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REPORT ON

DIPLOMATIC CONFERENCE ON HUMANITARIAN LAW

Geneva, February 20 to 29 March 1974



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The Diplomatic Conference convened by the Swiss Government on the re-affirmation and development of International Humanitarian Law applicable in armed conflicts opened in Geneva on 20 February 1974. Plenipotentiary representatives of 118 States including 29 African States, parties to the Geneva Conventions of 12 August 1949 and Members of the United Nations, as well as many observers from inter-governmental and non-governmental organizations attended. The Conference sat till 29 March dealing with two additional draft protocols to the Geneva Conventions, drawn up by the International Committee of the Red Cross (ICRC), with a view to supplementing existing International Humanitarian Law in the light of recent developments in armed conflicts.

Presiding over the opening ceremony, Mr. Pierre Graber, Federal Councillor Vice-President of the Federal Council and Head of the Swiss Federal Political Department welcomed the delegates. Mr. André Chavanne, State Councillor, Vice-President of the State Council and Head of the Education Department of the Republic and Canton of Geneva and Prof. Eric Martin, President of the International Committee of the Red Cross also welcomed delegates. A message of good-will from the Secretary-General of the United Nations was read by Mr. Vittorio Winspeare Guicciardi, Director-General of the Office of the United Nations at Geneva. President Moktar Ould Daddah, of the Islamic Republic of Mauritania, also made a strong statement in support of the Liberation Movements of Africa and the Middle East.

The first plenary meeting was on 27th February. There had been private consultation between various group of delegates, from 20th to 27th February to settle the question of allocation of official posts of the conference, and on the question of extending invitations to the Government of the Republic of Guinea Bissau, the Provisional Revolutionary Government of the Republic of South Viet Nam (GRP) and to the National Liberation Movements recognised by the Regional inter-Governmental organizations. The African Group concerned itself on the question relating the Guinea-Bissau and National Liberation Movements. It took a firm stand on both matters - Guinea

Bissau was to be unconditionally invited as a state, and the National Liberation Movements were to be invited in their right to participate fully in the deliberation of the conference. A consensus was worked out with other groups on ~~the~~ Guinea Bissau. In the plenary, matters relating to invitation was given priority and a resolution sponsored mostly by the African Group to the effect that decisions relating to invitations to the conference were to be adopted by a simple majority of votes of representatives present and voting, was adopted by 64 votes for, 28 against, and 14 abstentions.

On the 28th February, the President announced the consensus reached on the invitation of Guinea Bissau in behind-the-scene consultations. It was confirmed by the plenary and Guinea Bissau was invited formally amidst resounding applause from all sides of the Conference Room. Seven delegations including South Africa and Portugal expressed reservations on the admission of Guinea Bissau. The question of inviting the GRP of the Republic of South Viet Nam was then taken up. But the resolution sponsored by China and a few other delegations calling for the invitation was rejected by 38 votes for, 37 against, with 33 abstentions. Most of the 33 abstentions were African delegations, who acted on specific instructions from their Governments. In spite of statements by the South African and Portuguese delegations that Guinea Bissau was not a country, as it had no area of existence, no capital, and no population, the invitation to it was a triumph for the political fortitude of African States. Thus customary International Law was enriched, not only by the subsequent consideration by the Conference of Humanitarian Laws; but also by the invitation and recognition of Guinea Bissau as a State. Existing International Customary Laws on the definition of a state were thus improved upon.

On 1st March, invitations to the National Liberation Movements were considered. As a result of subsequent intensive behind-the-scene consultations by the African Group, a good measure of consensus was reached on this question. The National Liberation Movements were to be invited in their own rights to participate fully in all the deliberations of the conference; but without a right to vote. The rationale of this exception was that the conference being essentially one for plenipotentiary~~s~~ only states considered capable of assuming international responsibility, were properly equipped for taking decisions. I consider this reason specious, as the Liberation Movements have attained international recognition. At least for the present they depend largely on international support, and could be counted upon to

take international responsibility. As a matter of fact, their participation, and possible future acceptance of the convention and the protocols presupposed this. Though it was not quite what the African Group had stood for, the consensus represented, at least, over 90% of its demand, and on compromise basis, was accepted. The plenary approved the consensus, and the following 14 Liberation Movements were formally invited:

"The Palestine Liberation Organization (PLO), recognized by the League of Arab States, and the Mozambique Liberation Front (FRELIMO), the People's Movement for the Liberation of Angola (MPLA), the Angola National Liberation Front (FNLA), the African National Congress (ANC), the Panafricanist Congress (PAC), the Zimbabwe African People's Union (ZAPU), the Zimbabwe African National Union (ZANU), the South West African People's Organization (SWAPO), the Somali Coast Liberation Front (FLCS), the Djibouti Liberation Movement (MLD), the Seychelles People's United Party (SPUP), the Sao Tomé and Príncipe Liberation Movement (MLSTP) and the Comores National Liberation Movement (MOLINACO), all recognized by the Organization of African Unity (OAU)."

Before the meeting adjourned for the day, it elected by consensus its 19 Vice-Presidents and the Chairmen, Vice-Chairmen, Rapporteurs and members of Committees including the Ad Hoc Committee on Weapons; and allocated work to them.

In the week ending 15 March, while the plenary continued with general debates, the Committees went into session:

- a) Committee I dealing with the general provisions and applications of humanitarian law in international and non-international armed conflicts, set up a working group to agree three draft amendments relating to the inclusion of struggles against colonialism and racism in draft Protocol I, Article 1.
- b) Committee II concerned itself with the protection of the wounded and the sick, and with medical air transport. It discussed the definition and protection of civilian medical units, and considered the possibility of issuing identity cards to civilian medical personnel, similar to those already issued to military medical personnel, improvement of the efficiency of the Red Cross, Red Crescent and Red Lion and Sun emblems, especially at night, and adopted an internationally recognised distinctive sign for civil defence bodies.

- e) Committee III dealt with the protection of civilian population. It studied various definitions of the civilian population and the distinction between combatants and non-combatants in international and non-international armed conflicts.
- d) The Ad Hoc Committee on Weapons continued a general discussion of this subject; and observed that almost all delegations advocated a thorough study of weapons which cause unnecessary suffering or have indiscriminate effects, with particular reference to the report of the meeting of experts convened earlier by the International Committee of the Red Cross on the subject. It also unanimously supported the ICRC's proposal to convene a meeting of government experts on the subject in June 1974.

By 21st March, Committee III had reached consensus on Articles 43 and 45 of Protocol I and the corresponding Articles 24 and 25 of Protocol II, both relating to protection of civilian population. It agreed that "the parties to the conflict must at all times distinguish between the civilian population and combatants; between civilian objects and military objectives, and consequently direct their operations only against military objectives". On March 22nd, Committee I after long drawn consultations behind-the-scene, adopted an amendment to all-important Article 1 of draft Protocol I. By 70 votes for, 22 against, and 12 abstentions, armed struggles in which people fight against colonial domination, alien occupation and racist regimes, in the exercise of their right of self determination in accordance with UN resolutions and the UN Charter was adopted. The amendment further called upon signatories to the Conventions and Protocols to ensure compliance with due diligence. In situations not provided for by the Protocols and the conventions, the protection of civilians and combatants alike must be ensured under all circumstances. It discussed, but reached no decision on Article 5 concerning appointment of Protecting Powers or substitutes.

Committee II adopted the articles on the definition of the wounded, the sick and the shipwrecked, medical personnel and medical units, and approved the basic rule of respect for the wounded and the sick under all circumstances. It did not reach a decision on the possibility of extending the definition of "Shipwrecked persons" to include persons in distress on

land, as a result of the destruction of their means of transport. It adopted the submission by its technical sub-Committee for an internationally recognised distinctive civil defence service emblem (blue triangle on orange background); the issuing of a special identity card for civilian medical personnel; improvement of visibility of the signs of the Red Cross, Red Crescent and Red Lion and Red Sun; and on distinctive light signals (flashing blue light), radioelectric and radar signals, for identification of medical vehicles..

At its last meeting on the 25th March, the Ad Hoc Committee on conventional weapons adopted the work programme of the conference of Government Experts which the ICRC planned to convene in June 1974. While incendiary weapons, like napalm, aroused special interest, it was unanimously agreed that the whole range of conventional weapons should be studied. There were no meeting on the 27th March; but the plenary resumed on the 28th and considered the reports of the various Committees. It continued consideration on the 29th and adopted them with minor amendments. Before adjourning the Session, it was announced that a second session of the conference would possibly take place in May 1975.

GENERAL

The conference's decisions on preliminary matters such as questions of invitations were a resounding achievement for Africa. They were fruitful results of the concerted efforts of the African Group to widen the political grounds won by the Liberation Movements at the United Nations. The acceptance of Guinea Bissau as a state (the representative of the Guinea Bissau once presided over the plenary) is a stepping stone towards its recognition by the United Nations. In the discussion of the draft protocols, three aspects are important from the African point of view:

- a) Sufficient identification of the National Liberation Movements with Protocol I which concerns International Armed Conflicts,
- b) The application of the provisions of the protocol to take account of the special nature of guerrilla warfare, and
- c) The accommodation of the guerrilla combatants of the National Liberation Movements in the provision of prisoner of war status,

This session has achieved (a). There, however, still remain diplomatic efforts to widen the acceptance of this achievement in practice; and this engaged the minds of the African Group at the closing stages of the conference. It is recommended that OAU Member States continue with diplomatic efforts with a view to attaining the widest possible acceptance of the gains made by the National Liberation Movements and Guinea Bissau at the conference.

Legal Division
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Report on diplomatic conference on humanitarian law

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