XXth INTERNATIONAL CONFERENCE OF THE RED CROSS
Vienna, October 1965

THE LEGAL PROTECTION OF CIVILIAN POPULATIONS AGAINST THE DANGERS OF INDESCRIMINATE WARFARE

(Item 5 a of the provisional agenda of the International Humanitarian Law Commission)

Report submitted by the International Committee of the Red Cross

Geneva
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I. - The resolution adopted by the XIXth International Conference and subsequent steps

The XIXth International Conference of the Red Cross, which met in New Delhi, in Autumn 1957, was asked to pronounce itself on a project of "Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War", presented by the International Committee of the Red Cross (ICRC).

This project gave rise to an important debate within the XIXth International Conference, which finally adopted the following unanimous Resolution:

"The XIXth International Conference of the Red Cross,

convinced that it is interpreting the general feeling throughout the world which demands that effective measures be taken to rid the peoples from the nightmare of the threat of war,

having taken cognizance of the "Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War", drawn up by the International Committee of the Red Cross, following a request by the Board of Governors of the League, meeting at Oslo in 1954,

considers that a set of rules revising and extending those previously accepted is highly desirable as a measure of protection for the civilian population, if a conflict should unfortunately break out,

deems that the objectives of the Draft Rules submitted are in conformity with Red Cross ideals and the requirements of humanity,

urges the International Committee of the Red Cross to continue its efforts for the protection of the civilian population against the evils of war, and

requests the International Committee of the Red Cross, acting on behalf of the XIXth International Conference, to transmit the Draft Rules, the record of its discussions, the text of the proposals, and the submitted amendments, to the Governments for their consideration."
In implementation of this resolution, the ICRC communicated to the governments, during the Spring of 1958, the full text of the Conference debates on the project of the Draft Rules, together with the text of all amendments proposed. Copies of this documentation were also sent, for their information, to all National Societies of the Red Cross, the Red Crescent and the Red Lion and Sun.

A memorandum, dated May 12th, 1958, was attached to this documentation, in which the ICRC expressed itself as follows:

"The drawing up of the rules recommended by the New Delhi Conference is now a matter for Governments. Nevertheless, the Conference Resolution urges the International Committee to continue its efforts. This appeal strengthens the Committee in its resolution to continue its studies, in the light of the Conference discussions and in the humanitarian spirit which has prevailed in its previous efforts, with a view to assisting progress towards an international agreement - the logical conclusion of this work.

On the completion of its studies, and following consultations which may possibly be held on the subject, and when the documents appended have duly been examined by the recipients, the International Committee will submit, if its studies enable it to do so, some definite proposals to the authorities concerned."

Numerous Governments replied to this communication. The majority let it be understood that they would examine this documentation carefully. Only five Governments, however, communicated the results of their scrutiny. No Government of a great Power is included in this number. The five replies received can be summarized as follows:

One Government indicated that, after having carefully considered the matter, it approved the Draft as a whole.

Another Government suggested, in a verbal reply, that the ICRC should preferably draw up a declaration of principles, which, without being binding, could prompt the future conduct of States.

A third Government asked that article 14 of the Draft Rules be completed by a provision clearly prohibiting the use of nuclear and thermonuclear weapons. The same Government, furthermore, moved that a Conference of plenipotentiaries be called in order to negotiate and conclude a convention based on the Draft Rules.

In its reply, another Government advocated the establishment of special immunity for civil defence formations through the adoption of a particular emblem.

Finally, in a more detailed reply, a fifth Government, whilst expressing its support for the Draft Rules, stressed that it would
probably be difficult to obtain unqualified approbation from all countries concerned. This Government, therefore, suggested that the Draft Rules be divided up into a number of legal instruments, in such a fashion that Governments could, if they so desired, only adopt one aspect of the Rules. In this fashion, all matters pertaining to the definition of military objectives could be the object of a separate instrument. This same Government also stressed the importance of passive precautions and of the protection to be accorded to civil defence services. The status of these services of protection could, according to this Government, be the object of specific rules.

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As can be seen, these various replies hardly concord. Two governments, however, did express themselves in favour of the establishment of guarantees for the protection of civil defence services. The status of civil defence services has, moreover, been put on the agenda of the XXth International Conference and the ICRC - in a separate report on this subject - is submitting suggestions, which might later serve as a basis for the formulation of an international regulations.

On the other hand, the ICRC has had to note that, at least with regard to certain essential points, the Draft Rules could hardly longer serve as a basis for its future studies, given the absence of favourable reactions from Governments. Moreover, the few replies received do not show a sufficient consensus of opinion to enable the ICRC to orient its studies in a precise direction.

Given these circumstances, the ICRC has had recourse to outside opinion, which is the object of the following chapter.

II. - Further studies by the ICRC

The Resolution adopted in 1957 by the XIXth international Conference invited the ICRC "inter alia" to pursue its efforts for the protection of the civilian population against the evils of war. This invitation, moreover, corresponded to the intentions of the ICRC, which has, for a long time now, followed these problems with sustained interest.

Without going into details here, it is sufficient to recall that in 1917 already the ICRC launched an appeal against gas warfare; that in 1920 it addressed itself to the League of Nations with a view to the "limitation of air warfare to strictly military objectives". The ICRC also, in the period between the two World Wars, promoted passive defence measures with a view to the protection of the civilian population; it advocated the creation of security zones where the civil population could
take refuge, a suggestion which has found a partial application in the IVth Geneva Convention, of August 12th, 1949, for the protection of civilian persons in time of war.

In a more recent past, the appeals launched by the ICRC during the Second World War should also be mentioned; appeals asking for the observance of clear distinctions in the domaine of bombardment from its circular of September 1945 concerning atomic weapons and, on the same subject, its appeal of 1950 to the High Contracting Parties to the Geneva Conventions. It should be added that the International Red Cross movement has always encouraged and supported the ICRC in this field as can be seen from the numerous Resolutions adopted by International Conferences.

That is why, given the reticence of Governments towards the Draft Rules, the ICRC deemed it necessary to lay down in which direction it should henceforth pursue its studies. It, therefore, decided to consult a certain number of personalities who, given their knowledge of public opinion and the evolution of military, political and scientific thinking, could express and give it an informed opinion on the matter.

These personalities were chosen, sometimes with the assistance of National Societies concerned in the matter, in such a fashion as to represent the principal currents of opinion which exist in the world to-day. A number of these personalities met in a "Round table" conference, whilst others were approached individually. In order to facilitate this inquiry, the ICRC drew up a questionnaire which was handed to each of these personalities, setting out the principal questions on which the ICRC wished to be informed.

Their replies are briefly analysed hereunder and for commodity's sake the questions are presented in the same order as in the aforementioned questionnaire.

Possibilities and feasability of limiting the evils of war in the world to-day

The ICRC asked itself whether it was still possible to act in this field by means of legal measures of an international character. The personalities consulted were of the opinion, that, even when faced with the menace and the possibility of a nuclear conflict, the ICRC should pursue its efforts. For some it was a question of measures to be taken beforehand such as, for instance, the formulation of certain principles, whilst others preferred to consider formal approaches at a precise moment of tension and possibly even after the outbreak of hostilities. Yet others were of the opinion that the Red Cross should primarily prepare itself to bring efficient aid to the victims of any conflict.
The second aspect of the problem dealt with the crisis of confidence dividing the Great Powers. On this point the personalities consulted were practically unanimous. It appeared to them to be out of the question that, at the present time, the Great Powers would accept overall regulations such as the Draft Rules; that is to say, provisions of a precise and detailed character, concerning the conduct of hostilities, agreed to in peacetime already.

Agreements, however, on limited and specific questions, which do not touch on the vital interests of States, and which do not concern methods of warfare, appear feasible; regulations, for example, concerning civil defence or the evacuation of populations might, doubtless, meet with fairly general acceptance.

One of the personalities consulted also evoked the possibility of regional agreements, which would be binding to certain groups of States. This solution, however, appeared somewhat inopportune to other experts who saw therein the danger of "regionalizing international law" and that of having two sets of rules, one applying to the Great Powers, the other to less important countries, which would be contrary to universality, a principle of the Red Cross and of the Geneva Conventions.

The negotiations relative to disarmament and the efforts made to establish a lasting peace, should not, in the opinion of the personalities consulted, constitute an obstacle to the efforts of the Red Cross.

Disarmament is a long-term objective and as long as there are limited armed forces, national or international, it will be necessary to envisage principles and rules governing the conduct of hostilities.

One of the personalities consulted went as far as to recall that the Commission of Eighteen, designated by the United Nations to study disarmament, has recognized the usefulness of co-lateral measures towards disarmament, which can create a climate of confidence.

The notion of a civilian population and its protection

The ICRC put the question whether the immunity of the civilian population, recognized in traditional law, was still valid at the present time.

Generally speaking, it was recognized that civilians, even if they take part in the war effort by working in plants and factories directly linked to the military effort, are nonetheless not combatants. To be sure, the buildings in which they work, the machines they serve, are objectives which can legitimately be attacked and destroyed but these persons themselves do not constitute a military objective.

It was recalled, in this connection, that the participation of civilians in the war effort seems to be losing importance since these civilians'
work does not have an immediate effect on the actual conduct of hostilities.

With regard to the overall obligation of keeping the civilian population out of hostilities, the personalities consulted, generally speaking, confirmed this principle. In numerous cases, to be sure, wars have tended towards the total subjugation of the enemy country and of its population. However, even in this extreme hypothesis belligerents should bear in mind that after the war they will have to re-establish friendly relations with the population of the enemy country; it is, therefore, essential to avoid inflicting, as far as possible, unnecessary sufferings on the said population.

Various personalities consulted stressed that the civilian population, apart from the dangers resulting from aerial bombardment, was frequently the object of very strong pressures, more particularly when groups of partisans were leading the combat. Therefore, there would, perhaps, in this field also, be reason to seek measures of protection for the civilian population.

Finally, the personalities consulted informed the ICRC of the manner in which the major Powers envisaged the fate of the civilian population in the event of war. These personalities noted that the problem of reprisals, given the power of destructive weapons, is of capital importance and that it is the object of no precise conventional ruling.

Legal and practical methods of strengthening the protection of the civilian population

Having, generally speaking, counselled against the establishment of regulations with a view to binding governments in time of peace already, the majority of the personalities consulted, advanced the idea of a declaration reaffirming and setting forth a number of essential principles. This declaration could be made either by an International Conference of the Red Cross or by the ICRC itself. Such a declaration, it was observed, would in fact repeat the principles which already exist in customary and treaty law; it might also risk involving the Red Cross in the controversy at present opposing the Great Powers. However, by limiting the declaration to the strictly humanitarian field, such a risk might possibly be avoided.

With regard to the contents of the declaration, it was recommended that the principal obligations, already accepted by Governments in virtue of treaty and customary international law, figure therein. One of these personalities suggested that the declaration should also treat the question of the proportionality to be observed in the event of reprisals. He also proposed that the declaration recall the distinction to be observed, in the conduct of hostilities, between military objectives and non-combatants. Similarly, the principle should be laid down therein, according to which the conduct of hostilities must, till the very end, remain under the control of the individual and of his conscience.
A number of these personalities recommended that the declaration be preceded by a preamble setting out the reasons which, still to-day, render imperative the maintenance of the distinction between combatants and non-combatants, more particularly in order to facilitate a return to peace.

One of these personalities did not exclude the possibility that such a declaration of principle might, subsequently, be the basis of one or a number of international treaties. Such a declaration would represent, for States, an expression of international public opinion.

Finally, a new and interesting idea was put forward by one of the personalities consulted. In his opinion, the declaration should be drawn up in such a way that it could subsequently be submitted for ratification by governments; the latter could, thus, publicly declare that they approved the principles contained therein and that they intended to observe them.

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A number of the participants to this consultation stressed the necessity of disseminating, as widely as possible in the general public, the humanitarian principles which would be reaffirmed in the proposed declaration as well as those which already figure in the Geneva Conventions. These principles could thus be made to "penetrate the conscience of peoples".

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With regard to the practical methods which the Red Cross could employ, a number of personalities consulted suggested that, in the event of conflict, the ICRC address a solemn appeal to belligerents. This appeal should be launched at the moment when it is to be feared that an armed conflict may degenerate into total atomic war.

In the opinion of another personality consulted, who approved the aforementioned suggestion, this appeal should contain some simple rules, the application of which by belligerents would demonstrate their determination to keep the conflict within certain limits.

On the subject of practical measures to be taken and laid down, possibly through international instruments of law, the evacuation of populations was considered. Generally speaking, however, opinions were somewhat sceptic with regard to the practical possibilities of displacing populations en masse.
It would appear to be more realistic to envisage evacuations of a limited character, more especially from the great urban centers towards the less populated regions of a territory. The possibility of setting up security zones remains useful, though, up till now, it has hardly ever led to measures already provided for in peace time.

A number of the personalities consulted stressed the necessity of preparing personnel and equipment beforehand in order to bring assistance to the civilian victims of conflicts. This, however, to be sure, is a task probably beyond the possibilities of the Red Cross, though it can contribute towards its solution. The setting up of stocks of equipment and supplies could also be contemplated.

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These are the results obtained by the consultation of personalities to whom the ICRC had recourse and it wishes to thank them here most sincerely for the assistance they have given. The main conclusion which the ICRC draws, is that it must pursue its efforts in the field of legal protection of civilian populations against the dangers of war, a point on which all personalities consulted were unanimous.

III. - Conclusions

If reference is made to the New Delhi Resolution and without denying the value of the studies being pursued within other organizations, it will be seen that the problem of the respect of the civilian population in the event of armed conflicts does not yet seem to be anywhere near a prompt solution. The problem, nonetheless, continues to be of serious concern to statesmen and to peoples. The ICRC does not, therefore, in any way intend to disinterest itself in the question, all the more so since it is bound by its statutes to make sure that the civilian victims of armed conflicts receive aid and protection. The ICRC will, therefore, avail itself of every possible occasion to intervene in favour of a greater respect of the civilian population in time of war.

Indeed, the imperative reasons which led the ICRC, together with the XIXth International Conference, to promote the drafting of restrictive rules are, unfortunately, just as valid today as they were then. The fate of the civilian population in the event of war remains one of the crucial problems of our time and, since 1957, the development and the dissemination of weapons of massive destruction as well as the obstacles encountered in the course of negotiations on disarmament, have alarmed public opinion.
even more. It is even to be feared that, in certain conflicts, indiscriminate aerial bombardment may render the application of the principles contained in the Geneva Conventions inoperative.

In the field of humanitarian law, the Red Cross can but propose agreement and endeavour to persuade Governments to conclude them; it has no power to force them to do so. The final responsibility remains solely with the Governments. What more, therefore, can the Red Cross do?

A number of the personalities consulted by the ICRC have suggested that the International Red Cross Conference should, in a solemn declaration, reaffirm some of the essential principles of which the Red Cross demands the respect in any armed conflict. Amongst these principles would figure, more particularly, the obligation to maintain a very clear distinction between the civilian population and military objectives, the prohibition of attacking the civilian population as such and finally the obligation, when attacking military objectives, to take every precaution in order not to harm the civilian population.

The ICRC is of the opinion that the aforementioned suggestion deserves to be studied by the XXth Conference. The proposed declaration, without having a legal character, could nonetheless, have far reaching effects. It could, more particularly, serve as a basis to those who are of the opinion that weapons should not be employed in an indiscriminate manner and it might perhaps facilitate the subsequent conclusion of an agreement between States.

The ICRC will be grateful for all remarks and observations which the Governments and the National Societies, members of the Conference, may deem fit to communicate to it on this subject.