

# Department of principles and law

Objekttyp: **Group**

Zeitschrift: **Annual report / International Committee of the Red Cross**

Band (Jahr): - **(1976)**

PDF erstellt am: **23.07.2024**

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The new documentation also made it possible to discover 2,912 previously unknown deaths in concentration camps. These were officially recorded by the special bureau of vital statistics at Arolsen. The number of deaths thus determined by the ITS has increased regularly during the past six years, as follows: 1971, 1,680; 1972, 1,722; 1973, 2,174; 1974, 2,459; 1975, 2,518; 1976, 2,912. As at 31 December 1976, the total amounted to 354,278. It is obvious that this must not be regarded as the total number of victims who died in concentration camps since most of the records of these camps were destroyed shortly before the camps were liberated by allied troops. It must also be made clear that a great number of deaths were never recorded, such as those in the extermination camps, where no records were kept, those which occurred shortly before or shortly after liberation or those of persons who were transferred to the concentration camps for execution.

### III. DEPARTMENT OF PRINCIPLES AND LAW

#### REAFFIRMATION AND DEVELOPMENT OF HUMANITARIAN LAW

#### Diplomatic Conference

The third session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts<sup>1</sup> took place at Geneva from 21 April to 11 June 1976.

The Conference, whose fourth and final session was scheduled to take place from April to June 1977 at Geneva, was convened to discuss and adopt two *Protocols additional to the Geneva Conventions of 1949*, drafts for which had been prepared by the ICRC from 1970-1973 with the assistance of Red Cross and government experts. These drafts contain 122 basic provisions intended to improve protection for the victims of international armed conflicts (Protocol I) and non-international armed conflicts (Protocol II).

<sup>1</sup> Readers wishing to study in detail the work of the first three sessions of the Conference are referred to texts published in the issues of May 1974, July 1975 and September 1976 of *International Review of the Red Cross* (i.e. numbers 158, 172 and 186). Reprints have been made of these texts.

In its third session, the Committees<sup>2</sup> adopted 44 articles including the technical annex. Like the articles adopted at previous sessions, these are scheduled to be submitted to the plenary assembly of the Conference for final approval in 1977.

We refer below to some of the problems and the results obtained.

#### International armed conflicts

**Results.** — Part I of Protocol I containing general provisions relating to application of the law, and the major elements of Part II concerned with wounded, sick and shipwrecked persons, were adopted at the second session. At the third session, Committee II approved the remaining articles in Part II. This consisted especially of articles concerning medical transport and a new section, added to the original draft, entitled "Information on the Victims of a conflict and on Remains of Deceased" which supplemented the existing provisions in the Conventions relating to the dead and missing. The technical annex to Protocol I, a necessary addition to existing provisions concerning identification, recognition and marking of medical personnel, units and means of transport was also adopted by this Committee.

Of Part III, dealing with methods and means of combat and the status of prisoners of war, only four articles had been adopted at the second session. In the third session all the still pending articles relating to methods and means of combat were adopted. With regard to the status of prisoners of war, however, it was only possible to obtain a consensus on a single article aimed to provide minimum protection to all persons captured during hostilities. Despite long discussion it was impossible to obtain agreement on Article 42 entitled "New category of prisoners of war" which was designed to grant prisoner-of-war status to categories of combatants other than members of national armed forces and on a new article relating to the status of mercenaries.

The major elements of Part IV relating to the civilian population had been adopted at the second session by Committee III, with the exception of articles concerning civil defence, relief in favour of the civilian population, and treatment of persons in the power of a party to a conflict. Having devoted most of its time in the third session to the study of Article 42, Committee III was able to adopt only a single article, a short one covering the reuniting of dispersed families. It devoted several meetings however to two important articles, one on refugees and stateless persons and the other (Article 65) on the establishment of a list of fundamental guarantees for the benefit of all persons whatever their status.

In Part V (*Execution of the Conventions and of the Present Protocol*), Committee I had adopted five articles at the second

<sup>2</sup> Committee I, responsible for studying general provisions relating to the implementation of humanitarian law and scrutiny of its application; Committee II, dealing with the protection of civilian and military wounded, sick and shipwrecked persons and of medical personnel, units and means of transport; Committee III, concerned with protection of civilians and with methods and means of combat.

## THE DIPLOMATIC CONFERENCE

In September 1969 the Twenty-first International Conference of the Red Cross at Istanbul unanimously adopted a resolution requesting the ICRC to pursue actively its efforts with a view to proposing, as soon as possible, rules which would supplement existing international humanitarian law, and to invite governmental, Red Cross and other experts representing the principal legal and social systems in the world to meet for consultations with the ICRC on these proposals.

Accordingly, the ICRC convened a conference of government experts in May 1971. The first session was attended by the representatives of some forty countries, while a second session the following year brought together over 400 experts from seventy-seven governments. In addition to those two sessions, the ICRC arranged a number of consultative meetings with individuals and groups, including meetings with experts from National Red Cross Societies at The Hague in 1971 and in Vienna in 1972, and with non-governmental organizations in December 1971. The United Nations Secretary-General was kept informed of the progress of the work, about which reports were presented to sessions of the United Nations General Assembly.

The two draft Protocols to the Geneva Conventions of 1949 were drawn up as a result of this preparatory work. The first concerns the protection of victims of international armed conflicts and the second the protection of victims of non-international armed conflicts. The two draft Protocols were submitted in 1973 to the Twenty-second International Conference of the Red Cross at Teheran.

In 1973, the Swiss Government—Switzerland being the depositary of the Geneva Conventions of 1949—convened a Diplomatic Conference of plenipotentiaries of all the States which were parties to the 1949 Conventions or members of the United Nations to deliberate upon the draft Protocols prepared by the ICRC.

The first session of the Diplomatic Conference was held in February and March 1974. A second session took place from February to April of 1975 and a third the following year from April to June.

session. The Committee adopted two more articles during the third session, one of them the very important Article 74 relating to repression of breaches of the Conventions and of the Protocol, but was unable to conclude its work on this part.

The articles in Part VI containing the final provisions were not discussed.

It should be noted that the ad hoc Committee on conventional weapons considered a large number of proposals but adopted none.

*Pending questions.* — To sum up, the following questions were to be studied in the fourth session.

- granting prisoner-of-war status to new categories of combatant (Article 42);
- a provision covering mercenaries;
- the entire chapter on civil defence and relevant articles in the technical annex;

- provisions relating to the distribution of relief to the civilian population;
- articles dealing generally with the treatment of persons in the power of parties to a conflict (in particular article 65 on fundamental guarantees);
- remaining articles on the enforcement of the provisions of the Conventions and of the Protocol relating to superior orders, extradition and mutual assistance in criminal matters;
- the whole of Part VI containing final provisions relating to procedures for signature, ratification, entering into force, notifications, etc.;
- possibilities for forbidding or restricting the use of certain conventional weapons.

In addition, two particular proposals will be subject to special examination. One of these recognizes the possibility for one party to a conflict to resort to exceptional countermeasures in certain specific cases and in a clearly limited manner in the event of serious violations of the law by the enemy. The second provides for the establishment of an impartial international body to carry out investigations into alleged violations of the Conventions or Protocol.

## Non-international armed conflicts

**Results.** — It is the purpose of Protocol II to protect victims of non-international armed conflicts. Due to the very nature of the parties to these conflicts—legal governments and insurgents—this new instrument constitutes an important step in the evolution of international humanitarian law. About forty provisions develop and supplement Article 3 common to the Geneva Conventions of 1949, the only article which now applies to these conflicts. Prior to the fourth and last session of the Diplomatic Conference, work on Protocol II was already far advanced and few fundamental problems remained.

Rules guaranteeing humane treatment of persons in the power of a party to a conflict, and those concerning the protection of the wounded, the sick and the civilian population covering about three-quarters of all the provisions, had been adopted in Committee in the first three sessions.

**Pending questions.** — One of the questions not discussed was relief (Part VI). This is designed to provide procedures to assist the civilian population with food, medicines, clothing, hygienic equipment, etc. It also has a provision for the organization, by parties to a conflict, of bureaus for the recording and transmission of information on conflict victims.

There was reason to hope that Protocol II would readily be concluded by the fourth session.

## Preparatory work for the fourth session

The Diplomatic Conference instructed the Conference Secretariat to examine, in co-operation with the ICRC, all the articles already adopted by the Conference Committees to make sure of the technical exactitude of the language, grammatical correctness and the equivalence of the texts in the different languages.

This work was done in September 1976, with ICRC jurists assisting in the correction of texts and elimination of material errors.

The ICRC also continued its study of articles not yet adopted to take into account the work carried out by the various Committees. The Conference requested that a meeting take place in January 1977 of a small group of members of the Conference Secretariat, staff members of the ICRC, and various experts chosen among representatives of the countries taking part in the Conference because of their particular knowledge of the substance and their linguistic capabilities.

## Consultations and meetings

In preparing for the fourth session of the Diplomatic Conference the ICRC had numerous consultations with governmental and Red Cross experts to facilitate the conclusion of Conference work. It maintained contact with various non-govern-

mental organizations interested in international humanitarian law and its development. It also took part in the third Round Table on current problems of international humanitarian law at San Remo (31 August-4 September 1976), organized by the International Institute of Humanitarian Law. This private Round Table, like the preceding ones, made possible a constructive exchange of views on the main problems remaining for consideration by the last session of the Diplomatic Conference. About eighty experts took part in this meeting in their personal capacities.

## Weapons Conference

The second session of the *Conference of Government Experts on the use of certain Conventional Weapons* was convened by the ICRC and took place at Lugano from 28 January to 26 February 1976, as recommended by the first session which had taken place at Lucerne in 1974 and by the ad hoc Committee at the second session of the Diplomatic Conference.

Government experts from 43 states took part, as well as representatives of the United Nations, the World Health Organization, the League of Red Cross (Red Crescent, Red Lion and the Sun) Societies, various National Societies, the International Confederation of former Prisoners of War, the Special Committee of non-governmental organizations for disarmament, and SIPRI (The Stockholm International Peace Research Institute). The ICRC was represented by a large delegation not only because of its interest in the important humanitarian problem which the Conference dealt with but also because it was responsible for administration and organization of the Conference.

No agreement was reached at Lugano on specific proposals for restricting or forbidding certain weapons, but numerous points were clarified and the positions of various participants were more clearly understood. General trends of thought were brought into evidence, constituting a basis for the work of the ad hoc Commission.

The report of this second session was published in the spring of 1976 during the third session of the Diplomatic Conference.

## Accessions to the Geneva Conventions

The State of Qatar and the Democratic Republic of Sao Tomé and Príncipe have acceded to the four Geneva Conventions according to letters received by the Swiss Federal Council respectively on 15 October 1975 and 21 May 1976.

Papua New Guinea, in a letter received on 26 May 1976, and Surinam, in a letter dated 30 September 1976, both made declarations of succession.

In a letter dated 4 July 1976, the Socialist Republic of Viet Nam stated that it continued, with the same reservations, the participation in the Geneva Conventions of the Democratic Republic of Viet Nam and the Republic of South Viet Nam.

At the end of 1976, the number of States parties to the Geneva Conventions had reached a total of 141.

## **DOCUMENTATION AND DISSEMINATION**

### **Dissemination of the Principles of the Red Cross and the Geneva Conventions**

*Seminar at Kampala.* — A seminar on the Geneva Conventions, humanitarian law and first aid, organized by the

Uganda Red Cross in co-operation with the ICRC and League, took place at Kampala from 16 to 27 February. About sixty persons took part, including members of the armed forces, police, prison personnel, provincial administrations and the Uganda Ministry of Health.

The first week of the seminar was entirely devoted to the ICRC and international humanitarian law; the second week offered first aid teaching under the direction of the League.

*ICRC Training Seminar.* — From 4 to 15 October, the ICRC organized a seminar on international humanitarian law and methods for its dissemination, at the Henry Dunant Institute. Fifteen representatives from National Societies of the following countries took part: Canada, Denmark, the German Democratic

## **THE ICRC AND TORTURE**

The ICRC has gained some knowledge of how prevalent is the practice of torture, through the visits it was permitted to carry out in the various camps, prisons and other places of detention in a substantial number of countries where armed conflicts, internal troubles or domestic tensions were taking place.

One common factor has emerged: it is during interrogation that people are most often submitted to torture, the primary aim being to obtain information on matters affecting State security or on the armed political opposition. Prisoners of war enjoy the best protection, because under Article 126 of the Third Geneva Convention the ICRC has the right to see them as soon as they are captured.

The Fourth Geneva Convention gives the ICRC a right of access to civilian detainees similar to that in respect of prisoners of war. But there is an important exception: under article 5, the detaining Power may suspend access to persons detained for or suspected of activities hostile to the security of the State.

The obligation on States to allow the ICRC access to prisoners of war and civilian internees holds good only in international conflicts. In civil wars and in cases of internal troubles or tensions, ICRC visits are subject to the discretion of the detaining authorities.

The ICRC has set itself the following permanent objectives:

- to induce States always to discharge their obligations under the Geneva Conventions;
- to augment the number of countries willing to let it visit their prisons when internal troubles or tensions break out, either by making direct offers of services whenever there is some hope that such offers may be accepted or by systematically creating such conditions as would make it likely that ICRC offers of services to any government would meet with as favourable a reception as possible;
- in all countries accepting ICRC action, to visit prisoners without witnesses as soon as possible after their capture;
- whenever its delegates are sure or suspect that torture has been carried out, to persuade the responsible authorities to put a stop to such practices.

Over and above those objectives, which may be described as “operational”, the ICRC unqualifiedly condemns all torture, in whatever form it may be practised and under whatever pretext; it encourages all international and national efforts to draw up rules that would abolish torture. In particular, it appeals to the conscience of one and all to bring to an end this vilest and most despicable of acts invented by man.

Republic, Italy, Poland, Portugal, Sudan, Sweden, Tanzania and Uganda. The League also participated.

The first week of the seminar was devoted to the theoretical study of major questions relating to international humanitarian law. During the second week, the participants considered various methods for disseminating knowledge of this law, and the responsibilities of National Societies in this respect. The seminar reached a series of conclusions which were published in *International Review of the Red Cross* (November 1976, pages 565-567).

**African traditions and humanitarian law.** — At the request of the ICRC, Mrs. Yolande Diallo, of Senegal, doctor of laws, University of Grenoble, carried out a mission in West Africa to study similarities and differences between African humanism and the fundamental principles of humanitarian law and of the Red Cross, and to consider possibilities for disseminating these principles in Africa. Mrs. Diallo visited the People's Republic of Benin, Ghana, Togo and Upper Volta.

At the conclusion of her mission, Mrs. Diallo wrote a report which was published in the August number of *International Review of the Red Cross* and reprinted by the ICRC under the title "African Traditions and Humanitarian Law" (in English, French and Spanish).

**Teaching of international humanitarian law in Universities.** — In July, an institute for teaching international humanitarian law was established at Bogota, Colombia, under the name Inter-American Institute of International Humanitarian Law. The institute is under the direction of Professor Jaramillo.

In co-operation with the University of Santo Tomas at Bogota, the Colombian Red Cross in November organized a national seminar on the dissemination of international humanitarian law in which the ICRC participated by sending two speakers.

**Publications.** — The principal ICRC publications in 1976 were:

- Report on the Conference of Government Experts at Lugano (English, French, Spanish).
- "Reservations to the Conventions", by Mr. Claude Pilloud (English, French, Spanish).
- "African Traditions and Humanitarian Law", by Mrs. Diallo (English, French, Spanish).
- School textbook and teacher's manual in Swahili.
- Soldier's Manual and Summary of the Conventions in Swahili.
- Analytical Index to the International Review of the Red Cross, in English.
- "The Principles of the Red Cross" by Mr. Jean Pictet, in Arabic.

The ICRC also published a new series of four coloured posters illustrating the application of the four Geneva Conventions.

**Soldier's Manual.** — The Soldier's Manual in various languages is one of the means used by the ICRC to disseminate knowledge of the Geneva Conventions among the armed forces. In most cases, the National Societies assisted in this action. During 1976 more than 37,000 copies were sent by the ICRC to the following countries: Angola, Bangladesh, Cape Verde, Ethiopia, Mauritania and Morocco. The drawings and texts were adapted to suit the various recipient countries.

The Red Cross of Tanzania translated the Soldier's Manual and the Summary of the Conventions into Swahili; these texts, after having been approved by the Red Cross of Kenya were brought together in a single booklet and an edition of 50,000 copies was published by the ICRC. Twenty thousand copies were sent to Tanzania, 20,000 to Uganda and 10,000 to Kenya.

**School Textbook and Teacher's Manual.** — The Swahili version of the school textbook "The Red Cross and My Country", published in 1975 by the ICRC, was distributed as follows: 62,000 copies to Kenya, 50,000 to Tanzania, 30,000 to Uganda.

English and French translations of the African version of the school textbook were reprinted and sent for distribution to the following countries: Burundi, Central African Empire, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritius, Niger, Rwanda, Seychelles, Swaziland, Tanzania, Togo and Uganda.

In Asia, financial assistance was given to the Afghan Red Crescent to enable it to publish 19,000 copies of the school textbook in Dari and Pushtu.

## IV. RELATIONS WITH RED CROSS INSTITUTIONS AND NATIONAL SOCIETIES

### The Red Cross and Peace

During their meetings in November 1975, the Council of Delegates and the Board of Governors of the League of Red Cross Societies had both discussed how the Action Programme adopted in June of the same year at Belgrade by the World Red