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II. GENERAL AFFAIRS

Further accessions to the Geneva Conventions

In 1973, two States became Parties to the four Geneva Conventions of 1949: the Republic of Singapore (by accession on 27 April 1973) and the Kingdom of Swaziland (by accession of 20 June 1973).

These are the dates on which the official notifications were received by the Swiss Federal Council.

Further, the Ministry of Foreign Affairs of the Provisional Revolutionary Government of South Vietnam notified the President of the Swiss Confederation of its accession, in a letter dated 3 December 1973. In accordance with the request formulated by that Government on 28 December 1973, the accession was to have immediate effect by virtue of an article common to the four Conventions (Articles 62/61/141/157).

REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

As in the preceding years, the Legal Division's activities in 1973 were centered on work connected with the reaffirmation and development of international humanitarian law applicable in armed conflicts.

The positive result of the work undertaken in this sphere since 1968, and particularly during the two sessions of the Conference of Government Experts convened by the ICRC in 1971 and 1972, gave the undertaking a decisive impulse. At the close of the second session of that Conference, the Swiss representative announced his Government's intention of convening a Diplomatic Conference early in 1974.

Establishment of two draft Protocols additional to the Geneva Conventions of 1949

Bearing in mind the preparatory work so far carried out, the ICRC applied itself to drawing up two draft Protocols additional to the 1949 Geneva Conventions as basic proposals for discussion

by the Diplomatic Conference. The first (draft Protocol I) related to the protection of victims of international armed conflicts, and the second (draft Protocol II) to that of victims of non-international armed conflicts.

As some fundamental problems had not been sufficiently dealt with previously and the desirable unanimity had not been reached on other problems, the ICRC deemed it necessary, pursuant to the wish expressed by certain governments, to call small meetings of government experts to assist it in choosing various proposals, and also in wording certain draft articles. In addition, some technical questions required consultation with experts.

CONSULTATIONS WITH EXPERTS

Advisory Group of Government Experts: The Advisory Group met at ICRC headquarters from 15 to 19 January and from 5 to 9 March 1973.

Participants were chosen as follows: experts who at the second session of the Conference of Government Experts had held official posts (vice-presidents of the Conference, chairmen of Committees, and rapporteurs); experts appointed by the five permanent members of the United Nations Security Council, if not already in the first category; and experts furnished by Switzerland as the depositary State of the Geneva Conventions.

At the first meeting, discussions centered on questions relating to the protection of the civilian population, combatants, guerrilla warfare, the machinery for supervising the application of the Conventions (Protecting Powers and their substitute) and the field of application of draft Protocol II. The second meeting considered draft Protocol II as a whole, after which it studied certain points concerning draft Protocol I: resistance movements, the protection of the civilian population, relief, civil defence bodies, the prevention and punishment of breaches, the preamble, and reservations. This work led to a consensus on a number of points. It also helped the formulation of new proposals and, in general, proved a useful contribution to the ICRC's draft Protocols.

Meeting of experts on the international distinctive sign for civil defence: To ensure effective protection for civil defence bodies,

the Conference of Government Experts, at its second session, urged the need for an international distinctive sign for civil defence. It drew up a report on the general conditions which such an emblem should meet, and instructed the ICRC, on the basis of that report, to carry out studies with a view to proposing to the Diplomatic Conference an appropriate distinctive sign. In accordance with those instructions, the ICRC called a meeting of a small group of experts, in Geneva, from 22 to 26 January 1973. The meeting proposed a choice of two signs, either a light blue equilateral triangle on a light orange background, or two or more light blue bands on a light orange background. The ICRC introduced the proposals in draft Protocol I.

Meeting of Experts on Penal Law: At its second session, the Conference of Government Experts discussed at length the problem of penal sanctions. It considered the question of improving the penal system provided by the Conventions and the rules concerning the prevention and punishment of breaches of Protocol I. The great number of proposals put forward enabled it to prepare draft articles which, it was admitted, needed further careful study. This was why the ICRC called the meeting, from 29 January to 1 February 1973, of experts on penal law.

The meeting considered that the penal system adopted for the 1949 Geneva Conventions should also be used for Protocol I. On the basis of the proposals put forward at the Conference of Government Experts, it prepared draft articles designed to improve and supplement the system, and instituted, *inter alia*, provisions relating to the perfidious misuse of protecting signs, the punishment of breaches resulting from an omission, and the question of orders from a superior officer.

Meeting of experts on Signalling and Identification Systems for Medical Transports by Land and Sea: The 1949 Geneva Conventions provide for visual signalling only, by means of the distinctive emblem of the red cross, red crescent and red lion and sun, for the identification of protected institutions, units, medical transports and medical personnel.

With the armed forces' mobility and the use of new methods of detection and remote control weapons whereby targets beyond

visual range can be reached, the distinctive emblem of the red cross is insufficient as a means of signalling. The Conference of Government Experts considered how far technical means could be used for the identification and signalling of persons and protected objects. To this end, it prepared a draft entitled « Recommended International Standards, Practices and Procedures for the Identification and Signalling of Medical Aircraft ». Moreover, it recommended that the ICRC continue to study the signalling of medical transports by land and sea. Pursuant to that recommendation, the ICRC called a meeting in Geneva, from 5 to 8 February 1973, of experts who considered to what extent the standards proposed for medical aircraft could be extended to medical transports on land and at sea.

Text of two draft Protocols

Following these various consultations, the ICRC was able to prepare the draft Protocols, which were published in June 1973 and sent by the Swiss Government to all States Parties to the 1949 Geneva Conventions and to States Members of the United Nations, with a view to the Diplomatic Conference. In addition, the ICRC sent the drafts to National Societies before the XXIInd International Conference of the Red Cross (Teheran, 1973).

The draft Protocols may be briefly analysed as follows:

DRAFT PROTOCOL I

This draft is divided into six Parts.

Part I (General Provisions) deals with questions relating to the application of international humanitarian law. Attention may in particular be drawn to the article entitled *Appointment of Protecting Powers and of their Substitute*, which is intended to strengthen the international machinery provided by the Geneva Conventions to ensure impartial supervision of their application. It should also be noted that many experts favoured the training of skilled personnel in order to facilitate the application of the Geneva Conventions and the Protocol, and this gave rise to a specific article.

Part II (Wounded, Sick and Shipwrecked Persons) supplements the Geneva Conventions on two essential points: first, it extends to

civilian medical personnel as a whole the protection hitherto enjoyed by military medical personnel and the medical personnel of civilian hospitals; secondly, a body of provisions is meant to restore protected medical aviation through the adoption of an appropriate modern signalling system.

Part III comprises two Sections, one of which relates to *Methods and Means of Combat*, and the other to *Prisoner-of-War Status*. Section I lays down rules of behaviour towards adverse armed forces which must be respected by combatants during the fighting. The rules are intended to ensure some fairness in fighting and to safeguard civilians who take no part in hostilities. The purpose of Section II, which consists of only one article, is to enlarge the circle of persons who, in case of capture, should be entitled to prisoner-of-war status. By virtue of this provision, members of resistance movements would have the benefit of prisoner-of-war status provided they complied with certain conditions, which would however be more flexible than they have been in the past.

Part IV aims chiefly at strengthening the *protection of the civilian population*. The problem of protection against the effects of attacks is dealt with in its fundamental aspects. After reaffirming the rule that parties to a conflict shall limit their operations to the destruction or weakening of the enemy's military potential, the draft prohibits attack on civilian population as such, and the use of indiscriminate methods or terror, and it restricts attacks to military objectives. The purpose of these rules is to prohibit the practice of indiscriminate bombardment which, during World War Two and subsequent armed conflicts, caused so many victims among the civilian population. Part IV lays down that indispensable objects — foodstuffs, crops, livestock, etc. — and certain works containing dangerous forces — dams, dykes and nuclear generating stations — shall not be attacked. Special agreements under which certain localities would be recognized or given the status of non-defence or neutralization are based on the "open city" practice. The draft also considers some other important problems: civil defence, relief, and the treatment of persons in the power of a party to a conflict.

Part V (Execution of the Conventions and of the Present Protocol) contains, in Section I, provisions concerning the implementation

of the Geneva Conventions and of the Protocol. Section II, which deals with the *repression of breaches*, supplements the penal system established by the Geneva Conventions.

Lastly, *Part VI* contains the final provisions of the Protocol. Some of the articles relate to difficult problems such as reservations, amendment and denunciation.

DRAFT PROTOCOL II

The Geneva Conventions of 1949 contain only one provision applicable in non-international armed conflict: common Article 3. That article, which provides fundamental guarantees for all victims of non-international armed conflicts and which gives impartial humanitarian bodies grounds to offer their services, has made it possible to improve the lot of persons affected by such conflicts. Yet in some respects it has proved inadequate, particularly regarding the treatment of the wounded and the sick, and persons deprived of freedom. All the experts consulted saw the need to develop the rules applicable in non-international armed conflicts, and that is the purpose of the draft Protocol.

It must in the first place be pointed out that this draft is not meant to replace common Article 3, which retains its full value. Common Article 3 and Protocol II would coexist. Their field of application would, in fact, not be absolutely identical: while common Article 3 is applicable to all cases of non-international armed conflicts, this Protocol would apply to conflicts of a certain intensity, as specified in draft Article 1.

The draft Protocol is subdivided into *eight Parts*, which are entitled *Scope of the Present Protocol; Humane Treatment of Persons in the Power of the Parties to the Conflict; Wounded, Sick and Shipwrecked Persons; Methods and Means of Combat; Civilian Population; Relief; Execution of the Present Protocol, and Final Provisions*.

The purpose of the draft Protocol is twofold, namely, to protect the population of a High Contracting Party on whose territory a non-international armed conflict is taking place against arbitrary action by the parties to the conflict, and to protect the population against the effects of hostilities. The draft Protocol has taken many rules from the Geneva Conventions and adapted them to the require-

ments of non-international armed conflict. It has also drawn direct inspiration from draft Protocol I, particularly with regard to the wounded and the sick, methods and means of combat, and the protection of civilians.

Commentary to the two draft Protocols

To ease the task of those called upon to study the draft Protocols, the ICRC thought that a commentary would be useful. Although brief, it encompassed whatever seemed essential to an understanding of the provisions proposed. Above all, it was a statement of the underlying reasons. As a rule, it indicated the source of the article or articles and, where necessary, how they differed from previous texts.

The Commentary was sent by the Swiss Federal Council, in December 1973, to all the States and organizations invited to take part in the Diplomatic Conference.

Meeting of Experts on Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects, and report on the work of the meeting

In 1972, at the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, experts from nineteen Governments put forward a written proposal that the ICRC should consult experts on the problem of the use of certain "conventional" weapons that would cause unnecessary suffering or have indiscriminate effects.

The ICRC followed that recommendation. On two occasions, from 25 February to 2 March and from 12 to 15 June, it assembled at its headquarters experts appointed by the States which had put forward the above-mentioned proposal and by other States. It also invited the *United Nations*, the *World Health Organization*, the *Special Committee on Disarmament of Non-Governmental Organizations* and the *Stockholm International Peace Research Institute* to take part in the proceedings. It was thus possible to form a highly qualified working group and draw up a report describing certain types of

weapons liable to cause unnecessary suffering or have indiscriminate effects, and to analyse the injuries they cause to the human body.

The report, published by the ICRC in English, French and Spanish (a German translation was made by experts in the Federal Republic of Germany), was intended for anyone interested in the subject, even if not an expert on such problems. It was sent to all States Parties to the Geneva Conventions of 1949. It was also supplied to the General Assembly of the United Nations and the XXIIInd International Conference of the Red Cross.

The report is a compilation of legal, military and medical data designed to facilitate any subsequent study of the question of weapons, for international regulations prohibiting or limiting the use of some of those weapons.

XXIIInd International Conference of the Red Cross (Teheran, 8-15 November 1973)

The agenda of the Commission on International Humanitarian Law of the XXIIInd International Conference of the Red Cross included the question of the reaffirmation and development of international humanitarian law applicable in armed conflicts. Discussions mainly concerned the two draft Protocols additional to the 1949 Geneva Conventions. In accordance with a decision adopted by the Commission, instead of being put to the vote the various amendments proposed to the draft Protocols were shown in a report drawn up by the ICRC for the Diplomatic Conference.

COMMISSION ON INTERNATIONAL HUMANITARIAN LAW

This Commission, which was chaired by Mr. Pictet, Vice-President of the ICRC, met from 8 to 12 November. At the close of the discussions on the two draft Protocols, the Commission adopted three resolutions. The first, entitled *Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts*, appealed for the widest and swiftest adoption of the two Protocols. The second, entitled *Prohibition or Restriction of Use of Certain Weapons*, urged the Diplomatic Conference—without prejudice to its work on the two draft Protocols submitted by the ICRC—to