

CONFERENCE OF GOVERNMENT EXPERTS ON
the Reaffirmation and Development of
International Humanitarian Law Applicable
in Armed Conflicts

Geneva, 24 May - 12 June 1971

V

PROTECTION OF VICTIMS OF
NON-INTERNATIONAL ARMED CONFLICTS

Submitted by the
International Committee of the Red Cross



Geneva
January 1971

CONFERENCE OF GOVERNMENT EXPERTS ON
the Reaffirmation and Development
of International Humanitarian Law Applicable
in Armed Conflicts

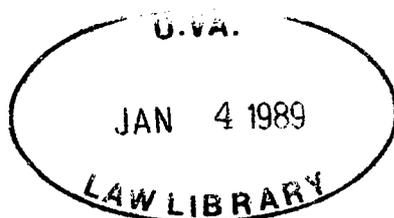
Geneva, 24 May - 12 June 1971

V

PROTECTION OF VICTIMS OF
NON-INTERNATIONAL ARMED CONFLICTS

Submitted by the
International Committee of the Red Cross

Geneva
January 1971



1970-1971
1972-1973
1974-1975
1976-1977
1978-1979
1980-1981

Int
55
.C7482c
v. 5

1982-1983
1984-1985
1986-1987
1988-1989
1990-1991
1992-1993
1994-1995
1996-1997
1998-1999
2000-2001
2002-2003
2004-2005
2006-2007
2008-2009
2010-2011
2012-2013
2014-2015
2016-2017
2018-2019
2020-2021
2022-2023
2024-2025

C O N T E N T S

	Page
LIST OF ABBREVIATIONS	III

TITLE I

INTRODUCTION

chap. 1	Historical Background	1
chap. 2	Work of the ICRC since 1949	6
chap. 3	Presentation and Aim of this Report	10

TITLE II

NON-INTERNATIONAL ARMED CONFLICTS ENTAILING
THE APPLICATION OF INTERNATIONAL HUMANITARIAN
LAW AS A WHOLE

chap. 1	Non-international armed conflict engaging the authorities in power against insurgents whose organization includes numerous component elements of a State, among which, in particular, is the control of a part of the territory.	13
chap. 2	Outside aid in the non-international armed conflict.	17
chap. 3	Problems arising from "Wars of liberation"	23

TITLE III

DEFINITION OF THE NON-INTERNATIONAL ARMED
CONFLICT

chap. 1	Objective finding of the existence of armed conflicts	36
---------	---	----

	Page
chap. 2 Definition of non-international armed conflict	43

TITLE IV

APPLICATION OF THE ESSENTIAL RULES OF THE
GENEVA CONVENTIONS OF 1949 IN CASES OF NON-
INTERNATIONAL ARMED CONFLICT
(Development of Article 3)

chap. 1 Statement of the Problem	49
chap. 2 Opinion of experts and proposals for the development of Article 3 common to the four Geneva Conventions of 1949.	52
A Protection of the wounded and sick	53
B Penal prosecutions and infliction of penalties	56
C Protection of prisoners of war	61
D Protection of civilians and the application of the Fourth Geneva Convention	67
E Extension of the humanitarian role of the ICRC	73

TITLE V

SITUATIONS OF INTERNAL DISTURBANCES AND
INTERNAL TENSIONS

chap. 1 Situations of internal disturbances	79
chap. 2 Situations of internal tensions	89

LIST OF ABBREVIATIONS

Annex Hague Conv. IV	Annex to the Hague Convention No IV of 1907, Regulations concerning the Laws and Customs of War on Land.
Article 3	Article 3 common to the four Geneva Conventions of 12 August 1949.
Commentary III	Commentary on the Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 1960.
European Conv. on Human Rights	European Convention of 4 November 1950 for the protection of human rights and fundamental freedoms.
Ist Gen. Conv. 1949	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.
IIInd Gen. Conv. 1949	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949.
IIIrd Gen. Conv. 1949	Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.
IVth Gen. Conv. 1949	Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.
Document I	Introduction (CE/1).
Document II	Measures intended to reinforce the implementation of the existing law (CE/2).
Document III	Protection of the civilian population against the dangers of hostilities (CE/3).

Document IV	Rules relatives to behaviour of combatants (CE/4).
Document VI	Rules applicable in guerrilla warfare (CE/6).
Document VII	Protection of the Wounded and Sick (CE/7).
Document VIII	Annexes (CE/8).
G.A.	United Nations General Assembly.
ICRC	International Committee of the Red Cross.
Para.	Paragraph.
Report of the ICRC on Reaffirmation	Report on Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts, Geneva, May 1969. Report submitted by the International Committee of the Red Cross to the XXIst International Conference of the Red Cross, Istanbul, September 1969.
Report Secretary-General A/7720	Report of the UN Secretary-General on Respect of Human Rights in Armed Conflicts, A/7720, 20 November 1969.
Report Secretary-General A/8052	Report of the UN Secretary-General on Respect of Human Rights in Armed Conflicts, A/8052, 18 September 1970.
Red Cross : Resolution XIII of Istanbul, 1969	Resolution XIII, "Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts", adopted by the XXIst International Conference of the Red Cross, Istanbul, 1969.

- UN : Resolution 2444
(XXIII)

Resolution 2444 "Respect of Human
Rights in Armed Conflicts" adopted
on 19 December 1968 by the UN
General Assembly.

U.N.

United Nations Organization.

TITLE I

INTRODUCTION

Chapter 1

Historical Background

For many years the Red Cross and the ICRC have been concerned with the plight of victims of non-international armed conflicts and have done their utmost to bring aid and relief to these victims.

At the time of the IXth International Conference of the Red Cross, meeting in Washington in 1912, National Societies submitted to the delegates two reports on the action of the Red Cross in time of civil war. One, entitled "The Role of the Red Cross in case of Civil War or Insurrection", contained a draft international convention. The other dealt with "Measures to be taken by the Red Cross in a country in a state of insurrection, to enable this institution to fulfil its task towards the two belligerent parties, while maintaining its neutrality"; this report primarily concerned the actions of the national Red Cross in such situations. However, the majority of the participants supported the contention of one of the delegates to the Conference, who held that "the Red Cross Societies have no duty whatever to fulfil toward rebel or revolutionary troops, which the laws of my country can only consider as criminals" 1/. As a result, the conference adjourned without going into this matter.

Shortly after the First World War, the delegates of the ICRC had the occasion to operate in the course of conflicts breaking out in certain European countries, especially in Hungary where a revolutionary government had seized power for four months in 1919.

1/ Document No 10, submitted by the ICRC to the XVth International Conference of the Red Cross, The Role and Activities of the Red Cross in Time of Civil War, London, 1938.

Following upon these various actions, the Xth International Conference of the Red Cross placed on its agenda the question of the action to be taken by the International Red Cross in civil war. The Conference did not revert to the idea of an international convention, as first formulated in 1912, but it did adopt one important resolution, Resolution XIV on Civil War, in which it recognized that victims of civil wars and disturbances, without any exception, are entitled to relief, in conformity with the general principles of the Red Cross 1/.

This resolution was to be put to a test shortly after its adoption, since two months later, a civil war broke out in the plebiscitary territory of Upper Silesia. To be sure, this conflict was somewhat unique in character. That area, lacking a national government, was placed under the administration of an inter-allied commission. At the same time, neither of the opposing armies constituted military formations recognized by the German or the Polish Governments. Nevertheless, the principles adopted by the Xth International Conference of the Red Cross constituted the basis for the action of the ICRC delegates, and the Parties to the conflict declared that, for the duration of the hostilities, they were applying the provisions of the Geneva Conventions as a whole.

In 1936 the Spanish Civil War broke out; it was to continue for three years. On both sides of the battle front the ICRC carried on extensive activities and obtained at least partial application of humanitarian law together with numerous other ameliorations in behalf of the victims. The delegates visited 40,000 prisoners and arranged for the exchange of hostages. Their families corresponded with them by the intermediary of the central Agency of Geneva, which created the formulae of "civilian messages" for them.

Problems relating to non-international armed conflicts became the subject of lively discussions during the XVIth International Conference of the Red Cross, meeting in London in 1938. This Conference also placed on its agenda the question of adaptation of the Geneva Conventions of 1929 and the Xth Convention of The Hague, 1907. This question of non-international armed conflicts was given attentive study by the legal commission of the

1/ Red Cross : Resolution XIV, Geneva 1921, Annex VI, p. 013.

Conference, which recognized all the difficulties inherent in it. Through its Rapporteur, as spokesman, it expressed: "Our proposal, while emphasising our anxiety that in civil war the great humanitarian principles which are the soul of the Red Cross should be increasingly applied, not only to the wounded, sick and prisoners of war, but also the non-combatants, and to children in particular, asks the International Committee, in the light of its practical experience, to pursue the study of all problems relating to the work of the Red Cross in civil war or revolution".^{1/}

Having taken cognizance of this report, the International Conference adopted Resolution XIV, on The Role and Activity of the Red Cross in Time of Civil War. This resolution particularly urged the ICRC to continue its efforts with a view to obtaining the application of the humanitarian principles which were formulated in the two Geneva Conventions of 1929 and the Xth Convention of The Hague, 1907, a humane treatment for all political detainees, the respect for the life and liberty of non-combatants, facilities for the transmission of news of a personal nature and for the re-union of families, and effective measures for the protection of children. The result of the ICRC studies in this field were to be submitted to the next International Conference of the Red Cross.

Following upon the tragic experiences suffered throughout the Second World War, when that conflict finally ended, the ICRC was more strongly convinced than ever of the imperative need to effectuate a revision and a development of the international humanitarian law then in force. For this purpose it sought the opinions of Red Cross and governmental experts. On the basis of the consultation with these experts, it prepared drafts which embodied proposals for rules applicable in cases of non-international armed conflict. These texts were submitted for study to the XVIIth International Conference of the Red Cross, meeting in Stockholm in 1948. The latter recognized the innumerable difficulties which were going to be raised by the problem of non-international armed conflict, and it suggested that this question be referred to the Diplomatic Conference, at the same time expressing the hope that the humanitarian principles contained in the Geneva Conventions would be applied in all armed conflict.

The drafts of revised or new conventions protecting victims of war, as presented to the Diplomatic Conference of 1949, contained two different texts relative

^{1/} Acts of the XVth International Conference of the Red Cross, London, 20 - 24 June 1938, p. 83.

to non-international armed conflict. The first, common to the Geneva Convention for the amelioration of the condition of wounded and sick in armed forces in the field, and to the Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, Article 2 al.4, stipulated that "In all cases of armed conflict not of an international character, occurring in the territory of one or more of the High Contracting Parties, each of the adversaries shall be bound to apply the provisions of the present Convention. In these circumstances, application of the Convention will not in any way depend upon the legal status of the Parties to the conflict and shall have no effect upon that status" 1/. The second text, common to the Convention relative to the treatment of prisoners of war and to that relative to the protection of civilian persons in time of war, Article 2 al. 4, read as follows: "In all cases of armed conflict not of an international character, occurring in the territory of one or more of the High Contracting Parties, each Party to the conflict shall be bound to apply the provisions of the present Convention, on condition that the adverse Party likewise conforms thereto. In these circumstances, application of the Convention will not in any way depend upon the legal status of the Parties to the conflict, and will have no effect upon that status 2/."

From the start, in the general debate, there was a confrontation of opposing points of view. Certain delegates feared that the drafts would cover all forms of anarchy; the advocates of the Stockholm draft considered the proposed texts as an act of courage, stressing that for too long a time patriots struggling for the independence of their country had been considered to be common brigands 3/.

In order to study this question with all the care it required, the Mixed Commission which was assigned to examine the drafts of articles common to the four Conventions, decided to appoint a special committee which subsequently organized itself into working groups. The work of the Diplomatic Conference resulted in Article 3

1/ Drafts of revised or new conventions protecting victims of war. Texts approved and amended by the XVIIth International Conference of the Red Cross, Stockholm 1948.

2/ Ibid.

3/ For the discussions at the Diplomatic Conference, see Commentary I, Geneva, 1952, p. 43 ff.

common to the four Geneva Conventions of 1949, which codified the fundamental principles of protection which should be afforded in all circumstances to victims of non-international armed conflicts.

Chapter 2

Work of the ICRC since 1949

As early as June 1953, the ICRC convened a Commission of experts in Geneva for the examination of the question of assistance to political detainees. The Commission was constantly guided by the fundamental principle that the mission of the Red Cross was the relief of human suffering. It stressed the fact that "this role falls to it not only in the case of international warfare, but also in that of civil war or disturbances" 1/.

The consultation with the experts was followed by meetings of two other Commissions. One of them was responsible for the study of the question of the application of humanitarian principles in the event of internal disturbances, the conclusions of which are frequently referred to in Title V of this document. The other was assigned to examine the question of aid to victims of internal conflicts. The work of this latter, also frequently quoted, dealt, among other important questions with cases for application of Article 3, de lege lata, and its scope as well as with the role of the ICRC and the National Societies of the Red Cross in the conflicts under consideration.

In its XXXIst Resolution, relative to the protection of victims of non-international conflicts, the XXth International Conference of the Red Cross, meeting in Vienna in 1965, shared the profound concern of the ICRC and urged it to "continue its work with the aim of strengthening the humanitarian assistance of the Red Cross to victims of non-international conflicts" 2/.

1/ Commission of experts for the examination of the questions of assistance to political detainees, Geneva, 11 June 1953, p. 2.

2/ See also, Red Cross Resolution XIX, New Delhi, 1957, Annex IX, p. 018. In 1957 the International Conference of the Red Cross, in its Resolution XIX, had already signaled the importance it attached to the possibility of affording relief to victims of non-international conflicts and to the action of the ICRC in this field.

In addition, this Conference adopted an important resolution (XXVIII) which set forth, among other matters, four essential principles of protection of the civilian population in case of armed conflict 1/; ruling out a suggestion that a specification be introduced to the effect that these principles would be applicable only in international armed conflicts, the conference wished to confer a quite general character on them and thereby demonstrate its interest in their application also in non-international conflicts.

During the winter of 1966-1967, the ICRC was to take an important decision relative to putting into effect the resolutions referred to above, but one which, in reality was going to have a decisive influence on the development of its work as a whole : it decided to extent its study to cover the whole of the laws and customs applicable in armed conflicts, doing so both for international and non-international armed conflicts.

Indeed, in the course of its practical activities, the ICRC had found that the number and scope of non-international armed conflicts made it immediately imperative to provide better protection to all victims of hostilities. However useful Article 3 had proved, it had been shown to have numerous loopholes, and this made it no longer possible to ensure sufficient guarantees to the victims in question.

Furthermore, the legal studies of the ICRC were broadened to cover all the laws and customs applicable in armed conflicts, because the insufficient character of the rules relative to the conduct of hostilities often affected the application of the Geneva Conventions in conflicts of all sorts 2/.

In the course of its studies, two developments lead to strengthening the conviction of the ICRC : the adoption by the Teheran Conference of a resolution on human rights in armed conflicts, and the adoption of Resolution No 2444 by the United Nations General Assembly on 19 December 1968. This resolution incorporated and endorsed the gist of the former resolution, as well as certain principles of the Vienna Resolution XXVIII 3/.

1/See Document VIII, Annexes.

2/See the report of ICRC on Reaffirmation, Geneva, May 1969, p. 7.

3/Ibid. p. 16 ff.

In February 1969, the ICRC convened a Commission of experts to examine the laws and customs applicable in armed conflicts. Problems arising from non-international armed conflict and situations of internal disturbances and tensions were placed on the agenda of that Commission. The results of its consultations were submitted to the XXI Conference of the Red Cross, held at Istanbul in September 1969 1/.

After having reviewed the work already done in this field, and having acknowledged that certain delegations entertained some reservations, the XXIst International Conference finally encouraged the ICRC to continue its activity by adopting a general resolution (No XIII) on Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts 2/. Furthermore, as evidence of its great concern in the matter of non-international armed conflict, it devoted two resolutions to the protection of victims of non-international armed conflicts, as well as to the status of combatants in the conflicts under consideration 3/. Indeed, the Conference called upon the ICRC to "devote special attention to this problem within the framework of the more general studies it has started to develop humanitarian law, in particular with the co-operation of Government experts".

For the purpose of carrying out the mandate entrusted to it by the XXIst International Conference and of submitting concrete proposals to a forthcoming Conference of governmental experts, the ICRC, in keeping with its tradition, decided to consult, in their private capacity, a certain number of military and legal experts on questions relative to non-international armed conflict and internal disturbances and tensions 4/.

1/ Ibid p. 97 ff.

2/ See Document VIII.

3/ See annexes XI, p. 020 and XII, p. 021.

4/ For details on these consultations, which likewise covered other areas of the law of armed conflicts and for the list of experts consulted, see Document I, Introduction. As that Document makes clear, some of these consultations were contained in a report entitled Preliminary Report on the Consultations of Experts Concerning Non-International Conflict and Guerrilla Warfare, Geneva, July 1970, intended primarily for the information of the UN Secretary-General.

The opinions of the experts consulted in the course of the year 1970 are given in this document, under the heading "The Experts' Opinion". The outcome of these consultations, as well as that of the work of certain private and public institutions 1/ provided the basis for the proposals and suggestions contained in this document, drawn up for the governmental experts.

Furthermore, the ICRC has extensively drawn upon the work done by the Human Rights Division of the United Nations Organization 2/, as well as upon the opinions put forward by representatives of the member States of that Organization in the course of the examination of reports A/7720 and A/8052 of the Secretary-General on "The Respect of Human Rights in Armed Conflicts" 3/.

1/ Reference is particularly made to the Conference on the Reconsideration of the Law of Armed Conflicts, organized by the European Centre of the Carnegie Endowment, Geneva, September 1969, and to the Conference on Humanitarian Law and Armed Conflicts, organized by the Centre of International Law of the University of Brussels, January 1970. Mention may also be made of the Congress of the International Society of Military Penal Law and of the Law of War, meeting in Dublin in May 1970, see Document VIII.

2/ The group of experts convened by the Human Rights Division of the United Nations Organization, New York, April 1970.

3/ For contacts with the UN, see Document I, Title I.

Chapter 3

Presentation and Aim of this Report

The general theme of this document is the endeavour to obtain better protection for the victims of non-international armed conflicts. It is thus intended to implement the aspiration expressed by the International Committee on a number of occasions, and embodied in resolutions 1/.

The protection of victims of non-international conflicts had already been the subject of a special report, submitted by the ICRC to the Istanbul Conference 2/. In addition, all the points examined here had been given an initial analysis in the report on Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts, presented at the same Conference.

However, all of the questions which will be examined further on in this report were studied in the light of recently manifested lines of thought : non-international armed conflicts entailing application of international humanitarian law as a whole, qualification of the non-international armed conflict and application of the essential rules of the Geneva Conventions, situations of internal disturbances and tensions. In particular, the ICRC has endeavoured to present concrete proposals for rules on most of these points, as the Istanbul Resolution XIII had urged.

1/ See in this connection Title I, chapter 2 of the present report.

2/ Report of the ICRC on the Protection of Victims of Non-International Armed Conflicts, Geneva, May 1969. This report dealt not only with the legal aspects of the matter but also the practical activity of the National Societies in case of armed conflict.

As these concrete proposals show, the ICRC believes that the most valid means to ensure that the victims of non-international armed conflicts obtain a more effective protection, more fully adapted to the new conditions of armed struggle, is to reaffirm and develop Article 3 by a series of appropriate rules. This regulation could be concretized in the form of an additional Protocol to Article 3 .

Such a Protocol would include a Preamble, which would refer to the existence of Article 3 common to the four Geneva Conventions of 1949 and would bring out all its scope and value. The Preamble would also stipulate that Article 3, being a fundamental provision, shall remain in force at all times.

The proposals and suggestions contained in the present document - after it has been modified and completed in the light of remarks which the governmental experts will wish to contribute - might well be presented in the form of more or less extensive and developed provisions in the Protocol, and might be subdivided as follows :

- I. : Provisions relating to non-international armed conflicts, entailing the application of international humanitarian law as a whole.
- II. : Field of application of the Protocol :
 - definition of non-international armed conflict,
 - provision relating to the field of application of the Protocol in time.
- III. : Provisions relating to the treatment of combatants.
- IV. : Provisions relating to the treatment of civilian persons (general protection and treatment of internees).
- V. : Provisions relating to penal prosecutions and punishments.
- VI. : Provisions relating to the implementation of the Convention :
 - right of humanitarian initiative,
 - assistance in the application of the humanitarian law of non-international armed conflicts,

- provision stipulating that the application of the provisions of the additional Protocol shall not affect the legal status of the Parties to the conflict,
- provision urging the Parties to the conflict shall endeavour to bring into force as completely as possible all of the international humanitarian law in force.

The additional Protocol should also include rules relative to the behaviour of combatants and to the protection of the civilian population against the dangers of hostilities. The ICRC has not formulated any proposals concerning these fields in the present report. Governmental experts will kindly refer to Documents III and IV, which deal more particularly with these questions.

TITLE IINON-INTERNATIONAL ARMED CONFLICTS
ENTAILING THE APPLICATION OF
INTERNATIONAL HUMANITARIAN LAW AS A WHOLE

Chapter 1

Non-international armed conflict engaging the authorities in power against insurgents whose organization includes numerous component elements of a State, among which, in particular, is the control of a part of the territory.

The problem

For many years it has been assumed that the conflict in question became a true civil war only after recognition of belligerency by the legal government, which recognition of belligerency then entailed the application of the law of armed conflicts in its quasitotality. Little by little, however, the tendency has been to leave subjective criteria out of consideration, i.e. those depending solely on the decisions of the government (formal recognition of belligerency), but instead to rely upon certain objective criteria, such as the existence of specific situations. Application of the standards of law of armed conflicts became attached no longer to war in the legal sense, but to factual situations and to a material state of war : it is that which the 1949 Geneva Conventions effectuated at the level of international conflicts, and also at the level of non-international armed conflict with article 3.

Henceforward, in an armed conflict of a non-international character, even if only one of the Parties, namely the legal government, constitutes, from the beginning of the conflict, an integral subject of the law covering those who have full international capacity, that no longer signifies that the insurgent party is bereft of all rights and exempt from all duties : the two Parties find themselves constrained to apply a minimum of rules : viz., Article 3. But when a certain balance of forces is reached in the struggle between the Parties to the conflict, it is found that a tendency exists toward an increasingly broad application of international humanitarian law; such being the case, should not humanitarian law as a whole be considered to apply in case of non-international armed conflict, when the rebel party presents certain of the constituent elements of a State (provisional government, organized civil authority, effective control of a territory, regular armed forces), this being true independently of any recognition of belligerency on the part of the authorities in power ?

The experts' opinion

Some of the experts consulted limited themselves to the finding that the armed conflict in question satisfied the conditions of Article 3, and that if a development of this latter were to be achieved, these new provisions would indubitably be applicable. Nevertheless, it seemed to them difficult to envisage that this armed conflict could come within the provisions of the whole body of international humanitarian law.

Other experts - the greater number - agreed that non-international conflicts revealing all the characteristics of a classical civil war should entail the application of humanitarian law as a whole, and no longer only Article 3, this being independent of any recognition of belligerency by the legal government.

But they explicitly hoped that no effort would be made to switch this armed conflict over into the category of international conflicts. If the problem is taken up from the angle of a change in qualification, it might result in interminable discussion which would not achieve the desired aim, i.e., a better protection of the victims.

Lastly, a few experts maintained that, as of now, it can be considered that the armed conflict which manifests the characteristics of a classical civil war can be called an international conflict when the insurgents dominate a sufficiently important part of the territory, menacing by that very fact the existence of the established government.

In this way, most of the experts consider that now-a-days the application of the law of armed conflicts as a whole no longer depends on the recognition of the insurgents by the legal government - recognition which is no longer ever met with in practice. Indeed, if such recognition of belligerency were to occur, it should no longer be considered as a unilateral juridical act creating a state of law, but as the acknowledgment of a pre-existing state of law, one which has essentially a political import.

They expressed the wish to see a general consensus reached in favour of the application of international humanitarian law as a whole in the situations in question, so as to guarantee that the victims would have the broadest possible protection and humane treatment.

Proposal

Should the regulation envisaged establish the following principle ?

When, in case of non-international armed conflict, the Party opposing the authorities in power presents the component elements of a State - in particular if it exercises public power over a part of the territory, disposes of a provisional government and an organized civil administration, as well as of regular armed forces - the Parties to the conflict shall apply the whole of the international humanitarian law applicable in international armed conflicts.

Commentary

In formulating this proposal, the ICRC is fully aware of the difficulties it may raise, particularly as concerns the application of the Fourth Convention relating to the protection of civilian persons in time of war. Actually, this latter is based, for the most part, on the concepts of nationality and of occupation.

Be that as it may, the conflict in question retains certain of the characteristics of the non-international armed conflict, especially as regards all that has to do with the relations of the Parties to the conflict with civilian persons. Nevertheless, considering the scope that hostilities may assume and considering the resulting increase in the number of victims, it is no longer admissible to leave civilians outside the protection that international humanitarian law as a whole should afford them.

The ICRC, therefore, hopes that the Commission of governmental Experts will examine the question of the application of all or a part of the Fourth Geneva Convention, taking into account certain modifications to be made in this regulation owing to the nationality of the civilians involved in the armed conflict in question, and also owing to the nature of the said conflict.

Chapter 2

Outside aid in the non-international armed conflict.The problem

In a number of non-international armed conflicts, one or the other Party to the conflict - and sometimes both together - has benefitted from the aid of a third State. As to the effects of such outside aid, the experts consulted by the ICRC held various views. Some felt that it encouraged the conflict and even created it : it is often because the insurgents have been assured of the support of a foreign power that they engaged in the conflict. The internal conflict, it has been said, has all too often become the terrain on which are manifested and carried on, at the price of great suffering, certain political and ideological rivalries extending far beyond the single territory involved. Moreover, it was pointed out that, under the Charter of the United Nations (Article 2, number 7), intervention in the internal affairs of a State was prohibited - this rule having been reaffirmed and made explicit in the recent declaration of the United Nations referring to the principles of international law dealing with friendly relations and co-operation between States.

Other experts considered however, that outside aid could be perfectly legitimate and in conformity with the principles of the United Nations Charter. This latter, and also general international law, in no wise prohibits agreements of co-operation between governments, including military co-operation, and the UN itself, in certain of its resolutions, has recommended providing aid to liberation movements, as they are called 1/.

1/ UN. A/Res. 2703 (XXV) number 10
UN. A/Res. 2708 (XXV) number 6
UN. A/Res. 2678 (XXV) number 10

It is not incumbent on the ICRC to express its position with regard to these opinions and, in particular, with regard to the legitimacy of the aid that a third State can bring to one or the other of the Parties to a non-international conflict. What does concern it, on the other hand - and this is a factual observation based on its practical experience and generally confirmed by the experts - is that this aid, whether justified or not, unless it is purely humanitarian, will give a greater scope to the conflict and consequently increase the number of victims.

Nevertheless, most often, the international law applicable to the situation is not considered as being modified, and it is deemed that only Article 3 is applicable, whereas the scope assumed by the conflict would, from the humanitarian point of view, require the application of many more guarantees and standards. Hence, the Committee had asked the experts consulted to look into the legal consequences of the aid of third States and into the possibility of ameliorating the situation as regards the applicable law.

The experts' opinion

While it was noted that there are outside elements in every non-international conflict, the experts sought, first of all, to ascertain what different forms outside aid can take with reference to material and personnel criteria. In addition, they raised the question as to whether these various forms of aid were of a nature to modify the qualification of the armed conflict.

They stressed that the nature of this outside aid was extremely varied, going from political support to the dispatch of armed forces taking a regular part in the hostilities.

Indeed, a third State can give its political backing to one or the other Party to the conflict. The experts did not consider that that could modify the qualification of the conflict. A reservation was, however, made in the case in which the General Assembly of the United Nations might, in a resolution, express the hope that its members would grant their moral and material support to one of the Parties to a specified conflict.

A third State can also provide an economic aid of varying amount; in principle, it should not have an influence on the nature of the conflict. The experts did, nevertheless, raise the question whether massive economic aid would not take on the aspect of a disguised military assistance.

Lastly, a third State can furnish a military aid; and in this connection, all of the experts hoped that distinctions would be drawn among the different degrees that such aid can assume. If this assistance is limited to the dispatch of technical counsellors or to the granting of a logistic support, it ought not to have an effect on the qualification of the conflict. But when the military aid consists in the dispatch of armed forces taking regular part in the hostilities - or in any case when these contingents are sufficiently large to modify the balance of the confronting forces - most of the experts joined in stating that the nature of the conflict will thereby be modified; from non-international, the armed conflict will thus have become international.

Most of the experts consulted by the ICRC in 1969 and 1970 upheld this thesis 1/; the second report of the Secretary-General of the United Nations likewise reviewed it :

"At the 1969 meetings of a Committee of Experts of the International Committee of the Red Cross, it was generally agreed that foreign military intervention, on the side of either party, could transform an internal conflict into an international one, calling for the application of the laws and customs of war. In their preliminary replies to the 1970 questionnaire of the Red Cross, some of the experts appeared to consider that this was true of purely military intervention ..." 2/.

1/ See in this respect the Report of the ICRC on Reaffirmation, Geneva, May 1969, p. 100.

2/ Report Secretary-General, A/8052, September 1970, para. 135, p. 44.

It is to be recalled that for a long time the teachings of the publicists had distinguished between the aid granted to the legal government and the aid granted to the rebels. The view was that, because of its sovereignty, the established State had the right to ask for an outside military aid, which aid would still not modify the qualification of the conflict, since the action of the intervening State had the same characteristics as that of the government being assisted. But when the foreign aid was granted to the insurgents, it was a matter of interference in the internal affairs of a State, leading to an internationalisation of the conflict, at least as between the forces of the legal government and those of the intervening State. While this situation is always true de lege lata, however the legality of the aid may be interpreted, it must be agreed that, as a whole, the experts have argued against this dichotomy and have unanimously stated that no distinction should any longer be made between the dispatch of armed forces to the insurgents and the dispatch made to the authorities in power. In both such cases, the armed conflict, from being non-international, becomes international.

As part of the problem of foreign aid in case of non-international armed conflict, the experts also examined the question of humanitarian assistance; they wished to reaffirm clearly its scope and value, so as to avoid confusion and abuse : a government which grants an aid to one or the other Party to the conflict in order to reinforce its military power should not be able wrongfully to qualify its act as humanitarian assistance.

Consequently, the experts insisted on pointing out that humanitarian aid supplied to the victims of the conflict, in particular by the ICRC, cannot have an effect on the qualification of the conflict and in no event constitutes an interference in the conflict 1/.

Although, as shown above, very many experts agreed that an aid in the form of a dispatch of armed forces was of a nature to transform the qualification of a non-international armed conflict, some of them opposed this theory, fearing that it would result in the creation of a new type of conflict which would be situated between the non-international conflict and the international confrontation.

1/ By analogy, Article 27, para. 3 of Geneva Convention I, 1949, may be cited.

In the first place, they consider it necessary to maintain the distinction between international armed conflict and non-international armed conflict, sanctioned by the international law now in force.

In the second place, they proved to be reticent in accepting the idea that a foreign aid in force transforms a non-international armed conflict into an international conflict. They warned against any tendency which would help to create new principles of international law and, above all, which would allow justifying a violation of the international law in force.

Lastly, rather than run the risk of confronting the numerous difficulties which the qualification of the conflict in question would not fail to raise, they deemed it preferable to seek to bring about as broad as possible an application of international humanitarian law.

Proposal

Should the regulation envisaged establish the following principle ?

When, in case of non-international armed conflict, one or the other Party, or both, benefits from the assistance of operational armed forces afforded by a third State, the Parties to the conflict shall apply the whole of the international humanitarian law applicable in international armed conflicts.

Commentary

The remarks relating to the application of the Fourth Geneva Convention, as they were formulated in the commentary on the preceding proposal, are also pertinent to the non-international armed conflict which involves an aid from a third State.

Furthermore, the ICRC considers that there is one other problem - which was not taken up by the experts consulted during the year 1970 -, having to do with the actions which the Forces of the United Nations can undertake according to the provisions of chapter VII of the United Nations Charter 1/ .

Actually, by the terms of Article 39 of the Charter, the Security Council, when it has determined the existence of any threat to the peace, breach of the peace or act of aggression, may decide upon the measures to be adopted to re-establish international security. In such circumstances, among the measures of security, it may, under Article 42 and when all other action would be inadequate, bring about the intervention of armed forces of any nature, as may be necessary to restore, international peace and security. The interpretation currently given to these provisions permits it to call upon these armed forces in case of non-international armed conflict constituting any threat to the peace.

Do the governmental experts consider that the action of the United Nations Forces pursuant to the initiative of the Security Council, entails the application of the whole of the international humanitarian law applicable in international armed conflicts ?

1/ See Report of the ICRC on "Implementation and dissemination of the Geneva Conventions", Geneva, March 1963, page 5.

On several occasions the International Conferences of the Red Cross have expressed the hope that agreements might be reached to ensure that the UN Forces respect the Geneva Conventions and are protected by them.

Red Cross : resolution V, Geneva 1963
resolution XXV, Vienna 1965

Chapter 3

Problems arising from "Wars of Liberation" 1/

The view is held in some quarters that "wars of liberation" are included in those armed conflicts to which all humanitarian law, particularly the Geneva Conventions, may justifiably be applied. The problem was raised already by the ICRC in the reports it submitted to the Istanbul Conference. In its report on the Protection of Victims of Non-International Conflicts, in particular, it quoted a series of resolutions in which the U.N. General Assembly urged that combatants against the authorities in power in southern Africa should, in the event of capture, receive the same treatment as, or even the status of, prisoners of war 2/. The ICRC pointed out that it could be deduced from some of those resolutions 3/ that the United Nations considered such armed conflicts or states of tension as international conflicts entailing the application of the laws and customs of armed conflicts.

1/ In this document, this expression, which is current, particularly in legal writings on the law of armed conflicts, and was already used in the reports which the ICRC submitted to the XXIst International Conference of the Red Cross does not, it goes without saying, imply the expression of any opinion.

2/ E.g. Resolution 2446 (XXIII) in which the General Assembly confirmed the Teheran Conference decision to : "recognize the right of freedom fighters in southern Africa and in colonial territories, when captured, to be treated as prisoners of war under the Geneva Conventions of 1949."

3/ E.g. Resolution 2383 (XXIII) relating to Southern Rhodesia in which the General Assembly urged the United Kingdom to : "ensure the application to that situation of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949".

The ICRC intends again to attach to this problem, in the present document, the importance it deserves. There are three reasons for this :

- in the first place, in its Resolution 2597 (XXIV), the U.N. General Assembly requested the Secretary-General to continue his study on the respect of human rights in time of armed conflicts "giving special attention to the need for protection of the rights of civilians and combatants in conflicts which arise from the struggles of peoples under colonial and foreign rule for liberation and self-determination and to the better application of existing humanitarian international conventions and rules of such conflicts". This particular problem was the subject of another important resolution at the last U.N. General Assembly, of which the work and resolutions will be considered at greater length below.
- Secondly, in the consultations it conducted in 1970, the ICRC made a point of submitting this problem to the experts and it has obtained a number of opinions which are quoted below.
- Thirdly, in accordance with its traditional mission, the ICRC itself for several years has been active in southern Africa for the benefit of victims of the conflicts on both sides. This last reason alone would justify the importance which the ICRC intends to attribute to the problem in its documentary material.

It is also this activity which, first and foremost, prompts the ICRC to the thoughts and conclusions to be found later herein concerning legal means of providing better protection for the victims of those conflicts. Before giving those thoughts and conclusions, however, it is appropriate that we mention the work of the United Nations on the question, the practical activities of the ICRC, and the opinions which the ICRC has obtained from the experts it has consulted.

a) Recent U.N. studies and resolutions

On the basis of the mandate assigned to the Secretary-General by the aforesaid resolution 2597, paras 195 - 237 of his second report 1/ dealt extensively with the question of protection for civilians and combatants in conflicts arising from the struggle of peoples under the yoke of colonial and foreign domination to achieve their freedom and self-determination.

After reviewing the various resolutions in which the General Assembly urged prisoner of war treatment or status, within the meaning of the Third Geneva Convention, for combatants in southern Africa 2/, the Secretary-General's report, in paras. 205 - 212, broaches the problem which is of concern to us here, namely the legal designation of conflicts of this type. It quotes inter alia, in para. 210, the opinion of experts that the various basic instruments adopted by the United Nations and its declarations concerning the self-determination of peoples would confer an international character upon armed struggles to overthrow foreign colonial administration.

Those experts "point out in particular that the concept of self-determination of peoples is enshrined in article 1 and other provisions of the United Nations Charter and considered as "a right" in the International Covenants on Human Rights. The Declaration on the Granting of Independence to Colonial Countries and Peoples proclaimed by the General Assembly in resolution 1514 (XV) provides, inter alia, that the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation; that all peoples have the right to self-determination; and that all armed action or

1/ Report Secretary-General A/8052, 18 September 1970.

2/ In other resolutions (e.g. No 2547 (XXIV)), the General Assembly also asked that in the situations under consideration in southern Africa the Geneva Convention relative to the Protection of Civilian Persons in Time of War be applied.

repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely the right to complete independence, and that the integrity of their national territory shall be respected. These experts further refer to other resolutions of the General Assembly such as resolution 2465 (XXIII) mentioned earlier, which reaffirm the legitimacy of the struggle of the colonial peoples to exercise their right to self-determination and independence, and urge all States in particular to give the necessary moral, political and material support to the peoples of those territories in their legitimate struggle to achieve freedom and independence".

However, it is by no means obvious from the opinions and resolutions mentioned above that the situation in southern Africa can really be considered as international conflict. In fact, the Secretary-General, in para. 212 of his report concludes : "Whether or not, as various experts tentatively suggest, the above-mentioned pronouncements of the General Assembly and other United Nations organs are sufficient to render conflicts "international" (that is, inter-State) in the sense of the Geneva Conventions, or whether they merely stress a strong concern of the international community for adequate measures of protection for combatants and civilians involved in such conflicts is a basic and difficult question which the General Assembly itself and the States Parties to the Conventions might wish to consider."

The relevant resolution 2374 (XXV) adopted by the last General Assembly on "Respect for Human Rights in Time of Armed Conflicts" also does not answer the question; rather does it emphasize the prisoner of war treatment which should be granted to "freedom fighters" 1/.

1/ Substantive paragraph 4 of this resolution (adopted by 77 votes in favour, 10 against and 28 abstentions) states : "(The General Assembly) affirms that the participants in resistance movements and freedom-fighters in southern Africa and territories under colonial and alien domination and foreign occupation, struggling for their liberation and self-determination, should be treated, in case of their arrest, as prisoners of war in accordance with the principles of the Hague Convention of 1907 and the Geneva Conventions of 1949".

The latest General Assembly, in connection with various subjects, adopted four other resolutions relating in part to the plight of combatants in southern Africa and colonial territories (Nos 2621, 2652, 2678 and 2707). They all, except No 2652, refer, like resolution No 2374 (XXV), to prisoner of war treatment for such combatants. Resolution 2652 refers to Southern Rhodesia and the application to the situation in that country of the Third Geneva Convention.

b) Opinions of experts consulted by the ICRC

From the experts' very numerous remarks on "wars of liberation" three obvious trends emerge.

A few experts considered that the theory that "wars of liberation" against colonial governments were international conflicts was based on fictitious grounds, namely that people struggling for freedom should be recognized as subject to international law. Whatever the argument - the right to self-determination, self-defence - the factual elements were characteristic of a situation of conflict. As the law stood, such situations constituted internal disturbances or non-international armed conflicts depending on the extent of hostilities. To consider such conflicts as international would be to substitute for the material concept of an armed conflict the teleological, subjective and political concept which had nothing to do with the application of humanitarian law. Consequently, there seemed to be no reason why insurgents in a war of liberation should have a greater right to the application of the law of armed conflicts than other insurgents.

Some of the experts inclined to this opinion were more moderate in their views and wished to make the following distinction: a nation seeking to regain by force of arms the independence they had recently lost due to occupation by another State, fought for self-determination, and their struggle was worthy of being considered an international conflict. However, if only a minority sought independence, no recognition of the conflict as international could be granted; to do so would only encourage a dissident and non-representative faction to resort to violence to achieve its aims.

Very many experts, by contrast, considered that since the UN General Assembly resolution No 1514 of 14 December 1960 "Declaration on the Granting of Independence to Colonial Countries and Peoples", such wars should be recognized as international and the movements fighting the colonial governments as subject to international law. The world community had clearly, on a number of occasions, made known its opinion on this subject and its wish that "freedom fighters" be granted privileged treatment.

The third tendency was represented by a few experts who, although not contesting the grounds for the latter theory, wished to qualify it. The right to self-determination, a right sanctioned by several conventions and international declarations, should be applied generally. These experts pointed out that resolutions adopted on specific cases were prompted by many political motives and had, moreover, proved to a great extent ineffectual. They wished for recognition of the general nature of the principle of self-determination and from that point of view they considered that any armed conflict originating from the right of peoples to self-determination should entail the application of the ius in bello as a whole.

c) ICRC activity in the field for the benefit of victims of "wars of liberation" in southern Africa.

For many years the ICRC has been concerned to carry out its traditional work in the conflicts and tensions prevailing in southern Africa. Below is given a summary of the information on this subject which it has published in its Annual Reports and other documents.

It was in 1963 that, for the first time, the ICRC was authorized by the Republic of South Africa to visit a number of places of detention in which were held prisoners sentenced for their hostile attitude to the Apartheid laws. The ICRC delegates repeated these visits in 1967, 1969 and 1970, and had access to all prisoners sentenced for political offences and reasons. Delegates talked in private with prisoners of their own choice and, in keeping with ICRC practice in connection with visits to political detainees, their reports, including their observations pointing out where there was room for improvement in detention conditions, were conveyed to the detaining Authorities. On the other hand, the ICRC delegates have not been authorized to visit persons detained for interrogation under the "Terrorism Act".

Since 1964 the ICRC has been permitted to visit persons under arrest in Southern Rhodesia for political reasons, namely the "restrictees" in camps and the "detainees" in prisons. Further visits were carried out each year from 1966 to 1969.

The ICRC has applied to extend its activity to prisoners convicted for political reasons, but the Rhodesian Authorities have not granted that request, stating that the prisoners were sentenced by ordinary courts and had been given the benefit of the usual rules of procedure.

In the territories under Portuguese control, the ICRC was authorized to visit political detainees and military prisoners in Portuguese Guinea in 1965, in Mozambique in 1966 and 1968, in Angola in 1966 and 1970, and in the Cape Verde Islands in 1969. In Mozambique visits were made not only to camps where captured rebels and sentenced detainees were held, but also to reception centres for civilian Africans (men, women and children) who had had to flee from disturbed areas. In all such visits the ICRC, through its reports to the authorities, endeavoured to improve detention conditions. As can be seen, the ICRC increased, as much as it was permitted, the frequency of its visits to persons detained for their political convictions or actions in southern Africa and in Portuguese controlled territory.

Moreover, during their travels in Africa, the ICRC delegates have contacted the leaders of the liberation movements waging the struggle against the authorities in power and whose combatants are referred to in the UN resolutions examined above. The setting up of permanent ICRC regional delegations in Africa in 1969 has made these contacts more frequent. The ICRC has thus been able to note the intention made known by several of these movements to observe in their struggle the basic principles of the Geneva Conventions. It also began to give them assistance in the form of medical supplies. Its delegates have visited military and civilian Portuguese detained by one of these movements. In addition, in 1969 and 1970, at the request of several of them, the ICRC, in keeping with its role as a neutral intermediary, took over some captured Portuguese nationals and sent those who so wished back to Portugal. For these operations the ICRC was pleased to have the assistance of African Red Cross Societies.

ICRC conclusions and proposals

The opinions it has gathered and its own practical experience has led the ICRC to a two-fold observation : on the one hand there undeniably exists within

the international community an increasingly widespread tendency not to consider the struggle for self-determination or against discrimination in southern Africa on the same footing as a mere internal uprising : it is a struggle which appears to be assuming an international character or at least is having an international impact, and those who carry it on seem worthy of the benefit, in the event of their capture or arrest, of privileged treatment similar to that laid down in the Geneva Convention relative to prisoners of war. Civilian populations which suffer from such events should also be protected by international humanitarian law.

On the other hand, the international community organization has not yet reached such a point that aspiration, although widely recognized, may be considered as a binding rule on all States and parties concerned. The ICRC, of course, is in no position to give an opinion on all the direct and indirect consequences of the various resolutions adopted by the United Nations on the problem with which we are concerned 1/. However, it must point out that, with regard to the qualification of the conflict or the treatment of combatants who participate in these struggles for freedom and self-determination, the aforesaid resolutions have to a great extent proved ineffectual : the States directly concerned by these texts do not consider these struggles as international conflicts and they treat these combatants as common law offenders or political detainees. Often the ICRC is not even authorized to visit them; when it is, it can hardly refer to those resolutions to which the authorities concerned object.

Under these conditions, what action can be taken to improve the plight of all victims of the conflicts considered in this chapter? Three possibilities should be examined here :

1/ It has been pointed out that one effect of those resolutions is to legalize the assistance which States not involved give to such "liberation movements" and which otherwise would be considered contrary to the non-intervention principles of the Charter.

1. It does not seem expedient, to the ICRC, that the envisaged regulations should specify that the situations in southern Africa to which the said resolutions refer entail the qualification "international conflict" or least the application of all humanitarian law. To do so would lead to no really practical result. It is more likely that the States concerned would not agree to be bound by a legal instrument containing such a stipulation, as has already been pointed out in para. 226 of the Secretary-General's Report on the possibility of drawing up a Protocol relating to such cases. Moreover, such a stipulation would have the disadvantage of introducing into the envisaged regulations, which should be quite general in scope and applicable by all, references to particular and, it is thought in certain quarters, more or less temporary situations in specific places. If resolutions and instruments are to cover such situations, they should preferably be ad hoc.

2. Should the envisaged regulations, as some experts suggested, make no mention of particular situations but lay down in a general way that struggles for self-determination or against discrimination should be deemed international in character or should at least entail the application of humanitarian law as a whole? The ICRC submits this question to the government experts. Although the question is general in nature, the ICRC does see many difficulties which should be brought out into the open.

Indeed, whereas the existence in southern Africa of struggles for self-determination has been recognized in several U.N. documents and resolutions, experience over the last few years has shown that elsewhere struggles supposedly of the same kind may not only be denied by the authorities in power, but may be interpreted in widely varying ways by the international community, without there being any general agreement on the subject. When the application of humanitarian law as a whole is dependent on certain objective and material factual elements, as mentioned in previous chapters (e.g. Parties to the conflict having certain characteristics of a State - military assistance on a large scale, etc.) the existence of such situations and their consequences on the status and treatment of victims may be more difficult to contest, whether by

the authorities in power or the rest of the international community. On the other hand, the very objective of a struggle carried on by a movement opposed to the authorities in power, however legitimate it may be, is a subjective element which, as we have shown, may be so prone to objection that the application of humanitarian law as a whole cannot surely and effectively be made dependent on it.

In addition, as some experts pointed out, if it is the struggle's aim which is the criterion for its qualification, why take into account only two of the human rights - essential as they are - provided for in the Charter and in international treaties, namely self-determination and non-discrimination? Why not make identical provisions for the benefit of combatants who, in other regions of the world, struggle, for example, against torture or for freedom of conscience and speech? In fact, to be truly general, the regulations should lay down that any struggle for a basic human right which is refused is of international concern and justifies the application of humanitarian law as a whole.

This may be perfectly understandable in theory, but the practical difficulties of introducing into the planned regulations such a teleological criterion to determine when humanitarian law as a whole is applicable, immediately come to mind. Not only could such a criterion give rise to too much controversy for it to be satisfactory; it might raise false hopes among the "combatants for Human Rights", the result of which would be disregard for and hence weaken the regulations in question.

True, as in the situations in southern Africa mentioned above, some struggles for basic human rights could be officially and generally recognized by the international community. But then, as pointed out in number one above, it would be preferable for such unforeseeable special cases to be covered by ad hoc rules and measures.

3. The third possibility of improving the plight of civilian and military victims of the conflicts dealt with in this chapter is to develop the rules of humanitarian law which are applicable to situations which do not automatically and incontrovertibly entail the implementation of the law of armed conflicts as a whole. Such

development should be based on objective and material criteria acceptable to all States, including - an important point - those on whose territory the persons to be protected are. This is the solution which the ICRC - which can only act effectively in virtue of such criteria - advocates and expresses in the various proposals it puts forwards in its documents, particularly in the one relating to non-international conflicts and guerrilla warfare. To broaden thus the scope of the maximum number of humanitarian rules, even though in a general ways, to meet a greater number of situations, will at the same time benefit those engaged in what may be considered as "wars of liberation". The rules should apply without discrimination to all persons involved in these conflicts, in accordance with the principle which is opposed to any discrimination in the application of humanitarian law durante bello, as emphasized by the ICRC in its document entitled "Introduction".

But this general legal solution advocated by the ICRC, consistent with its usual concept of humanitarian law - and which it intends to accompany with increased practical activity for the benefit of victims of the conflicts in question - does not in any way anticipate particular measures which the international community, and particularly the United Nations, may desire to continue taking in favour of captured combatants and other victims of these conflicts. In this connection, it might be asked whether the United Nations could not also consider measures other than the resolutions so far adopted and which, as we have pointed out, have had no real effect on the treatment of the persons they were intended to benefit.

In para. 229 of his Report, the Secretary-General alludes, inter alia to a declaration of basic humanitarian rules which should be observed by all Parties to these conflicts and which would be recommended or proposed to the Parties without directly raising the problem of the qualification of such conflicts. This is an interesting idea which is in line with the standard draft rules which the ICRC proposes in its document on guerrilla warfare. 1/

1/ See document VI, chapter V, Conclusions and proposals.

Consideration could also be given to the possibility of diplomatic approaches to the Parties engaged in such conflicts, by the Secretary-General or governments particularly well-placed, to obtain improved conditions for captured combatants of both sides and for populations severely tried by hostilities. The ICRC, of course, apart from its traditional work for victims of such situations, is ready to lend assistance to bring about such humanitarian agreements, as would no doubt be the best means of improving the lot of the victims of these situations.

TITLE IIIDEFINITION OF THE NON-INTERNATIONAL ARMED CONFLICT

Chapter 1

Objective finding of the existence of armed conflictsThe problem

For a long time, the classical law of armed conflicts has been applied when a state of war in its formal meaning existed between two or more States, or in case of recognition of belligerency in the course of a non-international armed conflict. Nevertheless, little by little it has become customary not to take into consideration the subjective criteria, i.e. those depending solely on the decisions of the government, but rather an objective criterion : the existence of a certain factual situation. With the 1949 Geneva Conventions, conventional law began to refer the application of its standards to factual situations, doing so both on the level of international conflict and on that of non-international conflict 1/.

Thus, since 1949, the conventions as a whole apply as soon as the material elements of an international armed conflict exist; the same is true of Article 3, common to the four Geneva Conventions, in case of non-international armed conflict, even if there has been no recognition of belligerency. To be sure, Article 3, de lege lata, does not contain a definition of the non-international armed conflict. But although the article fails to specify

1/ Articles 2 and 3 common to the four Geneva Conventions of 12 August 1949.

the concept of "non-international armed conflict", it is none the less true that the authorities involved would not be in a position to interpret it erroneously, and that, when the conditions of such a conflict are realized the humanitarian standards of Article 3 must apply. In addition, certain elements of the existing text can be singled out : a non-international armed conflict exists in case of hostilities engaging armed forces within the same State. Thus, Article 3 leaves a broad power of appraisal to the Parties to the conflict, but nevertheless does not give them the power of sovereign decisions as to the application of its provisions.

The tendency to consider that non-international armed conflicts no longer come within the sole competence of the State involved must be recognized. It is increasingly taking form within the international community. The United Nations General Assembly has, on several occasions, set forth its position on armed conflicts of this nature which could constitute any threat to the peace.

Despite this, in several non-international armed conflicts, one or the other of the Parties has denied that a conflict was involved within the meaning of Article 3.

How can this situation be improved ? Two solutions are possible to limit this discretionary power : on the one hand, the formulation of a procedure which would permit the objective finding of the existence of non-international armed conflicts, or, on the other hand, the endeavour to provide a better definition or a better specification of the very concept of "non-international conflict". These two solutions are, for that matter, not mutually exclusive; they may well have complementary elements.

For that reason, the ICRC first questioned the experts consulted as to the possibility of creating an objective procedure for establishing non-international armed conflicts.

The experts' opinion

The experts favouring the establishment of a procedure for the objective finding of armed conflicts presented various proposals to the ICRC, and no consensus could be reached on this point.

a) Utilisation of existing procedures

One of the experts thought that a fresh use could be made of the principle of recognition of belligerency accorded to the insurgents by third States, a recognition which could be considered as a sign of the existence of an armed conflict.

Another expert suggested reliance on the procedure of notification set up by the International Covenant on Civil and Political Rights in its Article 4, paragraph 3, and the European Convention on Human Rights in its Article 15, paragraph 3 1/. Likewise, the experts consulted

1/ International Covenant on Civil and Political Rights, Article 4, para. 3 :

"Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General, of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminated such derogation".

European Convention on Human Rights, Article 15 para. 3 :

"Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

by the Secretary-General of the United Nations suggested that "any given situation be regarded as coming under Article 3 if the government concerned makes an official proclamation of emergency along the lines of those provided in the International Covenant on Civil and Political Rights or in the European Convention on Human Rights" 1/.

Lastly, some of them recalled Article 1 of the Geneva Conventions, by which the High Contracting Parties undertake not only to respect the Conventions in all circumstances, but to see to it that they are respected. Study should be made of the possibility of having each State which is a part thereto participate in a collective enterprise to ensure respect for the Conventions.

b) Utilisation of certain existing bodies

Here emphasis was on the United Nations Organization. To be sure, number 7 of Article 2 of the United Nations Charter specifies that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII". The experts agree that, by the terms of Article 39 of the Charter, the intervention of the Security Council or of the fact finding body which might be designated by the latter can be envisaged when the non-international armed conflict constitutes a threat to the peace, a breach of the peace or an act of aggression.

Some hoped that the ICRC 2/ would be authorized to act as a fact-finding body, either alone or in conjunction with the United Nations, or even with the collaboration of regional political organizations.

1/ Report of the Secretary-General A/8052, September 1970, para. 160, p. 50.

2/ These proposals were taken up in the report of the Secretary-General A/8052, September 1970, para. 160, p. 50.

c) Creation of a new body 1/

Lastly, some experts preferred the creation of a new body composed of members whose value ought to be recognized internationally and which should be so constituted as to be immune to political pressures :

- an organization composed of representatives of the States Parties to the Geneva Conventions;
- an international body, apolitical and neutral, composed of members appointed in their private capacity, and which could constitute a branch of the international Court of Justice;
- a body set up by the United Nations, of international composition, including persons known for their humanitarian views and not a priori open to suspicion of partiality.

Nevertheless, many experts warned against the creation of such a body, presenting a wide variety of reasons : The principle of sovereignty of States would in all probability not permit such a body to fulfil its tasks; it would have difficulty in reaching a decision without being accused of intervening in the internal affairs of a State. Finally, and above all, the majority of these experts considered that the present international situation was not favourable to the creation of a new body.

With regard to the United Nations, certain experts expressed reservations and, in particular, felt that it was not possible to know in advance whether the Security Council or the General Assembly would be in a position to reach a desinterested and objective decision acceptable to the State in question, and that that would depend to a great extent on the degree of interest felt by the Permanent Members of the Security Council in the conflict. The uncertainty inherent in this approach was an argument against adopting such a solution.

1/ These proposals were taken up in the report of the Secretary-General A/8052, September 1970, para. 160, p. 50.

In connection with the role that the ICRC could play in this field, the experts felt that the right of humanitarian initiative as it is established by the Geneva Conventions affords the best solution, and that therefore the ICRC should continue its efforts to act in all cases where there are victims, without itself seeking to establish the existence of armed conflict, but also without waiting until this finding was made by the State in question or by some other body. In their opinion, the activity of the ICRC, being purely humanitarian, should not imply a finding as to the legal nature of the conflict; the delicate relations which exist between the ICRC and the government faced with non-international armed conflict on its territory would be dangerously jeopardised if the ICRC had regularly and publicly to express its conclusions on the nature of the confrontation.

Proposal

The various proposals submitted to the ICRC all involve difficulties and show how hard it would be, at this time, to create a new body assigned to establish the existence of armed conflicts of every sort, a body which would have to have the confidence of all in order to reach decisions considered as impartial by the States involved. It may happen, in certain cases, that existing bodies, such as the Security Council or bodies within regional organizations, will be prompted to take a stand on the nature of certain armed conflicts and that their decisions will be recognized by the Parties concerned, but, for all the reasons adduced above, the solution involving the creation of a procedure for the objective establishment of the existence of armed conflicts appears to be too difficult to work out at present, and so cannot constitute a real solution to the question raised in the statement of the problem.

Nevertheless, the experts are requested to express any differing views they may hold.

Since the first solution seems hardly practicable, the ICRC considers that the other solution, i.e. the endeavour to specify the concept of "non-international armed conflict" holds out more chance of success in diminishing the arbitrary evaluation left to each government as to the existence of a non international armed conflict.

This second solution will be examined in the following chapter entitled "Definition", and will lead to practical proposals.

It also presents the following advantage : if a body were to be set up to establish the nature of armed conflicts, the second solution, i.e. a more explicit definition of the conflict, would be of value to it precisely in deciding particular cases, just as it would already be helpful in the decisions that existing bodies might have to make.

Lastly, the ICRC wishes to state that it does not wish to assume the role of a fact finding body itself. Traditionally, it operates with utmost discretion, and hopes to continue along this line in order to retain the confidence of the parties to the conflict so that it may act in the interests of the victims of hostilities. It wishes to have the freedom of action and flexibility necessary to accomplish its humanitarian task, which is primarily to aid the victims of armed conflicts. It must respond rapidly in all circumstances, as soon as victims call for its aid, and without waiting until the nature of the conflict has been determined.

Nevertheless, it has acknowledged the general interest of this question and has felt that it would be well to submit it to the governmental experts for their appraisal : should it be sought to establish an objective procedure enabling the existence of armed conflicts to be established and their nature to be determined ?

Chapter 2

Definition of non-international armed conflictThe problem

Article 3 common to the four Geneva Conventions is applicable "in case of armed conflict which are not of an international character...".

This general and flexible formula was adopted by the Diplomatic Conference after lengthy debate and after it had dropped the idea of defining non-international armed conflict, or even of drawing up a list of objective criteria. This solution might, at first blush, appear to be the most favourable and should allow as broad as possible a field of application for the provisions of Article 3, which extend a fundamental and essential protection to victims of non-international conflicts, without limiting the right of repression enjoyed by the States, and without bringing in an increment of power to the rebel party.

Nevertheless, as we have had the occasion to state in connection with the objective procedure, the case has arisen where governments refuse to apply Article 3 because they dispute the existence of such a conflict.

As a result, the ICRC has been led to ask, with a view to curtailing the liberty of States to make their own appraisal, whether it might not be possible to define the situations of non-international armed conflict entailing the application of humanitarian law. Would it not be possible to establish a definition of non-international armed conflict, or at least could not certain objective criteria be singled out, which would specify the cases in which Article 3 can apply.

The experts' opinion

The experts first formulated a few considerations on the basis of facts. They all agreed in stating that non-international armed conflicts are not uniquely due to the confrontation of political forces, but that their origins are extremely varied and depend on social, economic, political and religious factors. At the same time, the characteristics of the conflicts vary, depending on the structure of the State in which they break out.

They called to mind the various forms of oppression exercised against certain minorities and social groups, reflected in mass exiles, in the creation of concentration camps, in imprisonment of political opponents, and even in acts of genocide.

The experts were divided as to the advisability of establishing a definition of non-international armed conflict which might be included in an Additional Protocol, but, nevertheless, their views can be classified in distinct categories.

A certain number of experts considered it inexpedient to try to find a definition of conflicts not of an international character. They feared, in particular, that they would confront the same difficulties that they ran into in 1949, and also those faced by the United Nations Commission assigned to define aggression. In addition, establishing a definition leads, invariable, they felt, to borderline cases and to cases which fall outside this definition, and this may bring about a result diametrically opposed to the one intended.

Most of the opponents of a definition emphasized the fact that such a definition would scarcely have any further raison d'être if agreement was reached on a generous and liberal interpretation of Article 3, or even on the application of all or part of the Geneva Conventions in cases of non-international armed conflict.

Moreover, certain experts, in quest of a satisfactory solution, proposed starting from the study of the international conflict. Article 3, at present in force, would suffice on this point if there existed a general definition of the international conflict. Such a definition would have a greater chance of obtaining the consensus of

the international community than a definition of the non-international conflict.

Lastly, several experts advocated seeking a definition on one form or another. A smaller number came out for a strict, clear definition which would, for example, take up the proposal made in 1962 by the Expert Commission convened by the ICRC, in the following terms: "The existence of an armed conflict, within the meaning of Article 3, cannot be denied if the hostile action directed against a legal government is of a collective character and consist of a minimum amount of organization..." 1/ These experts generally feel that such a definition would result in limiting to the fullest extent the freedom of evaluation of the States and would avoid the situations encountered on several occasions, in which the governments of the countries in conflict deny that the events occurring there have the character of armed conflict.

Considering that, ipso facto, a definition is never perfect, other experts proposed setting up a fairly general and flexible formula, making certain, in any case, that it was not exhaustive. This formula should be accompanied by concrete examples which would only be illustrative, and which should not be considered as being in any way an exhaustive listing.

Even in the absence of any definition, the concept of armed conflict could be illustrated by examples, and this, some felt, would constitute the most satisfactory and most flexible solution. On that point, one expert stressed the fact that the establishment of such criteria was essential, so as to ascertain, with the greatest possible ease, when international humanitarian law is applicable.

1/ The report of the Secretary-General A/8052 mentions the work of the 1962 Committee of Experts and stresses that certain experts consulted by the ICRC during 1970 have referred to its conclusions. Furthermore, the report recalls that "similar criteria had been proposed at the 1949 Conference... it might be said that these questions were considered as significant by many participants to that Conference...". Report Secretary-General A/8052, September 1970, para. 133, p. 43.

Proposal

In order to ensure a better application of international humanitarian law in cases of non-international armed conflict, and thereby to give greater protection to victims of such conflicts, the ICRC considers that certain limits could be imposed on the freedom of evaluation by the Parties to the conflict, as to the nature of the events taking place on the territory of a State. To this end, it proposes to specify the concept of non-international armed conflict by drawing up a list of concrete situations in which the authorities concerned could not deny the existence of a non-international armed conflict. It would be desirable to stress that this list was simply illustrative and not exhaustive.

The regulation envisaged might include the following principles :

The following situations, among others, will be considered non-international armed conflicts entailing the application of the provisions of the present Protocol when they occur on the territory of one of the High Contracting Parties and involve military or civilian victims :

1. A hostile organized action
 - a) which is directed against the authorities in power by armed forces;
 - b) which constrains the authorities in power to have recourse to their regular armed forces to cope therewith.
2. Hostile organized actions which take place between the armed forces of two or more factions, whether or not these hostile actions entail the intervention of the authorities in power.

Commentary

The enumeration given above of situations constituting cases of non-international armed conflict should not be considered to be limitative in nature, and the authorities concerned should not, in any case, be

empowered to interpret them as such. Furthermore, these circumstances would not necessarily be cumulative : The existence of one of them would suffice to constitute a state of non-international armed conflict.

The enumeration put forward distinguishes three situations in which the existence of non-international armed conflict is manifest. These situations must comprise a certain number of material elements, some of them constant, the others variable.

Among the constant elements may be distinguished:

1. The hostile action is organized. This enemy behaviour is the fact of a group which has achieved a certain degree of organization and which can effectuate concerted actions. This hostile action cannot be the work of an isolated individual or of a few scattered individuals.
2. The hostile action involves victims. The term "victim" is used in its widest acceptation : it means victims of any sort, wounded and sick persons, prisoners of war, civilian internees, detainees for their political attitudes. It was intentional that the number of victims not be specified; as soon as there are victims, this necessary material condition is satisfied.
3. Lastly, the hostile action must occur on the territory of one of the Contracting Parties.

As for the variable elements, they led to distinguishing three types of hostile action :

1. The hostile action of those who oppose the authorities in power.

This hostile action is led by militarily organized armed forces placed under the control of a responsible military authority. It is openly directed against the authorities in power. No longer should effective control of the territory or the existence of a provisional government or an organized civil administration be considered necessary elements for the existence of hostile action.

2. The hostile action of the authorities in power. These latter call upon their regular armed forces not only to cope with hostilities openly directed against them, but also to combat acts of hostility which can be voluntarily and systematically carried on in a diffuse and elusive fashion by the adverse armed forces.
3. Lastly, organized hostile actions can be conceived as raging between two or more factions confronting each other on the territory of one of the Contracting Parties, whether it be to accede to power or to create a new State by secession. In such a situation, the authorities who were in power could have disappeared or been too weak to intervene. Nevertheless, if they have the possibility of intervening to try to restore order, their action would not lead to modifying the qualification of the conflict.

As it drew up this non-exhaustive list of the various situations which could constitute cases of non-international armed conflict, the ICRC did not fail to recognize other factual elements which might be taken into consideration. It did not include them in its concrete proposal.

They dealt with :

- a) the aid which a third State could give to the authorities in power by sending them sizable armaments, or military advisors;
- b) the fact that several third States have recognized the belligerency of the forces opposed to the authorities in power;
- c) the fact that a hostile action has been placed on the agenda of the Security Council as constituting a threat to the international peace;
- d) the fact that one party to the conflict has called for the intervention of the "UN Peace-Keeping Forces", within the scope of chapter VI of the Charter of the United Nations.

The ICRC would appreciate it if the governmental experts would examine the above-mentioned facts to see if they are of a nature to characterize a situation of non-international armed conflict.

TITLE IVAPPLICATION OF THE ESSENTIAL RULES OF THE GENEVA CONVENTIONS
OF 1949 IN CASES OF NON-INTERNATIONAL ARMED CONFLICT

(Development of Article 3)

Chapter I

Statement of the Problem

Most of the armed conflicts which have broken out since the end of the Second World War have been of non-international character. These conflicts have frequently reached a high level of violence and have caused a great number of victims. The adversaries opposing each other are natives of one and the same State. They are fighting to stay in power or to accede to power, and it is often found to be true that the hatred felt toward a brother enemy is more bitter than that directed toward an enemy of another country.

Furthermore, in the internal conflict, far more than in the international, all elements of the population are intimately involved in the hostilities. And in this context, special attention is to be paid to the civilian population, which is the principal stake at issue. Without the support and loyalty of the civilians, no victory is possible. It is they who can provide information on troop movements on both sides, who can provide shelter, food, and care for the wounded. Thus they are subject to pressure and threats from both parties, and the true victory resides in their being won over by persuasion or by force.

Furthermore, the problems raised by the technical development of arms and the use of new methods of combat stand out sharply in this type of conflict. A first solution can be found in the two major principles of the Annex to

The Hague Convention, stating that : "The right of belligerents to adopt means of injuring the enemy is not unlimited" 1/ and it is forbidden "to employ arms, projectiles, or material calculated to cause unnecessary suffering" 2/ - principles, the validity and customary character of which are no longer disputed. Nevertheless, "Apart from cases where these principles have materialized in specific prohibitions, it is however sometimes difficult to say to what extent a particular weapon falls under the scope of these general norms" 3/. Thus the position of the civilian population causes great concern, since the adversaries in non-international conflicts try to bring hostilities to a rapid conclusion by employing the most effective weapons, while the systems of safety and protection remain insufficient.

To be sure, the victims of non-international armed conflicts are not without some protection : Article 3 common to the four Geneva Conventions has made it possible to ensure them basic protection and to guarantee respect for their fundamental rights. Furthermore, whenever possible, the ICRC has endeavoured, as best it can, to persuade the Parties to the conflict to abide by the provisions of paragraph 4 of Article 3, which stipulates : "The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention". Thus, even if the Parties have not applied all of humanitarian international law, they have applied at least one or another Convention forming part of it, in particular, the IIIrd Geneva Convention. Failing this, they have indicated their willingness to apply the essential principles of humanitarian law.

Article 3, common to the four Geneva Conventions of 1949 applicable in conflicts of a non-international character, has rendered great services. Nevertheless, there is no denying that it is marked by lacunae and imperfections. Even its initiators consider it as being only

1/ Annex to the Hague Convention No. IV of 1907, article 22.

2/ Ibid Article 23e.

3/ Report of the ICRC on Reaffirmation, Geneva, May 1969, p. 48.

a first step.

Hence, the ICRC has for long been concerned with the legal problem involved in the protection of victims of non-international armed conflicts. It has convened several commissions of experts assigned to examine these questions 1/ and the International Conference of the Red Cross, held at Vienna in 1965, and at Istanbul in 1969, adopted resolutions urging the ICRC to continue efforts for a better protection of victims of non-international armed conflicts 2/.

Thus encouraged in its efforts, the ICRC studied the possibility of applying the provisions of the Geneva Conventions now in force as broadly as possible, while taking into account the particular conditions inherent in non-international armed conflicts. Continuing its work in this field, the first results of which had been submitted to the International Conference of the Red Cross, meeting at Istanbul in September 1969 3/, it consulted a certain number of experts in 1970 on the possibility of developing the law applicable in non-international armed conflicts and of establishing an additional Protocol to Article 3 common to the four Geneva Conventions of 12 August 1949.

-
- 1/ - Commission of experts for the examination of the question of assistance to political detainees, June 1953.
- Commission of experts for the study of the question of the application of humanitarian principles in the event of internal disturbances, October 1955.
 - Commission of experts for the study of the question of aid to the victims of internal conflicts, October 1962.
 - Commission of experts assigned to examine the question of the reaffirmation and development of laws and customs applicable in armed conflicts, February 1969.
- 2/ See Documentary Annex : Annex X, p. 019; Annex XI, p. 020; Annex XII, p. 021.
- 3/ See report of the ICRC on Reaffirmation, Geneva, May 1969, p. 97.

Chapter 2

Opinion of experts and proposals for the development of Article 3 common to the four Geneva Conventions of 1949

A certain number of questions were submitted to the experts consulted in 1970 on the means of assuring a better protection to all victims of non-international armed conflicts : wounded and sick, prisoners of war, civilian population. But before going into a detailed examination of these problems, the experts wished to point out certain fundamental principles to be kept in mind when undertaking the development of Article 3 common to the four Geneva Conventions.

They wanted to emphasize the whole value of Article 3, de lege lata, claiming that the development of this article would actually only be the reaffirmation and the clarification of the general principles already contained in it.

In addition, the experts considered that it would be preferable to make it clear that the development of Article 3 was only for the purpose of making it applicable in non-international armed conflicts. No idea, or even a doubt, should be left that the principles of Article 3, as developed, apply to situations of internal disturbances or tensions.

Lastly, whatever be the development to be given to Article 3, it would be appropriate not only to maintain, but also to reaffirm the principle according to which its application will have no effect upon the legal status of the Parties to the conflict. This principle is considered as an essential guarantee by the State, and it must remain inviolate if the desired results are to be achieved.

A) Protection of the wounded and the sick 1/The problem

One point in respect of which a loophole soon became evident is the protection of the wounded and the sick, both civilian and military. The only provisions referring to them in this article are those in paragraph 1 which states that "persons... placed hors de combat by sickness, wounds,... shall in all circumstances be treated humanely, without any adverse distinction...." and in paragraph 2 : "The wounded and sick shall be collected and cared for".

Article 3 is silent on, for example, the protection to be granted to doctors and other medical personnel, on medical establishments and transports and on the respect due to the sign of the red cross.

Of course, such concepts, truly elementary and emerging from a long tradition, should be deemed to be implied. That the wounded shall be cared for implies that medical personnel shall be enabled to carry out their mission. But it must be admitted that there would be considerable advantage in stating expressly, among the provisions to be confirmed, principles which have never been contested.

In addition, recent experience has shown the urgent need to solve these problems. Improper knowledge of the rules of humanity, combined with partisan quarrels, too often interferes with the free exercise of the medical profession in internal conflicts. It endangers the lives of doctors and nurses and hampers the availability of

1/ See Document VII, Protection of the Wounded and Sick, Geneva, January 1971, p. 30.

medicaments and dressings. In the long run it is the wounded and sick who suffer, while, for a hundred years, the world has conceded that they should be kept out of the fighting.

Furthermore, the XIX International Conference of the Red Cross, which met in New Delhi in 1957, adopted an important resolution (No XVII) on medical care, expressing the wish that a new provision might be added to the Geneva Conventions of 1949, extending the provisions of Article 3 thereof.

The experts' opinion

The experts unanimously recognized the need for more effective protection of the wounded and sick, for increasing the respect shown to the emblem of the red cross, for strengthening the protection of medical personnel, whether military or civilian, as well as for the immunity of hospitals. Furthermore, they expressed the wish that civilian populations would not be punished simply for having aided or assisted the wounded and sick, as well as refugees.

The second report of the Secretary-General of the United Nations made use of this thesis 1/:

"It may therefore be suggested that an additional provision be adopted, under which personnel such as that of the Red Cross carrying out medical and relief activities and displaying the appropriate emblem should be protected from killing and ill-treatment in all circumstances, and given the necessary facilities, whenever available, to perform their mission. Such a provision should also cover persons acting in an individual capacity solely for the purpose of giving medical aid and relief, provided their identity and whereabouts are made known to all participants to the conflict...", and further, "... misuse of the Red Cross emblem or of insignia of other humanitarian organizations should be strictly forbidden".

1/ Report of the Secretary-General A/8052, para. 150, p. 47.

Proposal

The ICRC in no way excludes the solution which would consist in making all or part of the Geneva Conventions applicable in any non-international armed conflict. It has, nevertheless, prepared for the governmental experts a minimum of rules which it considers essential and which should be respected in all circumstances. The project is modeled on the Draft Rules 1/ already submitted to the International Conferences of the Red Cross, on the Draft of the Additional Protocol to the Fourth Geneva Convention on the Protection of the Wounded and Sick, and naturally, on Conventions I and IV themselves. This draft has six provisions embodying fundamental principles which cover the following points :

protection and care - search and recording - role of the population - medical personnel - medical establishments and transports - the distinctive emblem 2/.

1/ Draft rules for the protection of wounded, sick and civilian medical and nursing personnel in time of conflict, presented by the ICRC to the International Conferences of the Red Cross in Vienna and Istanbul (1965 and 1969), Document VII, Annex III, p. 012.

2/ See Document VII, p. 33 ff. for details of the provisions and the commentary thereon.

B) Penal prosecutions and infliction of penalties

1. Impunity to be granted for the sole fact of having taken part in hostilities

The problem

Article 3, de lege lata, which provides fundamental legal guarantees, does not deal at all with the problem of legal penalties which may be inflicted on combatants for the sole fact of having fought. Indeed, the Parties to the conflict, and particularly the authorities in power, can punish enemy combatants who have fallen into their hands even to the extent of capital punishment, because they have transgressed national law.

This situation is diametrically opposed to that of persons engaged in international armed conflicts, to whom customary law grants immunity for having taken part in the hostilities. The Third Geneva Convention is based on this principle. For that reason it seemed necessary to the ICRC to ameliorate the treatment of combatants who have taken up arms in the cause of the insurgent party. Outlawing the rebels will not encourage them to respect the law. Is it not our concern to see to it that they give proper treatment to those they capture ?

The experts' opinion

Certain experts thought that this question raised by the ICRC was particularly delicate at the beginning of the conflict, at a point when the State feels the first attacks upon its existence and its integrity, and when, naturally, it is tempted to take energetic steps. But, they added, when the hostilities have continued for

a certain time, and when it seems that they will continue, perhaps it would be possible to obtain acceptance of the limitation proposed by the ICRC.

While the experts were favourable, as a matter of principle, to impunity for combatants for the sole fact of having taken up arms in the cause of the party opposed to the authorities in power, they brought out the difficulties of its application, and felt that it would be necessary to try to get the governments to waive the application of certain provisions of their penal law. A solution could perhaps be found by asking them to introduce into their penal law a provision which would stipulate that participation in hostilities, as such, shall not be punishable by death.

Proposal

The regulation envisaged should include the principle by which no one could incur the death penalty solely for having belonged to armed forces which have fought in accordance with the laws and customs of armed conflicts.

Generally speaking, the authorities in power should not punish the fighter solely for having belonged to armed forces, unless imperative security requirements make this necessary.

2. Deferment, during hostilities, of the execution of any death penalty

The problem

This measure, somewhat broader than the preceding one, embraces it, in a way, since it advocates suspending all execution of death penalties for the entire period of hostilities, whatever be the reason

for the condemnation. The purpose of this proposal is to endeavour to eliminate summary executions which, on both sides, engender hate and provoke an endless spiral of reprisals. It is based on the recognition that crimes incurring the death penalty are far less numerous than they once were. And this idea has been incorporated in the report of the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts" (A/8052) : "It may be recalled in this connexion that the General Assembly, in resolution 2393 (XXIII) on capital punishment, took note of various reports and conclusions by Expert bodies according to which there exists in the world a trend towards a substantial reduction in the number of capital crimes as well as a trend towards reduction of the number of executions..."1/.

It is also anticipated that once hostilities come to an end, passions will be spent and the sentence will not be executed after all.

The experts' opinion

The experts consulted found the idea interesting, but also pointed out that it would be difficult to put into practice. It might encourage terrorism. It would only be feasible if it were strictly respected by both parties. Otherwise, the party which carried out death sentences would have a far stronger grip on the civilian population. In such conditions the adverse party would not be able to respect this provision for long.

It is obvious that, in the course of hostilities, judgments and executions constitute a bad policy which raises the problem of reprisals in an acute form. But the uncertain situation of the belligerents must also be taken into consideration : they cannot foresee the outcome of the struggle, and hence they fear the judgments and executions of the victor. While deferring executions during hostilities is wholly desirable, it does, however, necessitate respect for this provision by both sides, and plus stringent control measures 2/ which might allow the

1/ Report of the Secretary-General A/8052, September 1970, para. 155, p. 48 and 49.

2/ See in this connexion Title IV, chapter 2, section E, in fine.

Parties to develop the requisite state of mutual confidence in the matter of respecting this provision.

Proposal

The regulation envisaged should include the principle by which the Parties to the conflict should, on both sides, defer all capital punishment for the whole duration of the hostilities, unless imperative security requirements make this necessary.

3. General amnesty at the end of hostilities

The problem

At the end of hostilities, it is desirable that normal life should be resumed as soon as possible. Hence, it would be fitting to generalize the proclamation of general amnesty, in the interest of both the victims and the authorities who will have to restore order and reconcile all elements of a divided people.

The experts' opinion

The experts consulted emphasized that this measure was particularly desirable, and recalled that it had been utilized on several occasions; but they also recognized the fact that the granting of general amnesty has always been the prerogative of governments which have accorded it as they saw fit. Without wishing to ignore the difficulties which could arise from codifying this principle in an instrument of international law, they nevertheless hoped that the ICRC would submit this important problem to the governmental experts for their study.

Proposal

The regulation envisaged should include an encouragement of the Parties to a non-international armed conflict to proclaim a general amnesty at the end of hostilities, unless imperative security requirements oppose this.

Remarks on the three preceding proposals

The three above proposals are not at all intended to eliminate penal prosecution of war criminals, i.e. of combatants who may have committed some grave breach of the humanitarian law applicable in non-international armed conflicts. Nevertheless, with regard to such criminals, it would be necessary to reinforce respect for the judicial guarantees relative to the inquiry, the judgment and the execution of the penalty.

In order to obtain a better application of the measures proposed above, the Parties to the conflict could have recourse to the services of an impartial body (see, in this connexion, section E of this chapter on the implementation of humanitarian law applicable in these non-international armed conflicts).

C) Protection of prisoners of warThe problem

Article 3, de lege lata, provides minimum protection to "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms..."

To be sure, Article 3 codifies certain essential guarantees and, in particular, the prohibition of summary justice.

But "No sort of immunity is given to anyone under this provision. There is nothing in it to prevent a person presumed to be guilty from being arrested, and so placed in a position where he can do no further harm; and it leaves intact the right of the State to prosecute, sentence and punish according to the law" 1/.

The question of impunity to be accorded to the combatant for the sole fact of having taken part in hostilities has been treated above 2/ and was the subject of a concrete proposal made by the ICRC. But even supposing that this matter finds a satisfactory solution, there remains the problem of treatment of prisoners of war in case of non-international armed conflict.

The expansion of the conflicts under consideration during the past twenty years and the number of victims they claim now makes it impossible to consider that the guarantees of Article 3 provide adequate protection to prisoners of war.

1/ Commentary III, Geneva 1958, p. 39.

2/ See Title IV, Chapter 2, section B of this report.

The international community has become aware of the importance of this question and, on several occasions, has expressed the wish that these combatants might receive treatment similar to that provided by the Third Geneva Convention of 1949 in cases of international conflicts 1/.

This particular question of treatment of the combatant in cases of non-international armed conflict is part of the larger pattern of the status and treatment of the combatant in all armed conflicts, and of the application of Article 4 of the Third Geneva Convention which specifies the persons having a right to the status of prisoner of war.

The ICRC is well aware that the new forms of struggle call for a relaxing of the conditions imposed by Article 4, number 2. Thus, it is drafting proposals with a view to adapting these conditions to the new requirements. Such an adaptation might be accomplished by means of an interpretative Protocol of Article 4 of the Third Geneva Convention 2/. These proposals are valid both for international and for non-international armed conflicts.

Furthermore, the ICRC submitted this question for examination by the experts consulted in 1970.

The experts' opinion

Having recalled resolution XVIII relative to the status of combatants in non-international armed conflicts (Istanbul 1969), many experts were of the opinion that Article 4, number 2 of the Third Geneva Convention should be applied in the armed conflicts under consideration. Of course, all of the conditions of Article 4 could not be respected, and in particular, the requirement of belonging to a Party to the conflict, as this implies an international conflict. In addition, they thought that the combatants should not be accorded the status of prisoners of war, but rather a treatment similar to that established by the Third Geneva Convention of 1949.

1/ Red Cross : Istanbul Resolution XVIII, UN Resolution 2676 (XXV) number 5.

2/ See in this connexion, Document VI, section II, Combatants.

The experts had been asked for their opinion as to whether the conditions set forth in Article 4, number 2 of the Third Geneva Convention ought not to be adapted to the new conditions of armed struggle.

As a preliminary consideration, the experts consulted felt that if the conditions in question were to be modified, they should be modified for both the international armed conflict and the non-international armed conflict, since the treatment of combatants should not differ from one conflict to another. Further more, they emphasized the importance of repeating that an adaptation of these conditions should not result in making the distinction between combatants and the civilian population more difficult. Hence, the examination of these conditions should be made with a view to ensuring better protection, not only of the combatant, but also of the civilian population.

Lastly, they expressed the hope that the conditions, in such modified form as they might take, would be respected by the whole of the movement confronting the authorities in power, and that isolated individual violations could only lead to consequences for the individuals guilty of them.

Having recalled that certain of the conditions must still be taken into consideration and that they could not be eliminated, the experts, nevertheless, agreed that their wording had become obsolete. Some proposed modifying them by interpretation while others preferred to think in terms of a new formulation 1/.

They paid particular attention to the condition of belonging to a Party to the conflict, which seemed to them inadequate to cover the non-international armed conflict as it is formulated in Article 4, number 2 of the Third Geneva Convention. The purpose of this condition was to establish the international responsibility of the State for the action of a resistance movement attached to it. The primary objective of this responsibility

1/ For the adaptation of these conditions to the new forms of struggle, see Document VI, Title II, Combatants.

was to ensure that the resistance movement would observe the laws and customs of war, and to designate the forces, the points and the territory of the State of attachment as legitimate objects of reprisal for the belligerent which might be the victim of illegal acts on the part of the resistance movement. These concepts are inadequate in the non-international armed conflict. Certain experts hoped to create new points of attachment, and it goes without saying that the combatants must belong, in one way or another, to the contending Parties in a non-international conflict

Even if, in case of non-international armed conflict, it became possible to apply Article 4, number 2, as relaxed and modified in terms of the new requirements of armed struggle, there will still remain combatants who will not satisfy the conditions in question. This basic problem raises the question of ascertaining the dividing line between the application of internal penal law and that of international humanitarian law. The experts put forward a number of suggestions concerning the protection of combatants who do not satisfy the conditions stipulated in Article 4.

Some experts expressed the hope that such combatants would be protected by the Third Geneva Convention. Others proposed that an appropriate and humane penal legislation should be provided for them, to be promulgated by the State while still at peace, and based on a standard formulation of guarantees which could be drafted by the ICRC.

Finally, certain experts recalled that these combatants should, at the very least, have the benefit of the minimum guarantees listed in Article 3 common to the four Geneva Conventions.

By way of general conclusion to this question, some of them emphasized that it was not so much the legal status that was important from the humanitarian point of view, as certain fundamental guarantees with reference to the treatment of captured combatants.

Ameliorating the plight of these persons, in particular in the non-international armed conflict, could only be sought by leaving the legal status out of account, and by seeking, instead, practical guarantees covering the humane treatment of these persons.

Nevertheless, the humanitarian problem would be only partly solved, for even if the combatant, when captured, is treated as a prisoner of war, he has no certainty as to what his fate will be at the end of hostilities.

The experts made it a point to stress that the fact of applying the humanitarian rules to rebels did not amount to a recognition of belligerency. In other words, the fact that they were treated as prisoners of war does not give them the status of prisoners of war according to the Third Geneva Convention, and hence has no effect, in international law, on the status of the collectivity or the authority to which they belong.

Proposal

Should the regulation envisaged include the following principles :

- a) Members of regular armed forces and combatants belonging to armed forces satisfying the conditions of the Interpretative Protocol of Article 4, number 2 of the Third Geneva Convention shall benefit of the treatment of prisoners of war provided by the terms of the said Convention.
- b) Apart from the minimum guarantees of Article 3 common to the four Geneva Conventions of 1949, the combatants who belong to armed forces not satisfying conditions of the said Interpretative Protocol shall have the benefit of the protection afforded by the provision relative to the prohibition against capital punishment for the sole fact of having taken part in hostilities.

Commentary

In asking that a treatment analogous to that provided by the Third Geneva Convention be accorded to combatants who satisfy the conditions of the Interpretative Protocol of Article 4, number 2, the ICRC is well aware that all of the provisions of the Convention in question are not strictly applicable. Without a doubt, certain complicated mechanisms could not be actualized in case of non-international armed conflict when the parties had neither the means nor the organization needed to implement them. The main problem is rather to ensure a humane treatment of the combatants by as broad as possible an application of the essential rules of the Third Convention.

In addition, it should be specified that it is the armed forces as such which should satisfy the conditions set forth in the Interpretative Protocol of Article 4, number 2.

D) Protection of civilians and the application of the Fourth Geneva Convention

The problem

As has been said above (see statement of the problem p. 49), the situation of the civilian population is particularly difficult in non-international armed conflicts. It plays an important role in the conflict, and the evidence points clearly to the fact that no rebel movement would have a chance of succeeding if it did not have the support of the civilian population. And the corollary to this principle is that the repressive forces would be hard put to it to quell the insurgents without the support of that same population. This means that, in a non-international armed conflict, the civilian population is the main victim : the victim of terrorist acts, of bombardments, of threats tending to restrict the sale of medicines, of population displacements 1/.

The ICRC has, for a long time, been concerned about the precarious situation of the civilian population in non-international armed conflicts. Article 2 of the draft Convention for the protection of civilians in time of war, presented to the XVIIth International Conference of the Red Cross (Stockholm 1948), provided that :

"In all cases of armed conflict not having an international character, especially in cases of civil wars, colonial conflicts, wars of religion, arising on the territory of one or several of the High Contracting Parties, each of the adversaries shall be bound to apply the provisions of the present Convention. Application, in these circumstances, of the Convention shall in no respect depend on the legal status of the Parties to the conflict and shall have no effect upon that status."

1/ See the Report of the ICRC on Reaffirmation, Geneva, May 1959, p. 103

The international community, on many occasions, has wished for the reinforcement of the protection of the civilian population 1/.

The question of the protection of the civilian population from the dangers of hostilities is treated on the level of the international conflict as well as the non-international conflict in Document III, to which the governmental experts are requested to refer.

The attention of the experts here will be given rather more to the possibility of applying all or part of the Fourth Geneva Convention in cases of non-international armed conflict. The ICRC is fully aware of the difficulties which this question cannot fail to elicit. Indeed, the Fourth Geneva Convention is essentially based on concepts of nationality and occupation, which are hardly consistent with the nature of the non-international armed conflict.

Nevertheless, the number of victims in the civilian population is now so high that reinforcing their protection has become a matter of emergency.

Impelled by these considerations, the ICRC submitted the problem to the experts it consulted in 1970.

The experts' opinion

Certain experts wished the Fourth Geneva Convention to apply as a whole in cases of non-international armed conflict, when the party opposing the authorities in power is rooted in the civilian population to a significant degree.

However, most of the experts agreed that the Fourth Convention could not be applied integrally, without adaption, in the armed conflicts under discussion. Nevertheless, a great number of them expressed the hope

1/ For resolutions in question, see Document VIII.

that the provisions of the Fourth Convention might find as broad an application as possible. To be sure they recognized that the Fourth Convention is based on concepts of sovereignty, nationality and occupation, and these concepts are not consistent with the nature of non-international armed conflict. Certain provisions of the Fourth Convention result in safeguarding the ties of nationality and loyalty existing between the protected persons and their native States. Be that as it may, in non-international armed conflicts these criteria of frontier and nationality are no longer pertinent, or are replaced by other more elusive criteria of a social, political, ideological, or ethnic nature which create new types of allegiances. A means of applying the fundamental rules of the Fourth Convention may well be found by the expedient of these new allegiances.

The experts desired to find restated in an additional Protocol all the provisions which could logically be applied in non-international armed conflicts. They asked for a realistic approach in the accomplishment of this task, rather than seeking to have the Parties to the conflict respect certain relatively elaborate procedures, for example, those concerning the financial resources of persons concerned. Furthermore, they felt that the definition of the term "protected persons" required careful examination and adaptation to the conditions of the non-international armed conflict.

Finally, some among them pointed out that, due to their logistical insufficiencies, the rebel forces would not initially be capable of fulfilling all their obligations toward the population residing in the territory under their control. For that reason it would be necessary to set up reasonable criteria and also to admit the possibility that these criteria might not be immediately satisfied.

As a whole, the experts favoured the idea of adopting the provisions of the Fourth Geneva Convention to as great an extent as possible, while adapting them to the special conditions of the non-international armed conflict.^{1/} In particular, they had in mind Title II

^{1/} To this effect, certain articles of the Fourth Geneva Convention are quoted below in footnotes.

relative to the general protection of populations against certain consequences of war and Title III, section 1, relative to the provisions common to the territories of the parties to the conflict and to occupied territories.

Concerning Title II, mentioned above, they made a special study of article 23, relative to the consignment of medical supplies, food and clothing, and they considered it necessary to reaffirm the right of bringing relief to the civilian populations, particularly in case of blockades. Although the blockade is a legitimate means of war, they pointed out that, on the contrary, genocide is strictly prohibited.

Over and beyond the relevant provisions of the Fourth Convention, certain experts believed that other fundamental rules concerning the protection of the civilian population should find application in non-international conflicts. In particular, this might have reference to the prohibitions set up in the Convention on Genocide and the crimes appearing in the definition of crimes against humanity in Article 6, letter c of the Statute of the International Military Tribunal of Nuremberg and in the "Principles of Nuremberg", drafted by the International Law Commission (Principle VI, letter c).

Proposal

Instead of drafting any concrete proposal relative to the application of the Fourth Geneva Convention in case of non-international armed conflict, the ICRC submits this basic problem to the attention of the governmental experts.

Commentary

The civilian population should be assured of benefitting from fundamental guarantees. A few examples follow, for illustrative purposes.

The Parties to the conflict should ensure that the population is supplied with food and medicines, and, in any case, should agree to relief actions in favour of this population, facilitating them to the full extent of their capacities 1/.

In case of blockade or state of siege, the Parties to the conflict should grant free passage to consignments of medicines and medical equipment, of foodstuffs and clothing, exclusively intended for the civilian population. If the Parties so desired, the distribution could be made under the control of the ICRC or of any other agency accepted by them 2/.

In addition, it would be desirable to obtain the application of the totality of Part II of the Fourth Geneva Convention relative to the general protection of populations against certain consequences of war, as well as of Part III, Section I, relative to provisions common to territories of the parties to the conflict and to occupied territories 3/.

Furthermore, it would be necessary for the Parties to the conflict to facilitate the regrouping of families dispersed by hostilities and, in so far as possible, to authorize civilians to evacuate the territory they control so as to rejoin their families.

Civilian persons should also be protected against destruction of their property, unless destruction is rendered absolutely necessary by military operations 4/.

1/ Art. 55 and 59. Conv. IV, Geneva 1949.

2/ Art. 23, Conv. IV, Geneva 1949.

3/ See also, on this subject, the proposals set forth in Documents III and VII.

4/ Article 53, Conv. IV, Geneva 1949

In addition, any civilian person who is not a native of the State on whose territory the armed conflict occur, should have the right to leave that territory at any time. The Parties to the conflict should endeavour to do everything possible to facilitate their evacuation, and if necessary, could call upon the services of the ICRC or any other body which they approve.

Finally, and here we come to a question of capital importance, civilian persons, interned because of the events, should be able to have the benefit of the essential guarantees embodied in Section IV of Part III concerning the Regulations for the treatment of internees. Without seeking to set up a complicated arrangement, difficult to apply, we might be guided by the most important provisions concerning cases of internment, maintenance of the internees, conditions of accommodation and hygiene and medical attention which always must be made available to them. The conditions of camp administration should also be clearly stated, and it should be stipulated that discipline in internment areas must be consistent with humanitarian principles 1/.

It should also be recognized that civilian internees are to be given the right to send or receive correspondence, to receive individual or collective relief shipments.

The contemplated regulations should also codify a right to visit by near relatives and representatives of an impartial body, such as the ICRC.

Furthermore, provisions should also be made for means of registering detained persons and for information about them 2/.

1/ Articles 42, 81, 83, 84, 85, 91, 99, 100, Conv. IV, Geneva 1949

2/ Articles 107, 108, 116, 136, 137, Conv. IV, Geneva 1949.

E) Extension of the humanitarian role of the ICRC

The problem

According to Article 3, de lege lata, "an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties of the conflict."

Because of this provision the ICRC, since 1949, has been in a position to offer its services to Parties in conflict, without its initiative being considered as an unfriendly act, an attempt to interfere in the internal affairs of the State in question. This right of humanitarian initiative consecrated by Article 3 has enabled it to act effectively in numerous cases.

However, it should be remembered that the Parties to the conflict are not legally bound by the terms of this provision to accept the offer of these services. Furthermore, when such Parties refuse to admit that the events taking place on their territory have the character of a non-international armed conflict, as was unfortunately the case on several occasions, the result has increased the difficulties of the ICRC in accomplishing its humanitarian task.

Hence, the question can legitimately be asked whether the right to take a humanitarian initiative could not be reinforced.

The experts' opinion

A great number of the experts recognized the necessity to reinforce the right of initiative which Article 3, now in force, makes available to the ICRC. It was their thinking that the ICRC, because of its experience, should be enabled to carry on its activity in all circumstances, and should be authorized to intervene in all cases of armed conflicts. Such a principle could be institutionalized. The report of the Secretary-General of the United Nations on Respect for Human Rights in Armed Conflicts adopted the opinion of these experts

(A/8052) : "Some of the experts felt that the parties to a conflict should be bound to accept the offer of services of the International Committee of the Red Cross" 1/.

Nevertheless, it was pointed out that the States might well be reluctant to make a stricter commitment than that deriving from Article 3, de lege lata. Thus, it was suggested that a provision be made stipulating that the Parties to the conflict could not deny to the ICRC, or to some other humanitarian body, the right to carry on its activity, except in case of situations involving strict military necessity.

Certain experts entertained considerably more reservations. They feared that the strengthened right of initiative might be treated by some as a form of interference in the internal affairs of State. These experts believed that the question of reinforcement, or even of the imperative nature of the right to offer humanitarian services, was one of the most difficult problems, and that the time has not yet come when the right to act automatically in cases of non-international conflict can be given to a body, whatever it may be. They pointed out that especially now-a-days, the States are very susceptible about anything that touches upon respect for their national sovereignty, and a considerable number of governments would not be prepared to accept a text providing for the automatic and obligatory intervention of an international body. For this reason these experts expressed the hope that the ICRC would continue to carry on its activity in a pragmatic manner, as it has successfully done in the past. A solution might perhaps be found in an optional clause, to be accepted by those who so desired, on the condition that the fact of abstaining would not imply condemnation of their failure to accept this clause.

The attention of certain experts was drawn to one particular aspect of the right of humanitarian initiative : the contacts which the ICRC is called upon to make with the rebel party for humanitarian purposes. The experts pointed out that the contacts made with the rebels sometimes appear suspect or hostile to the legal government. The provision dealing with the right of

1/ Report of the Secretary-General A/8052, September 1970, para. 162, p. 50.

initiative could clearly stipulate that any impartial body such as the ICRC could offer its services to the Parties to the conflict without such offer being dependent on the authorization of the adverse party.

Proposal

Without making any concrete proposal, the ICRC wishes to submit this basic question to the governmental experts for study.

The ICRC wishes particularly to emphasize the fundamental principle according to which the many victims of non-international armed conflicts must, at all times, be able to receive the necessary relief, and to benefit from humanitarian aid under all circumstances.

* * *

*

Assistance in the regular observation of humanitarian law applicable in non-international armed conflict.

Although this section is devoted to the reinforcement of the right of humanitarian initiative, the ICRC is impelled to raise the more general problem of the application of international humanitarian law in cases of non-international armed conflicts, and of the assistance that a body, approved by the Parties to the conflict, could provide for the victims of hostilities.

The problem

In cases of non-international conflict, it must be recognized that, de lege lata, the application of Article 3, is, above all, within the competence of each of the Parties to the conflict, and that the Parties have no regular channels of communication on this matter.

Indeed, the provision of Article 3, paragraph 2, according to which "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties," is insufficient in this respect; for while that provision has already enabled the ICRC to act in numerous cases, this was essentially to accomplish its traditional task of assistance and relief to the victims of the armed conflicts. There is no mechanism of supervision in cases of non-international armed conflict, since the Protecting Powers, or their substitutes, can only act in international confrontations.

In spite of this, the idea has become more and more prevalent that the international community can no longer hold aloof from conflicts of a non-international nature, and this trend seems to call for a certain international supervision to be exercised by an impartial body, this being not only in the interest of the victims, but also in the interest of the Parties to the conflict, who would thus find themselves supported in the accomplishment of a difficult task.

The experts' opinion

The experts who were consulted in 1969 on supervision of the application of humanitarian law, expressed the opinion that it "would be desirable to see the ICRC not only continue to offer its services, but invested with internationally recognized functions of supervision, in order that it should be binding on the governments to accept its assistance for the application of humanitarian rules" 1/.

Aware that these armed conflicts involve the community as a whole, they also wished that, by its presence, the ICRC, or any other neutral body, would be enabled to co-operate in the application of the rules of humanitarian law.

The attitude of the experts consulted in 1970 was somewhat different. With regard to a strengthening of the right of humanitarian initiative, in no matter what form, it has been noted above that the experts showed considerable prudence, not to say reticence.

1/ Report of the ICRC on Reaffirmation, Geneva, May 1969, p. 107.

In contrast, various proposals were submitted to the ICRC for the creation of a supervisory body. In the opinion of the experts, this agency should be international, apolitical, and neutral, and should be composed of personalities known to be impartial. Certain experts considered that such a body could be set up by the United Nations Organization, or could constitute one of the branches of the International Court of Justice.

The second report of the Secretary-General of the United Nations adopted this thesis:

"Conditions may now be ripe to encourage consideration of the idea of gradually moving away from the ad hoc approach ... towards setting up, on a durable standing basis, an agency of implementation under the aegis of the United Nations. An absolute prerequisite for the establishment and success of such an agency would be that its character would be exclusively and strictly humanitarian; it would have to be scrupulously non-political and it should strive to offer all guarantees of impartiality, efficiency and rectitude"
1/.

But, it would also be proper to recall that numerous experts proved to be very hesitant about the idea of trying to set up any new body for establishing the existence of an armed conflict, or any new body charged with supervising the application of the law of armed conflicts and with assisting the Parties to the conflict in that task.

Conclusion

In the regulation envisaged, it would be desirable to encourage each of the Parties to the conflict to have recourse to two possibilities with a view to obtaining a better application of the humanitarian law in force in cases of non-international armed conflict; in the first place, they might call upon existing bodies :

1/ Report of the Secretary-General A/8052, para. 246, p.77.

a) an impartial body, such as the ICRC

In this connection, the question might be asked whether it would not be desirable for the ICRC, at this time, to set up a supervisory body which, although dependent on it, would enjoy a certain autonomy; or in the absence of a constituted body, it could draw up a list of personalities which would be available to the authorities concerned 1/;

b) international or regional organizations

In second place, where no such bodies exist, the Parties to the conflict could set up a special ad hoc multinational supervisory commission. The recent conflict in Nigeria provided one example of this.

1/ See also R.C. : Resolution XXII, Vienna 1965.

TITLE VSITUATIONS OF INTERNAL DISTURBANCES
AND INTERNAL TENSIONS

Chapter 1

Situations of internal disturbancesThe problem

This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules.

The Red Cross and the ICRC in particular have, for a long period of time, been concerned with this problem and have endeavoured to assist the victims of situations of internal disturbances with the agreement of the authorities involved.

Thus, on several occasions, the national Societies have played an important role not only in non-international armed conflicts, but also in situations of internal disturbances. Actually, at the IXth International Conference of the Red Cross in 1912, the proceedings dealt more with the question of disorders or armed disturbances than with non-international armed conflicts as such.

Later on, the International Conferences of the Red Cross themselves encouraged the ICRC to carry on activity in this field, in particular the Xth International Conference of the Red Cross of 1921, which adopted Resolution XIV, formulating the following general principles :

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

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

The XXth International Conference of the Red Cross (Vienna 1965) was also to adopt a Resolution on the Protection of Victims of Non-International Conflicts, in which it noted that on the occasion of non-international armed conflicts and internal disturbances, it had not been possible to ensure sufficient protection to the victims of these situations.

The ICRC has also been able to act on the basis of its Statutes, which, in Article 4, letter d), provide that the ICRC has, among its other tasks ... to "take action in its capacity as a neutral institution, especially in case of war, civil war or internal strife; to endeavour to ensure, at all times, that the military and civilian victims of such conflicts and of their direct results receive protection and assistance, and to serve, in humanitarian matters, as an intermediary between the Parties."

A similar text is found in Article VI, chapter 5, of the Statutes of the International Red Cross, which defines the functions of the ICRC.

A study of the relief action afforded by the ICRC in cases of internal disturbances and also of internal tensions has shown that, from 1958 to 1969, forty-two governments have authorized the ICRC to visit a total of nearly one hundred thousand persons held prisoner due to situations not, properly speaking, within the scope of Article 3. While in twenty-two cases, this involved internal tensions without characteristic disorders -

a problem which will be taken up in the next chapter - in twenty other cases internal disturbances were involved and it was alleged that the persons held in prison had perpetrated acts of violence within the scope of the penal code.

In the legal field, the ICRC has for a long time carried on studies tending to strengthen the general protection of victims of internal disturbances 1/. Even if it does not obtain authorization to carry on its activity, it considers that there are certain essential rights of the individual which must be respected in all circumstances. Yet it appears to the ICRC that these guarantees are not sufficiently respected and that the protection of victims must be reinforced.

Furthermore, despite the positive results it has obtained in numerous cases, the ICRC does not overlook the fact that it cannot always act efficaciously and, above all, that its action depends on the authorization of the authorities in power. Hence, once again, it submitted the question of internal disturbances to the experts it consulted during the year 1970.

The experts' opinion

The experts found that these situations of internal disturbances were tending to become more and more frequent and that it was important to deal with them on the humanitarian level to the greatest possible extent. These are situations which continue fully to merit the attention of the Red Cross, and the ICRC should persist in its activity, endeavouring to bring relief and assistance to the victims of internal disturbances.

1/ Commission of experts for the Examination of the question of assistance to political detainees, June 1953.

Commission of experts for the study of the question of the application of humanitarian principles in the event of internal disturbances, October 1955.

Commission of experts for the study of the question of aid to the victims of internal conflicts, October 1962.

Commission of experts for the study of the question of reaffirmation and development of laws and customs applicable in armed conflicts, February 1969.

Various proposals were formulated on how to give greater protection to victims, and on the development of the legal basis on which the ICRC could, in the future, found its activity.

To be sure, the Universal Declaration of Human Rights already existed, and the European Convention on Human Rights had just come into force in 1953, when the ICRC, in October 1955 convened a Commission of experts in Geneva, for the study of the question of the application of humanitarian principles in the event of internal disturbances. Nevertheless, the movement which was emerging in favour of human rights had not yet taken on all the scope it has today, and above all, the International Covenants on Human Rights had not yet been framed. Thus, the experts consulted in 1955 had adopted a somewhat different attitude from that of the experts consulted during the year 1970.

The 1955 Commission had considered that the "rule of the presence of the Red Cross in the event of disturbances is imperative, not only in order to effectively attenuate human suffering, but also in order to assist in the progressive establishment... of similar guarantees as those contained in the Geneva Conventions on behalf of protected persons and in time of war."

The Commission was of the opinion that "the ICRC is justified in basing its action not only on its general mission of alleviating human suffering", but also on the right of initiative in humanitarian matters which the Parties to the Geneva Conventions have accorded it. Above all, it had expressed the hope that the minimum of protection set forth by Article 3 would, in all events, be respected in cases of internal disturbances, and that certain provisions of a general character of the Fourth Convention, relative to the protection of civilian persons in time of war, might also apply.

Among the experts consulted in 1970, some thought that it would not be impossible to reach an agreement among States concerning the action of the ICRC in situations of internal disturbances; this agreement could take the form of a new Convention, unrelated to Article 3 common to the four Geneva Conventions. In fact, it seemed to them that the governments, and also world public opinion, are better prepared for such an idea than they were twenty years ago.

Most of them considered that Article 3 was not legally applicable in these situations which stand clearly outside the category of non-international armed conflict and, furthermore, that it was not advisable to propose its application in these situations : it would thereby give the impression, disclaimed by the governments concerned, that what was involved was a situation of non-international armed conflict.

Furthermore, in their opinion, endeavouring to make humanitarian assistance obligatory in these cases, would come up against objections which the governments would not fail to raise, by virtue of the principles of national sovereignty and of non-interference in the internal affairs of a State. It must not be forgotten that the State, finding itself in the presence of a conflict of this sort, should be able to retain a total right to evaluate the steps to be taken, in conformity with law, to suppress a riot or an insurrection. Obviously, no national law provides for torture, among other punishments.

Instead, the experts expressed the hope that the ICRC would pursue its action and bring its assistance to the victims of these internal disturbances, relying as in the past on its moral power and its neutrality, while treating each case flexibly on its own merits and appealing to the political and moral responsibility of the governments concerned.

Certain of them felt that the ICRC could be supported in its action by the General Assembly of the United Nations, which, case by case, would adopt a resolution requesting the ICRC to intervene and urging the government concerned to facilitate the accomplishment of that body's mission.

As a general conclusion, the experts tended to consider that the rights to be accorded to individuals in these situations of internal disturbances come within instruments relating to human rights.

Some did not fail to point out that the International Covenants on Human Rights were not yet in force and that their ratification might require a good deal of time. Consequently, in the meantime, could not international humanitarian law be applied so that no "humanitarian vacuum" would be allowed to subsist ? This basic question elicited two types of reply :

- On the one hand, certain experts stressed that occurrences of internal disturbances are situated outside the non-international conflict and that, even if the Covenants on Human Rights have not yet come into force, people are not abandoned to the arbitrary action of governments, for the general principles of law carry with them standards of civilization which governments must respect at all times. Furthermore, it should be recalled that several States are bound by the European Convention on Human Rights. Nevertheless, so that the victims of these situations (arising from the internal disturbances) might enjoy the full protection of the human rights to which they should be entitled, one of the most urgent measures to be taken is, in the experts' opinion, to use every possible means in order to encourage the ratification of international Covenants. 1/ In this connection, the report of the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts" recognizes that it would perhaps be difficult to formulate precise standards for extension of the guarantees of Article 3 to the situations of disturbances, but "one practical solution to ensure protection of basic human rights might be to speed up as much as possible the ratification and coming into force of United Nations and regional instruments on human rights including in particular the International Covenants". 2/

It is to be recalled that under the terms of Article 4 of the International Covenant on Civil and Political Rights, the States which are parties thereto may,

-
- 1/ Status of ratifications as of 19 January 1971, of the International Covenants relating to Human Rights :
- a) International Covenant on Economic, Social and Cultural Rights, adopted and open for signing, ratification and adherence by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966 : 11 ratifications;
 - b) International Covenant on Civil and Political Rights adopted and open for signing, ratification and adherence by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966 : 10 ratifications;
- 2/ Report Secretary-General, A/8052, September 1970, para. 144, p. 46.

in cases of exceptional public emergency and under certain conditions, take measures derogating from the obligations imposed by the Covenant in question. Nevertheless, no derogation from Articles 6, 7, 8 (para. 1 and 2), 11, 15, 16 and 18 is authorized. Thus, even in case of exceptional public emergency, the right to life must be respected, while torture, inhuman treatment and also slavery are still outlawed. Imprisonment on the ground of inability to fulfil a contractual obligation and condemnation for acts which did not constitute infractions at the time when they were committed are likewise prohibited. Lastly, everyone's legal persona and right to freedom of thought, conscience and religion is to be recognized.

- On the other hand, the experts wanted the ICRC to continue its activity and offer its services to governments which have to cope with situations involving internal disturbances; furthermore, until such time as the International Covenants come into force, fundamental guarantees of the sort found in Article 3 or in the Covenants on Human Rights should be respected by all who are involved in the disorders, on whatever side. These guarantees, we might add, often correspond to those found in domestic legislation, and it would be good to reaffirm and signalise them. Lastly, the experts found that the protection given by Article 3 to the wounded and sick, who must be collected and cared for, does not exist in the Human Rights texts; they therefore suggested that the ICRC draw up proposals on the medical aid to be afforded to victims of internal disturbances.

Proposal

A Declaration of Fundamental Rights of the Individual in Time of Internal Disturbances or Public Emergency could be adopted and proclaimed by a future Diplomatic Conference convened for the purpose of reaffirming and developing the provisions of international conventions protecting the victims of armed conflicts.

Until such time as a more complete regulation can be applied in situations of internal disturbances or public emergency, this Declaration would consecrate the basic principles underlying protection of the individual and would call attention to the fact that in all circumstances the populations of States in which such disorders

occur would remain under the protection of the general principles of international law.

This Declaration would contain a brief Preamble.

Furthermore, it would stipulate, inter alia :

In the event that public emergency or internal disturbances prove to be serious or protracted and involves acts of violence, and whether or not the state of exception is proclaimed by the authorities in power, the following fundamental rights shall be respected in all circumstances, without any discrimination :

1. No one shall be subjected to torture or to inhuman or degrading punishments or treatments;
2. No one shall be punished for an infraction he has not committed;
3. No one shall be condemned for any act or omission which, at the time when it was committed, did not constitute a criminal offence under national or international law;
4. No sentence shall be passed or execution carried out without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
5. Any person deprived of liberty due to such events shall at all times be accorded human treatment in conformity with the Standard Minimum Rules for the Treatment of Prisoners, as established by the United Nations Organization;

When constitutional guarantees have been suspended, and in particular when, due to the events, these persons are imprisoned for an indeterminate time and without being indicted or brought before a court, an impartial humanitarian institution such as the ICRC shall be authorized to visit them;

6. Collective penalties, taking of hostages, measures of reprisal against persons and their property are prohibited;
7. The wounded and sick shall be collected and cared for in all circumstances;

The national Societies of the Red Cross shall at all times be authorized to carry on their relief activities on behalf of the victims of situations of internal disturbances.

8. An impartial humanitarian body, such as the ICRC, may at all times, offer its services, on behalf of all the victims, to the authorities in power;

Neither this offer, nor its acceptance, shall have any effect on the legal status of the persons involved in these situations of internal disturbances.

Commentary

This draft Declaration is patterned after international humanitarian law and the International Covenant on Civil and Political Rights. It carries over from humanitarian law the fundamental principles of protection contained in Article 3, as well as certain provisions of the Fourth Geneva Convention - Article 32 on the prohibition of corporal punishment and torture, Article 33 on individual responsibility, collective penalties, reprisals and pillage, Article 34 on hostages - provisions which appear in Part III "Status and treatment of protected persons". It also takes broadly into consideration the International Covenant on Civil and Political Rights, in particular provisions 7 and 15, ranked among the rules from which no derogation can be allowed, even in case of exceptional public emergency.

In a certain sense, this Declaration has a provisional quality, since it is set up until such time as a more complete regulation is adopted. Nevertheless, and despite the coming into force of a new regulation, the principles which this Declaration sanctions are so basic that it would be considered as ensuring a minimum protection of the individual, one that should in the future and in all circumstances be respected in situations of internal disturbances.

Number 5 of the Declaration refers to humane treatment in conformity with the "Standard minimum rules for the treatment of prisoners". The minimum rules set up two sorts of provisions, the first sanction the

essential rights of the person imprisoned or condemned, the second define the technical aspects of detention conditions. The Declaration puts its prime emphasis on the first category, and especially on the following provisions:

Basic principle (para. 6) - Register (para. 7) - Separation of categories (para. 8) - Medical services (para. 22, 23, 24 and 25) - Discipline and punishment (para. 27) - Contact with the outside world (para. 37, 38 and 39).

Although no provision clearly stipulates that these Standard minimum rules are applicable to political detainees, the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Kyoto, Japan, August 1970) considered that these latter benefitted from their protection. In this sense, the ICRC considers that all persons imprisoned due to such events, including those who have been arrested by administrative decision and have not been made the subject of a judicial process, must have the benefit of the treatment afforded by the rules in question 1/. This is especially the case when habeas corpus is suspended or when the time limit for detention is abolished, and when, as a result, a person can be indefinitely held without being charged and appearing before a court.

Moreover, the ICRC is well aware that these Standard minimum rules, which have been approved by the ECOSOC, are not yet in force. If that should constitute an obstacle in the way of their application within the framework of the Declaration, or if any other difficulty should hinder their application, the governmental experts might examine the means of applying to the detainees the essential provisions of the Fourth Geneva Convention relating to the treatment of internees.

1/ Professor Jean Graven, on behalf of the Medico-Legal Commission of Monaco, has prepared a version of these rules specially intended for the treatment of non-delinquent detainees, which the ICRC brought to the attention of the XXIst International Conference of the Red Cross.

Chapter 2

Situations of internal tensionsThe problem

While situations of internal disorder - and even more, those of civil war - often lead to the arrest of large numbers of persons because of their acts or their political attitudes, this phenomenon is likewise found in situations which are not marked by acts of violence, but which reflect internal tensions of a political, racial or other nature. This evolution is also due to the fact that the established governments and their police dispose of such powerful means of repression that an armed insurrection is often practically impossible. This may give rise to situations of internal tensions which are characterized by the fact that the governmental authorities keep full control of the events and undertake the massive internment of persons they consider dangerous to their security.

The persons thus arrested are sometimes held in extremely distressing conditions, justifying alleviation of their plight on purely humanitarian grounds. This is what the ICRC has done in recent years, as mentioned above in the chapter devoted to internal disturbances. It has extended its action for the benefit of persons arrested at times of internal tensions because of their political opinions or attitudes, in so far as the authorities in power have allowed such action.

If the ICRC thus extended its activity to political prisoners in cases of internal tensions, it should, however, be recalled that the Red Cross has, for a long time, been concerned with assistance to political detainees, initially in relation to civil wars.

The non-international conflicts and internal disturbances which occurred after the First World War did, in fact, provide the occasion for the ICRC and the National Red Cross Societies to extend relief action to political prisoners. That experience was to be clearly endorsed in 1921, at the Xth International Conference of the Red Cross, held in Geneva, which decided by the terms of its resolution No XIV to "entrust the ICRC with the mandate to engage in relief in the event of civil war...", adding : "the Xth Conference deplores the unlimited sufferings to which prisoners and internees are sometimes subjected in countries engaged in civil war, and is of opinion that political detainees in time of civil war should be considered and treated in accordance with the principles which inspired those who drew up The 1907 Hague Convention". That resolution enabled the ICRC to act during the period between the two wars.

On the eve of the second World War, the XVth International Conference of the Red Cross (London 1938), "recalling the resolution on civil war adopted by the Xth Conference in 1921", called for "a humane treatment for all political prisoners, their exchange, and, so far as possible, their release".

Furthermore, the XVIIth International Conference of the Red Cross, meeting in Stockholm in 1948, adopted a resolution, No XX, on "persons prosecuted or detained for political reasons", the text being as follows :

"The XVIIth International Red Cross Conference,

"wishes to draw the attention of the Diplomatic Conference, which will be called upon to study the revised or new Conventions for the protection of war victims, to the importance of applying humanitarian principles to persons prosecuted or detained for political reasons",

"expresses the hope that the Governments of the High Contracting Parties ensure to such persons the protection afforded by the said principles".

A report made to the XVIIIth International Conference of the Red Cross (Toronto, 1952) described the action taken on this resolution in the following terms:

"Concerning civilians of enemy or foreign nationality, the Diplomatic Conference of 1949 took into account the idea expressed above in drafting section IV of Title III of the Fourth Geneva Convention (Rules for the Treatment of Internees)".

The experts' opinion

An Expert Commission convened by the ICRC in Geneva in 1953 1/ explored the question of political detainees and, setting aside the idea of an "International Convention", suggested a certain number of desiderata patterned on rules figuring in the 1949 Geneva Conventions and on the "Standard Minimum Rules for the Treatment of Prisoners" adopted in 1957 by the ECOSOC, which urged the Member States to apply them. The Commission felt that the following points should be given special examination :

- Early information to the prisoners' families concerning the fact of detention;
- Possibility for prisoners to correspond with relatives;
- Assistance (spiritual, intellectual, material) to prisoners.

An Expert Commission convened in 1962 2/, confirmed this opinion : "Likewise, humanitarian protection can and must be afforded to political prisoners". In this

1/ Commission of experts for the examination of the question of assistance to political detainees, Geneva, June 1953.

2/ Commission of experts for the study of the question of aid to the victims of internal conflicts, Geneva, October 1962.

respect, it took over the conclusions of the Expert Commission assigned in 1953 to examine the question of assistance to political prisoners. It did, however, indicate that "the qualification given by whatever authority, to persons incarcerated could not provide a reason for preventing the accordance of this humanitarian protection, based essentially on the sort of treatment reserved for detainees".

"In all such cases, this protection exercised within the framework of humanitarian law is also founded on the rights of the individual recognized by the United Nations Charter and the Universal Declaration of the Rights of Man".

As the foregoing brief history shows, the Red Cross has had a long-standing interest in political detainees, reflected both in the texts of the International Red Cross and also in practice. The special character of this interest should be noted here : the ICRC is not concerned with the reasons why these persons are detained; its sole preoccupation in the course of the visits which its delegates are authorized to make is with the treatment afforded them, with their possibility of contact with their families and with the assistance to be brought to them, as well as the assistance their families will often need to receive. In addition, the reports of these visits are forwarded only to the detaining Power.

While this interest is fully established, what it is important to stress, as was noted early in this chapter, is the fact that since 1945 particularly, the ICRC activity in favour of political detainees has also been carried on in what we have called situations of "internal tensions". In fact, according to the statistical study referred to above, more than twenty governments have authorized the ICRC to carry on its humanitarian action in favour of these persons in such situations. But it is also appropriate to point out that up to now the Statutes and Resolutions of the Red Cross providing for its activity in cases of civil war or internal disturbances do not yet mention explicitly these situations of internal tensions, although they are more and more frequent.

Proposals

In the foregoing chapters proposals made by the ICRC for the development of the humanitarian law applicable in case of non-international conflicts or internal disturbances refer to guarantees to be afforded to political prisoners, as a matter of principle. On the other hand, in cases of internal tension, the question remains unsettled. To be sure, even more than in internal disturbances, the persons detained in these situations for political reasons should, normally, have the benefit of the fundamental guarantees of Human Rights, which should find expression in national legislation, especially once the international instruments concerning these rights come into full effect. Nevertheless, several experts consider that, there too, it is extremely desirable that the activity of the Red Cross, and of the ICRC in particular, should be consolidated and sanctioned by adequate legal provisions.

Without making any concrete proposal, the ICRC does, however, wish to call the attention of the Experts Commission to the importance of the question which is submitted to it for study.

In particular, it would be glad to get the thinking of the experts concerning the application, in situations of internal tensions, of all or part of the Declaration of the Fundamental Rights of the Individual in Time of Internal Disturbances.

In any case as a minimum solution would it not be desirable that the activity carried on by the ICRC up to now in favour of victims of internal tensions be sanctioned and encouraged by a resolution that might be adopted by a future Diplomatic Conference or by a forthcoming International Conference of the Red Cross ?

*

*

*

Even if this document is devoted to the protection of individuals in non-international armed conflicts, as well as in other circumstances which, while not so serious, likewise affect the normal domestic life of a country (political disturbances or tensions), the remainder of the general problem of political prisoners which we have been impelled to put forward prompts the ICRC to raise a question not yet answered in the various proposals contained in its documentation, but one which merits full attention : it has to do with the "nationals" who, in the case of an international armed conflict, are imprisoned in their own country for political reasons. As the above-mentioned report of the ICRC and the League (Toronto 1952) shows, the plight of "nationals held prisoner was not taken up by the Diplomatic Conference of 1949 and should therefore remain in the forefront of the concerns of the Red Cross, and should figure in the study programme looking to the establishment of future rules".

As may be noted, regarding non international conflicts, internal disturbances or even internal tensions, the proposals submitted to the experts seek, more or less broadly, to obtain a minimum of guarantees for political prisoners. In the case under consideration ("nationals" detained for political reasons in cases of international conflicts), should we not, a fortiori, consider that these persons are equally to be afforded fundamental guarantees clearly expressed in one form or another.

At this stage of development, the ICRC does not propose any solution, but submits the question to the experts.

DOCUMENTARY ANNEX

CONTENTS DOCUMENTARY ANNEX

	Pages
A. INTERNATIONAL CONVENTIONS	
Annex I	
Geneva Conventions of August 12, 1949. Article 3 common to the four Conventions	01
Annex II	
Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (extracts). Articles 1 to 7	02
Annex III	
European Convention for the Protection of Human Rights and Fundamental Freedoms (extracts). Articles 2,3,4,7,15	04
B. RESOLUTIONS ADOPTED BY THE UNITED NATIONS	
Annex IV	
Standard Minimum Rules for the Treatment of Prisoners. Resolutions adopted by the Economic and Social Council (extracts)	06

	Pages
Annex V	
Declaration on the Granting of Independence to Colonial Countries and Peoples	011
 C. RESOLUTIONS ADOPTED BY THE INTER- NATIONAL CONFERENCES OF THE RED CROSS	
 Annex VI	
Xth International Red Cross Conference, Geneva, 1921. Resolution XIV	013
 Annex VII	
XVIth International Red Cross Conference, Londres, 1938. Resolution XIV	015
 Annex VIII	
XVIIth International Red Cross Conference, Stockholm, 1948. Resolution XX	017
 Annex IX	
XIXth International Red Cross Conference, New Delhi, 1957. Resolution XIX	018
 Annex X	
XXth International Red Cross Conference, Vienna, 1965. Resolution XXXI	019

	Pages
Annex XI	
XXIst International Red Cross Conference, Istanbul, 1969. Resolution XVII	020
Annex XII	
XXIst International Red Cross Conference, Istanbul, 1969. Resolution XVIII	021
D. MISCELLANEOUS	
Annex XIII	
International Covenant on Civil and Political Rights (extracts). Articles 4,6,7,8 (para. 1,2), 11,15,16,18	022
Annex XIV	
American Convention on Human Rights (extracts). Articles 3,4,5,6,9,12,17,18, 19,20,23,27	025
Annex XV	
Statutes of the International Red Cross. Article 6	028
Annex XVI	
Statutes of the International Committee of the Red Cross. Article 4	029

A. INTERNATIONAL CONVENTIONS

ANNEX I

GENEVA CONVENTIONS OF AUGUST 12, 1949
 ARTICLE 3 COMMON TO THE
 FOUR CONVENTIONS

ARTICLE 3

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

Conflicts
not of an
international
character

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

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

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;
 - (b) taking of hostages ;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment ;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

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

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

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

CONVENTION ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE
(extracts)
Articles 1 to 7

Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948

Entry into force: 12 January 1951, in accordance with article 13.

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided.

ARTICLE I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :

- (a) Killing members of the group ;
- (b) Causing serious bodily or mental harm to members of the group ;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ;

(d) Imposing measures intended to prevent births within the group ;

(e) Forcibly transferring children of the group to another group.

ARTICLE III

The following acts shall be punishable :

(a) Genocide ;

(b) Conspiracy to commit genocide ;

(c) Direct and public incitement to commit genocide ;

(d) Attempt to commit genocide ;

(e) Complicity in genocide.

ARTICLE IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

ARTICLE VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

EUROPEAN CONVENTION
FOR THE PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS
(extracts)
Articles 2,3,4,7,15

SECTION I

Article 2

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

- (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labour.
- (3) For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

Article 7

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 15

(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

B. RESOLUTIONS ADOPTED BY
THE UNITED NATIONS

ANNEX IV

STANDARD MINIMUM RULES
FOR THE TREATMENT OF PRISONERS :

Twenty-fourth Session
Agenda item 3

E/RES/663(XXIV)
6 August 1957

RESOLUTIONS ADOPTED BY THE
ECONOMIC AND SOCIAL COUNCIL

663(XXIV) World Social Situation

C

RECOMMENDATIONS OF THE FIRST UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

I

The Economic and Social Council

1. Approves the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders; 1)
2. Draws the attention of Governments to those Rules and recommends:
 - a) That favourable consideration be given to their adoption and application in the administration of penal and correctional institutions;
 - b) That the Secretary-General be informed every five years of the progress made with regard to their application;

1) A/CONF/6/1. United Nations publication. Sales No. 1956.IV.4, Annex I.A.

- c) That Governments arrange for the widest possible publicity to be given to the Rules, not only among governmental services concerned but also among non-governmental organizations interested in social defence;
3. Authorizes the Secretary-General to make arrangements for the publication, as appropriate, of the information received in pursuance of paragraph 2 (b) above and to ask for supplementary information if necessary.

994th plenary meeting,
31 July 1957.

PART I. RULES OF GENERAL APPLICATION

Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
- a) Information concerning his identity;
 - b) The reasons for his commitment and the authority therefor;
 - c) The day and hour of his admission and release.
- (2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,
- a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
 - b) Untried prisoners shall be kept separate from convicted prisoners;
 - c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
 - d) Young prisoners shall be kept separate from adults.

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

Discipline and punishment

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.
- (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.
31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.
32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
- (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.
38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
- (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.
39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

A/Res 1514 (XV)
of 14 December 1960

DECLARATION ON THE GRANTING OF INDEPENDENCE
TO COLONIAL COUNTRIES AND PEOPLES

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations ;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination ; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

C. RESOLUTIONS ADOPTED
BY THE INTERNATIONAL CONFERENCES
OF THE RED CROSS

Xth INTERNATIONAL RED CROSS CONFERENCE
GENEVA, 1921

RESOLUTION XIV

CIVIL WAR

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

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

(2) *In every country in which civil war breaks out, it is the National Red Cross Society of the country which, in the first place, is responsible for dealing, in the most complete manner, with the relief needs of the victims; for this purpose, it is indispensable that the Society shall be left free to aid all victims with complete impartiality.*

(3) *If the National Red Cross cannot alone, on its own admission, deal with all the relief requirements, it shall consider appealing to the Red Cross Societies of other countries, in conformity with the following general principles,*

(a) *Requests for foreign assistance cannot be accepted from one or other of the parties in conflict but only from the National Red Cross Society of the country devastated by the civil war; such requests must be addressed by it to the International Committee of the Red Cross.*

(b) *The International Committee of the Red Cross, having ensured the consent of the Government of the country engaged in civil war shall organize relief, appealing to foreign relief organizations.*

Should the Government in question refuse its consent, the International Committee of the Red Cross shall make a public statement of the facts, supported by the relevant documents. (Xth International Red Cross Conference, Geneva, 1921, XIV, general principles)

(1) *When, following the dissolution of the National Red Cross Society, or by reason of the inability or unwillingness of such Society to request foreign aid or accept an offer of relief received through the intermediary of the International Committee of the Red Cross, the unrelieved suffering caused by civil war imperatively demands alleviation, the International Committee of the Red Cross shall have the right and the duty to insist to the authorities of the country in question, or to delegate a National Society to so insist, that the necessary relief be accepted and opportunity afforded for its unhindered distribution. Should the authorities of a country refuse to permit such relief intervention, the International Committee of the Red Cross shall make a public statement of the facts, supported by the relevant documents.*

(2) *Should all forms of Government and National Red Cross be dissolved in a country engaged in civil war, the International Committee of the Red Cross shall have full power to endeavour to organise relief in such country, in so far as circumstances may permit. (Xth International Red Cross Conference, Geneva, 1921, XIV, exceptional cases)*

(1) *The Xth International Red Cross Conference approves the above proposals and recommends them for study to all National Red Cross Societies.*

(2) *The Conference recommends that, in agreement with the International Committee of the Red Cross, all Red Cross Societies should undertake intensive propaganda to create in all countries an enlightened public opinion, aware of the complete impartiality of the Red Cross, in order that the Red Cross may enjoy throughout the world, on all occasions and without any exception, the confidence and affection of the people without distinction of party, creed, class or persons, which are indispensable conditions to enable the Red Cross to accomplish its tasks fully and to secure the most effective safeguard possible against any violation of Red Cross principles in the event of civil war.*

(3) *The Xth International Red Cross Conference entrusts the International Committee of the Red Cross with the mandate to engage in relief in the event of civil war, in accordance with the above prescriptions.*

(4) *The Xth International Red Cross Conference, recalling the distressing experiences of the Red Cross in countries engaged in civil war, draws the attention of all peoples and Governments, of all political parties, national or other, to the fact that the state of civil war cannot justify violation of International Law and that such law must be safeguarded at all cost.*

(5) *The Xth International Red Cross Conference condemns the political hostage system, and emphasizes the non-responsibility of relatives (especially children) for the acts of the head or other members of the family.*

(6) *The Xth International Red Cross Conference deplores the unlimited suffering to which prisoners and internees are sometimes subjected in countries engaged in civil war, and is of opinion that political detainees in time of civil war should be considered and treated in accordance with the principles which inspired those who drew up the 1907 Hague Convention. (Geneva, 1921, XIV, Resolutions)*

ANNEX VII

XVith INTERNATIONAL RED CROSS CONFERENCE
LONDON, 1938RESOLUTION XIVRole and Activity of the Red Cross in time of Civil War.

The XVith International Red Cross Conference,

having taken cognizance with keen interest of the report presented by the International Red Cross Committee on the role and activity of the Red Cross in time of civil war,

recalling the resolution relating to civil war adopted by the Xth Conference in 1921, pays tribute to the work spontaneously undertaken by the International Red Cross Committee in hostilities of the nature of civil war and relies upon the Committee to continue its activity in this connection with the co-operation of the national Societies, with a view to ensuring on such occasions respect for the high principles which are at the basis of the Red Cross movement,

requests the International Committee and the national Red Cross Societies to endeavour to obtain :

- (a) the application of the humanitarian principles which were formulated in the Geneva Convention of 1929 and the Xth Hague Convention of 1907, especially as regards the treatment of the wounded, the sick, and prisoners of war, and the safety of medical personnel and medical stores,
- (b) humane treatment for all political prisoners, their exchange and, so far as possible, their release,
- (c) respect of the life and liberty of non-combatants,
- (d) facilities for the transmission of news of a personal nature and for the re-union of families,

(e) effective measures for the protection of children.

The Conference requests the International Committee, making use of its practical experience, to continue the general study of the problems raised by civil war as regards the Red Cross, and to submit the results of its study to the next International Red Cross Conference.

ANNEX VIII

XVIIth INTERNATIONAL RED CROSS CONFERENCE

STOCKHOLM, 1948

RESOLUTION XX**PERSONS PROSECUTED OR DETAINED FOR POLITICAL
REASONS**

The XVIIth International Red Cross Conference wishes to draw the attention of the Diplomatic Conference, which will be called upon to study the revised or new Conventions for the protection of war victims, to the importance of applying humanitarian principles to persons prosecuted or detained for political reasons.

expresses the hope that the Governments of the High Contracting Parties ensure to such persons the protection afforded by the said principles.

XIXth INTERNATIONAL RED CROSS CONFERENCE
NEW DELHI, 1957

RESOLUTION XIX

RELIEF IN THE EVENT OF INTERNAL DISTURBANCES

The XIXth International Conference of the Red Cross,

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

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

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

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

ANNEX X

XXth INTERNATIONAL RED CROSS CONFERENCE
VIENNA, 1965

RESOLUTION XXXI

Protection of Victims of Non-International Conflicts

The XXth International Conference of the Red Cross,

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

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

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

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

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

ANNEX XI

XXIst INTERNATIONAL RED CROSS CONFERENCE
ISTANBUL, 1969

RESOLUTION XVII

Protection of victims of non-international armed conflicts

The XXIst International Conference of the Red Cross,

considering that since the conclusion of the Geneva Conventions in 1949 non-international armed conflicts have been on the increase and have caused much suffering,

whereas Article 3 common to the four Geneva Conventions has already rendered great service in protecting the victims of these conflicts,

considering however that experience has brought out certain points on the basis of which this Article could be made more specific or supplemented,

asks the ICRC to devote special attention to this problem within the framework of the more general studies it has started to develop humanitarian law, in particular with the co-operation of Government experts.

XXIst INTERNATIONAL RED CROSS CONFERENCE
ISTANBUL, 1969

RESOLUTION XVIII

Status of Combatants in Non-International Armed Conflicts

The XXIst International Conference of the Red Cross,

considering Resolution No. XXXI, in which the XXth International Conference of the Red Cross urged the ICRC to continue its work with the aim of strengthening the humanitarian assistance of the Red Cross to victims of non-international armed conflicts and recommended that Governments of States parties to the Geneva Conventions and National Societies support these efforts in their respective countries,

whereas, since the adoption of the Geneva Conventions of 1949, non-international armed conflicts have become increasingly extensive and have already caused millions of victims,

considers that combatants and members of resistance movements who participate in non-international armed conflicts and who conform to the provisions of Article 4 of the Third Geneva Convention of 12 August 1949 should when captured be protected against any inhumanity and brutality and receive treatment similar to that which that Convention lays down for prisoners of war,

requests the ICRC to make a thorough study of the legal status of such persons and take the action in this matter that it deems necessary.

D. MISCELLANEOUS

INTERNATIONAL CONVENANT ON
CIVIL AND POLITICAL RIGHTS

(extracts)

(Articles 4,6,7,8 (para. 1,2),
11,15,16,18)

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General, of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ANNEX XIV

AMERICAN CONVENTION ON HUMAN RIGHTS
(extracts)
(Articles 3,4,5,6,9,12,17,18,19,20,23,27)

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article the following do not constitute forced or compulsory labor:

- (a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
- (b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
- (c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
- (d) work or service that forms part of normal civic obligations.

Article 9. Freedom from Ex Post Facto Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 12. Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 17. Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18. Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20. Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

*Article 23. Right to Participate
in Government*

1. Every citizen shall enjoy the following rights and opportunities:
 - (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - (c) to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

STATUTES OF THE INTERNATIONAL RED CROSS

Article 6

1. The International Committee of the Red Cross is an independent institution, governed by its own Statutes and recruited by co-optation from among Swiss citizens.

2. It maintains the fundamental and permanent principles of the Red Cross, namely: impartiality, action independent of any racial, political, religious or economic considerations, the universality of the Red Cross and the equality of the National Red Cross Societies.

3. After having assembled all pertinent data, it announces the recognition of any newly established or reconstituted National Red Cross Society which fulfils the conditions for recognition in force.

4. It undertakes the tasks incumbent on it under the Geneva Conventions, works for the faithful application of these Conventions and takes cognizance of complaints regarding alleged breaches of the humanitarian Conventions.

5. As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war, or internal strife, it endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results. It contributes to the preparation and development of medical personnel and medical equipment, in co-operation with the Red Cross organizations, the medical services of the armed forces, and other competent authorities.

6. It takes any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary and considers any question requiring examination by such an institution.

7. It works for the continual improvement and diffusion of the Geneva Conventions.

8. It accepts the mandates entrusted to it by the International Conference of the Red Cross.

9. Within the framework of the present Statutes and subject to the provisions of Article VII, it maintains close contact with National Red Cross Societies. It also maintains relations with Governmental authorities and any national or international institutions whose assistance it considers useful.

STATUTES OF THE INTERNATIONAL COMMITTEE
OF THE RED CROSS

Article 4

The special role of the ICRC shall be :

- (a) to maintain the fundamental and permanent principles of the Red Cross, namely: impartiality, action independent of any racial, political, religious or economic considerations, the universality of the Red Cross and the equality of the National Red Cross Societies ;
- (b) to recognize any newly established or reconstituted National Red Cross Society which fulfils the conditions for recognition in force, and to notify other National Societies of such recognition ;
- (c) to undertake the tasks incumbent on it under the Geneva Conventions, to work for the faithful application of these Conventions and to take cognizance of any complaints regarding alleged breaches of the humanitarian Conventions ;
- (d) to " take action in its capacity as a neutral institution, especially in case of war, civil war or internal strife ; to endeavour to ensure at all times that the military and civilian victims of such conflicts and of their direct results receive protection and assistance " and to serve, in humanitarian matters, as an intermediary between the parties ;
- (e) to contribute, in view of such conflicts, to the preparation and development of medical personnel and medical equipment, in co-operation with the Red Cross organizations, the medical services of the armed forces, and other competent authorities ;
- (f) to work for the continual improvement of humanitarian international law and for the better understanding and diffusion of the Geneva Conventions and to prepare for their possible extension ;
- (g) to accept the mandates entrusted to it by the International Conferences of the Red Cross.

The ICRC may also take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and consider any question requiring examination by such an institution.