Chapter 7


1 Introduction

In previous volumes of this Yearbook, the present author has put on record a series of events under the common denominator of “reaffirmation and development of international humanitarian law applicable in armed conflict.” The last event so recorded was the first session of the Diplomatic Conference on humanitarian law, held in Geneva at the beginning of 1974 and which commenced discussion of the two Draft Additional Protocols to the Geneva Conventions of 12 August 1949 prepared by the International Committee of the Red Cross (or ICRC). The Conference has meanwhile held its second session, from 3 February to 18 April 1975, and a third session is scheduled to take place from 21 April to 11 June 1976. In view of the considerable amount of work already done at the second session, and assuming that the constructive spirit which prevailed during this session will persist during the next, it may confidently be expected that the 1976 session will suffice, at least, to finish the first reading of the Draft Protocols. This will provide an excellent opportunity to enter into some of the more salient features of the Draft Protocols, in the light of the amendments accepted in the course of the Diplomatic Conference.

In the meantime, attention may usefully be paid to another conference which, while taking its place in the series of conferences on “reaffirmation and development of international humanitarian law applicable in armed conflict”, is sufficiently important as well as distinct from the rest of the series to deserve separate treatment: the Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne (Switzerland) from 24 September to 18 October 1974.1

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* Published earlier in 6 NYIL (1975) pp. 77-102.
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2 History

This Conference was convened by the ICRC at the request of the XXIInd International Conference of the Red Cross, held at Teheran in November 1973 (Res. XIV). The ICRC had shouldered this task without any great enthusiasm, because by that time it had become only too well aware of the political implications of the subject and its close connection with considerations of national security. Yet, the ICRC had itself as much as anyone else to blame (if that is the right word in this connection) for the situation in which it found itself: it had been among the first to draw attention to the need for an examination of certain new weapons developments in the light of existing legal criteria.

True, its interest in the matter had stemmed not so much from any particular desire to become involved in questions of weapons technology and armaments, but rather from the need to protect civilian populations from the dangers of indiscriminate warfare. In that context, it had broached the questions of chemical, bacteriological and radiological warfare in 1955 and, in 1956, the use of incendiary weapons: more than a decade before the United Nations began to take an interest in the matter.

In 1967, the ICRC sent a Memorandum to all Governments on the protection of civilian populations against the dangers of indiscriminate warfare. In a survey of existing law, annexed to the Memorandum, it raised the question whether “such new weapons as napalm and high velocity rockets” should not be included in the category of “weapons inflicting needless suffering.” Having received few reactions to this Memorandum, the ICRC in February 1969 convened a meeting

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4 Draft Rules, Part II (Rules of application), Section IV (Weapons contrary to the laws of humanity), Art. 10 (Unlawful means of causing harm).
5 While in the 1955 version of the Draft Rules the ICRC, believing that governments would not be prepared to agree to a restriction on the use of incendiary bombs, expressed the view that the general rules in the Draft would at all events prohibit the indiscriminate use of incendiary weapons (Commentary, pp. 87, 88), the second version published in 1956 mentioned incendiary agents in one breath with chemical, bacteriological and radioactive agents (Art. 14). In its Commentary to the second version the ICRC explained that, in view of comments it had received from various experts, it had “thought it desirable to mention incendiary agents in the list of examples in Article 14 and thereby to include in that article those incendiary weapons which, by their nature or in certain circumstances, would constitute devices with uncontrollable effects” (2nd ed. (1958), p. 106).
7 Ibid., p. 058.