XXIst INTERNATIONAL CONFERENCE OF THE RED CROSS

Istanbul, September 1969

REAFFIRMATION AND DEVELOPMENT OF THE LAWS AND CUSTOMS APPLICABLE IN ARMED CONFLICTS

(Item 4 a, b and e of the Provisional Agenda
of the Commission on International Humanitarian Law
and Relief to Civilian Populations in the Event of Armed Conflict)

Report submitted
by the International Committee of the Red Cross

Geneva
May, 1969

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[ORIGINAL FRENCH]

XXIST INTERNATIONAL CONFERENCE OF THE RED CROSS

REAFFIRMATION AND DEVELOPMENT OF THE LAWS AND CUSTOMS APPLICABLE IN ARMED CONFLICTS

PART I

General Remarks

I. OBJECT AND PURPOSE OF THE PRESENT REPORT

One of the main items on the Agenda of the Humanitarian Law Commission at recent International Conferences of the Red Cross was entitled "protection of civilian populations against indiscriminate warfare". The present Report partly constitutes a follow-up of the Resolutions adopted on the Subject at these Sessions.

For the XXIst Conference, however, this usual item has been replaced by the more general theme "Reaffirmation and development of the laws and customs applicable in armed conflict"(Number 4 of the provisional Agenda of the Commission for International Humanitarian Law and Relief to civilian populations in armed conflicts). It is that general subject with which this Report deals, covering more particularly points (a) (Protection of the essential Rights of the Human Being), (b) (Protection of Civilian Populations) and (e) (Other Fields). Points (c) (Status of Civilian Defence Services) and (d) (Protection of Civilian Medical and Nursing Personnel) are the subject of separate reports. The present

Report also covers certain aspects of item 5 of the Agenda (Non-International Conflicts on which the ICRC is also submitting a special document. 1)

The subject matter of this Report is of course far from new for the Red Cross; international wars or "blind weapons", for example, have often been matters for concern and resolutions of the International Red Cross alongside the protection of civilian populations. But the terms employed here, "reaffirmation and development of the laws and customs applicable in armed conflicts" definitely represent something new, a realization : they denote that, in the ICRC's opinion, the task devolving on the Red Cross as regards the development of humanitarian law should in future be conceived and undertaken on a broader basis. Chapter II explains the exact sense of this expression and the outlook in which the development of humanitarian law should be considered.

This conception is a logical issue of the ICRC's work in the field of humanitarian law since 1965, in accordance with the tasks entrusted to it by the XXth International Conference, particularly its Resolution XXVIII. Chapter III describes the evolution and extension of this work. The ICRC has maintained close contact for that purpose with the United Nations Secretary General, whom the General Assembly also instructed to make certain studies in this sphere. The cooperation between the United Nations and the ICRC are the subject of Chapter IV.

It is the second part of this Report, however, which is most important. This reviews in detail the different fields where efforts should be made to develop humanitarian law and the main problems arising in connection with each. To this end, it gives an analytical summary of the results of the discussions at the February 1969 Committee of experts specially convened by the ICRC. Where appropriate, the ICRC's own observations and conclusions accompany these results.

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1) Report of the ICRC on the Protection of Victims of Non-International Conflicts, Document DS 5a and b.

The third part of the Report gives the general conclusions to be drawn from this work and indications as to how they should be followed up.

Furthermore, a series of texts or Resolutions which can usefully be consulted, and minimum bibliographical data, have been added as an Annex (Part IV) 1). This was considered necessary to facilitate study of the present document and the subjects dealt with therein.

This Report does not therefore propose texts of laws or regulations. Nor is it a scientific document. Its essential purpose is to set forth as briefly and clearly as possible the main problems which arise in the sphere under consideration, with a view to facilitating their examination by the Governments, National Red Cross Societies, other recipients of the Report, and even the general public.

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1) For technical reasons this section of the Report is specially numbered, beginning with page 01.

II. SIGNIFICANCE AND SCOPE OF THE EXPRESSION "REAFFIRMATION AND DEVELOPMENT OF THE LAWS AND CUSTOMS APPLICABLE IN ARMED CONFLICTS"

As pointed out in the previous Chapter, the opinions of numerous experts consulted and its own experience have convinced the ICRC that the development of humanitarian law applicable in armed conflicts - a matter on which the Red Cross has been working since its inception - should in future be conceived on a broader basis, more closely corresponding to present facts. In a word this development, in its opinion, should present the five following characteristics, which will be examined in succession :

- It should be global and well balanced, bearing on the weakest points (what should be developed and re-affirmed and why);
- It should take full account of modern conditions in the international community (relinquish the expression "law of war");
- It should be conceived as a pressing task;
- It should enjoy the active support of public opinion and the peoples in general;
- It demands co-ordination of all the efforts undertaken in this field.

1. The development of international law applicable to armed conflict should be global and well balanced

Inadequacy of present rules

Authoritative voices have spoken of the "chaotic

status" of the law of war [1], or "dangerous lacunae" in this law. [2] But other authoritative voices have declared : "It is not norms which are lacking, but man who has failed by neglecting to oppose the existing norms to an illegal evolution" [3]. Each of these affirmations is partly true; but their divergencies at least betray an unsatisfactory situation, which some have gone as far to qualify "scandalous". The ICRC for its part has had opportunity for observing this in its actual practical activities during armed conflicts. Two examples are given to illustrate this situation.

Example one : A soldier will hesitate to bayonet a woman or a child belonging to the enemy; it would be criminal and sanctioned by law. But if he is soaring several thousand meters high in a plane, this same soldier will have less hesitation in launching bombs on the same town, where possible members of the enemy have been reported, bombs which may kill hundreds or thousands of women and children. Landing by parachute, if his plane is shot down, he will claim the protection of the hundred and twenty Articles of the Geneva Convention on prisoners of war. Is there any code of precise rules, universally recognized, to remind this soldier of the precautions he should take to spare these victims ? No, alas !

Example two : In an international war, if doctors and nurses from a country not involved in the conflict desire to alleviate suffering and enroll for this purpose in the medical corps of one of the belligerents, a series of precise, detailed rules, including the wearing of the red cross emblem, ensure special protection, enabling them to carry out their relief activities in all circumstances, even if they fall into the hands of the opposing party.

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1) Kunz :"The chaotic status of the laws of war and the urgent necessity for their revision". American Journal of International Law, 1951, p. 37.

2) Max Huber :"Quelques considérations sur une revision éventuelle des Conventions de La Haye relatives à la guerre", Revue internationale de la Croix-Rouge, 1955, p. 417.

3) H. Meyrowitz :"Reflexions on the Centenary of the Declaration of St-Petersburg", International Review of the Red Cross, December 1958, p. 611-625.

In an internal conflict, on the other hand, if these same doctors and nurses, for the same altruistic reasons, enroll in the ranks of one of the parties to the conflict, to perform their medical tasks, which the circumstances of the combats may make still more difficult, no written rule provides for special guarantees, in the interests of the victims, or even the wearing of the red cross emblem.

These two examples clearly illustrate, by their extreme nature, the inadequacy of humanitarian law applicable to armed conflicts. This situation can be outlined in three points :

a) For international wars, the rules designed to protect victims of hostilities (wounded, sick, shipwrecked) or secure proper treatment of individuals falling into enemy hands (military or civilian prisoners, occupied territories) have been periodically revised and developed to adapt them so far as possible to present needs. This is the whole sphere of the 1949 Geneva Conventions and their over four hundred Articles of extensive regulations, which were contrived by the ICRC.

These Conventions not only lay down in detail the protection of the persons to whom they relate, but a series of their stipulations ensure the regular application of these norms (procedure and supervisory bodies, repression of violations, diffusion of these texts, etc.).

b) The rules for the conduct of hostilities, in the broadest sense (conduct of military operations, employment of weapons, behaviour towards the enemy, conception of the combatant, etc.) are in quite a different state. These rules are also in the interests of the human person, by endeavouring to spare civilian populations and avoid unnecessary suffering. But, with the exception of the 1925 Geneva Protocol, these rules were last codified over sixty years ago - at a time when bombing did not yet exist ! - i.e. at the 1907 Hague Conference (whence the expression "Hague Law" used for this category of rules).

Some of these rules, like the general principles of law, certainly still have their full value. In addition customary rules have been formed. There are therefore limitative norms relating to the conduct of hostilities. These, however, in light of the changes which have occurred in war techniques and the conditions of the international community, are too few in number and insufficiently precise to ensure the protection of the human person as they should in the conflicts which continue to rent the world.[1] This is all the more true in that there is no procedure for supervision which would guarantee the application of these rules; the impression of inadequacy indeed often also springs from their defective application.

There is thus considerable disproportion between Geneva Law, extensively developed, and the sphere of rules relating to the conduct of hostilities. The ICRC has been concerned with remedying this situation for a long time past and its efforts have led to the reaffirmation of several basic principles of protection, confirmed by a recent Resolution of the UNO. [2]

But this is only a first step; as a whole the lack of rules subsists. The ICRC has come to realize, as

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1) So far as cultural property is concerned, on the other hand, The Hague Convention of 1954 for the Protection of Cultural Property in the event of armed conflict, concluded under the auspices of UNESCO, has brought into being for that what is still lacking for the protection of persons. As regards this Convention, see Annex. V, p. 016.

2) See on this subject, p. 18.

pointed out further on, 1) that a clear distinction between these two fields of law applicable to armed conflicts cannot be maintained, as was sometimes considered possible : belligerents necessarily consider this law as a single whole, and the inadequacy of the rules relating to the conduct of hostilities has a negative impact on the observance of the Geneva Conventions.

c) In addition, what is worse, while international wars involving the application of these Conventions have been few since 1945, non-international wars have been frequent and deadly. In these the only rules applicable are the few basic rules contained in Article 3, common to the four Geneva Conventions; these moreover mainly concern the treatment of persons in enemy hands, not the conduct of hostilities. However valuable this Article 3, which was a veritable victory in 1949, succeeding internal conflicts have demonstrated that it was inadequate to ensure the human person all the necessary protection.

The signification of "reaffirm and develop the laws and customs of a humanitarian nature applicable in armed conflicts"

As stated in more detail in Chapter III, the ICRC, in face of the situation described above, reached the following conclusion : the law applicable to armed conflicts having to be considered in its entirety, the main efforts for its development should now be directed essentially to the parts of this law which are inadequate in that respect, i.e. the rules concerning the conduct of hostilities, in their broadest sense, and the rules applicable to internal conflicts. This is what the expression "reaffirmation and development of the laws and customs applicable to armed conflicts" signifies.

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1) See below, p. 20.

"Reaffirm", for certain rules, certain principles, already exist, which are often simply customary or little known. This idea of "reaffirming" also assumes its full meaning for the new countries in the international community. 1)

"Develop", because the existing norms and principles should be specified and materialized in a series of rules often implicitly contained in those norms.

As to the terms "laws and customs", taken from the IVth Hague Convention, they show that both written and customary rules are under consideration.

Finally, it is a matter of developing and reaffirming the laws and customs "of a humanitarian nature.". It may rightly have been said that the law of war, properly interpreted, generally presents that character. 2) Nevertheless, the ICRC considers that efforts should be directed essentially towards the rules of a distinctly humanitarian nature; those concerning the protection of the human being or the essential assets of humanity. As will be seen further on, 3) in the programme submitted to the experts consulted, it therefore left aside everything connected with economic warfare, prize law, etc.

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1) As regards the value of this reaffirmation in respect of new members of the international community, see the experts' discussions, Part II .

2) The significance of the achievement of the Geneva Conventions of 1949 is not in any way diminished by the fact that the part of the law of war which they cover is of a humanitarian character. For, although we may not always realize it, this is the main feature of practically all rules of warfare covered by The Hague Regulations ...", H. Lauterpacht, "The problem of the revision of the law of war", British Yearbook of International Law 1952, p. 360.

3) See Part II, Chapter I.

And the Geneva Conventions ?

The above in no way implies that all the necessary attention to the Geneva Conventions should be neglected for the future. While these in practice reveal defects, which the ICRC is also working to remedy, for international conflicts, on the whole, they constitute an amply sufficient set of rules to ensure effective protection of the human being.

Effective protection, provided these Conventions are regularly applied. This problem of application is just as capital as that of the development of law, and the ICRC is giving it full attention. 1) But it is a different problem, not dealt with here as regards these Conventions.

2. Modern conditions of the international community must be taken into account in performing this task

The words "revision" or "restoration", of the law of war, which are convenient expressions for the sake of brevity, are often uttered and will sometimes be employed hereafter. But the ICRC deliberately refrained from using them in the title of this Report : they can create confusion, controversy, and are associated with the idea of war in the formal sense. In this way the ICRC desires to show that it is deeply aware of the changes which have occurred in the international community since the time when the 1899 and 1907 Hague Conferences codified the "law of war" and resort to war was considered as a legitimate means of State policy.2)

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1) See the Report submitted to the Conference by the ICRC on "The Implementation of the Geneva Conventions".

2) See the experts' discussions with regard to the reaffirmation of law in "modern" terms, Part II, Chapter II.

Since then recourse to war has been expressly prohibited by the League of Nations Covenant and, above all, the United Nations Charter. Even if resort to force remains legally possible in certain limited cases, even if, morally, and according to some doctrines, too flagrant injustice authorizes this, in our days it appears an exceptional means. The efforts of the Red Cross in the sphere of the present Report should not therefore give the impression that it wants to regulate war and the conduct of hostilities, as normal and legitimate occurrences, in the same way as a game is regulated.

No, it is always a question here of setting the limits required by humanity to the recourse to violence, incumbent, without respect to the qualification of the conflict, on all who are responsible for military operations, including those who consider they are engaged in a just cause (legitimate defence, war of liberation, police operations, etc.). For, in the final issue, it is always a matter of protecting the essential rights of the human person in exceptional circumstances.

By avoiding the words "law of war", the ICRC is also desirous to take account of the deep aspiration of the peoples to see peace installed and the disputes between human communities settled by pacific means. For some years past the ICRC, together with the whole Red Cross, has therefore decided to strengthen its contribution to a peaceful spirit in the world; to the utmost it will also submit an important Report on this point to the XXIst International Conference of the Red Cross,(1) These two endeavours, for peace and for the protection of mankind in armed conflicts, far from being in opposition, complete one another and must be conducted on a parallel.

Finally, the ICRC is fully conscious that the development of humanitarian law it advocates has to be effected in a world which lives with atomic weapons and the threat of nuclear warfare. As compared with The Hague period, this element also constitutes a new area of considerable importance, which cannot be ignored. The ICRC's attitude on this point is set forth at more length in Part II of this Report in connection with the prohibition of indiscriminate weapons or weapons causing unnecessary suffering(2).

(1) Report of the ICRC and of The League of the Red Cross Societies on "The Red Cross as a factor in World Peace".

(2) See below, Part II, Chapter III, A.

3. The task is conceived as pressing

"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..."

This quotation is not drawn from an ICRC publication or due to a particularly pessimistic author. It is the textual reproduction of part of the Resolution officially adopted by the Governments at the International Conference on Human Rights in April-May, 1968, at Teheran, which is referred to later. (1)

True, recent conflicts have given a special cast to these official observations, but they could already be made earlier, whether in connection with the Korean, Indochinese, Algerian wars or a series of other explosions of violence in the world. This is why, in 1957, the ICRC submitted a set of rules to all the Governments, designed to decrease these sufferings, at least in respect of civilian populations. Yet, on the Government level, no real action was taken for a long time on these proposals. Over ten years had to pass before the Resolution adopted in December 1968 by the United Nations (2), following those adopted at Teheran and by the International Red Cross, was to reaffirm the principles opposed to unlimited recourse to force.

Ten years is a long time, too long, in the sphere under consideration. As regards the ICRC's proposals, it was urged that the Powers should first concentrate on disarmament and the maintenance of peace.

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(1) See page 22 and for full text of Resolution see Annex VIII, page 024.

(2) See Annex X, page 030.

True these are basic matters, alongside others, assistance to the third world, for example, which claim the constant and earnest attention of the Governments. But, however important, they cannot justify such slowness in strengthening the humanitarian rules applicable in armed conflicts. From now, this consolidation should be considered as an equally fundamental task.

The United Nations Resolution referred to requests the Secretary General in particular to "study" the need to strengthen the existing rules. It is not for the ICRC to pass premature judgment on the results of these studies, in which it will give the fullest assistance, as stated later (1). Nevertheless, in the light of its own experience and the opinion of the experts it assembled in February 1969 - and certainly also the preamble of the Teheran Resolution quoted above - the ICRC considers this task is not only "necessary" but pressing (2).

In the interests of the victims of subsisting conflicts or those which may still break out, it is now the duty of the international community to achieve practical results in this field as rapidly as possible.

4. The undertaking must enjoy the active support of public opinion

The rules to be reaffirmed and developed are not designed for restricted circles or certain limited categories of individuals. They are of direct and deep interest to the peoples of every country; this is a characteristic of humanitarian law and especially the

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(1) See Part I, Chapter IV.

(2) For the reasons motivating this necessity and urgency see also experts' discussions, Part II, chapter II (general discussion).

Geneva Conventions. One day or another, anyone of us may have to suffer from the consequences of hostilities and many of us may be called on to take part in armed operations, and therefore to apply these rules. The peoples cannot constantly be the puppet of the blind forces that menace them. They should be the first to put forward the rights and just claims of humanity.

The weight of public opinion will be of primary importance in this undertaking and countless examples, confirmed moreover by the experts assembled by the ICRC, have demonstrated the role it can play in the triumph of legitimate causes.

The ICRC therefore strongly recommends all the recipients of the present Report, in particular the National Societies, to arouse interest in its contents, of wide circles surrounding them, especially all the members of the great Red Cross movement. The ICRC itself will not fail to bring this problem and the urgency of finding a solution before public opinion.

5. Efforts must be conceived in a co-ordinated manner

While the ICRC's efforts to strengthen the standards protecting human persons against the consequences of hostilities for quite a long time awakened little echo, recently a profound change has fortunately been observed. Apart from the mandates conferred on the ICRC by the International Conference of the Red Cross, in which Government representatives took part, the General Assembly of the United Nations has also instructed the Secretary General to undertake studies in this field and the succeeding Chapters state the relations existing between the two organizations in this connection.

In addition, several private national and international institutions showing sometimes active concern with

this problem, holding meetings on the subject (1). The ICRC is only too pleased to witness the interest appearing in numerous circles on a subject too long left aside. In view of the goal, however, i.e. a rapid solution of the problems arising, the ICRC feels that all this interest would be the more valuable if it trended towards co-ordinated action. For its part, in virtue of lengthy experience, it has endeavoured to keep informed of all that is being done in this field and maintain contact with the various institutions interested in the problem (2). It is therefore prepared to continue and extend this work of co-ordination, without which the best intentioned efforts sometimes risk decreasing rather than increasing their effectiveness.

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(1) Among these institutions, special mention should be made of the work of the Institute of International Law, which since 1956, has been concentrating on the question of the "Reconsideration of the Principles of the Law of War". After having also studied the problem of "The equality of application of the rules of the law of war to the parties in an armed conflict", the Institute of International Law is at present pursuing its work in the sphere under consideration on two particular points :"The problem raised by the existence of weapons of mass destruction and the distinction between military and non-military objectives in general" (5th Commission) and "The problem of the conditions of the application of the laws and customs of war to military operations of the United Nations and its regional organizations" (1st Commission).

(2) For its meeting of experts in February 1969, the ICRC prepared a documentary note giving a summary list of all the institutions dealing with humanitarian law applicable in armed conflicts and the position of their work. This list (Document D 1056 of 30.1.69) may be obtained from the ICRC, Geneva.

III. THE WORK OF THE ICRC SINCE THE XXth INTERNATIONAL CONFERENCE OF THE RED CROSS

An important Resolution (No XXVIII) (1) with regard to the protection of civilian populations against indiscriminate warfare was adopted by the XXth International Conference of the Red Cross (Vienna 1965). This Resolution proclaimed four essential principles of protection. The Conference did not consider this as its final goal but on the contrary urged the "ICRC to pursue the development of International Humanitarian Law, in accordance with Resolution No XIII of the XIXth International Conference of the Red Cross, with particular reference to the need for protecting the civilian population against the sufferings caused by indiscriminate warfare".

This task was considered both pressing and extensive; the ICRC was requested to "take into consideration all possible means and to take all appropriate steps... with a view to obtaining a rapid and practical solution of this problem".

On these lines, better to decide how this Resolution should be implemented, the ICRC judged necessary to consult a series of specially qualified persons, in a private and personal capacity, who represented the main trends of world opinion.

These consultations, conducted by representatives of the ICRC, sometimes during foreign missions, were effected in 1966 and the first months of 1967. They extended to over fifteen outstanding people, who had previously received a detailed questionnaire. Their opinions proved valuable and circumstantial. These persons were : President BARGATZKY (Bonn), Professor BAXTER (Harvard, U.S.A.) Mr. A. BUCHAN (London), Professor CASTREN (Helsinki), Mrs. CHAKHRAVARTY (New Delhi), Mr. CHOUDHURY (Karachi) Professor DRAPER (London), Ambassador EL ERIAN (Cairo, New York), Professor GRAEFRATH (Berlin), Ambassador

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(1) See Annex XII, page 034.

HAMBRO (Oslo, New York), Judge LACHS (Warsaw, The Hague), Senator MATINE-DAFTARY (Teheran), Professor MERAY (Ankara), Professor SAHOVIC (Belgrade), Ambassador TSURUOKA (Tokyo, Berne), Professor WOLFERS (Washington).

Professor ARECHAGA (Montevideo) and Professor TUNKIN (Moscow) were also approached by letter but it proved impossible to arrange a consultation.

Having drawn its conclusions from this broad survey of opinions, in the spring of 1967 the ICRC decided on two steps to give practical effect to Resolution XXVIII :

- a short-term measure : endeavour to obtain rapid official confirmation by the Governments of the principles of protection contained in the Resolution (this was one of the purposes of its Memorandum of May 1967);

- a longer-term measure : extend the work of "restoration" to the whole of humanitarian law applicable in armed conflicts.

1. Memorandum of 19 May, 1967

The ICRC therefore decided, as a first immediate step in line with the spirit of Resolution No XXVIII, to send a Memorandum to all the Governments. This Memorandum, dated 19 May, 1967, whose full text is attached as an Annex,(1) reached the Chancelleries a week before the Middle East conflict broke out. It called to mind the terms of the Resolution, in particular the four principles of protection, and requested the Governments to sanction and if need be develop these general rules in an adequate instrument of international law.

The Governments were also invited "to reaffirm, as of now through any appropriate official manifestations, such as a Resolution of the United Nations General Assembly the value they attach to the principles cited above".

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(1) See Annex XV, page 049.

On account of Middle East events, at the time this Memorandum aroused little echo. In the course of the summer, however, a dozen Governments with which the ICRC had been in touch, declared interest in its suggestion and readiness to submit a resolution to the General Assembly of U.N.O. in the desired sense. Consequently, in the autumn of 1967 a representative of the ICRC went to New York; it there became evident that the Middle East crisis and concentration of efforts on the non-proliferation treaty made it impossible to submit such a draft resolution.

The ICRC refused to give up and the following year circumstances were more propitious. As the Resolutions of the Teheran Conference on Human Rights were to pass before the General Assembly of the United Nations in the autumn of 1968, the ICRC considered a favourable occasion was offered for reverting to its idea. In a letter to U Thant of 19 September, 1968 (referred to later), reminding him of its suggestion it pointed out that this was in no way incompatible with the studies entrusted to the Secretary General of the U.N.O. The ICRC added : "Whilst awaiting the results of these studies and the adoption of new or revised provisions, which require time, we consider that any propitious opportunity should be taken to recall the rules, whether written or not, recognized by the international community and whose scrupulous observation could already save so many human lives."

At the beginning of October, an ICRC delegate, Mr. Pilloud, Director, went to New York to follow the General Assembly's discussions on this matter. He had contacts with the representatives of the countries prepared to submit a draft resolution which would take up the Teheran Conference Resolution on the respect of Human Rights; after listening to Mr. Pilloud, these delegates willingly agreed to incorporate the principles proclaimed by the International Conference of the Red Cross in their text.

When this draft was discussed by the Third Committee of the General Assembly on 9 and 10 December, 1968, some delegates asked that the fourth principle

relating to nuclear weapons should be left aside. This was accepted (1).

This Resolution (2), unanimously adopted by the General Assembly on 19 December, 1968, also contains another important section concerning the studies entrusted to the Secretary General, which are referred to below under 2. It suffices here to stress that by this Resolution the General Assembly "affirms" three of the principles proclaimed in Vienna. The first purpose of the ICRC's Memorandum, dated 19 May, 1967 was thus achieved. The reaffirmation of these principles by the United Nations should be considered an important step forward - a first step admittedly. The significance and value of this Resolution are examined in greater detail during the present Report in connection with the protection of civilian populations (3).

2. Extension of work for the "restoration" of the laws and customs applicable to armed conflicts.

During the winter of 1966-1967, the ICRC took a second decision to give effect to Resolution XXVIII adopted at Vienna. This was to be important for the future development of its work and the reasons should be explained.

As a result of what had been observed during its practical activities in armed conflicts these last twenty years, more especially in Korea, Vietnam and the Yemen, the ICRC had reached certain conclusions :

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(1) During its consultations in 1966, the ICRC had already found this fourth principle raised difficulties; some people felt it could be interpreted as not categorically forbidding all employment of nuclear weapons.

(2) See full text, Annex X, page 030.

(3) See Part II, C, Chapter III B.

- The inhabitants of a country not only suffer from the consequences of "classical" bombardments, but also the employment of certain weapons. The ICRC had thus been lead to consider the means of combat - which is no new preoccupation for the Red Cross.

- This concern cannot be confined to the civilian population : in face of the suffering caused by certain weapons, it is the human being whom the Red Cross has in view, combatants just as non-combatants.

- Nor can only international conflicts be taken into account : the number and size of internal conflicts makes it necessary to ensure better protection for the population and other victims.

- Finally, as this Report has already shown earlier (1), the application of the Geneva Conventions is jeopardized by the inadequacy of the rules relating to the conduct of hostilities.

The ICRC therefore concluded it could no longer simply concern itself with the protection of civilian populations if it were to achieve the pressing task entrusted to it under Resolution XXVIII by the Governments and the National Societies, fully and effectively. On the contrary, it was in the interests of real protection to conceive this task in a broad sense, by remedying the inadequacy of law applicable to armed conflicts in spheres where the deficiencies were most dangerous from the humanitarian angle.

In the spring of 1967, the ICRC consequently decided to seize the opportunity offered by the Memorandum to Governments concerning Resolution XXVIII and draw attention to the more general question of the "restoration" of the humanitarian rules of the law of war. The third part of this Memorandum of 19 May, 1967 (2) therefore read as follows :

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(1) See above, Chapter II, 1.

(2) See full text, Annex XV, page 049.

"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."

As will be observed here, it is no longer a question of the civilian population, but of all the rules designed to protect the "human person", i.e. the basic rights of the individual, whether a combatant or not.

Two other events which occurred in the course of 1967 added to the ICRC's conviction that this was a necessary and even urgent undertaking: the Middle East and the Nigerian conflicts. For this reason, in April 1968, it decided to prepare a report for the XXIst International Conference of the Red Cross on the whole question of the "restoration" of the law of war and to convene a large meeting of experts for this purpose. Mr. Pictet, member of the ICRC and Director General, informedthe representatives of the National Red Cross Societies of these intentions when they met in Geneva at the League Executive Committee in September 1968, in an address on "Necessary restoration of the law of war" and the item covered by the present Report was duly placed on the Agenda of the Istanbul Conference.

3. Resolution of the Teheran Conference on Human Rights in armed conflicts

Another noteworthy fact confirmed the ICRC in its views. Its 1967 Memorandum, probably on account of war events in the Middle East, had not brought many replies from the Governments (1); in particular they had failed to take up position on the third part of the Memorandum concerning the inadequacy of the law of war. It can however be considered that they gave an indirect reply in May 1968 at the International Conference on Human Rights in Teheran.

The latter indeed adopted an important Resolution concerning Human Rights in armed conflicts, whose text is attached as an Annex (2). Subject to approval by the General Assembly of the U.N.O., it proposed that the Secretary General of that organization should study the need for additional humanitarian conventions or the revision of the existing conventions. The preamble to the Resolution brought out the necessity of such an undertaking (3). It furthermore requested the Secretary General, as an immediate measure, to draw the attention of all States members of the United Nations to the existing rules of international law and, in the absence of these, to the principles which ensure the protection of populations in all circumstances.

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(1) Most of the replies received - thirty odd - stated that the document had been submitted to the competent services for study. A few Governments replied in detail, stating what was done on the internal level, or approving the ideas set forth in the Memorandum.

(2) See Annex VIII, page 024.

(3) It should be pointed out here that already in 1966, the Governments, by adopting at the United Nations the Resolution relating to the Geneva Protocol (See Annex VII, page 022) had affirmed that "the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining these standards of civilization".

By proposing that the Secretary General of the U.N.O. should be entrusted with studies in this field, the Teheran Resolution already explicitly provided for consultation with the ICRC. On 20 August, 1968, Mr. Thant therefore forwarded a copy of this Resolution, requesting its views on the subject. On 18 September, the ICRC replied as follows :

> "The studies which the Secretary General is requested to undertake concern a sphere very similar to that in which has been the efforts deployed by the International Committee 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."

As stated earlier (1), by its Resolution No 2444 of 19 December, 1968 (2), the General Assembly of the U.N.O. took up and approved the essential parts of the

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(1) See above, 2 .

(2) See Annex X, page 030.

Teheran Conference Resolution already referred to, incorporating the principles proclaimed by the XXth International Conference of the Red Cross, During the discussion, several Delegations made favourable allusions to the ICRC's work for the development of humanitarian law, and the Director of the Human Rights Division pointed out that in 1969 the ICRC would dispose of a Committee of experts instructed to examine somewhat similar questions to those mentioned in the draft Resolution. He furthermore confirmed that the studies entrusted to the Secretary General would be conducted "in consultation with the International Committee of the Red Cross and other appropriate international organizations".

The ICRC, which was then concluding its preparations for the meeting of experts, learnt with keen satisfaction from its Delegate in New York that this Resolution had been unanimously adopted. Not only did it confirm the essential principles of protection, but the Committee could thus consider the second objective of its Memorandum of May 1967 fully achieved, by drawing the Governments' attention to the position as regards the humanitarian rules applicable to armed conflicts.

4. The meeting of experts convened by the ICRC in February 1969

With a view to completing the Report it proposed to submit to the International Conference of the Red Cross on these subjects the ICRC had decided, in April 1968, to surround itself with the opinions of experts who were especially qualified, owing to their knowledge of international law or the political and military facts of the contemporary world. This, moreover, is the usual procedure followed by the ICRC in its legal work.

It approached a score of personalities from a series of different horizons, calculated to ensure wide representation of every current of thought. Several of them had already been approached by the ICRC at the time of the 1966 consultation. The Committee stated that the meeting would be of an advisory and private nature, where participants would voice their purely personal opinions.

The meeting was held at ICRC headquarters from 24 to 28 February 1969. The following eighteen personalities were able to attend throughout or part of the time :

- General A. BEAUFRE	Paris
- Dr.M.BELAOUANE, President of the Algerian Red Crescent	Algiers
- Mr. A.BUCHAN, Director of the Institute for Strategic Studies	London
- General E.L.M.BURNS	Ottawa - Geneva
- Prof. B.GRAEFRATH	Berlin (DDR)
- Ambassador E.HAMBRO	Oslo - Geneva
- Prof. R.HINGORANI	Patna
- Judge KEBA M'BAYE	Dakar
- Ambassador L.E.MAKONNEN	Addis-Ababa New York
- General A.E.MARTOLA	Helsinki - Nicosia
- Senator A.MATINE-DAFTARY	Teheran
- Mr. S.MacBRIDE, Secretary General of the International Commission of Jurists	Dublin - Geneva
- Prof. S. MERAY	Ankara
- Prof. J. PATRNOGIC	Belgrade
- Prof. B. ROELING	Groningen
- Mr. Marc SCHREIBER, Director, Human Rights Division	U.N.O. - New York
- Prof. R. TAOKA	Kyoto
- Baron C.F. von WEIZSAECKER	Hamburg

In addition, three personalities who had been invited but unable to attend on account of their work communicated their opinions to the ICRC in writing or in the course of subsequent conversations :

- Judge Christopher COLE	Freetown (Sierra Leone)
- Ambassador E.GARCIA-SAYAN, President of the Peruvian Red Cross	Lima
- Prof. Nagendra SINGH	New Delhi.

Finally, five other personalities had regretfully to decline the ICRC's invitation on account of their work. These were Ambassador CASTANEDA (Mexico), Judge Isaac FORSTER (Dakar-

The Hague), General KOWALSKI, M.D. (Warsaw), Judge Kisaburo YOKOTA (Tokyo), and Professor Hans HAUG (Berne).

Ten meetings, under the Chairmanship of Mr. Pictet, member of the ICRC, enabled reviewing the different questions submitted to participants by the ICRC several weeks earlier in the preliminary documentation. It is unnecessary to enter into details here as regards the results of these discussions, since Part II of the present report deals exclusively with these.

It suffices to emphasize how fully the experts showed themselves aware of the importance of the matters submitted for consideration, endeavouring to advise the ICRC and find solutions which would correspond to the fundamental aspirations of humanity. The ICRC desires at this juncture to voice them its fullest gratitude.

IV. RELATIONS WITH THE UNITED NATIONS AND CO-ORDINATION OF WORK

The question of co-ordination between U.N.O. and the ICRC (as pointed out in the previous Chapter) was raised by the very existence of the Resolution adopted at the Teheran Conference on Human Rights and still more that of the General Assembly Resolution dated 19 December 1968, following it up, which entrusts studies entering into the field of humanitarian law, relating to armed conflicts, to the Secretary General of the U.N.O. The latter is engaged in similar work at the request of the International Conference of the Red Cross, where the Governments of States bound by the International Conventions of Geneva also sit.

These Resolutions stipulate that the Secretary General's studies shall be conducted "in consultation with the ICRC and other appropriate international organizations"; but they give no other details as to the form of this co-ordination, thus leaving it to organizations concerned to decide. So far as concerns the discussions of the IIIrd Committee of the General Assembly on this point (1), they chiefly brought out a twofold desire of the

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(1) See provisional Proceedings of meetings of 9 and 10 December and of 12 and 13 December 1968, documents A/C.3/SR 1633 and 1634.

Delegates : on the one hand, that the concern for economy avoid overlapping and, on the other, that the Secretary General keep close contact with the competent organizations, especially the ICRC.

The ICRC had already established such close contact prior to the adoption of these Resolutions. In 1967, and again in 1968, it was in touch with U Thant and members of his staff concerning the implementation of Resolution No XXVIII of the 1965 International Conference of the Red Cross. Furthermore, in its letter of 18 September, 1968, to the Secretary General, mentioned earlier (1), the ICRC, when pointing out the extension of its work, declared itself ready to assist Mr. Thant in the studies he would have to undertake.

More than this, following the December 1968 Resolution of the General Assembly, the ICRC wrote to Mr. Thant on 16 January, 1969, officially informing him of the meeting of experts. It added :

> "Naturally, the report which the International Committee will draw up as a result of this consultation with experts will be at your entire disposal. In addition, we are prepared, if you so wish, to associate with the work of this group of experts a personality of your own choosing, qualified by his duties in the framework of the United Nations, and especially of the General Secretariat, whom we would be pleased to invite, in the same capacity as the other participants, and who could give you detailed information of the results of this meeting."

As a result the ICRC had the pleasure of including among the experts the Director of the U.N.O. Human Rights Division, Mr. Marc Schreiber, who took an active and valuable part in the meeting.

At this still preliminary stage of the work, the following remarks can be added in regard to co-ordination :

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(1) See above, page 22 .

a) In respect of the matters considered, the United Nations has for long been concerned with atomic weapons from numerous angles, including study of a possible Convention designed expressly to prohibit their use (1). More recently, the Secretary General was instructed to draw up a report on the consequences of the eventual employment of bacteriological and chemical weapons (2). The question of these weapons is also an item on the programme of the "Committee of Eighteen for Disarmament", from its legal angle. (3)

Any humanitarian law study relating to these weapons should therefore take account of the work proceeding on the subject in the United Nations. The ICRC meeting of experts took up these problems in that spirit. The Red Cross, however, which groups millions of members, has always reserved the possibility of making its voice heard on these matters, as the expression of public conscience, even if they are dealt with by other bodies.

As regards the other subjects to be studied, in particular the humanitarian rules relating to the conduct of hostilities or those applying to internal wars, these have been considered by the ICRC for a long time past, particularly the protection of civilian populations or victims of non-international conflicts. Since 1953, the ICRC has assembled a dozen Committees of experts on these matters. (4)

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(1) See United Nations General Assembly Resolution No 2289 of 8 December, 1967 (Conclusion of a Convention on the Prohibition of the Employment of Atomic Weapons).

(2) Resolution 2454 adopted by the General Assembly on 20 December, 1968. See Annex IX, page 027.

(3) See Report of this Committee to the United Nations dated 28 August, 1968, document ENDC/236, page 4.

(4) The list of these Committees appears as Annex XVII, see page 065.

The work of other organizations on specific points should certainly also be borne in mind : for instance the World Veteran's Federation or the Institute of International Law. Their work is referred to further on in connection with the discussions at the February 1969 Committee of Experts. As pointed out in Chapter II (1), what is essential is to co-ordinate all these studies so as to obtain the most effective results.

b) As to the law creating process, the Red Cross, and in particular the ICRC, has always appeared to the International community specially qualified to undertake the preparatory studies.

For the ICRC, this qualification springs from long tradition, experience acquired notably in preparing the draft of the Geneva Conventions, and from the independent and non-political nature of its action (as pointed out by some of the Delegates during the discussions last December at the U.N.O. General Assembly). This qualification also derives above all from a characteristic which distinguishes the ICRC and the Red Cross Societies from the other institutions working in this field : the ICRC is also a body for practical action, called on to carry out its humanitarian work in armed conflicts all over the world. It is thus able to draw information of great importance for the development of humanitarian law directly from experience and observations in the field.

Once this preparatory phase concluded, however studies transfer to government level - a new stage which it is also for the Red Cross, and especially the ICRC, to initiate and promote, within the limits of their resources, in order to see the studies result in concrete realizations. This is not the place to deal within this phase of a governmental nature; it will be alluded to in connection with the remarks made by the experts whom the ICRC consulted on the procedure in order to obtain rules of positive law (2), and in Part III of this Report (general conclusions of the ICRC).

c) Finally, it should be remarked that the studies requested of the U.N.O. Secretary General in the

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(1) See above, page 14.

(2) Part II, Chapter V.

Resolution of 19 December, not only relate to the development of humanitarian law, which is the subject of the present Report, but also to the "steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts" (1). The consultation provided for with the ICRC also includes this point.

The very important question of the application of existing law, which in principle is not dealt with in the present Report (2), in the first place concerns the Governments themselves. The ICRC is nevertheless constantly called on to consider this problem and to work, within its means, to secure proper observation of humanitarian law.

For this reason it desired to communicate to the Secretary General of the U.N.O., (apart from the Report it is submitting to the XXIst International Conference of the Red Cross on the "Implementation of the Geneva Conventions"), a series of reflections and appropriate comments on the means for improving the application of humanitarian law, with a view to making a maximum contribution to the studies requested of Mr. Thant.

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(1) Resolution 2444, 2, a) Annex X, page 030.

(2) With the exception of the experts' discussions concerning the development of rules designed to guarantee the application of substantive law; see Part II, Chapter III, D.

PART II

The Discussions and Results of the 1969 Meeting of Experts (1)

I. SCOPE OF THE MATTERS SUBMITTED TO THE EXPERTS

The preliminary documentation submitted to the experts, after explaining, like the first part of this Report, what should be understood by "Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts", defined the object of their study. In order to confine this to fields where it seems specially necessary to develop and reaffirm the law, the ICRC had proposed to leave aside :

a) For international conflicts, the matters covered by the Geneva Conventions (conditions of the wounded, sick, shipwrecked, as well as treatment of individuals falling into the power or coming under the authority of the enemy). As pointed out (2), these matters, are on the whole, adequately covered by the 1949 Geneva Conventions;

b) For the remaining law applicable in cases of armed conflict, the following subjects : rules relating to the outbreak or termination of hostilities and to the non-hostile relations between belligerents (declaration of war, parlementaires, capitulations, armistice, etc.) rules relating to enemy property; rules relating to sea warfare (including the question of blockade and prize law); rules relating to hostilities between air forces; finally, all the law of neutrality.

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(1) For the composition of this meeting of experts, held at the ICRC Headquarters from 24 to 28 February, 1969, see above, page 25.

(2) See above, page 10.

The ICRC considered, without disregard to the humanitarian aspects of these rules, it was less pressing to update and clarify the law in those fields. It added that other organizations could study some of these subjects, especially the law of sea warfare, in view of its special nature.

Consequently, the programme required the experts to concentrate attention, in the first place, on the rules relating to :

a) the use of weapons and means of war;

b) the protection of civilian populations against hostilities and their consequences;

c) behaviour between combatants with a view to limiting unnecessary suffering;

d) the suitable means of securing the enforcement of the above rules (reprisals, sanctions, supervision, repression of violations).

In the second place, the ICRC asked the experts to review the types of armed conflict to which the above rules should apply. Alongside international and non-international conflicts, the documentation had provided for situations resembling previous cases, in one way or another: hostilities conducted by the United Nations, guerilla and, finally, by extension, situations of internal disturbance and tensions. With the exception of the case of international conflict, the study was to bear on all the humanitarian rules applicable in these situations. The ICRC had underlined that it was well aware of the relative nature of this classification, essentially designed to make it easier to approach the questions; in practice, often no clear line can be drawn between these different situations, which makes the legal aspect more complicated and at times renders the application of these rules more difficult.

Finally, in the third place, the experts were requested to give their opinion as to the channels and procedures whereby the norms evolving from the discussion

could be transformed into rules of positive law.

As will be seen, the questions relating to the application of existing law, especially the Geneva Conventions, were not included among the matters submitted to the experts, (with the exception of d) above). It was shown earlier that this is another problem (1), which is so important and so comprehensive that it could be the sole subject of a special meeting of experts.

The opinion of the experts

On the whole the experts approved the framework suggested for their study, recognizing that these were the fields in which clarification and development of law were most necessar. Three points of this agenda, however, gave rise to remarks on their part :

- One expert pointed out that some aspects of the law of sea warfare also demanded somewhat urgent revision from the humnitarian stand-point. According to generally accepted law, merchant ships should not be attacked without warning and if they are sunk their crew should be rescued. Technical developments, however, make it difficult to observe these rules: in particular the existence of wireless installations in the lifeboats, enabling the naval and air forces of the belligerent to which the ship sunk belongs to receive warning, incite the opponent to attack lifeboats and their occupants as well. This situation, which is inadmissible from the humanitarian point of view, should be studied in order to find another solution.

- In reaffirming the law of war, the importance of repressing infractions committed by omission has been brought out; this is a count of indictment often left aside in judging war criminals. It was decided to deal with this question in connection with penal sanctions (2).

- Lastly, it was emphasized that in limiting study to the matters proposed, the impression should be avoided that the other matters of the law applicable to armed conflicts had no humanitarian character.

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(1) See above, page 10.

(2) See below, Chapter III, D.

Finally, owing to the wide scope of the programme submitted for consideration and the relatively short time available (a week), the experts judged advisable to concentrate mainly and first on the following points : general conception of the problem (general discussion), the question of weapons, the protection of civilian populations, non-international conflicts and guerilla. Although the discussions were not so detailed on the other subjects of the agenda, they enabled the ICRC to gather valuable opinions on the questions raised in the preliminary documentation.

II. GENERAL DISCUSSION ON THE NECESSITY AND URGENCY OF REAFFIRMING AND DEVELOPING THE HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

Before turning to the different aspects of law applicable in armed conflicts for the experts' consideration, the ICRC desired their remarks on the reasons which, in its opinion, make the reaffirmation and development of this law necessary and even pressing on some points. The first part of the present Report has already gone into some of these reasons in Chapter II (1). It is therefore sufficient here to summarize the six reasons explained by the ICRC in the preliminary documentation for the experts. The discussion on this subject was at the same time to prove the occasion of a general debate which, as will be seen, went even beyond the framework of the question put by the ICRC.

Here are the six reasons submitted to the experts:

1. Existence of armed conflicts, a contemporary reality : Among the reasons which in 1949 led the U.N.O International Law Committee relinquish dealing with the revision of the law of war, was particularly the fear of appearing to lack confidence in the possibilities of U.N.O. to settle disputes between nations (2). If the peaceful settlement of differences remains the primary objective

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(1) See above, page 4 .

(2) See Report of the International Law Commission UNO Doc A/CN 4/13 of June 9, 1949, p. 8.

of the international community, this fear no longer seems to be grounded. It should now be admitted that the strengthening of humanitarian law is in no way incompatible with the search for peace (1).

2. Contribution to peace : The ICRC has always considered that the proper observance of humanitarian laws and customs in armed conflicts was calculated to safeguard the values of mankind and thus facilitate a return to peace. This idea was confirmed, moreover, in one of the considerations in the 1966 U.N.O. Resolution on the Geneva Protocol (the observance of rules on the conduct of warfare "is in the interest of maintaining the standards of civilization" (2).

3. Safeguard of the international community : The development of technical means has led to the idea of total warfare. This could involve the complete destruction of the enemy State and all the human values it offers civilazation. It is therefore necessary that definite norms, sufficiently rooted in the peoples' conscience, oppose fatal "escalations".

4. Inadequacy of the law applicable to armed conflicts in relation to present conditions : The first part of this Report describes the situation of humanitarian law applicable in armed conflicts and the points on which it is inadequate (3). True, there are customary rules and the fundamental principles of The Hague Conventions retain their full value. But different views are possible and frequent in both interpretation and application when it comes to principles and customs. As was reminded in the 1966 United Nations Resolution on the Geneva Protocol, "strict observance" of the rules is in the interest of the maintenance of peace. Strict observance implies sufficiently detailed rules.

5. Disparity between the Geneva Conventions and other law applicable to armed conflicts : The first part of the present Report also explained of what this

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(1) On this subject see Part I, page 10 - 11.

(2) See text of this Resolution, Annex VII, page 022.

(3) See above, page 6.

disparity consisted (1). The ICRC had emphasized it in the preliminary documentation, stating that it had observed through experience the unfortunate effects of this disparity as regards the application of the Geneva Conventions. This application does not depend in law on the observance of the other rules, but it is quite clear that in practice the belligerents are led to consider the law of war as a single whole.

6. Expansion of the international community : In view of the very time-worn character of The Hague rules that are still valid, the imprecise nature of the customary rules, numerous States having newly acquired independence may experience some difficulty in ascertaining precisely the rules to be observed, above all if their leaders have in mind the contrary practices of older nations. Thus the necessity of reaffirming and defining these rules by instruments and procedures in which these new States will be associated.

The experts' opinion

In general, the experts recognized the necessity and urgency of reaffirming and developing the law under consideration and approved the different reasons given by the ICRC. As will be seen, they added remarks on certain points.

The general discussion largely centred round what should be reaffirmed and developed and the procedure to be followed.

The experts first mentioned a certain number of texts (international Treaties, conventional provisions and resolutions of international organizations) which in their opinion should form the basis of their discussion on this question. The famous "Martens Clause" appearing in the preamble to The Hague Convention IV, of 18 October, 1907, was initially mentioned:

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(1). See above, page 6.

> "Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

The spirit of this clause, it was reminded, reappears in all The Hague Conventions and those of Geneva; the clause is also referred to in Resolution XXIII of the Teheran International Conference on Human Rights (April-May 1968) (1).

In addition to The Hague Conventions (1899 and 1907) (2), the Geneva Protocol of 17 June, 1925, on the Prohibition of the use of asphyxiating poisonous or similar gases or bacteriological means (3) the Geneva Conventions of 12 August, 1949 (4) and The Hague Convention of 1 May, 1954, for the Protection of Cultural Property in the Event of Armed Conflict (5), some experts mentioned the Convention on the Prevention and Punishment of the Crime of Genocide, dated 9 December 1948 (6), the

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(1) Annex VIII, page 024.

(2) Carnegie Foundation for International Peace, "The Hague Conventions and Declarations of 1899 and 1907", New York, Oxford University Press, 1918.

(3) League of Nations, Treaty Series, Vol. XCIV, 1929, No 2138.

(4) United Nations, Treaty Series, Vol. 75, 1950, No 970 - 973, page 31.

(5) United Nations, Treaty Series, Vol. 249, 1956, No 3511, page 240.

(6) United Nations, Treaty Series, Vol. 78, 1951, No 1021, page 278.

Convention on the Elinimation of all Forms of Racial Discrimination, of 21 December, 1965 (1) as well as the principles of international law confirmed by the Charter of the Nuremberg Tribunal and in the Judgement of this Tribunal (2). The importance of Article 2 of the United Nations Charter - prohibition of resort to force - was stressed and some laid emphasis on the Universal Declaration of Human Rights (3) and the international Covenants on Human Rights (4), which it was said constitute a series of civil and political rights very closely bearing on the subject of the meeting's discussions.

Finally, the experts drew attention to Resolution XXVIII of the XXth International Conference of the Red Cross (5), Resolution XXIII of the International Conference on Human Rights (Teheran, April-May, 1968) (6) and especially Resolution 2444 (XXIII) adopted on 19 December, 1968, by the General Assembly of the United Nations on the respect of human rights in armed conflicts (7) (Resolution which confirmed the two previous Resolutions). The legal force and compulsory character of such resolutions, it is true, are the subject of controversy. It must however be admitted that, unanimously adopted, they have real weight. This is the case in particular of Resolution 2444 (XXIII) referred to above.

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(1) United Nations, Monthly Chronicle, Vol. III, No 1, January 1966, p. 117.

(2) See these principles as formulated by the United Nations International Law Committee, Annex XVIII, page 068.

(3) United Nations publications, sales No 1949, I-3.

(4) United Nations, Monthly **Chronicle**, Vol. IV, page 41.

(5) Annex XII, page 034.

(6) Annex VIII, page 024.

(7) Annex X, page 030.

Having enumerated the texts which in their opinion should be taken as a basis for the discussions, the experts turned to the following two questions :

a) What to reaffirm and develop ?

b) How to reaffirm and develop ?

a) What to reaffirm and develop ?

One of the experts, speaking as "the devil's advocate", wondered whether it was still possible to take the root principle of humanitarian law as a basis : the distinction between civilians and combatants. In present circumstances, is there anything to reaffirm if such a distinction is adopted as a starting point ? The change of situation is due, according to him, to two developments, one technical the other political.

This expert referred in particular to what he termed the "coercive war". According to this theory, defended by some authors, non-combatants are not only targets but essential targets. It is by taking them as objectives that surrender of the opponent is calculated. Is this not precisely the case with the bombing of the civilian population or acts of terrorism ?

Most of the experts, discarding this extreme theory, considered their study should not set out from the worst situation and the lowest standards, as otherwise it would lead nowhere. The standards States still looked on officially as valid should be taken as a starting point, i.e. notably the different texts referred to above : implicitly (the Geneva Conventions) or explicitly (Resolution 2444 of the United Nations) these texts, on the contrary, fully recognize the distinction between combatants and the civilian population.

It was also underlined that until law was amended and new law accepted, modern military techniques were submitted to existing law. For a State to declare that existing law is outdated owing to the invention of new methods of warfare is therefore entirely contrary to reason and to any accurate legal conception. It was also emphasized that practices contrary to this law such as had been encountered in armed

conflicts were not in themselves sufficient to form new customary rules : it is generally admitted today that the obligatory nature of custom presupposes two factors, a material factor (prolonged and constant repetition of the same external actions) and a psychological factor (the conviction of the subjects of the law that these actions, are obligatory according to law.

Some experts stated that it should not be a matter of purely and simply reaffirming the provisions as a whole (The Hague Conventions and the Geneva Protocol); only certain norms of these Conventions and the rules of a humanitarian character they contain should be reaffirmed. One remarked that while a great deal could be taken from these texts the wording of some of the still entirely reasonable and valid principles no longer appeared adequate.

b) How to reaffirm and develop ?

The experts indicated several possible approaches.

In the first place a choice must be made between two general approaches : one giving priority to humanitarian requirements, the other giving priority to the necessities of war. The first, for example, is to be found in the Preamble to the St. Petersburg Declaration (1); it states that the Governments have fixed"... by common agreement, the technical limits at which the necessities of war ought to yield to the requirements of humanity...". The second, which appears in articles published since 1945 and has been adopted by a certain number of persons in our days, considers that in the long run international law and inter-State relationships will be better guaranteed by a realistic recognition of the nature of war and the adoption of rules not going dead against the practices of belligerents. According to this second line of approach, the technical developments related to war have to be considered first and the rules and customs adjusted to this development.

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(1) See Annex I, page 01 .

In view of the development of all kinds of weapons (atomic, chemical, bacteriological) it seemed to several experts that this would be impossible for conflicts resorting to such types of weapon and in particular nuclear weapons : while even military experts are incapable of foreseeing the forms atomic war could assume and its consequences, how can anyone talk of adapting norms to such problematical realities ? In their opinion, therefore, the second approach should be rejected and the first adopted : the requirements of humanity come before the necessities of war. A passage from a Judgement of the International Court of Justice was quoted. This refers to "...certain general and well-recognized principles, such as the elementary considerations of humanity, which are still more absolute in time of peace than in time of war..." (1).

For some experts, however, the restrictions laid on the conduct of hostilities are the result of a necessary balance between the requirements of war and those of humanity. They nevertheless admitted that the development of new weapons could affect this balance, which would have to be readjusted so long as military necessities remain realistic and reasonable.

The question was also raised as to whether the meeting should above all concentrate on existing law or on desirable law for the future. It is the problem of "de lege lata" or "de lege ferenda". Most of the participants considered the meeting should work towards the future in order to be useful. There is of course no question of introducing entirely new law in this field but rather of developing and defining in specific rules what often implicitly exists in the general principles or in customary rules.

It was pointed out that the questions with which the meeting was concerned : the conduct of hostilities, the use of weapons and the problem of conflicts of a non-international character, placed the committee if not before a legal vaccuum at least in the sphere predominated

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(1) I.C.J. Straits of Corfou affair. Judgment of 9 April, 1949. p. 22 .

by international custom. But this custom is often subject to discussion and raises problems on which qualified publicists are not unanimous : the meeting's discussions could therefore help to consolidate this custom. Some experts however stressed that the committee should remain realistic and above all consider what could be obtained rather than what it would be theoretically desirable to obtain.

Some experts referred to the fact that in modern international law, war, the resort to force, are prohibited. The basic rule is contained in Article 2 (4) of the United Nations Charter, stipulating :

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

One of the experts considered that this prohibition should constitute the starting point for the meeting's discussions, while admitting that it was difficult to define all the consequences of this prohibition on the law of war. In any event it was impossible to discuss the law of war today as it was discussed in 1907, not only because methods and weapons of war have changed but also on account of the prohibition to resort to force. If this is forgotten, by regulating war it is inferred that limited war is accepted, and, he added, the meeting should not accept war under any form whatsoever.

On the contrary, realizing that armed conflicts exist, and a danger of whole peoples' extermination by modern weapons, the meeting should endeavour to formulate additional rules to strengthen the existing principles and, at the same time, the fight against war : it was in this sense that paragraph 2 b) of the United Nations General Assembly's Resolution 2444 (1), stating the need for additional humanitarian rules, should be interpreted.

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(1) See Annex X, page 030.

It is true that the Charter itself admits certain forms of war, such as defensive war (Article 51) or wars of collective security (see in particular Art. 53). Moreover, according to a fairly widespread opinion today, "wars of liberation" are not or should not be forbidden.

The United Nations, it was underlined, had also considered the law applicable in armed conflicts and had reaffirmed the Nuremberg principles (1). The General Assembly's Resolutions had recalled the Geneva Protocol of 1925 (2) and the United Nations was at this time particularly concerned with chemical and bacteriological war, on the political level of disarmament. Furthermore, in 1954, the Convention for the Protection of Cultural Property in Event of Armed Conflict had been concluded under the auspices of UNESCO.

One expert was of opinion that the United Nations in taking up such problems had approached them from the angle of Human Rights. This was an approach to note : the Declaration of Human Rights and the International Covenant on Human Rights form a code proposed by the United Nations to the international community and constitute a set of civilian and political rights touching very close by on the subject of the meeting's discussions. He emphasized that in these texts the distinction between peacetime and wartime did not exist. He also reminded the Committee that, similarly, in the Convention on Genocide (3) the Contracting Parties had confirmed that genocide was a crime against the law of nations, whether committed in time of peace or of war. All these texts make no distinction between the different "situations of armed conflict."

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(1) Resolution of the General Assembly 95 (I) of 11 December 1966.

(2) Resolution of the General Assembly 2126 of 5 December 1966.

(3) In particular various Article in the Universal Declaration of Human Rights (such as Articles 2,3,5,7 and 12) and of the Covenants relating to human rights (in particular Articles 4,6,7,8,11,15,16 and 18), were mentioned, which it was pointed out concerned the discussions of the meeting.

The experts raised several questions of terminology. They considered that a reaffirmation of the legal rules could not always be made using the old terms (1). The formula "...by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples..." in the Martens clause (2) was quoted as an example. Were not the civilized nations, added some of the experts, those who had most often violated the rules they had proclaimed ?

Furthermore, a delegation to the United Nations General Assembly had declared during the discussion of the draft of Resolution 2444 (3), that to its mind the principles set forth in that text were not fully satisfactory, especially because the first implied the right to use means to injure the enemy (4). It was recalled that, during the course of its work, the Institute of International Law had decided to refrain from employing the word "right" in cases of this type.

Some experts stated that it was not so much large international conflicts which interested the meeting : owing to the developments of military science, these conflicts would engender such destruction that one should be somewhat sceptical as to means of attenuating them; it is therefore the many conflicts which have not this world nature or this character of war in the traditional sense that should be the centre of the discussion. Special attention should be given in this connection to the discussions concerning Article 3 of the Geneva Conventions relating to non-international conflict, and the development of this provision.

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(1) See also Chapter C below (behaviour between combatants) page 76

(2) See above, page 36

(3) Annex X, page 030

(4) United Nations, General Assembly, 23rd session, Provisional Proceedings A/C.3/SR/634.

Finally, the experts commented on the two following questions:

c) Enlargement of the international community

As has been seen, the enlargement of the international community is one of the reasons given by the ICRC for the necessity and urgency of reaffirming and developing the law in question (1).

Various remarks were made in this context with regard to the application, or more precisely the possibility of applying The Hague and Geneva Conventions. Many States have acceded to independence in the last nine or ten years. For most of these it is difficult to know whether The Hague Conventions are or are not applicable. The situation is different and clearer as regards the Geneva Conventions since several of these States have made a declaration of continuity or will have an opportunity to do so. In fact, is it not one of the first acts of new States after acquiring their independence to become members of the Red Cross community and officially show that they recognize the validity of the Geneva Conventions ?

In the past, The Hague Conventions were applicable in most of the African territories, as they then formed an integral part of a mother-country which had signed these Conventions. Today, having become independent, these States have not always explicitly manifested their will to continue to be governed by them.

The important problem of the acceptance of international law under internal law in countries where education is not yet general was also spoken of : What methods would be suitable to make the essential principles of humanitarian law understood and admitted ?

While approving what had just been said with regard to the need of considerable propaganda in developing countries to obtain respect of the law of war and human rights, other experts remarked that it should not be forgotten that the laws of war are also customary law, compulsory for all States, and therefore even for those which have not acceeded to or have not ratified The Hague Conventions.

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(1) See above, page 36.

Finally, it was said, it is just as important to remind older States of their duties in this respect. Is it not these which possess the great weapons ABC, the most dangerous for the survival of humanity ?

d) Are humanitarian principles prejudicial to peace ?

One of the experts put the following question : can the "humanizing" of war contribute, from the military angle, to its outbreak ? Is it not in a way encouraging limited warfare to restrict it by humanitarian law ? Would not a State be tempted to engage itself in war knowing that humanitarian law would be applied ? This question was replied to in the negative : it is not a decisive factor in armed conflicts as we know them at present.

Some experts emphasized the complexity of the question if it is regarded from the viewpoint of "dissuasion" : there is no doubt that the introduction of ideas of limited warfare conducted "humanely" weakens the concept of nuclear dissuasion which has also been said to contribute to peace between the Great Powers. But this meant entering into the whole huge problem of atomic weapons, which the meeting preferred to examine specially in connection with prohibited weapons (1).

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(1) See below, Chapter III, A.

III. THE DIFFERENT FIELDS IN WHICH SUBSTANTIVE LAW SHOULD BE DEVELOPED

A. PROHIBITION OF "NON-DIRECTED" WEAPONS OR WEAPONS CAUSING UNNECESSARY SUFFERING

The Red Cross cannot remain indifferent to the means of combat employed by belligerents. As will be seen later, it has taken up position against certain weapons on several occasions. True, as one of the experts reminded the Committee, weapons in themselves are never "humanitarian". Nevertheless, distinctions have been made between them for a long time past.

Some means of war, owing to the indiscriminate nature of their effects or their imprecision, strike those who should be left outside the fighting : wounded, sick, women, children, etc. They are often termed "mass destruction" weapons, especially in the United Nations Resolutions; the ICRC and the Red Cross sometimes call them "non-directed" weapons. Other weapons, although precise, have appeared to entail unnecessary suffering and have been prohibited by the international community (e.g. dum-dum bullets) (1).

In general - and the experts repeated this - two great principles already formulated in The Hague Conventions, continue to govern the use of weapons : "The right of belligerents to adopt means of injuring the enemy is not unlimited" (2). This principle was again recently confirmed by the U.N.O. Resolution of 19 December, 1968. The second principle prohibits the employment of

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(1) Hague Declaration of 29 July, 1899, prohibiting the use of bullets "which expand or flatten in the human body..."

(2) Hague Regulations, Article 22.

"arms, projectiles or material calculated to cause unnecessary suffering". (1)

Apart from cases where these principles have materialized in specific prohibitions, it is however sometimes difficult to say to what extent a particular weapon falls under the scope of these general norms. In the Declaration of Saint-Petersburg of 1868 (2), the signatory Governments reserved the right "to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armaments of troops". Unfortunately, this intention has only very incompletely been realized, either because specific prohibition is lacking for weapons such as incendiary means, or because negotiations have not yet led to specific prohibitions (atomic weapons), or again because the Conventions adopted have not been accepted by all (asphyxiating gases).

The ICRC therefore considered it advisable to draw the experts attention in its preliminary documentation to three types of weapon which have particularly concerned both public opinion and the Red Cross: nuclear weapons, bacteriological and chemical weapons and napalm. It did not intend by this to imply that concern should be confined to these means alone. As will be seen in the general conclusion to the present Chapter, several experts considered the role of the Red Cross to consist not so much of dealing with one or other specific weapon as of drawing attention to and strengthening the general rules limiting their use, in the interests of humanity.

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(1) Hague Regulations, Article 23, e). In the article quoted above, page 5 Meyrowitz clearly demonstrated in this connection that, in the French text, the words "propres à causer des maux superflus" have a wider significance than the usual English translation of this provision "arms... calculated to cause unnecessary suffering."

(2) See text of this Declaration, Annex I, page 01.

1. Atomic weapons

The problem

In the preliminary documentation the ICRC put a question of procedure rather than substance to the experts. Before the question was considered, however, it wanted to point out that, since 1945, the Red Cross had never ceased to show concern in respect of nuclear weapons, in particular by several Resolutions of its International Conference. These solemnly called on the Powers to reach an agreement proscribing recourse to such weapons.

The ICRC itself had conveyed its anxiety for the future of Red Cross work in face of the development of war techniques to all the National Societies as early as September 1945. Again, in its Appeal of 5 April, 1950 (1) ("atomic weapons and non-directed weapons") to the States Parties to the Geneva Conventions, it had stressed the incompatibility between these recently signed Conventions and the employment of the atomic bomb, requesting the Governments to make every possible effort to reach an agreement on the prohibition of this weapon and of "non-directed" weapons in general, as a natural complement to the Geneva Conventions and the 1925 Geneva Protocol. Finally, its Draft Rules of 1956 for the protection of civilian populations had again marked its point of view, especially Article 14 of these.(2)

In its preliminary documentation, having thus drawn attention to the successive occasions on which it had taken up position on this matter, the ICRC made the following observations :

On the one hand, the question of nuclear weapons is dealt with in detail and from its various aspects by the United Nations or by specialized agencies. These have adopted Resolutions on the subject (3) and are examining the possibility of convening a special

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(1) See text of this Appeal, Annex XIII, page 036

(2) See text of Draft Rules, Annex XIV, page 040

(3) See in particular Resolution adopted in 1961, Annex VI page 019, (of the seven resolutions relative to disarmament adopted by the General Assembly in December 1968, four bear on questions connected with nuclear weapons).

Conference for the specific prohibition of the atomic weapon. On the other hand, since Hiroshima and Nagasaki, no atomic weapons have been employed and for some people their use now appears very unlikely. But, and this is a decisive fact, wars conducted without the employment of atomic weapons are still rife and cause many victims.

In these circumstances, and this was the question put to the experts, should not the efforts to develop humanitarian law be directed in the first place to the rules applicable in the types of conflict at present taking place. This in no way implies relinquishing the hope of total prohibition of nuclear weapons. The ICRC's question therefore related to a matter of priority.

The experts' opinion

This question gave rise to a lengthy debate; only the essential points can be mentioned here, with the risk of sometimes simplifying to the utmost very subtle and interesting shades of opinion.

a) Several experts, specialized by lengthy studies of the question of nuclear weapons, gave a positive reply of principle to the question put : "Yes, the main efforts should be directed towards rules for the conflicts which the world is experiencing for the time being". To justify this opinion, they notably gave the following reasons :

- At the present time, owing to the technical development of atomic weapons, the Powers possessing these have reached a sort of equilibrium in dissuasion, which makes a nuclear war improbable for the moment. This situation equally applies to what are termed tactical nuclear weapons. But it is a matter of tacit, informal understanding; there is nothing to be gained by trying to consolidate it by prohibitions of a legal character, which would probably not be accepted and might even have the contrary effect.

- Further, the question of nuclear weapons is so closely allied with the policy of the Big Powers and disarmament, that really to remedy the threat these weapons represent, not only they but war itself would have to be attacked. It is by avoiding major wars that recourse to such weapons will be avoided. Until these remote goals are achieved, it is therefore advisable to aim at those easier to attain, like the founders of the Red Cross.

- However contradictory it may appear, there is thus a certain dualism to be observed in the attitude towards this matter : on the one side, it has to be admitted that the threat of a total atomic war, i.e. reciprocal "dissuasion", undoubtedly contributes to maintain peace; this is a situation which legal prohibitions should not interfere with. On the other side, it must be endeavoured to obtain that limits to the conduct of hostilities in localized and "non-atomic" conflicts should be accepted, possibly by means of legal norms.

b) The majority of the experts, however, without giving an entirely negative reply to the ICRC's question, voiced reservations and fears, in particular the following :

- It is dangerous to let the idea that nuclear war is at present "unthinkable" take root in public opinion, when unpredictable facts might modify the present equilibrium more rapidly than imagined and one day lead a belligerent to employ nuclear weapons. This equilibrium is uncertain and everything should be done to instal a situation which is more secure.

- By giving priority to the humanitarian law applicable in "non-nuclear conflicts", the Red Cross must at all costs avoid creating the impression that it is less concerned than hitherto by this great threat. On the contrary, its moral pressure should be maintained, to influence the creating-process of the doctrine.

This pressure should be exercised a fortiori in that public opinion sometimes believes that tactical and "clean" atomic weapons somewhat similar to so termed conventional weapons can be employed. But in this respect the most recent studies, as was confirmed by the experts

specialized in the subject, have shown that the consequences of such employment were impossible for strategists themselves to foresee and that the "discriminating" employment of atomic weapons appeared increasingly less conceivable; an ad hoc report by the United Nations Secretary general in October 1967 (1) also mentions this.

- In leaving aside the nuclear weapon and nuclear dissuasion, the impression should be created that less importance is attached to the fate of the inhabitants of developing countries where armed conflicts are at present in course than to that of the populations of other areas. World solidarity has to be respected and it is not these countries which, in experiencing wars sometimes "fed" by others, should bear the costs of a "balance of terror".

- Finally, the disadvantages of having two simultaneous types of morals in the international community, was stressed : tolerate on the one hand that more or less official mouthpieces threaten to exterminate the adversary by mass destruction weapons at the cost of so many innocent victims, and on the other demand that ideas of discriminating conduct of operations and respect for the disarmed opponent should be proclaimed and accepted already in peacetime for "non-nuclear" conflicts. Threats of mass destruction can only weaken international morals.

All the experts who took this view therefore considered it necessary for the Red Cross to maintain and reaffirm its previous positions, emphasizing its important moral role. In their opinion, the Red Cross should continue to show that the employment of nuclear weapons would be contrary to existing international law or at least to essential humanitarian principles, as it did in its Appeal of 1950. There is no shortage of texts on this point and the experts put forward as examples some of the basic provisions of the 1907 Hague Regulations, the stipulations in the Geneva Conventions ensuring the protection of hospitals, the 1925 Geneva Protocol, the 1961 United Nations Resolution referred to earlier, and also the Decision of a Japanese Court in 1965, considering the atomic bombardment

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(1) Report by the Secretary General"on the consequences of the possible employment of atomic weapons"
UNO Document A/6858 of 10.10.1967

of Hiroshima as unlawful (1).

c) Finally, some experts considered that the ICRC should start out from more general principles (2), especially the point of view that weapons endangering civilian populations should never be employed, since they are unable to distinguish between combatants and civilians. Article 14 of the ICRC Draft Rules of 1956 appeared to them to constitute a minimum in this respect (3).

It was also pointed out that while the United Nations Resolution of 19 December, 1968, had not reiterated the fourth principle proclaimed by the XXth International Conference of the Red Cross ("that the general principles of the law of war apply to nuclear and similar weapons") (4), it nevertheless retained its own value.

Conclusions of the ICRC

There remained therefore a divergency of views among the experts as to whether it was at present advisable for the ICRC to propose new rules and precise legal prohibitions in respect of nuclear weapons. On the other hand, they all agreed that the Red Cross should in no case relax pressure at the moral level and the level of humanitarian principles on public opinion and the Great Powers, with a view to the latter achieving rapid, even partial, solutions as regards their present endeavours. Such solutions could take the form, for example, of total prohibition of atomic tests or the formal prohibitions of atomic weapons under an ad hoc Convention, or again even of a sort of undertaking never to be the first to employ such weapons, subject to eventual reprisals against such employment; this solution would be equivalent to that which exists for bacteriological and chemical weapons and would at least have the advantage of conforming

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(1) See R.A. Falk, "The Shimoda Case", American Journal of International Law 59 (1965), page 786.

(2) See below, page 63 the main passages of the text they proposed as a guide.

(3) See this Article, Annex XIV, page 040 .

(4) See on this subject supra page 19 .

more closely to the basic principles of law and morality.

Ultimately, the experts answer to the question of procedure put by the ICRC slightly changes the angle from it was thinking of dealing with the question of nuclear weapons; it is no longer so much a matter of priority as of different levels. In reality, the Red Cross should work simultaneously on both planes : on the moral level it should continue to proclaim that the employment of atomic weapons is incompatible with the respect due to the persons protected by the Geneva Conventions and to non-combatants in general. It should therefore persist in and even increase its pressure in urging the Governments to find concrete solutions of the threat implied by nuclear weapons, making it understood that it reserves to itself always to the question from the legal angle. Simultaneously, on the legal level, it should concentrate on the development of the rules designed to protect the human person during wars of the present type.

2. Bacteriological and chemical weapons

The problem

> "Far from mitigating the suffering involved by war, scientific progress in the field of aeronautics, ballistic projectiles and chemical weapons, have only increased it and above all extend it to the whole population, with the result that war will soon simply become a means of merciless general destruction.
>
> We desire to protest today against a barbarous innovation which science tends to perfect, i.e. render increasingly murderous and ingenious in its cruelty. Namely, the employment of asphyxiating and poison gases, the use of which it appears is to be extended in proportions unimaginable hitherto".

These are the terms in which the ICRC denounced the employment of asphyxiating gases in January 1918. The Red Cross has therefore concerned itself with chemical and bacteriological warfare for a very long time. Its concern

is manifest in the Resolutions adopted on more than one occasion by the International Conference of the Red Cross. It was therefore greatly relieved when in 1925 the Powers concluded the Geneva Protocol (1) confirming the prohibition of gases and extending this prohibition to bacteriological means of warfare, and the Red Cross decided to work for the fullest and widest ratification of this diplomatic instrument. In its Resolution No XXVIII, the XXth International Conference of the Red Cross once more solemnly stated this position and on that basis the ICRC wrote in 1967 to all the States not yet Parties to the Geneva Protocol (2).

While, fortunately, chemical and bacteriological weapons were not employed during World War II, the prohibition of gases by the Geneva Protocol was not entirely respected. It was violated on a mass scale in a preceding conflict and minor infractions were repeated, irrespective of the use made of so-called non-poisonous gas, illegal for some and authorized for others. Furthermore, press articles and the rumours that are circulating concerning the preparations being made by some Powers to develop increasingly effective chemical and bacteriological means cannot fail to disquiet the Red Cross and public opinion in general.

Such anxiety has also been expressed in the United Nations. In 1966 an important Resolution was unanimously adopted requesting strict observance by all States of the principles and objectives of the Geneva Protocol (3). Furthermore, in December 1968 the General Assembly of the U.N.O., "considering that the possibility of the use of chemical and bacteriological weapons constitutes a serious threat to mankind", acted on a suggestion of the Committee of Eighteen on Disarmament and requested the Secretary General to prepare a concise

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(1) See text of Protocol, Annex III, page 09 . It should be borne in mind that this was concluded in the framework of the League of Nations during a conference on the control of the international traffic in arms.

(2) See in Annex III, page 09 the number of States Parties to the Protocol.

(3) Resolution No. 2162 of 5 December, 1966, see text in Annex VII, page 022

report on the effects of the possible employment of such weapons (1). The Group of experts appointed by Mr. Thant to draw up a report has already met twice. The ICRC supplied it with some documentation and the very full studies carried out in this field by the Stockholm International Institute for Peace and Conflict Research are also available to it (2). The Committee of Eighteen for Disarmament itself, moreover, has placed the question of bacteriological and chemical weapons on its Agenda (3).

After having thus drawn the experts attention to the work proceeding in other quarters and stressed its desire to avoid overlapping, the ICRC had nevertheless felt necessary to submit two important questions of a legal nature raised by bacteriological and chemical weapons in its preliminary documentation :

a) Up till now, in customary law just as in conventional law, these weapons have always been dealt with together. Some scientists and experts however consider it would be easier to come to an agreement at the present time on bacteriological weapons than on chemical weapons. Would it therefore be advisable to consider the assembly in the near future of a Diplomatic Conference to establish a Convention prohibiting the employment of biological means (4), with a definition adapted to modern techniques, and leaving aside for the time being chemical weapons ?

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(1) Resolution No. 2454 of 20 December, 1968, Annexe IX, page 027

(2) In August 1968, this Institute organized an important meeting of experts which was attended by Mr. Pilloud, ICRC Director.

(3) See above, page 31

(4) According to some specialists, this term would be preferable to the term "bacteriological", as it has a wider meaning and applies even to harmful agents which are not bacteria in the specific sense.

b) For chemical weapons, there has been controversy as to the significance of the prohibition contained in the 1925 Geneva Protocol and in common law. For some, this extends to the employment during war of all gases, even non-poisonous. Others uphold that it is admissible to employ gases whose sole purpose is to hinder or temporarily disable members of the armed forces, without causing death or permanent injury of their physical integrity and health, such as police gases.

The experts' opinion

a) For the first question, the majority of the experts emphasized the danger of biological warfare : large sums appear to be assigned in some States for research in this field. Even if it is generally admitted that the employment of such weapons is not for today, the progress of science might quite quickly modify this situation and make such employment more probable. For some, this danger is just as great, if not greater than that of atomic weapons : the consequences of biological means would probably be even more indiscriminate and above all they could be manufactured relatively easily and at small cost.

Consequently, in view of this great potential danger, in the experts' opinion it would be urgent and pressing to take action while there is still time and not hesitate to provide a new instrument prohibiting biological weapons more entirely than in the Geneva Protocol, without attaching the question of chemical weapons, which raises more complicated problems.

It was however pointed out that, as for atomic weapons, mere prohibition would not suffice to eliminate all threats : to be effective, this prohibition would have to be coupled with means of supervision in respect of the manufacture of these weapons, although such supervision would be even much more difficult than for the manufacture of nuclear weapons.

Other experts, on the contrary, considered it disadvisable to separate the questions of bacteriological and chemical weapons and necessary to avoid anything which could detract from the significance or

weaken the interpretation of the existing prohibitions, which are broad enough to cover all the microbiological agents that are apprehended. The separation of bacteriological and chemical weapons, in their opinion, would be an error from this angle; for the former there is only a virtual danger, however great, while for the latter, alas, the danger already exists. In addition, these two types of weapon have always been considered together on the legal level, by public opinion and conscience. They should therefore be dealt with together in any conference if it is advisable to reaffirm and define the prohibitions in the Geneva Protocol, whatever difficulties chemical weapons themselves may imply.

b) Indeed, for chemical weapons - and here we enter on the second question put to the experts - the existence of gases and substances whose effects are not lethal but simply incapacitating, or the existence of substances acting on vegetation, whose employment is considered admissible by some, raise a series of difficulties, as was clearly shown by the diverging opinions of the experts on this subject. Some, criticizing the term "chemical", which to their mind is too loose (it is not in the Geneva Protocol for that matter), wondered whether the employment against the enemy of chemical agents involving no serious danger for health might not in the final issue be of a more humanitarian character than many other means of warfare. The employment of means such as police gases (lachrymatory and others) is admitted on the national level : why could they not a fortiori be admitted against the enemy ?

Other experts, on the contrary, considered that the prohibition in the 1925 Geneva Protocol should be taken as covering all gases, including those not directly poisonous, in virtue of the deliberately broad terms of this prohibition (1) in the Protocol. When they concluded it, the States were already familiar with non-poisonous gases, such as lachrymatory gases, and they could have specifically excluded them from the prohibition. If they failed to do so, it is because they wanted to make the prohibition as extensive as possible, in view of all the dangers of abuse which a breach in respect of prohibition might involve.

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(1) "... asphyxiating, poisonous or other gases, and of all analagous materials or devices..."

For these experts then, it is primarily a question of reaffirming the complete character of the conventional or customary prohibition of gases if it is desired to review the legal aspect, always with the idea of avoiding to weaken in any way what already exists.

Finally, some experts remarked, as they had already done in respect of atomic weapons, that the role of the Red Cross was not so much to attack one or other specific weapon as to draw attention to the basic humanitarian norms under which existing or future weapons should be judged and if necessar prohibited.

Conclusions of the ICRC

The ICRC will set out from this viewpoint to formulate several conclusions:

In the first place, as mentioned earlier, other appropriate organizations are studying means of warfare and it does not seem that the Red Cross should take any specific initiative so long as these studies are proceeding. But it should continue to voice its concern with regard to these weapons and the urgency of reaffirming and defining the humanitarian limitations in this field, if they are considered inadequate. The studies in course should not therefore be inordinately protracted.

Furthermore, under the conception explained at the beginning of this Report, humanitarian law should be developed globally. The question as to whether or not bacteriological weapons should be dealt with first and separately arises from a different angle or rather no longer arises : both weapons, bacteriological and chemical, must be dealt with, possibly on different methods or different levels. Special importance should be given in this sense to the 1966 United Nations Resolution quoted earlier (1), as all the States Members of the U.N.O. implicitly recognized thereby that the prohibitions in the Geneva Protocol fall under customary law. It should be possible to express this recognition without much loss of time, for example, by means of a general and universal Declaration ratified as speedily as possible.

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(1) See page 55.

Finally, as to the controversy surrounding non-poisonous gases, the Red Cross does not possess the technical knowledge to take a decision. In virtue of its long experience, however, it should raise certain questions here and act as the interpreter of legitimate anxiety: is it always possible in an armed conflict, where conditions are quite different from those under which police gases are employed on the internal level and in peacetime, to distinguish easily between what is poisonous and what is not ? The risks of abuse and uses which would then be harmful to the human person surely demand extreme precaution in this connection ? The Geneva Conventions provide for special respect of the sick and wounded; some gases or some substances in principle non-poisonous, can become dangerous for human beings when highly concentrated. Others may not be poisonous for healthy individuals in peacetime, but would they not become very dangerous in wartime by affecting people who were weak, wounded or sick ? Finally, in doubtfut cases, who is to say when there is violation or not ? Will not controversy in itself lead to an "escalation" towards the employment of distinctly poisonous means ?

These questions show that the problem must not only be solved in the light of particular chemical means which in themselves theoretically involve no serious harm, but also of all the possible consequences of introducing distinctions in the employment of chemical weapons which till now did not exist in any case in the peoples' conscience.

3. Napalm

The problem

The ICRC could not leave out napalm from among the weapons calculated to cause unnecessary suffering. Its own delegates' observations have enabled it to realize the burns and frightful harm this weapon can cause, which are all the more cruel when innocent individuals have to suffer from them. Moreover, of recent years, the employment of this weapon has aroused such reprobation in public opinion that, according to some jurists, the conditions would be favourable for obtaining complete prohibition. Napalm, however, is also an incendiary

weapon which, according to the military experts, can be very effective, while remaining precise in its consequences.

As napalm and incendiary weapons in general are not specifically prohibited by any rule of international law, doubts can persist as to the licit or illicit character of their employment. It is therefore precisely a matter where a clearer definition would be desirable. But in what sense ? This was the question put by the ICRC to the experts in its preliminary documentation.

The experts' opinion

Napalm, for some experts, like incendiary weapons, comes under the Geneva Protocol on account of its consequences: it also causes a sort of asphyxia. Napalm and incendiary means in general should therefore be assimilated to bacteriological and chemical weapons. Such assimilation is already found in the disarmament discussions between the two Wars (1). The experts further pointed out that this assimilation to some extent again appeared in the preamble (fifth paragraph) of the Teheran Resolution (2).

At the time of the present Report, however, it is not yet known whether the Group of experts instructed by Mr. Thant to examine the consequences of bacteriological and chemical weapons (3) will extend its study to those of incendiary weapons and napalm.

Other experts, on the contrary, considered such assimilation difficult. Without in the least denying the great suffering it can cause, they confirmed the effectiveness of napalm in some cases and subject to "discriminating" use. They pointed out that the current military handbooks of some of the Great Powers' armies allow the employment of incendiary weapons and in particular napalm, with restrictions. Thus, according to the

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(1) On 23 July, 1932, in the framework of the Conference for the Reduction and Limitation of Armaments, the General Commission adopted a Resolution concluding that chemical, bacteriological and incendiary warfare is prohibited under the conditions unanimously recommended by the special Committee. (Conf. doc.D/136(1)).

(2) See text of this Resolution, Annex VIII, page 024.

(3) See above, page 56.

British handbook, these weapons can be employed but only against non-human objectives (1); according to the American manual, they are licit on condition they are not employed so as to cause unnecessary suffering (2).

Consequently, for these experts, it is above all the use to which belligerents put these weapons that is important and may appear contrary or not to law and fundamental humanitarian principles. They added that, from this angle, abuses could unfortunately be found in the conflicts of these last decades, especially in the fact that members of the civilian population had only too often been harmed. It was probably these abuses more than the weapon itself which had given rise in public opinion to this wave of reprobation. In their opinion it should be attempted to raise legal barriers to such abuse.

These latter experts therefore were fairly close to those who considered that the role of the Red Cross in this field, as in that of the weapons previously examined, was not to prohibit one or other specific weapon but to draw attention constantly to the basic principles under which one or other weapon and its employment can be considered admissible.

Conclusions of the ICRC

The ICRC considers that in regard to this problem, in the same way as for bacteriological and chemical weapons, more extensive studies should be made of the consequences of incendiary weapons in order to reach a clear legal solution as to their employment. But, pending the completion of such studies and the definition of a clear rule the ICRC considers that: in virtue of the humanitarian principles mentioned above, the Parties to a conflict should be solemnly reminded that, in any event and without prejudice to total prohibition, the employment of incendiary weapons should be accompanied by

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(1) Manual of Military Law, Part III, p.41, 1958 ("...directed solely against inanimate military targets (including aircraft). The use of such ammunition is illegal if directed solely against combatant personnel").

(2) The Law of Land Warfare, FM, 27-10, July 1956, page 18.

special precautions to prevent them unduly affecting members of the civilian population or disabled members of the armed forces, or causing unnecessary suffering. The belligerents should even refrain completely from employing them in all cases where these conditions are in danger of not being respected. This is a minimum solution which is imperative in light of the general emotion aroused by the employment of these weapons and to which the Red Cross cannot remain indifferent.

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As has been seen, several experts would like that the Red Cross above all play its role as regards weapons by reaffirming the essential principles. In this respect, as a guide, they formulated recommendations in six points. The gist of these will be found further on (1).

The preceding pages have already brought out most of these principles, which we will confine ourselves to summarizing here:

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(1) 1. There are two major humanitarian principles which should guide the ICRC in its attitude towards weapons of large-scale destruction and other means of destruction. Weapons and methods which should never be used are those which (a) endanger the civilian population and whose effects harm combatants and civilians alike, and (b) are liable to cause needless suffering.

2. Such weapons include but are not limited to those which are nuclear, biological, bacteriological and chemical.

3. The fact that the effects on civilian populations of nuclear, biological and chemical weapons are unpredictable, or cannot be controlled in space and time by those who use them, in no way justifies their detention or use.

4. Where international law does not explicitly forbid such weapons, effective steps should be taken to prohibit their use completely.

1. Belligerents have not unlimited rights as to the choice of means of harming the enemy.

2. Belligerents should refrain from using weapons:

   - of a nature to cause unnecessary suffering;

   - which on account of their imprecision or their effects harm civilian populations and combatants without distinction;

   - whose consequences escape from the control of those employing them, in space or time (1).

3. The belligerents should take special precautions in the choice of weapons, when their employment, even against military objectives, presents undue danger of affecting individuals hors de combat.

(continued)

5. The United Nations, in consultation with the ICRC, should take steps to convene a Diplomatic Conference with a view to prohibiting all these weapons.

6. Pending the adoption of a new treaty or protocol in addition to The Hague Conventions and the 1925 Geneva Protocol, the use of such weapons should be deemed forbidden under existing international law.

(1) This principle, contained in Article 14 of the ICRC's Draft Rules also corresponds with the ideas expressed by representatives of certain religions on the subject of nuclear weapons. Vide speech by Pope Pius XII to the VIIIth Congress of World Medical Association (30.9.1954) and the document published by the World Council of Churches entitled "The Christian Faith and War in the nuclear Age" (WCC Abingdon press New-York, 1963).

B. PROTECTION OF CIVILIAN POPULATIONS AGAINST HOSTILITIES

"As it is the duty of the League of Nations to deal with various questions relating to war, and particularly with the means of rendering it more humane, the International Committee, the central organ of the Red Cross, to whom this task was originally assigned, has the honour to submit to you the following proposals.....

1) Limitation of aerial warfare to exclusively military objectives (such as fights between scouts), and prohibition of the dropping on towns of projectiles which carry death to the peaceable population, and to women and children unconerned with the war ."

This was the request made by the ICRC to the League of Nations as far back as 1920. In other words, it has never resigned itself to consider the practice of indiscriminate bombing a valid aspect of international law. And yet this practice, sometimes based on theories considering the civilian population a suitable target, was developed to such a degree, especially during the Second World War, that it has helped to cast doubts on the fundamental distinction between combatants and non-combatants. During that war, it was a cause of great suffering and loss among the populations concerned, without even producing decisive military advantages. And the trials of war criminals conducted after 1945 failed to remove this doubt.

The ICRC has always considered the few rules on bombing contained in the 1907 IVth Hague Convention (1) to retain their full value and in cases where they no longer seem adapted to the development of war techniques - especially "strategic" bombing - principles and rules of custom subsist which, in the interest of populations, set imperious limits to hostilities and are opposed to such practices. As a first step, its unrelenting efforts to uphold this point of view led to the "Draft Rules limiting

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(1) Articles 25 and 27 of The Hague Regulations, see Annex II, page 03.

the dangers incurred by civilian populations in times of armed conflict" submitted to the XIXth International Conference of the Red Cross (1). Although this draft, as noted earlier (2), failed to result in any practical governmental action, the ICRC nevertheless continued its efforts, in another form. These finally contributed to the adoption of the principles of protection appearing in Resolution 2444 of the United Nations General Assembly, adopted on 19 December, 1968 (3).

These principles, which are valid for all armed conflicts, clearly denote :

- prohibition to attack the civilian population as such, which was not included till now in any instrument of international law (1,(b) of the Resolution);
- the necessity during military operations of sparing the population so far as possible (1, (c)).

In its preliminary documentation, the ICRC submitted three questions of a different types on this subject :

1) The legal value and significance of the Resolution referred to above;
2) The problems connected with the principle of prohibition to launch direct attacks against populations;
3) The problems relating to the second of the principles in question, protection of populations against the consequence of attacks directed not against them but against military objectives, which will be termed "protection against indirect attacks".

1. Value and significance of Resolution 2444

The experts had already stated (during the general discussion (4)), the value of some of the

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(1) See text of this Draft, Annex XIV, page 040.

(2) See above page 13.

(3) See Annex X, page 030

(4) See above, page 38.

Resolutions adopted by the United Nations General Assembly, such as the 1966 Resolution concerning the Geneva Protocol. So far as concerns Resolution 2444, without entering into legal subtilities, they all stressed its importance, particularly in view of its unanimous adoption. In their opinion, it can be considered the expression of the legal conception of the international community; it also voices the conscience of the peoples, above all in confirming a Resolution of the International Red Cross. By a resolution of this type, the General Assembly certifies the existing law and, in this sense, it can be said that Resolution 2444 puts an end to certain legal doubts.

Several experts nevertheless stressed that, however important, it did not represent an issue but a starting point; as pointed out by the ICRC in the preliminary documentation, its principles should be developed in the form of more detailed rules. This was also what the Resolution itself implied, in the experts' opinion, on account of the studies it requests the Secretary General to undertake.

But even in the present form, the ICRC proposed and several experts recommended, its principles should be as widely disseminated as possible and in particular introduced into army military instruction, especially for air forces. The aim of their inclusion in military manuals would be to remind all the members of armed forces that it is sometimes their duty to give priority to the requirements of humanity, placing these before any contrary orders they might receive - priority which, according to the experts, the Nuremberg judgments endeavoured to underline.

2. Protection of civilian populations against direct attacks

The ICRC had submitted two questions to the experts on this subject in its preliminary documentation :

a) Is it expedient to state explicitly, as is sometimes done, that attacks intended to terrorize the civilian population are forbidden ? It is often difficult to prove the intention to terrorize, but there may be

a psychological advantage to a special condemnation of such practices.

b) Positive law does not state how the expression "civilian population" is to be construed. Naturally, personnel directly engaged in hostilities is not covered by this expression. Attempts have been made also to exclude sections of the population participating indirectly in the war effort (workers in an armament factory, etc.). In the opinion of the ICRC, civilians within or near military objectives are naturally subject to the effects of hostilities, but they may not be attacked in their own homes by air, sea or land. Is this also the opinion of the experts ?

The opinion of the experts

a) As regards attacks to "terrorize", several experts called to mind the theories of dissuasion and threats of total nuclear war, problems already debated in connection with atomic weapons (1). In the event of nuclear war, they were of opinion that principles of Resolution No. 2444 and the more detailed rules developing them could not be observed. The Red Cross should not however set out from these extreme hypotheses to decide on the rules for the protection of populations, as otherwise it would get nowhere. It should rather take present conflicts, conducted without atomic weapons.

In the event, an obvious lesson was to be drawn from the armed conflicts which had taken place to date, as military experts had declared, thus confirming what the ICRC had learnt in the course of previous consultations : not only did bombardments to terrorize cause great suffering, but they were to a large extent ineffective; they often even strengthened the moral resistance of the enemy and consequently, far from shortening the conflict, prolonged it.

The majority of experts thus approved the idea of specially condemning attacks to terrorize the civilian population by means of weapons. On the other hand, they felt that terrorization by psychological means tending to weaken the moral resistance of the adversary could not be condemned.

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(1) See above, page 50.

For some experts, the prohibition of direct attacks against the civilian population raises certain transport problems : sometimes every means of transport, even civilian, is mobilized for the country's defence. It is then difficult to draw a line between what is purely military and what is civilian. This situation could not of course justify complete freedom to attack, as otherwise transport vehicles of a primarily humanitarian character would be affected.

b) As to the definition of the civilian population, the experts generally approved the ICRC's position : persons not taking a direct part in hostilities, even if they were indirectly contributing to the war effort, could not be attacked as "quasi combatants". As an expert rightly pointed out, this would open the door to every abuse and would take all sense from the prohibition formulated in Resolution 2444. If a factory worker could be attacked as such, then why not also attack his wife who brings his dinner ?

But if civilians are on the site of a military objective or in its immediate proximity, they expose themselves tothe particular risks resulting from an attack directed against that objective (1). What is more, as an expert emphasized, belligerents should be reminded that the civilian population should never be used as a shield to shelter by its presence certain military personnel from attacks. If it is really desired to protect civilians, an endeavour should be made to place them at a distance from military objectives, naturally within reasonable limits.

3. Protection against "indirect" attacks

The problem

Belligerents never admit that they directly attack populations, unless they plead reprisals or exceptional measures justified by superior motives. Most often the attacks are supposed to be directed against military elements and it is claimed that populations are only indirectly affected. This is why the second principle of Resolution 2444 (obligation to spare the population so

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(1) This was already the conclusion drawn by the ICRC in its 1956 Draft Rules, Article 6, see Annex XIV, page 040.

far as possible) is so important, and rules in general setting limitations on bombardments and attacks, even when directed against military elements.

In its preliminary documentation, the ICRC had asked the experts to draw a distinction (which is usually admitted and is important for the rules applicable), between two types of bombardment: on the one hand, land or air bombardments which are closely linked with military operations proceeding on land and should enable a locality or a territory to be occupied by the assailant; on the other hand, bombardments that are independent of land forces, such as those which have been made possible by the development of aviation or projectiles, whose essential purpose is to destroy objectives of military and economic value (destructive or "strategic" bombardments).

a) Occupation bombardments

It is generally considered that the norms of The Hague Regulations relating to bombardments (Articles 25 to 27) (1) still have their full value for this type of bombardment. But is the idea of the "undefended locality" appearing in Article 26 always clear enough ? Also in a locality which defends itself, is the obligation laid on the assailant by Article 27 "to spare as far as possible" buildings dedicated to religious worship, the arts, science, hospitals and historical monuments, provided they are not serving for military ends, sufficiently strict, in view of the words "as far as possible".

The experts' opinion

While confirming that the above rules retained their full value, several experts considered there would effectively be interest in defining the conditions to be fulfilled by a locality for it to be considered as really "undefended"; in this connection they referred to the idea of the "open town" which the ICRC had explained in its 1956 Draft Rules (Article 16) (2). True, the existence of "undefended" localities should never weaken the obligation of belligerents to take the precautions demanded by Article 27 in attacking defended localities. Furthermore, even in a locality declaring itself an "open locality",

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(1) See Annex II, page 03.

(2) See Annex XIV, page 040 .

individuals escaping from the control of the authorities may commit isolated acts of hostility; the locality should not for this reason lose the whole benefit of its special protection.

In any case, the experts concluded, the institution of "open localities" should be further studied (1) to enable more frequent recourse to it, in the interests of civilian populations. The institution of such localities is also closely linked of course with supervision of the application of humanitarian rules; this question is dealt with apart later on (2).

As to the precautions belligerents should take in attacking "defended localities", the experts considered it difficult to go much beyond Article 27. It was however pointed out that the Geneva Conventions stipulate unreserved respect for hospitals, which is not tempered by the words "as far as possible"; consequently, belligerents should take very special precautions to spare these. The protection of cultural buildings is now more fully ensured by the 1954 Convention for the Protection of Cultural Property. This protection is nevertheless limited by the reservation that "where military necessity imperatively requires" it may be waived (3).

True, other protective signs could be contemplated alongside the red cross (red crescent, red lion and sun) as was provided incidentally in the 1907 Hague Convention concerning bombardment by naval forces (4) and

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(1) This study could be coupled with that of the "neutralized zones" and "safety zones" proveded for under the IVth Geneva Convention for the Protection of Civilians in time of War (Articles 14 and 15).

(2) See below, Chapter III, D.

(3) See Article 4 of the 1954 Convention for the Protection of Cultural Property in the event of armed Conflict, Annex V, page 016.

(4) Article 5, paragraph 2, of that Convention, providing that inhabitants have the duty of drawing attention to the buildings to be protected by visible signs, consisting of large rigid rectangular panels, divided diagonally into two coloured triangles, black at the top and white at the bottom.

in the 1954 Convention for the Protection of Cultural Property (1). But it is preferable not to multiply protective signs. Care should be taken above all not to place military installations close to civilian buildings it is really desired to safeguard these.

Destructive or "strategic" bombardments

In its preliminary documentation, the ICRC pointed out that the above norms of the Hague Regulations are usually considered not to apply to such bombardments ; these are mainly governed by the idea of "military objectives", which has progressively taken form (2). It is expressly referred to in the Geneva Conventions but it has not been defined anywhere in positive law.

This idea does not however prevent the abuse which has occurred or may occur (indiscriminate bombing on the pretext of hitting a military objective, or which definitely entails disproportionate civilian destruction, or again is based on the mere presumption of military elements). To avoid such abuses, in Annex II to its Memorandum of 19 May, 1967 (3), the ICRC mentioned a series of rules belligerents should respect in destructive bombardments.

The experts'opinion

The experts, called on to give their opinion of these different rules, examined below, in general appoved them, with certain amendments :

a) The rule according to which "bombardments may only be directed against military objectives" should, in

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(1) Article 16 of this Convention, which provides as a distinctive sign for cultural property, "the form of a shield, pointed below, per saltire blue and white" (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

(2) By analogy with Article 2 of the 1907 Hague Convention respecting Bombardments by Naval Forces in Time of War. This provides for the possibility of bombarding, even in undefended localities:"..military or naval establishments, depôts of arms of war material, workshops or plants which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor,...".

(3) See Annex XV, page 049.

the experts' opinion, be closely linked with the prohibition of direct attacks against the civilian population, to make clear that it constitutes a direct consequence of this prohibition (1).

Further, the definition of "military objective" proposed in the preliminary documentation appeared to them too loose and likely to lead to abuse. They noted with considerable interest in this respect the definition appearing in a Resolution adopted in 1967 by the Fifth Commission of the Institute of International Law, reading as follow :

> "May only be considered as military objectives those which by their actual nature, destination or military employment, effectively contribute to military action or present generally recognized military interest, in such a manner that their total or partial destruction procures substantial military advantage for the author of this action at the moment".

b) "Before bombarding a military objective, the attacking force must have sufficiently identified it as such". This rule, even if it is difficult to observe, is useful in the experts' opinion and should appear in military manuals.

c) "In bombardments directed against military objectives, the belligerents should take every possible precaution to avoid inflicting damage on the civilian population". The expression "to reduce damage to a minimum" which appeared in the terms proposed by the ICRC seemed dangerous to the experts: it might mean that certain damages are always authorized.

d) "A bombardment should not risk causing damages to the civilian population out of proportion to the importance of the military objective aimed at by the attacks".

This rule, also approved, gave rise to several

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(1) "In order to limit the dangers incurred by the civilian population the attacks may only be directed against military objectives", declares Article 7 of the ICRC Draft Rules, Annex XIV, page 040.

pertinent remarks. It was pointed out that this is a rule in itself and not a particular case in respect of the preceding rule, as the ICRC had indicated. It might appear to a belligerent, that, even in taking all the necessary precautions, an attack against a military objective would cause serious loss to the civilian population; if this is disproportionate to the military advantage anticipated, he should refrain from the attack.

Moreover, the principle of proportionality is characteristic of a developed law. This idea, like that of "reasonable", proposed by an expert, cannot be dependent on the purely subjective and arbitrary appreciation of an assailant. Whatever difficulties are involved by this idea, which is again to be found in the rule placing limitations on reprisals (1), it conforms to the development of the law it is desired to introduce in this field. It also implies the existence of closer supervision of the humanitarian rules devolving from it.

e) "When choosing a military objective for attack, the consequences that will result for the civilian population must be taken into consideration". This rule does not appear in the Annex to the Memorandum of 19 May, 1967, but in some national regulations. It was considered useful by the experts as an additional precaution, incumbent especially on the higher command.

Finally, the experts shared the ICRC's opinion that the general rules quoted above should not only be applied to "strategic" bombardments, but to all destructive attacks conducted by whatever means, including consequently, for example, operations carried out by commandos in enemy territory. This conclusion moreover conforms to the general term "attacks" employed in Resolution No 2444 of 19 December, 1968, and in the ICRC Draft Rules.

Conclusions of the ICRC

The field which has just been considered, the protection of civilian populations against bombardments and other attacks, contrary to that of weapons,

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(1) See below, Chapter III, D.

where studies still have to be continued on various subjects, is already largely cleared. The two great principles to which attention was drawn at the beginning of this Chapter unhesitatingly mark the road to follow. For the development of these into more definite rules, enough material to reach a series of practical conclusions exists in the previous studies of the ICRC, those of the Institute of International Law and the discussions summarized above.

In the near future, it should therefore be possible to draw up a minimum set of rules, which would be recommended for adoption by the Governments, in a form to be decided, with a view to their speedy inclusion in the instructions given to the armed forces.

C. BEHAVIOUR BETWEEN COMBATANTS

The general problem

Humanitarian law should extend to every aspect of armed conflict, whether the choice of weapons and the use to which they are put or behaviour in combat. Certain norms affecting relations between combatants themselves should therefore be examined here. There is of course no question of opposing the violence employed by combatants to disable the enemy, sometimes to the limits of their strength. It is a question of avoiding the violence which exceeds this aim and entails useless suffering. In this sphere likewise it is a matter of limiting certain forms of suffering and particularly excess of cruelty. It should be noted that such abuses add not only to the difficulty of reverting to peace but of mutual reconciliation. The Red Cross always starts out from the idea that an armed conflict presents an exceptional and extreme situation; it also knows by experience that those who are impelled to hate and fight each other in such circumstances are led not only to resume normal relationships once peace is restored but sometimes even closely cooperate.

The basic rules concerning behaviour between combatants are mainly formulated in Articles 22 and 23, b), c), d) and f) of The Hague Regulations (1); these

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(1) See Annex II, page 03.

provisions are considered to have the value of customary rules. Their significance in contemporary forms of armed conflicts may be questioned. Moreover, on too many occasions during the Second World War, as in recent conflicts, combatants have appeared to be insufficiently familiar with these rules. This concerns the Red Cross.

The general principle established by Article 22 of The Hague Regulations and reaffirmed in the U.N.O. Resolution of 19 December, 1968, according to which belligerents have not unlimited right to adopt means of injuring the enemy, also applies to behaviour during combat. It is developed in the fundamental rules in Article 23, referred to above, which were examined during the discussion.

The experts' opinion

The great majority of experts, although having had no opportunity to discuss the matter at length, declared themselves favourable to a reaffirmation of the above rules; a form and wording better adapted to present conditions would endow them with their full value.

1. Prohibition to wound or kill the disabled enemy

The problem

The rule in Article 23, c) "it is forbidden to kill or wound an enemy who having laid down his arms or no longer having means to defend himself has surrendered unconditionally" is implicitly understood in the IIIrd Geneva Convention concerning the treatment of prisoners of war.

In view, however, of the very general terms of that Convention (Article 4) ("Prisoners of war... are persons... who have fallen into the power of the enemy"), the ICRC wondered whether there might not be advantage in reaffirming the present rule and even completing as an indication, it by specific cases of practices it prohibits; would it not also be of interest to define cases in which a combatant can clearly make known his intention to surrender? The plane in distress whose crew lands by parachute to save their lives is a particular case which should be clarified.

The experts' opinion

The experts replied in the affirmative to the questions raised by the ICRC. Their discussion mainly centred round the case of the airman descending by parachute.

a) In the air : the experts stressed the complexity of the problem. They nearly all agreed to the distinction, often more difficult to establish in practice than in theory, between the airman in distress and the armed parachutist. According to some, the former should benefit from the rule of quarter, as his situation could be compared to that of a shipwrecked individual, while the latter should be assimilated to a combatant proceeding to attack or in flight, whom it is consequently admissible to take as an objective. But how far does this analogy extend ? and what are the military factors to be considered : the number of "air-wrecked" their attitude, the nationality of the territory on which they are to land, the military situation of the moment ? It is difficult to establish criteria, but it was generally admitted that an airman in distress, cut off, and not employing any weapon, should be respected.

b) On the ground : the experts unanimously considered that, even if an airman had committed acts authorizing qualification as a war criminal, when captured he should be treated as a prisoner of war, without prejudice to regular judgement. It was reminded, however, that, while the legal situation was inarguable, there were difficulties in actual practice : the civilian population may feel savage towards the airman who has just bombed it; in this connection, one expert quoted an example of officers who had watched civilians lynch parachutists without interfering and who had subsequently been condemned by the Courts of the Allied Powers. (1)

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(1) Cf. Green L.C., International Law through the Cases, London, 1951, pp. 712-714 : War Crimes Court, Essen, The Essen Lynching Case (1945), 1 LRTWC 88.

International law on the subject, it was said, should develop on the same lines as internal penal law has developed. According to the latter, no one is entitled to take the law into his own hands and "to assassinate an assassin is an assassination".

2. Quarter (1)

The rule under which "it is prohibited to declare that there shall be no quarter" (Article 23, d)) is implicit in the Geneva Conventions, but it does not appear in specific terms, as these are above all concerned with the treatment of combatants from the time they fall into the hands of the enemy, while the rule in question already applies to the statement of intent.

The ICRC emphasized that this rule is very important from the humanitarian angle. On the other hand it may be questioned whether its wording is not somewhat outdated and it should not be reaffirmed in other, more uptodate, terms.

Further, would it not be well (this also applies to the other principles examined here) to complete this provision relating to quarter by examples of the gravest contrary practices, as an indication but not to limit ? It covers for instance, certain threats sometimes voiced by the belligerents to "wipe out" an ethnical group or certain categories of enemies, (threats which are moreover also contrary to the prohibition of genocide sanctioned by a special Convention concluded under the auspices of the United Nations).

The experts' advice

The experts generally replied affirmatively to the questions put, which they considered in close relation to the rule examined under 1. While some were doubtful whether quarter could be granted in exceptional military

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(1) The Shorter Oxford English Dictionary on historical principles, Oxford, 1933, gives the following definition of the "quarter": "Exemption from being put to death, granted to a vanquished opponent in a battle or fight; clemency shown in sparing the life of one who surrenders".

situations, they admitted in general that such cases should be very rare. And even in these it should always be possible to spare the lives of persons falling into the hands of the enemy.

One expert desired that the status of persons guilty of sabotage should be specifically defined, in order that they also benefit by the rule considered here.

3. Prohibition of treachery

The problem

In its preliminary documentation, the ICRC brought out two provisions in The Hague Regulations : that of Article 23, b) ("it is forbidden to kill or wound treacherously individuals belonging to the hostile nation or army"), which is completed and defined under f) "it is forbidden to make improper use of a flag of truce, the national flag or military insignia or the uniform of the enemy, as well as of the distinctive signs of the Geneva Convention" .

The ICRC pointed out that it is often difficult to draw a distinction between what is treachery and what is a ruse of war, which is admissible (Article 24 of The Hague Regulations). This difficulty has certainly been increased by some modern methods of combat (commandos, guerilla warfare, etc.). Furthermore, as regards wearing enemy uniform, after the Second World War, as is known, a Court (1) admitted that this was not illicit with a view to misleading the enemy prior to combat. Should it be concluded that a certain idea of loyalty in war is more in keeping with the period at which the above rules were drafted than with the conditions of our times ?

In any event, from the humanitarian standpoint, the three following observations can be made :

- For the red cross emblem, protection against abuses is regulated by the Geneva Conventions; national legislations of implementation have however above all considered the repression of commercial abuses. But what it is most important to prohibit is the abuses

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(1) See judgment in the case Otto Skorzeny, Law Reports of trials of War Criminals - United Nations War Crimes Commission, H.M.S.O. London 1949 .

of the protective emblem in times of armed conflict, owing to their unscrupulous nature and the importance of the interests at stake. Far from relinquishing the rule in Article 23, f) of The Hague Regulations, would it not therefore be indicated to strengthen it, asked the ICRC ?

- In any event, would it not be advisable to reaffirm specifically the prohibition of every type of perfidious means, which bar the way to a cease fire and consequently to the diminution of useless suffering or violate the basic laws of humanity ? It has frequently been observed that if it is wished to prevent conflicts from degenerating, the armies facing each other must behave with a minimum of reciprocal loyalty. For example, the abuse of the truce flag, i.e. the white flag of surrender, compromizes the chances of using it and consequently the chances of peace; similarly, the breach of a local truce, for example, to collect the wounded. Is it possible to reaffirm, regenerate the rules concerning the prohibition of perfidy in this light ?

- Finally, as regards the wearing of enemy uniform, would it not be judicious to state more precisely the cases in which this is unreservedly prohibited, possibly in the sense deriving from decisions of tribunals ?

The experts' opinion

First of all, two suggestions should be mentioned, one with the idea of replacing the term "treachery" by "perfidy" (1), the other aiming at the inclusion in all future regulations of a list of the various forms of perfidy which should be completely prohibited.

In general, everything that is perfidious should be prohibited. But, as the experts pointed out, it is no longer so much a matter of obtaining a spirit of chivalry on the battlefield or an ideal of loyalty, as

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(1) The same remark had been made at the 1874 Brussels Conference by a delegate who had pointed out that the term "treachery" could not be applied to an enemy (quoted by Mechelyinck, The Hague Convention relating to the Laws and Customs of Land Warfare', Ghant, 1915, page 244).

of denouncing everything that can make a return to peace more difficult. Mention was made of Kant's Project for Lasting Peace (1), in which it is said that a humane attitude should be preserved towards the enemy, since otherwise peace could never be re-established. Even if it is not easy to apply some rules strictly, it should at least be seen that means which would close the road to peace are not employed.

The abusive employment of the white flag and above all of the red cross emblem (red crescent, red lion and sun) are among the means which should be proscribed. Abuse should not only be prohibited but also involve sanctions, as it weakens humanitarian law.

On the other hand the experts were divided on the question of the wearing of enemy uniform. It was moreover pointed out that neither decisions of tribunal nor qualified publicists were unanimous on this question.

True the judgment referred to above, according to which it would not be illicit ("improper") to wear enemy uniform prior to combat, corresponds to a custom in maritime warfare whereby the enemy flag may be flown before combat. If however this judgment should be considered to settle the use appearing most in line with the conditions of today, it should be defined, perhaps after thorough study, in a more precise rule. This is necessary to avoid diverging interpretations, which are a source of difficulty, reprisals and consequently of increased suffering.

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(1) Kant, Emmanuel, Project for Lasting Peace ("Zum ewigen Frieden"), 1795, Section 1, Article 6 : "No State at war with another should admit hostilities of a nature to render mutual confidence impossible at the time of future peace ".

D. RULES SECURING THE APPLICATION OF THE LAWS AND CUSTOMS UNDER CONSIDERATION

1. Reciprocity

The problem

Here the ICRC does not consider it is a question of a rule in the same sense as those examined further on. It however felt it advisable that the question of reciprocity should be submitted to the experts. It is indeed sometimes recognized, in the opinions of textwriters, that the law of war is based on this "principle": if one of the Parties fails to apply the essential rules, the adversary is no longer bound to observe them. True, this principle is found in general treaty law and the reservations accompanying the accession of many States to the Geneva Protocol in a way make the prohibition subject to reciprocity.

In the ICRC's opinion however, this conception, which is no longer valid so far as it concerns the Geneva Conventions or the 1954 Convention on the Protection of Cultural Property, should also be discarded for the rules examined in the previous Chapters. If these standards are viewed as definitely humanitarian and aimed at safeguarding the fundamental rights of individuals, their observance should be independent of reciprocity.

The experts' opinion

The experts approved the ICRC's position: in the field of basic human rights, reciprocity should not be admitted. When one of the belligerents has committed serious violations, the injured Party may have recourse to the procedures available to ensure the cessation of the violations and which are examined further. Among these procedures, reprisals, to the extent to which they are permitted, can only be exercised in the last resort. The attitude of each Party towards the rules examined by the experts should not be determined by the attitude of the other Party, but in relation to the basic humanitarian requirements formulated by the international community.

It is evident, however, that if one Party, in violation of definite rules, employs weapons or other methods of warfare which give it an immediate, great military advantage, the adversary may, in its own defence, be induced to retort at once with similar measures.

Reciprocity is a de facto element which should not be neglected (1). It can play an important role in the effective application of the rules concerned. To admit this element, which is more of a sociological order, as a principle of international law in the field considered would however be very dangerous.

2. Reprisals

The problem

No provision of positive law defines reprisals (2) or stipulates methods of execution. Nevertheless it is a generally admitted rule that belligerents can resort to them, except in cases where they are explicitly prohibited. Some authors see them as unfortunately one of the few means of ensuring the effective enforcement of the law of war.

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(1) The ICRC often invokes reciprocity when it is a matter of granting advantages to victims over and above the minimum guarantees from which they ought to benefit under international humanitarian law.

(2) The Institute of International Law has given the following definition of "reprisals": "Reprisals are measures of constraint derogating from the ordinary rule of the law of nations, which are taken by a State following illicit actions committed against it by another State with the purpose of compelling the latter, by means of injury, to comply with the law" (Institute of International Law 1934 Yearbook, page 708).

The Geneva Conventions prohibit reprisals against the persons they protect and The Hague Convention of 14 May, 1954, does likewise as regards the protection of cultural property in the event of armed conflict. Resort to reprisals therefore remains authorized in the field previously considered. If this measure is admissible in itself, it can nevertheless involve such abuse and offer so great dangers from the humanitarian viewpoint that the need regulate it, with a view to reducing the suffering it entails, has repeatedly been felt (1).

The ICRC, for its part, mindful of the dangers mentioned above, cannot but hope to see the complete prohibition of reprisals. Is this a possible solution ? This was the question put in the preliminary documentation.

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(1) In its Appeal of 12 March, 1940 "concerning the protection of the civilian population against aerial bombardments" (addressed to the States bound by the Geneva Conventions and the IVth Hague Convention of 1907) the ICRC said in particular: "The International Red Cross Committee moreover holds it to be fundamentally important to stipulate that no reprisals insofar as the Powers may consider reprisals to be legitimate -- may be instituted before the interested Party has, at the very least, been able to make itself heard, within a given time, through the intermediary of the Power appointed to represent its interests with the enemy, or through any other channel the Powers may choose. Nothing should be neglected which may prevent the belligerent States from embarking on the perilous course of reprisals.

Lastly, the International Committee recalls here a principle which can, on no pretext whatever, be called into question, namely, that persons and things protected by the Geneva Convention can never be the objects of attack, not even on the plea of reprisals.".

In addition, it was asked whether, if complete prohibition appears impossible, limits should not be set to reprisals, in order to reduce their tragic consequences ? The following limits have been formulated in the texts of qualified writers or in the publications of specialized institutions (1):

(a) Reprisals cannot be exercised unless the Party alleging violation having offered the possibility of an enquiry and impartial observation of the facts;

(b) The scale of reprisals must not be out of proportion to that of the violation they aim at stopping;

(c) They must be carried out, so far as possible, only in the same field as that of the violation;

(d) They should in any case not be contrary to the laws of humanity.

The experts' opinion

The experts, without being in a position to make a detailed study on this point, nevertheless clearly demonstrated two trends of opinion:

Some felt that from the point of view adopted by the meeting - viewing the norms formulated in the fields

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(1) The Oxford Manual on the "Laws of Land Warfare" published by the Istitute of International Law at its meeting in Oxford in 1880, states in Article 86: " In grave cases in which reprisals appear to be absolutely necessary, their nature and scope shall never exceed the measure of the infraction of the laws of war committed by the enemy. They can only be resorted to with the authorization of the Commander in Chief. They must conform in all cases to the laws of humanity and morality." (See Deltenre, General Collection of Laws and Customs of War, Brussels, 1943, p. 665 (E)).

previously examined as rules designed to protect fundamental human rights - it was no longer possible to authorize resort to reprisals. It would otherwise be admitting serious derogations from these fundamental rights and imply reversion to the law of the jungle. In their opinion, any effort should be aimed at the development of procedures and bodies which would enable supervision and ensurance of the application of the proposed rules. If by these means violations were registered, there should then be punishment of the culprits on the one hand - another measure examined later on - and repair of damages, if necessary (1) on the other. To authorize reprisals would be reverting to primitive forms of justice.

Other experts, on the contrary, considered that the international community had not yet reached a stage of development where the functioning of the supervisory bodies in question could be guaranteed under all circumstances. Experience had shown, they had failed, at least so far as concerned the rules relating to the conduct of hostilities, in most armed conflicts. In these conditions, total prohibition of reprisals would not only be shutting the eyes to reality but would perhaps have contrary effects.

The experts were nevertheless unanimous in considering that efforts should be made to restrain the exercise of reprisals to the largest possible extent. Some of them quoted a Decision of the Nüremberg Tribunal (2) clearly denoting that the inhuman application of a measure which is

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(1) Article 3 of the IVth Hague Convention of 1907 concerning the Laws and Customs of War on Land provides that "A belligerent Party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation ...".

(2) In this Judgement relating to hostages, the Tribunal admitted that the "practice of hostages is not in contradiction with international law when the Occupying Power resorts to it as an ultimate means, in the interests of defending public order. It is only the <u>inhuman application</u> of this measure which can be considered a crime". See: "The Hostage Trial", Law Reports of trials of war criminals, United Nations War Crimes Commission, Vol. 8, p. 34.

not in itself unlawful can constitute a crime of war. In this spirit, the experts approved the principle of proportionality in paragraph (b) above. They were more reserved as to (c), i.e. the possibility of limiting reprisals to the same field of law where the violation has been committed. Reprisals can, of course, in no case be exercised in the fields covered by the Geneva Conventions and against the persons protected by these. The principle in (a)was also approved, while doubting it would always be possible to apply.

Conclusions of the ICRC

The ICRC, for the reasons set forth above, can only fall into line with the experts who would like to see reprisals totally prohibited, in favour of developing procedures for the investigation of violations. However, so long as belligerents consider it necessary to resort to reprisals in certain cases, efforts must be made to reduce their harmful effects. To this end, the limits examined earlier, in particular that of proportionality, should be applied.

3. Supervision of the application of the rules and inquiries into violations

While there is detailed provison in the Geneva Conventions for the role of the Protecting Powers (1) and subsidiarily the ICRC, to co-operate in the ensuring of the regular application of their rules, no such recourse in principle exists for the laws and customs examined in the preceding Chapters. Neither the 1907 Hague Regulations

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(1) Thus Article 8 of the Ist Geneva Convention lays down that: "The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict". A similar provision is to be found in the other Conventions and other stipulations relating to the "Substitutes for Protecting Powers" establish the supervisory bodies which are to intervene when a Protecting Power cannot be appointed in virtue of the provision quoted above. In addition, several stipulations of the Geneva Conventions are devoted to the humanitarian activities of the ICRC.

nor even the 1925 Geneva Protocol provide procedures or bodies for the investigation of infractions.

True, the belligerents always have the possibility of mutual agreement to appoint commissions of enquiry, but, as everyone knows, in times of conflict, such agreements are extremely rare.

The task of a body for supervision and enquiry of the laws and customs in the fields considered is much more difficult and delicate than in these covered by the Geneva Conventions. In the latter it is more a question of ascertaining the treatment of persons who are generally situated out of range of the fighting. But for violations of rules relating to the conduct of hostilities, enquiries will generally have to be made after the event, of facts that have occurred in the combat zone during military operations, and the truth will be more difficult to establish. It may however be pointed out that the role of the supervisory bodies provided for by the Geneva Conventions may also extend to acts of war, for example, attacks against hospitals. In the preliminary documentation, the ICRC had requested the experts to give their opinion on the possibilities and means of also instituting procedures and supervisory bodies in the fields of law under consideration in the present Report. It stressed that the existence of such procedures and bodies could to some extent avoid or reduce resort to reprisals, with all the dangers they involve.

The experts' opinion

Many and interesting ideas were put forward. First of all a remark concerning the French terminology should be mentioned. This observation had already been made, incidentally, during the Diplomatic Conference which drafted the texts of the 1949 Geneva Conventions. Several experts made reservations with regard to the French word "contrôle" ("scrutiny"). This term appears, it is true, in the actual French text of the Conventions referred to but is often interpreted in the sense it has in English of a controlling power and of ruling over something, while here it is more intended to indicate that the bodies in question are entitled to examine the situation on the spot, proceed to verifications and enquiries. It was

moreover bearing in mind this meaning that the English text of the Conventions translates the term "contrôle" by "scrutiny" (1). This precaution in respect of terminology is all the more imperative, some experts emphasized, in the case of non-international conflicts: States are sensitive to everything that touches on their domestic jurisdiction and it must be avoided giving the impression by the word "contrôle" of more extensive outside interference than is intended in reality.

After this preliminary remark, the experts formulated a series of suggestions; a very clear general conclusion evolved from these: an impartial and objective presence, similar to that existing in the fields covered by the Geneva Conventions, appeared necessary to contribute to the regular observance of the rules relating to the conduct of hostilities, in the broadest sense, or those, as will be seen later on, which must be applied in conflicts of a non-international character. This presence is essential not only to investigate violations committed or alleged to have been committed but also to facilitate observance of the rules by belligerents and, through its mediatory action and the indirect contact it maintains between the Parties, avoid resort to extreme measures, such as reprisals. The experts considered such a system indispensable, and adapted to the more developed law it is being endeavoured to introduce in the fields considered. They recognized that the task of bodies called upon to act in this sense would be particularly delicate and that the Parties to the conflict would not easily accept scrutiny on the battlefields themselves.

On the other hand, the experts had different views as to the means of ensuring this presence. Some of them suggested that the tasks of the Protecting Powers should be extended to the field of humanitarian law considered. Had they not already been endowed with extensive powers by the 1949 Geneva Conventions and in particular the IVth ? It was however pointed out that advantage had practically

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(1) On this subject, The Geneva Conventions of 12 August, 1949, Commentary published under the general editorship of Jean S. Pictet: Ist Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field, 1952, p. 93-94.

never been taken of the institutions of a Protecting Power as provided under the Geneva Conventions in the wars of these last twenty years (this is also due to the internal nature of these conflicts in most cases). Perhaps it would be well to remind belligerents further of their obligation to designate a Protecting Power and the fact that this does not involve any political-legal consequences, bearing only humanitarian significance.

Other experts proposed setting up standing committees of enquiry. These would be instituted and organized by the General Assembly of the United Nations. Without having any power of sanction, which would be the prerogative of the UNO itself, they would permanently supervise the application of the rules considered by the experts. It was also suggested drawing up a list of personalities of high reputation, whose objectivity would be certain. On the basis of this list, deposited with the ICRC, the latter would entrust the conflicting Parties with appointing several persons to carry out the duties of scrutiny, who would remain responsible to the ICRC.

Finally, some experts also proposed to extend the role of the ICRC under the Geneva Conventions for the regular observance of their stipulations to the rules considered in the preceding Chapters. In this regard the representatives of the ICRC pointed out that it was not a governmental body and that the enforcement of law was essentially a Government matter; even under the Geneva Conventions it could only propose acting as a substitute for the Protecting Power in the latter's absence under clearly defined conditions.

An expert also stressed the importance the mere publicity given to violations observed by the supervisory body could assume, owing to the pressure of public opinion. This body could in particular communicate its findings to the UNO Secretary General, who would be free to pass them on or not to the General Assembly, after having contacted the belligerent at fault. This form of procedure is applied in the 1962 International Convention for the Prevention of Pollution of the Sea by Oil. Everyone also knows the role played by the publicity given to violations of the Conventions relating to Human Rights, whether the Cevenants established by UNO or regional Conventions, particular by the "European Convention on Human Rights and Fundamental Freedoms", November 4, 1950.

Conclusions of the ICRC

The ICRC can but fully support the basic desire voiced by the experts that an impartial and objective body should co-operate, as representative of the higher interests of the international community, in the regular observance of the rules relating to the conduct of hostilities, in the broadest sense.

The ICRC knows from its own experience in the field of the Geneva Conventions how often breaches are due to negligeance or subaltern authorities: if the real scope of these infringements is not ascertained by an appropriate body, they may appear as deliberate on the part of the responsible authorities and involve serious repercussions. Another lesson drawn from the experience of the ICRC is that it is essential for the role of a supervisory body not to be considered by belligerents as hampering their freedom of action or as an outside presence prompt to criticize and condemn, but as offering useful assistance in fulfilling their intention of conforming strictly to international law.

As to the practical means of achieving the desire of principle expressed by the experts, however, the ICRC cannot yet concur with any of the experts' proposals. The subject seems to call for still more detailed study.

The difficulties of the undertaking should not be concealed. The fields of the law of war in question are precisely those where violations may have the most serious consequences and arouse an outburst of passion. Moreover, in these fields, as has been pointed out, belligerents are suspicious in advance of anything which could hamper a freedom of action often considered vital to their very existence. Nevertheless, great as the difficulties may be, the interests of the international community itself and of peace must take priority: these demand that the necessity of submitting to impartial supervision the regular observation of every aspect of humanitarian law applicable in armed conflicts should in future be unanimously admitted.

4. Penal Sanctions

The problem

Breaches of the laws and customs of war involve the personal responsibility of those committing them, as well as that of the belligerent to which the authors of the breaches belong. The belligerent victim of a violation may judge and punish guilty persons who fall into its power.

This last rule, originating in customary law, was extensively applied in the trials that followed the Second World War and was confirmed by the Geneva Conventions for their own field. But it also applies to violations of the rules examined in the previous Chapters. The accused persons are entitled to benefit from the legal guarantees provided under the Geneva Conventions if they are in the power of the enemy. Recently, the U.N.O. General Assembly adopted a proposal on the imprescriptibility of war crimes, a large proportion of which represent violations of these Conventions. In the documentation submitted to the experts, the ICRC had asked : Is it necessary to strengthen the rules for the repression of violations committed in the fields considered ? In the affirmative, does the list of war crimes appearing in the Nuremberg principles, as formulated by the Committee of International Law (1), take sufficient account of the rules evolved by the experts ?

The experts' opinion

The experts also generally insisted on the necessity of accompanying the rules considered by sanctions, in order to strengthen their observance. According to some, serious violations of these rules should be regarded as war crimes, on the basis of the principles of the Nuremberg Tribunal.

One expert emphasized that offences of omission should also be sanctioned, i.e. the fact of tolerating violations of humanitarian rules. In this way everyone, and in particular the responsible authorities would be better aware of their responsibilities in the application of humanitarian rules.

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(1) See Annex XVIII, page 068.
See also "The Charter and Judgement of the Nuremberg Tribunal". History and Analysis (Memorandum by the Secretary General), New York 1949 (ONU A/CN 4/5, 3 March, 1949).

He considered that the Nuremberg Judgments had not taken sufficiently account of this aspect, contrary to the International Military Tribunal for the Far East, which had drawn up several rules on offences by omission (1).

Nor has this type of violation been specifically provided for in the clauses of the Geneva Conventions relating to penal sanctions (these stipulate the obligation to search out the persons accused "of having committed or ordered" serious violations...). In the expert's opinion any future regulations should be more precise on this point.

It was also proposed to set up a Standing Tribunal already in peacetime to note serious violations of humanitarian law, composed of members having no connections with armed conflict and thus entirely objective. This proposal corresponded to the anxiety of all the experts, several of whom had participated in or attended Judgments for war crimes given after 1945 : to ensure the most objective and impartial composition possible of the tribunals called upon to judge these crimes. Some experts considered that the judgments referred to above, whose value they in no way underestimate, could never serve as precedents, like the decisions of an international court, as only the victor and the vanquished had appeared before the Tribunal.

Conclusions of the ICRC

The repression of serious violations of the basic rules relating to the conduct of hostilities should certainly be explicitly provided, according to the pattern of a more developed law, while taking into account the particular conditions - combat - under which these violations often occur. It should also be endeavoured to ensure that the repressive bodies are of the most impartial nature possible (2) - although judgment for war crimes subsequent to the close of hostilities (it must be pointed out) was not instituted for the conflicts which occurred after 1945.

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(1) See : B.W.A. Röling, "The Law of War and the national Jurisdictions since 1945", Recueil des Cours de l'Académie de Droit International de La Haye, 100, 1960, II, p 378 ff..

(2) A similar idea had already been voiced by the experts assembled in 1955 by the ICRC to study the problem of the repression of infractions of the Geneva Conventions, See Annex XVII, page 065.

But for the ICRC, as for several of the experts, first the substantive rules must be clarified, considerably adjusted and widely disseminated and supervisory procedures developed. This effort in itself would contribute to decreasing violations of fundamental humanitarian rules and factilitate the task of national or international tribunals called upon to give judgment on such violations.

IV. CASES OF APPLICATION OF THE RULES UNDER CONSIDERATION

A. INTERNATIONAL WAR

a) War in the formal sense and armed conflicts

The problem

Under The Hague Conventions, their rules are applicable provided all the belligerents are bound by the Conventions (clausula si omnes). The fundamental rules of The Hague referred to earlier are nevertheless considered to have the force of customary law. They therefore are applicable in any international war.

Another difficulty arises, however. Although the IIIrd Hague Convention, which is still in force, lays down the obligation to declare war, all the conflicts after 1945 have broken out with no such declaration or no specific ultimatum. For various reasons, nations no longer qualify as "war" their "hostilities with other States", in particular on account of the U.N.O. Charter. These are qualified as "police operations", "legitimate defence", "assistance to an ally with domestic difficulties",etc. And more often than not the war-time national legislation is not therefore brought into force. As a result, a Party to such hostilities could claim that it is not bound to apply the laws and customs "of war" in these situations.

A similar question arises also for the 1925 Geneva Protocol, prohibiting the employment of asphyxiating gases "in war". Would their employment then be authorized in armed conflicts not qualified as "war" ?

The Geneva Conventions, taking this situation into account, explicitly provide in Article 2 that they "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them". The U.N.O. Resolution of 19 December, 1968, goes even further, since it provides for the application of "basic humanitarian principles in all armed conflicts".

In any event, questioned the ICRC in the preliminary documentation, given the humanitarian character of the laws and customs considered, should they not at least apply to all international armed conflicts, whatever they are formally called and even if one of the Parties does not recognize the actual situation ?

The experts' opinion

The experts unanimously approved the ICRC's position and turned their attention to the more delicate question examined below.

b) Question of aggression and equality of the Parties

Up to the foundation of the League of Nations, ~~the~~ international law had always defended the concept of equality between the Parties to a conflict with respect to the application of the law of war. But with the growth of the community of nations, this thesis gradually lost ground. Apart from the privileged position of the United Nations (examined below under E), it was argued that a State victim of an aggression is not bound to apply the rules of war to the same extent as the author of the aggression. True, this presupposes that the international community agrees on the concept of "aggression", a result not yet achieved in the United Nations discussions on this subject. But even in the absence of any precise definition, the Security Council or the General Assembly might be led to designate one of the Parties to a conflict as the aggressor, has occurred.

In the texts of qualified writers even the opponents of equality consider that, if there is to be any discrimination, it should not infringe on humanitarian rules. In this connection, this view was expressed notably in a part of a resolution (entitled : "Equality of Application of the Rules of the Law of War to Parties to an Armed Conflict") which the Institute

of International Law adopted in 1963 in Brussels. The passage in question is framed in the following terms :

> "The Institute of International Law, considering, on the one hand, that obligations whose purpose is to restrain the horrors of war and which are imposed on belligerents for humanitarian reasons by Conventions in force, by the general principles of law and by the rules of customary law, are always in force for the Parties in all categories of armed conflicts and apply equally to actions undertaken by the United Nations..." (1)

The experts' opinion

Several experts emphasized the great difficulty of obtaining both a precise definition of aggression (2) and objective designation of the aggressor from the competent body of the international community. Even if these conditions were fulfilled, the observance of the humanitarian rules applicable in armed conflicts would still be binding on the two Parties, the victim of the aggression and its author. This solution is all the more indicated when there is confusion as to whether there is aggression.

The experts consequently unanimously endorsed the ideas expressed in the Resolution of the Institute of International Law, thus falling completely into line with the views of the ICRC. If the application of the rules is to differ in the case of proved aggression, it would be, said some experts, in "jus post bellum", i.e. in the law applicable after the close of hostilities, particularly on matters relating to the appropriation of enemy property.

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(1) See Institute of International Law, Brussels Session, September 1963, Resolutions adopted by the Institute, Geneva 1963, page 376.

(2) It will be remembered that the United Nations gave fresh impetus to the discussions on the definition of aggression by setting up, in 1967 (Resolution 2330 of 18.12.1967), a Special Committee of 35 members charged with submitting to the next General Assembly a report on the question as a whole.

B. THE NON-INTERNATIONAL CONFLICT

The problem

Most of the conflicts that have broken out since 1945 have been of an internal character and have claimed large numbers of victims. This type of conflict assumes the most varying forms and, in consequence of the direct or indirect intervention of third parties, a clear line is sometimes difficult to draw between the "internal conflict" and the "international conflict".

The ICRC and the Red Cross have been called upon to intervene actively in these internal conflicts; the role of the Red Cross in this sphere is moreover the subject of a special Report by the ICRC to the XXIst International Conference of the Red Cross, entitled "Protection of Victims of non-international Conflicts" (1). As for the present Report, its main purpose is to communicate the opinions of the experts. The legal aspect of the question raised by non-international conflicts has already been taken up by the Red Cross. It has convened several Committees of experts (2) and a Resolution of the XXth International Conference of the

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(1) Document D.S. 5 a-b.

(2) Commission of Experts for the Examination of the Question of Assistance to Political Detainees, June 1953.
Commission of Experts for the Study of the Question of the Application of Humanitarian Principles in the Event of Internal Disturbances, October 1955.
Commission of Experts for the Study of the Question of Aid to the Victims of Internal Conflicts, October 1962.

Red Cross (1), (Vienna, 1965) encouraged the ICRC to continue its work.

It has become clear to the ICRC, from its experience, that the existing provisions fail to meet all the humanitarian requirements of such conflicts. Article 3 common to the four Geneva Conventions especially, valuable as it has already proved to the ICRC, has in practice revealed inadequacies.

Bearing this situation in mind, the ICRC submitted two important legal problems to the experts : first, the question of the definition of non-international conflicts; secondly, the question of the development of the law applicable to these conflicts.

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(1) Resolution XXXI (Protection of Victims of non-international Conflicts) :

"The XXth International Conference of the Red Cross,

considering that during armed conflicts not of an international character and internal disturbances occurring in recent years, it has not been possible to ensure sufficient protection for the victims of these conflicts and in particular the prisoners and detainees,

considering further that the Geneva Conventions of 1949 contain in Article 3, common to them all, the provisions applicable to these conflicts,

having taken note of the report of the Committee of Experts convoked by the International Committee of the Red Cross to meet from 25 to 30 October 1962,

urges the ICRC to continue its work with the aim of strengthening the humanitarian assistance of the Red Cross to victims of non-international conflicts,

recommends that Governments of States parties to the Geneva Conventions and National Societies support these efforts in their respective countries."

1. Definition of the non-international conflict

Existence of a non-international conflict

In several armed conflicts of a non-international character the lawful Government has denied that they were of the kind covered by Article 3 and therefore refused to apply it. This Article certainly gives the Governments considerable latitude but not it would seem that of final and incontrovertible decision in this matter.

Could there be improvements and in particular more objective criteria than those of Article 3 to define the cases of application ?

The experts' opinion

The experts as a whole regretted the absence of a definition of the non-international conflict adapted to the conditions and requirements of modern warfare.

One expert, on the grounds of personal experience, called attention to all the difficulties involved in problems raised by internal conflicts. There are numerous causes for these; they may originate from particular political, social, economic or then religious situations. A war of liberation, the uprising of a minority against the lawful Government and a class war : all constitute internal conflicts; the situation is particularly complicated when there are no longer two parties to a conflict, but three, even four parties who are trying to eliminate each other. He however suggested possibly defining the non-international conflict as follows : "the internal armed conflict is a means of expression, a deadly form of dialogue when none other is any longer possible".

Some of the experts called to mind the definition of non-international conflicts proposed by the Committee of experts which had met in 1962 in Geneva to study the question of assistance to the victims of internal conflicts.

In that Committee's opinion, the existence of an armed conflict is undeniable, in the sense of Article 3, if hostile action against a lawful Government assumes a collective character and a minimum of organization. The

duration of the conflict, the number and leadership of rebel groups, their installation or action in parts of the territory, the degree of insecurity, the existence of victims, the means adopted by the lawful Government to re-establish order, all have to be taken into account.

The experts, in approving these criteria, considered they could usefully be reverted to and completed for determining the existence of an internal conflict.

Other experts made distinctions between the different types of non-international conflicts and advocated considering, (a) internal wars where the two Parties control part of the territory (comparable in form to international wars), and (b) guerrilla situations, the struggle of a small minority whose very weakness prevents it from entering into open rebellion against the lawful Government.

Generally speaking, the experts considered that the conditions to be fulfilled by a non-international conflict to be considered as such should not be too restrictive.

Distinction between the non-international and the international conflict

a) Foreign intervention in the non-international conflict.

The problem

Foreign intervention has occurred in various forms, including even full military intervention, in several armed conflicts of a non-international character in the sense of Article 3. When there is foreign military intervention on the insurgents' side, there would seem no doubt that the laws and customs considered should be applied as a whole in the conflict, which thus becomes of an international nature. The situation is more delicate when military intervention occurs on the side of the lawful Government. But, in demanding or accepting foreign military aid, should it not be admitted that the lawful Government thereby gives de facto a sort of recognition of belligerency, which everyone knows entails the application of the laws of war ? This was the question put to the experts.

The experts' opinion

Few experts came to a decision on this point; they however admitted that foreign military intervention, on the side of either Party to a conflict, transformed a non-international conflict into an international conflict, thus endorsing the ICRC's opinion.

b) Wars of liberation

The problem

In a series of conflicts, their qualification has been a subject of argument between the lawful Government and the insurgents. The latter claimed that it was a conflict between the communities of States, thereby involving full application of the laws of war, while the Government denied the situation any international character. This has particularly been the case during certain wars of liberation.

On this subject it should be remenbered that, in a series of Resolutions (1), the United Nations General Assembly has requested the status accorded to war prisoners, in case of capture, for combatants fighting against the authorities in Southern Africa. The ICRC wanted to know whether it could be considered that this request on the part of the General Assembly implied it had adopted a position concerning the nature of the conflicts in which these combatants are engaged.

The experts' opinion

This question gave rise to extensive discussion. Some of the experts declared that while in 1949 it could be

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(1) - Resolution : "The Policies of apartheid of the Government of the Republic of South Africa" (Res. 2396, 2.12.1968),

- Resolution : "Question of Territories under portuguese administration" (Res. 2395, 29.11.1968),
- Resolution : "Measures to achieve rapid and total elimination of all forms of racial discrimination in general and of the policy of apartheid in particular" (Res. 2446, 19.12.1968),
- Resolution : "Question of Southern Rhodesia" (Res. 2383, 7.11.1968).

imagined that colonial wars, wars of liberation, came under Article 3, today, since Resolution 1514 (December 14, 1960) of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples, these wars should be admitted as entering into the category of international wars. The groups fighting against colonial governments should thus be considered subjects of international law.

The question arose as to whether a war of liberation had any status in international law. Some experts considered the right to autodetermination conferred an international character on the struggle of peoples to gain their independence. Others were of opinion that the justification of wars of liberation could be given a broader interpretation; the acceptance of Human Rights by Governments implied the duty of ensuring their citizens the benefit of these fundamental rights. Any serious neglect of this duty could imply virtual recognition of the right to open resistance.

While several experts thus endeavoured to find grounds for the political-legal conception of wars of liberation, the majority stressed that the formulation of humanitarian rules applicable to such conflict took first place.

2. Observance and development of rules applicable in internal conflicts

Observance of rules

Before entering into the question of developing the rules considered, the experts demonstrated the difficulties of observing humanitarian norms in non-international conflicts.

Some first of all stressed the dilemma confronting insurgents, between the necessities of combat and observance of the rules of war. Actual fighting conditions would sometimes deprive them of means of action if they were compelled to respect these rules from the outset of their resistance. If this argument were pushed to the extreme, it could be advanced that humanitarian law favour the lawful Governments. Reconciliation of the requirements of the rebellion with the application of humanitarian principles would therefore offer a serious problem.

The situation of the civilian population in internal conflicts was considered secondly. One expert, on the basis of personal experience, laid emphasis on the important role played by the civilian population in such conflicts. He declared that no attempt at liberation had the slightest chance of success unless it were backed by the civilian population. The natural consequence of this principle was that no repressive force could break the insurgents' spirit without the support of that same population. For this reason the latter is the main victim in such conflicts : victim of acts of terrorism on both sides, bombardments against the rebels, measures restricting the sale of medicines, the displacement of populations. While it is of course impossible to sanction the slaughter of innocent victims, in the fire of action, added the expert, these sort of things are considered quite normal, and it is easy to see how difficult it can be to impose humanitarian solutions in such cases.

Finally it was considered important to induce insurgents to abide by humanitarian rules. Without going so far as to affirm that the application of humanitarian principles is based on reciprocity, in practice it would be difficult to ask Governments to apply these rules to persons who entirely disregarded them. Governments should of course respect the laws of civilization and humanity at all times, but both sides should be persuaded to take humanitarian norms into consideration.

The serious problems arising in the practical application of humanitarian law, owing to the very nature of non-international conflicts were thus demonstrated. As a whole the experts however considered the Red Cross should continue its efforts to obtain more satisfactory application and development of Article 3 of the Geneva Conventions. They added that the purpose should even be universal acceptance of the Red Cross Principles and their application in all armed conflicts, internal or international.

Development of the rules applicable to non-international conflicts

This not only concerns the rules concerning the treatment of human beings, but also those relating to the conduct of hostilities. Certain humanitarian limitations should be set in both spheres, in accordance with Resolution 2444 of the United Nations, entitled "Respect for human rights in armed conflicts", which is of an entirely general character.

Apart from Article 3 of the Geneva Conventions and its possible development, the experts and the ICRC were therefore of opinion that the rules relating to the conduct of hostilities evolved during the first part of the discussions should apply to internal conflicts, whether the use of weapons, bombardments, or behaviour between combatants is concerned.

The ICRC had submitted a series of proposals in connection with the development of Article 3. These related to the respect of the red cross sign, hospitals, medical personnel or members of National Red Cross Societies; the treatment of regular combatants; relief for military or civilian detainees; blockade; supervision; drawing up of a model agreement for the application of the other provisions of the Geneva Conventions.

The experts gave their opinions on these different proposals, which are reverted to below. They recognized that most of them were not aimed at the formulation of entirely new rules but at defining norms implicitly contained in Article 3, and more especially the fundamental principle of humane treatment.

a) Respect of the red cross sign : Article 3 does not specifically provide for respect of the red cross sign, hospitals, medical personnel and personnel belonging to National Red Cross Societies.

b) Treatment of regular combatants : Should not treatment similar to that prescribed in the IIIrd Geneva Convention be provided for these combatants, who are liable to punishment simply because they have fought, and the waiving of all trials and executions during hostilities be recommended ?

Some experts were dubious that it would be possible and advisable to prevent summary trials, which they however admitted undoubtedly help to embitter the confliot. The formulation of such rules could meet with a series of obstacles: on the one hand, refusal of the lawful authorities, who might fear this would be favouring the insurgents, giving the rebellion a free-hand as it were; on the other hand, reticence of the Parties to the conflict, who, not being certain of its outcome, might apprehend the trials and executions of the victorious side once it was over.

Other experts, on the contrary, clearly demanded that no sentences should be delivered, or at least no executions should take place during hostilities.

(Wars "of liberation" have come to be regarded very differently by the world. This evolution of opinion has resulted in several resolutions which have been adopted by the United Nations General Assembly (1). In each of these the United Nations requests that the status of war prisoners should be granted to combatants for freedom, in accordance with the Geneva Conventions of 1949, without their being subject to any penal sanctions.)

c) Relief for civilian or military detainees : There are no provisions in Article 3 for these persons to receive relief or to give and receive news (2).

The experts unanimously encouraged the drawing up of such rules.

d) Blockade : There is no provision concerning blockade in case of internal conflict. It would be very desirable to provide for exceptions of a humanitarian nature to a blockade, for the benefit of the civilian population.

The difficulty here lies in the special position of this means of war in international law. One expert asked

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(1) See above, page 101

(2) Resolution XIX (relief in the even of internal disturbances) adopted by the XIXth International Conference of the Red Cross (1957) should be referred to here :

"The XIXth International Conference of the Red Cross,

considering it necessary to ensure maximum efficiency and equity in the distribution of relief supplies in the event of internal disturbances,

declares that relief supplies of all types must be distributed equitably among the victims by the National Red Cross Society, without hindrance on the part of the local authorities;

considers that, in the event of the National Red Cross Society being unable to come to the assistance of the victims, or whenever it may be deemed necessary or urgent, the International Committee of the Red Cross should take the initiative for the distribution of relief supplies, in agreement with the authorities concerned;

requests authorities to grant the Red Cross every facility in carrying out relief actions.".

in this connection whether it could be validly proposed to forbid this particularly cruel means of combat in non-international conflicts when blockade is not prohibited in international wars. Would it not be better to obtain a rule forbidding blockade in case of international conflict, which could then by extension be applied to internal conflicts ?

For other experts, it could not be affirmed that blockades were admitted in all international conflicts. In virtue of the general rules of humanitarian law and human rights, blockades could thus be considered as forbidden if they were directed solely against the civilian population, to the exclusion of any military personnel.

The experts further reminded the Committee that humanitarian principles had to be applied in blockades ; Article 23 of the IVth Geneva Convention relative to the Protection of Civilians in time of War was moreover drafted in this sense. This Article stipulates the obligation of belligerents, with certain restrictions, to "permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases". (1)

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(1) Ever since the period between the two World Wars, the Red Cross has been concerned with the condition of civilian populations during blockades, especially in the case of Article 16 of the League of Nations Covenant (providing for collective action by member States) being applied. The ICRC was requested to study this question; as a result of its studies the XIVth International Conference of the Red Cross (1930) adopted an important Resolution (XXXIV) observing that "an effort should be made, through an appropriate organization, to obviate, as far as possible, that the hardships inseparable from the enforcement of Article 16 of the League of Nations Covenant and of the war blockade be inflicted upon categories of persons necessarily strangers to the resistance of the State forming the object of League of Nations or belligerent intervention (children, aged persons, invalids, etc.)". Under this Resolution the Conference also considered that "the aforesaid humanitarian relations (in the event of application of the economic weapon of the League of Nations) should be made to include aid to certain categories of the civilian population by the provision of medical and sanitary supplies, as well as foodstuffs and clothing" and that it was "advisable to extend to Blockade in case of Declared War" the principle of the maintenance of humanitarian relations .

It should be noted in this context that the application of humanitarian rules in case of blockade should be made easier by the fact that each Party to the conflict, whose aspiration is to represent the whole State, claims to have concern for the welfare of the population.

e) Supervision : Article 3, paragraph 2, provides that "an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict". This possibility has, it is true, enabled the ICRC to intervene in numerous cases, with the agreement of the Parties to the conflict. It should however be reminded that the Parties are under no obligation to accept the services of the Committee.

The experts were of opinion that it would be desirable to see the ICRC not only continue to offer its services, but invested with internationally recognized functions of supervision, in order that it should be binding on the governments to accept its assistance for the application of humanitarian rules.

Some experts furthermore emphasized that it is no longer possible to consider some conflicts of an internal character, which claim hundreds of thousands of victims, as falling strictly within the domestic jurisdiction of the States. These conflicts concern the whole international community, and the experts therefore hoped for the presence of the ICRC - or another neutral body - which could co-operate in the application of humanitarian norms.

f) Enforcement of the other provisions of the Geneva Conventions: According to the terms of paragraph 3 of Article 3, "the Parties should endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Geneva Conventions". Would it be advisable to draw up a model agreement in this sense, which the ICRC would systematically propose for application by the Parties in conflict ?

The experts unanimously considered this as an excellent and feasible proposal. It would at the same time be sufficiently flexible, since the agreement to be concluded could be adapted to the particular nature of each internal conflict, and would possess the advantage of enabling the ICRC to endeavour automatically to obtain the widest possible

application of the Geneva Conventions in each case. The existence of such a model agreement should in no way however impede the rapid formulation and adoption by the international community of the several basic rules examined above, which would be of compulsory nature.

Conclusions of the ICRC

The general conclusions to be drawn from the experts' discussions will be found in the special Report of the ICRC to the XXIst International Conference of the Red Cross on the problem of non-international conflicts.

C. SITUATIONS OF INTERNAL DISTURBANCES AND TENSION

The problem

In situations of serious internal tension which may be considered potential conflicts though they do not necessarily develop into an open struggle between two factions, the conditions of the uprising and the large numbers of victims have made it desirable to apply a minimum of humanitarian rules.

Owing to the fact that lawful Governments and their police forces dispose of means of repression which often make armed insurrection almost impossible, the conditions have modified. As a result there are now situations of internal tension which are characterized by the government authorities complete control of events and wholesale internment of individuals considered dangerous for their security.

Although these situations fail to fulfil the conditions of a non-international conflict under the terms of Article 3, the ICRC has for a long time concerned itself with this problem.

From the legal angle, a Resolution of the Xth International Conference of the Red Cross (geneva, 1921) should be cited among others :

"The Red Cross, which stands apart from all political and social distinctions, and from differences of creed, race, class or nation, affirms its right and duty of affording relief in case of civil war and social and revolutionary disturbances.

The Red Cross recognizes that all victims of civil war or of such disturbances are, without any exception whatsoever, entitled to relief, in conformity with the general principles of the Red Cross".

Resolution XXXI of the XXth International Conference of the Red Cross (Vienna, 1965) on 'the"Protection of Victims of Non-International Conflicts" should also be borne in mind.

Finally, several Committees of experts have met to study these problems (1).

Moreover, the ICRC has also endeavoured to give practical assistance to victims of these situations of internal tensions, with the agreement of the authorities concerned. A survey established by it, some of whose statistical data the experts were the first to receive, shows that in the course of the last 11 years 42 Governments have authorized the ICRC to visit in all nearly 100,000 individuals detained as a result of situations which do not strictly speaking come within the framework of Article 3.

In 20 cases it was a case of internal disturbances. In 22 others there was internal tension without characteristic uprisings and the detainees could therefore be considered as purely political.

Some of the Governments only gave ICRC Delegates restricted authorization, which prevented them from systematically and repeatedly visiting all the political detainees. The figure of 100,000 detainees, moreover, also includes a certain percentage of ordinary delinquent prisoners, who are often not separated from political detainees by the penitentiary authorities.

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1) Commission of Experts for the Examination of the Question of Assistance to Political Detainees, June 1954;
Commission of Experts for the Study of the Question of the Application of Humanitarian Principles in the Event of Internal Disturbances, October 1955;
Commission of Experts for the Study of the Question of Assistance to the Victims of Internal Conflicts, October, 1962.

It should not be forgotten, despite these positive results and although the ICRC has often been able to intervene owing to a broad interpretation of Article 3, it in reality enjoys no rights in situations that cannot be qualified as non-international conflicts. For this reason, it asked the experts whether it would not be advisable to set up humanitarian rules applying to the victims of such situations.

The experts' opinion

The experts recognized that this problem was of vital interest for the Red Cross. They would like the ICRC to be in a position to intervene in cases where there is extensive internment of individuals opposed to the Government. They also affirmed that it ought to be possible to require the Governments to behave in accordance with minimum norms of civilization.

They however felt it should be pointed out that, in virtue of the principle of national sovereignty and non-interference in a country's domestic matters, the Governments might raise objections to the formulation of rules authorizing the ICRC to intervene in cases of internal tension and disturbances. Despite this, the question was considered of such interest and so important, that the experts were led to propose various solutions to the ICRC :

Some of them felt it might be possible to come to an agreement with the Governments on ICRC intervention in cases of internal disturbances and tension; this agreement could be formulated in a separate convention, entirely independent of Article 3.

Others considered these situations should be considered as peacetime situations coming within the international Covenants for the protection of Human Rights. It seemed to them difficult to envisage a situation falling in between the spheres of Article 3 and the Covenants, especially since the fundamental guarantees of the latter should be respected in all circumstances, despite the Articles formulating exceptions.

Still other experts considered the ICRC should continue to give assistance on the basis of its moral prestige and neutrality, adjusting its action to each particular case

and appealing to the Governments' political and moral sense. It was indeed feared it would be difficult to lay down strict rules, owing to the susceptibility of Governments in these matters.

Above all, several experts were very anxious that internationally recognized status should be conferred on the Red Cross in this respect, authorizing it to take action in such cases. They considered specific mention could be made of the ICRC when the "Minimum Rules for the Treatment of Detainees" adopted by the United Nations Ist Congress on the Prevention of Crime and the Treatment of Delinquants (30 August, 1955) (1) are revised at the 1970 Conference for that purpose in Kyoto.

Finally, several experts thought a solution might lie in a Resolution by the United Nations General Assembly requesting the ICRC to carry out its humanitarian duties in situations of internal disturbances and tension and recommending the Governments to appeal to it.

In reply to a question whether the United Nations General Assembly could adopt a resolution concerning an internal situation which in principle fails to come within its competence under the Charter, the experts stated that this could be done according to the present interpretation of Article 2, paragraph 7, of that Charter.

Conclusions of the ICRC

This subject is also dealt with in the special Report of the ICRC to the XXIst Conference on "The Protection of Victims of Non-International Conflicts" (Document D.S. 5 a-b). This Report should therefore also be consulted for the general conclusions. (In particular page 6).

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1) In this connection it will be remembered that, at the request of the ICRC, the Monaco Medico-Legal Committee drafted a set of "Minimum Rules for the Protection of non-delinquant Detainees" (4 June, 1966). These are reproduced in a Report to the XXIst International Conference of the Red Cross entitled "Implementation and Dissemination of the Geneva Conventions (I)". Document D.S. 3/1.0. See also International Review of the Red Cross, August 1967, February 1968.

D. GUERRILLA WARFARE

The problem

A preliminary remark should be made : guerrilla warfare is far from being confined to classical international conflicts and is equally to be found in internal conflicts. Section B of this Chapter having dealt with the humanitarian problems arising in conflicts of the latter type, we shall here consider guerrilla warfare only as waged in international conflict.

In reality no precise legal concept is attached to the term guerrilla warfare. Many definitions have been given. Without disregard to the numerous studies published on this subject, for which the summary bibliography annexed to the present Report should be consulted, we will simply quote the following definition :

> "...a form of warfare carried on by independent, quasi-military groups in connection with a regular war, generally in the rear of or on the flanks of the enemy... The term partisan is synonymous with guerrilla, as is "irregular".
>
> A guerrilla or partisan is, in the literal meaning of the word, an "irregular"..."(1).

This form of combat is not new, since its name is drawn from Spanish popular resistance against the armies of Napoleon. If today it is a headache for many jurists, it is because it has been extended in the XXth Century to a degree that upsets a series of strategic, political and legal concepts, at odds with traditional criteria.

Its development during the Second World War in the form of resistance movements against an occupying force led to the introduction of a special Article when the Geneva Conventions were revised in 1949 (Article 4, (2) of the IIIrd Convention). This provision recognizes the status of war prisoner for members of "resistance" movements fulfilling the following conditions :

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(1) Encyclopaedia Britannica, Vol. 10, V.P. 996 "Guerrilla Warfare".

"...

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war." (1)

A further condition is that these movements must belong to one of the Parties to the conflict.

Several conflicts that have broken out since 1949 have involved guerrilla operations. In 1969 it is evident that guerrilla warfare has often taken the shape of "wars of liberation", colonial or social struggles, which are essentially nationalistic or ideological, and that guerrillas have rarely conformed to the five conditions of this new provision in the IIIrd Convention of 1949. This situation led the World Veterans Federation to study how these conditions should be interpreted (2).

The ICRC could not remain aloof from these problems of interpretation in relation to a text whose adoption it had advocated twenty years earlier. It therefore felt it should request the experts to give thought to the problem of guerrilla warfare, confining their examination, however, to the field of international conflicts.

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(1) These conditions were moreover drawn from Article I of the "Regulations concerning the Laws and Customs of War on Land" annexed to The Hague Convention of 18 October, 1907 (Convention No. IV). This Article and the complete text of Article 4 of the IIIrd Geneva Convention of 1949, Annex IV, page 11.

(2) See in particular the Resolution adopted by the General Council of the WVF on 21 March, 1962, on the "International Definition of the Status of clandestine non-uniformed Fighters"), together with the Conclusions and Recommendations of the Advisory Group of experts convened on 6 and 7 February, 1967, in Paris by the WVF. For this last text, see Annex XIX, page 69.

Two main questions were submitted to them :

- the application of the Geneva Conventions to guerrillas, and,
- the respect of the Geneva Conventions and the other laws and customs of war of a humanitarian character by these same guerrillas.

The experts' opinion

a) Application of the Geneva Conventions to guerrillas

Before expressing their opinion on the special problems raised by this type of conflict, the experts voiced a desire for a definition of the word "guerrilla warfare" which can signify either a technique of warfare or a legal concept.

Guerrilla warfare has indeed become a method of combat, and the common factors which permit a situation to be considered a state of guerrilla warfare have to be determined. Any legal examination of the question must be founded on this basis.

The term "guerrillas" often includes all irregular combatants (1). It is this sense which will principally be considered.

A distinction should be drawn, according to the experts, between terrorism or banditism and guerrilla warfare; guerrilla warfare is an organized movement with a political aim and enjoying popular support. Various names may disguise the reality of guerrilla warfare (partisans, resistance movements, subversive movements, movements of national liberation, etc.). It can also take different forms : thus the guerrillas do not necessarily hold a territory, even if all in fact have a safe retreat (a "sanctuary", said one expert) where they can regroup and take shelter. Similarly, a group operating in urban zones will be faced with problems different from those of a traditional guerrilla movement.

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(1) See Encyclopaedia Britannica, Vol. 10, p. 996 "Guerrilla Warfare" : In the literal sense of the word, a guerrilla or a partisan is an "irregular combatant"; he is never a regular soldier and his "irregularity" is his distinctive character.

- R.R. Baxter, "So-called unprivileged Belligerency : Spies, Guerrillas and Saboteurs", British Yearbook of International Law, 1950, page 323, ff.

According to the experts, its undefinable and elusive character makes it difficult for jurists to discuss this type of warfare, which is made up of a series of completely different stages in which the laws and customs of war are not always equally applicable. In the first stage, for example, one expert pointed out, where, still being weak, the movement will be tempted to resort to extremist methods, humanitarian norms will perhaps be more difficult to apply than in the second stage, where having assumed shape and also perhaps developed a greater sense of responsibility, the laws and customs of war should be applied as widely as possible.

The ICRC had requested the experts' opinion on the present-day realism of the conditions laid down in Article 4 (2) of the IIIrd 1949 Geneva Convention, for captive guerrillas to be entitled to be treated as prisoners of war.

Several preliminary remarks of the experts should be mentioned before examining each of the conditions laid down in this provision of the IIIrd Geneva Convention.

One expert asked whether these conditions, stipulated in the context of the Second World War when guerrilla warfare had been the form assumed by resistance against the Occupying Power, might not nowadays be of a negative order, by placing completely outside the law and consequently outside any protection, guerrilla movements failing to satisfy these conditions.

Several experts thought The Hague criteria repeated in Article 4 of the IIIrd 1949 Convention were particularly hidebound in face of the diversity and changeability of guerrilla warfare. Perhaps it was really only a matter of interpretation.

Another expert even considered that the present forms assumed by guerrilla warfare no longer enabled conforming to the four conditions under (a) to (d) of paragraph 2 of Article 4, nor even to the requirement of belonging to one of the Parties to the conflict.

As to the latter question (Article 4 (2)), the experts were of opinion that this condition was not easy to fulfil in some guerrilla conflicts (not only internal conflicts but those where a belligerent does not admit it is a Party to the conflict and the other Party uses this as a pretext

for refusing to recognize that the guerrilla movement satisfies this condition) (1). Generally speaking, however, it was recognized that international law excluded "private war".

As to the obligation of being commanded by a person responsible for his subordinates (Article 4, paragraph 2, (a)), even if resistance movements are badly organized at the beginning of their operations and cannot easily satisfy the conditions laid down, this requirement of a certain degree of organization and a responsible leader seemed essential to the experts (2).

The condition that there should be a fixed distinctive sign recognizable at a distance (Article 4, paragraph 2, (b)), on the other hand, seemed to the majority of the experts somewhat difficult to fulfil. But as the World Veterans Federation had said (3) "This sign should be

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(1) One cannot however omit referring to the commentary on this provision, which reverts to the conclusions of The Hague Conferences stating : "It is essential that there should be a de facto relationship between the resistance organization and the party to international law which is in a state of war, but the existence of this relationship is sufficient. It may find expression merely by tacit agreement, if the operations are such as to indicate clearly for which side the resistance organization is fighting". The Geneva Conventions of 12 August, 1949. Commentary published under the general editorship of Jean S.Pictet, Vol. III, Geneva Convention relative to the Treatment of Prisoners of War, Geneva, ICRC, 1960, p. 57.

(2) See also on this subject the Commentary referred to above, pages 56-59. This is the most important condition, which in a way guarantees the legality of the armed struggle. It is moreover entirely compatible with the very nature of guerrilla warfare.

(3) Conclusions and Recommendations adopted by the Advisory Group of Experts, see above page 113, note 2.

distinctive to enable identification in relation to the peaceful population, (...), fixed in the sense that the resistant should wear it throughout the operation in which he is taking part and (...) recognizable at a distance by analogy with uniforms of the regular army."

The necessity of carrying arms openly (Article 4, paragraph 2, (c)) gave rise to no discussion and the meeting adopted on this point the Recommendations of the World Veterans Federation.

See p. 170

The obligation of conducting their operations in accordance with the laws and customs of war (Article 4, paragraph 2, (d)) is dealt with further on. This was the second question put to the experts (respect by guerrillas of the Geneva Conventions and the other laws and customs of war of a humanitarian character).

Finally, it should be stated that most of the experts did not advocate any basic modification in the interpretation of Article 4 in favour of guerrillas, with the exception of two participants who asked that combatants fighting against an aggression or against colonialism should be favoured.

The ICRC had pointed out in its documentation that experience in recent conflicts had shown this provision of the IIIrd Convention, whose conditions we have just examined, by no means protected all the combatants in this type of conflict. It can therefore legitimately be asked, continued the ICRC, what is to become of combatants who do not satisfy these conditions. It asked the experts whether they considered these persons sufficiently protected by the provisions of the IVth Convention, in the event of their being applicable, and made two suggestions :

- Could it be requested, as in internal conflicts, that such prisoners should not be executed ? (Thus going beyond Article 75 of the IVth Convention)
- In other hypotheses, would it not be possible to obtain humane treatment of these persons, at least equivalent to that laid down in Article 3 (common to the four Conventions and stipulating the respect of certain basic principles in non-international conflicts) ?

All the experts agreed in considering that guerrillas should be protected in one way or another, pointing out, however, as seen above, the great difficulty of enclosing guerrilla warfare in a clearly defined legal framework. The guarantees offered by the IVth Convention of 1949 relative to the Protection of Civilian Persons in Time of War, as they are recalled in the document of the World Veterans Federation (cf. Annex), do not always appear adequate. The principle of non-execution of prisoners seemed to the experts a measure, even if it failed to correspond to the positive law applicable, which would enable avoiding that either side resort to extremes. As to the humane treatment of prisoners, this is in the real interests of both Parties.

In any event, whether the guerrillas did or did not satisfy these conditions, the experts all emphasized the importance of the provisions in the Geneva Conventions demanding respect of medical personnel and establishments, which experience had shown were not sufficiently observed. In all our efforts, added one expert, we should urge the application of these provisions. They should moreover be reviewed as a whole and for every case the day regulations are adopted for guerrilla warfare. Similarly, it is absolutely essential that civilian doctors should be able to care for the wounded of such conflicts without being harassed.

b) Application by guerrillas of the Geneva Conventions and other laws and customs of war of a humanitarian nature

Several general remarks made by the experts on this subject should be recorded to start.

- In a guerrilla conflict, as in any other form of warfare, it is in the interests of both Parties to avoid unnecessary suffering.

- Guerrillas must also recognize certain obligations if it is desired to obtain more satisfactory protection for them, either by practical measures on the scene of action or by some future regulations.

- Guerrillas and their opponents should conform to the same rules. The more restricted facilities of the former should however be taken into account and general principles established which both Parties could apply. Either Party might make of rules which are too definite a pretext on legal ground not to apply them.

Finally, several experts considered that the special conditions of guerrilla warfare should be borne in mind and guerrillas treated as prisoners of war even if they failed to observe the laws and customs of war. It is perhaps only during a second phase, one expert pointed out, when guerrillas have secured control of certain territory that they can conform to these rules. He suggested they should then make an explicit and official declaration that they agree to apply all the laws and customs of war.

They should in any event respect humanitarian principles. Guerrillas should therefore be familiar, if not with all the laws and customs applicable in an armed conflict, at least with their fundamental principles (1).

One of these, applicable in such warfare seems precisely the respect of prisoners of war and especially the prohibition against ill-treating or executing them.

In the documentation submitted to the experts, the ICRC had drawn attention to a fact frequently alleged : that it is a material impossibility for members of resistance movements, owing to their particular combat conditions, to apply the provisions of the IIIrd Convention relative to the treatment of prisoners of war. Should it not in any event be strictly forbidden to put prisoners to death or inflict serious injury on their health : should they not (as has occurred in some conflicts) after having been disarmed, be released where there are no facilities to care for them. They could also be handed over to an Ally or a neutral State, as authorized in the IIIrd Convention.

In this type of conflict, the experts emphasized, practical solutions must first of all be sought for that problem as for others. The suggestions put forward by the ICRC in explaining the problem, that these prisoners be handed over to a neutral State or released, asking them on their honour not to resume fighting, could offer such practical solutions. These solutions have moreover already been adopted in recent conflicts and have been advocated by qualified theorists.

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(1) For this whole problem, see the preceding Chapter on "Non-international conflicts", where these matters have been dealt with at greater length.

Prisoners are neither the only nor even the main problem arising on the humanitarian level in guerrilla warfare; it should not be forgotten that it is civilians (or non-combatants) who are the principal victims of hostilities in these conflicts.

In this connection, one expert drew attention to the danger that the concept of civilian population might be narrowed down to the effect that individuals indirectly participating in the war effort (economically or politically, and no longer simply on the military level, as was the case till now) might be placed in the category of combatants.

Because guerrilla warfare by its infrastructure calls upon the whole population, there has often been a temptation to consider that in such a conflict there is no longer any distinction between combatants and non-combatants and to take this as a justification, stressed an expert, for the forces opposing the guerrillas not to apply the laws and customs of war.

Several experts however felt it should not be impossible to define the section of the population to be distinguished from armed units, which forms, and should continue to form, the civilian population, and which should not be deliberately attacked by the belligerents.

The practice of "terrorism" (1) gave rise to discussion among the experts : one argued that, especially at the beginning of their struggle, it was perhaps the only arm available to guerrillas combating a Government preventing them from employing other methods. To condemn terrorism without appeal would perhaps be equivalent, according to this expert, to depriving guerrillas of their only means of combat, and would therefore lack realism.

The majority of the experts were however of opinion that terrorism in the sense of indiscriminate attacks against

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(1) Robert (Alphabetical and analogical French Dictionary, Paris, 1966) gives the following definition : "Systematic employment of violence to achieve a political aim (...) and especially all acts of violence (individual or collective attacks against life, destruction...) on the part of a political organization to impress the population and create an atmosphere of insecurity." (translation).

the civilian population, should be condemned and that it outlawed guerrilla forces.

Conclusions of the ICRC

The ICRC feels the following general conclusions can be drawn from the discussion on the guerrilla warfare :

1. The conditions laid down in Article 4 of the IIIrd Geneva Convention in order that a guerrilla (member of a "resistance movement" are the words of the 1949 text) may be considered as a prisoner of war in case of capture, should be interpreted as broadly as possible when the guerrillas respect fundamental humanitarian principles in combat.

2. Prisoners on either side should be treated humanely. Death sentences and still more executions not conforming to the conditions of Article 4 of the IIIrd Convention should be avoided.

3. Terrorism : While this cannot be proscribed in absolute terms (the word itself, like guerrilla warfare, has several different meanings) should be forbidden when it is inflicted indiscriminately against the civilian population (whatever the means employed : violence, bombardments, etc.).

E. APPLICATION BY THE UNITED NATIONS FORCES

The problem

It has sometimes been declared that, even if the United Nations were to have one day a bigger coercive force to render the law of war superfluous, rules would still be valuable for the conduct of armed intervention by U.N.O. forces.

The United Nations as such are not Parties to any of the Conventions relating to the laws and customs of war; but the question of the observance of these laws by the special forces of the Organization has arisen on several occasions, in particular as regards the Geneva Conventions.

The Secretary General's rules for the U.N.O. forces lays down that : "The force shall observe the principles and spirit of the general international Conventions applicable to the conduct of military personnel. ". Recent Agreements between the Secretary General and the States providing contingents state that the Conventions referred to include, inter alia, the Geneva Conventions and The Hague Convention for the Protection of Cultural Property.

What is the position with regard to the particular laws and customs considered in the preceding Chapters (conduct of hostilities in a broad sense) ? The question of equality between the Parties has sometimes been raised here, on account of the special and privileged position of the U.N.O., whose armed intervention would always be for the purpose of maintaining or restoring international peace and security in the sense of the Charter. Consequently, it could not be bound by the whole law of war on the same grounds as the usual type of belligerent.

It is however generally admitted in this field also that the humanitarian rules should be observed by the U.N.O. forces, if only in view of the importance attached to the respect of human rights by the Organization and its Charter. It was therefore asked by the ICRC in the preliminary documentation, whether this attitude should not be adopted also towards the rules examined in the preceding Chapters, which are likewise designed to safeguard the fundamental rights of the individual in extreme situations.

The experts' opinion

The discussion centred rather round the application of existing law, i.e. the Geneva Conventions, by the United Nations forces than round the rules examined in the previous Chapters. The great majority of the experts would like to see the U.N.O. accede to the Geneva Conventions, stating that they saw no real legal obstacles to this. The reticence sometimes inspired by such a step would seem to be due to the fear of the United Nations forces being considered on a parallel with the army of any country, when, it was affirmed, it should be regarded as a peace force.

The experts also pointed out that the objections against accession of the United Nations to the Geneva Conventions failed to take sufficient account of Article 42

of the Charter (1), providing specifically for "Such action by air, sea or land forces" as may be necessary in the eyes of the Security Council.

As was rightly stressed, the armed contingents placed at the disposal of the U.N.O., it is true, all come from countries Parties to the Geneva Conventions; these contingents are therefore bound to apply them. It would however appear far more preferable, according to the experts, for the United Nations to accede officially to the Geneva Conventions. Pending such a step, the Commanders in Chief of the U.N.O. Forces, as has been done in the past, should explicitly pledge themselves to respect these Conventions and to give instructions in this sense to their subordinates.

Conclusions of the ICRC

The ICRC can but record these views, which correspond to its own, with satisfaction (2). In this spirit, the engagements taken by the United Nations, in one form or another, should clearly extend to the application of all the humanitarian rules that might be reaffirmed or developed in the fields covered by the present Report.

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(1) "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of Members of the United Nations".

(2) See Memorandum of the ICRC dated 10 November, 1961, addressed to the Governments of all the States Parties to the Geneva Conventions, on the subject of the application of these Conventions by the contingents placed at the disposal of the United Nations.

V. PROCEDURE TO GIVE LEGAL FORCE TO THE LAWS AND CUSTOMS UNDER CONSIDERATION

The problem

In the documentation submitted to the experts, the ICRC had emphasized that it was more a question of a preliminary exchange of views on this point than a detailed study. As stated in the first part of the Report, this coming chapter treats of an essentially governmental phase of the work.

The ICRC had recalled the procedure adopted for the drawing up of the previous humanitarian Conventions, in particular The Hague Conventions of 1899 and 1907, The Hague Convention of 1954 on the Protection of Cultural Property (1) and, principally, the 1949 Geneva Conventions, which represent the widest set of rules applicable in cases of armed conflict. The latter had passed through four stages before being finally drafted up :

- Preparation by groups of experts convened in a private capacity by the ICRC of documentation on the law in force and that which should be formulated;

- Drafting of rules, on this basis, submitted to a Conference of Government experts convened by the ICRC in 1947;

- Submission of this Draft to the XVIIth International Conference of the Red Cross (Stockholm, 1948);

- Submission of the Drafts resulting from the debates at the above Conference to a Diplomatic Conference, convened by the Swiss Government, which, after four months discussion resulted in the signature of the present Geneva Conventions.

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(1) The first Peace Conference, in 1899, was convened by the Tzar of Russia; the second, in the same city, in 1907, was convened by the President of the United States. As to that of 1954, it met at The Hague under the auspices of UNESCO, which had undertaken the preparatory work.

The experts' opinion

The question of procedure was taken up not only in connection with this particular point, but on several other occasions during the study of subjects covered in the preceding Chapters. Only the main points of the discussion will be summarized below.

First of all, a marginal but important aspect, several experts stressed the meaningful role public opinion can play in giving vigour to legal rules; these rules, it was said, will be all the more easily and promptly adopted by the Governments in that they respond to the deep aspirations of public opinion and to the public conscience.(1) The press and other mass media should therefore be borne in mind in this type of effort.

The non-governmental organizations can also provide valuable support, as an expression of public opinion [redacted]. As to the governmental organizations, the active support to be obtained from some regional organizations (Council of Europe, Organization for African Unity, Organization of American States, etc.) should also be borne in mind; UNESCO could similarly join actively in the diffusion of these ideas.

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(1) It should be pointed out in this connection that the Council of the Interparliamentary Union, at its meeting in April 1969 in Vienna, adopted a Resolution in which, after noting the Teheran Resolution and Resolution 2444 of U.N.O., it :

"requested as a matter of urgency all parliaments :

a) to use their influence to ensure full application and respect for all conventions of international rules of a humanitarian character;

b) to encourage and support the action undertaken by the International Committee of the Red Cross, to ensure the strengthening of the principles of a humanitarian nature and the development of their legal and practical consequences."

Furthermore, on two occasions, in April 1968 and April 1969, a group of non-governmental organizations met at ICRC Headquarters to obtain information with regard to the work of the Committee in the sphere considered.

This public opinion campaign will have all the more chance of success, it was rightly pointed out, if emphasis is laid on the essential objectives of these new humanitarian rules : reduce the suffering inherent in conflicts and facilitate the return to peace.

Finally, this appeal to public opinion should not be confined to the phase preceding the adoption of the new rules. Pressure should continue in order that these rules are ratified by the Governments and, widely disseminated among all persons concerned, especially military circles.

After these remarks on the role of public opinion in the law-creating process of new humanitarian norms, the experts' opinions on this process itself should be recalled. Their opinions can as a whole be grouped in four categories :

1. The experts generally considered it preferable not to revise the existing Conventions at present, especially the Geneva Conventions. They thought it more advisable to create new instruments of international law, whether additional Protocols to the existing Conventions, or independent instruments, which, in fact, would complete or wholly or partially replace the existing Conventions (1). These new instruments could in particular extend the field of application of the previous texts to all types of armed conflict.

2. How were these legal instruments and particularly these Protocols to be set up? The experts' views varied on this point.

   Some suggested getting certain of these instruments adopted within the framework of the United Nations; worked out by an ad hoc committee, a draft Protocol or Convention could be approved by the General Assembly and then submitted to all the States for ratification. This procedure has been followed for several instruments of international law set up in the above conditions, in particular the international Covenants on Human Rights.

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(1) Thus the IVth Geneva Convention is supposed to "complete" The Hague Convention on the Laws and Customs of Land Warfare, so far as concerns occupied territories.

Other experts however voiced reservations in regard to such a system. While recognizing the important work of the United Nations in codifying law, they argued that several countries, together representing hundreds of millions of individuals, were not members of that organization. As a result, such important Conventions as those on human rights, genocide or racial discrimination, had not been open to these countries. In accordance with the universal nature of the Red Cross, all countries without distinction should be able to adopt the rules evolved by the experts, precisely on account of their humanitarian nature.

For these reasons, these experts advocated a diplomatic conference convened outside the actual framework of the United Nations. This solution would not moreover exclude some connection with the latter, in a form to be decided. Allusion was also made here to the Treaty on the Non-Proliferation of Nuclear Weapons, for whose ratification or accession there are several depositary Governments, thus enabling any State desirous of joining in this treaty to do so.

Finally, other experts wondered if the necessity to reach a rapid solution would not justify also considering other simpler and more direct procedures than those employed for the existing humanitarian Conventions. Thus one expert proposed a Protocol which would be adopted by an international Conference of the Red Cross and then submitted directly to the Governments for approval and official accession. With the same idea, another expert suggested an instrument of international law prepared by a widely representative committee of experts, convened by the ICRC, which would not necessarily be of a governmental character. After having possibly obtained the comments of Governments on this draft, with the help of experts, the ICRC would draw up the final instrument. This would be directly communicated to the Governments, which, by an official declaration, would confirm their intention of considering themselves bound by this text.

3. Allusion was also made to an <u>intermediate stage</u>, which might intervene between the phase of the preparatory work and the stage, when the legal rules would be given final touches by Government Plenipotentiaries. This would consist of a "Declaration of Principles".

This had been the procedure for the principles relating to the protection of civilian populations, examined above (Chapter III B) : these principles were proclaimed by the XXth International Conference of the Red Cross (Resolution XXVIII) and reaffirmed, in its Resolution 2444, by the General Assembly of the United Nations. The latter had employed the method of a Declaration of Principles in several spheres of law. These Declarations imply the development of the principles proclaimed into a series of detailed rules and, consequently, subsequent codification by means of a formal instrument of international law (e.g. in the fields of Human Rights, elimination of forms of racial discrimination, the pacific utilization of extra-atmospheric space, friendly relations between States, etc.).

4. Finally, the experts' discussions enabled a definite conclusion to be drawn : it is not compulsory to envisage a single instrument of international law to cover all the fields in which it appears humanitarian law should be developed. Considerable flexibility must be given here too, which would not exclude the possibility of several legal instruments, each corresponding to one of the subjects considered and created by different procedures. These variations in procedure might also be necessitated by the different degrees of progress in work from one subject to another. It would not be in the least incompatible with the need repeatedly stressed by the ICRC in this Report, to work towards the reaffirmation and development of the whole of humanitarian law applicable in armed conflicts.

Conclusions of the ICRC

At the present stage, the ICRC has above all to confine itself to noting these different opinions and communicating them to the persons receiving the present Report, in particular the members of the coming International Conference of the Red Cross. Special importance can however already be attached to the remarks voiced on some points : the fact that it is not advisable to revise the existing Conventions for the time being, the advantage of choosing procedures whereby the purposes in view can be rapidly achieved (which has always been emphasized by the ICRC) and, finally, the necessity of drawing up instruments of international law of universal scope.

P A R T I I I

General Conclusions of the ICRC

In the first part of this Report, the ICRC explains the reasons militating in favour of the reaffirmation and development of humanitarian law applicable in armed conflicts. It also emphasizes the urgency of undertaking this.

This need, which the ICRC has observed directly in its relief activities during recent armed conflicts, have been fully confirmed by the highly qualified personalities it consulted, as shown in the second Part of the present Report.

This second Part also brings out the numerous fields in which development of humanitarian law is both possible and desirable, either because the subjects in question still require more detailed study or else they already appear sufficientl ripe, and this is most frequently the case, to pass on speedly to the stage of codification.

One could have thought of setting up an order of priority in the matters to be dealt with, and, for example, give first place to: the protection of civilian populations against hostilities, the development of the rules applicable in internal conflicts and the prohibition of chemical and bacteriological weapons. But the ICRC will refrain from doing so: there are urgent aspects in every field and the work must progress wherever it can.

After having shown why this development of humanitarian law is essential and pressing as well as the matters with which it should concern itself, the procedure to be followed should be stated. But this primarily depends on the Governments. The ICRC, however, on the basis of the experts' opinions, has already made several suggestions as to possible solutions in the preceeding Chapter.

It is therefore hoped that the XXIst International Conference of the Red Cross, where the Governments are represented, will take up position on this point and formulate useful guidelines. It may perhaps consider advisable not only to lay down the procedures that appear best calculated to

achieve the proposed purpose, but also to formulate now several general principles on certain matters as a guide for future work, as was done by the preceding Conference with regard to the protection of civilian populations.

The ICRC, for its part, on the basis of previous observations to which this Report may have given rise before the Conference and the opinions it has been able to obtain, intends to submit concrete proposals to the Conference, to facilitate the discussion and the adoption of practical measures.

The Conference will probably be called on to furnish certain guidelines to the ICRC for subsequent work; for example, the ICRC could be requested to continue to promote the reaffirmation and development of humanitarian law, taking advantage of every propitious occasion and cooperating with all the official or private organizations interested in these questions.

The ICRC in no way underestimates the extent of this task, especially since it would be pursued alongside the attention it must continue to give to the Geneva Conventions themselves, to their regular application and to its relief activities in aid of victims of conflicts. But in today's troubled world, the peoples and especially the young generation, expect great achievements; it is the duty of the Red Cross to respond to their expectations.

PART IV

ANNEXES AND BIBLIOGRAPHY

A N N E X E S

Pages

A. INTERNATIONAL TREATIES

B. UNITED NATIONS RESOLUTIONS

pages

C. RESOLUTIONS ADOPTED BY INTERNATIONAL RED CROSS CONFERENCES

D. ICRC PUBLICATIONS

E. MISCELLANEOUS

ANNEX I

DECLARATION OF ST. PETERSBURG

OF 1868

to the Effect of Prohibiting the Use
of certain Projectiles in Wartime,

signed at St. Petersburg
November 29 - December 11, 1868.

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that Commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows :

Considering :

That the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would therefore, be contrary to the laws of humanity;

The contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg by sending Delegates thereto, to accede to the present engagement.

This engagement is compulsory only upon the Contracting or Acceding Parties thereto in case of war between two or more of themselves; it is not applicable to non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be compulsory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg, the twenty-ninth of November - elenventh day of December one thousand eight hundred and sixty-eight.

THE HAGUE CONVENTION No IV OF 1907 CONCERNING THE LAWS AND CUSTOMS OF WAR ON LAND

(Indication of the Contracting Powers.)

Seeing that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;

Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice;

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

ANNEX TO THE CONVENTION.

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

Section I: ON BELLIGERENTS

CHAPTER I.

The qualifications of Belligerents.

Art. 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions :

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination army.

Art. 2

The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

Art. 3.

The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.

Prisoners of war.

Art. 4

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Section II: HOSTILITIES

CHAPTER I

MEANS OF INJURING THE ENEMY SIEGES, AND BOMBARDMENTS.

Art. 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

Art. 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden :

a) To employ poison or poisoned weapons;

b) To kill or wound treacherously individuals belonging to the hostile nation or army;

c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;

d) To declare that no quarter will be given,

e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Art. 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Art. 25

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

Art. 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Art. 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the same time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Art. 28

The pillage of a town or place, even when taken by assault, is prohibited.

GENEVA PROTOCOL OF JUNE 17, 1925

FOR THE PROHIBITION OF THE USE IN WAR OF ASPHYXIATING, POISONOUS OR OTHER GASES AND OF BACTERIOLOGICAL METHODS OF WARFARE

The undersigned Plenipotentiaries, in the name of their respective Governments:

Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilised world; and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

Declare:

That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration.

The High Contracting Parties will exert every effort to induce other States to accede to the present Protocol. Such accession will be notified to the Government of the French Republic, and by the latter to all

signatory and acceding Powers, and will take effect on the date of the notification by the Government of the French Republic.

The present Protocol, of which the French and English texts are both authentic, shall be ratified as soon as possible. It shall bear to-day's date.

The ratifications of the present Protocol shall be addressed to the Government of the French Republic, which will at once notify the deposit of such ratification to each of the signatory and acceding Powers.

The instruments of ratification of and accession to the present Protocol will remain deposited in the archives of the Government of the French Republic.

The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and, from that moment, each Power will be bound as regards other Powers which have already deposited their ratifications.

In May 1969, 65 States were bound by the Geneva Protocol. Many of them have qualified their deeds of ratification with more or less identical provisos to the effect that :

1) the Protocol is binding on the State making the reservation only in its dealings with other States which have ratified or adhered to the Protocol;

2) obligations towards an enemy, under the terms of the Protocol, would cease to be binding on the State making the reservation if that enemy's armed forces or allies did not comply with the stipulations of the Protocol.

THE GENEVA CONVENTIONS

of August 12, 1949

(Extracts)

I. GENERAL PROVISIONS

Application of the Convention

Art. 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed résistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Conflicts not of an international character

Art. 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons :

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

b) taking of hostages;

c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

II. GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR.

Prisoners of war

Art. 4

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy :

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions :

   a) that of being commanded by a person responsible for his subordinates;

   b) that of having a fixed distinctive sign recognizable at a distance;

   c) that of carrying arms openly;

   d) that of conducting their operations in accordance with the laws and customs of war.

3. Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power.

4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services

responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

5. Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention :

1. Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

2. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or

non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

In May 1969, 123 States were parties to the Geneva Conventions.

CONVENTION OF THE HAGUE
for
THE PROTECTION OF CULTURAL PROPERTY
in
THE EVENT OF ARMED CONFLICT
(14 May, 1954)

I. GENERAL PROVISIONS REGARDING PROTECTION

Art. 3
Safeguarding of cultural property

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

Art. 4
Respect for cultural property

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.

2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property.

They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

4. They shall refrain from any act directed by way of reprisals against cultural property.

5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

II. SPECIAL PROTECTION

Art. 8

Granting of special protection

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they :

a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;

b) are not used for military purposes.

2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.

4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be used for military purposes.

5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the "International Register of Cultural Property under Special Protection". This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

In May 1969, 57 States were parties to the Convention of The Hague for the Protection of cultural Property in the Event of armed Conflict.

UNITED NATIONS GENERAL ASSEMBLY

Sixteenth Session

RES/1653/(XVI)
24 November 1961

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
on the report of the First Committee
1653 (XVI) Declaration on the prohibition of the use of nuclear and thermo-nuclear weapons.

The General Assembly,

Mindful of its responsibility under the Charter of the United Nations in the maintenance of international peace and security, as well as in the consideration of principles governing disarmament,

Gravely concerned that, while negotiations on disarmament have not so far achieved satisfactory results, the armaments race, particularly in the nuclear and thermo-nuclear fields, has reached a dangerous stage requiring all possible precautionary measures to protect humanity and civilization from the hazard of nuclear and thermo-nuclear catastrophe,

Recalling that the use of weapons of mass destruction, causing unnecessary human suffering, was in the past prohibited, as being contrary to the laws of humanity and to the principles of international law, by international declarations and binding agreements, such as the Declaration of St-Petersburg of 1868, the Declaration of the Brussels Conference of 1874, the Conventions of The Hague Peace Conferences of 1899 and 1907, and the Geneva Protocol of 1925, to which the majority of nations are still parties,

Considering that the use of nuclear and thermo-nuclear weapons would bring about indiscriminate suffering and destruction to mankind and civilization to an even greater extent than the use of those weapons declared by the aforementioned international declarations and agreements to be contrary to the laws of humanity and a crime under international law,

Believing that the use of weapons of mass destruction, such as nuclear and thermo-nuclear weapons, is a direct negation of the high ideals and objectives which the United Nations has been established to achieve through the protection of succeeding generations from the scourge of war and through the preservation and promotion of their cultures,

1. Declares that :

a) The use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, a direct violation of the Charter of the United Nations;

b) The use of nuclear and thermo-nuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and to the laws of humanity;

c) The use of nuclear and thermo-nuclear weapons is a war directed not against an enemy or enemies alone but also against mankind in general, since the peoples of the world not involved in such a war will be subjected to all the evils generated by the use of such weapons;

d) Any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization;

2. Requests the Secretary-General to consult the Governments of Member States to ascertain their views on the possibility of convening a special conference for signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons for war purposes and to report on the results of such consultation to the General Assembly at its seventeenth session.

1063rd plenary meeting,
24 November 1961

This Resolution was adopted by 55 votes in favour, 20 against and 26 abstentions.

UNITED NATIONS GENERAL ASSEMBLY

Twenty-first session

B/RES/2162 (XXI)
5 December 1966

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
on the report of the First Committee, A/6529

2162 (XXI/B) Question of the Geneva Protocol

The General Assembly,

Guided by the principles of the Charter of the United Nations and of international law,

Considering that weapons of mass destruction constitute a danger to all mankind and are incompatible with the accepted norms of civilization,

Affirming that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining these standards of civilization,

Recalling that the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare of 17 June 1925 (2) has been signed and adopted and is recognized by many States,

Noting that the Conference of the Eighteen-Nation Committee on Disarmament has the task of seeking an agreement on the cessation of the development and production of chemical and bacteriological weapons and

(2) League of Nations, Treaty Series, vol. XCIV, 1929 No. 2138

other weapons of mass destruction, and on the elimination of all such weapons from national arsenals, as called for in the draft proposals on general and complete disarmament now before the Conference,

1. Calls for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and condemns all actions contrary to those objectives;

2. Invites all States to accede to the Geneva Protocol of 17 June 1925.

This Resolution was submitted by Hungary and adopted by 91 votes in favour, none against and 4 abstentions.

RESOLUTION XXIII OF THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS

Teheran, April-May 1968

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 and 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 system 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.

Submitted by Czechoslovakia, India, Jamaica, Uganda and the United Arab Republic. This Resolution was adopted by 53 votes in favour, none against and one abstention.

UNITED NATIONS GENERAL ASSEMBLY

Twenty-third session
Agenda item 27

A/RES/2454 (XXIII)
10 January 1969

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
on the report of the First Committee (A/7441)

2454 (XXIII). Question of general and complete disarmament

The General Assembly,

Reaffirming the recommendations contained in its resolution 2162B (XXI) of 5 December 1966 calling for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare signed at Geneva on 17 June 1925, (1) condemning all actions contrary to those objectives and inviting all States to accede to that Protocol,

Considering that the possibility of the use of chemical and bacteriological weapons constitutes a serious threat to mankind,

Believing that the people of the world should be made aware of the consequences of the use of chemical and bacteriological weapons,

Having considered the report of the Conference of the Eighteen-Nation Committee on Disarmament which recommended that the Secretary-General should appoint a group of experts to study the effects of the possible use of such weapons, (2)

Noting the interest in a report on various aspects of the problem of chemical, bacteriological and other

(1) League of Nations, Treaty Series, vol. XCIV, 1929, No. 2138.

biological weapons which has been expressed by many Governments and the welcome given to the recommendation of the Conference of the Eighteen-Nation Committee on Disarmament by the Secretary-General in the introduction to his annual report on the work of the Organization submitted to the General Assembly at its twenty-third session, (3)

Believing that such a study would provide a valuable contribution to the consideration by the Conference of the Eighteen-Nation Committee on Disarmament of the problems connected with chemical and bacteriological weapons,

Recalling the value of the report of the Secretary-General on the effects of the possible use of nuclear weapons, (4)

1. Requests the Secretary-General to prepare a concise report in accordance with the proposal contained in paragraph 32 of the introduction to his annual report on the work of the Organization submitted to the General Assembly at its twenty-third session and in accordance with the recommendation of the Conference of the Eighteen-Nation Committee on Disarmament contained in paragraph 26 of its report;

2. Recommends that the report should be based on accessible material and prepared with the assistance of qualified consultant experts appointed by the Secretary-General, taking into account the views expressed and the suggestions made during the discussion of this item at the twenty-third session of the general Assembly;

3. Calls upon Governments, national and international scientific institutions and organizations to co-operate with the Secretary-General in the preparation of the report;

(3) See Official Records of the General Assembly, Twenty-third Session, Supplement No. 1A (A/7201/Add. 1), para. 32.

(4) Effects of the Possible Use of Nuclear Weapons and the Security and Economic Implications for States of the Acquisition and Further Development of These Weapons (United Nations publication, Sales No. : E.68.IX.1).

4. Requests That the report be transmitted to the Conference of the Eighteen-Nation Committee on Disarmament, the Security Council and the General Assembly at an early date, if possible by 1 July 1969, and to the Governments of Member States in time to permit its consideration at the twenty-fourth session of the General Assembly;

5. Recommends that Governments should give the report wide distribution in their respective languages, through various media of communication, so as to acquaint public opinion with its contents;

6. Reiterates its call for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare signed at Geneva on 17 June 1925, and invites all States to accede to that Protocol.

1750th plenary meeting,
20 December 1968.

Submitted by Australia, Austria, Belgium, Canada, Chile, Denmark, Ethiopia, Finland, Ghana, Hungary, India, Iran, Mauritania, Mexico, Mongolia, Netherlands, Pakistan, Poland, Sweden, United Arab Republic, United Kingdom. It was adopted by 107 votes in favour, none against and 2 abstentions.

UNITED NATIONS GENERAL ASSEMBLY

Twenty-third session
Agenda item 62

A/RES/2444 (XXIII)
13 January 1969

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY
on the report of the Third Committee (A/7433)

2444 (XXIII). Respect for human rights in armed conflicts

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, (1)

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

1. Affirms resolution XXVIII of 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;

1) See Final Act of the International Conference on Human Rights (United Nations publication, Sales No.: E.68.XIV.2) p. 18.

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, (2) the Geneva Protocol of 1925 (3) and the Geneva Conventions of 1949. (4)

1748th plenary meeting,
19, December 1968.

(2) Carnegie Endowment for International Peace, The Hague Conventions and Declarations 1899-1907 (New York, Oxford University Press, 1918).

(3) League of Nations, Treaty Series, vol. XCIV (1929), No. 2138.

(4) United Nations, Treaty Series, vol. 75 (1950), Nos. 970-973.

Submitted by Afghanistan, Denmark, Finland, India, Indonesia, Iraq, Jamaica, Jordan, Morocco, Norway, Philippines, Sweden, Uganda, United Arab Republic, Yugoslavia and Zambia. The Resolution was adopted unanimously.

XIX INTERNATIONAL CONFERENCE

OF THE RED CROSS

RESOLUTION XIII

Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War

The XIXth International Conference of the Red Cross,

convinced that it is interpreting the general feeling throughout the world which demands that effective measures be taken to rid the peoples from the nightmare of the threat of war,

having taken cognizance of the "Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War", drawn up by the International Committee of the Red Cross, following a request by the Board of Governors of the League, meeting at Oslo in 1954,

considers that a set of rules revising and extending those previously accepted is highly desirable as a measure of protection for the civilian population, if a conflict should unfortunately break out,

deems that the objectives of the Draft Rules submitted are in conformity with Red Cross ideals and the requirements of humanity,

urges the International Committee of the Red Cross to continue its efforts for the protection of the civilian population against the evils of war, and

requests the International Committee of the Red Cross, acting on behalf of the XIXth International Conference, to transmit the Draft Rules, the record of its discussions, the text of the proposals, and the submitted amendments, to the Governments for their consideration.

XXth INTERNATIONAL CONFERENCE

OF THE RED CROSS

RESOLUTION XXVIII

Protection of Civilian Populations against the Dangers of Indiscriminate Warfare

The XXth International Conference of the Red Cross,

in its endeavours for the protection of the civilian population, reaffirms Resolution No. XVIII of the XVIIIth International Conference of the Red Cross (Toronto, 1952), which, in consideration of Resolution No. XXIV of the XVIIth International Conference of the Red Cross (Stockholm, 1948) requested Governments to agree, within the framework of general disarmament, to a plan for the international control of atomic energy which would ensure the prohibition of atomic weapons and the use of atomic energy solely for peaceful purposes,

thanks the International Committee of the Red Cross for the initiative taken and the comprehensive work done by it in defining and further developing international humanitarian law in this sphere,

states that indiscriminate warfare constitutes a danger to the civilian population and the future of civilisation,

solemnly declares that all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles:

- that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;

- that it is prohibited to launch attacks against the civilian populations as such;

- 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;

- that the general principles of the Law of War apply to nuclear and similar weapons;

expressly invites all Governments who have not yet done so to accede to the Geneva Protocol of 1925 which prohibits the use of asphyxiating, poisonous, or other gases, all analogous liquids, materials or devices, and bacteriological methods of warfare,

urges the ICRC to pursue the development of International Humanitarain Law in accordance with Resolution No. XIII of the XIXth International Conference of the Red Cross, with particular reference to the need for protecting the civilian population against the sufferings caused by indiscriminate warfare,

requests the ICRC to take into consideration all possible means and to take all appropriate steps, including the creation of a committee of experts, with a view to obtaining a rapid and practical solution of this problem,

requests National Societies to intervene with their Governments in order to obtain their collaboration for an early solution of this question and urges all Governments to support the efforts of the International Red Cross in this respect,

requests all National Societies to do all in their power to persuade their Governments to reach fruitful agreements in the field of general disarmament.

Appeal of the International Committee of the Red Cross of 5th April, 1950, concerning atomic weapons and non-directed missiles (Addressed to the High Contracting Parties signatory to the Geneva Conventions for the Protection of the Victims of War).

Geneva, April 5, 1950.

On August 6, 1945, when the first atomic bomb exploded, the world saw in it at first only a means of ending the War. Soon the destructive capacity of this arm became known, and increasing alarm came with the realisation. Since then, the civilised world has been hoping to see a reaffirmation of the rules of law and their extension to ensure protection against such means of destruction. Not only has this hope been belied, but there is already talk of arms still more destructive. Scientists have it that entire cities can be instantly wiped out and all life annihilated for years over wide areas. Mankind lives in constant fear.

It is the province of Governments to draw up the laws of war. The International Committee of the Red Cross is well aware of this fact, and it realises that the establishment of such laws involves political and military problems which are by their very nature outside its scope. Nevertheless, on the morrow of the formal signature of the four Geneva Conventions for the protection of the victims of war, the Committee feels that its duty is to let Governments known of its anxiety.

The protection of the human person against mass destruction is intimately bound up with the principle which gave rise to the Red Cross: the individual who takes no part in the fighting, or who is put hors de combat must be respected and protected.

The International Committee has not waited until now to take up the question. On September 5, 1945, scarcely a month after the release of the first bomb, it drew the attention of National Red Cross Societies to the grave problem posed by the atomic arm. This step was

in itself a logical sequence in the attitude the Committee had taken to the development of modern warfare. From 1918 onwards, it had begun to collect documentation on the protection of civilians against aerial warfare and might be considered in this respect as a pioneer of civilian air-raid precautions. The Committee at the same time endeavoured to secure from the Powers an undertaking to refrain from the bombardment of non-military objectives. A series of proposals was laid before one of the first Assemblies of the League of Nations, with the object of eliminating certain methods of warfare introduced during the first World War. Supported by the conclusions reached by experts and backed by the documentation it had brought together, the Committee later addressed to the Disarmament Conference an appeal for the absolute prohibition of aerial bombardment.

During the second World War, the Committee repeatedly called upon belligerents to restrict bombardment to military objectives only, and to spare the civil population. The most important of these appeals, dated March 12, 1940, recommended that Governments should conclude agreements which would confirm the immunity generally accorded to civilians and prohibit all attacks against them. Similarly, the International Committee on several occasions advocated the creation of safety zones and localities. All these efforts proved fruitless.

The War once over, the International Committee did not relax its efforts. The Preliminary Conference of National Red Cross Societies, which met at Geneva in 1946, adopted a Resolution recommending, inter alia, the prohibition of the use of atomic energy for war purposes. Armed with this text, the International Committee presented a report to the XVIIth International Red Cross Conference (Stockholm, 1948) recalling the above facts, and proposed the confirmation of the 1946 Resolution, after extending it to cover all non-directed weapons. The Conference voted the following Resolution:

"The XVIIth International Red Cross Conference, considering that, during the Second World War, the belligerents respected the prohibition of recourse to

asphyxiating, poison and similar gases and to bacteriological warfare, as laid down in the Geneva Protocol of June 17, 1925,

noting that the use of non-directed weapons which cannot be aimed with precision or which devastate large areas indiscriminately, would involve the destruction of persons and the annihilation of the human values which it is the mission of the Red Cross to defend, and that use of these methods would imperil the very future of civilisation,

earnestly requests the Powers solemnly to undertake to prohibit absolutely all recourse to such weapons and to the use of atomic energy or any similar force for purposes of warfare."

Almost at the same moment, the International Congress of Military Medicine and Pharmacy, also meeting at Stockhom, adopted a similar Resolution.

Today, in recalling to Governments the Resolution of the XVIIth Red Cross Conference, the International Committee feels obliged to underline the extreme gravity of the situation. Up to the Second World War it was still to some extent possible to keep pace with the destructive power of armaments. The civilian populations, nominally sheltered by International Law against attack during war, still enjoyed a certain degree of protection, but because of the power of the arms used, were increasingly struck down side by side with combatants. Within the radius affected by the atomic bomb, protection is no longer feasible. The use of this arm is less a development of the methods of warfare than the institution of an entirely new conception of war, first exemplified by mass bombardments and later by the employment of rocket bombs. However condemned - and rightly so - by successive treaties, war still presupposed certain restrictive rules, above all did it presuppose discrimination between combatants and non-combatants. With atomic bombs and non-directed missiles, discrimination becomes impossible. Such arms will not spare hospitals, prisoner of war camps and civilians. Their inevitable consequence is extermination, pure and simple. Furthermore, the suffering caused by the atomic bomb is out of proportion to strategic necessity; many of its victims die as a result of burns after weeks of agony,

or are stricken for life with painful infirmities. Finally, its effects, immediate and lasting, prevent access to the wounded and their treatment.

In these conditions, the mere assumption that atomic weapons may be used, for whatever reason, is enough to make illusory any attempt to protect non-combatants by legal texts. Law, written or unwritten, is powerless when confronted with the total destruction the use of this arm implies. The International Committee of the Red Cross, which watches particularly over the Conventions that protect the victims of war, must declare that the foundations on which its mission is based will disappear, if deliberate attack on persons whose right to protection is unchallenged is once countenanced.

The International Committee of the Red Cross hereby requests the Governments signatory to the 1949 Geneva Conventions, to take, as a logical complement to the said Conventions - and to the Geneva Protocol of 1925 - all steps to reach an agreement on the prohibition of atomic weapons, and in a general way, of all non-directed missiles. The International Committee, once again, must keep itself apart from all political and military considerations. But if, in a strictly humanitarian capacity, it can aid in solving the problem, it is prepared, in accordance with the principles of the Red Cross, to devote itself to this task.

For the International Committee of
the Red Cross

Leopold Boissier
Vice-President
Chairman of the Legal Commission

Paul Ruegger
President

RULES FOR THE LIMITATION OF THE DANGERS INCURRED BY THE CIVILIAN POPULATION IN TIME OF WAR

Preamble

All nations are deeply convinced that war should be banned as a means of settling disputes between human communities.

However, in view of the need, should hostilities once more break out, of safeguarding the civilian population from the destruction with which it is threatened as a result of technical developments in weapons and methods of warfare,

The limits placed by the requirements of humanity and the safety of the population on the use of armed force are restated and defined in the following rules.

In cases not specifically provided for, the civilian population shall continue to enjoy the protection of the general rule set forth in Article 1, and of the principles of international law.

* * *

Chapter I. - Object and Field of Application

Article 1

Since the right of Parties to the conflict to adopt means of injuring the enemy is not unlimited, they shall confine their operations to the destruction of his military resources, and leave the civilian population outside the sphere of armed attacks.

This general rule is given detailed expression in the following provisions:

Article 2

The present rules shall apply:

(a) In the event of declared war or of any other armed conflict, even if the state of war is not recognized by one of the Parties to the conflict.

(b) In the event of an armed conflict not of an international character.

Article 3

The present rules shall apply to acts of violence committed against the adverse Party by force of arms, whether in defence or offence. Such acts shall be referred to hereafter as "attacks".

Article 4

For the purpose of the present rules, the civilian population consists of all persons not belonging to one or other of the following categories:

(a) Members of the armed forces, or of their auxiliary or complementary organizations.

(b) Persons who do not belong to the forces referred to above, but nevertheless take part in the fighting.

Article 5

The obligations imposed upon the Parties to the conflict in regard to the civilian population, under the present rules, are complementary to those which already devolve expressly upon the Parties by virtue of other rules in international law, deriving in particular from the instruments of Geneva and The Hague.

Chapter II. - Objectives barred from Attack

Article 6

Attacks directed against the civilian population, as such, whether with the object of terrorizing it or for any other reason, are prohibited. This prohibition applies both to attacks on individuals and to those directed against groups.

In consequence, it is also forbidden to attack dwellings, installations or means of transport, which are for the exclusive use of, and occupied by, the civilian population.

Nevertheless, should members of the civilian population, Article 11 notwithstanding, be within or in close proximity to a military objective they must accept the risks resulting from an attack directed against that objective.

Article 7

In order to limit the dangers incurred by the civilian population, attacks may only be directed against military objectives.

Only objectives belonging to the categories of objectives which, in view of their essential characteristics, are generally acknowledged to be of military importance, may be considered as military objectives. Those categories are listed in an annex to the present rules.

However, even if they belong to one of those categories, they cannot be considered as a military objective where their total or partial destruction, in the circumstances ruling at the time, offers no military advantage.

Chapter III. - Precautions in Attacks on Military Objectives

Article 8

The person responsible for ordering or launching an attack shall, first of all:

(a) make sure that the objective, or objectives, to be attacked are military objectives within the meaning of the present rules, and are duly identified.

When the military advantage to be gained leaves the choice open between several objectives, he is required to select the one, an attack on which involves least danger for the civilian population:

(b) take into account the loss and destruction which the attack, even if carried out with the precautions prescribed under Article 9, is liable to inflict upon the civilian population.

He is required to refrain from the attack if, after due consideration, it is apparent that the loss and destruction would be disproportionate to the military advantage anticipated:

(c) whenever the circumstances allow, warn the civilian population in jeopardy, to enable it to take shelter.

Article 9

All possible precautions shall be taken, both in the choice of the weapons and methods to be used, and in the carrying out of an attack, to ensure that no losses or damage are caused to the civilian population in the

vicinity of the objective, or to its dwellings, or that such losses or damage are at least reduced to a minimum.

In particular, in towns and other places with a large civilian population, which are not in the vicinity of military or naval operations, the attack shall be conducted with the greatest degree of precision. It must not cause losses or destruction beyond the immediate surroundings of the objective attacked.

The person responsible for carrying out the attack must abandon or break off the operation if he perceives that the conditions set forth above cannot be respected.

Article 10

It is forbidden to attack without distinction, as a single objective, an area including several military objectives at a distance from one another where elements of the civilian population, or dwellings, are situated in between the said military objectives.

Article 11

The Parties to the conflict shall, so far as possible, take all necessary steps to protect the civilian population subject to their authority from the dangers to which they would be exposed in an attack - in particular by removing them from the vicinity of military objectives and from threatened areas. However, the rights conferred upon the population in the event of transfer or evacuation under Article 49 of the Fourth Geneva Convention of 12 Aug. 1949 are expressly reserved.

Similarly, the Parties to the conflict shall, so far as possible, avoid the permanent presence of armed forces, military material, mobile military establishments or installations, in towns or other places with a large civilian population.

Article 12

The Parties to the conflict shall facilitate the work of the civilian bodies exclusively engaged in protecting and assisting the civilian population in case of attack.

They can agree to confer special immunity upon the personnel of those bodies, their equipment and installations, by means of a special emblem.

Article 13

Parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or near military objectives, with the idea of inducing the enemy to refrain from attacking those objectives.

Chapter IV. - Weapons with Uncontrollable Effects

Article 14

Without prejudice to the present or future prohibition of certain specific weapons, the use is prohibited of weapons whose harmful effects - resulting in particular from the dessemination of incendiary, chemical, bacteriological, radicactive or other agents - could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population.

This prohibition also applies to delayed-action weapons, the dangerous effects of which are liable to be felt by the civilian population.

Article 15

If the Parties to the conflict make use of mines, they are bound, without prejudice to the stipulations of the VIIIth Hague Convention of 1907, to chart the mine-fields. The charts shall be handed over, at the

close ot active hostilities, to the adverse Party, and also to all other authorities responsible for the safety of the population.

Without prejudice to the precautions specified under Article 9, weapons capable of causing serious damage to the civilian population shall, so far as possible, be equipped with a safety device which renders them harmless when they escape from the control of those who employ them.

Chapter V. - Special Cases

Article 16

When, on the outbreak or in the course of hostilities, a locality is declared to be an "open town", the adverse Party shall be duly notified. The latter is bound to reply, and if it agrees to recognize the locality in question as an open town, shall cease from all attacks on the said town, and refrain from any military operation the sole object of which is its occupation.

In the absence of any special conditions which may, in any particular case, be agreed upon with the adverse Party, a locality, in order to be declared an "open town", must satisfy the following conditions:

(a) it must not be defended or contain any armed force;

(b) it must descontinue all relations with any national or allied armed forces;

(c) it must stop all activities of a military nature or for a military purpose in those of its installations or industries which might be regarded as military objectives;

(d) it must stop all military transit through the town.

The adverse Party may make the recognition of the status of "open town" conditional upon verification of the fulfilment of the conditions stipulated above. All attacks shall be suspended during the institution and

operation of the investigatory measures.

The presence in the locality of civil defence services, or of the services responsible for maintaining public order, shall not be considered as contrary to the conditions laid down in Paragraph 2. If the locality is situated in occupied territory, this provision applies also to the military occupation forces essential for the maintenance of public law and order.

When an "open town" passes into other hands, the new authorities are bound, if they cannot maintain its status, to inform the civilian population accordingly.

None of the above provisions shall be interpreted in such a manner as to diminish the protection which the civilian population should enjoy by virtue of the other provisions of the present rules, even when not living in localities recognized as "open towns".

Article 17

In order to safeguard the civilian population from the dangers that might result from the destruction of engineering works or installations - such as hydro-electric dams, nuclear power stations or dikes - through the releasing of natural or artificial forces, the States or Parties concerned are invited:

(a) to agree, in time of peace, on a special procedure to ensure in all circumstances the general immunity of such works where entended essentially for peaceful purposes:

(b) to agree, in time of war, to confer special immunity, possibly on the basis of the stipulations of Article 16, on works and installations which have not, or no longer have, any connexion with the conduct of military operations.

The preceding stipulations shall not, in any way, release the Parties to the conflict from the obligation to take the precautions required by the general provisions of the present rules, under Article 8 to 11 in particular.

Chapter VI. - Application of the Rules

Article 18

States not involved in the conflict, and also all appropriate organisations, are invited to co-operate, by lending their good offices, in ensuring the observance of the present rules and preventing either of the Parties to the conflict from resorting to measures contrary to those rules.

Article 19

All States or Parties concerned are under the obligation to search for and bring to trial any person having committed, or ordered to be committed, an infringement of the present rules, unless they prefer to hand the person over for trial to another State or Party concerned with the case.

The accused persons shall be tried only by regular civil or military courts; they shall, in all circumstances, benefit by safeguards of proper trial and defence at least equal to those provided under Articles 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Article 20

All States or Parties concerned shall make the terms of the provisions of the present rules known to their armed forces and provide for their application in accordance with the general principles of these rules, not only in the instances specifically envisaged in the rules, but also in unforeseen cases.

MEMORANDUM

PROTECTION OF CIVILIAN POPULATIONS AGAINST THE DANGERS OF INDISCRIMINATE WARFARE

Geneva, May 19, 1967

To the Governments Parties to the 1949 Geneva Conventions for the Protection of War Victims and to the IVth Hague Convention of 1907 concerning the Laws and Customs of War on Land

I

As a result of its humanitarian action in connection with armed conflicts, the International Committee of the Red Cross has become ever increasingly aware of the imperative necessity for nations to renounce force as a means of settling disputes, to agree to reduce armaments and to establish peaceful and confident relations amongst themselves. The Red Cross contributes, within its own sphere of action, by every means available to it, towards these ends.

Until such time as these objectives have been achieved - and so long as the scourge of armed conflicts, even of a limited nature, continues to subsist or to arise - it is, however, of paramount importance that the humanitarian rules destined to safeguard the essential values

of civilisation and to facilitate thereby the re-establishment of peace should be strictly observed in such extreme situations. These rules are laid down, in particular, in the Geneva and Hague Conventions as well as in customary law. The International Committee desires to issue a solemn reminder of this necessity, which has incidentally been recalled by various International Conferences of the Red Cross, at which the Governments were represented.

II

As a result of technical developments in weapons and warfare, given also the nature of the armed conflicts which have arisen in our times, civilian populations are increasingly exposed to the dangers and consequences of hostilities. The International Committee, which has long been deeply concerned by this grave threat, is certain that it reflects public opinion by calling once again the earnest attention of all Governments to the principles which the XXth International Conference of the Red Cross, at Vienna in 1965, proclaimed in its Resolution No. XXVIII, thereby confirming the prevailing law.

Indeed, in its Resolution - the full text of which is attached hereto - the Conference solemnly declared that:

> all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles:
>
> - that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
> - that it is prohibited to launch attacks against the civilian populations as such;
> - 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;

- that the general principles of the Law of War apply to nuclear and similar weapons.

In order for these principles to be fully operative, the International Committee urgently requests Governments to sanction them and, if need be, to develop them in an adequate instrument of international law. The International Committee is prepared to assist in drawing up such an instrument.

In addition, without awaiting the entry into force of this instrument and the possible achievement of an agreement between the Powers concerned for the formal prohibition of weapons of mass destruction, the International Committee invites the Governments to reaffirm, as of now, through any appropriate official manifestation, such as a resolution of the United Nations General Assembly, the value they attach to the principles cited above. Moreover, these principles could henceforth be referred to in the instructions given to the armed forces.

III

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.

For the International Committee
of the Red Cross

Samuel A. GONARD
President

Annex

Annex

SUMMARY REVIEW OF INTERNATIONAL LAW RULES CONCERNING THE PROTECTION OF CIVILIAN POPULATIONS AGAINST THE DANGERS OF INDISCRIMINATE WARFARE

The basic rule is laid down in article 22 of the Regulations concerning the Laws and Customs of War on Land, annexed to the Fourth Hague Convention of October 18, 1907, namely: "the right of belligerents to adopt means of injuring the enemy is not unlimited". From this principle, still valid and confirmed by the XXth International Conference of the Red Cross, the following rules are derived.

1. Limitation for benefit of persons

Whilst combatants are the main force of resistance and the obvious target of military operations, non-combatants shall not be subject to and shall not participate in hostilities. It is therefore a generally accepted rule that belligerents shall refrain from deliberately attacking non-combatants. This immunity to which the civilian population by and large is entitled - provided it does not participate directly in hostilities - has not been clearly defined by international law, but in spite of many examples of blatant disregard for it, it is still one of the main pillars of the law of war.

In 1965 the International Conference of the Red Cross in Vienna formulated (in its Resolution XXVIII) the following requirement as one of the principles affecting civilians during war and to which governments should conform, viz: "... 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."

A major rule deriving from the general norm quoted above is that bombardments directed against the civilian population as such, especially for the purpose

of terrorising it, are prohibited. This rule is widely accepted in the teachings of qualified writers, in attempts at codification and in judicial decisions; in spite of many violations, it has never been contested. The XXth International Conference of the Red Cross, moreover, did not omit to re-state it.

International law does not define civilian population. Of course, any sections of the population taking part in hostilities could hardly be classified as civilian. The view is general that civilians staying within or in close proximity to military objectives do so at their own risk. But when such people leave objectives which may be attacked and return to their homes they may no longer be subject to attack.

Another rule deriving from the general norm is that belligerents shall take every precaution to reduce to a minimum the damage inflicted on non-combatants during attacks against military objectives.

This latter rule is perhaps less widely admitted than those previously mentioned. However, in an official resolution of September 30, 1938, the League of Nations considered it fundamental and it has been given effect in the instructions which many countries have issued to their air forces.

The precautions to which allusion is made would include, for the attacking side, the careful choice and identification of military objectives, precision in attack, abstention from target-area bombing (unless the area is almost exclusively military), respect for and abstention from attack on civil defence organizations: the adversary being attacked would take the precaution of evacuating the population from the vicinity of military objectives.

As can be seen, the obligation incumbent on the attacking forces to take precautions depends in part on the "passive" precautions taken by the opposite side, or, in other words, the practical steps taken by each belligerent to protect its population from consequences of attacks. What is the extent of such an obligation? In some attempts at drafting regulations it has been suggested that bombing attacks should not be carried out

if there is strong probability of indiscriminate effect causing the population to suffer. The International Committee of the Red Cross, for its part, proposed, in its appeal of March 12, 1940, that belligerents should recognize the general principle that an act of destruction shall not involve harm to the civilian population disproportionate to the importance of the military objective under attack. On a number of occasions, and recently by qualified writers, by experts and by some army manual of the laws and customs of war, this rule has been re-stated.

2. Target limitation

In this connection, the accepted rule is that attacks may only be directed against military objectives, i.e. those of which the total or partial destruction would be a distinct military advantage.

There has always been an accepted distinction between the fighting area and the zones behind the lines. This distinction is purely technical in origin, the theatre of operations depending on the ground gained by the advancing troops and the range of weapons. Until the advent of air raids, areas behind the firing lines were in fact immune from hostilities.

This out-dated concept was the basis for the law of conventional warfare, i.e., in the main, articles 25 to 27 of the Regulations annexed to the IVth Hague Convention of 1907. In those articles the word "bombardment" must be construed to mean "shelling"; since that time the aeroplane has made air bombardments possible well behind the lines.

Nowadays, a belligerent's whole territory may be considered a theatre of hostilities. The 1907 rules are still applicable to the fighting area at the front. So far as areas well behind the lines are concerned, they are in part out of date.

Although during the Second World War indiscriminate bombardments wrought widespread havoc, no government has attempted to have the practice recognized as lawful. The contrary has in fact been the case. States

have shown a marked tendency to justify their air bombardments as reprisals against an enemy who first had recourse to this method, or, as in the case of the use of the atomic bomb, as an exceptional measure dictated by overriding considerations, such as the saving of human lives by putting an end to the war quickly.

Our first rule of target limitation is not contained in treaty law, but its validity is founded on many official statements, made particularly during the Second World War and the wars of Korea and Vietnam. It has been evolved progressively by analogy with a provision contained in the IXth Hague Convention of 1907; this authorizes naval shelling of certain important military objectives, even if these are situated in undefended towns. The 1949 Geneva Conventions and the 1954 Hague Convention contain several references to the concept of military objective.

Several documents, such as the draft issued by the Commission of government jurists who met in The Hague (December 1922 - February 1923) and the Draft Rules drawn up in 1956 by the International Committee of the Red Cross, have suggested definitions or lists of military objectives. It is generally admitted that an objective is military only if its complete or partial destruction confers a clear military advantage. It is held, also, that any attacking force, before bombing an objective, shall identify it and ascertain that it is military.

There are buildings which cannot under any circumstances be considered as military objectives; they are given the benefit of special immunity under the Geneva Conventions (I, art. 19, IV, art. 18), the Hague Regulations of 1907 (art. 27), and the 1954 Hague Convention relating to the protection of cultural property (art. 4), namely belligerents will in particular spare charitable, religious, scientific, cultural and artistic establishments as well as historic monuments. In addition, under the Fourth Geneva Convention, belligerents may, by special agreement, set up safety or neutralized zones to shelter the civilian population, particularly the weaker members thereof, in order to provide them, under such agreement, with special protection against the effects of hostilities.

These Conventions stipulate that it is the duty of the authorities to indicate the presence of such buildings and zones by special signs.

Mention must also be made of article 25 of the Regulations annexed to the IVth Hague Convention of 1907, considered for years as one of the fundamentals of the law of war namely: "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited". The subsequent development of air warfare has vitiated this provision so far as areas behind the fighting lines are concerned; it is a provision which has been supplanted by the military objective concept. It is nevertheless still valid for ground fighting. When localities offer no resistance, an enemy who is able to take them without a fight shall, in the interest of the population, abstain from attack and useless destruction.

It has become customary to declare towns "open" if it is not intended to defend them against an enemy who reaches them.

3. Limitations on weapons and their use

In this respect the basic rule is article 23 (e) of the Regulations annexed to the IVth Hague Convention of 1907, namely: "It is forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering."

Its characteristic is that its aim is not only to spare non-combatants, but also to avoid any suffering to combatants in excess of what is essential to place an adversary hors de combat. This implies that weapons and methods as described below should not be used. Due to the nature of modern war, this field of law no longer concerns only combatants, but also civilian population.

a) Weapons inflicting needless suffering

The Conventions of The Hague and of St. Petersburg prohibit the use of "Poison or poisoned weapons" (Hague Regulations, art. 23,a), "any projectile of a weight below 400 grammes which is either explosive or

charged with fulminating or inflammable substances" (St. Petersburg Declaration, 1868) and so-called "dum-dum" bullets "which expand or flatten in the human body" (Hague Declaration, 1899).

It might well be asked whether such new weapons as napalm and high velocity rockets should not be included in this category. They have not so far been expressly prohibited but they do cause enormous suffering and the general prohibition which forms the subheading to this section seems applicable to them.

Mention must also be made of a clause in the St. Petersburg Declaration to the effect that parties thereto reserve the right to come to an understanding whenever a precise proposition shall be drawn up concerning any technological developments in weapons, with a view to maintaining the principles they have established and reconciling the necessities of war to the laws of humanity. It is unfortunate that States have not followed up this suggestion which today is as valid as ever.

b) "Blind" weapons

These weapons not only cause great suffering but do not allow of precision against specific targets or have such widespread effect in time and place as to be uncontrollable. They include, for instance, chemical and bacteriological weapons, floating mines and delayed action bombs, whose insidious effects are such that they preclude relief action.

The Geneva Protocol of June 17, 1925, prohibiting the use in war of asphyxiating, poisonous and other gases and of bacteriological methods of warfare has replaced older prohibitions (the 1899 Hague Convention, the Treaty of Versailles) and shall be considered as the expression of customary law. In an almost unanimous resolution on December 5, 1966 - which affirms that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining the accepted norms of civilisation - the United Nations General Assembly called for strict observance by all States of the principles and objectives of this Protocol, and condemned all actions contrary to those objectives. This very brief Protocol is in the

nature of a Declaration subject to ratification by the Powers and binding them in the event of conflict with any co-signatories. This formula seems to have been well chosen and remarkably successful; only one violation has been recorded. It should be pointed out, however, that almost eighty States are not participants.

Unanimous agreement on the interpretation of this prohibition has not been achieved by qualified writers. The Protocol mentions not only asphyxiating gases but also "others" gases. Does this mean all gases or only those which are a hazard to life and health?

The major problem however has been set by nuclear weapons.

In a resolution adopted on November 24, 1961, the United Nations General Assembly stated that the use of nuclear and thermo-nuclear weapons, which exceed even the field of war and cause uncontrollable suffering and destruction to humanity and civilization, "is contrary to international law and to the laws of humanity". It must be added, however, that this resolution was not adopted unanimously, did not cover the case of reprisals and, what is more, it envisaged at some future date the signing of a Convention on the prohibition of nuclear weapons, and it also requested the United Nations Secretary-General to hold consultations with governments on the possibility of convening a special Conference for that purpose.

Until such a Convention has been drawn up and widely ratified - it is still not yet known when this special Conference will meet - the fact must be faced that qualified writers differ on this question. It is not our aim here to decide this important controversy. We would state merely that the use of atomic energy was unknown. However this does not justify its use: in the implementation of the law of war, as any other law, general principles must apply to cases not previously foreseen. It is in fact these very principles which the present survey reviews, i.e.: no attack on the civilian population per se, distinction between combatants and non-combatants, avoidance of unnecessary suffering, only military objectives to be targets for attack, and even in this latter case, the taking of every precaution to

spare the population.

This view was proclamed by the XXth International Conference of the Red Cross which met in Vienna in 1965. The Resolution No. XXVIII then adopted postulated certain essential principles of protection for civilian populations and added that "the general principles of the Law of War apply to nuclear and similar weapons". This does not imply that the Conference intended to make any decision on the legitimacy of using such weapons; it merely made it clear that in any event nuclear weapons, like any others, were subject to these general principles until such time as governments came to an understanding on measures for disarmament and control with a view to a complete prohibition of the use of atomic energy in warfare.

ANNEX XVI

Geneva, September 18, 1968

Dear Secretary-General,

I have the honour to follow up the letter of August 20, 1968 which Mr. Rolz-Bennett, Under-Secretary-General for Special Political Affairs, sent me in accordance with your instructions concerning the resolution entitled "Human rights in armed conflicts", adopted by the International Conference on Human Rights which was held this spring in Teheran. When sending me a copy of this resolution and referring in particular to operative paragraph 2 which mentions our institution, Mr. Rolz-Bennett asks to have the views of the International Committee of the Red Cross on this resolution and what action the United Nations might take on it.

Our serious attention had already been drawn to that resolution which, in fact, concerns matters which are closely connected with our work and our preoccupations. As you know from the memorandum, to which I refer later on, already in May 1967 the International Committee brought to the notice of governments the unsatisfactory state of the rules for the limitation of hostilities. We were therefore very pleased to see confirmed by the governments meeting in Teheran, the importance, taken for the safeguard of the individual, - at the same time as the efforts so necessary for the maintenance of peace and for disarmament - of those measures which aim not only at ensuring the regular observation of existing humanitarian international law, but also at developing this law in relation with new conditions.

His Excellency U Thant
Secretary-General
United Nations Organization

NEW YORK

This is to tell you that we have received your request, transmitted by Mr. Rolz-Bennett, with great interest. It moreover follows up the brief conversation I had the pleasure of having with you on the subject when you visited Geneva at the beginning of July. We were also able to discuss this matter in Geneva with Mr. Stavropoulos, Legal Adviser to UNO and Mr. Schreiber, Director of the Division of Human Rights.

Since you ask me the International Committee's view on this resolution, I would like to indicate the following:

a) On analyzing the text of the resolution, it can be seen that point 3 is sufficient by itself and does not call for any practical sequel. One should restrict oneself to hoping that all governments should rapidly implement, if necessary, this demand to accede to the existing Conventions.

b) Point 1 contains an invitation to the General Assembly to charge the Secretary-General with a mandate. Such mandate will not, it appears, become executory unless the General Assembly takes it up on its own account, probably on the basis of a draft resolution which would be proposed to the General Assembly by one or more member States.

The studies which the Secretary-General is requested to undertake concern a sphere very similar to that in which has been the efforts deployed by the International Committee 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 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.

c) As regards point 2, this seems to request the Secretary-General to take action now with the member States, by drawing their attention in particular to the protection which must be accorded to inhabitants and belligerents by virtue of the so-called "de Martens" clause, extracted from the preamble to the IVth Hague Convention of 1907.

The Red Cross was prompted by similar considerations when in 1965, at the XXth International Conference in Vienna, it adopted Resolution XXVIII which contains the following passage:

> "(The Conference)... solemnly declares that all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles:
>
> - that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
>
> - that it is prohibited to launch attacks against the civilian populations as such;
>
> - 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;
>
> - that the general principles of the Law of War apply to nuclear and similar weapons."

In its memorandum of May 19, 1967, of which you have received a copy, the International Committee recalled these principles to all Governments requesting them to embody them, if need be with the necessary developments, in an adequate instrument of international law and, in the meantime, at once to mark the value which they attached to these general standards "through any appropriate official manifestation, such as a resolution to the United Nations General Assembly".

Several Governments have encouraged us on this path and declared themselves prepared, last year, to submit a resolution to that effect to the General Assembly. Unfortunately, events in the Near East and concentration of all efforts on the non-proliferation of nuclear weapons have, it appears, postponed the realization of this project. You have been kept closely informed of these steps.

The submission this autumn to the General Assembly of the Teheran resolution could be the occasion of realizing these intentions under a somewhat different form. Could it not be possible, in particular, that the General Assembly, whilst asking that the thorough studies proposed by the Teheran resolution could be undertaken, reaffirms certain essential principles of protection which, at the least, be respected in every armed conflict ? Whilst awaiting the results of these studies and the adoption of new or revised provisions, which require time, we consider that any propitious opportunity should be taken to recall the rules, whether written or not, recognized by the international community and whose scrupulous observation could already save so many human lives.

At all events, we have the intention of sending an observer to New York to follow the discussion on the subject before the General Assembly, who will be at your disposal and at that of delegations or bodies which may wish to consult him.

We avail ourselves of this opportunity to assure you, Sir, of our highest consideration.

S.A. Gonard

LIST OF MEETINGS OF EXPERTS AND ROUND TABLE DISCUSSIONS CONVENED BY THE ICRC SINCE 1950 WITH A VIEW TO THE DEVELOPMENT OF INTERNATIONAL LAW

A. NON INTERNATIONAL CONFLICTS AND INTERNAL DISTURBANCES

1. Commission of experts to examine the question of assistance to political detainees (Geneva 9-11 June 1953)

   (ICRC publication No 453, Geneva, 1954).

2. Commission of experts for the study of the question of the application of humanitarian principles in the event of internal disturbances (Geneva, 3-8 October, 1955)

   (ICRC publication No 481, Geneva, 1955).

3. Commission of experts for the study of the question of aid to the victims of internal conflicts (Geneva, 25-30 October 1962)

   (ICRC publication No 577, Geneva, 1955).

B. PROTECTION OF CIVILIAN POPULATIONS - REAFFIRMATION AND DEVELOPMENT OF THE LAWS AND CUSTOMS APPLICABLE IN ARMED CONFLICTS

1. Commission of experts for the legal protection of civilian populations and victims of war from the dangers of aerial warfare and blind weapons. (Geneva, 6-13 April 1954).

   (Summary of opinions expressed by members of the Commission; mimeo., Geneva, May 1954).

2. Legal protection of the civilian population - Advisory Working Party of Experts designated by National Red Cross Societies (Geneva, 14-19 May, 1956)

(Summary record, mimeo., D 443 b, Geneva, June 1956) (Draft rules limiting the dangers incurred by civilian population in time of war, Geneva, September 1956).

3. Round Table on "Opportunité et possibilité de limiter les maux de la guerre dans le monde actuel" (The Advisability and Possibility of Limiting the Evils of War in the World Today) (Geneva, 11-14 April 1962)

(No report has been published, but reference may be made to the ICRC's report to the XXth International Conference of the Red Cross on "Legal Protection of Civilian Populations Against the Dangers of Indiscriminate Warfare", Doc. D 5a/1).

4. Consultation of experts on the reaffirmation and development of humanitarian laws and customs applicable in the event of armed conflicts (Geneva, 24-28 February 1969)

(See the present report).

C. STRENGTHENING OF INTERNATIONAL HUMANITARIAN LAW GUARANTEES IN FAVOUR OF CIVIL DEFENCE ORGANIZATIONS

1. Working party on the position of civil defence organizations in international law (Geneva, 12-16 June 1961)

(Summary Report, mimeo., Geneva, 1962).

2. Meeting of experts on the status of civil defence personnel according to International Humanitarian Law (Geneva, 27 October-6 November 1964)

(A Report on this meeting was submitted to the XXth International Red Cross Conférence, viz : Conf. D 5b/1, Geneva, May 1965).

3. Advisory group on the status of civil defence organizations (Geneva, 31 October - 3 November 1967)

(No report has been issued)

D. MISCELLANEOUS

Meeting of experts on the problem of the repression of breaches of the Geneva Conventions (Geneva, 8-12 October 1956).

(No report has been issued, but reference may be made to pages 49-50 of the ICRC's Annual Report for 1956).

PRINCIPLES OF INTERNATIONAL LAW
sanctioned by the Nuremberg Tribunal statute and verdict

Excerpt from the Charter of the International Military Tribunal
(Extract)

(Principles formulated in 1950 by the United Nations International Law Commission). (1)

PRINCIPLE VI

a)

b) War crimes :

Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to murder, illtreatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or illtreatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

c) Crimes against humanity :

Namely, murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in wiolation of the domestic law of the country where perpetrated.

(1) The International Law Commission and its work. United Nations. New York. Publication No 67.V.6.

ANNEX XIX

WORLD VETERANS FEDERATION

Meeting of Experts
Advisory Group

PARIS
February 6-7, 1967

February 21, 1967

I. INTRODUCTION

1. The Advisory Group had been asked whether a more precise definition was required of the "non-uniformed fighter" and if so, whether it was possible to arrive at such a definition.

2. In order to reply to these questions, the Group examined the present situation as it emerges from the two Geneva Conventions of 12 August 1949 relative to the Treatment of Prisoners of War and to the Protection of Civilian Persons in Time of War.

3. The Group confined itself to the field of application of Article 2 of these two conventions. It wished to stress, however, that it would be advantageous to study the question of resistance fighters in internal conflicts.

II. APPLICATION OF THE 1949 GENEVA CONVENTIONS

4. The Group examined the following cases:

Case where resistance in occupied territory takes the form of "organized movements" as defined in Article 4-2) of the Convention relative to the treatment of prisoners of war.

5. In this connection, the Group made the following comments:

(a) Regarding the condition "of being commanded by a person responsible for his subordinates", it was noted that, in the minds of those who drafted the Convention, "organized resistance movements" were deemed to be formations with a hierarchy of command; that being so, it was sufficient if the responsible person was the one responsible for the resistance movement at the highest level and was recognized as such by one of the parties to the conflict.

(b) As regards the necessity of "having a fixed distinctive sign recognizable at a distance", the Group understood that such a sign ought to be distinctive in order to make it possible to distinguish the wearer from the peaceful population, that it should be fixed in the sense that the resistance fighter should wear it throughout the whole operation in which he is taking part, and that it should be recognizable at a distance in the same way as the uniforms of regular forces.

(c) As regards the condition of "carrying arms openly", the Group understood that, when the resistance fighter was engaged in operations, he should carry the weapons in his possession in a similar way to members of the regular forces.

(d) With respect to the conditions of "conducting their operations in accordance with the laws and customs of war", this presupposes that the resistance fighter has been duly informed regarding the laws and customs of war.

6. It emerges from all these observations that these four conditions are in fact satisfied only in the case of a resistance movement of a military character or in cases where operations of a military character are executed by the members of a resistance movement.

7. The Group noted in this connection that the term "non-uniformed fighter" did not apply in such cases, particularly on account of condition (b) above, and that consequently the notion of "non-uniformed fighter" which the Group had been requested to examine was too restrictive. The Group felt that it would be better to speak of the international status of resistance fighters.

8. In conclusion, the Group noted that the members of a resistance movement who fulfil the four conditions mentioned above must, under the terms of this Convention, be accorded the Status of Prisoners of War when they fall into the power of the enemy.

The case where resistance in occupied territory takes another form not conforming to the conditions laid down in Article 4-2) of the Convention relative to the treatment of prisoners of war.

9. The Group noted that in that case, the Convention relative to the Protection of Civilian Persons in Time of War was applicable. The guarantees provided by this Convention are set forth inter alia, in Articles 5, 32, 33, 34, 68 and 72.

10. In particular, the Group noted that, by virtue of Article 33 of the Convention, a person falling within the provisions of Article 68 cannot be punished for an offence he or she has not personally committed. On these grounds, the Group felt that membership of a resistance group or movement could not alone constitute an aggravating circumstance.

11. In conclusion, the Group noted that this Convention provided a minimum guarantee for resistance fighters in case of arrest and was an important step towards the solution of the problem under consideration.

B I B L I O G R A P H Y

This is a summary bibliography, of an indicatory character, limited to the legal aspect of the problems mentioned, and to publications of the last two decades. It implies no taking up position or preference by the ICRC concerning the works cited. For more complete bibliographical information, reference can be made to the works cited under "General" (in particular Schwarzenberger) and the general treaties of international law.

I. GENERAL

M. BARTOS et J. PATRNOGIC, "Droit international humanitaire dans le monde contemporain", Annales de Droit international médical, Bruxelles, 1964.

E. CASTREN, "The Present Law of War and Neutrality", Helsinki, 1954.

INTERNATIONAL COMMISSION OF JURISTS, "Human Rights, the Laws of War and Armed Conflicts". Bulletin of the ICJ, No 35, Geneva, September 1968. p. 3-12.

G.I.A.D. DRAPER, "The Geneva Conventions of 1949", Recueil des Cours de La Haye, tome 114, 1965.

M. GREENSPAN, "The Modern Law of Land Warfare", 1959.

M. KHADDURI, "War and Peace in the Law of Islam", 1955.

J. KUNZ, "La problematica actual de las leyes de la guerra", Valladolid, 1955.

M.A. MARIN, "The Evolution and Present Status of the Laws of War", Recueil des Cours de La Haye, tome 92, 1957.

H. MEYROWITZ, "War Aims; Methods of Warfare; The Rules of War: Reflections on the Centenary of the Declaration of St. Petersburg", International Review of the Red Cross, Geneva, December 1968; p. 611-625.

G.D. PERAZIC, "Medunarodno Ratno Pravo" (International Law of War), Kultura, Beograd, 1966.

B. ROELING, "The Law of War and the National Jurisdictions since 1945", Recueil des Cours de La Haye, tome 100, 1960.

D. SCHINDLER, "Die Anwendung der Genfer Rotkreuzabkommen seit 1949", Schweizerisches Jahrbuch für internationales Recht, Band XXII, 1965.

A. SCHLOEGEL, "Völkerrechtliche Probleme auf der XX. Internationalen Rotkreuzkonferenz 1965 in Wien", Jahrbuch für internationales Recht, 13. Band, Göttingen, 1967, p. 245-262.

G. SCHWARZENBERGER, "The Law of Armed Conflict", London, 1968.

K. SKUBISZEWSKI, "Prawo Wojny i Neutralnosći w Świecie Współczesnym" (The law of war and neutrality in today's context), Ruch Prawniczy, Ekonomiczny i sociologiczny No 1/1967, p. 105-126.

J. STONE, "Legal Controls of International Conflict", Sydney, 1954.

II. NEED AND URGENCY OF REAFFIRMING AND DEVELOPING HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

J.P.A. FRANCOIS, "Reconsidération des principles du droit de la guerre", Institut de Droit international, Vingt-cinquième Commission, Rapport provisoire, Genève, février 1957; rapport définitif, Genève, mai 1958.

H. HAUG, "Ansätze zur Weiterbildung des Kriegsrechts", Festschrift für Walther Hug, Bern, 1968.

M. HUBER, "Quelques considérations sur une revision éventuelle des Conventions de La Haye relatives à la guerre", Revue internationale de la Croix-Rouge, Genève, juillet 1955.

V. KOSOVIC, "Considerations on the need to revise the laws of war", Jugoslovenska Revija za medunarodno pravo, 1956, p. 104-111.

J. KUNZ, "The Chaotic State of the Laws of War and the Urgent Necessity for their Revision", American Journal of International Law, 1951.

H. LAUTERPACHT, "The Problem of the Revision of the Law of War", British Yearbook of International Law, 1952, p. 360-362.

J. PICTET, "The Need to Restore the Laws and Customs Relating to Armed Conflicts". Review of the International Commission of Jurists, No 1, Geneva, March 1969, p 22-42.

A. SCHLOEGEL, "Die Entwicklung des humanitären Völkerrechts der Gegenwart", Zentralorgan des Deutschen Roten Kreuzes in der Bundesrepublik Deutschland, Dezember 1968 und Januar 1969.

III. THE DIFFERENT FIELDS IN WHICH SUBSTANTIVE LAW SHOULD BE DEVELOPED

"Blind" weapons or those causing unnecessary suffering

R. BINDSCHEDLER, "Das Völkerrecht und die Nuklearwaffen" Aristoteleion Panepistemion Thessalonikès, Salonique 1968, p. 491-505.

A. ECHIM, "Interzicezea Folosirii Armelor Nucleare, Problema actuala a dreptului international" (The prohibition of the use of atomic weapons, the present problem of international law) Justitia Noua, Bucuresti, No 4/ 1966, p. 64-83.

F.A. von der HEYDTE, "Le problème que pose l'existence des armes de destruction massive et la distinction entre les objectifs militaires et non militaires en général", Institut de Droit international, Cinquième Commission, Rapport définitif, Genève, juin 1967.

E. von FRANKENBERG, "Die Massenvernichtungswaffen", Berlin,1958.

E.A. KOROVINE, "Atomnoïe Orudgie i Mejdounaronoïe Pravo" (Nuclear weapons and international law) Mejdounarodnaïa Jiznj, No 5/1955, p. 48-59.

H. MEYROWITZ, "Les armes psychochimiques et le droit international", Annuaire français de droit international, 1964.

H. MEYROWITZ, "Les armes biologiques et le droit international" (Droit de la guerre et désarmement), Paris 1968.

J. POKSTEFL, "Le problème des armes de destruction massive dans le projet présenté par le CICR au sujet de la protection de la population civile en temps de guerre", Casopis pro mezinavodni pravo, 1959, p. 241-258.

J. POKSTEFL, "Chemicré a Bakteriologické Prostredsky vedeni valecnych akci" (Chemical and bacteriological methods in the conduct of military operations), Studie z Mezinárodmiho práva, Praha, No 11, 1966, p. 137-162.

M. RADOJKOVIC, "Les armes nucléaires et le droit international", Year Book of World Polity, 1962.

N. SINGH, "Nuclear Weapons and International Law",London, 1959.

Protection of civilian populations against hostilities

International Committee of the Red Cross, "Draft Rules for the Protection of the Civilian Population from the Dangers of Indiscriminate Warfare," Geneva, June 1955.

F.A. von der HEYDTE, "Le problème que pose l'existence des armes de destruction massive et la distinction entre les objectifs militaires et non militaires en général", (see above under "Blind weapons...").

J.A. PASTOR RIDRUEJO, "La proteccion a la poblacion civil en tiempo de guerra", Zaragoza, 1959.

A.I. POLTORAK, "Voïna i Miroïe Naselenie" (War and the civilian population), Troudy Voïenno - ïouriditcheskoï Akademii, Vypousk 11, Moskva 1950, p. 84-138.

E. SPETZLER, "Die völkerrechtliche Stellung der Zivilpersonen im Lufkrieg", Göttingen, 1956.

Regulations to ensure the Rule of Law

R. BAXTER, "Forces for compliance with the law of war", Proceedings of the American Society of International Law, 1964, p. 81-89.

E.P. MELESKO, "K Istorii Voprosa ob otvetstvennosti za narusenie zakonov i obycaev voïny" (On the history of the question of responsibility for the violation of the laws and customs of war) Sovetskii Ezegodnik Mejdunarodnovo Prava 1960, Moskva 1961, p. 218-229.

J. PATRNOGIC, "Control of the Application of humanitarian conventions", Revue de Droit Pénal Militaire et de Droit de la Guerre (1966).

C. PILLOUD, "La protection pénale des Conventions humanitaires internationales", Revue internationale de la Croix-Rouge, novembre 1953.

B. ROELING, (see work cited under "General").

F. SIORDET, "The Geneva Conventions of 1949: the Question of Scrutiny", extract from the "Revue internationale de la Croix-Rouge2, Geneva, September 1951, February and November 1952.

G. SCHWARZENBERGER, "International Responsibility in Time of War", Indian Yearbook of International Law, 1965.

UNITED NATIONS WAR CRIMES COMMISSION, "History of the United Nations War Crimes Commission and the Development of the Laws of War", London, 1948.

IV. CASES OF APPLICATION OF THE HUMANITARIAN LAW.

International Conflict

J.P.A. FRANCOIS, "L'égalité d'application des règles du droit de la guerre aux parties à un conflit armé", Institut de Droit international, Quatrième Commission, Rapport définitif et rapport provisoire, Genève, mars 1963.

G. SCHWARZENBERGER, "From the Laws of War to the Law of Armed Conflict", Current Legal Problems , 1966.

L. KOTZSCH, "The Concept of War in Contemporary History and International Law", 1956.

Non-international Conflict

A.V. AMELIN, "Mejdunarodnopravovaïa Zascita Ucastnikov Grajdanskich I Nacionalno-Osvoboditelnych Voïn" (The protection of participants in civil wars and wars of national liberation in international law), Sovetskiï Ezegodnik Mesdunarodnovo Prava, 1958, p. 397-406.

E. CASTREN, "Civil War", Helsinki, 1966.

J. des CILLEULS et R. de LA PRADELLE, "La neutralité de la médecine et la guerre subversive", Revue internationale de la Croix-Rouge, avril 1960.

N. FRIEDMANN, "Intervention, Civil War and International Law." Proceedings of the American Society of International Law, 1959.

R. PINTO, "Les Règles du Droit international concernant la guerre civile", Recueil des Cours de La Haye, tome 114, 1965.

I. SEIDL-HOHENVELDERN et J. PATRNOGIC, "La protection des populations civiles dans les conflits armés de caractère non international", Annales de droit international médical, No 17, Monaco, juin 1968, p. 12-24.

F. SIORDET, "The Geneva Conventions and civil war"."Revue internationale de la Croix-Rouge,"Supplement, Geneva, September, November 1950.

J. SIOTIS, "Le droit de la guerre et les conflits armés d'un caractère non international", Genève, 1958.

Guerrilla

R. BAXTER, "So-Called Unprivileged Belligerency: Spies, Guerrillas and Saboteurs", British Yearbook of International Law, London, 1950, p. 323 ff.

R. BIERZANEK, "Status Miedzynarodoprawny Partyzantów I Czlonków Ruchu Oporu" (The Status of partisans and members of resistance movements in international law), Sprawy Miedzynarodowe, No. 5, 1967, p. 35-56.

W.-J. FORD, "Resistance movements and international law", International Review of the Red Cross, Geneva, October, November, December 1967 and January 1968.

R. KHAN, "Guerrilla Warfare and International Law", International Studies, New Delhi, Vol. 9, No. 2 (Oct. 1967), p. 103 ff.

P. KLEUT, "Guerre de partisans et droit international", Jugoslovenska Revija za medunarodno pravo, année 3, 1956, p. 94-104.

H. MEYROWITZ, "Le statut des saboteurs dans le droit de la guerre", Revue de droit pénal militaire et de droit de la guerre, Bruxelles, 1966, V-1, p. 121-176.

F.M.OSANKA, (Editor) "Modern Guerrilla Warfare", London, 1962, (This work contains the principal classical texts of contemporary theorists on guerrilla warfare).

J.H. SCHMID, "Die Völkerrechtliche Stellung der Partisanen im Kriege", Zürich, 1956, 196 p.p.

I.P. TRAININ, "Question of Guerrilla Warfare in the Law of War", American Journal of International Law, Vol. 40 (1946), p. 534 ff.

Application by the United Nations Forces

R. BINDSCHEDLER, "Die Vereinigten Nationen und das Kriegsrecht", Mélanges offerts à Juraj Andrassy, La Haye, 1967, p. 68-87.

M. BOTHE, "Le droit de la guerre et les Nations Unies. A propos des incidents armés au Congo", Etudes et travaux de l'Institut universitaire de Hautes Etudes Internationales, No 5, Genève, 1967.

D.W. BOWETT, "United Nations Forces", London, 1964.

G. SCHWARZENBERGER, "Report on Self-Defence under the Charter of the United Nations and the Use of Prohibited Weapons", International Law Association, Brussels Conference (1962).

F. SEYERSTEDT, "United Nations Forces in the Law of Peace and War", Leyden, 1966.

J. SUTOR, "Omz a Rozwoj Miedzynarodowego Prawa Wojennego" (U.N.O. and the development of the law of war.), Panstwo i Prawo, No 1 1964.

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