

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

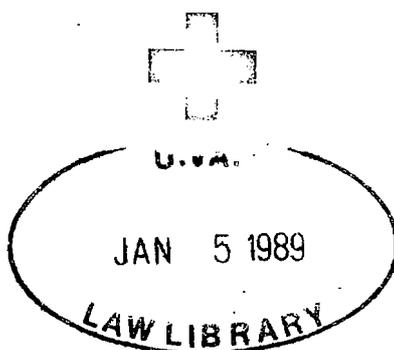
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Geneva, 24 May - 12 June 1971

II

MEASURES INTENDED TO REINFORCE THE  
IMPLEMENTATION OF THE EXISTING LAW

Submitted by the  
International Committee of the Red Cross



Geneva

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## V.

## ANNEXES

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ABBREVIATIONS

Art.	Article.
<u>Commentary</u>	<u>Commentary on the Geneva Conventions of 12 August 1949</u> , published under the general editorship of Jean S. PICTET, International Committee of the Red Cross. Vols. I, II, III and IV.
<u>Commentary I</u>	<u>Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949</u> , Geneva, International Committee of the Red Cross, 1952.
<u>Commentary II</u>	<u>Commentary on the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949</u> , Geneva, International Committee of the Red Cross, 1960.
Conv.	Convention.
Ist. Conv.	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949.
IIInd Conv.	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949.

IIIrd Conv.	Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.
IVth Conv.	Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.
Doc.	Document.
Documents I, II, III, IV, V, VI, VII, VIII.	Conference of government experts on the reaffirmation and development of international humanitarian law applicable in armed conflicts, Geneva, 24 May - 12 June, 1971. Documentary material submitted by the International Committee of the Red Cross.
Document III	<u>Protection of the Civilian Population against Dangers of Hostilities</u> (CE/3b), Geneva, January 1971.
Document IV	<u>Rules relative to Behaviour of Combatants</u> (CE/4b), Geneva, January 1971.
Document V	<u>Protection of Victims of Non-International Armed Conflicts</u> (CE/5b), Geneva, January 1971.
Document VI	<u>Rules applicable in Guerrilla Warfare</u> (CE/4b), Geneva, January 1971.
ICRC	International Committee of the Red Cross.
IRRC	International Review of the Red Cross.
Para.	Paragraph.

Report of the ICRC  
on Reaffirmation.

Reaffirmation and Development  
of the Laws and Customs  
Applicable in Armed Conflicts.  
Report submitted by the  
International Committee of the  
Red Cross to the XXIst  
International Conference of  
the Red Cross (Istanbul,  
September 1969), Geneva, May,  
1969, D.S. 4 a,b,e.

Report Secretary-General  
A/7720

United Nations, General Assembly,  
Twenty-fourth session, Agenda  
item 61. Respect for Human  
Rights in Armed Conflicts,  
Report of the Secretary-General,  
A/7720, 20 November 1969.

Report Secretary-General  
A/8052

United Nations, General Assembly,  
Twenty-fifth session, Agenda  
item 47. Respect for Human  
Rights in Armed Conflicts,  
Report of the Secretary-General,  
A/8052, 18 September 1970.

UN

United Nations.

UNESCO

The United Nations Educational,  
Scientific and Cultural  
Organization.

I. DISSEMINATION OF HUMANITARIAN PRINCIPLES AND RULES, NATIONAL LEGISLATION FOR THEIR APPLICATION AND INSTRUCTIONS TO BE GIVEN TO THE ARMED FORCES

It cannot be denied that the dissemination of humanitarian principles and rules in all countries constitutes a task of primary importance among the various measures intended to strengthen the implementation of the law in force 1/. Indeed, it is clear that a better application of the international instruments of a humanitarian nature, and of the corresponding rules and regulations adopted at the national level, depends greatly on the dissemination and publicity given them, as well as on their teaching.

As concerns the Geneva Conventions of 1949, a certain number of statements must be made in this connection, especially with regard to :

- A. The national legislation for application 2/
- B. The dissemination of the Conventions 3/
- C. Instructions to be given to the armed forces 4/.

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1/ The two Reports of the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts", likewise emphasize the importance of this task. Cf. Report Secretary-General A/7720, paras. 117 to 121, and Report Secretary-General A/8052, paras. 251 to 256. This question was given attention at the 25th Session of the General Assembly, in the Third Commission assigned to deal with item 47 of the Agenda (entitled "Respect for Human Rights in Armed Conflicts : Report of the Secretary-General"). Several delegations insisted on the need of disseminating and of teaching humanitarian principles and rules (Cf. UN : Provisional A/C.3/SR 1780 to 1795).

2/ See below, A., pp. 2 - 3.

3/ See below, B., pp. 4 - 7.

4/ See below, C., pp. 8 - 9.

A. National legislation for application

In conformity with Article 1 common to the four Geneva Conventions of 1949, "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.". A State cannot be satisfied merely to give orders or directives to a few civilian or military authorities, leaving it to them to arrange as they please for the details of execution. It is for the State to supervise this execution, and furthermore, if it is to keep its solemn engagements, the State must of necessity prepare in advance, that is to say in peacetime, the legal, material or other means of loyal enforcement of the Conventions as and when the occasion arises 5/.

A certain number of measures of application are incumbent on the States Parties to the Geneva Conventions in order to guarantee that the latter are implemented 6/. In particular, it is only by virtue of appropriate legislation which enters into force from the start of hostilities that the Parties to the Conventions will be able to respect their engagements. In particular, they will have to endeavour to eliminate any divergency between the national legislation and the obligations under the Conventions 7/.

Two spheres of interest merit particular attention in this respect : the use of the emblem of the red cross (red crescent, red lion and sun) and the penal sanctions to be prescribed for cases of violations of the Geneva Conventions.

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5/ Cf. Commentary I, p. 26.

6/ See below, Annex XVIII, list of measures of application incumbent upon States Parties to the Geneva Conventions of 1949.

7/ Cf. Report presented by the ICRC to the XXth International Conference of the Red Cross, "Implementation and Dissemination of the Geneva Conventions" (Conf. D 3/1), p. 9.

a) The use of the emblem of the red cross, the red crescent, and the red lion and sun should be the subject of appropriate legislation at the national level, enabling the competent authorities to repress all abuses 8/. The ICRC has prepared a model law for this purpose, which it makes available to any States wishing to use it for guidance 9/.

b) The legislative penal measures that all States must adopt to repress violations of the Geneva Conventions constitute an important category, studied hereinafter in a special chapter 10/.

Independently of these two spheres, a certain number of provisions of the Conventions may, at the national level, lead to legislative or regulatory measures of application. When a State becomes a Party to the Geneva Conventions, the ICRC sends, to its National Red Cross Society (Red Crescent, Red Lion and Sun), an overall list of these measures 11/, certain of which must already be passed in time of peace.

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8/ As is prescribed by Art. 54 of the 1st Convention. The National Red Cross, Red Crescent or Red Lion and Sun Societies will see to it that such appropriate legislation exists in their countries : they know that, in time of armed conflict, this respect is fundamental for the effective protection of the wounded or sick and of the personnel coming to their aid.

9/ Cf. "Model Law for the Protection of the Red Cross Emblem and Title", RICR, Supplement, September 1951, Vol. IV, No. 9, p. 160.

10/ See below III., "Reinforcement of Rules relative to the Sanction of Violations of the Law in Force", pp.35 - 43.

11/ See below, Annex XVIII.

## B. Dissemination of the Geneva Conventions of 1949

It is evidently a fundamental task to disseminate the letter and spirit of the Conventions in all countries in order to contribute to the creation of a prevailing opinion which may impose respect of engagements in all circumstances.

The four Geneva Conventions of 1949 contain provisions by which the Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the texts of the said Conventions as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire populations 12/. Hence, this obligation is primarily incumbent on the Governments themselves.

However, as has been stressed in certain resolutions of the more recent international Conferences of the Red Cross 13/, it is important to point out that the Red Cross (ICRC and National Societies) is called upon to play an important role in this sphere as an auxiliary to the public services.

Thus, Resolution XXI of the XXth International Conference of the Red Cross, after having recalled how important is the application of the Articles of the Conventions concerning dissemination to ensure the observance of

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12/ Reference is made to Articles 47 of the I<sup>st</sup> Conv., 48 of the II<sup>nd</sup> Conv., 127 of the III<sup>rd</sup> Conv., 144 of the IV<sup>th</sup> Conv.. See below, Annex IV. The III<sup>rd</sup> and IV<sup>th</sup> Conventions furthermore provide that the military or other authorities who, in time of war, assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

13/ See below, Annexes V, VIII, XII.

these Conventions, expresses the wish - a new and essential point - that Governments and National Societies submit periodic reports to the International Committee of the Red Cross on the steps taken by them in this sphere 14/. On the basis of this Resolution, the ICRC, on 21 November 1966, addressed to the Governments Parties to the Geneva Conventions, a Memorandum entitled "Implementation and Dissemination of the Geneva Conventions of 1949"15/. This Memorandum submitted the following proposals to them: 1<sup>o</sup>) that a summary containing the essential principles of the Conventions be distributed to each enlisted man; 2<sup>o</sup>) that a programme of instruction for all armed forces be drawn up and put into application in all schools and training centres of these armed forces and their auxiliary services; 3<sup>o</sup>) that the competent authorities in the different States communicate to the ICRC all measures they have taken with a view to disseminating the Geneva Conventions.

As one of the reports presented by the ICRC to the XXIst International Conference of the Red Cross indicates 16/, some fifty replies to the Memorandum were returned to the ICRC, but only twenty-five replies dealing with the substance 17/. These replies, which bear witness to the very positive efforts made in this respect in many countries, are nevertheless indicative of the tasks remaining to be accomplished. The ICRC has also received several replies from National Red

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14/ See below, Annex VIII.

15/ See below. Annex XV. This Memorandum was addressed to the 114 Governments of States Parties to the Geneva Conventions at that time, and to the National Societies of those same countries, for their information.

16/ XXIst International Conference of the Red Cross, Istanbul 1969, "Implementation and Dissemination of the Geneva Conventions", II. Follow-up to Resolution XXI adopted by the XXth International Conference), D.S. 3/1 b.

17/ Ibid., pp. 11-11bis.

Cross Societies, some of them responding in the place and stead of the Governments 18/ 19/.

The ICRC has established some information material for use by public services and National Societies in support of their campaigns to disseminate knowledge of the Geneva Conventions. Recently in a circular addressed to these Societies 20/, the ICRC gave them the list of all the information material available, pointing out to them that they could make extensive use of it in their support of the campaign to disseminate knowledge of the Geneva Conventions. In particular, it is suitable to mention the illustrated school textbook, The Red Cross and My Country, together with a corresponding Teacher's Manual 21/ and the Soldier's Manual, also illustrated, intended for the army and the police forces 22/.

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18/ Ibid., pp. 119-137.

19/ Furthermore, it is worth pointing out that the ICRC, on 15 June 1970, addressed to the High Contracting Parties a Memorandum concerning the Dissemination in Latin America of Knowledge on the Geneva Conventions of 1949. Following the conflict which broke out on 14 July 1969 between Honduras and El Salvador, the ICRC considered it timely to submit some proposals on dissemination to the authorities concerned in Latin American States which are Parties to the Geneva Conventions (Cf. below, Annex XVI). The IXth Inter-American Red Cross Conference (Managua, December 1970) passed a Resolution on this subject (Resolution 1) which recommends the National Societies to initiate an active campaign for the dissemination of the humanitarian principles of the Red Cross and of the Geneva Conventions in their respective countries, and invites them to remind their respective governments of their obligations in this field (Cf. IRRC, February 1971).

20/ Circular of 26 August 1970 (Ro 246b) concerning the Dissemination of Knowledge of the Geneva Conventions.

21/ Some fifty countries have already incorporated this manual into their official school programmes (primary level). To date, it has been translated into fifteen languages (the Arabic translation will shortly be available). It is presented in different versions that take into account the diverse regions of the world.

22/ This manual, which was published in 1969, and a new edition of which has just appeared, has gained wide acceptance. See also below, p. 9.

The tasks of teaching assume special importance, for it is vital to reach the individual directly. The reports of the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts" emphasize the desirability of strengthening efforts in the educational field, and they present some worthwhile suggestions on this subject 23/. The Red Cross must make its own contribution to this work. The ICRC at the present time envisages a programme of dissemination at the university level, for there are many who have stressed the importance of introducing the instruction of international humanitarian law at that level. A number of contacts have been set up between the ICRC and UNESCO 24/. It would be appropriate for the various groups which take a special interest in questions of human rights to be provided at all times with the necessary information.

It goes without saying that the necessity for dissemination, acknowledged in the case of the Geneva Conventions, also extends to the other humanitarian rules of the law of armed conflict, as well as to any further rules that may be adopted as a result of the present studies 25/.

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23/ Cf. Report Secretary-General A/7720, paras. 120-121; Report Secretary-General A/8052, paras. 252 to 254.

24/ Cf. particularly in this connection Resolution XXIX of the XXIst International Conference of the Red Cross, "Junior Red Cross Training and Participation in International Education Year (1970)". See also Report Secretary-General A/7720, para. 120.

25/ From now on, there should be a wide dissemination of certain fundamental principles of protection set forth in resolution 2675 (XXV), passed at the 25th Session of the General Assembly of the United Nations, on protection of civilian populations. See Document III, Annex XI.

C. Instructions to be given to the armed forces

Special emphasis should of course be placed on the dissemination of the Conventions to military personnel at all levels of authority and the instruction of such persons as to the humanitarian principles and rules 26/.

As has been indicated 27/, the articles of the Geneva Conventions of 1949 relative to dissemination provide, among other matters, that the Contracting Parties undertake to include the study of these Conventions in their military instruction programmes. It is also worthwhile pointing out that Article 45 of the Ist Convention (Article 46 of the IIInd Convention) states that "Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the proceeding articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention ".

It would be desirable for each State to prepare a military manual containing the basic humanitarian rules of the law of armed conflicts 28/.

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26/ Cf. Report Secretary-General A/7720, para. 117.

27/ See above, p. 4.

28/ It is appropriate to recall here the principles of international law recognized by the Charter of the International Military Tribunal of Nürnberg and by the judgment of that Tribunal. These principles were affirmed in 1946 by the General Assembly of the United Nations in its resolutions 3 (I) and 95 (I), and were subsequently ennuiciated by the United Nations International Law Commission at the request of the General Assembly. In particular, the capital question of the "order received" should be settled at the national level, and this should be done in a way that reflects the tendencies revealed in the judgment of the Nürnberg Tribunal, namely that the soldier should be able to refuse to obey an order which, if carried out, would constitute a serious infraction of the humanitarian rules.

It should be recalled that, with a view to the dissemination of the Geneva Conventions, the ICRC has available some information material for the armed forces 29/ : This consists of the Soldier's Manual, intended for servicemen, a booklet entitled "The Geneva Conventions" (a short summary for members of the armed forces), and the Course of Five Lessons on the Geneva Conventions 30/.

Finally, it is important to emphasize that the application of these humanitarian rules relative to armed conflicts by the Forces of the United Nations also brings up the problem of dissemination and instruction. The Red Cross has already concerned itself with this question on a number of occasions 31/.

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29/ See above, p. 6.

30/ Henry COURSIER, Course of Five Lessons on the Geneva Conventions, in French, English, German and Spanish.

31/ Cf. below, Annex VI (Centenary Congress, Geneva, 1963. Resolution V "Application of the Geneva Conventions by the United Nations Forces"), Annex X (XXth International Conference of the Red Cross, Vienna, 1965. Resolution XXV, "Application of The Geneva Conventions by the United Nations Emergency Forces"). See also the report presented by the ICRC to the XXth International Conference of the Red Cross, "Implementation and Dissemination of the Geneva Conventions" (Conf. D 3/1), pp. 6-7.

II. REINFORCEMENT OF THE RULES RELATIVE TO THE  
SUPERVISION OF THE REGULAR OBSERVANCE OF  
THE LAW IN FORCE

Application of the law of armed conflicts depends, in the first instance, on the subjects of this law. The appreciation of the way in which this law is applied is particularly within the competence of each belligerent taken individually.

However, certain branches of the law of armed conflicts are not entirely left, as far as their application and the supervision of the latter are concerned, to the unilateral appreciation of the parties. Indeed, conventional law has, in certain areas, provided special institutions assigned to guarantee the impartial supervision of the application of the conventions and to facilitate such application.

After a brief review of the positive law 32/, it will be appropriate to indicate some of the ideas and proposals which have been put forward on this matter in the course of recent years 33/, and to suggest certain developments of law in this field 34/ in the light of past experience of the armed conflicts which have broken out since the conclusion of the Geneva Conventions of 1949.

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32/ See below, A., pp. 11 - 20.

33/ See below, B., pp. 21 - 29.

34/ See below, C., pp. 30 - 34.

## A. The law in force

Several international legal instruments applicable in time of armed conflict have set forth the measures appropriate to ensure the supervision of their application. It is worthwhile examining briefly the machinery for scrutiny set up by certain of them.

### 1. The Geneva Conventions of 1949

Article 1, common to the four Geneva Conventions, stipulates that "the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances" <sup>35/</sup>. This is such an imperative requirement that it appeared desirable to parallel the system of self-scrutiny by the institution of a third independent scrutiny in a position to function under all circumstances.

#### The Protecting Powers

The common Article 8 (Article 9 of the Fourth Convention), in its first paragraph, provides that "The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty

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<sup>35/</sup> It is worth pointing out, in this connection, that one of the Resolutions adopted by the International Conference on Human Rights (Teheran 1968) notes that "States parties to the Red Cross Geneva Conventions sometimes fail to appreciate their responsibility to take steps to ensure the respect of these humanitarian rules in all circumstances by other States, even if they are not themselves directly involved in an armed conflict" (Resolution XXIII).

it is to safeguard the interests of the Parties to the conflict". Under normal conditions the system of scrutiny therefore relies on the intervention of the "Protecting Powers", i.e. the neutral States whose duty is to represent the interest of one belligerent when dealing with the adversary. Extended to the four Conventions, the scrutiny thus instituted has become obligatory. The Protecting Powers are no longer simply the mandatory of a belligerent, as they are in the framework of international customary law; they will have to make decisions and take initiatives; ~~they receive a higher mandate from the Contracting Powers as a whole, that of aiding actively in the application of the Conventions and of supervising the observance thereof.~~ These duties cover the total of the provisions of the Conventions 36/.

Option for the Contracting Parties to Provide an Organization as a replacement for the Protecting Powers.

The common Article 10 (Article 11 of the Fourth Convention), in its first paragraph, envisages the replacement of the classic institution of the Protecting Powers by an organization which offers all guarantees of impartiality and efficacy which the High Contracting Parties would be empowered to designate at any time, before or during the hostilities, and to which they would entrust the duties incumbent on the Protecting Powers by virtue of the Conventions. The Diplomatic Conference of 1949 refrained from

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36/ The co-operation and scrutiny set up by Article 8 thus do not consist solely in the activities exactly defined by certain provisions of the Conventions citing the Protecting Powers (see below, Annex XVII). The Protecting Powers are given a general mission which gives them the right, and the duty, to intervene in other than these particular cases. Article 8, among other matters, allows the Protecting Power to take any steps and initiatives with a view to verifying the application of any provision of the Conventions, or, further, to ameliorate this application.

giving a more precise designation to the organization in question, even by analogy. Hence it might be an institution set up exclusively for the purposes of Article 10, or an already existing organization. This possibility has not yet been employed 37/.

#### Substitutes for Protecting Powers

Article 10, in its paragraph 2, establishes a valid substitute for the Protecting Power in the latter's absence. When protected persons do not benefit, or cease to benefit, no matter for what reason, from the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the Conventions by a Protecting Power. This paragraph can and should be applied only when all the possibilities of ensuring scrutiny by the system of the Protecting Power have been exhausted. Such an eventuality can hardly arise in practice unless the Power of Origin intentionally abstains, or systematically refuses, to appoint a Protecting Power, or again, if it disappears entirely.

In its third paragraph, Article 10 stipulates that the Detaining Power shall - in the final stage, and in the absence of the above system - request a humanitarian organization, such as the ICRC, to assume the humanitarian functions devolving on the Protecting Power, or shall be bound to accept the offer of services made by such an organization 38/.

Finally, as is provided in paragraph 6, whenever mention is made of a Protecting Power in the Conventions, such mention also applies to substitute organizations in the sense of Article 10.

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37/ This point is again studied below, p. 21.

38/ The role of the ICRC is examined below, pp. 14 - 15.

The designation of a substitute for a Protecting Power is the subject of a reservation on the part of certain States : these States do not recognize the request made by a Power detaining persons protected by the Conventions to a neutral State or to a humanitarian organization to assume towards these persons the function of a Protecting Power unless agreement is obtained from the government of the State to which these persons belong 39/.

### The role of the ICRC

As has been indicated 40/, the Detaining Power shall, in the absence of a neutral State or of a substitute organization, request a humanitarian organization such as the ICRC to perform the humanitarian duties of the Protecting Powers or shall accept the offers of the services of such an organization. Scrutiny of the application of the Conventions naturally comes first among these duties.

Furthermore, a general provision of the Geneva Conventions, common Article 9 (Article 10 of the Fourth Convention), enshrines the activities of the ICRC and its traditional right of initiative. By the terms of this article, no provision of the Conventions excludes a humanitarian activity of the Red Cross or of an analogous organization.

A certain number of the provisions of the Conventions specify the duties of the ICRC 41/. With respect to scrutiny, it must in particular be indicated that Article

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39/ Cf. Claude PILLOUD, "Reservations to the Geneva Conventions of 1949", I and II, extract from the IRRC, 1957 and 1965. See also Reports Secretary-General A/7720, para. 116 and A/8052, para. 257.

40/ See above, p. 13.

41/ Ist Conv.: 5 articles; IInd Conv.: 5 articles;  
IIIrd Conv.: 12 articles; IVth Conv.: 16 articles.

126 of the IIIrd Convention and Article 143 of the IVth Convention established a dual system of visit and inspection of all places of detention and internment (by the Protecting Power and the ICRC). The role of the ICRC does not duplicate that of the Protecting Powers, but complements it in a significant way: the ICRC is not called upon to exercise a real scrutiny as such, in the legal meaning of the term, but it watches over the humane treatment of protected persons in the name of the principles of humanity; this amounts in practice to ascertaining whether the provisions of the Conventions are adequately applied and thus it constitutes a "factual scrutiny". The ICRC delegates, in this respect, enjoy the same prerogatives as do the representatives of the Protecting Powers.

It is proper to emphasize that, shortly after the conclusion of the Conventions of 1949, the ICRC considered and announced that it was, in principle, prepared to become the substitute of the Protecting Powers, in case of the absence of the latter, either because this duty normally devolved upon it as a "last resort" (Article 10, paragraph 3), or because the States agreed in entrusting this to it as an "organization which offers all guarantees of impartiality and efficacy" (Article 10, 1st paragraph).

Since the ICRC nevertheless felt that it had to make certain reservations of detail as to the extent of this role, certain circles retained the incorrect impression that the ICRC was refusing to be the substitute of the Protecting Powers. These reservations dealt in particular with the fact that, in becoming a substitute, the ICRC would remain what it is, i.e. an institution with its own principles. If its action had to become more "protective" than it had been in the past, it would not, itself, thereby become a "Power", i.e. a State, with the diplomatic characteristics pertaining thereto. As the Conventions prescribe, moreover, its mandate shall only cover the more specifically "humanitarian" duties devolving on the Protecting Powers.

Hence, it is proper to dispel all misunderstanding: in case of need, the ICRC will do everything possible - and it wishes to stress this here - to be the substitute of a defaulting Protecting Power, with the agreement of the two parties concerned.

Reasons for the unsatisfactory functioning of the  
machinery for scrutiny set up by the Geneva Conventions

In the Conventions of 1949, the duties entrusted to the Protecting Powers took on a new and considerable extension 42 a/. The Diplomatic Conference had sought, as emphasized above, to face up to all situations. The experience of armed conflicts occurring since then indicates that, for certain reasons, the machinery for scrutiny, as set up, did not always function as planned :

(a) Certain conflicts took place before the coming into force of the 1949 Conventions, or the Parties to the conflicts were not yet bound by these Conventions.

(b) Very many conflicts were ~~non-international armed~~ conflicts to which the system of scrutiny of common Articles 8, 9 and 10 (Art. 9, 10 and 11 of the Fourth Convention) does not apply 42/.

(c) In other conflicts, diplomatic relations between the belligerents were not broken off and for that reason they did not appoint Protecting Powers.

*A* (d) In certain conflicts, some States did not undertake the designation of a Protecting Power, fearing that that might be interpreted as a recognition of a belligerent State they did not intend to recognize.

(e) Finally, it is proper to point out that due to the prohibition of recourse to force contained in Article 2, paragraph 4, of the Charter of the United Nations, there is a general tendency, on the part of States, only rarely to

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42 a/ These duties were, until then, only provided for in a more limited way in the Convention relative to the Treatment of Prisoners of War, concluded in Geneva, 27 July 1929.

42/ Cf. Document V.

recognize the existence of an armed conflict, even though it does indeed exist.

Taking these reasons into account, certain suggestions will be given below as to the possible development of the law in this domain 43/.

The Secretary-General of the United Nations has also commented on certain reasons which explain the failure to make use of the institution of Protecting Powers 44/.

## 2. The Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 45/

The Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with the Regulations for the execution of the Convention and its Protocol, set up a system of scrutiny based on that of the Geneva Conventions of 1949, and provide for the function of Protecting Powers or their substitutes, conciliation procedure and assistance of UNESCO 46/.

According to Article 21, this Convention and the Regulations for its execution are applied "with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict". Article 23 deals with the technical assistance of UNESCO, upon which the High Contracting Parties may call with a view to organizing the protection of their cultural property, or in connection with any other problem arising out of

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43/ See pp. 30 - 34.

44/ Cf. Report Secretary-General A/7720, para. 213.

45/ United Nations Treaty Series, Vol. 249, 1956, No 3511.

46/ Cf. on this subject Report Secretary-General A/7720, para. 62, and A/8052, paras. 74-78.

the application of the Convention or of the Regulations for its execution. This organization is likewise "authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties."

The first chapter of the Regulations entitled "Control" provides, in particular, for the nomination of the delegates of the Protecting Powers (Article 3) and for the functions of these delegates, Article 5 <sup>47/</sup>. Other provisions deal with the representative for cultural property that each Contracting Party engaged in an international armed conflict must appoint (Article 2, para. a), with the appointment and functions of the Commissioner-General for Cultural Property (Article 2, para. c, Articles 4, 6 and 7), with the discharge of the mission of control (Article 8), and with substitutes for Protecting Powers (Article 9).

### 3. Other international legal instruments

Other international legal instruments applicable in time of peace as in time of armed conflict provide for a system of scrutiny, the setting-up of which often seems highly complicated, especially in time of armed conflict. It is desirable to emphasize that these instruments are chiefly oriented towards peacetime. Some of them have not yet come into force.

In particular it is important to mention :

- The International Convention on the Elimination of All Forms of Racial Discrimination <sup>48/</sup>

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<sup>47/</sup> The principal functions of these delegates consist in taking note of violations of the Convention, in investigating the circumstances in which they have occurred, and in making representations locally to secure their cessation.

<sup>48/</sup> Entered into force in 1969. Cf. Report Secretary-General A/8052, Annex I, para. 72, which gives certain indications of the system of scrutiny set up by that Convention.

- European Convention for the Protection of Human Rights and Fundamental Freedoms 49/
- The International Covenant on Civil and Political Rights 50/.

It is appropriate to make particular reference to the following system of scrutiny, apart from those mentioned above :

4. Special agencies created in conformity with the United Nations Charter

In conformity with its Charter, the United Nations is empowered to set up the necessary international agencies, among others, those for developing and encouraging respect for human rights and fundamental freedoms. In recent years the United Nations has created special agencies assigned to

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49/ The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (United Nations Treaty Series, Vol. 213 (1955), No 2889). This Convention is in force. For the system of installation or scrutiny which it provides, cf. especially the following documents of the Council of Europe : Doc. CM (68) 39; Doc. H (70) 7.

50/ This Covenant has not yet come into force. Cf. Report Secretary-General A/8052, Annex I, para. 71, which examines the system of scrutiny provided and states, in this connection : "Here again the procedures are involved and time consuming, but this will not prevent them from playing a useful role in matters of human rights in armed conflicts as soon as the relevant instruments enter into force". See also Doc. CM (68) 39 and Doc. H (70) 7 of the Council of Europe which give a fairly detailed comparison of the machinery of scrutiny established by the Covenant and by the European Convention.

matters of protection of human rights in armed conflicts 51/.

Thus, in the case of the Middle East conflict, fact-finding functions relating to the application of certain provisions of the Geneva Conventions, were included in the terms of reference of certain ad hoc bodies established by the General Assembly or by the Commission on Human Rights with the approval of the Economic and Social Council 52/. As these ad hoc bodies have not been authorized by a State to investigate locally, it appears that, up until now, their mission has not fulfilled expectations.

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51/ Cf. Report Secretary-General A/8052 (para. 246 and Annex I, paras 69-70).

52/ The bodies referred to - as note 72 of the Secretary-General's Report A/8052 indicates - are the "Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, established by General Assembly resolution 2443 (XXIII) of 19 December 1968, and the Special Working Group of Experts established by Commission on Human Rights resolution 6 (XXV) of 4 March 1969; a further mandate was given to the Group by Commission on Human Rights resolution 10 (XXVI) of 23 March 1970.". See also Report A/8089, 26 October 1970, of the Special Committee in question and resolution 2727 adopted by the XXVth General Assembly of the United Nations.

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## B. Recent ideas and suggestions

It is not a new idea to endeavour to ensure a better application of the law of armed conflicts and in particular of the international humanitarian conventions by entrusting the supervision thereof to an independent body.

At the time of the Diplomatic Conference of 1949, the French delegation, concerned by the fact that in future conflicts there might perhaps no longer be a neutral State in a position to carry out the task of the Protecting Powers, had proposed the creation of a "High International Committee" consisting of persons of established impartiality and chosen without regard to nationality. As has already been stated 53/, the Conference limited itself to providing, in very general terms, the option of the Contracting Powers to agree at any time to entrust to "a body offering every guarantee of impartiality" the duties assigned to the Protecting Powers by the Conventions. For the rest, the Conference recommended, in Resolution No 2 attached to its Final Act 54/, that "consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of War Victims.". After April 1950 the French government consulted the signatory States on this matter. They received very few replies. Certain States emphasized the numerous difficulties in the way of the creation of such an institution, especially as concerns its headquarters, its composition and its resources. In the final analysis, the French government could only recognize the reluctance of the States to concretize such a proposal.

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53/ See above, p. 12, remarks relative to the first paragraph of common Article 10 (Article 11 of the Fourth Convention).

54/ This resolution was passed by 32 votes for, 8 against, and 4 abstentions.

In the course of recent years, various ideas and proposals have been presented at the international level, either on a private basis, by certain eminent persons, or by non-governmental organizations, or even by inter-governmental organizations, and in particular by the United Nations. It was advocated that various systems, organs and procedures be established. The different suggestions and initiatives put forward by this considerable body of opinion seek to improve the machinery of scrutiny in the application of the law of armed conflicts, and in particular of the humanitarian conventions 55/.

As a whole, these ideas and proposals deal in substance with the following questions :

- Internationalized organization of supervision.
- Improvement in the ways the Protecting Powers would function.

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55/ The following bodies and institutions should be mentioned. Within the framework of some of their activities, they have dealt and are dealing with the organization of supervision of the application of the law of armed conflict :

- Amnesty International.
- "Commission médico-juridique de Monaco"
- Friends World Committee for Consultation (Quakers).
- International Association of Democratic Lawyers.
- International Commission of Jurists.
- International Committee of Military Medicine and Pharmacy.
- International Committee for the Neutrality of Medicine.
- International Law Association.
- Special Committee for Human Rights of Non-Governmental Organizations in Consultative Status with the United Nations Economic and Social Council.
- World Veterans Federation.

- Constitution of groups of outstanding persons capable of fulfilling the duties entrusted to them by the Conventions under the direction of the Protecting Powers, or of their possible substitutes 56/.
- Training and instruction of personnel assigned to supervise the application of the Conventions 57/.

More recently certain suggestions were put forward on the establishment of a High Commissariat for Human Rights and on the creation - within the United Nations - of a permanent impartial agency, possibly of a judicial nature, charged to investigate allegations of non-observance of the provisions of the humanitarian Conventions which would be submitted to it and to report on this subject to the General Assembly or to the Security Council.

The two Reports of the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts" 58/.

These two recent and important contributions explore in detailed fashion in particular those questions concerning international assistance in the application of humanitarian rules relative to armed conflicts and the

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56/ See also below, p. 34, remarks concerning Resolution XXII, "Personnel for the Control of the Application of the Geneva Conventions", of the XXth International Conference of the Red Cross.

57/ Ibid.

58/ Reports Secretary-General A/7720 and A/8052, presented respectively to the 24th Session - item 61 of the agenda - and to the 25th Session - item 47 of the agenda - of the General Assembly of the United Nations.

supervision of that application 59/. They put forward a certain number of proposals which have been discussed, above all by the Third Commission, during the 25th Session of the General Assembly of the United Nations 60/. The two reports, among other matters, analyze the system of scrutiny set up by the Geneva Conventions of 1949 and contribute, in this connection, their observations and suggestions on the subject of the Protecting Powers, on the option - for the Parties to the Geneva Conventions - of setting up machinery to ensure the performance thereof, on the substitutes for the Protecting Powers, on the role of the ICRC, and on the creation of an executive body or agency under the aegis of the United Nations 61/.

(a) As regards the Protecting Powers, the first report indicates that several reasons were advanced to explain why this institution had virtually never been utilized since the adoption of the Geneva Conventions of 1949 62/, and it selects out certain ideas that might contribute to the effectiveness of such an institution 63/.

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59/ Cf. Report Secretary-General A/7720, paras. 202 to 227, and Report Secretary-General A/8052, paras. 238 to 250, and Annex I, paras. 69 to 73, Annex II, paras. 7 and 9, litt. K.

60/ See Twenty-Fifth Session, Third Committee, Provisional Summary Records A/C.3/SR. 1780 - 1788, A/C.3/SR. 1792 - 1805. See also A/8178 : Report of the Third Commission on the Discussion of Report Secretary-General (A/8052), and recommendations to the General Assembly on this subject.

61/ Report Secretary-General A/7720, paras. 206 to 212, and Report Secretary-General A/8052, paras. 239 to 250.

62/ A/7720, para. 213: "... Many reasons have been advanced for this : the relatively small number of States which could be considered as truly neutral by all parties to the armed conflicts; the cumbersome and time-consuming procedure of appointment of Protecting Powers which calls for the agreement of the belligerents as to these Powers at the time when hostilities are raging; the fact that the military phases of some of the conflicts were over before Protecting Powers could be appointed. The burden in terms of material and human resources which is imposed on States solicited as potential Protecting Powers has also been mentioned as a deterrent, as well as the risks of political embarrassment vis-à-vis the parties to the conflict." And see above, p. 17.

63/ Cf. Report Secretary-General A/7720, paras. 216 to 220

(b) The two Reports of the Secretary-General refer to the possibility available to the Parties to the Conventions of Geneva of elaborating and setting up an arrangement intended to ensure the application of the Conventions, outside the framework of the United Nations 64/.

(c) Concerning the substitutes for the Protecting Powers, within the meaning of common Article 10, paragraph 2 (Article 11, paragraph 2 of the Fourth Convention), the first Report of the Secretary-General notes that the neutral States or organizations have received no requests from the Detaining Powers inviting them to assume the duties of Protecting Powers 65/.

(d) The role of the ICRC, or of any other impartial humanitarian body, is taken extensively into consideration in the two Reports of the Secretary-General 66/. These reports, among other matters, underscore the important humanitarian activities engaged in by the ICRC, and indicate that they have amply proved their value and that they "deserve full and active support from all those who are in a position to extend assistance" 67/. They do, however, raise the question of ascertaining the "willingness and capacity of the ICRC to consent to act as a substitute for a Protecting Power under the Geneva Conventions or to interpret broadly its role as a quasi-substitute so as to realize the full potential of that role by assuming additional functions which might exceed the strictly humanitarian confines to which it adheres at present and more closely relate its action to the responsibilities which would have devolved on the Protecting Powers" 68/. They stress certain

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64/ Ibid., para. 208 and paras. 221 to 224. See also Report Secretary-General A/8052, paras. 241 and 250.

65/ Cf. Report Secretary-General A/7720, para. 213.

66/ Cf. Report Secretary-General A/7720, paras. 210 to 215, and para. 226; also Report of the Secretary-General A/8052, paras. 241 to 245.

67/ Cf. Report Secretary-General A/8052, para. 242.

68/ Ibid., para. 243. A response is given to this question above, p. 15.

limitations to which the ICRC is subjected by reason of its purposes and its nature. Nevertheless, these reports emphasize that the offers of services of the ICRC have been accepted in a large number of armed conflicts which have arisen since 1949. The first Report of the Secretary-General states, in conclusion, that "... while the International Committee of the Red Cross and certain organizations play a most useful role, there would be pressing need for measures to improve and strengthen the present system of international supervision and assistance to parties to armed conflicts in their observance of humanitarian norms of international law" 69/.

(e) The two Reports of the Secretary-General took into consideration that "the machinery designed to facilitate and ensure the application of the norms of the Geneva Conventions and other humanitarian instruments relevant to armed conflicts should be enriched and perfected by widening in particular the effective choices of the parties so that supervisory assistance should never fail to assert itself for lack of acceptable alternatives" 70/, and it concluded, in particular, that it would be entirely justified for the United Nations to take part in the efforts tending to effectuate scrutiny and to ensure the observance and application, in all armed conflicts, of the accepted humanitarian rules and norms 71/. Certain considerations are advanced with regard to the creation of a permanent agency or organization under the aegis of the United Nations, assigned to act in this field 72/, with regard to the method of its establishment (especially as concerns its autonomy) 73/ and

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69/ Report Secretary-General A/7720, para. 215.

70/ Cf. Report Secretary-General A/8052, para. 245.

71/ Cf. Report Secretary-General A/7720, paras. 224 and 225; also Report Secretary-General A/8052, paras. 245 to 249 and para. 269.

72/ Cf. Report Secretary-General A/7720, para. 224, and Report Secretary-General A/8052, para. 246.

73/ Cf. Report Secretary-General A/8052, para. 248, which considers that in this connection, useful indications might be derived from recalling the procedure employed with regard to the establishment and functioning of another organ of the General Assembly ... the Office of the United Nations High Commissioner for Refugees.

with regard to the functions which could be entrusted to it 74/.

To be sure, as the first Report points out, "an objection which is sometimes voiced against the proposal to create a United Nations organ to act in this field is that it would be subject to political pressures" 75/. It is suggested in one of the reports that this objection could be met by giving to such an agency a large degree of autonomy and by drafting its constitution in such a way as to give overriding priority to humanitarian considerations 76/. However, it is beyond all doubt true that this objection is invested with great importance - as certain delegations pointed out, in particular during the discussions of the Third Commission at the 25th Session of the General Assembly 77/ - and that the question still calls for a thoroughgoing analysis 78/.

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74/ Cf. Report Secretary-General A/8052, para. 247, which considers that this organ or agency might, in particular, assist "in determining whether the criteria in force in connexion with the granting of prisoner of war status are met in a given situation" or "be empowered to evaluate the elements which would help to provide an answer to the question of whether or not an internal armed conflict exists in terms of Article 3 of the Conventions ... or whether or not a person or group of persons would qualify under the relevant international instruments to the protection granted to 'combatants' or persons in territories under occupation".

75/ Cf. Report Secretary-General A/7720, para. 225.

76/ Ibid.

77/ The Third Commission was assigned to deal with item 47 of the agenda, entitled "Respect for Human Rights in Armed Conflicts : Report of the Secretary-General". See above, footnote 60/.

78/ Several delegations of the Third Commission considered that the problem should first be examined by the Conference of Governmental Experts convened by the ICRC. Cf. in particular, UN: A/C.3/SR. 1780, p. 19, A/C.3/SR. 1784, p. 7, A/C.3/SR. 1787, p. 6, A/C.3/SR. 1792, p.8, A/C.3/SR.1793, p. 7.

The second Report of the Secretary-General furthermore suggests that "as an alternative to the establishment of a permanent organ charged with the implementation of humanitarian rules, or pending the eventual establishment of such an organ, consideration might be given to making more frequent use of certain types of ad hoc machinery which ... have been occasionally resorted to by the Organization" 79/.

The 25th General Assembly of the United Nations did not devote any resolution to this subject, but limited itself to stating, in its resolution 2677 (XXV) : "Realizing, however, that because existing humanitarian rules do not adequately meet all contemporary situations of armed conflict it is necessary to develop the substance of these rules and procedures for their implementation". This same resolution also expressed the hope that the Conference of government experts to be convened in 1971 by the ICRC will formulate concrete recommendations for consideration by Governments. As regards the creation of the office of a High Commissioner of the United Nations for Human Rights, proposed by certain delegations of the Third Commission, the General Assembly decided, upon the recommendation of that Commission, to consider this question again in all its aspects at the 26th Session 80/.

In addition to the various problems mentioned above, examined in the two Reports of the Secretary-General and by the 25th Session of the General Assembly, it is also desirable to take into consideration the special question of supervision and scrutiny of the effective respect for humanitarian rules by the United Nations Forces during military operations by the United Nations. The absence of a Protecting Power in these operations could conceivably limit the protection which the members of these Forces, as well as their adversaries, can rightfully expect to receive under the Geneva Conventions, and might be harmful to the reputation of the United Nations by giving currency to the idea that the latter refuses to accept any form of supervision and scrutiny in this matter. Hence, the question merits careful study.

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79/ Cf. Report Secretary-General A/8052, para. 249.

80/ Cf. General Assembly Resolutions. Twenty-fifth Regular Session, Part V, p. 35.

Lastly, it is essential to emphasize the desirability of undertaking a careful examination of the role that the United Nations might play to ensure fuller application of the common Articles 8, 9 and 10 of the Geneva Conventions of 1949 (Articles 9, 10 and 11 of the Fourth Convention). The second Report of the Secretary-General, in fact states, with regard to this matter, that "one of the basic objectives of United Nations efforts would appear therefore to be the strengthening of the impact of the Geneva Conventions, encouraging their full application and assisting in making their provisions better known in order that they may afford more effective protection to those whom they are designed to benefit" 81/. The United Nations could, for example, encourage the humanitarian organizations in their work, by endeavouring, in particular, to eliminate the legal and political obstacles likely to hamper the fulfilment of their missions.

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81/ Cf. Report Secretary-General A/8052, para. 14.

C. Conclusions of the ICRC regarding possible  
developments

This document has brought out the various possibilities provided by the present system under Articles 8, 9 and 10 of the Geneva Conventions of 1949 (Articles 9, 10 and 11 of the Fourth Convention). In addition, while emphasizing that the Contracting Parties have not yet had recourse to all the possibilities afforded, it has indicated some of the reasons why, in the opinion of the ICRC, the system of scrutiny there instituted has not operated in a satisfactory manner 82/.

In the light of these reasons, certain developments of the law can be taken into consideration. However, the ICRC does not put forward any concrete proposals in this sphere, but limits itself to placing the following suggestions before the experts for their examination :

(a) It has been pointed out that, in certain conflicts, some States have not undertaken to designate a Protecting Power, fearing that it might be interpreted as a recognition of a belligerent State, which they do not intend to recognize 83/.

- Should it not be expressly stipulated that the designation of a Protecting Power - or of a substitute - solely for the purpose of applying the Geneva Conventions of 1949, has no effect on the reciprocal status of the Parties and, in particular, involves no recognition of the adverse State ?

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82/ See above pp. 16 - 17.

83/ See the reason for the unsatisfactory operation of the above mentioned system of supervision, p. 16 letter (d).

(b) It has been indicated that, during certain conflicts, diplomatic relations have not been broken off between the belligerents, and that this was the reason why the latter did not designate Protecting Powers 84/.

- Would it not be appropriate to stipulate, on the one hand, that when diplomatic relations are not broken off between the belligerents, and when, for that reason, no designation of Protecting Powers has been made, the diplomatic representatives of the belligerents shall, ipso facto, exercise the prerogatives of such Protecting Powers and, on the other hand, if the diplomatic representatives of the belligerents do not receive the requisite authorization to this effect, there will then be a designation of Protecting Powers - or of substitutes - in conformity with the system instituted by the Geneva Conventions of 1949 ?

Independently of these two suggestions, certain remarks are also presented in Documents III, V and VI on the subject of strengthening the rules relating to scrutiny of the regular observance of the law in force, and of international assistance in the application of the humanitarian norms.

A number of observations are made there concerning possible developments of law in the following spheres :

- Protection of the civilian population in time of armed conflict : zones under particular protection (supervision of the conditions for the setting-up and utilization of these zones and objective findings of abuses alleged by the adversary) 85/; Protocol of Geneva of 1925 86/.

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84/ See the reason for the unsatisfactory operation of the above mentioned system of supervision, p. 16, letter (c).

85/ Cf. Document III, Title III, Chapters 1) e, 2) c. See also Report Secretary-General A/8052, paras. 73 to 82.

86/ Ibid., Title III, Chapter 3, 2), note 126.

- Non-international armed conflicts : assistance in the regular observance of humanitarian law 87/.
- Rules applicable in guerrilla warfare : procedures for the implementation of these rules. (International observers assigned to make objective findings of alleged violations of these rules) 88/.

It is emphasized how helpful would be the reinforcement of the supervisory procedure and the presence of an impartial body in obtaining the regular observance of the proposed rules in each of these cases 89/.

A certain number of developments of the law, envisaged as part of the present work, concern, to a large extent, the limitations imposed, for humanitarian reasons, on the conduct of hostilities 90/.

Such being the case, it is evident, as is pointed out in one of the reports presented by the ICRC to the XXIst International Conference of the Red Cross 91/, that the task of an agency for supervision or scrutiny in this sphere is much more difficult and delicate than the task which consists in verifying the treatment of individuals, who are generally to be found in the rear of combat zones. Actually, for violations of rules relating to the conduct of hostilities, this will most frequently involve findings to be made after the fact, in relation to circumstances which have taken place in the zone of combat during military operations.

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87/Cf. Document V pp. 75 to 78. See also Report Secretary-General A/8052, paras. 157 to 162.

88/Cf. Document VI, pp. 54 - 55. See also Report Secretary-General A/8052, paras. 185 and 186.

89/Cf. also Report Secretary-General A/8052, para. 247.

90/Cf. in particular, Documents III, IV and VI.

91/Cf. "Reaffirmation and development of the laws and customs applicable in armed conflicts". (D.S. 4 a.b.e)

Although the extension of the functions of supervisory bodies to cover the new rules proposed by the ICRC thus involves certain difficulties, there is, nevertheless, nothing wholly unrealistic about it. The Geneva Conventions of 1949 have, moreover, provided an opening in this respect, by introducing the system of Protecting Powers into the I<sup>st</sup> and II<sup>nd</sup> Conventions and thereby providing for the role that these Powers may be called upon to play in connection with situations occurring within the actual framework of military operations (such as ascertaining hospital bombardments, determining misuse of the emblem, etc.) 92/. It is likewise proper to point out that the functions which the Fourth Convention entrusts to the Protecting Powers concerning the occupied territories represent a very significant extension in the tasks of these Powers.

A certain number of other questions could also be examined in this context of the reaffirmation and development of the law, taking into account various ideas and suggestions which have been presented on this subject in the course of recent years 93/. The question arises, in particular, of ascertaining whether it would be desirable to ameliorate the ways the Protecting Powers would function and to make specific the provisions of the Geneva Conventions concerning the competences of the delegates of those Powers. Likewise, the question could be taken into consideration of ascertaining whether the supervisory body itself should be allowed to determine whether these prohibitions, advanced in the name of military necessity, against exercising the supervisory operations were justified.

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92/ This possibility did not yet exist in the corresponding Convention of 1929. It is because of this extension that the authors of the 1949 Conventions established, in Article 8 of the I<sup>st</sup> and II<sup>nd</sup> Conventions, certain limits to the activity and the supervision of the Protecting Powers, by providing that "their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessity". This restriction is understandable, as these two Conventions find their application, above all, on the field of battle and in its immediate vicinity, hence it had no reason to appear in the III<sup>rd</sup> and IV<sup>th</sup> Conventions which find their application chiefly at the rear.

Lastly, examination could be made of the problems of constituting groups of competent persons for the discharge of these functions entrusted to them in the Conventions under the direction of the Protecting Powers, or their possible substitutes, as well as of the question of training the personnel assigned to scrutinize the application of the Conventions. As concerns this latter point, the ICRC would like to point out that the XXth International Conference of the Red Cross adopted a Resolution entitled "Personnel for the Control of the Application of the Geneva Conventions", which "invites the States Parties to the Conventions to envisage the possibility of setting up groups of competent persons for the discharge of these functions, entrusted to them in the Conventions, under the direction of the Protecting Powers or their possible substitutes" and which "expresses the wish that the International Committee of the Red Cross, which has declared itself prepared to do so, contribute to the training of these persons"<sup>94/</sup>. The ICRC must point out, in this connection, that, so far, no one has come forward and no group has presented itself.

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<sup>94/</sup> Cf. XXth International Conference of the Red Cross, Vienna 1965, Resolution XXII, ("Personnel for the Control of the Application of the Geneva Conventions"). See below, Annex IX.

III. REINFORCEMENT OF THE RULES RELATIVE TO  
PENAL SANCTIONS FOR VIOLATIONS OF THE  
LAW IN FORCE

It is clear that the measures taken to repress violations of the law of armed conflicts make a significant contribution to ensuring the application of that law.

In particular, it is necessary, both at the national level and, in so far as possible, at the international level, to provide penal sanctions for persons guilty of violating the humanitarian rules 95/.

After it has made a brief review of the provisions of the Geneva Conventions of 1949 concerning penal sanctions 96/, this section will show what efforts have been undertaken in that field by the Red Cross (ICRC and National Societies) 97/, it will list the provisions established by other international legal instruments 98/, it will bring out a few suggestions which have been presented on this matter during recent years 99/, and it will stress some of the points which the ICRC considers desirable 100/.

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95/ See Report Secretary-General A/7720, para. 122, which also emphasizes the importance of this point.

96/ See below, A., p. 36.

97/ See below, B., pp. 37 - 40.

98/ See below, C., pp. 41 - 44.

99/ See below, D., pp. 45 - 46.

100/ See below, E., pp. 47 - 48.

A. The Geneva Conventions of 1949

The Geneva Conventions of 1949 contain identical provisions 101/ by which the Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches defined respectively in Article 50 of the Ist Convention, Article 51 of the IInd Convention, Article 130 of the IIIrd Convention and Article 147 of the IVth Convention 102/. Furthermore, each Contracting Party undertakes to adopt measures necessary to put an end to acts contrary to the provisions of the Conventions, other than the grave breaches defined in each of them.

It is therefore incumbent on the States themselves to provide the necessary penal sanctions and procedures.

It is also important to point out that one Article common to the four Conventions 103/ provides that, "At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention", and that "If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed". The great defect of this formula is that, in practice, it makes the opening of an enquiry dependent on the consent of the Parties. However, in such a delicate area as that of violations, the Parties are hardly predisposed to reach an understanding. Hence, such a provision has never led to a tangible result.

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101/ Art. 49 of the Ist Conv.; Art. 50 of the IInd Conv.;  
Art. 129 of the IIIrd Conv.; Art. 146 of the IVth Conv..  
See below, Annex IV.

102/ See below, Annex IV.

103/ Art. 52 of the Ist Conv.; Art. 53 of the IInd Conv.;  
Art. 132 of the IIIrd Conv.; Art. 149 of the IVth Conv..  
See below, Annex IV.

B. Efforts undertaken in this sphere

by the Red Cross

(ICRC and National Societies)

Although punishment is not a matter with which the Red Cross is concerned, the ICRC, being aware that respect and regular observance of the humanitarian norms depend in part on the prescribed penal sanctions 104/, has constantly endeavoured to remind the States of their obligations in this regard.

In 1956, the ICRC convened experts for consultation on the question of repression of violations of the Geneva Conventions 105/. This meeting of experts examined in particular the possibility of drawing up a model law for the repression of violations of the Geneva Conventions, this being a means which might perhaps make it possible to open the way toward a certain uniformity 106/. These experts considered that, for several States, a model law for the repression of serious violations would be of no great value; they nevertheless considered that States which still have to enact new legislation, or to adopt existing legislation, should be able to draw upon a certain number of principles in the form in which they exist in the legal provisions already adopted by certain States. The meeting of experts moreover observed that, in the majority of States, the provisions for the repression of breaches other than grave

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104/ The ICRC has been since a long time looking into this question. Cf., for example, G. MOYNIER, Considérations sur la sanction pénale à donner à la Convention de Genève, Geneva 1893.

105/ Meeting of experts (8 - 12 October, 1956). Cf. ICRC, Doc. D 459.

106/ The enactment of such a law had been proposed earlier, particularly at the Sixth International Congress of Penal Law (Rome, 27 September - 3 October 1953).

breaches were often inadequate 107/.

Several resolutions have been passed on this subject by the International Conferences of the Red Cross. Thus, in 1963, on the occasion of the Centenary Congress of the Red Cross, the Council of Delegates adopted a Resolution, recommending that the ICRC collect information on legislation introduced in all countries to repress violations of the Geneva Conventions 108/.

The ICRC already had a considerable amount of data on the penal legislative measures taken by quite a large number of States. However, in deference to the Council of Delegates' wish, it felt it should request supplementary information from all the National Societies. It therefore sent them a circular letter on 20 April 1964, asking that they forward any laws or regulations showing how violations of the Geneva Conventions are repressed in their countries 109/. Twenty-five National Societies replied to this request 110/.

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107/ The experts also examined several questions submitted to them by the ICRC, inter alia whether there was any need to provide for the repression of breaches by omission; on this point, they gave an affirmative reply, stating that in States where omissions as such are not punishable it might be useful to refer to the definition of intentional omission given by contemporary publicists.

108/ Centenary Congress, Geneva, 1963, Resolution VI, ("Repression of Violations of the Geneva Conventions"), see below, Annex VII.

109/ Cf. Report presented by the ICRC to the XXth International Conference of the Red Cross (Vienna 1965), "Respect of the Geneva Conventions. Measures taken to repress violations", (D.4 a/1), p. 1.

110/ Ibid., pp. 1-2.

These replies indicated that very great disparities were to be found in the various national laws for implementation and that the problem is not by any means dealt with everywhere in a uniform manner 111/.

Relying on the information it already had and on the replies it received, the ICRC presented a report on this point to the XXth International Conference of the Red Cross 112/. Having examined this Report, that Conference passed a Resolution requesting the ICRC to continue its work in this field and further requesting Governments, National Societies and institutions of comparative law to give the ICRC their full support and the information required for a study of this problem 113/.

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111/ Ibid., p. 2 : "The ICRC had already observed this some years ago. Between 1954 - 1956, it endeavoured to draw up a model law for the repression of violations of the Geneva Conventions, which could provide Governments with a basis. After convening a meeting of experts, it was obliged to relinquish this idea because of the variety of penal systems which exist in the different countries. It declared, however, that it would be at the disposal of any National Society or Government desiring to consult it on the legislative measures to be taken for repressing violations of the Geneva Conventions. On several occasions it has been able to give advice, and, in the future, it will gladly do its best to respond to any similar requests".

112/ Cf. above, Note 109/. The legislative texts communicated to the ICRC are given in an annex to this report.

113/ The XXth International Conference of the Red Cross, Vienna 1965, Resolution XXVI ("Repression of Violations of the Geneva Conventions"). See below, Annex XI. This resolution likewise appeals to Governments which have so far not done so to complete their legislation so as to ensure adequate penal sanctions for violations of these Conventions.

In a new circular letter of 18 April 1968, the ICRC invited National Societies to supply it with the requisite information 114/. As the ICRC indicated in a Report submitted to the XXIst International Conference of the Red Cross 115/, only nineteen National Societies sent in the requested information. The ICRC found that, in most cases and generally speaking, it must be acknowledged that the usual penal legislation (penal code, military penal code) was insufficient adequately to ensure the repression of breaches of the Geneva Conventions as they are mentioned in Articles 50 of the I<sup>st</sup> Convention, 51 of the II<sup>nd</sup> Convention, 130 of the III<sup>rd</sup> Convention, and 147 of the IV<sup>th</sup> Convention 116/. The ICRC also pointed out that the law or penal codes of some States which included chapters on violations against humanity and the law of nations (covering offences against the Geneva Conventions and the Convention on Genocide), might serve as working documents and as example 117/.

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114/ Cf. ICRC (D 1008). Circular letter of 18 April 1968, addressed to National Societies of the Red Cross, Red Crescent, and Red Lion and Sun. The ICRC there requested the National Societies kindly to collect and send in to it the following texts :

a) Special laws relating to the Geneva Conventions, making provision for repression of serious breaches thereof and, possibly, laying down the procedure for dealing with accused parties.

b) Extracts, from the civil or military penal code or from any general legislative act, relating to the repression of breaches of the Geneva Conventions and to the procedures applicable to parties accused of such violations.

115/ Cf. Report submitted by the ICRC to the XXIst International Conference of the Red Cross (Istanbul, 1969), "Respect of the Geneva Conventions. Measures taken to repress violations", Volume 2 (further to the Report presented to the XX<sup>th</sup> Conference) (D.S. 3/3). The legislative texts sent in to the ICRC are given in an annex.

116/ Ibid., p. 3.

117/ Ibid.

C. Measures provided by other international  
legal instruments

Other international instruments of a humanitarian nature, some of which are applicable in time of peace as in time of armed conflict, have provided for legislative measures which the Contracting Parties must take at the penal level with a view to ensuring their application.

It is suitable to mention, in particular, the Convention for the Prevention and Punishment of the Crime of Genocide 118/, the Convention for the Protection of Cultural Property in the Event of Armed Conflict 119/, the International Convention on the Elimination of All Forms of Racial Discrimination 120/, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 121/.

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118/ Approved and submitted for signature and ratification or for adhesion by the General Assembly in its resolution 260 A (III) of 9 December 1948. Entry into force on 12 January 1951. Cf. United Nations, Collection of Treaties, Vol. 78, 1951, No. 1021.

119/ Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. Cf. United Nations, Collection of Treaties, Vol. 249, 1956, No. 3511.

120/ Adopted and presented for signature and ratification by the General Assembly in its resolution 2106 A (XX) of 21 December 1965. Entry into force in 1969.

121/ Adopted and presented for signature, ratification or adhesion by the General Assembly in its resolution 2391 (XXIII) of 26 November 1968, and entry into force November 1970.

a) Convention on the Prevention and Punishment of the Crime of Genocide

This Convention, in its Article V, provides that :

"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."

b) The Convention for the Protection of Cultural Property in the Event of Armed Conflict

Article 28 of this Convention states that :

"The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention."

c) The International Convention on the Elimination of All Forms of Racial Discrimination

Article 2, letter d, of this Convention provides that :

"Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group, or organization".

d) Convention on the Non-Applicability of Statutory  
Limitations to War Crimes and Crimes against Humanity

It is important to recall that this Convention, in its Article 1, stipulates as follows :

"No statutory limitations shall apply to the following crimes, irrespective of the date of their commission :

"a) War crimes as they are defined in the Charter of the International Military Tribunal, Nuremberg of 8 August 1945, and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, and particularly the 'grave breaches' enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;

"b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945, and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed."

Article IV sets forth the legislative or other measures to be adopted by the Contracting Parties :

"The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in Articles I and II of this Convention

and that, where they exist, such limitations shall be abolished." 122/.

It is proper to point out in this connection that the XXIst International Conference of the Red Cross adopted a Resolution which :

"noting furthermore that the adoption by the XXIIIrd Session of the United Nations General Assembly in 1968 of the Convention on the imprescriptibility of war crimes and crimes against humanity is an important step in this direction,

"requests the Governments of all States to accede to this Convention which is now inseparable from the system designed to safeguard human rights." 123/.

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122/ It is appropriate to refer specially to two resolutions concerning this Convention, adopted by the General Assembly of the United Nations at its 24th Session [resolution 2583 (XXIV)], and at its 25th Session [resolution 2712 (XXV)].

123/ XXIst International Conference of the Red Cross, Istanbul 1969, Resolution XII, "War Crimes and Crimes against Humanity". See below, Annex XIII.

D. Suggestions which have been presented on  
this question

Various ideas and suggestions have been put forth on this question by different circles, particularly as to the establishment of a model law for the repression of breaches of the Geneva Conventions, the implementation of an ~~international penal code~~, and the creation of an international penal court which would be called upon to punish war crimes and crimes against humanity, and even violations of human rights 124/. Despite their interest, none of these ideas has led to any result so far. The ICRC continues to examine each such suggestion with great interest.

The two Reports of the Secretary-General of the United Nations on "Respect for Human Rights in Armed Conflicts" contain interesting material on this subject. One of them recalls that the General Assembly of the United Nations, at its fifth Session in 1950 and at its seventh Session in 1952, made arrangements for the preparation of one or more preliminary draft conventions and proposals relating to the establishment of the Statute of an International Criminal Court 125/. Two committees on international criminal jurisdiction submitted drafts of a statute for such a court. However, at its ninth Session the General

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124/ It is worth pointing out here that already in 1872, Gustave MOYNIER, one of the founders of the Red Cross, had proposed the formation of an international jurisdiction which would be competent to rule on violations of international humanitarian law. At that time he advocated a tribunal formed of five members, two of whom would be appointed by the belligerents and three by neutral powers. Cf. Pierre BOISSIER, Histoire du Comité international de la Croix-Rouge. De Solferino à Tsouschima, Paris, 1963, pp. 480-481.

125/ Cf. Report Secretary-General A/7720, para. 126. And see UN : resolution 485 (V) and resolution 877 (VII).

Assembly decided to postpone consideration of the matter and no action has been taken on that question since then 126/.

The first Report of the Secretary-General likewise states that, "Information on penal legislation by States in respect of violations of existing humanitarian rules might be included in reports on measures taken to give effect to humanitarian instruments which might be submitted to appropriate international organs" 127/. This report furthermore stresses that "as regards humanitarian instruments which might be elaborated in the future, their effectiveness would be enhanced if they were to stipulate the adoption of penal sanctions against individuals violating their provisions" 128/.

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126/ Cf. Report Secretary-General A/7720, para. 126. At the 25th Session of the General Assembly of the United Nations, a delegate of the Third Commission emphasized that one of the weaknesses of the organization of the international community was the absence of an international tribunal to sit in judgment on war crimes and crimes against humanity. This delegate did, however, say that he doubted that the international community was prepared to accept such a jurisdiction at the present time. (Cf. UN : Provisional A/C.3/SR. 1784, p.6).

127/ Report Secretary-General A/7720, para. 127.

128/ Ibid.

### E. Conclusions and hopes of the ICRC

Much work remains to be accomplished more than twenty years after the ratification of the Geneva Conventions, in order to achieve harmonization of the internal repressive legislation. That is one of the most delicate tasks, taking into account the numerous divergences of ideas that can be found when considering the legal systems of the 128 States today Parties to the Geneva Conventions of 1949.

In the absence of a permanent international jurisdiction, it is obvious that the punitive legislations enacted at the national level take on the greatest importance, particularly because of the fact that violations of the law of armed conflicts engage the personal responsibility of those who have committed them. Be that as it may, the penal provisions now in force in the majority of States are still insufficient to ensure the prevention of the grave breaches enumerated in the Conventions.

It is appropriate to mention, as was already pointed out in a report presented by the ICRC to the XXIst International Conference of the Red Cross 129/, that a certain number of grave breaches are only very rarely covered by the usual penal legislation (penal code, military penal code) 130/. As a result, the ICRC would very much hope that it be recommended to the States concerned to supplement their legislation in this matter or to enact special legislation.

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129/ Report entitled "Respect for the Geneva Conventions. Measures taken to Repress Violations", Volume 2, p. 3.

130/ Ibid. The following breaches are mentioned in this connection : biological experiments; the taking of hostages; deportation and illegal transfer; destruction and appropriation of property not justified by military necessity; the compelling of prisoners of war to serve in the armed forces of their enemies; depriving a prisoner of war of the right to proper trial.

If, therefore, at the present stage of development of international humanitarian law, it appears that it is necessary to be satisfied with a repression ensured by national jurisdictions, it is important that the different domestic penal legislations should always tend, so far as possible, to uniform repression.

These remarks are naturally valid for all the humanitarian rules of the law of armed conflicts and for any that might be adopted as a result of the present studies.

## IV. THE PROBLEM OF REPRISALS

In the law of armed conflicts, reprisals exercised by the belligerents can be defined as compulsory measures, derogating from the ordinary rules of such law, taken by a belligerent following illegitimate acts to its detriment committed by another belligerent and which intend to compel the latter, by injuring it, to observe the law 131/. Although, in principle, such measures are not normally legal, they are regarded as being so in the particular circumstances which existed at the time 132/ 133/.

It hardly needs to be pointed out that, in general respects, reprisals exercised by the belligerents do not result in the re-establishment of the law. On the contrary, they set off, in most cases, a spiral of reprisals and counter-reprisals which lead to a progressive degradation of the law and of the values which it is sought to safeguard.

To be sure, the opinion which holds that such reprisals are allowable within the structure of international law, as a sanction of the law of armed conflict, can be staunchly defended on the theoretical level. The fact is that the international community is still characterized by a very marked decentralization, and to a great

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131/ This definition is based on the very well-known one which is given in the first article of a resolution passed by the Institute of International Law at its XXXIXth session and entitled "System of Reprisals in Time of Peace". See Institute of International Law, Yearbook 1934, p. 708.

132/ Cf. Commentary, I, p. 342.

133/ Mention should be made of an important work which has just been published : Frits KALSHOVEN, Belligerent Reprisals, Scientific Collection of the Henry Dunant Institute, Vol. I, Leyden, 1971. This chapter takes greatly into account the ideas put forward by Mr.

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extent it leaves the States themselves to decide what measures should be taken in international law. Thus, in such a perspective, the States have, among other faculties, the option of recourse to reprisals 134/.

It is nevertheless desirable to underscore the fact that, despite its theoretical justification, the recourse to reprisals stirs up serious objections, especially from the humanitarian point of view. While it may not, by itself, constitute an unlawful measure, it may involve such abuse and may offer such great dangers for the human person that the need is repeatedly felt to regulate it with a view to reduce the suffering it entails 135/.

The ideal and the most radical solution would be to prohibit all reprisals and to rely solely on scrutiny and penal sanctions. However, as one author points out 136/, "... as desirable as the complete prohibition of reprisals may appear, such an extreme attitude seems hardly realistic; it does not take into account the fact that the exercise of reprisals in reply to violations which procure military advantages may be caused by an imperious need and that consequently an absolute prohibition cannot fail to remain purely theoretical .... Consequently, the regulation of reprisals must be envisaged rather from two other points of view : from that of the prohibition of certain forms of reprisals and from that of the conditions of the exercise of that right".

Furthermore, it is important to indicate that the prohibition of reprisals is only made possible through the introduction of other less destructive means : scrutiny of the regular observance of the law and repression of breaches committed. That is why this section, closely linked for

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134/ Except naturally in the cases - mentioned below - where reprisals are expressly prohibited.

135/ Cf. Report of the ICRC on Reaffirmation, pp. 83-87.

136/ Cf. Denise BINDSCHEDLER, A Reconsideration of the Law of Armed Conflicts, Report prepared for the "Conference on the Law of Armed Conflicts : Contemporary Problems", organized by the Carnegie Endowment for International Peace, (Geneva, 15-20 September 1969), p. 84.

that reason to sections II and III, appears in this document.

In order to clarify the definition of reprisals exercised by the belligerents, it seems necessary to put forward a few remarks of a general nature and to make a number of distinctions 137/. After a brief reference to the areas of the law of armed conflicts in which the prohibition of reprisals is already expressly stipulated 138/, it will likewise be appropriate to examine specifically the present state of the law relative to the conduct of hostilities, since within this framework the problem of reprisals is far from having been settled 139/. Lastly, some data will be given on certain studies recently undertaken in this field 140/ and on the conclusions of the ICRC with regard to possible developments 141/.

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137/ See below, A., pp. 52 - 54.

138/ See below, B., pp. 55 - 56.

139/ See below, C., pp. 57 - 58.

140/ See below, D., pp. 59 - 61.

141/ See below, E., pp. 62 - 63.

A. Remarks of a general and of a terminological nature

(distinctions to be made)

- Reprisals and the United Nations Charter

There are many who have argued that the United Nations Charter has abolished the right of reprisals, under Article 2, paras. 3 and 4, in which it is stipulated :

"... 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

" 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations." 142/.

- Prohibition of reprisals and *jus cogens*

The problem of the imperative nature of the rules of international humanitarian law raises numerous questions, especially as concerns the rules relating to the prohibition of reprisals.

The notion of reprisals in the structure of international law can be somewhat clarified if we distinguish it from certain other concepts, and, in particular, from self-defence, from reciprocity and from measures of retortion 143/ :

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142/ Cf. Denise BINDSCHEDLER, op.cit., p. 84. The Security Council has condemned reprisals on several occasions, as for instance in its Resolution 188 of 9 April 1964.

143/ Indeed, it is certain that the establishment of a clear distinction between reprisals and other non-peaceful measures of restraint is of a sort to prevent States from qualifying acts of reprisals as acts of aggression or of resorting to reprisals by invoking self-defence.

- Reprisals and self-defence 144/

The difficulty of establishing a precise line between reprisals and self-defence is due to the fact that these two concepts have a certain number of characteristics in common. In particular, each of them implies the accomplishment of acts contrary to law, but considered as lawful in the particular circumstances in which they are performed.

Nevertheless, reprisals and self-defence envisage fundamentally different aims : while the purpose of reprisals exercised by a belligerent is to impose respect for the law on the other belligerent, self-defence is a recourse to force seeking directly to ward off a danger threatening the State 145/.

- Reprisals and reciprocity (the tu quoque argument) 146/

Reciprocity can be defined as the right for a belligerent to adopt, in a particular case, an attitude identical to that of the other belligerent; hence it is based, as one author points out 147/, "on the argument of tu quoque and not necessarily on the idea of sanctions which is intimately connected with the notion of legal obligation and its breach". Thus, reciprocity is distinguished in this way from reprisals. In addition, reprisals do not necessarily consist - as is the case with reciprocity - in measures in derogation of the same rule which was originally violated by the other belligerent 148/.

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144/ The right of self-defence is here taken into consideration as it is conceded to States under Article 51 of the United Nations Charter.

145/ Cf. Frits KALSHOVEN, op.cit., pp. 26-27.

146/ Ibid., pp. 362-365.

147/ Cf. Denise BINDSCHEDLER, op.cit., p. 83.

148/ Cf. Frits KALSHOVEN, op.cit., p. 25.

- Reprisals and retaliatory measures

A distinction is generally made between reprisals and retortion. The latter is also a form of retaliation, but the measures taken do not break the law, and are in reply to acts which are themselves lawful 149/. While it may be accepted that reprisals and retortion are treated as related concepts from one point of view, it should be emphasized that the component of law enforcement, essential to the notion of reprisals, is lacking in retortion 150/.

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149/ Cf. Commentary I, p. 342, under Article 46.

150/ Cf. Frits KALSHOVEN, op.cit., p. 28.

B. Prohibition of belligerent reprisals :

brief summary of the positive law

The law of armed conflicts already acknowledges certain cases of prohibition of reprisals : the Geneva Conventions of 1949 and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict both actually forbid reprisals against persons and property protected by these Conventions.

(a) The Geneva Conventions of 1949

The four Geneva Conventions of 1949 forbid reprisals against protected persons and property respectively in Article 46 of the I<sup>st</sup> Convention, in Article 47 of the II<sup>nd</sup> Convention, in Article 13, paragraph 3 of the III<sup>rd</sup> Convention, and in Article 33, paragraph 3 of the IV<sup>th</sup> Convention 151/.

These provisions have an absolute character and cannot themselves be set aside by right of reprisals.

A certain number of points can be raised concerning possible developments of the law in this field. They are given below 152/.

(b) The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict 153/

Article 4, paragraph 4, of this Convention provides expressly that the Contracting States :

"... shall refrain from any act directed by way of reprisals against cultural property."

151/ See below, Annex IV. See also Frits KALSHOVEN, op.cit., p. 263.

152/ See Section E, "Conclusions of the ICRC as to Possible Developments", herein below, pp. 62 - 63.

153/ See above, note 45/. See also Frits KALSHOVEN, op.cit. pp. 272 - 277.

As has already been stated 154/, the prohibition of reprisals has only been made possible through the introduction of other less destructive means : scrutiny of the regular observance of the law and repression of breaches committed.

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154/ See above, p. 50.

### C. Reprisals and the conduct of hostilities

It is appropriate to call attention to the fact that the problem of reprisals still almost entirely remains to be worked out in the sphere of rules relative to the conduct of hostilities ("Law of Combat" or "Law of The Hague").

To be sure, in this connection, it is important to recall that the law of armed conflicts is a compromise between humanitarian considerations and military necessities and that the respective weight of these two categories will differ in respect of each individual rule. If, therefore, as one author points out 155/, the unconditional protection of certain human or material values must prevail in the sphere of basic rights of the human person - all the more so in that the military value of reprisals against individuals will be, as a rule, insignificant, on the other hand, "as far as the use of weapons or methods of warfare is concerned, which give a military advantage that may often be substantial, it is certainly not possible to exclude reciprocity."

In this connection, therefore, it seems necessary simply to restore and strongly reaffirm the limits which the requirements of humanity impose upon reprisals 156/ :

- In the first place, it would be desirable to reaffirm that reprisals must respond to an imperative necessity. According to certain authorities this corresponds to the law already in force, but nevertheless it should be provided for explicitly 157/.

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155/ Cf. Denise BINDSCHIEDLER, op.cit., p. 85.

156/ The ICRC convened experts in February 1969 and submitted to them, for their opinion, certain of the limits which have been formulated on this matter in the writings of publicists or in the publications of specialized institutions. Cf. Report of the ICRC on Reaffirmation, pp. 83-85.

157/ Cf. Denise BINDSCHIEDLER, op.cit., p. 87.

- The principle of proportionality, according to which the scale of reprisals must not be set in proportion to that of the violation they aim at stopping, must be explicitly acknowledged by the States 158/.
- It would be desirable to reaffirm the principle according to which reprisals resorted to by belligerents should in any case not be contrary to the law of humanity 159/.

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158/ Ibid., p. 87. See also Report of the ICRC on Reaffirmation, p. 85.

159/ Ibid., p. 83 and p. 85, and see also Denise BINDSCHEDLER, op.cit., p. 87.

D. Studies recently undertaken in this field

The problem of reprisals has been taken into consideration in the course of certain studies undertaken during recent years.

In particular mention should be made of the work of the Institute of International Law on "the problem raised by the existence of weapons of mass destruction and the distinction between military and non-military objectives in general" 160/, the Vienna Convention of 1969 on the Law of Treaties 161/, the draft declaration relative to the principles of international law concerning friendly relations and co-operation among States, adopted in 1970 within the United Nations 162/, as well as resolution 2675 (XXV) entitled "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", adopted by the General Assembly of the United Nations at its 25th Session 163/.

- Institute of International Law

At its Edinburgh Session (September 1969), the Institute of International Law examined and adopted a draft Resolution placed before it on "the distinction

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160/ See Yearbook of the Institute of International Law, Nice Session, 1967, Vol. 52, t. II., pp. 1-271, and Yearbook of the Institute of International Law, Edinburgh Session, 1969, Vol. 53, t. II, pp. 48-126.

161/ Cf. UN : A/CONF. 39/27 (23 May 1969).

162/ This draft was adopted by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, at the close of its Sixth Session (Geneva, 2 May 1970). Cf. UN : Monthly Bulletin, Vol. VII, No. 6 (June 1970).

between military objectives and non-military objects in general and particularly the problems associated with weapons of mass destruction" 164/.

In the course of the discussion 165/, it was pointed out, in connection with Article 8 of this draft that the rapporteur had spoken of reprisals in his preliminary report, but that the question had been set aside by the Commission. The latter had not wished to introduce the problem, for, if it had done so, the question of nuclear weapons would have taken on an entirely different aspect 166/.

- The Vienna Convention of 1969 on the Law of Treaties

Article 60 of this Convention (entitled "Termination or Suspension of the Operation of a Treaty as a Consequence of its Breach") states, in its paragraph 5, that :

"Paragraphs 1 to 3 167/ do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties."

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164/ See Document III, Annex XXIV.

165/ Cf. Yearbook of the Institute of International Law, Vol. 53, t. II, p. 48 and ff., (see in particular p. 105 and p. 109).

166/ Ibid., p. 105. Article 8 of the Resolution states that "Existing international law prohibits all attacks for whatsoever motive or by whatsoever means for the annihilation of any group, region or urban centre with no possible distinction between armed forces and civilian populations or between military objectives and non-military objects."

167/ These paragraphs refer to the termination or suspension

- The draft declarations relative to the principles of international law concerning friendly relations and co-operation among States

Within the United Nations the Special Committee on Principles of International Law concerning Amicable Relations and Co-operation among States completed the work of its Sixth Session on 2 May 1970 by adopting a report in which the above-mentioned draft declaration appears.

This draft declaration contains, in one of its paragraphs, the statement that :

"The States have a duty to refrain from acts of reprisal involving the use of force."

- Resolution 2675 (XXV) adopted by the General Assembly of the United Nations, 9 December 1970

This resolution, entitled "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", in its Article 7, affirms the following basic principle :

"Civilian populations, or individual members thereof, should not be the subject of reprisals, forcible transfers or other assaults on their integrity." 168/.

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168/ See the remarks made on this subject in Document III, Title II, Chapter 3, 2), e.

E. Conclusions of the ICRC as to possible  
developments

Regarding the problem of reprisals as it is reflected in the sphere of rules relating to the conduct of hostilities, this chapter has indicated the principles which, in the opinion of the ICRC, should be reaffirmed with a view to specifying the limits on reprisals imposed by the imperatives of humanity 169/. Emphasis has likewise been placed on the importance of making a very clear distinction between reprisals and reciprocity 170/, and these remarks are outstandingly valid for the "law of combat".

As concerns the Geneva Conventions of 1949, certain developments of the law are studied and proposed on the subject of reprisals in Documents III and VI :

- Reprisals and the protection of the civilian population.

After having indicated the questions which arise on this point within the framework of the Fourth Convention (and of its Article 33, paragraph 3), Document III puts forward the following concrete proposal :

{ "... The civilian population taken as a whole, like the individuals who constitute it, must never be made the object of reprisals." 171/.

- Reprisals and the rules applicable in guerrilla warfare.

Document VI examines this question, underscoring the fact that it is closely linked to those of hostages, of torture and of "terrorism" 172/.

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169/ See above, pp. 57 - 58.

170/ See above, pp. 53 - 54.

171/ Cf. Document III, Title II, Chapter 3, 2) e., p. 38.

172/ Cf. Document VI, pp. 42-43.

Lastly, in the opinion of the ICRC, an important question should also be given thorough attention : the problem of reprisals and the protection of victims of non-international armed conflicts. On this point, the ICRC does not put forward any concrete proposal, but limits itself to offering a certain number of indications.

Article 3 common to the four Geneva Conventions of 1949 ("Conflicts not of an international character") does not expressly stipulate the prohibition of reprisals. However, as the ICRC has pointed out in the Commentary 173/, while reprisals do not appear here in the list of acts prohibited by Article 3, but any reprisal entailing one or other of the acts referred to under letters a) to d) of that article is prohibited 174/, as is also, speaking generally, any measures incompatible with the "humane treatment" demanded unconditionally in the first clause of sub-paragraph 1 of Article 3.

Several authors and experts nevertheless question whether it can be deduced from common Article 3, and in particular from the norm relating to humane treatment, that reprisals are prohibited against the persons it protects 175/. They consequently consider that Article 3 should be amended in such a way as to stipulate explicitly the prohibition of reprisals against protected persons.

The ICRC therefore suggests that this question should be carefully examined.

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173/ Cf. in particular, Commentary II, ad Art. 3, p. 36.

174/ Letters a) to d) of common Article 3 :

"...

- 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".

175/ Cf. in particular Frits KALSHOVEN, op.cit., pp. 266-270.

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A. GENEVA CONVENTIONS OF AUGUST 12 1949

## ANNEX I

## PROTECTING POWERS

## Article 8 Ist Conv.

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

Protecting  
Powers

The Parties to the conflict shall facilitate to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

## Article 8 IIInd Conv.

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

Protecting  
Powers

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The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

## Article 8 IIIrd Conv.

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

Protecting  
Powers

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

## Article 9 IVth Conv.

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

Protecting  
Powers

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

## ANNEX II

## SUBSTITUTES FOR PROTECTING POWERS

## Article 10 Ist Conv.

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

Substitutes  
for Protecting  
Powers

When wounded and sick, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

## Article 10 IIInd Conv.

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

Substitutes for  
Protecting  
Powers

When wounded, sick and shipwrecked, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever, in the present Convention, mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

### Article 10 IIIrd Conv.

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

Substitutes  
for  
Protecting  
Powers

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

### Article 11 IVth Conv.

The High Contracting Parties may at any time agree to entrust to an international organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

Substitutes for  
Protecting  
Powers

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State in which the State of which they are nationals has not normal diplomatic representation.

## ANNEX III

ACTIVITIES OF THE ICRC AND OF ANY OTHER  
IMPARTIAL HUMANITARIAN ORGANIZATION

## Article 9 Ist Conv.

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

Activities  
of the  
International  
Committee of  
the Red Cross

## Article 9 IInd Conv.

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains, and for their relief.

Activities of the  
International  
Committee of  
the Red Cross

## Article 9 IIIrd Conv.

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Activities of the  
International  
Committee  
of the  
Red Cross

## Article 10 IVth Conv.

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

Activities of the  
International  
Committee of  
the Red Cross

## ANNEX IV

PROVISIONS RELATIVE TO SUPERVISION, DISSEMINATION,  
SANCTIONS AND PROHIBITION OF REPRISALSIst Conv.

## CHAPTER VIII

## EXECUTION OF THE CONVENTION

## ARTICLE 45

Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Detailed  
execution.  
Unforeseen  
cases

## ARTICLE 46

Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

Prohibition of  
reprisals

## ARTICLE 47

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Dissemination  
of the  
Convention

## ARTICLE 48

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Translations.  
Rules of  
application

CHAPTER IX  
REPRESSION OF ABUSES AND INFRACTIONS

ARTICLE 49

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

ARTICLE 50

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

ARTICLE 51

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ARTICLE 52

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Penal  
sanctions  
I. General  
observations

II.  
Grave  
breaches

III.  
Responsibil-  
ities of the  
Contracting  
Parties

Enquiry  
procedure

IIInd Conv.

## CHAPTER VII

## EXECUTION OF THE CONVENTION

## ARTICLE 46

Each Party to the conflict, acting through its Commanders-in-Chief shall ensure the detailed execution of the preceding Articles and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Detailed  
execution  
Unforeseen  
cases

## ARTICLE 47

Reprisals against the wounded, sick and shipwrecked persons, the personnel, the vessels or the equipment protected by the Convention are prohibited.

Prohibition of  
reprisals

## ARTICLE 48

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Dissemination  
of the  
Convention

## ARTICLE 49

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Translations.  
Rules of  
application

## CHAPTER VIII

## REPRESSION OF ABUSES AND INFRACTIONS

## ARTICLE 50

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

## ARTICLE 51

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

## ARTICLE 52

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

## ARTICLE 53

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Penal  
sanctions  
I.  
General  
observations

II.  
Grave  
breaches

III.  
Responsibil-  
ities of the  
Contracting  
Parties

Enquiry  
procedure

IIIrd Conv.

## PART VI

## EXECUTION OF THE CONVENTION

## SECTION I

## GENERAL PROVISIONS

## ARTICLE 126

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Supervision

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

## ARTICLE 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Dissemination  
of the  
Convention

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

## ARTICLE 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Translations.  
Rules of  
application

## ARTICLE 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Penal  
sanctions  
I. General  
observations

## ARTICLE 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

II.  
Grave  
breaches

## ARTICLE 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

III.  
Responsi-  
bilities of the  
Contracting  
Parties

## ARTICLE 132

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Enquiry  
procedure

IVth Conv.

## PART IV

## EXECUTION OF THE CONVENTION

## SECTION I

## GENERAL PROVISIONS

• • •

## ARTICLE 143

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

Supervision

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

## ARTICLE 144

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Dissemination  
of the  
Convention

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

## ARTICLE 145

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Translations.  
Rules of  
application

## ARTICLE 146

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Penal  
sanctions  
I.  
General  
observations

## ARTICLE 147

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

II.  
Grave  
breaches

## ARTICLE 148

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

III.  
Respon-  
sibilities of the  
Contracting  
Parties

## ARTICLE 149

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Enquiry  
procedure

B. RESOLUTIONS OF THE INTERNATIONAL

RED CROSS CONFERENCES

## ANNEX V

## GENEVA CENTENARY CONGRESS, 1963.

Resolution IV**Implementation and Dissemination of the Geneva Conventions**

The Council of Delegates,

whereas by virtue of articles 47 to 49 of the First Geneva Convention of August 12, 1949 ; of articles 48 to 50 of the Second Convention ; of articles 127 to 129 of the Third Convention and 144 to 146 of the Fourth Convention, the Contracting Parties have undertaken :

- (a) to give the text thereof the widest possible dissemination in their respective countries, both in time of peace and war, and in particular to incorporate the study of the text in their programmes of military and, if possible, also civil instruction, in order that these principles may be made known to the population as a whole ;
- (b) to communicate to one another, through the intermediary of the Swiss Federal Council and, during hostilities, through the intermediary of the Protecting Powers, the official translations of these Conventions, as well as the laws and regulations adopted to ensure implementation ;
- (c) to take the necessary legislative measures for the repression of serious infringements of these Conventions ;

whereas the application of these articles is the basis of a general and complete implementation of these Conventions, the Council of Delegates, after having earnestly deliberated on the matter in Geneva, in September 1963 again calls the attention of National Red Cross, Red Crescent and Red Lion and Sun Societies, whose Governments have not yet discharged their obligations, to the humanitarian importance of the question :

requests these Societies to approach their Governments with a view to the early and effective implementation of the aforesaid articles ;

proposes the inscription here and now of this question on the agenda of the next International Conference of the Red Cross, to which these National Societies will submit a report on the steps taken as regards this present Resolution.

## ANNEX VI

GENEVA CENTENARY CONGRESS, 1963.

Resolution V**Application of the Geneva Conventions by the United Nations Forces**

The Council of Delegates,

considering that the States which are parties to the Geneva Conventions have undertaken to respect and to ensure the respect of these Conventions ;

considering that it is necessary that the United Nations Emergency Forces shall observe and be protected by these Geneva Conventions ;

expresses its appreciation for the efforts already made by the United Nations to that effect and recommends :

- (a) that the United Nations be invited to adopt a solemn declaration accepting that the Geneva Conventions equally apply to their Emergency Forces as they apply to the forces of States parties to the said Conventions ;
- (b) that the Governments of countries providing contingents to the United Nations should as a matter of prime importance give them before departure from their country of origin adequate instructions on the Geneva Conventions as well as orders to comply with them ;
- (c) that the Authorities responsible for these contingents should agree to take all necessary measures to prevent and repress any infringements of the said Conventions.

ANNEX VII

GENEVA CENTENARY CONGRESS, 1963.

Resolution VI

**Repression of Violations of the Geneva Conventions**

The Council of Delegates,

recommends that the International Committee of the Red Cross collect information on legislation introduced in all countries to repress violations of the Geneva Conventions, and that it submits a report on the subject to the XXth International Conference of the Red Cross.

## ANNEX VIII

XXth INTERNATIONAL CONFERENCE OF THE RED CROSS,  
VIENNA, 1965.Resolution XXI**Implementation and Dissemination of the Geneva Conventions**

The XXth International Conference of the Red Cross,

considering that by virtue of Article 47 of the First Geneva Convention of 12 August 1949, Article 48 of the Second Convention, Article 127 of the Third Convention and Article 144 of the Fourth Convention the Contracting Parties have undertaken to give the widest possible dissemination, both in time of peace and war, to the texts of the Conventions in their respective countries and in particular to introduce the study thereof into the military and, if possible, civilian instruction syllabuses so that the principles may be known by the whole population,

considering that the application of these Articles is of the greatest importance in ensuring the observance of these Conventions,

considering further that it is essential that members of the armed forces have adequate knowledge of the Geneva Conventions,

appeals to all States parties to the Geneva Conventions to make increased efforts to disseminate and apply these Conventions, in particular by including the essential principles of the Conventions in the instruction given to officers and troops,

further appeals to National Societies to strengthen their activities and to co-operate with their Governments in this field,

expresses the wish that Governments and National Societies submit periodic reports to the International Committee of the Red Cross on the steps taken by them in this sphere,

notes with satisfaction and gratitude the efforts made by the ICRC to ensure the application of the Geneva Conventions and requests it to continue with this task.

## ANNEX IX

XXth INTERNATIONAL CONFERENCE OF THE RED CROSS,  
VIENNA, 1965.

Resolution XXII

**Personnel for the Control of the Application  
of the Geneva Conventions**

The XXth International Conference of the Red Cross,

noting that in conflicts occurring throughout the world the Geneva Conventions, which have been ratified by a large number of States to mitigate the hardships these conflicts cause, are still not rigorously applied in all cases,

recalling that Articles 8 and 9, common to the four Conventions, oblige Parties to the conflict to facilitate, to the greatest possible extent, the task of the Protecting Power entrusted with co-operating in the application of the Conventions and controlling this application,

considering that with a view to ensuring the application of the humanitarian Conventions and the scrutiny of this application it is essential to make available — in the event of a conflict — to the Protecting Powers and their possible substitutes a sufficient number of persons capable of carrying out this scrutiny impartially,

invites the States parties to the Conventions to envisage the possibility of setting up groups of competent persons for the discharge of these functions, entrusted to them in the Conventions, under the direction of the Protecting Powers or their possible substitutes,

expresses the wish that the International Committee of the Red Cross, which has declared itself prepared to do so, contribute to the training of these persons.

## ANNEX X

XXth INTERNATIONAL CONFERENCE OF THE RED CROSS,  
VIENNA, 1965.

Resolution XXV

**Application of the Geneva Conventions  
by the United Nations Emergency Forces**

The XXth International Conference of the Red Cross,

considering that the States parties to the Geneva Conventions have undertaken to respect them and make them respected in all circumstances,

considering further that it is necessary for the "United Nations Emergency Forces" to respect these Conventions and be protected by them,

expresses its satisfaction at the practical measures already taken by the United Nations,

recommends

1. that appropriate arrangements be made to ensure that armed forces placed at the disposal of the United Nations observe the provisions of the Geneva Conventions and be protected by them;
2. that the Governments of countries making contingents available to the United Nations give their troops — in view of the paramount importance of the question — adequate instruction in the Geneva Conventions before they leave their country of origin as well as orders to comply with these Conventions;
3. that the authorities responsible for the contingents agree to take all the necessary measures to prevent and suppress any breaches of the said Conventions.

## ANNEX XI

XXth INTERNATIONAL CONFERENCE OF THE RED CROSS,  
VIENNA, 1965.

Resolution XXVI**Repression of Violations of the Geneva Conventions**

The XXth International Conference of the Red Cross,

recalling Resolution VI adopted by the Council of Delegates (Geneva, 1963),

further recalling that according to Article 49 of the Ist Geneva Convention of 12 August 1949, Article 50 of the IIInd Convention, Article 129 of the IIIrd Convention and Article 146 of the IVth Convention, Governments have the obligation to provide penal sanctions in cases of violations of the Geneva Conventions,

thanks the International Committee of the Red Cross for the efforts it has made to study the question of suppressing violations of the Geneva Conventions,

requests the ICRC to continue its work,

further requests Governments, National Societies and institutions of comparative law to give the ICRC their full support and the information required for a study of this problem,

appeals to Governments which have so far not done so to complete their legislation so as to ensure adequate penal sanctions for violations of these Conventions, and

requests the ICRC to submit a report on the results achieved to the next International Conference and to make this the subject of a publication for the general public.

## ANNEX XII

XXIst INTERNATIONAL CONFERENCE OF THE RED CROSS,  
ISTANBUL, 1969.

Resolution IX**Dissemination of the Geneva Conventions**

The XXIst International Conference of the Red Cross,

considering that the United Nations General Assembly decided in its Resolution No. 2412 (XXIII) of 17 December 1968 that 1970 would be "International Education Year",

noting that item 41 of the provisional agenda of the XXIVth Session of the General Assembly, which will open in New York on 16 September 1969, provides for the examination of a report by the Secretary-General on this subject,

aware of the great interest that Governments, the ICRC and the League attach, within the framework of the activities of the International Red Cross, to school and university syllabuses and programmes of permanent education,

hopes that the United Nations and in particular the United Nations Educational, Scientific and Cultural Organization will provide for events devoted to education and the dissemination of the Geneva Conventions during 1970,

requests, for that purpose, that a World Day be devoted to such events, with the use of the audio-visual aids made available by the most modern techniques.

## ANNEX XIII

XXIst INTERNATIONAL CONFERENCE OF THE RED CROSS,  
ISTANBUL, 1969.

Resolution XII**War Crimes and Crimes against Humanity**

The XXIst International Conference of the Red Cross,

recalling that the respect and defence of human rights and dignity are the basis of humanitarian Red Cross activities and the aim of humanitarian law, the development of which is of common concern to the United Nations and the Red Cross,

noting once more that war is the most serious violation of human rights and dignity,

considering that war crimes and crimes against humanity are the most flagrant breach of human rights and aggravate the plight of war victims,

recognizing that it is the duty of the Red Cross to give support, through its moral authority and prestige, to measures intended to avoid the recurrence of such crimes,

noting furthermore that the adoption by the XXIIIrd Session of the United Nations General Assembly in 1968 of the convention on the imprescriptibility of war crimes and crimes against humanity is an important step in this direction,

requests the Governments of all States to accede to this Convention which is now inseparable from the system designed to safeguard human rights.

## ANNEX XIV

XXIst INTERNATIONAL CONFERENCE OF THE RED CROSS,  
ISTANBUL, 1969.

Resolution XXIX

**Junior Red Cross Training and Participation  
in International Education Year (1970)**

The XXIst International Conference of the Red Cross,

acknowledging the invaluable contribution which teachers have been making to the development of the Junior Red Cross,

considering that such contributions should be formally recognized by National Societies,

suggests that National Societies invite teachers to become members of the Red Cross in order to assist the Societies in training both junior and adult members,

recommends that a message be sent to the appropriate international teaching organisations, thanking them for the work which their members have been doing for the Junior Red Cross since its foundation and expressing the hope that National Societies may look forward to their continuing support and assistance,

recommends further that National Societies explore the possibility of new forms of Junior Red Cross exchange programmes involving school libraries, and associate themselves with the objectives of International Education Year (1970) with a view to providing better training facilities for Junior Red Cross members.

C. TEXTS OF THE ICRC

## MEMORANDUM

### Implementation and Dissemination of the Geneva Conventions of 1949

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GENEVA, November 21, 1966

*To Governments parties to the Geneva Conventions*

The XXth International Conference of the Red Cross, meeting in Vienna in October 1965, in its Resolution XXI, entitled "Implementation and Dissemination of the Geneva Conventions", expressed the wish that Governments and National Societies submit periodic reports to the International Committee of the Red Cross on the steps taken by them in this sphere.

This resolution reads as follows:

*The XXth International Conference of the Red Cross,*

*considering that by virtue of Article 47 of the First Geneva Convention of August 12, 1949, Article 48 of the Second Convention, Article 127 of the Third Convention and Article 144 of the Fourth Convention, the Contracting Parties have undertaken to give the widest possible dissemination, both in time of peace and war, to the texts of the Conventions in their respective countries and in particular to introduce the study thereof into the military and, if possible, civilian instruction syllabuses so that the principles may be known by the whole population,*

*considering that the application of these Articles is of the greatest importance in ensuring the observance of these Conventions,*

*considering further that it is essential that members of the armed forces have adequate knowledge of the Geneva Conventions,*

*appeals to all States parties to the Geneva Conventions to make increased efforts to disseminate and apply these Conventions, in particular by including the essential principles of the Conventions in the instruction given to officers and troops,*

*further appeals to National Societies to strengthen their activities and to co-operate with their Governments in this field,*

*expresses the wish that Governments and National Societies submit periodic reports to the International Committee of the Red Cross on the steps taken by them in this sphere*

*notes with satisfaction and gratitude the efforts made by the International Committee of the Red Cross to ensure the application of the Geneva Conventions and requests it to continue with this task.*

The previous Conference, held in New Delhi in 1957, also stressed the importance of school programmes, requesting that place should be set aside for the history and aims of the Red Cross as well as for the basic principles of the Geneva Conventions.

In accordance with this wish, the International Committee of the Red Cross proposes to draw up periodic reports on the basis of information which Governments may be so good as to supply it on measures taken in various countries to ensure dissemination of the Conventions. It has the intention, accordingly, of submitting such reports at the next International Conference of the Red Cross in 1969. These documents will enable the appropriate authorities in each country to see what is being done elsewhere and to profit thereby.

By virtue of articles 47 of the First Convention, 48 of the Second Convention, 127 of the Third Convention and 144 of the Fourth Convention, the High Contracting Parties have undertaken, in time of peace as in time of war, to disseminate the text of the Conventions in their respective countries as widely as possible and, in particular, to include its study in programmes of military and, if possible, civil instruction, so that the principles thereof may become known to their armed forces as a whole, the population, medical personnel and chaplains.

The above-mentioned articles add that civil, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Conventions and be specially instructed as to their provisions.

Created for the victims of war, aimed at avoiding unnecessary sacrifice during a conflict and protecting the human being when he is being threatened without valid reason, called upon to be the safeguard in the midst of strife of values upon which peace will one day be reconstructed, the Geneva Conventions will play their essential rôle only if they are known to those, who, at all levels, have the obligation to respect them.

The International Committee of the Red Cross, in reminding the Governments of States parties to the Geneva Conventions, as well as National Red Cross Societies, of the above principles and also of the aforesaid resolution of the XXth Conference and the articles of the Conventions devoted to their dissemination, wishes to submit the following proposals to them :

1. That a summary, containing the essential principles of the Conventions, possibly based on the attached model, be distributed in the same way as personal equipment to each enlisted man. The International Committee of the Red Cross would appreciate it if the authorities concerned would inform it as soon as this or a similar measure has been able to be put into effect.
2. That a programme of instruction for all armed forces be drawn up and put into application without delay in all schools and training centres of these armed forces and their auxiliary services. The International Committee of the Red Cross herewith attaches to this memorandum a specimen minimum programme for the instruction of officers and troops.
3. That the competent authorities in the different States communicate to it all measures they have taken with a view to disseminating the Geneva Conventions amongst the armed forces and the civilian population, notably in the sense of the above-mentioned proposals. The International Committee, for its part, holds at the disposal of States parties to the Geneva Conventions the publications it has produced for the purpose of promoting these Conventions. It is also prepared to give any help which may be required in drawing up programmes of instruction.

In proposing these different measures, the International Committee is conscious of being true to the above-mentioned Resolution of the XXth International Conference of the Red Cross and to the line drawn by the provisions of the Geneva Conventions concerning dissemination. It is also conscious of serving the cause of peace by encouraging the spreading of the humanitarian ideal which is the basis of the entire Red Cross movement.

A copy of the present memorandum has been addressed to the National Red Cross Society in each country.

FOR THE INTERNATIONAL COMMITTEE  
OF THE RED CROSS

**Samuel A. GONARD**  
President

## MINIMUM PLAN OF INSTRUCTION IN THE GENEVA CONVENTIONS

### I. Theoretical course (one day)

#### 1. General

Humanitarian law and the rules of war—Definitions—Sources—General principles.

#### 2. Historical background

Development of thinking and practice—The drawing up of the Geneva Conventions and their application.

#### 3. General provisions of the Conventions

Cases of application—Internal conflicts—Control (Protecting Powers and the International Committee of the Red Cross)—Sanctions—Non-renunciation of rights—Prohibition of reprisals—Beginning and termination of application.

#### 4. Conventions I and II of 1949

(wounded, sick, shipwrecked)

#### 5. Convention III of 1949

(prisoners of war)

#### 6. Convention IV of 1949

(civilians)

### II. Practical work (one day)

#### 1. Showing of films and slides

#### 2. Conventions I and II

#### 3. Convention III

#### 4. Convention IV

For each cycle (2, 3 and 4), two problems to be solved, submitted by a small group—Study of the text of the Convention—Criticisms and discussion.

#### 5. General discussion and conclusions

# GENEVA CONVENTIONS

OF AUGUST 12, 1949

## ESSENTIAL PROVISIONS

*The ICRC has drawn up a very brief summary of these Conventions, in addition to its various publications to promote their dissemination.*

*This summary is proposed as a basic minimum of instruction to the armed forces and is applicable in certain circumstances. The authorities concerned, none the less, have still a duty, in general, to give more detailed and complete instruction, in order to spread as widely as possible the knowledge of these humanitarian statutes to which 123 States are now signatory.*

International Committee of the Red Cross,  
Geneva, 1969.

### General rules

The object of the Geneva Conventions is to have the individual respected. They are based on a great principle, namely that persons placed *hors de combat* and those taking no active part in hostilities shall have their lives spared and in all circumstances be treated humanely.

The taking of hostages, executions without regular judgment, torture, and cruel or degrading treatment are prohibited acts against military personnel as well as civilians (I-IV 3; III, 13; IV, 32, 34).

Also prohibited are reprisals against persons protected by the Conventions (I, 46; III, 13; IV, 33).

Protected persons must always be able to benefit from the activity of a Protecting Power or of the International Committee of the Red Cross (I-III, 8 to 10; IV, 9 to 11).

### Wounded and Sick

The wounded and sick, both military and civilian, must be protected (I, 12, 15). This shall also apply to medical personnel (doctors, nurses, etc. and to chaplains, who for their part are bound to observe strict military neutrality (I, 24 to 27).

Protection also covers hospitals sheltering the wounded and sick, vehicles transporting them and the medical equipment allotted to them (I, 19, 32 to 36; IV, 16 to 22).

The emblem of the red cross (or of the red crescent) on a white ground is the sign of this protection. It can be employed for no other purpose whatsoever and must always be respected (I, 38 to 44).

#### **Prisoners of war**

Military personnel and auxiliaries who are captured or who surrender must have their lives spared and at all times be treated humanely (III, 4, 13, 14).

They must in particular receive the necessary food, clothing and medical care (III, 15 to 30).

They must be able to correspond with their families.

The names of prisoners of war will be communicated by the capturing authority to the International Committee of the Red Cross in Geneva (Central Tracing Agency) which will be allowed to visit them and arrange for them to receive relief (III, 70, 72, 78, 123, 126).

If penal sanctions are taken against prisoners for offences committed before their capture, the International Committee of the Red Cross (in the absence of the Protecting Power) will be so informed. It will be authorized to follow the proceedings and assist prisoners in their defence.

In the event of a death penalty being pronounced, the sentence shall not be executed before the expiration of a period of six months from the date on which notification of the sentence has been made to the International Committee of the Red Cross (III, 101).

#### **Civilians**

Civilian wounded and sick, civilian hospitals and their personnel, shall be the object of particular respect and may be placed under the protection of the red cross or the red crescent emblem (IV, 16 to 22).

The civilian population in occupied territory must, in so far as circumstances permit, be enabled to live in a normal manner. Deportations are prohibited (IV, 49).

Civilians may only be interned for imperative reasons of security. In such case, they shall benefit from conditions at least of the same standard as those prevailing in prisoner of war camps (IV, 41 to 43).

In occupied territory, pillage is prohibited, as is the indiscriminate destruction of property (IV, 33, 53).

## ANNEX XVI

Translation

**MEMORANDUM****Concerning the Dissemination in Latin  
America of Knowledge on the Geneva  
Conventions of 12 August 1949**

GENEVA, 15 June 1970

*To the High Contracting Parties*

Following the conflict which broke out on 14 July 1969 between Honduras and El Salvador, the delegates of the International Committee of the Red Cross successfully intervened to arrange repatriation of prisoners of war and interned civilians detained by each of the Parties to the conflict. These operations were completed on 6 October 1969 when the last Honduran civilians detained in El Salvador were repatriated.

Such events give new impetus to interest in the ever present problem of disseminating knowledge of the Geneva Conventions of 12 August 1949 for the protection of victims of war.

True, direct conflict between States Parties to these Conventions is unusual, but there can nevertheless be a number of related situations which although of less importance and on a lesser scale, call for the application of certain provisions of humanitarian law. Those situations are a cause of concern to the International Committee of the Red Cross which is convinced that, to meet them, the best safeguard is the dissemination of knowledge of the Geneva Conventions of 1949.

On the grounds of the right of initiative conferred on it by articles 9 (or 10) common to the four Geneva Conventions and by its long tradition, the ICRC has the honour to submit some proposals to the authorities concerned in Latin American States which are Parties to those Conventions.

In all countries, the problem of disseminating knowledge of the Geneva Conventions is twofold: basic instruction in schools to young

people and the population in general, on the one hand, and practical instruction on conduct in certain situations in the event of operations by armed forces on the other hand.

In the first case, namely basic instruction, the Fourth Meeting of Presidents of National Red Cross Societies of North America, Mexico, Central America and Panama, which met in Mexico from 18 to 22 November 1969, adopted a number of resolutions with which the International Committee fully associates and which it recommends to the attention of the authorities concerned. The same applies to like resolutions adopted by other Red Cross Conferences. They were concerned essentially with the introduction into school programmes, and into programmes of military instruction, of courses on the history and fundamental principles of the Red Cross and on the 1949 Geneva Conventions.

Concurrently with that basic effort, the International Committee would suggest as another practical measure the issue to each soldier in the field of a booklet, along the lines, for example, of the attached model, summarizing the essential rights and obligations arising from accession to the 1949 Geneva Conventions. At the same time the soldiers should be given appropriate explanations. If deemed expedient a coloured illustrated booklet, conforming to the attached model, could replace the printed text which might be issued to officers only. In each case suitable explanations could also be given.

In regions as large as the American continent the soldier in the field may often be considered the authorities' sole representative in the most forward position, confronted by a mission calling for application of the humanitarian principles. The International Committee is of that opinion, but it has no power to decide in place of the authorities nor should it undertake a task which is beyond it.

It has however prepared documentary material which it makes available to all Parties to the 1949 Geneva Conventions with a view, in particular, to the application of the essential provisions of article 144 of the IVth Convention relating to dissemination, and which reads as follows:

*The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and,*

*in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.*

*Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.*

The International Committee expresses beforehand its thanks for all replies which are sent to it. It will not fail to contact the authorities concerned to convey to them the result of this first consultation.

*The President*  
**Marcel A. NAVILLE**

D. MISCELLANEOUS

## ANNEX XVII

LIST OF ARTICLES OF THE GENEVA CONVENTIONS OF 1949  
RELATING TO THE FUNCTIONS OF PROTECTING POWERS

(extract from "The Geneva Conventions of 1949 :  
The Question of Scrutiny"  
by F. SIORDET, RICR, Geneva, 1953).

A. GENERAL PROVISIONS COMMON TO ALL FOUR CONVENTIONS	Conventions			
	1st	2nd	3rd	4th
	Articles			
1. Cooperation in the application of the Conventions . . . . .	8	8	8	9
2. Scrutiny of the application of the Conventions . . . . .	8	8	8	9
3. Offers of good offices in the event of disputes as to the interpreta- tion or application . . . . .	11	11	11	12
4. Forwarding of translations of the Conventions during hostilities. . .	48	49	128	145
5. Substitutes . . . . .	10	10	10	11
 B. SPECIAL PROVISIONS				
I. <i>Geneva Convention for the Amelioration of the condition of the wounded and sick in Armed Forces in the Field</i>	First Convention Articles			
1. Forwarding of information on wounded, sick and dead . . . . .	16			
2. Offer of good offices for the establish- ment of hospital localities and safety zones . . . . .	23			

II. <i>Geneva Convention for the Amelioration of the condition of wounded, sick and shipwrecked members of Armed Forces at sea</i>	Second Convention Articles	
1. Forwarding of information on shipwrecked wounded, sick and dead. . .		19
III. <i>Geneva Convention relative to the treatment of Prisoners of War</i>	Third Convention Articles	
1. Action simply as intermediary :		
Forwarding :		
Particulars of the situation in camps		23
Rates of pay for labour . . . . .		62
Notifications of payments . . . . .		63
List of credit balances . . . . .		66
Claims for compensation . . . . .		68
Action on correspondence and relief		69
Legal documents . . . . .		77
Official records of death . . . . .		120
Particulars of identity . . . . .		122
2. Scrutiny and special action facilitating scrutiny :		
Visit of camps and places of internment . . . . .		126
Scrutiny of the list of labour detachments . . . . .		56
Reception of complaints and requests from prisoners of war, and reports on the situation in camps . . . . .		78
Relations with spokesmen, and scrutiny of motives for dismissals . . .		79, 81
Scrutiny of Punishment Register . .		96, par. 5
3. Action in connection with the money of prisoners of war :		
Fixing their cash holdings . . . . .		58
Scrutiny of limitations of their balances . . . . .		60, par. 4
Inspection of prisoners' accounts. .		65, par. 2
4. Action in connection with the correspondence and relief of prisoners of war :		
Limitation of correspondence . . . .		71, par. 1
Limitation of relief . . . . .		72, par. 3
Scrutiny of the distribution of relief		73, par. 3
Arrangements for special transports		75
Adoption of a different method of distribution for collective relief (Article 9 of Regulation III)		

5. Action in judicial connections :	<b>Third Convention Articles</b>
Reception of the list of offences punishable by death . . . . .	100
Reception of the detailed communi- cation of a death penalty six months before execution . . . . .	101
Reception of notifications of proceed- ings . . . . .	104
Legal assistance . . . . .	105
Reception of sentences and notices of appeal . . . . .	107
6. Action in the event of transfer of pri- soners of war to a third Power :	
Notification to the State of Origin of the fact that the third Power is failing to fulfil its obligations. . .	12
7. Action in connection with Mixed Me- dical Commissions :	
Participation in the appointment of (Article 2 of Regulation II)	
Substitution for the ICRC in the appointment of (Article 5 of Regu- lation II)	
IV. <i>Geneva Convention relative to the Protection of Civilian Persons in Time of War</i>	<b>Fourth Convention Articles</b>
A. <i>General :</i>	
1. Offers of good offices for the esta- blishment of safety zones (Article 10 of the relevant Regulation). . .	14, par. 3
2. Scrutiny of the distribution of Me- dical relief or relief for pregnant women or children . . . . .	23
3. Possibility of contact with pro- tected persons . . . . .	30

	Fourth Convention Articles
<b>B. <i>For foreigners in the territory of a Party to the conflict:</i></b>	
1. Demands for reasons for a refusal to allow the departure of foreigners . . . . .	35
2. Payment of allowances. . . . .	39
3. Forwarding of a request for voluntary internment . . . . .	42
4. Reception of the names of persons interned or placed in assigned residence, or liberated . . . . .	43
5. Notification, in case of transfer of protected persons to a third Power, of the fact that the third Power is failing to fulfil its obligations . . . . .	45
<b>C. <i>For civilians in Occupied Territory:</i></b>	
1. Reception of the necessary particulars of transfers and evacuations of populations . . . . .	49, par. 4
2. Contact with workers with a view to their protection . . . . .	52
3. Scrutiny of the state of the provisioning of occupied territories. . . . .	55
4. Action in connection with relief:	
Assurance of the humanitarian destination of relief consignments . . . . .	59, par. 4
Assent to a decision for the diversion of relief from its original destination . . . . .	60
Scrutiny of the distribution of relief . . . . .	61
5. Action in judicial connections:	
Reception of notifications of proceedings. . . . .	71
Legal assistance . . . . .	72, 74
Reception of notifications of death sentences six months before execution . . . . .	75

<i>D. For interned civilians :</i>	<b>Fourth Convention Articles</b>
1. Action simply as intermediary :	
Forwarding :	
Of particulars of the situation in places of internment . . . . .	83
Of measures taken in regard to foreign relations . . . . .	105
Of legal documents . . . . .	113
Of official records of death . . . .	129
Of particulars of identity. . . . .	137
2. Scrutiny and special measures faci- litating scrutiny :	
Visits of places of internment. . . .	143
Scrutiny of the list of labour detachments . . . . .	96
Reception of complaints and requests of internees, and reports on the places of internment. . . .	101
Relations with Internees' Com- mittees — Scrutiny of reasons for dismissals. . . . .	102, 104
Scrutiny of records of disciplinary punishments . . . . .	123, par. 5
3. Action in connection with internees' money :	
Payment of allowances to inter- nees . . . . .	98, par. 2
Inspection of internees' accounts	98, par. 3
4. Action in connection with relief to internees :	
Scrutiny of the distribution of relief . . . . .	109
Arrangements for special trans- ports . . . . .	111
Adoption of a different method of distribution (Article 9 of Regu- lations II)	
5. Action in judicial Connections. . . .	126

## ANNEX XVIII

List of measures of application incumbent upon  
States parties to the Geneva Conventions of 1949

- I. Measures for dissemination among the armed forces
- A. Translation or publication of a translation already made (Ist Conv., 48; IInd Conv., 49; IIIrd Conv., 128; IVth Conv., 145)
- B. Inclusion of the provisions for military leaders, commanders etc. in regulations and instructions which bind them to take direct measures of application :
- Examples from the Ist Conv. : Art. 12, protection, care, treatment of the sick and wounded; Art. 15, search for casualties after an engagement; Art. 16, recording the names of the sick, wounded and dead; Art. 17, rules regarding the dead; Art. 19, protection of fixed establishments and mobile medical units of the Medical Service etc.
  - Examples from the IInd Conv. : Art. 12, respect and protection of the sick, wounded and shipwrecked; Art. 14, handing over of the sick, wounded and shipwrecked on board hospital ships; Art. 15, wounded taken on board a neutral warship or a neutral military aircraft; Art. 16, condition of the sick, wounded and shipwrecked fallen in enemy hands; Art. 18, search for and collection of the sick, wounded and shipwrecked after an engagement; Art. 20, burial of the dead, etc.
  - Examples from the IIIrd Conv. : Art. 13, humane treatment of prisoners; Art. 14, respect for the person of prisoners; Art. 16, equality of treatment; Art. 17, questioning of prisoners; Art. 18, property of prisoners; Art. 19 and 20, evacuation of prisoners.

- Examples from the IVth Conv. : Art. 16, special protection and respect of the sick, wounded, infirm, and expectant mothers; Art. 17, evacuation from besieged or enclosed areas and free passage of religious and medical personnel and medical equipment; Art. 18 and 19, protection of civilian hospitals and discontinuance of protection; Art. 20, protection of staff in civilian hospitals; Art. 21 and 22, land, sea and air transport of the sick, wounded, infirm, and expectant mothers, etc.

Note : All the measures in A. and B. should be taken already in peacetime.

## II. Organizational measures in view of possible conflicts

### A. Measures to be taken in peacetime :

- Setting up of Information Bureaux (Ist Conv., Art. 16; IIIrd Conv., Art. 122; IVth Conv., Art. 136);
- Issuing of Identity cards and armllets :
  - a) Identity cards and armllets for medical and religious personnel (Ist Conv., Art. 40)
    - special identity cards and armllets for auxiliary personnel (Ist Conv., Art. 41);
  - b) Special identity cards and armllets for religious, medical and hospital personnel of hospital ships and for their crew (IIInd Conv.,
  - c) Identity cards for members of the armed forces (IIIrd Conv., Art. 17);
  - d) Identity cards and armllets for permanent and auxiliary personnel of civilian hospitals; lists of such personnel (IVth Conv., Art. 20);
- Issuing of identity discs (Ist Conv., Art. 17; IIInd Conv., Art. 19);
- Organization of Graves Registration Services (Ist Conv., Art. 17; IIIrd Conv., Art. 121);
- Printing of forms : capture cards (IIIrd Conv., Art. 70, Annex IV); internment cards (IVth Conv., Art. 106, Annex III); correspondence cards and letters (IIIrd Conv., Art. 71, Annex IV; IVth Conv., Art. 107

Annex III); notification of death (IIIrd Conv., Art. 120, Annex IV); repatriation certificates (IIIrd Conv., Annex IV);

- Posting of texts of the Conventions in prisoner of war camps (IIIrd Conv., Art. 41; IVth Conv., Art. 99);
- Organization of internment (IIIrd Conv., Art. 21 onwards; IVth Conv., Art. 79 onwards);
- Site, recognition and marking of civilian hospitals (IVth Conv., Art. 18).

B. Measures to be taken in peacetime :

- Site of fixed medical establishments (protected from military operations) (Ist Conv., Art. 19);
- Possibly : establishment of hospital zones and localities (Ist Conv., Art. 23); safety zones (IVth Conv., Art. 14), and neutralized zones (IVth Conv., Art. 15);
- Equipping and marking of hospital ships and life-boats (IIInd Conv., Art. 22, 24, 25, 26, 27, 43);
- Equipping of medical aircraft and conditions for flight over neutral countries (IIInd Conv., Art. 39 and 40);
- Organization of land and air transport of sick and wounded, civilians, the infirm, and maternity cases (IVth Conv., Art. 21 and 22);
- Situation of non-repatriated aliens (IVth Conv., Art. 38), means of existence (IVth Conv., Art. 39), employment (IVth Conv., Art. 40);
- Supplies for the population of occupied territory, hygiene and public health measures (IVth Conv., Art. 55 and 56).

### III. Legislative measures (to be taken in peacetime)

#### 1. Measures relating solely to the Geneva Conventions :

##### A. Use of the emblem

- Restrictions on the use of the emblem in time of war and of peace and repression of abuse (Ist Conv., Art. 44, 53, 54; IInd Conv., Art. 44 and 45);
- Regulations on the use of the emblem in time of war, marking of medical units and establishments authorized to use the emblem (Ist Conv., Art. 42), limitation in the use of markings by ships (IInd Conv., Art. 44), military authorities' control (Ist Conv., Art. 49).

##### B. Repression of breaches of the Conventions :

(Ist Conv., Art. 49-51; IInd Conv., Art. 50-52; IIIrd Conv., Art. 129-131; IVth Conv., Art. 146-148)

- a) Grave breaches
- b) Other breaches
- c) Procedure (in accordance with IIIrd Conv., Art. 105 et seq).

##### C. Definition of Persons protected by the Conventions :

- Definition of members of the armed forces in conformity with Art. 13 of the Ist and IInd Conv. and Art. 4 of the IIIrd Conv.;
- Conditions in which Art. 4 and 5 of the IVth Conv. should be applied.

##### D. Civilian Enemies or aliens

- All aliens have the right to leave a territory at the outset of, or during a conflict (IVth Conv., Art. 35);
- Respect of the conditions governing the internment of protected persons (IV Conv., Art. 42, 43);
- Penal legislation applicable to occupied territory (IVth Conv., Art. 64 and 78).

E. Penal and Disciplinary Sanctions (prisoners of war and interned civilians):

- Penal and disciplinary sanctions applicable to prisoners of war (cf. Annex);
- Penal and disciplinary sanctions applicable to internees in occupied territory (IVth Conv., Art. 117 to 126).

F. General Dissemination of the Conventions :

- Inclusion of the study of the Conventions, in military and civilian instruction courses.

2. Relations with the Hague Conventions

- Recognition of the principles of the "laws of war" (Ist Conv., Art. 135);
- Requisition : recognition of the rules of the Hague Conventions (Ist Conv., Art. 35);
- Use of the emblems in "the cases provided in any other international Convention" (IIInd Conv., Art. 44).

IV. Penal and Disciplinary Sanctions (IIIrd Convention, see above III E).

1. Penal Sanctions

A. Principle of assimilation in relation to the troops of the Detaining Power :

- Assimilation of laws, regulations and orders in force (Art. 82, 87, 88);
- Assimilation of punishments (repetition of punishment for the same offences) (Art. 86);
- Assimilation of establishments and conditions for executing punishments (Art. 108);
- Assimilation of procedure, jurisdiction (Art. 84, 102);
- Assimilation of conditions of confinement (Art. 103);
- Assimilation of the right of appeal (Art. 106).

B. General Conditions concerning the principle of assimilation :

- Compliance with generally recognized principles, "non bis in idem", prohibition of coercion ("nulla poena sine lege") right of defence, essential guarantees of impartiality and independence.

C. Exceptions in special cases :

- Acts punishable if committed by prisoners but not by soldiers of the Detaining Power (disciplinary penalties) (Art. 82);
- Leniency clause (Art. 83);
- Freedom of courts to appreciate (Art. 87);
- Offences committed before capture (Art. 85).

D. Exceptions in matters of jurisdiction (if need be) :

- Exclusive competence of military courts, together with essential guarantees, unless civil courts are given express authority (Art. 84).

E. Exceptions concerning penalties (if the occasion should arise) :

- Corporal punishment and any form of torture or cruelty forbidden (Art. 87);
- Collective punishment for individual acts forbidden (Art. 87);
- Prisoners may not be deprived of their rank or prevented from wearing their badges, even if they have been condemned (Art. 87);
- The death sentence cannot be pronounced on a soldier for an offence not provided for by the laws of the Detaining Power (except with the concurrence of the prisoner's country of origin) (Art. 100).

- Qualified lawyer chosen by the accused or appointed by the court (Art. 105); facilities for defence (Art. 105);
- Interpreter and assistance of a friend (Art. 105);
- Particulars of charge (s) shall be communicated to accused and to counsel for defence (Art. 105);
- Time limits (Art. 105);
- Presence of Protecting Power at the trial (exceptionally in camera) (Art. 105);
- Sentences to be communicated to Protecting Power, prisoners' representative and prisoner of war (Art. 107);
- Protecting Power to be notified in cases of final conviction (Art. 107).

## 2. Disciplinary Sanctions

Assimilation of infractions punishable by disciplinary sanctions (Art. 82). Exceptions for unforeseen cases (Art. 82) and for the special case of escapes (Art. 91 to 94). General exception applicable to penalties which are inhuman, brutal or detrimental to health (Art. 89).

Art. 89 to 98 to be applied irrespective of regulations in the Army of Detaining Power.

Note : All measures listed in IV should be taken, or at least provided for, in time of peace, so that they may be put into force on the outbreak of hostilities.

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