INTERNATIONAL COMMITTEE OF THE RED CROSS

Conference of Red Cross Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts

(The Hague, 1 - 6 March 1971)

REPORT ON THE WORK OF THE CONFERENCE

Geneva
April 1971
INTERNATIONAL COMMITTEE OF THE RED CROSS

Conference of Red Cross Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts

(The Hague, 1 - 6 March 1971)

REPORT ON THE WORK OF THE CONFERENCE

Geneva
April 1971
CONTENTS

 Pages

 I. INTRODUCTION 1

 II. LIST OF EXPERTS DELEGATED 6

 III. FORMAL OPENING OF THE CONFERENCE 13

 IV. ANALYTICAL REPORT OF DISCUSSIONS AT THE CONFERENCE 19
   A. General discussion 20
   B. Protection of the wounded and sick 23
   C. Measures intended to reinforce the application of the law in force 28
   D. Protection of the civilian population against dangers of hostilities 33
   E. Protection of victims of non-international armed conflicts 43
   F. Rules applicable in guerrilla warfare 53
   G. Role of national Red Cross societies in the dissemination and development of humanitarian law 56

 V. ANNEXES 01
I. INTRODUCTION

Origin and Purpose of the Conference

In its circular No. 478e 1/ of 15 April 1970, informing all National Red Cross, Red Crescent and Red Lion and Sun Societies of the work it had undertaken to follow up resolution XVIII of the Istanbul Conference (September 1969) on the reaffirmation and development of international humanitarian law, the International Committee of the Red Cross (ICRC) stated, inter alia:

"As it has always done in matters of this kind, the International Committee is making a point of associating National Societies closely in this important undertaking. It will keep them regularly informed on progress, either in circular letters or in news bulletins. It expresses the hope that National Societies will forthwith send it any advice or suggestions they wish to offer. Already at this present stage, any further remarks concerning the two reports entitled "Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts" and "Protection of Victims of Non-International Conflicts" which the Committee submitted to the XXIst International Conference will be of the greatest value.

"If National Societies particularly interested in these problems so wish, the International Committee would be prepared to convene them to a meeting, so that they may exchange their observations with it and among themselves. Such a meeting could take place either at the end of this year or at the beginning of 1971, as it would be useful to hold it before the Conference of governmental experts advocated by the XXIst Conference."

1/ Copy attached.
Six months later, on 28 October 1970, the ICRC was pleased to inform all National Societies, in its circular No. 481/ that, in view of the favourable reaction to the idea of a special meeting, it had decided to organize, for the beginning of 1971, a conference to which Societies specially interested in these problems could delegate experts. It added:

"...the Netherlands Red Cross, in keeping with the active interest it has always shown for this work, has kindly offered to welcome the conference in the Peace Palace (at the premises of the International Law Academy), in The Hague. It will therefore be in that town that the conference, which the International Committee will convene in agreement with the Netherlands Red Cross, will take place from 1 to 6 March 1971."

Concerning the purpose of the Conference, the ICRC gave the following detail:

"The main purpose of the meeting will be to proceed to a wide exchange of views on the matters dealt with in several of the International Committee's reports on the reaffirmation and development of international humanitarian law to the XXIst International Conference and which are, inter alia, the subject matters of that Conference's resolutions XIII to XVIII. A list of these subjects is attached hereto. In the framework of this exchange of views, National Societies may raise problems which are of increasing concern to the International Red Cross by reason of the armed conflicts and tensions which have arisen in the last few years and which often place heavy responsibility for practical action upon the shoulders of National Societies."

Participation

The ICRC is pleased to say that thirty-four National Societies on four continents, in reply to its invitation, delegated some seventy qualified persons. A list of these experts is given in the next section.

1/ Copy attached.
In addition, the League of Red Cross Societies and the Human Rights Division of the United Nations were represented. With the delegates and experts of the ICRC, therefore, the Conference was attended by more than eighty people.

It is interesting to note that this was the first conference of Red Cross experts on humanitarian law for twenty-five years. The previous one was in 1946; it was concerned mainly with the revision of the 1929 Geneva Conventions and the drawing up of a convention for the protection of civilians.

Conference programme and documents

On 29 January 1971, the ICRC conveyed to interested National Societies some details on the conference programme. In particular, it suggested that the proceedings should bear on five of the six subjects for discussion as listed in its circular No. 481e, namely:

- protection of the wounded and the sick,
- measures to reinforce the implementation of the existing law,
- protection of civilian populations against the dangers arising from hostilities,
- protection of victims of non-international armed conflicts,
- the humanitarian problems of guerrilla warfare.

At the same time it sent them appropriate documents 1/ to supplement the ICRC's reports to the Istanbul Conference and which, as stated in its circular 481e, were intended as a basis for discussions. The ICRC had hoped also to send the National Societies taking part in the Hague Conference eight

1/ Including the preliminary report on the consultation of experts concerning non-international armed conflicts and guerrilla warfare, which was drawn up in mid-1970 by the ICRC, particularly for the U.N. Secretary-General, and the Questionnaire on the protection of civilian populations, which served as a basis for the consultations conducted by the ICRC on that subject.
documents which it was drawing up for the Conference of Government Experts in May - June 1971. However, the documents were delayed by the need to take into account the work of the last United Nations General Assembly, so that, to its regret, the ICRC was able to send the interested National Societies only document No. VII on "Protection of the Wounded and Sick". Document No. V, "Protection of Victims of Non-International Armed Conflicts" was available to the National Society experts at The Hague.

The work of the Conference

The Conference, which met from 1 to 6 March, held an opening meeting and nine working meetings.

At its first working meeting it unanimously elected Mr. Jean PICTET, member of the ICRC and Chairman of the ICRC Legal Commission 1/, as chairman of the Conference. It also elected, as Secretaries-General, Mr. A. van EMDEN, Director General of the Netherlands Red Cross, and Mr. Claude PILLOUD, Director of the ICRC and Head of the Department of Principles and Law.

Summary records of the meetings were distributed periodically to the experts, except those of the meetings towards the end of the week, which were sent to the participating National Societies. A general recapitulation drawn up by the Conference Chairman, Mr. Pictet, under his own responsibility at the end of the session, was also sent to the National Societies. During its second meeting, the Conference elected a Working Party to summarize the proceedings on the protection of the wounded and the sick. Both that summary and Mr. Pictet's recapitulation are attached hereto.

The summary records issued during the Conference set out, although very succinctly, the gist of the discussions. However, the ICRC deemed it expedient to review and enlarge on them, on the basis of notes and recordings. In addition, it desired to group the ideas expressed, not only in the order of

1/ Now Vice-President of the ICRC.
the meetings but according to the main items of the agenda 1/. That is the purpose of the present report which, like other ICRC documents of this kind is analytical and impersonal.

In that form, it was not possible, of course, to reproduce in this report all the suggestions, many of them highly interesting, put forward by the experts; they were, however, all recorded and will be useful to the ICRC for the continuation of its work.

The ICRC would make a point of expressing once again its profound gratitude to all who took part in the meeting. It fulfilled its aim of enabling the ICRC to gather valuable and varied opinions on the subjects to be examined by the Conference of Government Experts which will be meeting at Geneva in May 1971. The present report to the Governments invited to that Conference and to all National Red Cross Societies should not only reflect the usefulness of the discussions at The Hague; it should also give the ICRC an opportunity, when sending it to those Governments, to draw attention to the matters of main concern to the Red Cross in connection with the reaffirmation and development of humanitarian law.

In that long-term undertaking which is being carried out with a view to producing genuine instruments of international law to supplement the humanitarian law already in force, the Hague conference was an important and productive phase. The many ideas put forward, during the final meetings, on the very active part which National Societies desire or continue to play in support of the ICRC's work in this field show the usefulness of such a conference which the majority of the experts hoped would be repeated at fairly frequent intervals.

1/ Of the five items on the agenda, only one, the Protection of the Wounded and Sick, was dealt with by the experts with the relevant document (No. VII) to hand. The other four subjects were discussed without the documents which were being prepared by the ICRC for the Conference of Government Experts. That documentation, consisting of eight documents, having since been issued, it was deemed useful in the present report to refer to the passages of the documents in connection with the main problems discussed at The Hague.
II. LIST OF EXPERTS DELEGATED *

ALGERIA
Mr. M.S. Louanchi, Lawyer

AUSTRALIA
Mr. J.A. Nimmo, Vice-President

AUSTRIA
Dr. F. Wendl, Legal Adviser

CANADA
General I.S. Johnston, President
General A.E. Wrinch, National Commissioner

CONGO (Democratic Republic)
Mr. J.P. Bompese, President

* With the exception of the Presidents, delegates are shown in alphabetical order and with the title of the office held at the time of the Conference.
DENMARK
H.R.H. Prince Henrik of Denmark
Prof. I. Foighel
Mr. A. Fremm, Secretary-General
Mr. T. Lehmann, Secretary

FINLAND
General A.E. Martola, President
Mr. K.J. Warras, Secretary-General

FRANCE
Mr. J. Giffard, Vice-President of the Seine Maritime Departmental Council
General G. Glain, Head of External Relations

GERMANY (Democratic Republic)
Prof. W. Ludwig, President
Prof. B. Graefrath, Legal Adviser

GERMANY (Fed. Rep. of)
Mr. W. Bargatzky, President
Mr. K. Buschbeck, Legal Adviser
Dr. A. Schlögel, Secretary-General
Prof. I. Seidl-Hohenveldern
Mr. W. Voit, Oberlandesgerichtsrat
HUNGARY
Prof. G. Herczeg
Dr. T. Németh, Ass't Director, Legal Dept.
Mr. I. Pásztor, Ass't Director, External Relations

INDONESIA
Mr. S. Ijas, Secretary-General
Mr. Soejatmo, Legal Adviser
Mr. M. Tranggono, Legal Adviser

IRELAND
Mrs. T. Barry, Chairman
Miss M.B. Murphy, Secretary-General

ITALY
Dr. E. Ciantelli, Member of Provincial Committee

JORDAN
Dr. A. Abu-Goura, President
Dr. G. Goussous

LEBANON
Mr. G. Asmar, Barrister
MEXICO
Mr. J.J.G. de Rueda, Mexican Red Cross delegate general in Europe

NETHERLANDS
Jonkheer G. Krajenhoff, President
General K.L. Bakema, Second Vice-President
Mr. A. van Emden, Director General
Prof. F. Kalshoven
General J.D. Schepers, Military High Court.
Prof. D. Simons

NORWAY
General T. Dale, President
Mr. H. Mathiesen, Secretary-General

PHILIPPINES
Col. C.C. Gloria

POLAND
Mr. J. Rutkiewisz, President
Mr. S. Dabrowa, Legal Adviser
Miss D. Zys, Head of International Relations Dept.

PORTUGAL
Mr. C. Mourisca, Lawyer, Member of Supreme Court.
RUMANIA
Prof. T.R. Popescu

SAUDI ARABIA
Mr. F. Akasha, Director, Foreign Relations
Mr. A.G. Ashi, Deputy Governor

SPAIN
Prof. F. Murillo

SWEDEN
Mr. G. Sandberg, Legal Adviser
Mr. O. Stroh, Secretary-General

SWITZERLAND
Prof. H. Haug, President
Mr. P. Audeoud, Vice-President
Miss R. Lang, Member of Central Secretariat

TURKEY
Mr. K. Kocak, Member of Executive Committee
Mr. G. Koymmen, Member of the Treasury

UNITED ARAB REPUBLIC
Mr. Esmat A. Hammam, Legal Adviser, Min. Foreign Affairs
UNITED KINGDOM

Mr. I.D.M. Reid, Director, International Affairs

U. S. A.

Mr. G. Elsey, President
Mr. R.S. Eaton, Senior Vice-President
Mr. H. Starr, Adviser

U. S. S. R.

Prof. I. Blishchenko
Mrs. L. Tcherkasskaya, Head, International Relations

VIETNAM (Republic)

Dr. M. Pham Van Hat, President

YUGOSLAVIA

Dr. D. Mesterović, President
Mr. B. Jakovlević, Legal Adviser, Head of International Relations
Mrs. S. Splijak, Secretary-General
INTERNATIONAL COMMITTEE OF THE RED CROSS

Mr. M.A. Naville, President
Mrs. D. Bindschedler, Committee Member
Mr. R. Gallopin, Committee Member
Mr. J. Pictet, Committee Member
Mr. J.L. Le Fort, Secretary-General
Mr. C. Pilloud, Director
Mr. J. Wilhelm, Assistant Director
Mr. P. Gaillard, Assistant Director
Mr. A. Martin, Legal Adviser
Mr. J. de Preux, Legal Adviser
Mrs. D. Bujard, Legal Adviser
Mr. J. Mirimanoff-Chilikine, Legal Adviser
Mr. M. Veuthey, Legal Adviser

LEAGUE OF RED CROSS SOCIETIES

Mr. N. Abut, Under Secretary-General
Mr. J. Meurant, Special Assistant to the Secretary-General

UNITED NATIONS

Mr. M. Schreiber, Director of Human Rights Division
Mr. A.M. Ghoneim, Adviser
III. FORMAL OPENING OF THE CONFERENCE

The inaugural meeting of the Conference of Red Cross Experts was held on 1 March 1971 in the main hall of the International Court of Justice, in the Peace Palace. Under the chairmanship of Jonkheer G. Kraijenhoff, President of the General Committee of the Netherlands Red Cross, the ceremony took place in the presence of delegations of the National Societies of the Red Cross and representatives of the United Nations and of the League of Red Cross Societies, as well as of the members of the delegation of the International Committee of the Red Cross and of the Netherlands Red Cross. Representatives of the Netherlands Government and members of the diplomatic corps likewise took part in the inaugural meeting.

Jonkheer G. KRAIJENHOFF, President of the General Committee of the Netherlands Red Cross, opened the meeting with a few words of welcome voiced on behalf of the Netherlands Red Cross. It was particularly gratifying that the Conference of Red Cross Experts was being held in The Hague. Turning next to the work of the Conference, he pointed out that armed conflicts were at that moment taking place, and he added:

"In several respects we must face up to the consequences, and we have frequently observed that prevailing regulations are no longer in keeping with the needs of the time. Changes occur nowadays with bewildering rapidity; we must talk of revolution rather than evolution!"

"We of the Red Cross cannot and should not stand aloof from these events, for at the centre of all there is mankind. It is our responsibility to protect suffering humanity, and for that reason we must compliment the International Committee of the Red Cross for having so quickly taken the initiative after Istanbul."
Mr. Marcel A. NAVILLE, President of the International Committee of the Red Cross, expressed the gratitude of the International Committee to the Netherlands Government and to the City of The Hague, which had graciously offered patronage and hospitality to the Conference. He went on to say:

"I would not omit to point out the profound significance attending the choice of The Hague as the place for this first meeting of experts. It was thereby intended not only to give effect to the desire for the Conference to take place under the auspices of a legal tradition without equal, but also to give prominence to the fact that humanitarian law applicable to the victims of conflicts, that is to say, the law of Geneva, may no longer be systematically separated from the laws on the conduct of war, the law of The Hague."

After thanking the Netherlands Red Cross for having undertaken to organize the Conference, Mr. NAVILLE referred to the fruitful collaboration that exists between the United Nations and the ICRC in the field under review, adding the following observations:

"Twenty-two years have passed since the community of independent nations, still shaken by the horrors of the Second World War, built up in 1949 that monumental legal instrument, the Geneva Conventions. Planned and prepared by the International Committee of the Red Cross, its 400-odd articles are the most complete code of rules for the protection of the human being in the event of armed conflict. It is a duty incumbent on governments to spread knowledge of them widely and to ensure the observance of their provisions. And it is only right to underline that, to the extent that those Conventions are applied, they afford sufficient protection to the victims of the events they were designed to cover. We must therefore discount, as pointless and even dangerous, any idea of undertaking at present the general revision of these laws, which almost every nation in the world has ratified.

"It is true that some States which acceded to independence only after 1949, and therefore did not participate in drawing up the Conventions, may be inclined to ask that they be recast on the grounds that they are not suited to their way of thinking or way of life. The Red Cross must therefore endeavour to demonstrate to those countries that the Geneva Conventions..."
are standards of universal civilization to which all States can and should subscribe, for they were drawn up in a spirit of respect for the principles of non-discrimination, equality, and impartiality. Let us study carefully how the application of existing law may be improved, but let us avoid undermining a legal system instead of strengthening it.

"On the other hand, how urgent it is to supplement those Conventions in order that the protection of victims may be ensured in all sorts of new situations which arise as a result of the nature of contemporary conflicts. By underlining the urgency and need of this task, the XXIst International Conference of the Red Cross, at Istanbul in 1969, wished to make it clear that the reaffirmation and development of humanitarian law was the central concern of the Red Cross as a whole, and not only of the International Committee.

"On the basis of the mandate which was unanimously confirmed by Istanbul resolution XIII and encouraged by the support which the United Nations has just given it in resolution No. 2677, the International Committee of the Red Cross wished to initiate the public phase of its programme by calling together the experts of National Red Cross Societies for a broad exchange of views and to associate closely the National Societies in its work for the renovation of international humanitarian law. It will avail itself of this opportunity to make known the results of its work and to explain its views on the main problems."

The President of the International Committee of the Red Cross next drew attention to the various fields of activity in which there was a manifest need for additional rules to complete the body of international humanitarian law at present in force. Reverting to the role of the National Red Cross Societies, he added:

"In several ways the National Red Cross, Red Crescent and Red Lion and Sun Societies may contribute to the success of this work.

"In the first place, in the drawing up of humanitarian law, the nearer the approach to the government level and to a diplomatic conference, the more what are called the demands of State security, or military necessity, obtrude. True, all effective regulations
must take this into account, but the Red Cross as a whole must make it understood that certain basic humanitarian requirements predominate over any other consideration.

"In the second place, faced with the difficulties of the undertaking, certain circles and governments may be tempted to delay or postpone the work. There again, the Red Cross as a whole, and each National Society in its own country, should insist on the necessity of reaching, in a reasonably near future, general agreement on new protective provisions. In connection with this matter of humanitarian law studies, the National Societies and the ICRC have a decided advantage over other institutions; their work may be based on actual experience and first-hand knowledge at the individual level of the realities of present-day conflicts. That is a guarantee of realism and effectiveness."

The President of the International Committee of the Red Cross concluded his remarks with the following words:

"Hence the role of the Red Cross is fundamental here. It is its duty and original character to remind the Powers that in leading the people certain rules must be given priority. To safeguard the innocent, to refrain from inflicting needless suffering, to treat an enemy with humanity, is to increase the chances of a return to peace, to a peace which at heart all men seek, yet to achieve which, by a tragic contradiction, they incessantly wage war against each other."

Mr. Marc SCHREIBER, Director of the Division of Human Rights of the United Nations, emphasized that:

"The ideal relationship between a world organization which has assumed as one of its main objectives the universal promotion of human rights, and the Red Cross and Red Crescent, with their various national and international forms of organization, is evident. On a number of occasions over the years it has been manifest in concrete co-operation, each respecting the other's identity and particular methods. The sole aim of that co-operation was to affirm in a tangible manner the fellowship of mankind in order to provide at least an acceptable minimum of protection"
to those who had the greatest need as a result either of natural disasters or of the various forms of violence which humanity still inflicts upon its members."

Mr. SCHREIBER recalled the important resolution on "respect for human rights during periods of armed conflicts", which was adopted by the International Conference on Human Rights (Teheran, April-May 1968) and which constituted a starting-point for collaboration between the United Nations and the Red Cross. In particular, as he pointed out:

"The Secretary-General has had the benefit of extremely useful and generous co-operation from the International Committee of the Red Cross for the drawing up of two important reports on the respect of Human Rights in Time of Armed Conflicts. These were submitted to the General Assembly, which gave them a sympathetic hearing pending their discussion. The data they contain was jointly compiled. The Secretary-General's suggestions and proposals are his own. In accordance with the wish expressed by the General Assembly, it is proposed that they be submitted to examination by the Conference of Government Experts which the International Committee of the Red Cross has convened for next May in Geneva. The Secretary-General must report on the results of that conference and on any other relevant developments to the next session of the General Assembly. The joint study - carried out in close co-operation - of the complex and, as the English say, "vexed" question of the reaffirmation and development of international humanitarian law is being continued by the Red Cross and the United Nations. They should lead to definite results as soon as possible. There is undoubtedly no need to say that world public opinion requires and indeed demands it."

Finally, Mr. V.G.M. MARIJNEN, Burgomaster of The Hague, made the following closing remarks:

"I bid you welcome to this town where the Netherlands Red Cross has been established since 1867, the year of its foundation by royal decree of His Majesty William III.

"I congratulate the initiators of this conference who had the excellent idea of choosing this site
for your meeting. They could not have made a better choice than the Peace Palace, where solutions have already been worked out for important human problems. And for your organization too, the main objective is to supply comfort and relief to areas stricken by disasters of all kinds."

We would add that a greatly appreciated musical interlude by the Het Nederlands Kammerkoor followed the main speeches delivered during the opening meeting.
IV. ANALYTICAL REPORT OF DISCUSSIONS AT THE CONFERENCE
A. GENERAL DISCUSSION

As a preliminary, some experts underlined how gratifying was the interest displayed by the public for the development of international humanitarian law. They mentioned also the active part played by the United Nations General Assembly in examining during its last three sessions, the problem of respect for human rights in armed conflicts. They also expressed approval of the fact that the General Assembly, by its resolution No 2677 (XXV), conferred on the International Committee of the Red Cross a major role in the reaffirmation and development of international humanitarian law.

Some experts stated that the basic objective of the United Nations, pursuant to its Charter, was the maintenance of peace. Accordingly, they considered that even if the Red Cross ought to continue its assistance activities in the event of armed conflict, one of its tasks was to contribute to the maintenance of peace in the world. Its efforts should be directed to the promotion of understanding and co-operation among the nations.

However, that armed conflicts were waged was a reality and it was important to improve the protection for war victims and restrict the destructive effects of armed conflicts, with absolute respect for the prohibitions on resorting to the use of force embodied in the Charter and other United Nations instruments as the final objective.

On the whole, the experts recognized that the reaffirmation and development of international humanitarian law was urgently required in order to provide better protection for victims of armed conflicts. One expert, however, pointed out that the suffering engendered by armed conflicts was not due only to the fact that the rules of international humanitarian law were out of date, but rather to the general attitude of those who, when committing their hostile acts,
used methods incompatible with the general principles of the *jus in bello*. Some experts likewise stressed the importance of achieving a total prohibition of weapons of mass destruction. This question, which has special reference to the protection of the civilian population, is considered at greater length under part D of the present report.

The development of international humanitarian law was a basic and urgent need and it was for that reason that the ways and means of putting forward concrete proposals for rules should be examined attentively. In that connection, one of the experts pointed out that there were many international law instruments concluded within the framework of the United Nations which provided protection of human rights in armed conflicts. He also stressed the importance of the Geneva Conventions, the outcome of the bitter experience of war. It would be dangerous, he stated, for the development of international humanitarian law, to maintain too clear a distinction between instruments relating to human rights and those relating to international humanitarian law. Account had to be taken now of all branches of international law in the development of humanitarian law.

The importance of the humanitarian aid provided by the Red Cross in armed conflicts was underlined. The experts however brought to the fore that both the international and the national bodies of the Red Cross often met serious difficulties impeding their work. It was therefore necessary to strengthen the position of all Red Cross bodies and the protection to which they were entitled; rules enabling the Red Cross to develop its humanitarian action under the best possible conditions had also to be drawn up. Furthermore, the Red Cross should rely heavily on public opinion for success in its efforts.

The experts expressed the view that the development of international humanitarian law should entail not the general reform of the law in force and the revision of the Geneva Conventions, but rather a supplement to prevailing humanitarian law and the attunement of the "law of The Hague" with the "law of Geneva". In general, they were in favour of the drawing up of protocols additional to existing legal texts. Such protocols should be preceded by a preamble.

As to method, one expert suggested that all important new trends and developments in international law
should be recorded in a general document. This would provide the basis for the additional protocols that could be subsequently drawn up.
B. PROTECTION OF THE WOUNDED AND SICK

I. General considerations

An expert of the ICRC stressed the point that aid to the wounded and sick formed part of the traditional tasks of the Red Cross, which had been established, in the first instance, so that the wounded and sick might be better cared for in times of armed conflict. He enumerated, in the course of an introductory statement, the main problems that arise in this sphere.

A distinction should be drawn between armed conflict that is international and armed conflict that is not international. In the case of international armed conflict, the problem that arises is predominantly that of the protection to be afforded to members of the civilian medical personnel so that they may be better placed to carry out their mission.

The position is that the Fourth Geneva Convention of 1949 provides no more than a partial solution of the problem. The Convention affords protection solely to the personnel of civilian hospitals which are recognized as such by the State.

A related problem concerns the extension of the right to wear the red cross emblem to members of the civilian medical personnel; such persons visit exposed localities, in order to bring aid, and they must be protected.

In addition, there is need to define and supplement the protection of medical establishments and formations, as well as that of medical vehicles.

Finally - among other matters - it would unquestionably be desirable to prohibit, where detained persons are concerned, the removal or transplant of organs; and also to afford due protection to the medical profession: no one should compel a doctor to perform acts repugnant to his professional conscience.
These various provisions might be incorporated in a Protocol additional to the Fourth Geneva Convention of 1949, a revised draft of which has already been submitted to the Conference.

In the case of non-international armed conflict, to which only Article 3 - common to the four Geneva Conventions - is applicable, protection of the wounded and sick is wholly inadequate; it is merely stipulated that "the wounded and sick shall be collected and cared for". There is no mention of the respect due to the emblem, and no provision for the protection of military and civilian medical personnel or of medical establishments and transport. It would therefore be appropriate to fill the gaps, and, to that end, the ICRC has presented, in draft form, some provisions covering the matters in question; the provisions might form part of a Protocol additional to Article 3, common to the four Geneva Conventions. The simplicity of the texts fits the provisions to the nature of the conflict.

The Red Cross experts gave general approval to the proposals drawn up by the ICRC, merely offering certain comments designed to improve, from the point of view of substance and form, some of the provisions of the additional Protocols 1/.

On the question of form, one expert thought it would be appropriate to amend the wording of the title and Article 1 of the Protocol relating to international armed conflicts; reference should be made to the Geneva Conventions as a whole, and not solely to the Fourth Convention. Furthermore, the proposed two additional Protocols should be as similar as possible in form.

Several experts commented on the linking of the draft Protocols to instruments of international law already in force. There was the risk that the linking of an

1/ The Conference of Red Cross Experts set up a working party whose task it was to summarize the discussions in the Assembly and to submit observations on the two draft Protocols additional to the Geneva Conventions relative to the protection of the wounded and sick. See Annex II.
additional protocol to the Fourth Geneva Convention might give rise to two difficulties: (a) some of the projected provisions were related to the three other Conventions as well; and (b) the protocol would thus, in the form proposed, apply solely to cases of occupation of territory.

It was accordingly proposed to attach the first Protocol to all of the Geneva Conventions, and the second Protocol to Article 3, common to the four Conventions. Only one of the experts considered that the two instruments might with advantage be combined in a single instrument.

Lastly, on the question of the legal procedure to follow in establishing the texts, one expert suggested that it would be enough to refer to the existing articles proposed for expansion or amendment without reproducing them integrally; the additional Protocols should contain only the new material.

II. Examination of the draft Protocol additional to the Fourth Geneva Convention of 1949 relative to the protection of the wounded and sick 1/

From a substantive point of view, the experts examined several articles of this draft additional Protocol:

As regards article 4, para. 1, they expressed the hope that the protection to be afforded to medical establishments and units would be of a general character and include, for example, medical laboratories and radiological centres. A phrase such as "... and any other hospital installation or installation of medical nature..." might be adopted.

As regards Article 5, some experts feared that the proposed protection might be of too broad a scope, for were it to be extended to vehicles not recognized by the State, no control would be possible. On that ground it was suggested that the text should stipulate an obligation to provide a certificate in respect of ambulances identical in form with that proposed in article 4, para. 2, in respect of hospitals.

1/ See Document VII, Part one, pp.4 ff.
Furthermore, some experts hoped that protection would be extended to cover hospital trains and the transport of medicines and other medical supplies.

Some of the experts went further, expressing the hope that protection would likewise be afforded to factories engaged exclusively in the manufacture of medical and analogous products, as well as to related warehouses and to reserves of such supplies. It would doubtless not be possible to go beyond that point, for governments would probably be reluctant to accept the general protection of related products, for example, petrol for ambulances, foodstuffs for the wounded, etc.

Some experts were of opinion that article 5 concerning requisition - a matter covered by article 57 of the Fourth Convention - could be deleted.

As regards article 7, some experts submitted that the more intensive the effort to protect a large number of persons, the greater the risk of weakening the protection of medical personnel, in the strict sense of that term. The experts put forward two suggestions:

(a) Protection should also cover the civil defence medical service;

(b) Medical personnel should, during the term of employment, enjoy the same protection as military medical personnel.

Article 8 should be extended to the whole of the medical personnel.

Non-delation is an obligation incumbent not only upon all persons who have taken part in the administration of medical treatment, but upon any person who has had knowledge of the treatment.

Lastly, given that the wounded and sick are not always in a position, of their own initiative, to seek medical treatment, the experts proposed thus to amend paragraph 3: "... the wounded or sick whom he has treated."

In the opinion of one delegation, article 10 should call for the compilation of a list of States that had applied the recommended control measures; the list would be communicated by competent government or competent organization to all
Parties to the Geneva Conventions.

In general, the experts entered reservations in respect of article 11; it was calculated to give rise to confusion, and was even deemed superfluous. One expert, however, favoured its retention, as a means of obviating misuse of the red cross emblem. The other experts inclined to the view that the whole of the medical personnel, military and civilian, might display the red cross emblem, provided that its use was controlled by the State.

III. Examination of the draft Protocol additional to the Geneva Conventions relating to non-international armed conflicts. 1/

For this question, see the report of the Working Party entrusted with summarizing the Assembly discussions and submitting observations on the two draft Protocols additional to the Geneva Conventions relating to the protection of the wounded and sick 2/.

---

1/ See Document VII, Part one, pp. 30 ff.
2/ Report of the Working Group, Annex II.
C. MEASURES INTENDED TO REINFORCE THE APPLICATION OF THE LAW IN FORCE

Introducing the subject, one of the experts of the ICRC examined the four main questions raised in the field of the measures to be taken to reinforce the application of the law in force:

I. Dissemination of humanitarian principles and rules, national legislation for their application and instructions to be given to the armed forces.

II. Reinforcement of the rules relative to the supervision of the regular observance of the law in force.

III. Reinforcement of the rules relative to the penal sanctions for violations of the law in force.

IV. The problem of reprisals.

It is evident that these problems are closely linked, for each one has some relation, in one form or another, to the question of the application of the law.

I. Dissemination of humanitarian principles and rules \(^1\)

All delegations emphasized the extreme importance of ensuring the maximum possible dissemination of humanitarian rules. Several delegates laid particular stress on the activities which National Societies must set up in this field. Some mentioned the importance of the tasks that should be accomplished among youth, and, in this connection, some observations were presented regarding the school textbook prepared for primary school classes by the ICRC, *The Red Cross and My Country*.

\(^1\) See Document II, pp. 1 and ff.
One of the ICRC experts said that about fifty countries had already accepted the textbook, which had been translated into fifteen languages, and that an Arabic version was now being prepared. A Teacher's Manual for use with the textbook had also been issued.

The ICRC expert also pointed out that the ICRC had brought out in 1970 a Soldier's Manual and that a new edition was to come out soon. This booklet was intended for the army and police force.

One of the delegates thought that the Soldier's Manual should also contain the penal sanctions provided for by national legislation. Another delegate emphasized the importance of adapting teaching material to the developing countries. Several observations were made on the necessity of introducing courses of international humanitarian law in universities. Some stressed the co-operation on this matter between the Red Cross and UNESCO.

One of the experts put forward a certain number of suggestions regarding the creation of advisers who would be attached to the officers in charge of military units; they would be given officer rank in order to enjoy all necessary facilities; they would instruct the rank and file on the law of armed conflicts and would take steps to prevent breaches of this law and to conclude certain agreements with the local civilian population. Their principal duty would be the dissemination of the Conventions wherever necessary. These advisers could be trained by National Societies working in close co-operation with the ICRC.

Concerning co-operation between National Societies and ICRC for the dissemination and development of humanitarian law, very many delegates submitted observations and suggestions. As this problem was debated in the general closing discussion, it is dealt with here under section G.

II. Supervision of the regular observance of the law in force 1/

Several delegates pointed out the importance of

1/ See Document II, pp. 10 and ff.
supervision provided for in the Geneva Conventions of 1949 in common Articles 8, 9 and 10 (Articles 9, 10 and 11 of the Fourth Convention). Some delegates considered that the system of scrutiny provided for could work adequately and that it was only necessary to strengthen it by eliminating certain obstacles to it. Others, on the other hand, put forward certain ideas relative to the creation of a permanent supervisory body and made references on that subject to the two reports of the United Nations Secretary-General on the "Respect for Human Rights in Armed Conflicts" submitted to the XXIVth and XXVth sessions of the General Assembly. Some delegates thought that the creation of such a body would not enter into competition with the already established activity of other organs but could supplement it satisfactorily.

One of the delegates expressed the fear that such a permanent international supervisory body would not be able to exert strict neutrality owing to the political pressures to which it would be subjected.

Many delegates examined the role of the ICRC in this field. Some of them stated that they felt that the ICRC was the sole competent organ in this domain, and one of the delegates suggested that common Article 10 should be supplemented so that the ICRC should be designated automatically as the substitute for Protecting Powers. Another delegate suggested that the ICRC should set up a permanent body that would remain under Swiss administration, but with a staff that would be partly internationalized. Some delegates pointed out the limitations imposed upon the ICRC, taking into account the fact that the duties of the Protecting Powers often assume a political character: the strengthening of ICRC activities should therefore be envisaged only within a purely humanitarian framework.

When this point was examined, the representatives of the ICRC wished to emphasize that the International Committee, in accordance with the statements it had already made shortly after the conclusion of the Geneva Conventions of 1949, was always prepared, in principle, to act as the substitute for the Protecting Powers, in case of the absence of the latter, with the agreement of the two Parties concerned.

Other observations were put forward as to the role which National Societies would be called upon to play (one of the delegates declared that some explicit stipulation on this point should be included within the mechanism provided by Articles 8, 9 and 10). Several experts brought up the problem
of international assistance in non-international armed conflicts, and this question will be examined further on.

In substance, the experts raised the complex nature of this question. Some of them considered that it would be appropriate to define more precisely the functions, mandate and duties of the institutions in question, in particular those of the Protecting Powers.

III. Reinforcement of the rules relative to penal sanctions for violations of the law in force

One of the delegates suggested drawing up an international penal code for war crimes and presented in this respect a certain number of observations on the "grave breaches" defined in the Geneva Conventions of 1949, in Article 50 of the 1st Convention, Article 51 of the IIInd Convention, Article 130 of the IIIrd Convention and Article 147 of the IVth Convention: wilful killing; torture or inhuman treatment, including biological experiments; wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial; taking of hostages. Precise definitions of these grave breaches should be made.

Several delegates emphasized that States should be encouraged to accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which came into force in November 1970.

Finally, one of the experts suggested that a legal instrument be drawn up listing some of the fundamental rules in this particular sphere, inter alia: that persons causing needless suffering commit a crime against humanity, that the authors of such acts shall not claim their ignorance of the fundamental principles of humanitarian law, and that all persons found guilty of such crimes shall nevertheless have

1/ See Document II, pp. 35 and ff.
the benefit of a fair and regular trial.

The dissemination of these very simple rules should contribute to the respect of international humanitarian law.

IV. The problem of reprisals 1/

One of the delegates insisted that reprisals against the civilian population, which are already prohibited by Article 33 of the IVth Convention in the case of protected persons and their property, should be prohibited under all circumstances. Another delegate spoke of the norms relative to the prohibition of reprisals considered as imperative rules of international humanitarian law (jus cogens).

1/ See Document II, pp. 49 and ff.
D. PROTECTION OF THE CIVILIAN POPULATION
AGAINST DANGERS OF HOSTILITIES 1/

One of the experts of the ICRC introduced the question. After having presented the general problems raised by the protection of civilian populations (distinction between military objectives and non-military elements; problem of the definition of the civilian population; rules relative to the prohibition of attacking the population; protection of non-military objects; precautions to be taken to spare, as far as possible, populations from dangers of hostilities), the expert put forward four special points to the conference:

- the special protection of certain categories of the civilian population,
- active and passive precautions,
- creation of zones of refuge,
- relief for civilian populations.

Before examining these particular points, many experts spoke on general matters, emphasizing that the protection of civilian populations against dangers of hostilities should remain at the centre of Red Cross concern.

I. QUESTIONS OF A GENERAL NATURE

1. Definition and protection of the civilian population

Several experts insisted at the outset on the distinction that belligerents should make, under all circumstances, between licit and illicit objectives 2/.

1/ See Document III "Protection of the civilian population against dangers of hostilities".

2/ See Document III, Part One, Title II, Chap. 1.
Concerning the civilian population, the principle under which a distinction must be established between persons belonging to the civilian population and those taking part in hostilities should be maintained and reaffirmed.

Two experts insisted on the need for a definition of the civilian population 1/, as there was no such definition to be found in any of the legal instruments in force. They expressed their preference for a negative definition, of the type appearing in Article 4 of the 1956 Draft Rules. On the other hand, the experts did not agree on the question of those persons who, till now, have been called "quasi-combatants", i.e. those civilians whose work was linked to the military effort. Some experts feared that if an attempt were made to limit the notion of the civilian population by excluding factory workers - by reason of the fact that they contributed to the military effort - there would be the danger that it would lead to a justification for total war. Others considered, on the other hand, that any persons contributing towards augmenting the military might of a party to a conflict were combatants in the wide sense of the term, that is to say, they were a licit objective, unless they joined again the ranks of the civilian population and ceased their former activity. In the opinion of these experts, government officials and members of the government were licit military objects if they exerted any influence affecting military decisions.

Finally, one of the experts pointed out that, according to whether the armed conflict was internal or international, the categories of persons constituting the civilian population could vary, thereby making it more difficult to establish a single definition, which would be valid for all types of conflicts. Thus, the police force which is often classed among the civilian population in an international conflict, becomes a significant element of the struggle in an internal conflict.

Already during the general discussion, the experts had all recalled that it was urgent to take steps to ensure a better protection of the victims of armed conflicts. One of the experts pointed out that conventional law did not contain any precise rule as to the protection of the civilian population 2/; in his opinion, all indiscriminate military activities could not be considered to be already expressly prohibited and it was found that the general principles formulated in resolutions of the International Conferences of

1/ See Document III, Part One, Title II, Chap. 2.
2/ See Document III, Part One, Title II, Chap. 3.
the Red Cross and of the United Nations General Assembly were not rules binding upon States. This expert therefore believed that National Societies must approach governments in order to show them the need for appropriate rules of international law to be created. Other experts thought that the actual prohibition in itself to attack the civilian population had already become a norm in customary law, according to which there was, for example, an absolute prohibition to bomb civilians.

In this connection, one of the experts did not fail to observe that the prohibition of reprisals 1/ directed against civilian populations, already contained in the Fourth Geneva Convention of 1949, constituted an integral part of the law in force, but that it was in fact often violated during armed conflicts. In the development of the law, care should be taken that this prohibition were not weakened; on the contrary it should be strengthened. Several experts supported this opinion.

The fate of the civilian population depended also, to a large extent, on the protection given to non-military objects 2/. In this regard, the destruction of crops, foodstuffs and the factories which are essential for their production, as well as springs and other water resources, must, according to several experts, be expressly prohibited. Others mentioned a whole list of objects, which, by virtue of their use, should be the subject of particular protection. One of the experts suggested that the ICRC might draw up a schedule of non-military objects which should enjoy particular protection, such as medical equipment and supplies.

2. Weapons and the protection of the civilian population 3/

When the important question of weapons of mass destruction was approached, several experts pointed out that the Red Cross, and the ICRC in particular, had always condemned their utilization and that they were already prohibited by positive international law. Other experts expressed

1/ See Document III, Part One, Title II, Chap. 3.
2/ See Document III, Part One, Title II, Chaps. 4 - 6.
3/ See Document III, Part One, Title II, Chap. 7, and Title III.
some doubts on this last point.

Some experts quoted resolution No. 1 adopted by the Institute of International Law at its Edinburgh Session in September 1969 and which, in Article 7, called for a general prohibition of weapons 1/. One of the experts made, in the same sense, another proposal relative to indiscriminate weapons 2/. Many experts thought that, if it were desired to obtain a real protection of the civilian population and also to allow the Red Cross to carry out its tasks in time of armed conflict, the prohibition of the use of weapons which can put into danger the distinction to be observed by belligerents between military objectives and the civilian population must be reaffirmed.

In the framework of its future studies, the ICRC was invited to take into consideration the different instruments and documents, drafted within the United Nations, such as General Assembly resolutions 1653, 1925, 2454 A and 2603, not in order to draw up new conventions in this field but rather not to be behind in relation to United Nations studies relative to the development of international law. Regarding this, very close co-operation must be maintained between the United Nations and the ICRC.

One of the experts thought that it would be expedient to reaffirm the prohibition of weapons of mass destruction and biological and chemical weapons, including napalm and defoliants, even though they were already prohibited by the law in force. Another expert pointed out that even conventional weapons - licit weapons used against military objectives - could be employed blindly, and he gave the example of a

1/ This article is as follows: "Existing international law prohibits the use of all weapons which, by their nature, affect indiscriminately both military objectives and non-military objects, or both armed forces and civilian populations. In particular, it prohibits the use of weapons the destructive effect of which is so great that it cannot be limited to specific military objectives or is otherwise uncontrollable (self-generating weapons), as well as of 'blind' weapons."

2/ This proposal provides: "Without prejudice to the present or future prohibition of certain weapons, the use is prohibited of weapons, which by their very nature, or in the case of kinds of weapons, which by their use, can make no distinction between military objectives and civilian population; further, the use is prohibited of weapons which cause needless suffering."
grenade which, when placed at the entrance of a room could hurt all civilians stepping in. Thus, in this case, it is not the nature of the weapon that is illicit but the use to which it is put.

II. SPECIAL QUESTIONS

1. Protection of certain categories of civilians

The experts divided the persons who should enjoy special protection into two main categories; the first included weak and vulnerable persons, and the second those others going to their aid.

In the first category, the following were mentioned:

Children: Article 24 of the Fourth Convention, though excellent, was all the same not adequate because it did not cover such situations, of topical interest, where children who had been looked after abroad should be able to return to their own country at the end of hostilities or when their medical treatment was over. On the basis of provisions in the Third and Fourth Conventions, relative to the communication of names of prisoners of war, a similar rule should be proposed for children whose names would be supplied to a central organization, such as the Central Tracing Agency in Geneva. The latter would keep in touch with parents through National Societies or UNICEF, who would undertake to look after them. The problem of adoption was also raised.

Physically and mentally handicapped persons: These were not mentioned in the conventions in force, as they were not considered medically as sick persons. In this regard, the specialized institutions and personnel caring for them should be protected.

The aged: This problem was becoming more acute as the mean age of the population was getting higher. The people and personnel affected should be protected. Medical and related equipment was mentioned: it was suggested that it might be useful to draw up a list of such equipment.
Women in special condition: (expectant mothers, maternity cases, mothers of infants).

In the second category were included, besides medical personnel 1/, already dealt with earlier, the personnel of non-military civil defence organizations 2/.

These organizations deserved special protection, not in themselves, but by virtue of the relief missions which they accomplished, particularly because they were exposed to grave perils. It was pointed out, regarding this question, that the medical services of civil defence organizations could wear the red cross emblem, while other civil defence staff would display a special emblem. This special protection, arising from the development of Article 63 of the Fourth Geneva Convention, was all the more essential as persons belong to civil defence bodies could be mistaken in the field for military forces.

Two other experts raised the problem of the protection of members of the armed forces carrying out civil defence tasks. Two cases were considered: in some countries, these soldiers were assigned duties exclusively for the benefit of civil defence 3/, and were, like military doctors and chaplains, non-combatants; in other countries, military personnel, who were combatants in the customary course of events, could be called upon to perform civil defence tasks. In both cases, these persons, who belonged to the army, could, under the law in force, be considered as prisoners of war, if they fell into hands of the enemy. The problem of their protection, by reason of the tasks they performed for the benefit of the civilian population, was therefore more complex and required special study.

1/ See above, Section B.

2/ See Document III, Part One, Title II, Chap. 3 and Part Two.

3/ For example, members of the fire brigade in a big European capital which had been attached to the army were considered, during the Second World War to be non-combatants, and were authorized by the occupying forces to carry out their duties.
2. Relief actions and the role of National Societies

On the subject of relief, one of the experts mentioned the important Resolution XXVI adopted by the XXIst International Conference of the Red Cross, reaffirmed by resolution 2675 of the 25th United Nations General Assembly. The Declaration of Principles contained in the Istanbul resolution has laid down a certain number of principles which have not yet been accepted equally favourably. For example,

1/ See Document III, Part One, Title III, Chap. 5.

2/ Here are the six principles of this resolution:

" 1. The fundamental concern of mankind and of the international community in disaster situations is the protection and welfare of the individual and the safeguarding of basic human rights.

" 2. Relief by impartial international humanitarian organizations for civilian populations in natural or other disaster situations should as far as possible be treated as a humanitarian and non-political matter and should be so organised as to avoid prejudicing sovereign and other legal rights in order that the confidence of the parties to a conflict in the impartiality of such organisations may be preserved.

" 3. The activities of impartial international humanitarian organisations for the benefit of civilian populations should be co-ordinated in order to secure prompt action and effective allocation of resources and to avoid duplication of effort.

" 4. Disaster relief for the benefit of civilian populations is to be provided without discrimination and the offer of such relief by an impartial international humanitarian organisation ought not to be regarded as an unfriendly act.

" 5. All States are requested to exercise their sovereign and other legal rights so as to facilitate the transit, admission and distribution of relief supplies provided by impartial international humanitarian organisations for the benefit of civilian populations in disaster areas when disaster situations imperil the life and welfare of such populations.

" 6. All authorities in disaster areas should facilitate relief activities by impartial international humanitarian organisations for the benefit of civilian populations.".
the first principle has been accepted by the international community, the second has only been recommended, the third has not yet been carried out, the fourth is merely in response to a certain trend, while the fifth and sixth, too, have not yet been accepted. Hence, it would be useful, for the ICRC and the League as well as for National Societies, to work out rules which would give life to these Istanbul principles, and which could be incorporated into the protocol proposed by the ICRC for the protection of the civilian populations.

The kind of relief to be given should also be mentioned, namely, essential foodstuffs and medical supplies vital to survival. According to some experts, the principle of the confidence which the Red Cross should enjoy should even be admitted and enshrined in the legal instrument to be created; also its right to act for the benefit of the civilian population, without requiring for each particular case the consent of the governments concerned, should be stipulated.

To sum up, one of the experts proposed that the following principles should be embodied in a legal instrument:

- no obstacles should be placed to the organization of relief,
- fundamental human rights should be safeguarded,
- activities of impartial humanitarian organizations should be internationally admitted,
- relief action should be co-ordinated,
- States should accept the transit of relief through their territory,
- the responsible authorities should facilitate distribution of relief.

In relation with the problem of relief, one of the experts considered that the position of National Societies in the provisions of the Geneva Conventions was not satisfactory: it did not correspond to the role which they could play. He put forward, in this regard, some ideas which could be included in a legal instrument. A general article should recognize the usefulness and significance of the work accomplished by National Societies; there should be a provision inviting authorities to allow National Societies to
develop in a general way their activities, thus enshrining their autonomous status; National Societies should receive assistance and facilities from the authorities concerned; the authorities should grant National Societies various privileges in order that their premises might be protected and so that their various services might carry out their work; Article 63 of the Fourth Convention should be supplemented, revised and made more precise, for the experience of recent conflicts had shown that the work accomplished by National Societies in occupied territory should be better protected; finally, there should be a provision listing, though not exhaustively, the principal activities of National Societies. In that experts' view the authority of National Societies throughout the world would be strengthened by such provisions.

3. **Precautions to be taken for the benefit of the civilian population - the problem of zones of refuge and safety zones** 1/

The "active" and "passive" precautions to be taken regarding the civilian population by the parties to a conflict concerned, according to one of the experts, enemy civilians as well as their own nationals. Another expert thought that the problem of "passive" precautions should be tackled very cautiously, so as to avoid compelling States to create, for example, safety zones and zones of refuge, in order that a State attacked should not be made responsible for harm suffered by the population, by reason of the fact that it did not take such precautions.

One of the experts recalled, in connection with the creation of special zones, that care must be taken at all costs to avoid suggesting any idea whereby the perpetrator of an attack would be allowed, outside these zones, to have recourse to indiscriminate weapons or to carry out indiscriminate attacks.

1/ See Document III, Part One, Title II, Chap. 7 and Title III, Chap. 1.
III. CONCLUSIONS

In a general way, the experts recognized that, as it stood today, the law relative to the protection of the civilian population was definitely inadequate. In written law, provisions were few in number, while customary law provisions lacked precision and clarity. International resolutions constituted an excellent guide, but one should now advance a stage further. One of the experts thought that, in a first phase, a solemn declaration by the United Nations should be obtained, in which the validity of a number of rules for the benefit of the civilian population would be recognized. In a second phase, a legal instrument should be definitively worked out and submitted to governments for accession. Should this be in the form of a new set of conventions or in the form of protocols? For the present, the experts favoured a solution consisting of additional protocols to the law in force, especially where the protection of the civilian population was concerned.
E. PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS

I. General considerations

In an introductory paper one of the experts of the ICRC examined the main problems to be solved if effective protection were to be provided for the victims of non-international armed conflicts.

Some armed conflicts of that kind were on such a scale and caused so many victims that - irrespective of the characterization of the conflict - there was every justification to consider that they ought to entail the application of international humanitarian law as a whole.

In genuinely non-international armed conflicts, a concept yet to be defined, Article 3 of all four Geneva Conventions no longer provided adequate protection for victims so that it should be developed by, for example, an additional protocol adapting to the character of conflict the essential provisions of prevailing international humanitarian law.

The particular problems arising from internal disorders and tensions, and ways and means of assisting the many victims of such increasingly frequent situations, had also to be examined.

As a preliminary step, the Red Cross experts formulated some general considerations. They first underlined the difficulties of the problems arising from non-international armed conflicts. They pointed out that such conflicts involved two hostile parties of differing legal status, namely the authorities in power and the hostile opposition whose degree of organization might vary from the inchoate to the highly developed and whose motives might be complex, who might seek to seize power or merely overthrow the authorities, an aim considered almost criminal by some experts. Naturally, the authorities in power, who would feel responsible for the territory under their control, would be loath to recognize the rebels who threatened their very existence and would tend
to consider them as criminals.

The experts underlined that whatever the origin of a non-international armed conflict - political opposition, social tension, economic difficulties, racial disturbances, and so forth - it was becoming less and less frequent for such conflicts to be devoid of international aspects.

In spite of these difficulties, the experts agreed that an effort must be made to ensure the better application of international humanitarian law and to develop the law applicable in the situations under consideration. In the accomplishment of that aim, they realized the necessity for realism by seeking first and foremost to make the work of the Red Cross easier for the benefit of victims of hostilities, and secondly by seeking to give governments cause for greater confidence in the Red Cross.

Some experts pointed out that there were two opposing tendencies: the one for respect of the principle of National sovereignty and avoidance of interference in the internal affairs of the State; the other no longer admitting that the international community might permit systematic violations of human rights on the grounds of its inability to intervene pursuant to the principle of national sovereignty.

Respect for human rights had become the business of the international community as a whole; this was clear from several resolutions of the United Nations General Assembly relating to certain situations of non-international armed conflict. That principle, sanctioned by the international community, could provide the basis for a solution to the problems relating to the protection of victims of non-international armed conflicts.

II. Non-international armed conflicts entailing the application of international humanitarian law as a whole

In general, the ICRC proposals were approved 1/. The experts agreed that international humanitarian law as a

1/ See page 13 ff., Document V.
whole should apply to a non-international armed conflict between the authorities in power and insurgents whose organization had many features of a State, including, inter alia, control of part of the territory, and to any non-international armed conflict in which one of the parties received help from abroad 1/.

The experts agreed that insurgents exercising effective control over some part of the territory should assume responsibility for the humane treatment of the civilian population even if that population were not favourable to it.

They nevertheless underlined the fact that where either of these situations prevailed, international humanitarian law could probably not be fully applied from the outset of hostilities. In addition, the conceptions of nationality and occupation would constitute obstacles to the application of the Fourth Geneva Convention as a whole. They therefore suggested that a list of the most important articles to be respected in all circumstances be drawn up. That list could be included in a protocol additional to the common Article 3 of the four Geneva Conventions or in a protocol to the Fourth Geneva Convention.

The experts urged that special attention be given to "wars of liberation". Without going into the problem of defining such conflicts, they held the view that it was necessary to draw up a rule stipulating that the essential provisions or principles of the Geneva Conventions should be applied in the circumstances under consideration.

Some experts made remarks on terminology. They feared that the expression "wars of liberation" could be considered to have a political sound. It was preferable to avoid it as the motivating idea of the Red Cross was to help victims in a strictly humanitarian manner. Other experts, in contrast, considered that the examination of problems from a modern point of view was not to be feared. The expression "wars of liberation" had been widely used by writers on international law and in United Nations resolutions. The significance of the expression was clearly defined and the

1/ See page 17, Document V.
Red Cross should not hesitate to use it 1/.

III. The definition of the non-international armed conflict.

Under the heading "Definition of the Non-International Armed Conflict" 2/ the ICRC examined ways and means of improving the application of humanitarian law, which should not depend solely on the good will of the States concerned.

Indeed, when events occurring on a territory conformed to certain subjective criteria, the existence of non-international armed conflict could not be denied. The International Committee had examined two ways of solving this problem: the possibility of creating an objective procedure for establishing the existence of armed conflicts, and the definition of the non-international armed conflict.

In its proposals on the first point, the ICRC had considered that the solution which would consist of a procedure for the objective determination of the existence of an armed conflict seemed impracticable. In view of the importance of the matter, however, the ICRC submitted it to government experts, requesting them to let it know if they were of a different opinion 2/.

Only one Red Cross expert thought that fresh use could be made of the principle of recognition of belligerent status by conferring on some new or existing body authority to establish, in a manner binding on the parties involved,

1/ The ICRC has stated in its documentation that the use of this expression, which is current in legal literature on the law of armed conflicts and which was used in the reports which the International Committee submitted to the XXIst International Conference of the Red Cross, in no way implies the expression of any opinion on the part of the Red Cross.

2/ See page 36, ff. of Document V.

3/ See page 41, Document V.
whether an armed conflict existed or not.

The other experts were more reserved on the advisability of such an objective procedure. They feared that a body detailed to decide on the existence or inexistence of armed conflicts would not be sufficiently immune from all political influence and would not be in a position to take decisions prompted by strictly humanitarian considerations.

Some experts pointed out that in 1949 agreement on the definition of the non-international armed conflict could not be reached; Article 3 itself contained no such definition. In general, the experts hoped that a strict definition of non-international armed conflict would not be sought, stating that such a definition would result in marginal and therefore controversial cases, and in cases which would not come within the definition.

Others, referring to suggestions put forward by experts consulted in 1970, considered that it would be easier to extrapolate from the definition of the international armed conflict, for there were already, in international conventions and United Nations resolutions, established principles clearly laying down that certain situations were international conflicts.

The Red Cross experts were more in favour of establishing a non-exhaustive list 1/ of actual cases of non-international armed conflict, on condition that the list was drawn up pragmatically.

IV. Application of the essential rules of the 1949 Geneva Conventions in non-international armed conflicts (Development of Article 3)

The Red Cross experts were in general in favour of developing Article 3 with a view to strengthening the protection of victims of non-international armed conflicts. They

1/ Such is the intention of the ICRC which, in its proposals relating to the definition of the non-international armed conflict, sought to draw up a non-exhaustive illustrative list of actual situations which could be considered as armed conflicts of this kind. See page 46, Document V.
supported the ICRC's efforts to ensure respect in non-international armed conflicts for the essential rules of prevailing international humanitarian law. They recognized that it was necessary to improve protection for combatants and the civilian population, and to extend that protection to civilians detained as a consequence of events. Some experts expressed the hope that the penalties laid down for war crimes would be accompanied by the setting up of an international tribunal.

The Red Cross experts recognized that the best way of developing Article 3 of the four Geneva Conventions would be by an additional protocol. Only one expert considered that a non-compulsory addendum would be preferable to a protocol and more in keeping with the spirit of Article 3.

The Red Cross experts applied themselves particularly to the examination of three aspects of the development of Article 3:

1) The protection of the wounded and the sick
2) The legal obligations incumbent on the party to the conflict opposing the authorities in power
3) The extension of the ICRC humanitarian role.

1) **The Protection of the wounded and the sick**

The ICRC had soon realized that the protection afforded by Article 3 common to the four Geneva Conventions to the wounded and the sick was inadequate. The article did not mention, for example, the protection of medical personnel, establishments and transports, and said nothing on the respect due to the red cross sign. The ICRC therefore drew up a draft protocol which includes a minimum of essential rules taken from the First and Fourth Conventions 1/. This draft could be included in an additional protocol to Article 3. (For the opinion of Red Cross experts on this question, see page 23).

---

1/ See pp. 30 ff. of Document VII and pp. 53 ff. of Document V.
2) The legal obligations incumbent on the party to the conflict opposing the authorities in power

Some experts pointed out that there were a number of fundamental principles in the Geneva Conventions which presupposed a balance of the forces involved. However, in non-international armed conflict, such a balance rarely existed. Nevertheless, it was necessary for the rules to be applied by both parties. The experts stated that very often the party in conflict with the authorities in power contested not only the authorities' legality but also the validity of international treaties signed by them. In any case, the rebels did not consider themselves bound by such treaties.

The experts therefore wondered whether an effort should not be made to obtain from rebel parties a formal statement undertaking to apply the relevant humanitarian rules of Article 3 either as it stood or as developed in an additional protocol. Such a statement could be one of various kinds: the insurgents could conceivably declare their accession to the Geneva Conventions or, more simply, the parties could declare themselves prepared to apply the Geneva Conventions as a whole or one or other of those Conventions.

In any case, it was expedient to remind the parties to a conflict that it was in their own interest and that of the population to respect the relevant rules even if the enemy did not do so.

Other experts underlined the fact that in reality a statement by the forces in opposition to the authorities in power was not necessary as they should respect the provisions of Article 3. The ICRC has always considered that Article 3, which lays down fundamental principles for the protection of human beings, was binding not only on the government of the contracting State but on the population as a whole, and that rebels were therefore under an obligation to respect its provisions. If Article 3 were to be developed by means of an additional protocol the situation in law would not be radically changed and insurgents, like authorities in power, could justifiably be considered bound to observe the new provisions.
3) Extension of the ICRC humanitarian role

Many Red Cross experts considered that the International Committee’s proposals for the extension of its humanitarian mission 1/ were too timid. The ICRC is submitting this important question to the government experts without putting forward any concrete proposals.

Most of the Red Cross experts were of the opinion that the ICRC’s right of initiative should be reinforced so that the Committee could automatically act in the event of non-international armed conflict. As one of the experts pointed out, Protecting Powers, in existing law, could not act in non-international armed conflict. Moreover, if a special body were to be set up, by the United Nations for example, to act as a substitute for Protecting Powers, that body would certainly encounter difficulties of a political nature when intervening to promote the application of international humanitarian law. The question therefore arose whether it was not possible for the ICRC to act as an automatic substitute for Protecting Powers which parties to a conflict would be obliged to accept.

One expert nevertheless raised the question of whether States were prepared to accept the compulsory intervention of the ICRC or of any other body in such situations. However, in view of the importance of the question, he thought it was necessary to submit it to study by government experts.

V. The role of the National Red Cross Societies in non-international armed conflict

The experts stressed that the role which National Societies must assume in the event of non-international armed conflict should be reinforced and mentioned in the additional protocol to Article 3. A provision could be envisaged whereby parties to a conflict would be bound to facilitate the work of National Societies.

The experts were of course well aware of the difficulties confronting National Societies, and particularly

1/ See pp. 73 ff., Document V.
the National Society of a country in which conflict had broken out. Such a National Society would be in a difficult position when it maintained close contact with the authorities in power and it would not be easy for it to discharge its mission impartially. However, its work was of primary importance and it was also important that other National Societies be enabled to act. In addition, as the experts pointed out, in several conflicts which had broken out since 1949, the National Societies had been able to intervene effectively and, at first sight the Red Cross experts believed it possible to reach agreement on a provision relating to the mission which National Societies could undertake during non-international armed conflicts.

VI. International relief

The experts were anxious to find ways and means to forward international relief in good time and they emphasized how necessary it was for such relief to reach victims from the outset of hostilities.

SITUATIONS OF INTERNATIONAL DISTURBANCES AND INTERNAL TENSIONS 1/

By way of preliminary, the experts pointed out that these situations, which were becoming more and more frequent, were very complex since there were very various motives underlying their outbreak. In view of the high number of their victims, it was necessary for the Red Cross to intervene. It was, however, important to avoid giving the impression of interfering in the internal affairs of the State in question, so that intervention should be restricted to purely humanitarian work.

The draft "Declaration of fundamental rights of the

1/ See p. 79 ff., Document V.
individual in time of internal disturbances or public emergency" contained in the documentation prepared by the ICRC 1/ met with the experts' general approval. They pointed out that although some of its provisions were embodied in International Covenants on human rights, the Declaration went further, since, unlike those Covenants, it included judicial guarantees in emergency situations. Moreover, the Declaration provided for the care of the wounded and sick, another provision which was not included in the International Covenants in question.

The experts supported also the idea contained in paragraph 5 of the Declaration, namely that any person deprived of liberty due to events shall at all times be treated humanely. They pointed to the conditions of hardship in which such persons might be detained and they were in favour of the ICRC's being authorized to visit such persons.

In conclusion, one expert stated that the draft Declaration did not duplicate existing law - whether in force or not so far in force - and that it was in any case in keeping with Red Cross ideals.

1/ See p. 86, Document V.
F. RULES APPLICABLE IN GUERRILLA WARFARE

In an introductory paper, one of the experts of the International Committee of the Red Cross examined the various international humanitarian law problems to which guerrilla warfare gives rise.

The basic problem raised by guerrilla warfare - which is a method of fighting used both in international and in internal armed conflicts - is: how can guerrilla fighters not complying with the conditions laid down in article 4(2) of the Third Geneva Convention be granted, in case of their capture or surrender, prisoner of war status or at least equivalent treatment consistent with that Convention.

In its documentation, the ICRC suggests the outline of a protocol interpreting article 4(2) of the Third Geneva Convention of 1949 and listing the conditions required of guerrilla fighters to qualify in the event of capture or surrender for prisoner of war status.

Another problem of major importance is the plight of the civilian population which is the main victim of conflicts conducted by guerrilla methods.

Account must also be taken of the fact that guerrilla warfare has been the cause of many innovations by parties to conflict in the means of injuring an enemy. How to limit the use of such means, in the light of international law rules relating to the conduct of hostilities, has therefore also to be examined.

To begin with the Red Cross experts made a point of distinguishing between guerrilla warfare in international and in non-international conflicts.

The experts emphasized that guerrilla warfare in an international armed conflict was, in most cases, waged by a recognized government held to be responsible for the actions of the guerrilleros. They pointed out that the very concept of combatant had changed considerably since 1949, and even
more so since 1907, and that the principle that any government was entitled to organize its armed forces as it pleased had to be recognized. However, they did not lose sight of the fact that guerrilla forces did not always depend on a responsible government, even in international armed conflict. Experience had shown, indeed, that a liberation movement using guerrilla methods could be formed, in international armed conflict, independently of the recognized authorities. Such a movement could even have a dual function: to fight the troops of an invading State, or to fight its own country's regular forces which it considers betray their cause or nation. In such situations it has been observed that when the resistance movement reaches a certain stage of development and there is a balance of the opposing forces the invader treats captured resistance members more humanely, and prisoners of war are exchanged.

The experts pointed out that in non-international armed conflicts too, both sides could resort to guerrilla methods. One expert underlined the difficulty of drawing up provisions relevant to "urban guerrilla warfare", occurring mainly in non-international armed conflicts and often involving the use of terrorism which struck innocent victims. It had to be admitted that the position of authorities in power was very difficult when they had to face up to such practices as terrorism and kidnapping.

As can be seen, certain Red Cross experts emphasized the complexity of the problem raised by guerrilla warfare. It was a method employed by the weak against the strong, by the aggressed against the aggressor, by the people in a struggle for national liberation; it was a method taken up spontaneously by the people and which required time to become organized; and as private wars were no longer admissible, the objectives of movements using guerrilla tactics in their fight must be political and have popular support.

The experts considered that "guerrilleros" should, from the very beginning of their struggle, be able to count on certain guarantees. They pointed out that even the worst criminals had judicial guarantees, so that "guerrilleros" should not be less well treated. Moreover, such guarantees were necessary to induce them to have as much respect as possible for the law of armed conflicts.

Examination of the conditions laid down in article 4 (2) of the Third Geneva Convention.
The Red Cross experts in general approved the ICRC suggestion of an interpretative protocol \(^1\) on the conditions which, according to article 4(2) of the Third Geneva Convention, resistance movements must fulfill in order to qualify for prisoner of war status. Some, however, thought it might not be sufficient merely to bring up-to-date those conditions which, in their opinion, were out-moded; they considered it necessary to draw up new rules.

"... commanded by a person responsible for his subordinates" Art. 4 (2) (a);

This condition appeared still to be valid. However, the experts pointed out that during occupation a population could spontaneously take up arms, in which case this requirement would be inappropriate. It should therefore be reconsidered.

"... having a fixed distinctive sign recognizable at a distance" Art. 4 (2) (b);

As some experts mentioned, modern armies wore camouflage battledress. For that reason "guerrilleros" could not be expected to be recognizable at a distance.

"... carrying arms openly" Art. 4 (2) (c);

This condition was out of date for forces employing guerrilla methods; all regular armies practiced camouflage and ambush; modern armies did not openly carry arms.

"... conducting their operations in accordance with the laws and customs of war" Art. 4 (2) (d);

The experts considered that this was still a valid condition and that, as far as possible, the law should demand that "guerrilleros" respect international humanitarian law. However, in their view the wording was old fashioned and should be revised.

In conclusion, one expert stated that in his opinion simple rules covering all forms of guerrilla warfare, and which "guerrilleros" could respect, should be drawn up. He believed that a distinction had to be made between two stages: the first, captivity, when the authorities should treat surrendering forces humanely; the second, trial, which should take place only when feelings are restored to calm.

\(^1\)/ See p. 16 ff, Document VI.
G. ROLE OF NATIONAL RED CROSS SOCIETIES IN THE DISSEMINATION AND DEVELOPMENT OF HUMANITARIAN LAW

On several occasions, during the conference, and in particular when the measures for reinforcing the application of the law in force were examined, the important role that National Societies could play in the dissemination of humanitarian law was emphasized by the experts. Several of them spoke of their National Societies' experiences or achievements, including, in particular, the publication of special information booklets in their own language, the adaptation of publications issued by the ICRC or by the League, the organization of appropriate seminars, etc.

However, it was found from the discussions on the different points mentioned earlier that the problem was more far-reaching: it was necessary not only to determine the role of National Societies in the dissemination of the Geneva Conventions, but also to fix the part which they were capable of playing, and which many Societies desired to play, in the present studies in view of developing and reinforcing the international law applicable in armed conflicts. These aspirations and trends were concretized more specifically in the general debate that took place at the end of the conference. The delegates entered into a comprehensive discussion of the subject, on the one hand on the basis of a brief questionnaire prepared to that end by the ICRC, and on the other hand mainly on the basis of a series of points raised verbally by one of the experts speaking on behalf of several others.

Concerning the contribution which National Societies could bring to the development of international humanitarian law after the Hague meeting, that expert thought that, in order to render acceptable and understandable to public opinion the efforts undertaken so far, the work to be done should also be considered on another plane and a plan of action for National Societies should be fixed, by determining a number of the principal criteria and priorities. In this regard, he was of the opinion that a certain number of
concrete questions should be raised within the National Societies, and more particularly the following:

- who should be protected?
- protected against what or whom?
- what are the formal and practical possibilities for action?
- in what measure are these possibilities utilized?
- what are the obstacles and how can they be overcome?

In the opinion of that expert, the way to approach the problems should be facilitated as much as possible for laymen. The ICRC, in close co-operation with National Societies, should therefore seek methods that would allow efforts aiming at the development of humanitarian law to be systematically supported. As a suggestion, he advocated the creation, within National Societies of groups responsible for the dissemination of these matters and for influencing the attitude of public opinion, the creation, with the active co-operation of ICRC experts of courses and seminars, and especially the maintenance and development of closer contacts between National Societies and the ICRC. With this end in view, and in order that those contacts might be further strengthened, it would be appropriate that they should not take place haphazardly at casual meetings but that some sort of procedure should be evolved which, while remaining all the while fairly elastic, would permit these contacts to be organized in systematic and regular fashion.

Many experts, who spoke on the proposals mentioned above, warmly supported them and made additions to them on various points.

Several others suggested that the ICRC should constitute a consultative group of experts, recruited among National Societies. This body would study, inter alia, Red Cross requirements in the field in question, how the Red Cross could adapt itself to the necessities of the contemporary world without denying its fundamental principles and in what way it could act on public opinion.

Other experts proposed holding regional seminars in each of the various continents, with the object of training senior officials and directors of National Societies in the field of humanitarian law with the help of the ICRC. They pointed out, in support of this idea, that it was at times
very difficult, for a number of reasons, for members of National Societies to make long journeys abroad.

The proposal was also made to the ICRC and the League that they should place permanently on the agenda of the Council of Delegates the question of the dissemination and development of humanitarian law. For the forthcoming meeting of the Council in Mexico next October, the ICRC was requested to draw up and submit a detailed programme of the role which National Societies could play in this field and the support which the ICRC could provide for them.

Finally, many delegates considered that National Societies, where they had not already done so, should henceforth establish and maintain close contacts with their Government, particularly with the ministries concerned (Public Health, Defence, Foreign Affairs), regarding these problems with the aim of informing them and, if necessary, stimulating their interest in these studies. In this regard, the creation of working groups composed of governmental and National Society experts was suggested.
V. ANNEXES
ANNEX I

CONFERENCE OF RED CROSS EXPERTS
on the Reaffirmation and Development of
International Humanitarian Law Applicable
in Armed Conflicts (The Hague, 1-6 March 1971)

RECAPITULATION

submitted by the Chairman of the Conference,
Mr. J. Pictet, during the closing session.

In the course of the general discussion with which
our conference opened, we were reminded that, although the
united and indivisible Red Cross movement was founded to
alleviate the suffering caused by armed conflicts, it must
also contribute to the maintenance of peace. Moreover, war
as a means of settling international disputes was forbidden
by the United Nations Charter.

That being said, the consensus was that the reaffirm-
ation and development of the law applicable in armed conflicts
was an urgent necessity, bearing in mind the progress achieved
in the realm of human rights. However, it was by no means
necessary to entirely re-shape the existing conventions. It
was sufficient to supplement them and give them added preci-
sion, particularly by means of additional protocols.

Concerning the first item on the agenda, the protec-
tion of the wounded and the sick, the two draft protocols sub-
mitted by the ICRC were considered to be an excellent basis.

Agreement was reached on the following two prin-
ciples:
a) the civilian medical personnel should be granted protection equivalent to that of the military medical personnel, and

b) the right to display the sign of the red cross (or red crescent) should, in time of conflict, be conferred only on persons subject to State supervision.

For further details on this first item, reference may be made to the report of the Working Party which was set up to draft the conference's conclusions in this field.

The second item of the agenda, Measures intended to Reinforce the Implementation of the Law, was split into four sub-divisions.

1) Dissemination of knowledge on the Geneva Conventions. A number of experts stressed that humanitarian law should not only be developed, but better applied. For that, it was essential that the Conventions be much better known and be taught more thoroughly at all levels. Renewed effort was demanded, particularly of the armed forces and universities, and also to influence youth. It was necessary to reach the individual direct. The Red Cross had a contribution to make to that mission. Interesting practical suggestions were put forward, particularly that of training advisers to be attached to large military units.

2) Supervision of the implementation of treaty provisions. Some delegations stated that supervision was essential to the proper implementation of the Conventions and should, if possible, be reinforced.

The view was also expressed that the system of supervision provided for in the Geneva Conventions was good and that, rather than evolve a different system, what was required was to eliminate the obstacles which all too often States raised to the appointment of Protecting Powers.

Most of the experts advocated strengthening the humanitarian role of the ICRC and some went so far as to suggest that the ICRC should, on a permanent basis and automatically, substitute for Protecting Powers. In this respect, the ICRC delegation pointed out that, contrary to what was thought or said in certain quarters, it was ready to act as the substitute for Protecting Powers whenever possible and expedient,
by assuming the humanitarian tasks falling to a Protecting Power, as the Conventions themselves laid down. The ICRC was still a relief organization, independent and acting in accordance with Red Cross principles; it would not become the mandatory of a specific State.

Some experts suggested the founding of a special organization to deputize for Protecting Powers, as permitted, incidentally, by the Conventions. Such a body could be founded within the framework of the United Nations.

Other experts underlined the increased influence today of public opinion and the usefulness of enlisting its support to enforce respect of the law.

3) Sanctions. A clearer definition of war crimes was advocated.

4) Reprisals. These were recognized as the cause of great suffering, and a failure in that they did not achieve their objectives. In 1949, the Geneva Conventions forbade reprisals against persons protected by the Conventions. It was the wish of some experts that they also be forbidden in all circumstances against the civilian population as a whole.

Another important item was: the protection of the civilian population against the dangers of discriminate warfare.

Although, in this respect, general principles, customary rules and United Nations resolutions could be invoked, it was essential to draw up compulsory international law standards providing civilian populations with the protection which they so urgently required.

Several experts pointed out that although weapons of mass destruction - permitting of no distinction between military objectives and population - and also weapons which inflicted needless suffering were already prohibited, it would be worth while reaffirming the relevant laws. That matter was being dealt with by the United Nations but the Red Cross could not but be interested in it and should continue to make its voice heard.
It was agreed that future rules should define the civilian population and the special safeguard of the weak and defenceless and also, for example, of the personnel of civil defence services. Stress was laid also on the importance of active and passive precautions to be taken by the parties to a conflict.

The Conference devoted special attention to international Red Cross relief for sorely tried populations. Provision should be made to send such populations the food and medical supplies they needed. In that respect, the traditional role of National Red Cross Societies, laid down in Article 63 of the Fourth Geneva Convention and endorsed by Resolution No. XXVI of the twenty-first International Conference of the Red Cross, should be given the support of an international law provision so that governments grant National Societies the necessary facilities.

The next item was the delicate problem of non-international armed conflicts and internal disorders.

On the whole, the experts approved of the idea of a protocol to supplement the Geneva Conventions. They nevertheless emphasized the difficulty of satisfactorily defining such conflicts.

In a similar general way, the experts urged that the ICRC's right to take initiative in non-international armed conflicts be strengthened in such a way that its offers of service would be accepted by governments. Governments, it was said, should have confidence in the Red Cross. Moreover, the impartial role of National Red Cross Societies for the benefit of all conflict victims should have the backing of a legal provision.

The importance of respect for humanitarian law by insurgents - in their own interest, incidentally - was emphasized. The ICRC should obtain a commitment from them as it had already done.

With respect to internal disorders, one expert suggested, as the conventional system of recognizing belligerent status had proved ineffective, that standard minimum rules based on the Conventions should supplement Article 3 of the Conventions.
The last item on the agenda was guerrilla warfare, a particular form of fighting which occurred both in internal and international conflicts.

One expert stated that all peoples were entitled to resist invasion and that any government had the right to organize its armed forces in the manner it deemed expedient. However, stress was also laid on the reciprocal advantages to the parties, whatever the circumstances, of observing certain limitations in their methods of fighting, and of granting humane treatment to defenceless enemies. Support was given also to the idea of refraining from carrying out capital punishment during hostilities.

Attention was drawn to the very clear change in the concept of combatant since the drawing up of The Hague Regulations respecting the Laws and Customs of War on Land in 1907 and even since the Geneva Conventions of 1949. The Conference discussed the well-known conditions required of combatants to qualify for treatment as prisoners of war and it considered whether they should be maintained or amended. It appeared that, in any case, an army had to be able to distinguish enemy combatants from the peaceful population and that a certain element of loyalty should prevail during the fighting: that implied that both parties would comply with the laws and customs of war in their operations.

A recommendation was put forward that simple rules, applicable to all the widely varying forms of guerrilla warfare and understandable to everybody, should be drawn up.

In that respect, as in others, the Red Cross had always to endeavour to ensure that the principles of humanity and impartiality prevailed.

When the agenda was completed, the experts were asked whether they had other points to raise.

One expert asked the very appropriate question of what National Red Cross Societies could do to develop and implement humanitarian law. It was suggested that they could promote that undertaking by approaches to their respective governments, train one or more specialists to be made available to the authorities, undertake a publicity campaign to obtain the so necessary support of public opinion, constitute among themselves a select committee of experts, and so forth.
Throughout its work, the Conference sought a balance between idealism and realism. Co-operation among National Red Cross Societies, the ICRC and governments should be continued, for, as was said, "humanitarian law is of concern to all".

The Hague, 6 March 1971
ANNEX II

REPORT OF THE WORKING PARTY TO SUMMARIZE THE PROCEEDINGS OF THE CONFERENCE AND TO SUBMIT OBSERVATIONS ON THE TWO DRAFT ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS RELATING TO THE PROTECTION OF THE WOUNDED AND SICK (DOCUMENT VII)

The Working Party consisted of Mr. ASMAR of the Lebanon, Mr. AUDEOUD of Switzerland, Mr. JAKOVLJEVIC of Yugoslavia, Mr. VOIT of the Federal Republic of Germany and Mr. VEUTHEY of the ICRC who acted as secretary and to whom we express our warm thanks. It directed me to submit the following conclusions:

I. QUESTIONS OF PRINCIPLE

1) The Working Party considered that its terms of reference were to submit proposals on the two drafts submitted by the ICRC, in the light of opinions expressed during the Conference on this question (predominant opinion).

2) It deemed it expedient to submit the results of the discussions in the form of conclusions, without actually applying itself to the drafting of texts.

3) On the question of the manner in which the texts should be presented, it concluded that the two drafts should be kept distinct from each other, the second relating to armed conflicts which are not international.

4) The protocols should not change anything in existing Conventions and should therefore avoid repetition and reaffirmation and should make no reference to any Convention or articles thereof, except that the first should refer to article 2 and the second to article 3 of the four Conventions.

All the provisions of both protocols should therefore be new.
II. EXAMINATION OF THE DRAFT PROTOCOLS

A. First Protocol

a) Comment

The title could cause confusion as it related solely to the Fourth Convention but made reference to article 2 of all the Conventions.

Conclusion

It would be better to give it the title "Draft Additional Protocol to the four Geneva Conventions of August 12, 1949, relative to the protection of wounded and sick civilians".

b) Article 1

Comment

Same comment. In addition, the objective should be better defined.

Conclusion

Article 1 (1) should specify that the rules are to give better protection to the wounded and the sick and to extend protection to civilian medical personnel in the event of armed conflict international in character.

Article 1 (2) should stipulate the application of the protocol in all cases for which provision is made in article 2 of the four Conventions.

c) Article 2

Comment

This is a repetition, with the addition of maternity cases. That addition did not appear to be adequate justification for the repetition of the rest of the article.

Conclusion

Article 2 of the draft protocol should be deleted.
d) Article 3

Article 3 (1):

Comment
The term "human beings" seems too general, since the article is essentially to protect persons undergoing medical treatment.

Conclusion
The term could be deleted, the reference to "medical benefit for the person concerned" appearing to be adequate.

Article 3 (2):

It was suggested that the place of the words "even if they give their consent" could be changed for greater clarity, in order to include everyone in the prohibition.

e) Article 4

Article 4 (1):

Comment
A phrase of more general purport should be used or the other hospital or medical centres and utilities should be inserted after "blood transfusion centres".

Article 4 (2):

Comment
The Working Party considers that in urgent cases the right to protection should be recognized even before receipt of the certificate of recognition.

Article 4 (3), 4 (4) and 4 (5): No comment.

f) Article 5

Article 5 (1):

Comment
The significance of "other vehicles" was queried.
One expert asked whether helicopters could not be mentioned. He also thought it desirable to provide for the respect and protection of medical supplies during transport.

**Conclusion**

The wording "other means subject to supervision" could be used and "medical supplies" inserted after "medical personnel and equipment".

**Article 5 (2)**

**Comment**

It seems pointless to add the requirement of a certificate, the emblem seeming sufficient.

**g) Article 6**

**Comment**

Could be deleted as it duplicates another article. However, it would be useful to mention civilian medical units.

**Conclusion**

A wording which might be used is "Medical utilities and units, including blood transfusion centres and hospital medical utilities, shall be considered on the same footing as the establishments which the Occupying Power may requisition ...".

**h) Article 7**

**Article 7 (1)**

**Comment**

The wording "Civilian medical personnel organized and duly authorized by the State" was too restrictive, as personnel organized regionally or by recognized institutions should also be protected. It would therefore be preferable to specify "Civilian medical personnel authorized or recognized by the State".
The Working Party is aware that civil defence medical personnel are protected, but the question of the non-medical civil defence personnel has to be treated separately. In addition, the Working Party considers that the protection for personnel should not be limited to working hours.

**Conclusion**

It would be expedient to use the words: "the personnel of civilian medical organizations duly authorized by the State ..." and, to replace "employed in similar work" by "assigned to medical duties".

Articles 7 (2) and 7 (3): No comment.

It is to the hoped that the emblem could be worn when travelling between home and the place of work.

**Article 7 (4):**

**Comment**

The phrase "they shall preferably be assigned to the nursing of persons of their own nationality" appears to conflict with the non-discrimination principle applicable to the sick, the wounded and the medical personnel.

**Conclusion**

The phrase could be deleted.

1) **Article 8**

**Article 8 (1):** No comment.

**Articles 8 (2) and 8 (3):**

**Comment**

To apply the non-delation obligation to doctors only seems too restrictive.

**Conclusion**

This obligation (medical secrecy) should be extended to all persons and bodies corporate having participated in the administration of medical attention.
j) Article 9

Article 9 (1):

Question
   Should the inhabitants ask for the permission?

Question
   Would it not be possible to say "the inhabitants and relief societies shall be authorized ..."?

Article 9 (2): No comment.

Article 9 (3):

Comment
   It would be better to avoid a repetition concerning the military.

Conclusion
   Care to wounded and sick civilians could be mentioned, as is the case for military wounded and sick.

k) Article 10

Comment
   The mere repetition of a rule contained in the Conventions should be avoided, but a reminder of this rule is a good thing within the framework of the protocol.

Conclusion
   It could be specified that the distinctive emblem in question is the one provided for in the protocol.

l) Article 11

Remark
   It seems difficult and dangerous to make provision in the framework of the Conventions for a new emblem to be displayed by persons not subject to supervision. To mention the sign of the Staff of Aesculapius would be to recognize it as a distinctive but not as a protective emblem.
There was no need to fear that this refusal would of itself lead to misuse of the red cross emblem.

**Conclusion**

This article should be deleted.

**Remark**

One member of the Working Party regrets that no sign is laid down for doctors. However, it might be for the World Medical Association to generalize the use of the Staff of Aesculapius as a sign for doctors.

**m) Additional clause**

One member of the Working Party considers that the manufacture of medical supplies and equipment should be protected, and their conveyance facilitated.

**Conclusion**

This deserves consideration but cannot be decided at present.

Moreover, in connection with article 4 (4), the same member asked whether fixed medical establishments should not be entitled to display the red cross emblem even in peace time.

**N.B.** Particularly with respect to article 7, the Working Party is of the opinion that civilian medical personnel are to be protected irrespective of nationality, in the same way as the general population in all countries engaged in armed conflict.

This should perhaps be specified.
B. PROTOCOL NO 2 (relating to non-international armed conflicts)

a) The title could be changed to Draft Additional Protocol to the Four Geneva Conventions of August 12, 1949, relative to the Protection of the Wounded and Sick in Armed Conflicts not of an International Character.

b) Remark

By analogy with Protocol No 1, article 1 should define the objective and scope.

Conclusion: Article 1 could define the objective, namely to reinforce and extend the protection of the wounded and sick in armed conflicts not of an international character.

Scope: all cases mentioned in article 3 of the four Conventions.

c) Article 1 (which would become article 2)

Article 1 (1)

Comment: Children under 15 years of age could be included.

Article 1 (2): no comment.

Article 1 (3): The expression "human beings" seems too general, since the phrase mentions medical benefit for the person concerned.

d) Article 2: no comment.

e) Article 3: no comment.

f) Article 4:

Comment: "Ministers of religion" would no doubt be preferable to "chaplains". The comparison with prisoners "of war" seems inadequate.
Conclusion: Replace "chaplains" by "ministers of religion" and delete the words "of war" after "prisoners".

\[ g) \text{Article 5 (1)} \]

The comment here refers only to the French version.

Article 5 (2): No comment.

\[ h) \text{Article 6} \]

The word "shall" in the second sentence could to advantage be replaced by "should".

N.B. As for the first protocol, the Working Party is of the opinion that medical personnel are to be protected irrespective of nationality and political opinions, in the same was as the wounded and sick. It suggests that this be specified.
Development of International Humanitarian Law

GENEVA, 15 APRIL 1970

To the Central Committees of Red Cross, Red Crescent and Red Lion and Sun Societies

LADIES AND GENTLEMEN,

The XXIst International Conference of the Red Cross, meeting at Istanbul in September 1969, devoted its Resolution XIII to the reaffirmation and development of the laws and customs applicable in armed conflicts. That resolution, the text of which is appended hereto, assigns to the International Committee of the Red Cross some heavy tasks, in particular that of drawing up proposals in that field for submission to governments.

The International Committee set to work immediately after the Conference, for the undertaking is of obvious urgency. With the assistance of consultants of various nationalities, the International Committee is at this moment compiling full documentary material containing concrete proposals which it intends to submit in the Spring of 1971 to a conference of governmental experts who, in accordance with the aforesaid resolution, should be representative of the world’s main legal and social systems. That conference, to which some thirty governments will be invited to send experts may be followed by a second.

The International Committee hopes to be able in this way to draft proposals likely to meet with approval as widely as possible and which it will submit to all States parties to the Geneva Conventions.

In addition, complying with the wish expressed by the International Conference of the Red Cross, the Committee is maintaining
close liaison with the United Nations Organization, and particularly
with the Secretary-General. It was represented, inter alia, at the
General Assembly's proceedings which resulted in Resolution 2597
encouraging the Secretary-General to continue his studies in co-
operation with the International Committee, with particular attention
to certain subjects. A representative of the Committee also
attended the meeting of the Human Rights Commission in March
1970 at New York, when it examined the Secretary-General's
report. Moreover, to co-operate with the Secretary-General in these
studies, as desired by the General Assembly, the International
Committee will provide him with a preliminary report on non-
international armed conflicts, guerrilla warfare, and the status of
irregular combatants.

Furthermore, as the Istanbul Resolution XIII encourages it,
with a view to co-ordination of work, the ICRC continues to
concern itself actively for the studies and events, often of genuine
value, which private organizations devote to certain aspects of
humanitarian law. It has given accounts of some of those events in
its periodical publications.

As it has always done in matters of this kind, the International
Committee is making a point of associating National Societies
closely in this important undertaking. It will keep them regularly
informed on progress, either in circular letters or in news bulletins.
It expresses the hope that National Societies will forthwith send it
any advice or suggestions they wish to offer. Already at this present
stage, any further remarks concerning the two reports entitled
"Reaffirmation and Development of the Laws and Customs applicable
in Armed Conflicts" and "Protection of Victims of Non-Inter-
national Conflicts" which the Committee submitted to the XXIst
International Conference will be of the greatest value.

If National Societies particularly interested in these problems so
wish, the International Committee would be prepared to convene
them to a meeting, so that they may exchange their observations
with it and among themselves. Such a meeting could take place
either at the end of this year or at the beginning of 1971, as it would
be useful to hold it before the conference of governmental experts
advocated by the XXIst Conference.

The International Committee thanks beforehand those National
Societies which, following this circular, are kind enough to let it have
their suggestions.

Yours sincerely,

FOR THE INTERNATIONAL COMMITTEE
OF THE RED CROSS

Marcel A. NAVILLE
President
CONGRESS OF RED CROSS EXPERTS ON THE
REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL
HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

To the Central Committees of National
Red Cross, Red Crescent and Red Lion and Sun Societies

Ladies and Gentlemen,

In its circular No. 478 of 15 April 1970, the International Committee of the Red Cross had the honour to inform you of its work since the XXIst International Conference of the Red Cross with a view to the reaffirmation and development of international humanitarian law applicable in armed conflicts, consistent with several resolutions adopted by that conference.

The International Committee stressed also its desire to associate closely, as usual, the National Societies in this important undertaking and its readiness, if National Societies giving special attention to these problems so desired, to convene them to a conference at which they might exchange views among themselves and with it.
The International Committee is pleased to inform you that, in view of the favourable response from many Societies, it has decided to organize, for the beginning of next year, a conference to which Societies specially interested in these problems may delegate experts. In addition, as it had the pleasure of stating at the informative meeting it held last September, during the meeting of the League Executive Committee, the Netherlands Red Cross, in keeping with the active interest it has always shown for this work, has kindly offered to welcome the conference in the Peace Palace (at the premises of the International Law Academy), in The Hague. It will therefore be in that town that the conference, which the International Committee will convene in agreement with the Netherlands Red Cross, will take place from 1 to 6 March 1971.

The results of the meeting, which will be of a purely Red Cross character, may be communicated to the Conference of Government Experts which will take place three months later in Geneva, from 24 May to 12 June 1971, and which some forty government experts will attend.

As customary for such meetings, travel expenses and the cost of staying in The Hague will be borne by the delegations. The Netherlands Red Cross will shortly send all National Societies relevant information on arrangements for the meeting and accommodation in The Hague.

The main purpose of the meeting will be to proceed to a wide exchange of views on the matters dealt with in several of the International Committee's reports on the reaffirmation and development of international humanitarian law to the XXIst International Conference and which are, inter alia, the subject matters of that Conference's resolutions XIII to XVIII. A list of these subjects is attached hereto. In the framework of this exchange of views, National Societies may raise problems which are of increasing concern to the International Red Cross by reason of the armed conflicts and tensions which have arisen in the last few years and which often place heavy responsibility for practical action upon the shoulders of National Societies.

The International Committee should be grateful to National Societies if they would let it have their suggestions concerning the enclosed list of subjects for discussion. A more detailed provisional programme - for which the International Committee will take into consideration suggestions
received - will in due course be sent to National Societies. They will also receive a copy of the documentary material, accompanied by concrete proposals, which the International Committee is preparing for the meeting of governmental experts and which it will send to the governments concerned at the beginning of next year.

As mentioned in its aforesaid circular, the International Committee is maintaining close liaison with the United Nations, particularly its Secretary-General. Consistent with the co-operation recommended by the UN General Assembly resolution 2597 (XXIV), it has periodically supplied the UN Secretary-General with documents and information on the legal studies under way and it is following with attention the work of the twenty-fifth session of the General Assembly, particularly that relating to its agenda item 47: "Respect for Human Rights in Armed Conflicts".

In order to make the necessary arrangements for the organization of the meeting, in co-operation with the Netherlands Red Cross, the International Committee asks National Societies which intend to delegate one or more experts to the meeting to advise it thereof as soon as possible and not later than the end of November 1970.

Yours sincerely,

For the International Committee of the Red Cross

Marcel A. Naville
President
I. LIST OF SUBJECTS FOR DISCUSSION

In the following list, the indications between brackets under each chapter-heading are not exhaustive and are mentioned chiefly as examples. The list does not prejuge that the International Committee of the Red Cross will suggest that the conference should examine these items in the order given.

1. Measures intended to reinforce the implementation, in armed conflicts, of existing international humanitarian law
   (Dissemination of humanitarian principles and rules, national legislation for their application and instructions to be given to the armed forces - reinforcement of rules relative to the supervision of the regular observance of existing law and to the sanction of violations - Protecting Powers and their substitutes - problem of reprisals).

2. Strengthening of the protection of civilian populations against dangers of hostilities
   (Reaffirmation of the immunity of the civilian population as such - distinction to be observed between non-military elements and military objectives in case of attacks - precautions to be taken as to fighting methods or the choice between different means of combat in order to spare the population - precautions to be taken by the authorities of the State to which it belongs - creation of zones or localities enjoying a particular status in view of their special protection - guarantees to be afforded to the personnel of non-military civil defence bodies).

3. Humanitarian rules relative to behaviour between combatants
4. **Protection of victims of non-international armed conflicts**

(Notion and qualification of non-international armed conflicts - effective observance and development of rules applicable in these conflicts and which concern the treatment of victims and the conduct of hostilities - possible extension of certain rules to situations of internal disturbances and tensions).

5. **Status of combatants and the problem of guerrilla warfare**

(Possible definition and development of humanitarian rules with regard to the qualification of combatants, as well as the status and treatment of prisoners - rules relative to the conduct of hostilities in guerrilla warfare and duties incumbent upon parties to the conflict to spare the civilian population).

6. **Protection of the wounded and sick**

(Strengthening of existing guarantees - protection and marking of civilian medical personnel - strengthening of the safety of civilian medical transports and the problem of marking them - extension of certain rules to non-international armed conflicts).