Chapter 4

The Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Second Session), 3 May - 2 June, 1972*

1 Introduction

As mentioned in my previous paper,¹ the Conference of Government Experts held in Geneva in May 1971, although an important step on the road towards the “reaffirmation and development” of certain more or less neglected parts of the international humanitarian law applicable in armed conflicts, was in itself insufficient preparation for a future diplomatic conference. A second conference of experts appeared indicated, and the announcement made in the final session of the Conference by the President of the International Committee of the Red Cross (or ICRC) that such a conference would be organized in 1972, was received with unanimous approval and satisfaction.

This second session of the Conference of Government Experts was duly held in Geneva from 3 May - 2 June 1972. Prior to entering into its proceedings, it seems useful to put on record certain other activities, related to the subject of this note, which took place in the period between the two Conferences.

First, on the level of the United Nations, the Secretary-General submitted to the twenty-sixth session of the General Assembly his third Report on Respect for Human Rights in Armed Conflicts.² This consisted for the most part of a comprehensive account of the 1971 Conference of Government Experts. On the basis of this Report and of other relevant documents before it, the Third Committee on 15 December 1971³ and the General Assembly on 20 December 1971⁴ adopted two resolutions concerning the general aspects of the subject and one relating to the protection of journalists on dangerous missions.

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* Published earlier in 3 NYIL (1972) pp. 18-61.
1 2 NYIL (1971) p. 68 et seq., at p. 89.
2 A/8370, 2 Sept. 1971. See also the comments of governments on the earlier reports of the Secretary-General, A/8313 and add.
4 GA Res. 2852, 2853 and 2854 (XXVI).
Important elements in GA Resolution 2852\(^5\) were: the emphasis laid on the “need to evolve norms designed to increase the protection of persons struggling against colonial and alien domination, foreign occupation and racist regimes” (operative paragraph 3 sub b), the request to the Secretary-General “to prepare as soon as possible, with the help of qualified governmental consultant experts, a report on napalm and other incendiary weapons and all aspects of their possible use” (paragraph 5), and the emphasis placed on the need for wide dissemination of the “principles of respect for human rights applicable to armed conflicts” (paragraphs 6, 7). Resolution 2853 (XXVI),\(^6\) which had many elements in common with the previous one, distinguished itself most markedly by expressing the hope that the second session of the Conference of Government Experts would lead to recommendations “for subsequent consideration at one or more plenipotentiary diplomatic conferences” (operative paragraph 3) and by calling upon “States parties to the existing international instruments to review, as a matter of priority, any reservations they may have made to those instruments” (paragraph 4).\(^7\) For the rest, both Resolutions favoured the continuation by the ICRC of the work which it had initiated for the reaffirmation and development of international humanitarian law applicable in armed conflicts.

As for the specific subject of “protection of journalists engaged in dangerous missions in areas of armed conflict”, a matter of special interest to the General Assembly and the Commission on Human Rights since 1970, Resolution 2854 (XXVI) bore witness to the fact that the problems attending realization of the idea of special protection for this particular category of civilians were far from solved. Not only had both Australia and the United States submitted alternative texts for the 1971 draft of the Commission (originally a French proposal)\(^8\) but a number of critical observations, made both in writing by Governments\(^9\) and orally in the debate\(^10\) amounted to expressions of serious doubt as to the

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\(^5\) This 12-Power Resolution was sponsored by Austria, Chile, Ecuador, Egypt, Ireland, Kenya, Mexico, Morocco, Norway, Peru, Sweden and Yugoslavia. The requested report on napalm and other incendiary weapons was brought out on 9 Oct. 1972, A/8803.

\(^6\) This 3-Power Resolution, introduced by the United States, was co-sponsored by Japan and New Zealand.

\(^7\) Despite its general language, this paragraph envisages in particular the reservation of the Soviet Union and other communist States to Art. 85 of the 1949 Prisoners of War Convention, to the effect that prisoners of war will lose their status once they are convicted of a war crime. The United Kingdom, which proposed the paragraph, has meanwhile set the example by withdrawing its own reservation to Art. 68 of the 1949 Civilians Convention regarding the right to impose the death penalty in occupied territory.

\(^8\) A/C.3/L. 1902 and 1903.

\(^9\) A/8371, annex II; A/8371/Add. 1 and 2.

\(^10\) A/8589 (Report of the Third Committee), paras. 15-18.