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RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

Comments by Governments on the reports of the Secretary-General

Note by the Secretary-General

Addendum

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FINLAND

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The subjects dealt with in these reports /A/7720, A/8052/ were extensively discussed at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts convened by the International Committee of the Red Cross in Geneva from 24 May to 12 June 1971. Government experts from Finland participated in this Conference. The comments on the Secretary-General's two reports submitted below consequently also take into account the deliberations at the aforesaid Conference.

In the opinion of the Finnish Government the existing humanitarian international conventions and rules provide a good basis for achieving respect for human rights in armed conflicts. The primary prerequisite for securing a better application is that States not yet parties to these conventions adhere to them. The next step is to spread the knowledge of existing rules and limitations as widely as possible so that everybody could get a good knowledge of the main provisions in the conventions.

The Hague Conventions have to a large part become customary international law and many of their provisions are thus binding on all States. The Geneva Conventions of 1949 have been adhered to by 127 Governments and constitute thus a remarkable achievement. In this respect no revision is called for; the problem is to secure that the Conventions are also applied in armed conflicts. In this way much human suffering can be alleviated.

The concept of total war as well as new techniques of warfare have, however, changed the image of war from that what it was 25 years ago. It is thus obvious that there are some great lacunae in the existing provisions which need to be remedied. In addition many provisions originating from the turn of the century are to a large extent obsolete. The Finnish Government shares the opinion of the Secretary-General and the ICRC that the existing humanitarian conventions need to be supplemented by additional protocols.

Until the present day the United Nations and the ICRC have followed somewhat different paths in their approach to these questions. The Geneva Conventions are based upon a distinction between international and non-international armed conflicts. Depending on the legal nature of each special situation different sets

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of rules may apply to the person affected by the conflict. The United Nations has on the other hand consistently stressed the value of the individual human being regardless of the legal nature of the armed conflict.

In the armed conflicts that have taken place during the last 20 years it has often been difficult, if not impossible, to classify a conflict whether it is international or not. Moreover there may be many different types of non-international armed conflicts.

If the Hague and Geneva Conventions now are to be supplemented by one or several additional protocols which would be firmly based on these conventions, the sharp distinction between international and non-international conflicts would probably be maintained. In addition, some very basic question might remain outside the instrument.

To prevent this from happening it is important to take an over-all view of the problem as the Secretary-General has done in his reports. The Finnish Government has noted with interest the Secretary-General's observations in his second report (A/8052, para. 24) that "There are instances in which the autonomous protection ensured by the human rights instruments of the United Nations is more effective and far-reaching than that derived from the norms of the Geneva Conventions and other humanitarian instruments oriented towards armed conflicts."

In particular it is worth noting that certain of the provisions in the International Covenant on Civil and Political Rights can be applied even in time of public emergency which threatens the life of the nation. These provisions concern among other things the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment and the prohibition of slavery and servitude. Although the Covenant has not yet entered into force, the principles contained in the provisions seem to be almost universally accepted and thus constitute customary international law binding upon all States.

These provisions apply everywhere, in time of peace as well as in time of war, and in all armed conflicts whether of an international or non-international character, in civil wars as well as in situations of internal disorder. As to their scope they apply to all individuals without regard to their status in the conflict or their nationality. As to their substance these provisions afford a protection that goes beyond that given by the Geneva Conventions.

In the light of the aforesaid it is of vital importance that when provisions supplementing existing international humanitarian law are to be drafted the effort should be undertaken in the closest co-operation between the United Nations and the ICRC. In the opinion of the Finnish Government the preparatory work by the ICRC for the Conference of Government Experts mentioned above should take into account the results in the field of human rights achieved within the framework of the United Nations.

The primary task would thus seem to be to supplement the existing rules of humanitarian law with some basic provisions applicable to all armed conflicts as well as to all persons present in the territory where the armed conflict is occurring.

In addition there is certainly also a need to supplement the existing rules with some special provisions. Also in this respect the Secretary-General's two reports provide an excellent basis for discussion.

The present concept of total war has created a situation where the civilian population is exposed to practically the same dangers as regular armies. The distinction between the civilian population and combatants has lately, unfortunately, become somewhat blurred.

It would therefore seem an urgent task to agree on a clear definition of combatants, which should be limited to those actively participating in the conflict. When they are unable to continue their function within the framework of the armed unit, they should enjoy protection against armed force.

The almost complete lack of rules applicable in air warfare has left the civilian population defenceless targets for bombing from the air. Thus the regulation of air warfare is most urgent.

In general the Secretary-General's proposal for standard minimum rules for the protection of the civilian population is supported by the Finnish Government and should be closely studied.

On the other hand the Finnish Government expresses some doubts as to the proposed establishment of refuges or sanctuaries for the protection of civilians. This might contain a danger of exposing all other areas to indiscriminate bombardments. And the civilian population being moved from their usual domiciles might encounter serious difficulties and it might even change the basic structures of the society.

As regards the implementation of existing humanitarian law, the Finnish Government fully supports the suggestions made in chapter XII of the Secretary-General's report (A/8052). In particular the suggestion to compile and circulate existing rules of international humanitarian law on all levels in a society cannot be emphasized too much. After all, the widespread knowledge of the existing provisions is the basic requirement for getting them applied when armed conflicts occur.

FRANCE

/Original: French/
30 September 1971

The French Government has examined with very great interest the two reports of the Secretary-General on respect for human rights in armed conflicts and considers them to represent an important contribution to the study of this question.

The French Government, which is a party to the Conventions of 1899, to almost all the Conventions of 1907, to the Protocol of 1925 and to the Conventions of 1949, reiterates its view that priority should be given at the international level to the scrupulous implementation of these treaties by as many States as possible.

Although favourably disposed to the studies on the advisability and necessity of strengthening or widening the scope of existing provisions, the French Government draws attention to the extremely wide range of subject-matter falling under scrutiny in that regard. It therefore believes that the formulation by Governments of final conclusions on this matter should await the outcome of the work undertaken by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which met at Geneva from 24 May to 12 June 1971 and is scheduled to hold a second session in 1972.

The French Government nevertheless believes it should offer some preliminary observations on the following points:

1. It considers that if there is to be more scrupulous observance of humanitarian law, it is extremely important that States should ensure the more effective dissemination of existing rules to the persons responsible for their

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implementation. That step would create a collective frame of mind, of which no individual could remain oblivious, promoting heightened respect for international morality.

2. With regard to control over the observance of humanitarian law, the Geneva Conventions define the role of the Protecting Powers and the International Committee of the Red Cross.

The French Government is not opposed to seeking ways of making this control more effective and in this regard it believes that the International Committee of the Red Cross could, if it has the agreement of the States concerned, make an important contribution.

It feels, however, that the most careful consideration should be given to the general problem, for whereas it is admissible for a State to submit to external control in a sphere which comes entirely within its sovereignty, or where, in addition, reciprocity would obviously be desirable, as is the case with disarmament, the problem is different when the field of application of the control is beyond its authority. That would be the case with a non-international armed conflict where the very aim was to overturn this authority.

Furthermore, it does not seem desirable to establish new organs for verifying compliance with humanitarian law. Rather than create new institutions, whose effectiveness of action would in any case be questionable, it seems preferable to explore every possibility offered by the existing institutions.

3. With regard to the problem of the utilization of certain weapons, the French Government wishes to reaffirm its adherence to the rules laid down in the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. It hopes that this instrument will soon be accepted by those States which are not yet parties to it.

It considers, however, that the consideration of the specific problem of weapons should be left to those bodies which are directly concerned with disarmament and that the study currently being made both by the General Assembly and under the auspices of the International Committee of the Red Cross is not an appropriate vehicle for it.

Indeed, a distinction should be drawn between the subject of weapons themselves and the matter of the principles to be observed by the parties to a conflict in respect of their choice and use of weapons.

In this connexion, the definition of general rules to ensure that the use of weapons does not unduly affect the civilian population is of some interest, for if compliance with the law is to be secured it is vital to adopt principles which experience has shown to be applicable in practice.

4. The problem of implementing all or part of humanitarian law in non-international conflicts is an important and complex one.

The French Government has taken note of the fact that it was extremely difficult to draw up for this purpose an objective definition of non-international conflict covering every possible situation.

This difficulty clearly emerges from the reports of the Secretary-General and was considered during the proceedings of the Conference of Experts at Geneva. A number of suggestions were made, but they require study and it is too early to formulate any conclusions at this stage.

In any case, the French Government considers that the idea of making some body responsible for determining whether a conflict is internal or international should be ruled out as incompatible with the principle of the sovereignty of States and as engendering interference in their domestic affairs.

Furthermore, it would be difficult to agree on the nature, permanence and composition of such a body, which in any event could not be given decision-making power. Only the Security Council is empowered, under Article 39 of the United Nations Charter, to determine whether any threat to the peace exists, but this determination is not necessarily bound up with the implementation of humanitarian law.

The crux of the matter seems to be to ensure that in every conceivable situation the persons directly or indirectly involved in the conflict will receive treatment from either side that is consonant with humanitarian principles.

One way of achieving this aim might be through the negotiation of special agreements between the parties to the conflict, in liaison with the International Committee of the Red Cross and possibly on the basis of a standard model.

5. The idea of establishing refuges or sanctuaries, suggested in the report of the Secretary-General, is not, in the opinion of the French Government, a sound or practical way of providing protection for the civilian population.

First of all, the establishment of such areas would be fraught with very serious difficulties, such as geographical problems of location, problems of transferring the population, problems of enforcing displacement and problems of food supply.

Furthermore, there is the danger that the existence of such refuges or sanctuaries would encourage the idea that the rest of the territory is an unrestricted combat zone where the civilian population that has remained behind would no longer receive adequate protection.

On the other hand, the practice of designating "open cities" and perhaps of establishing safety zones of limited extent for some groups of people - children, the elderly, the handicapped - in the vicinity of buildings protected under the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict could be useful forms of action.

At all events, the question will be re-examined by the International Committee of the Red Cross.
