

Horst Seibt

COMPENDIUM
OF CASE STUDIES
OF
INTERNATIONAL
HUMANITARIAN LAW



ICRC

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Legal expert, German Red Cross

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Translated and adapted from German
by the International Committee of the Red Cross



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Original German title: **Es begann in Solferino**

ISBN 2-88145-058-X

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Geneva 1994

FOREWORD

The ICRC takes pleasure in presenting this compendium of case studies of International Humanitarian Law (IHL), a collection of some 60 cases in which IHL is applicable, taken from a work entitled *Es begann in Solferino* by Mr. Horst Seibt, IHL expert, of the German Red Cross.

With his kind permission, the ICRC has translated it and adapted it to the general plan of one of its recent publications, *Basic Rules of the Geneva Conventions and their Additional Protocols*.

The analysis of case studies is (if I may be allowed the metaphor) a sort of obstacle race over IHL territory. It is the rider who, on completing his circuit faultlessly, realizes the majesty and beauty of horsemanship. And it is by overcoming all the difficulties of these cases that the importance of IHL, and its applicability to present conditions, will be realized and IHL better understood.

The cases are admittedly difficult, but they can be an excellent means of individual training. They are especially intended for members of National Societies who are keen to improve their own knowledge and to be able later on to train qualified personnel, as provided for in Article 6 of Additional Protocol I.

This booklet answers a long-felt need for examples of case studies that can be quoted by lecturers and used as a basis for consideration and analysis and to assess the knowledge of IHL acquired at courses and seminars.

The ICRC first of all wishes to thank Mr. F. Gillioz, who supervised all preparations for the English version of this compendium. Its thanks also go to everyone who has been concerned with revising and translating it, particularly Mr. E. Markee and Mr. J. de Preux, and especially to Mr. H. Seibt himself.

HOW TO USE THIS COMPENDIUM

This compendium of case studies of IHL is intended to serve just one purpose: to augment the reader's, or your own, knowledge of IHL.

The table of contents at the beginning of this compendium is composed of 4 parts:

1. General references
2. International armed conflict
3. Non-international armed conflict.
4. Comments and answers.

These 4 parts comprise five chapters divided into sections. Part II, Chapter 4, Section II, relating to the general protection and administration of civilians in time of war, is even divided into subsections.

This layout follows as closely as possible that of the ICRC publication entitled: *Basic Rules of the Geneva Conventions and their Additional Protocols*.

A short introductory text taken from the *Basic Rules*, which summarizes the theoretical questions dealt with in the ensuing cases and gives general bibliographical references, is to be found at the beginning of each chapter and section

The compendium may be used in many ways, and just two could be mentioned here:

It is *intended first of all for teachers*, who can choose from it a case study related to a subject that interests them, they can equally adapt it, make it longer or shorter, simpler or more complicated. The case studies may be used to illustrate any section of International Humanitarian Law in university courses or seminars.

Next, *the compendium is intended for students* (not necessarily lawyers) and indeed for anyone who might want to know more about IHL, be it ICRC or League delegates, or especially National Society staff in charge of information and dissemination of IHL.

Each case study comprises a description of a situation followed by questions, comments and answers. Students can simply read through the description of the situation, the questions and the answers, in which case they must not fail to read them in conjunction with the Basic Rules or, if they want to go more thoroughly into the matter, with the Commentaries on the Geneva Conventions. After this sort of reading they may reasonably be expected to have a much clearer idea about IHL in application.

The legal opinions expressed in certain answers to the questions set are the author's and are not necessarily those of the ICRC.

LIST OF ABBREVIATIONS

C I-IV	Geneva Conventions numbered in Roman figures.
P I-II	Additional Protocols I and II to the Geneva Conventions.
H.IV.R	Regulations annexed to the 1907 Hague Convention No. IV respecting the laws and customs of war on land. International Law concerning the Conduct of Hostilities
IHL	Bibliography of International Humanitarian Law, Henry Dunant Institute, Geneva 1980.
Basic	Basic Bibliography of International Humanitarian Law, Henry Dunant Institute, Geneva 1985.
IHL II	Bibliography of International Humanitarian Law, Second edition, Henry Dunant Institute, Geneva 1987.

Roman numerals indicate the number of the Convention or the Protocol (designated by the letter P). Arabic numerals refer to the articles of these instruments.

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PART I

GENERAL REFERENCES

**Chapter 1: *PROVISIONS COMMON TO THE FOUR CONVENTIONS AND TO PROTOCOL I;*
cf. H.IV.R, Arts. 1-28**

Section I: Fundamental Principles of the Red Cross

C I,2
C II, 2
C III, 2
C IV, 2
P I, 1

The Conventions and the Protocol are applicable in case of declared war or of any other armed conflict arising between two or more of the Parties to the Conventions and Protocol I from the beginning of such a situation, even if the state of war is not recognized by one of them. These agreements also cover armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.

C I,5
C III, 5
C IV, 6
P I, 3

The application ceases at the general close of military operations and, in occupied territory, at the end of the occupation, except for those categories of people whose final release, repatriation or settlement takes place at a later date.

These people shall continue to benefit from the relevant provisions of the Conventions and Protocol until their final release, repatriation or settlement.

P I,1
C I, 63
C II, 62
C III, 142
C IV, 158

In cases not covered by the Conventions, the Protocol or other international agreements, or in the case of denunciation of these agreements, *civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.*

(The **Martens clause:** in cases not covered by the law in force the victims remain under the protection of humanity and the dictates of public conscience)*.

* Extract from the *Basic Rules of the Geneva Conventions and their Additional Protocols*, p. 8.

QUESTIONS

- 1. THE PRINCIPLE OF HUMANITY**
- 2. RELIEF OPERATION/“ARMED PROTECTION” AND THE PRINCIPLE OF NEUTRALITY**

BIBLIOGRAPHY

Basic Bibliography pp. 9-13

1. THE PRINCIPLE OF HUMANITY

The situation:

In a country where violent clashes are taking place between armed groups, a local group leader suddenly comes face to face with a member of the opposing group.

Both are wounded in the ensuing hand-to-hand encounter. The group leader manages to bind up his own wounds. He then gives rudimentary first aid to his adversary, who is *hors de combat*, and drags him into his house.

There his comrades in arms oppose his decision, saying that as he did not leave his enemy to die, that enemy should now be executed, especially as this is the practice of the other side.

If his life is spared he should at least be forced to remove the mines laid by the people on his side.

Question:

The leader knows that the command under which he serves has publicly stated that it intends to respect the basic provisions of the Geneva Conventions. What must he do?

2. “ARMED PROTECTION”/THE PRINCIPLE OF NEUTRALITY

The situation:

In the course of an operation taking place in a non-international armed conflict the ICRC may at any time be confronted with government troops or “armed dissidents”.

Government forces frequently offer to protect the ICRC during its relief distributions.

Questions:

1. How should the ICRC react after carefully examining the dangers of the situation?
2. Can it accept protection by soldiers?
3. What reasons could it give for its decision?
4. Which fundamental principles have to be considered?

Section II: Prohibition of reprisals

C I, 46	Reprisals, violations of the law in response to other violations of the law and to make them cease, are prohibited against the wounded, sick and shipwrecked, medical services and personnel, civil defence services and personnel, prisoners of war, civilians, civilian and cultural property, the natural environment and works and installations containing dangerous forces. They are admitted only in the conduct of the hostilities.*
C II, 47	
C III, 13	
C IV, 33	
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51-56	

QUESTIONS

- 3. INTERNATIONAL ARMED CONFLICT/
MURDER OF PRISONERS AND REPRISALS**
- 4. PRISONERS OF WAR/REPRISALS**
- 5. OCCUPYING POWER/SECURITY/REPRISALS**
- 6. INTERNAL DISTURBANCES/REPRISALS/
CONDUCT OF ATTACKS**

BIBLIOGRAPHY

- IHL pp. 299-304
Basic pp. 87-88
IHL II pp. 461-467

3. INTERNATIONAL ARMED CONFLICT/MURDER OF PRISONERS/REPRISALS

The situation:

During an armed conflict between States party to the Geneva Conventions a military aircraft makes a forced landing on enemy territory. Before the armed forces can capture the pilot he is lynched by local inhabitants.

Shortly afterwards, planes from the murdered pilot's country of origin drop pamphlets on a field hospital in the area where the murder occurred, stating: "You have violated international law. You beheaded one of our pilots after taking him prisoner. International law requires prisoners to be humanely treated. You will be punished for what you did".

* Extract from the *Basic Rules*, p. 9.

Questions:

1. Was the civilian population entitled to kill the enemy pilot if he would not surrender?
2. What do you think of the pamphlet?
3. Does the hospital need to fear attack if it bears the protective emblem?
4. In view of the threat, what can be done to avoid the death of patients and staff looking after them?
5. What does Additional Protocol I say on the subject?

4. PRISONERS OF WAR/REPRISALS

The situation:

During an armed conflict between two States party to the Geneva Conventions, an ICRC delegate is summoned to the Ministry of Foreign Affairs of one of the belligerents, which informs him as follows:

- “We have been informed that our enemies are executing our parachutists when they capture them. This is contrary to the Geneva Conventions protecting uniformed combatants.”
- “Consequently, for each one of our parachutists executed by the enemy we shall execute ten prisoners of war as a reprisal.”

Questions:

1. What should the delegate do?
2. How should the situation be assessed in the light of the Geneva Conventions of 1949 and Protocol I?
3. What about an enquiry procedure?

5. OCCUPYING POWER/SECURITY/REPRISALS

The situation:

You are a magistrates' court judge in an enemy-occupied locality. A bomb explosion at night during curfew kills three soldiers of the Occupying Power.

The perpetrators of the explosion escape.

As a reprisal the Occupying Power deports ten citizens to a neighbouring third country, destroys their houses and expropriates their lands.

Questions:

1. Are these measures justified by imperative military necessity?
2. Should the officers who ordered them be punished?
3. What can you do?

**6. INTERNAL DISTURBANCES/REPRISALS/
CONDUCT OF ATTACKS**

The situation:

In the capital of a certain country civilians are killed by a bomb explosion.

Responsibility is claimed by an organization that has taken refuge in a neighbouring country.

The air force of the first country carries out a reprisal raid against camps probably housing the perpetrators of the explosion. A factory and a crèche are hit, and people are killed.

Questions:

1. Must the facts be examined in the light of the Law of Geneva?
2. What attitude should be adopted towards the reprisal raid?
3. What have the Additional Protocols to say on the subject of attacks?

PART II

INTERNATIONAL ARMED CONFLICT

Chapter 2: *PROTECTION OF THE WOUNDED, SICK AND SHIPWRECKED CONVENTIONS I AND II, ADDITIONAL PROTOCOL I, PART II;*
cf. H.IV.R, Arts. 1-28

Section I: Protection, treatment and care

P I,10

All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

C I, 12

C II, 12

P I, 10

In all circumstances, they shall be treated humanely and shall receive, to the fullest possible extent and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction between them on any other grounds. Women shall be treated with all the particular consideration due to their sex.

Wounded, sick and shipwrecked combatants who are captured become prisoners of war. Until their recovery or their disembarkation they will benefit from the provisions of Conventions I or II and III.*

QUESTIONS

7. EQUAL TREATMENT OF THE SICK

8. REPATRIATION OF NEUTRAL MEDICAL UNITS

9. THE RIGHT TO KEEP SILENT / WAR CRIME

BIBLIOGRAPHY

IHL pp. 220-231

Basic pp. 68-70

IHL II pp. 319-334

* Extract from the *Basic Rules*, p. 14.

7. EQUAL TREATMENT OF THE SICK

The situation:

During the reconquest of an enemy-occupied territory, the commander of a military unit asks the chief physician of the hospital in a small town to take in wounded from his unit who cannot be moved.

The chief physician replies that his hospital is already completely full of enemy soldiers and that they too are not in a condition to be moved.

The commander replies: “Your enemy wounded are now my prisoners of war. I therefore order you to evacuate them and make room for our own soldiers.”

The chief physician refuses to evacuate seriously wounded persons even if they are enemy soldiers.

The soldiers accompanying the officer resent this answer and draw their weapons. The chief physician thereupon makes his answer plain by standing in the doorway of the hospital to bar entry to it.

You are the legal adviser to the unit commander.

Question:

Are you going to agree to the use of force?

8. REPATRIATION OF NEUTRAL MEDICAL UNITS

The situation:

During an armed conflict between two States, civilian medical units from neutral States are sent to each side. A Red Cross field hospital from a neutral State is made available to one of the belligerent States, and falls into the hands of the opposing State. The officer commanding the occupying force takes possession of the other side’s wounded and sends them to the rear as prisoners of war.

Only wounded or sick members of the occupation forces are left in the hospital.

The representative of the occupying force is requested by the neutral State to give back the hospital and to allow the repatriation of the neutral personnel.

Question:

Must the occupying force comply with this request or can it order the medical unit to stay on to look after its own sick and wounded?

9. THE RIGHT TO KEEP SILENT/WAR CRIME

The situation:

You are the head of a local section of your National Red Cross Society in a region invaded by the enemy.

A village is dynamited before the occupying forces withdraw. Many civilians are wounded by the explosion. An assistant nurse asks your advice. Among the wounded she is looking after, she has found the perpetrator of the explosion. No legal adviser or qualified personnel are available to help you.

Questions:

1. Is there any obligation to report the culprit?
2. What are the limits of the duty to protect the sick?
3. Is it important that the assistant nurse is the only person to know the facts?
4. Is there any obligation not to report the culprit?

Section II: The role and protection of medical personnel and medical units

C I,18
P I,17

The civilian population must respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them.

The civilian population and relief organizations, such as National Red Cross and Red Crescent Societies, will be authorized, even invaded or occupied regions, to collect and care for the wounded, sick and shipwrecked, even if they are enemy parachutists or guerrillas. Nobody may be harassed, prosecuted or convicted for such humanitarian action.

Furthermore, the competent authority may appeal to the civilian population and the relief organizations to collect the wounded, sick and shipwrecked, to search for the dead and report where they were found.

C II, 21

The same applies in naval warfare to neutral merchant vessels, yachts or other craft that may be called upon, by the Parties to the conflict, to take on board and care for the wounded, sick and shipwrecked, and also to collect the dead.*

QUESTIONS

10. COMBAT ZONE/RESCUE OF WOUNDED

**11. TERRITORY OF A SOVEREIGN STATE/
MEDICAL AUTHORITIES**

**12. NAVAL WARFARE/MILITARY HOSPITAL
SHIPS**

13. HOSPITAL SHIP/INSTRUCTIONS

BIBLIOGRAPHY

IHL pp. 220-231
Basic pp. 68-70
IHL II pp. 319-334

* Extract from the *Basic Rules* p. 15.

10. COMBAT ZONE/RESCUE OF WOUNDED

The situation:

During a declared war between two States enemy troops invade a town. There is fierce fighting and isolated groups hold out and put up stiff resistance. The streets are strewn with wounded soldiers of both sides and wounded civilians.

A few members of a local Red Cross medical unit have assembled with their families in the Red Cross dispensary. Some of them propose to intervene immediately to assist the wounded.

Questions:

1. Is this intervention in accordance with the Conventions of 1949? Does P I add anything new to them on the subject?
2. Who is competent to search for and collect:
 - a. wounded and sick soldiers?
 - b. wounded, sick or destitute civilians?
3. Before the group intervenes in the combat zone, what should the head of the unit be recommended to do after collecting the casualties?

11. TERRITORY OF A SOVEREIGN STATE/ MEDICAL AUTHORITIES

The situation:

Rockland and Bluesland are engaged in a declared international armed conflict. The public health authorities of Rockland have only women doctors available; the men are serving in the forces.

Rockland consequently considers enlisting the services of doctors resident in its territory who are nationals of Bluesland, and threatens to intern them if they refuse to work for the health service of their enemies.

At the same time plans are made to display the red cross emblem on the building housing the health service administration.

Mothers and babies of the Bluesland nationality regularly used to consult the health service advisory centres for mothers and children, but as soon as the conflict breaks out they are excluded from such consultations on the pretext that they have no need of care and advice.

A number of mothers enquire whether they could complain about this. They are curtly told that there is no possibility whatsoever for them to do so and that they have been barred from consultations only because their compatriots have refused to work for the health service.

Questions:

1. May doctors legally be forced to work?
2. Is it legal to threaten them with internment?
3. Is the health service administration building entitled to display the protective emblem?
4. Is it permissible to deny the mothers consultations, especially so as to bring pressure to bear on the doctors?
5. Is it true that these mothers have no means of lodging a complaint?

12. NAVAL WARFARE/MILITARY HOSPITAL SHIPS

The situation:

During an armed conflict between Rockland and Bluesland, Rockland declares that it cannot guarantee the safety of a hospital ship from Bluesland, and accuses it of taking part in military operations.

Bluesland denies these allegations.

The Rockland declares that it will no longer consider itself bound by the provisions of the Geneva Convention relating to respect for enemy hospital ships unless the vessel is withdrawn from the combat zone.

Questions:

1. Which Convention and which provisions are involved?
2. The two enemies contradict each other. How can the truth be established?
3. Can a belligerent country divest itself of the obligations incumbent upon it as a Party to the Geneva Conventions?

13. HOSPITAL SHIP/INSTRUCTIONS

The situation:

A German newspaper published the following despatch on 2 June 1982: "In a region situated about 30 miles north of the Falkland Islands

(Malvinas) and declared by the British to be a zone reserved for hospital ships, a British task force boarded the Argentinian vessel *Bahia Paraiso*. After verifying that the vessel was engaged on a purely humanitarian mission the task force transferred 140 Argentinians wounded in the fighting at Goosegreen from the British hospital ship *Uganda* to the Argentinian vessel.’

Questions:

1. Which Conventions are relevant in this case?
2. What is the position as regards zones reserved for hospital ships?
3. Was the task force entitled to board the hospital ship?
4. How is the takeover of wounded at sea regulated?
5. What elements of the Conventions are repeated in the Additional Protocol I and what innovations does the Protocol contain in this respect?

Section III: *Emblem and signals*

C I, 39
P I, 18

The sign of the red cross⁽¹⁾ or red crescent must be displayed on the flags, buildings, installations and mobile formations of medical units, on their means of transport, as well as on armlets, clothes and headgear of medical and religious personnel. It will be as large as the circumstances require.

C I, 42
P I, 18

An important regulation: the distinctive emblem of the Convention and the Protocol *may be displayed only on medical units and by medical personnel protected by the Convention and Protocol, and only with the consent of the competent authority.* Strict observance of this rule is essential to respect of the Conventions and the Protocol.

C II, 43

In naval warfare, ships and craft entitled to the protection of the Convention will be marked as follows:

- (a) *all exterior surfaces must be white;*
- (b) *one or more dark red crosses, as large as possible, must be painted and displayed on each side of the hull as well as on horizontal surfaces, so as to afford the greatest possible visibility from the sea and from the air. A white flag with a red cross shall be flown at the mainmast, as high as possible.*

c I, 44

The international Red Cross organizations and their duly authorized personnel are permitted to use the emblem of the red cross on a white ground at all times.

C I, 53

Apart from these regulations, the use of the emblem or the designation “red cross” or “Geneva cross”,

C I, 54
C II, 45
P I, 18

or any sign or designation constituting an imitation, shall be prohibited at all times; the necessary measures will be taken to prevent and repress any abuse of these distinctive signs.

P I, 85

The perfidious use of the red cross (and other protective signs or signals) is a grave breach.

⁽¹⁾ The form of the cross is not specified but it has become customary to use a so-called Greek cross, i.e., a cross with four arms of equal length not touching the edge of the shield, comprising the inverted colours of the Swiss flag. Instead of the red cross, some countries use the red crescent. The red lion and sun emblem adopted by Iran is no longer in use. Instead it has used the red crescent since 1980.

P I, 18 In addition to the distinctive emblem, the Parties to the
and Annex I conflict may authorize the use of distinctive signals
 (light, radio and secondary radar signals, internation-
 ally recognized codes and signals.*

QUESTIONS

14. OCCUPIED TERRITORY/MISUSE OF THE EMBLEM

15. INTERNATIONAL LAW/NATIONAL LAW

16. PROTECTIVE EMBLEM AND CAMOUFLAGE

BIBLIOGRAPHY

IHL pp. 83-101
IHL II pp. 57-84

14. OCCUPIED TERRITORY/MISUSE OF THE EMBLEM

The situation:

A civilian hospital recognized by the State employs full-time and part-time doctors. Their status is certified by their wearing an armlet bearing the red cross emblem and carrying an identity card bearing a photograph of the holder. They are also entered on the hospital's staff list.

Meanwhile the region is occupied by military forces.

Two doctors, one a full-time doctor and the other a part-time doctor, are going home in a private car bearing the protective emblem.

The car is stopped by a military police patrol belonging to the Occupying Power. The part-time doctor's armlet and identity card are confiscated, he is told that he has broken the law, and the car is impounded.

The case is submitted to you as legal adviser to the hospital.

Questions:

1. What is correct here under the Convention?
2. What are you going to do?

* Extract from the *Basic Rules*, pp. 19-20.

15. INTERNATIONAL LAW/NATIONAL LAW

The situation:

Under the Geneva Conventions unauthorized use of the protective emblem (red cross or red crescent) by individuals or corporate bodies is prohibited.

Violations of this rule must be dealt with in accordance with international law.

Questions:

1. Is there any difference between a violation in a country that applies the Geneva Conventions as having the effect of national law and a violation in a country that does so via implementary legislation?
2. Who must take measures, and what measures, to ensure the protection of the emblem in accordance with the Conventions?
3. What is the situation regarding similar emblems used prior to 1906 and 1949?

16. PROTECTIVE EMBLEM AND CAMOUFLAGE

The situation:

In an armed conflict between two States party to the Geneva Conventions, a dressing station and an armed forces' supplies depot are in close proximity.

The dressing station's shelters are identified by means of the emblem. In case of an air raid warning, arrangements have been made to camouflage both installations.

Other shelters without the protected emblem are nearby and remain uncamouflaged.

Questions:

1. Which Conventions apply?
2. What do you think of the siting of the two installations?
3. What means other than camouflage are suitable to protect medical units?
4. If the medical centre were hit could this be called a war crime?
5. Does Additional Protocol I merely confirm the principles set out in the Conventions or does it go further?

Chapter 3: CONDUCT OF COMBATANTS AND PROTECTION OF PRISONERS OF WAR CONVENTION III, ADDITIONAL PROTOCOL I, PART III

Section I: Conduct of combatants

Part III of the Protocol does not confine itself to stating the rules relating to the status and treatment of prisoners of war, It also recalls the correct conduct of combatants in the course of hostilities. The fundamental principle forming the basis of these rules is that *the right of the Parties to the conflict to choose methods or means of warfare is not unlimited*

P I, 35

For example, it is prohibited to employ weapons projectiles and methods and materials of warfare of a nature to cause superfluous injury, particularly those which are intended to cause, or can be expected to cause, widespread, long-term and severe damage to the natural environment. Neither may the presence of civilian persons be used to render certain points or areas immune from military operations.

P I, 51
C IV, 28

It is prohibited to kill, injure or capture an adversary by resort to perfidy.

P I, 37

Acts inviting the confidence of an adversary to lead him to believe that he is entitled to receive, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The recognized emblems (the white flag, the emblem of cultural property, other recognized protective signs), and in particular the sign of the red cross or red crescent, must not be used improperly. The use of the national insignia of States not Parties to the conflict is forbidden. The national insignia of the adverse Party must not be used during attacks or in order to shield, favour, protect or impede military operations.

P I, 38

P I, 39

The Protocol thus asserts that the law of armed conflicts demands a minimum of honesty on the part of the combatants. Other rules of conduct for combatants are summarized either in Section I of this chapter or in the relevant chapters of this manual (see in particular Chapter I, points 2 and 5; Chapter II, points 3-4 and

P I, 40 7-11, Chapter III, Section II, and Chapter IV, Section
P I, 41 I). But it should be stressed here, once again, that it is
prohibited to declare that no will be given, to threaten
the adversary with this and to conduct hostilities in such
P I, 42 a way that there are no survivors. The enemy who is ,
or who has surrendered, or who shows his intention to
surrender, or who has parachuted from an aircraft in
distress, shall not be made the object of attack. If the
capturing Party is unable to evacuate its prisoners from
the fighting zone, it must release them and take all feasi-
ble precautions to ensure their safety*.

QUESTIONS

17. RUSES OF WAR/ACTS OF PERFIDY

18. SUSPENSION OF HOSTILITIES (TRUCE) AND PERFIDY

BIBLIOGRAPHY

IHL pp. 83-101
Basic pp. 46-48
IHL II pp. 188-202

17. RUSES OF WAR/ACTS OF PERFIDY

The situation:

The commander of the occupation forces authorizes a unit of Red Cross auxiliaries to collect and care for the wounded in occupied territory and on this occasion to display the Red Cross flag.

In the course of their activities the auxiliaries discover among the wounded a member of their own armed forces who is only slightly injured. He tells them that he is pretending to be wounded so that he can carry on the fight in the rear of the enemy. He asks the auxiliaries to bandage him heavily so as to disguise his true condition, to carry him to safety on a stretcher, and to help him to recover his weapon.

* Extract from the *Basic Rules*, pp. 24-25.

Questions:

1. What do you think of these requests?
2. What regulations must the auxiliaries observe when deciding what to do?
3. Should they comply with the soldier's request?
4. What must they do?

18. SUSPENSION OF HOSTILITIES (TRUCE) AND PERFIDY

The situation:

One of the Parties to the Geneva Conventions has not recognized the existence of a state of war between itself and another State against which it claims be simply conducting police operations.

After fierce fighting, sector commanders agree on a truce to care for the wounded. A Red Cross unit goes to the scene and an armed soldier is ordered to protect it.

The Red Cross auxiliaries first care for a wounded enemy soldier who later, as they are looking after other wounded, fires behind their backs on the soldier escorting them, but misses him. The soldier prepares to fire back at the "sniper", who puts up his hands in token of surrender.

Questions:

1. What is the significance of non-recognition of a state of war?
2. Where can the legal provisions for such a truce be found?
3. Is the Red Cross unit an integral part of the military medical service?
4. What do you think of the wounded man's conduct and the soldier's reaction?
5. Does Protocol I contain anything (whether old or new) in this connection?

Section II: The status, protection and treatment of prisoners of war

Status:

C III, 12
14

Regarding the rights of prisoners of war, the principle specifying that prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them, should be borne in mind. Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

C III, 14

Women must be treated with all the regard due to their sex and shall in all cases benefit by treatment at least as favourable as that granted to men. Finally, it should be noted that prisoners of war retain the full civil capacity they had at the time of their capture. Within the limits imposed by captivity, they therefore continue to enjoy their civil rights according to the law of their country of origin. In particular, they can marry by proxy.

As for the duties of prisoners, they are generally derived from the laws of war and the rules of military discipline.

C III, 17

Some of these duties are formally stated in the Convention; thus Art. 17, related to *questioning* of the prisoner, specifies that he is bound to give his name, first names and rank, date of birth and army, regimental, personal or serial number, or failing this, equivalent information.⁽¹⁾ However, the same article adds that no physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to obtain from them information of any kind whatever.

Protection and treatment

P I, 41
41
42

The Protocol prohibits declaring that no quarter will be given, threatening the adversary with this, and conducting hostilities in such a way that there are no survivors. The enemy who is, who *hors de combat*, has surrendered or who shows his intention of surrendering, or who has parachuted from an aircraft in distress, shall not be the object of attack.

⁽¹⁾ These particulars will be reproduced on the identity card which the Parties to the conflict are required to issue to the prisoner of war (C III, 17, 18).

- C III, 13
16 In these articles, the Convention states that *prisoners of war must at all times be treated humanely* and that subject to any privileged treatment on account of rank, sex, state of health, age or professional qualifications, all prisoners of war shall be treated alike. The Protocol specifies that no prisoner may be subjected to physical mutilation or to medical and scientific experiments of any nature whatever which are not justified by the medical treatment of the prisoner concerned and which are not in his interest. It nevertheless allows for exceptions in the case of donations of blood for transfusion or of skin for grafting, provided that these are voluntary.
- P I, 11
- C III, 19
P I, 41 Among the *general principles* protecting prisoners of war the following should also be mentioned: they shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone. When they have been captured under unusual conditions which prevent their being evacuated in the normal way, they shall be released and all feasible precautions shall be taken to ensure their safety.
- C III, 22
23 Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and wholesomeness. No prisoner of war may at any time be sent to or detained in an area where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.*

Prisoners without the recognized status of prisoner of war are at all time entitled to the fundamental guarantees

* Extract from the *Basic Rules*, pp. 24-27, and see p. 31. (see the *Basic Rules*, Chapter IV, Section II, point 2 (g), p. 43 and point 6, guarantees of judicial procedure).

QUESTIONS

19. OBLIGATION TO WORK

20. RELIGIOUS ASSISTANCE

21. ESPIONAGE

22. UNITED NATIONS CONTINGENT AND THE LAW OF GENEVA

23. NEUTRAL DETAINING POWER

BIBLIOGRAPHY

IHL pp. 232-253
Basic pp. 70-73
IHL II pp. 364-389

19. OBLIGATION TO WORK

The situation:

An armed conflict breaks out between two States party to the Geneva Conventions of 1949.

In a prisoner-of-war camp volunteers are recruited to work for two weeks to evacuate a munitions depot captured from the enemy. Volunteers are promised better rations, but three of them are killed by an explosion.

You are a lawyer. At the end of hostilities one of the widows consults you about the question of the exclusion of “war risks” from a life insurance policy.

Questions:

1. Is it in accordance with the Geneva Conventions to use prisoners of war for dangerous work?
2. Do prisoners who volunteer for such work renounce certain rights under the Conventions?
3. Are the Detaining Power’s promises of better conditions for volunteers an unacceptable form of pressure?

20. RELIGIOUS ASSISTANCE

The situation:

You are a county court judge in a town in your country, which is occupied by the enemy.

A camp for prisoners of war of your nationality is located nearby.

The local priest asks you whether it would be possible for him to exercise his ministry in the camp, since there is no military chaplain there.

He tells you that clergymen who are prisoners in the camp but do not have the status of military chaplains have expressed a wish for religious assistance.

Questions:

1. Is there any such possibility?
2. If so, what conditions must be fulfilled?
3. What are the rights and duties of clergymen who are in a prisoner-of-war camp?

21. ESPIONAGE

The situation:

After the outbreak of hostilities between two countries, an officer enters the enemy country and sets up an espionage network in which he takes part as a spy. He then returns to his own country and rejoins its armed forces. Later on he is taken prisoner and accused of having directed espionage activities.

Both States have ratified the Geneva Conventions; H.IV.R is accepted as customary law.

You are to defend the accused officer.

Questions:

1. On what are you going to base your defence of your client?
2. Can the prosecuting counsel wittingly maintain that your client is not entitled to the protection of the Conventions because they have been repeatedly violated by his country?

3. Can the court apply the *clausula rebus sic stantibus*? That is, can it decide the Convention is not applicable unless circumstances remain in the state in which they were envisaged when the treaty was concluded?

22. UNITED NATIONS CONTINGENT AND THE LAW OF GENEVA

The situation:

United Nations troops are sent to the scene of an armed conflict which one of the Parties declares to be an international conflict, whereas the other denies it that status.

Soldiers of the United Nations armed forces are taken prisoner and ill-treated during interrogation. They are forced to make a confession stating that they were ordered to fly over enemy territory to spread bacteria over it.

In reply to criticism in the world press the Detaining Power argues that:

- neither Party to the conflict is party to the Third Geneva Convention relative to prisoners of war. Nor is the UN. The Parties to the conflict have, on the other hand, declared that they will apply the Third Geneva Convention. The UN has not made any such declaration. Consequently the Detaining Power considers itself bound towards the enemy State but not towards the UN;
- the methods of interrogation used are therefore not a breach of humanitarian law, and have moreover saved lives by putting an end to such flights over its territory and the use of bacteriological weapons.

Question:

Is this analysis of the situation correct? Give reasons why/why not.

23. NEUTRAL DETAINING POWER

The situation:

According to a newspaper report of 12 June 1982 “The Federal Department of Foreign Affairs stated on Friday that one of the Soviet soldiers captured by the Afghan resistance and now interned in Switzerland escaped from his internment camp this week”.

Questions:

1. What kind of conflict was the conflict in Afghanistan? Was Switzerland involved in it?
2. On what legal basis had these Soviet soldiers come to Switzerland?
3. If one of these soldiers had managed to enter the Federal Republic of Germany (FRG) should he have been extradited to Switzerland or interned in the FRG?

Section III: Discipline

- C III, 39 To ensure discipline in accordance with military honour, every prisoner-of-war camp is placed under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power.
- C III, 41
P I, 83 This officer must be fully acquainted with *the text of the Conventions* and the relevant provisions of the Protocol. These texts must also be posted in each camp, in the prisoners' own language, in places where all may read them.
- C III, 40 The wearing of badges of rank and nationality, as well as decorations, shall be permitted, in due respect for the dignity of the persons concerned.
- P I, 87 Military commanders must ensure that members of the armed forces under their command are aware of their obligations under the Conventions and the Protocol. They are responsible for preventing any breaches of these provisions, for suppressing them, and, if necessary, reporting them to the competent authorities.*

QUESTION

24. DEATH SENTENCE

BIBLIOGRAPHY

IHL pp. 232-253
Basic pp. 70-73
IHL II pp. 335-364

24. DEATH SENTENCE

The situation:

Two States that are Parties to the Geneva Conventions are at war. A prisoner of war is killed during a riot in a camp. Four of his fellow-prisoners, one of them a corporal, are accused of his murder. Only one person is appointed to defend all four accused and is bound by instructions. The corporal is sentenced to death and executed. The Protecting Power is not made aware of these facts until later.

The corporal's widow and orphan child sue for a survivor's pension.

Questions:

1. Was the trial in accordance with the Law of Geneva?
2. Has the lawsuit brought by the widow and orphan any chance of success under domestic law?

* Extract from the *Basic Rules*, pp. 28, 29.

Section IV: Repatriation

Direct repatriation and hospitalization in a neutral country

- C III, 109 Even during hostilities the Convention prescribes the direct return to their own countries of the wounded and sick whose mental or physical fitness seems to have been seriously impaired, and hospitalization in neutral countries of specific categories of those less seriously sick or wounded.
- C III, 112 A model agreement annexed to Convention III, (Annex I, referred to in Art. 110), cites numerous cases which can give rise to application of this principle. *Mixed Medical Commissions*, set up at the outbreak of hostilities, are called upon to decide what prisoners are to be repatriated. The Parties to the conflict must send back to their own country, regardless of number or rank, seriously wounded and sick prisoners of war, after caring for them until they are able to travel.
- No sick or injured prisoner of war may be repatriated against his will during hostilities.
- C III, 117 No repatriated person may be employed on active military service.

Release and repatriation at the end of hostilities

- Situations which can arise at the end of a war have shown that the way in which the principle of the Code for prisoners of war of 1929 was worded, requiring repatriation of prisoners on the conclusion of peace, could be detrimental to them, because experience has shown that a very long time can elapse between the time hostilities cease and the time peace is concluded.
- C II, 118 To remedy this, the Convention states that *repatriation will take place "without delay after the cessation of active hostilities"*, i.e., after the cease-fire.
- C III, 119 One exception to immediate repatriation is provided in the case of prisoners convicted or prosecuted for criminal offences, who may be detained until the end of legal proceedings and, if necessary, until they have completed their sentences.*

* Extract from the *Basic Rules*, p. 32.

QUESTIONS

25. RELEASE OF PRISONERS OF WAR

26. EARLY REPATRIATION OF PRISONERS OF WAR

BIBLIOGRAPHY

IHL pp. 232-252

Basic pp. 70-73

IHL II pp. 335-364

25. RELEASE OF PRISONERS OF WAR

The situation:

At the end of hostilities between two States one of them releases and repatriates without delay the few prisoners of war in its power. The other State takes two years to release the thousands of prisoners it holds in military camps and hospitals.

The ICRC has at all times been able to monitor the conditions of detention of the prisoners of war in the two States, during and after hostilities.

Questions:

1. What has the ICRC done in this situation?
2. What are the principal legal instruments upon which the ICRC can base its steps?

26. EARLY REPATRIATION OF PRISONERS OF WAR

The situation:

The Annual Report of the ICRC for 1981 states that “In connection with the hostilities between Iraq and Iran, the ICRC continued discharging the tasks falling to it under the Third and Fourth Geneva Conventions” and that “After months of negotiations, 62 Iraqi prisoners of war and 102 Iranian prisoners of war and civilians were repatriated under the auspices of the ICRC.”

The air routes used were:

Baghdad-Larnaca (Cyprus)-Tehran, and Tehran-Larnaca Baghdad.

Questions:

1. What mandate is this and by whom was it conferred?
2. Why is the number of prisoners exchanged not the same on both sides? Do not such exchanges take place on a one-for-one basis?
3. When should the prisoners still detained have been released?
4. What has Additional Protocol I to say on this subject?
5. What part does Cyprus play in this operation?

Chapter 4: *PROTECTION OF CIVILIAN PERSONS AND POPULATIONS IN TIME OF WAR CONVENTION IV, ADDITIONAL PROTOCOL I, PART IV; cf. H.IV.R, Arts. 1-28*

Section I: General protection and administration of civilians in time of war

C IV, 4 Article 4 of the Fourth Convention defines *protected persons* as follows:

“persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.

This protection rules out any arbitrary actions by the enemy at whose mercy the protected persons may be.

The Fourth Convention is especially concerned with supplementing Section III of the Hague Regulations of 1907 on the laws and customs of war relating to occupied territories.

But, in addition to a section concerning the administration of foreigners, it also includes provisions relative to the protection of civilian populations and provisions common to the territories of the Parties to the conflict and to occupied territories. Both these latter groups of provisions are supplemented or even replaced by corresponding Articles in the Protocol.

*The rules of general protection stated in this subdivision refer to all persons affected by an armed conflict, whether or not they are protected persons in the meaning of Article 4 of the Fourth Convention. In principle they therefore concern nationals as well as non-nationals of the Parties to the conflict, nationals of neutral States on the territory of a Party to the conflict, as well as nationals of States not Parties to the Conventions and the Protocol who find themselves on this territory.**

* Extract from the *Basic Rules*, pp. 35-41.

Protection against the effects of hostilities

P I, 48 The fundamental principle on which the law of armed conflicts is based is expressed as follows:

In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

P I, 48 Two basic rules follow from this principle. The first prohibits the use of weapons, projectiles and material and methods of warfare of a nature to cause unnecessary injury. The second, in order to ensure respect and protection for the civilian population and civilian property, obliges the Parties to the conflict to distinguish at all times between the civilian population and combatants, as well as between civilian property and military objectives and to direct their operations only against military objectives.

Safety zones

C IV, 14 The Fourth Convention provides that either before or after the outbreak of hostilities, hospital and safety zones and localities may be established so as to protect wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under the age of seven. The Protecting Powers and the ICRC are invited to lend their good offices in order to facilitate the setting up and recognition of such zones and localities.

If necessary, and when circumstances permit, these zones may be set up in or near places which already benefit from special protection as cultural property.

Neutralized zones

C IV, 15 Neutralized zones are zones established in fighting areas and intended to shelter from the dangers of war all persons, without distinction, who are not taking part, or no longer taking part, in hostilities and who do not perform any work of a military nature while they remain in these zones.

They are established by agreement between the Parties concerned on the proposal of the Party setting up the zone.

QUESTIONS

27. CIVIL DEFENCE/PROTECTED ZONES
28. DISTINCTION BETWEEN COMBATANTS AND NON-COMBATANTS
29. TERRITORY OF A SOVEREIGN STATE/FIRE BRIGADE
30. SITING OF BUILDINGS/MILITARY OBJECTIVES
31. CIVILIAN HOSPITALS/REQUISITION
32. PILLAGE/EMERGENCY ACTION
33. REUNITING OF DISPERSED FAMILIES/FAMILY NEWS

BIBLIOGRAPHY

IHL pp. 253-268
IHL II pp. 364-387

27. CIVIL DEFENCE/PROTECTED ZONES

The situation:

During an international armed conflict you are the mayor of a locality in occupied territory.

Your fellow countrymen are reconquering this territory. The enemy therefore fortifies the locality of which you are mayor, in order to resist a siege by your countrymen who already surround it.

There are no shelters for the inhabitants and the houses will not stand up to bombardment. Any attack would probably cause heavy losses among the civilian population.

Questions:

1. What are you going to do?
2. Whom will you contact so that action can be taken?

3. Who can be sheltered from the effects of war?
4. Does Additional Protocol I of 1977 make special provisions for such cases?

28. DISTINCTION BETWEEN COMBATANTS AND NON-COMBATANTS

The situation:

An armed conflict is in progress between a colonial government and a “Patriotic Liberation Front” representing part of the local population.

The obligation to distinguish between combatants and non-combatants is ignored. Non-combatant civilians are being murdered and ill-treated, families dispersed, inhabitants driven from their villages, houses set on fire and children deported.

Questions:

1. What Conventions and provisions contain rules for the protection of non-combatants?
2. How is this obligation to be respected and applied in practice?

29. TERRITORY OF A SOVEREIGN STATE/FIRE BRIGADE

The situation:

During an international armed conflict the headquarters of the military administration of a small town is set on fire. The fire threatens to spread to neighbouring blocks of flats and to the nearby Health Service offices.

A military unit offers to help to put out the fire. On its way to the fire a lorry carrying armed soldiers skids and overturns, trapping several soldiers underneath it. The fire brigade is asked to help.

Questions:

1. What should be the attitude of the fire brigade?

2. Would it make any difference to the situation if the building on fire were a munitions factory not situated in the immediate vicinity of civilian housing?
3. If the soldiers were on their way to attack enemy parachutists, what should be the attitude of the fire brigade?
4. What would the situation be if tank waggons full of kerosene were on fire on a railway line in the suburbs of the town but well away from any inhabited area?

30. SITING OF BUILDINGS/MILITARY OBJECTIVES

The situation:

A military administration building is to be erected in the town centre, next the building housing the Health Service and the Food Hygiene Institute. About 100 yards away are a densely populated residential area, two hospitals, five churches, a theatre in course of construction, and the public library.

Experts in the law established by the Conventions and Protocols (P I, Art. 6) are of the opinion that the new building should not be put to its intended use.

However, the head of the local military administrative services thinks the site chosen is perfectly suitable, as it was used during the Second World War to house the administrative service of the time. "In any case", he says "if relations were to become strained the present administration would be evacuated".

Questions:

1. Which of these two opinions above is correct? (See the Geneva Conventions of 1949, the Hague Conventions of 18 October 1907 and the Annexed Regulations respecting the Laws and Customs of War on Land, and the Hague Convention of May 14, 1954 for the Protection of Cultural Property in the Event of Armed Conflict).
2. Bearing in mind the provisions relating to buildings (siting, protection), what should be done?
3. Should this matter be discussed in public?

31. CIVILIAN HOSPITALS/REQUISITION

The situation:

You are the legal adviser of a corporation that owns a hospital.

When the enemy drew near, the hospital staff living nearby went home. When its troops entered the town, the Occupying Power requisitioned the still fully equipped civilian hospital for its own sick and wounded.

The medical officer of the occupying forces has obliged the former hospital staff to resume their work. There is no other hospital in the locality.

Questions:

1. Is it legal to requisition the hospital?
2. Is it legal to oblige the hospital staff to resume their work?
3. What can you do to keep the hospital for the sole use of its owner?
4. What should be done to ensure that hospital services necessary for the civilian population continue to be provided?

Prohibition of maltreatment and pillage

Respect for the human person

Article 27 of the Fourth Convention states the basic principle of the Geneva Conventions. It proclaims respect for the human person and the inalienable character of his fundamental rights. This Article is now supplemented by Article 75 of Protocol I relative to fundamental guarantees as well as by other relevant provisions which appear under the heading “General Protection” (point 2, p. 41 of the *Basic Rules*). Article 27 declares:

C IV, 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.

C IV, 29

In case of infringement of these rules the State is responsible, irrespective of any individual responsibility which may be incurred.

C IV, 31

It follows from this same principle that no physical or moral coercion may be used against protected persons, in particular to obtain information from them, or from third parties, and that the High Contracting Parties specifically agree that each of them is prohibited from taking any action of a nature to cause either physical suffering or extermination of the protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other form of brutality by civilian or military agents.

C IV, 32

C IV, 33

Pillage is prohibited.

C IV, 34

The taking of hostages is prohibited.*

* Extract from the *Basic Rules*, pp. 44-45.

32. PILLAGE/EMERGENCY ACTION

The situation:

A State has taken possession of a frontier town in a neighbouring country, without declaring war.

The Occupying Power quickly takes control of the district hospital and orders it to continue working.

One evening a doctor of that hospital goes to investigate a noise and finds a drunken armed soldier robbing the patients and maltreating anyone resisting him.

The soldier refuses to obey the doctor's orders and continues his misconduct. The doctor therefore strikes him. The blow causes the soldier's death.

The doctor is at once arrested and threatened with trial by a military court for violating his humanitarian mission by taking part in a military operation, and for homicide.

In addition the hospital is threatened with closure.

The Protecting Power appoints you to defend the doctor. What are you going to say in his defence?

Questions:

1. What arguments will you use to defend the accused?
2. Is it permissible to close down the hospital as a reprisal?

Reuniting of dispersed families and family news

PI, 74

All the Parties to the Conventions and the Protocol must facilitate the reunion of dispersed families

and encourage the work of the humanitarian organizations engaged in this task.

C IV, 26

In particular, each Party to the conflict must facilitate enquiries made by members of families dispersed because of the war with the object of renewing contact with one another and, if possible, of meeting.

C IV, 25

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them.

C IV, 50

Furthermore, as far as are concerned, it is provided that the Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. It will take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.*

* Extract from the *Basic Rules*, pp. 42-43, 47.

33. REUNITING OF DISPERSED FAMILIES/ FAMILY NEWS

The situation:

In an armed conflict between two States bound by the Geneva Conventions, a woman asks the local Red Cross administrative headquarters to send on a letter to her parents, who live in the enemy country, because the Post Office has refused to accept her letter.

Questions:

1. May the Red Cross take the place of the Post Office?
2. What should the administration officer do with this letter?
3. In this case, is the Law of Geneva applicable to nationals of the country?
4. Does the Red Cross verify whether the message is genuinely a family message?

Section II: Treatment of foreigners on the territory of a Party to the conflict

Subsection 2.1: General provisions

PI, 73 Persons who, before the outbreak of hostilities, were considered as stateless persons or refugees under the relevant international agreements or under the legislation of the State of refuge or State of residence are protected persons within the meaning of the Fourth Convention.*

QUESTIONS

34. POLITICAL REFUGEES AND “ENEMY ALIENS”

35. ALIEN CHILDREN

BIBLIOGRAPHY

IHL pp. 253-268
IHL II pp. 364-387

34. POLITICAL REFUGEES AND “ENEMY ALIENS”

The situation:

Two neighbouring States have radically different political systems. Dissidents of all shades of opinion take refuge in either country.

An armed conflict breaks out between the two States. Internal regulations in each country require that in the event of war, security or supervisory measures shall be taken against nationals of the other country. Thus they may be required to register, report to the police, and carry an identity document; be forbidden to travel without permission, to enter certain areas or change their address; or they may be subjected to assigned residence or internment.

* Extract from the *Basic Rules*, p. 43.

One of the States merely interns all those nationals of the neighbouring country who are opposed to its own political system.

The other State decides to intern immediately all nationals of the other country who are in its territory.

Questions:

You are consulted by aliens who, although not hostile to the State in which they have taken refuge, are nevertheless subject to these measures. They want to know if they can raise any objection.

35. ALIEN CHILDREN

The situation:

An armed conflict having broken out between two countries, a family of enemy nationality flees. When crossing the frontier they lose their daughter Suleika; she is picked up by customs officers who send her to the Youth Bureau, since nobody knows where her parents have fled.

As a lawyer working for the local administration authorities you have to deal with this case and the Youth Bureau asks you what has to be done.

Questions:

The child does not speak a word of the language of the country in which she has remained, and comes from a country in which two separate languages are currently spoken and have equal standing. Which of these two languages should be regarded as her “mother tongue”? Should her education be continued in a third language, for example in the language of the country which she has remained?

Subsection 2.2: Treatment of civilian internees

Both in the case of enemy civilians on the territory of a Party to the conflict, and that of protected persons in occupied territory, the principle is:

C IV, 41
78

if the Detaining Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

~~Internment therefore is not a punishment.~~ Like the code for prisoners of war, it must in all circumstances respect human dignity. The conditions of internment are virtually the same as those applying to prisoners of war and, by and large, the rules of internment applicable to civilians follow almost word for word those concerning prisoners of war (see Arts. 79 to 135 of the Fourth Convention).

C IV,95

Furthermore, as far as are concerned, an essential difference is worth pointing out. Whereas prisoners of war (excepting officers) can be compelled to work, civil internees can only be employed as workers if they so wish. Apart from its strictly voluntary character, their work is governed by the same rules as those of prisoners of war.*

QUESTIONS

36. WORK IN THE CAMPS

37. POLITICAL PRISONERS

38. ATTEMPTS TO ESCAPE

BIBLIOGRAPHY

IHL pp. 253-268
Basic pp. 73-78
IHL II pp. 364-387

* Extract from the *Basic Rules*, pp. 50 and 51.

36. WORK IN THE CAMPS

The situation:

You have been interned, as a civilian, in occupied territory because you endangered the security of the Occupying Power by wilfully ignoring the curfew.

The Camp Commandant orders all internees aged between 18 and 60 to take part in building an air raid shelter for the persons in the camp. Any person refusing will incur disciplinary punishments of up to 30 days' arrest.

You do not want to take part in this work, because you are not used to it.

Questions:

1. Where in the camp will you find regulations relating to internment?
2. May internees be forced to work?
3. In this situation, is any provision of labour legislation applicable?

37. POLITICAL PRISONERS

The situation:

Your country is at war with a neighbouring country.

You are the legal adviser to the head of a camp for enemy internees and for some of your fellow countrymen who have been interned as political prisoners.

You are notified that an ICRC delegate is about to visit the camp.

Questions:

What are you going to tell the head of the camp, who says that:

1. In obedience to the orders he has received from his superiors, he will allow the ICRC to visit the "political prisoners" although it is not legally entitled to do so.

Is this comment true?

2. It is out of the question to give the ICRC a list of the internees.
3. For security reasons it will be essential to be present at the interviews with the prisoners; the ICRC is not entitled to lay down any conditions at all.

38. ATTEMPTS TO ESCAPE

The situation:

Zacharias is interned in a camp marked with the letters IC (*internés civils* = civilian internees).

The relations of his country of origin with the country of detention are those set out in Art. 2 common to the four Geneva Conventions of 1949.

He escapes from the camp but is recaptured after four days.

When arrested he states:

“I left the camp shortly after midnight by means of a tunnel underneath the barbed wire, which I had dug with the help of another detainee who did not escape with me because he was afraid. Until the following evening I was hidden and given food by Sister Monica, the night nurse in a hospital near the camp. The following night I broke into a house to get a change of clothing, but was arrested by the police, who told me that my accomplices and I were liable to severe punishment”.

Questions:

1. To what penalty is Sister Monica liable?
2. Will Zacharias be taken to court for housebreaking?
3. Will his fellow detainee be punished as his accomplice?

Section III: Occupied territories

Subsection 3.1: General provisions

C IV, 35 While recognizing the right of foreigners to leave the territory at the outset of, or during a conflict, the Convention also affirms the right of the State to detain them on certain conditions if their departure would be against the national interests.

C IV, 36 If departures take place, they must be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food.

C 17, 38

<i>The situation of foreigners who remain will continue to be governed, in principle, by the provisions concerning aliens in time of peace.</i>

In all cases, foreigners on the territory of a Party to the conflict benefit from the rules stated under *General Protection* of all persons affected by the armed conflict and, in particular, from the fundamental guarantees (see point 2, pp. 41 ff. of the). In addition, a number of basic rights are ensured them by the Convention (right to receive individual or collective relief, medical and hospital treatment, to practise their religion, and to benefit from the measures decreed by the Government in favour of certain categories of persons).

C IV, 49 One of the most important clauses is that prohibiting deportations.

<i>Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.*</i>

* Extract from the *Basic Rules*, pp. 45-47.

QUESTIONS

39. OCCUPIED TERRITORY/LEGAL POSITION

40. DEPORTATION

BIBLIOGRAPHY

IHL pp. 253-268

IHL II pp. 364-387

39. OCCUPIED TERRITORY/LEGAL POSITION

The situation:

War breaks out between Rockland and Bluesland.

Bluesland places part of Rockland under military occupation, since it claims the territory so occupied as its own. It evacuates the population of that territory and refuses the ICRC permission to visit the members of that population whom it has imprisoned.

Questions:

1. Are the inhabitants of the occupied territory “protected persons”?
2. Which provisions have been violated?

40. DEPORTATION

The situation:

A war breaks out between Rockland and Bluesland. Rockland has violated human rights by imprisoning all Bluesland’s nationals living in its territory. Bluesland’s army crosses the frontier and occupies a town. All inhabitants are immediately deported to Bluesland and interned in a camp.

Questions:

To what category of war victims do these people belong?

Subsection 3.2: Occupation administration/Protection of persons

Regarding the protection of persons, reference will first be made to point 2 under General Protection of all persons affected by the armed conflict (pp. 41 ff.), and in particular to the section dealing with aid, fundamental guarantees and the protection of women and children, as well as to point 3, letter a): Respect for the human person.

C IV, 49 One of the most important clauses is that prohibiting deportations.

*Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.**

QUESTIONS

41. DUTY OF PROTECTION

42. CIVILIAN HOSPITAL

43. LABOUR LAWS

BIBLIOGRAPHY

IHL pp. 202-214
Basic pp. 65-67
IHL II pp. 296-318

41. DUTY OF PROTECTION

The situation:

Several thousands of people have fled their country and have taken refuge in a neighbouring country where they are housed in camps.

Following border skirmishes, the area in which the camps are located is in turn occupied but no real armed conflict breaks out there.

Certain local militias sympathize with the Occupying Power and persecute the refugees in their camps, going so far as to massacre them without the Occupying Power intervening.

* Extract from the *Basic Rules*, p. 47.

Questions:

1. Is this an international conflict?
2. What are the duties of the Occupying Power?
3. What are the consequences of those duties?

42. CIVILIAN HOSPITAL

The situation:

Shortly after enemy occupation of a town the chief physician of the hospital gets the following letter from the officer commanding the occupying troops: "Having inspected the hospital directed by you, we note that although in accordance with C IV, Art. 20, para. 5, you have submitted a list of personnel engaged in the care of the sick, you have not supplied the certificate showing that your establishment is a civilian hospital, in accordance with C IV, Art. 18, para. 2. Your establishment therefore cannot be considered as a civilian hospital within the meaning of the Convention. The hospital and its personnel are consequently not authorized to use the protective emblem (C I, Art. 38, and C IV, Art. 18, para. 3). This misuse of the emblem will cease immediately!"

Questions:

1. What sort of hospital is this?
2. Is the certificate required by C IV, Art. 18, para. 2, essential:
 - a. for recognition of the hospital as a civilian hospital?
 - b. for use of the protective emblem?
3. Are the personnel of the hospital entitled to wear the protective sign?
4. In an occupied territory, what authority is competent to authorize the use of the protective emblem?

43. LABOUR LAWS

The situation:

Mrs. Petra is an old woman. She lives in a region occupied during an international armed conflict.

The occupation authorities require her to work as a cleaner in one of their services for no more remuneration than food and lodging.

She refuses, saying that she won't work for the armed forces. She is formally ordered to obey.

Mrs. Petra asks you the following questions:

1. Is she taking part in hostilities by working for the occupying forces?
2. What remuneration can she demand for her work?
3. What court is competent to decide her claim, a local conciliation board or a military tribunal?

Subsection 3.3: Public officials and magistrates

Magistrates and public officials are, up to a point, protected against political pressures. The Occupying Power may not alter the status of public officials or judges in the occupied territory, or apply sanctions or take measures of coercion or discrimination of any kind against them because they abstain from fulfilling their functions for reasons of conscience.*

QUESTIONS

44. LOCAL GOVERNMENT OFFICIALS

45. PENAL LIABILITY OF PUBLIC OFFICIALS

46. REGISTRAR OF BIRTHS, MARRIAGES AND DEATHS

BIBLIOGRAPHY

IHL pp. 202-214

Basic pp. 65-67

IHL II pp. 296-310

44. LOCAL GOVERNMENT OFFICIALS

The situation:

A local government official who manages the waterworks in an enemy-occupied town has scruples of conscience: he believes that it is his duty to take part in administering the population's water supply, but he is unwilling to work for the Occupying Power because he is afraid of being accused later on of collaborating with the enemy.

Questions:

1. Is an Occupying Power entitled to remove public officials from their posts?
2. Is the Occupying Power entitled to oblige this public official to remain at his post?
3. If he continues to do his job, could his own country accuse him at the end of hostilities of collaborating with the Occupying Power?

* Extract from the *Basic Rules*, p. 49.

4. If this public official quits his post, on whom will responsibility for maintaining the water supply devolve?
5. What articles assign this responsibility?

45. PENAL LIABILITY OF PUBLIC OFFICIALS

The situation:

Two States are at war. Rockland is party to the Geneva Conventions. Bluesland has stated that it accepts them and will conform to them.

Bluesland occupies part of Rockland's territory. The military police of Bluesland, the Occupying Power, arrests a public official who before the occupation had ordered all nationals of the enemy State to be interned. He is accused of illegal detention and is to be brought before a court of the Occupying Power.

Questions:

1. Does this public official qualify for protection under the Geneva Conventions?
2. What factors will determine whether he can be released or acquitted?

46. REGISTRAR OF BIRTHS, MARRIAGES AND DEATHS

The situation:

Part of a belligerent State is occupied by enemy armed forces. On the approach of the enemy army the Registrar of Births, Marriages and Deaths in a small town takes to flight. To replace him the Occupying Power appoints an inhabitant of the town to draw up all the documents relating to births, marriages and deaths that are required by law. When the occupation ends the validity of the official documents he has issued, especially the marriage certificates, is disputed by people who believe that he was not authorized to hold this office.

Questions:

1. In this case, is the substitute official a fictitious official?
2. Are the marriages he has celebrated valid or not?
3. Is he entitled to continue in this job after the withdrawal of the Occupying Forces?

Subsection 3.4: Penal legislation

- C IV, 64 Finally, a detailed statute relative to penal legislation aims to permit the maintenance of order while protecting the population in the occupied territory from overbearing treatment on the part of the Occupying Power. The principle is that the penal legislation of the occupied territory remains in force except in so far as it constitutes a threat to the Occupying Power, in which case it may be repealed or suspended by that Power. Subject to this reservation, the tribunals of the occupied territory shall continue to function for all offences covered by this legislation.
- C IV, 67 In order to ensure that justice is observed, the courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.*

QUESTION

47. PENAL PROCEDURE

BIBLIOGRAPHY

IHL pp. 202-214
Basic pp. 65-67
IHL II pp. 296-310

47. PENAL PROCEDURE

The situation:

You are a lawyer in an occupied territory. The Occupying Power has enacted penal regulations to ensure its security.

One of your countrymen is arrested for intentionally violating these regulations.

He is to appear before a military court which for security reasons is to sit in the national territory of the Occupying Power and not in the occupied territory.

* Extract from the *Basic Rules*, p. 49.

In accordance with the detainee's wish the Occupying Power appoints you to defend him.

When you visit the detainee he hands you a bill of indictment in the language of the Occupying Power, which he does not understand.

The Protecting Power has tried in vain to get news of the detainee from the military court.

Questions:

1. Is the Occupying Power entitled to enact its own penal regulations in the territory it occupies, to run parallel to the penal law already in force there?
2. What demands are you going to make at the first hearing by the military court?

Subsection 3.5: Role of the National Society

The National Red Cross or Red Crescent Society is qualified to aid the wounded, sick and shipwrecked, to distribute relief and to supervise the welfare of the population with the means at its disposal. It must be shielded from any pressures that could prejudice its traditional character. To this end, and subject to temporary and exceptional measures imposed for urgent security reasons by the Occupying Power, the Convention provides as follows:

C IV, 63

- a) *Recognized National Red Cross and Red Crescent Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions.*
- b) *The Occupying Power may not require any changes in the personnel or structure of these Societies which would prejudice their activities.**

QUESTIONS

48. REQUISITION OF RED CROSS OR RED CRESCENT PROPERTY

BIBLIOGRAPHY

IHL pp. 202-214
Basic pp. 65-67
IHL II pp. 296-310

48. REQUISITION OF RED CROSS OR RED CRESCENT PROPERTY

The situation:

Part of a State party to the Geneva Conventions has fallen without armed resistance into the power of the army of a neighbouring State that is also party to the Conventions.

* Extract from the *Basic Rules*, pp. 48 and 49.

The local commander of the Occupying Forces attempts to requisition the furniture and vehicles of the National Society's local section.

When his attempt is resisted, he states politely that he is entitled to requisition this property because it does not belong to the medical detachment.

Questions:

1. What legal rules have to be examined?
2. Is the officer's argument well-founded?
3. What should be the first reaction?
4. Who should be contacted to help if necessary?

PART III

NON-INTERNATIONAL ARMED CONFLICT

PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICT: ARTICLE 3 COMMON TO THE FOUR CONVENTIONS, AND ADDITIONAL PROTOCOL II

Article 3 common to the four Conventions

C I, 3
C II, 3
C III, 3
C IV, 3

Article 3 common to the four Conventions applies to all armed conflicts of a non-international character and occurring in the territory of one of the Powers parties to the Convention. In such a case, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those who are *hors de combat* for any other reason, will in all circumstances be treated humanely without any adverse distinction.

The common article 3, of which it has justly been said that it is, in itself, a small Convention within a larger one, states what constitutes a minimum of humane treatment. The following acts, committed against the persons mentioned above, *are and must remain prohibited at all times and in all places*:

- 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 carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**

* Extract from the *Basic Rules*, pp. 52-53.

QUESTIONS

49. COURT MARTIAL

50. RELIEF SOCIETY

51. PROTECTIVE EMBLEM AND PERSONS TAKING TO FLIGHT

52. THE OBLIGATION OF DISCRETION

53. MERCENARIES

54. RELIEF OPERATION IMPEDED

BIBLIOGRAPHY

IHL pp. 351-363
Basic pp. 101-106
IHL II pp. 401-422

49. COURT MARTIAL

The situation:

In a non-international armed conflict an aircraft belonging to the rebel forces flies over a town controlled by government troops and drops pamphlets calling upon the population and soldiers to kill their officers and join the rebels.

On the return journey the aircraft is shot down. The pilot lands by parachute and is taken prisoner.

As you were a civilian judge before being called up into the army, the Town Major orders you to form a court martial and punish the prisoner on the spot and without delay.

He points out that although 1977 Protocol II additional to the Geneva Conventions forbids any such procedure, it has not been ratified.

Questions:

1. What will you reply?
2. What measures should be taken?

50. RELIEF SOCIETY

The situation:

A non-international armed conflict is in progress.

In the territories controlled by either side, young members of the National Red Cross Society are being trained in first aid. With the permission of the competent authorities they volunteer to search for the wounded of both sides, and to collect, protect and care for them under the protection of the emblem. The young people's determination to demolish the "walls of hate" impresses captors and victims alike.

Questions:

1. What are the rights and duties of these volunteers?

51. PROTECTIVE EMBLEM AND PERSONS TAKING TO FLIGHT

The situation:

In Swinland armed and organized groups under responsible commanders are continually clashing with each other during raids into the territories under each other's control.

ICRC representatives are doing humanitarian work on both sides with the aid of locally recruited employees.

A group attacks a village occupied by its enemies. The combatants defending the village take to flight. Among them is an ICRC worker clearly indicated as such by his overall bearing a big red cross. The attackers fire on them. The ICRC worker is killed.

Questions:

1. Were the attackers entitled to fire on the persons running away, although medical workers could be seen among them?
2. Was the ICRC worker murdered?
3. What conclusions should be drawn from the described events?

52. THE OBLIGATION OF DISCRETION

The situation:

The Attorney-General has imprisoned the leader of the dissidents. As a reprisal the dissidents have put a price on the Attorney-General's head.

A seriously wounded man is picked up by an ambulance driven by the Attorney-General's wife in her capacity as a member of the National Red Cross Society. The wounded man is thereupon identified as the dissident leader's son.

Questions:

1. Should this fact be reported?
2. Since the wounded man is regarded as a "criminal", should he be denied medical attention?
3. How should the chosen course of action be justified?
4. What does Additional Protocol II say on the subject?

53. MERCENARIES

The situation:

A liberation movement that has taken refuge in a neighbouring country plans to overthrow its own country's government and change the political system.

It hires a group of mercenaries of various nationalities to carry out this plan.

The mercenaries plan their coup in the foreign country with the knowledge of the local authorities. Their armed group succeeds in embarking on a commercial plane bound for the State they intend taking over.

When they land the airport police discover their weapons. The mercenaries then take over another plane by force and oblige the pilot to fly them to an airport specified by them.

Questions:

1. Is this a non-international armed conflict?
2. If the mercenaries had been taken prisoner could they claim to be treated as prisoners of war?
3. Does humanitarian law deal with the question of mercenaries?
4. How does the law regard the action taken by the mercenaries?

54. RELIEF OPERATION IMPEDED

The situation:

In an internal conflict, the ICRC has been granted permission to give protection and assistance to the civilian population in the combat zone.

Your National Society seconds you to the ICRC as an assistant.

Led by an ICRC delegate, a convoy of two jeeps, three lorries, thirty national first-aiders and yourself has to take medicines and food from local Red Cross headquarters to a place four hours' drive away, for which the parties are fighting. Your vehicle breaks down. Once it is repaired you try to catch up with the convoy.

You are stopped at a road block. Your colleague from the sister Society acts as interpreter. An officer asks you whether you would mind taking a group of soldiers as far as the next road block. You refuse. At the next road block the same thing happens. When you reach your destination you find the other vehicles waiting for you.

Two thousand people have to be given relief supplies and 170 casualties suffering from fractures and gunshot wounds have to be given medical attention. You do not start your return journey until nightfall.

Questions:

1. Are the armed forces entitled to check on you?
2. Are you under any obligation to give the soldiers a lift?
3. Must there be any verification of the people to whom the food is to be distributed?
4. Must the wounded be subjected to checking?
5. Why is it dangerous to drive back by night?

QUESTIONS

55. TREATMENT WITHOUT DISCRIMINATION

56. SEPARATED FAMILIES/FAMILY MESSAGES

BIBLIOGRAPHY

IHL pp. 351-363
Basic pp. 101-106
IHL II pp. 401-422

55. TREATMENT WITHOUT DISCRIMINATION

The situation:

An internal armed conflict has broken out.

You and the other members of a team of volunteers from the National Red Cross Society are in a village controlled by dissident forces who have no medical unit available.

The officer commanding these highly disciplined dissident forces requests you to attend to and care for the wounded, but in the following order: dissidents, civilians, government soldiers.

Your safety and protection are fully guaranteed.

Questions:

1. Are you betraying the legal government of your country if you help dissidents, bearing in mind that the government has officially recognized your unit?
2. What guidelines should you follow?

56. SEPARATED FAMILIES/FAMILY MESSAGES

The situation:

An armed conflict between two ethnic groups living in an island State divides it into two parts. There are members of each ethnic group in both parts. Many families are broken up, for communications between the two parts of the island are cut.

The ICRC undertakes to transmit news between members of families separated in this way.

Questions:

1. What activity will the ICRC be engaged in on either side of the *de facto* frontier?
2. Which of the four Conventions, and which provisions of them, form the legal basis for this kind of activity?

PART IV COMMENTS AND ANSWERS

QUESTION 1: THE PRINCIPLE OF HUMANITY

Comments:

Among the 450 articles of the Geneva Conventions, only Article 3 common to the four Conventions applies as a matter of principle to civil wars or non-international armed conflict, but it is developed and supplemented by the 28 articles of P II of 1977.

The conditions for the application of P II are that there must be “organized armed groups” under “responsible command”, which control a part of the territory and carry out sustained and concerted military operations. In the situation described these conditions appear to be present.

The “dissidents” are in any event bound by C IV, Art. 3, paragraph (2), which clearly states that the wounded and sick shall be collected and cared for, and by Art. 3, paragraph (1), common to all four Conventions, which states that adversaries who are *hors de combat* shall not be killed.

The declaration by the authorities commanding the group that they will respect the basic provisions of the Geneva Conventions answers the explicit invitation to do so contained in Art. 3 (2), subpara. 3, common to all four Conventions.

The following principles belong to the basic provisions of the Conventions:

- the principle of humanity must be respected in all circumstances, even if the enemy infringes it (C I-IV, Art. 1);
- reprisals against protected persons (C I, Art. 46; C II, Art. 16; C III, Art. 13, para. 3; C IV, Art. 33, para. 3) are illegal;
- prisoners of war are in the hands of the enemy Power, but not of individuals or military units who have captured them (C III, Art. 12, para. 1);
- unless he is a volunteer, no prisoner of war may be employed to remove mines or similar devices (C III, Art. 52, paras. 1 and 3).

Answer:

The commander must spare his prisoner's life and care for him as best as he can, protect him from ill-treatment by his comrades in arms, not use him to carry out dangerous or humiliating work and evacuate him as soon as possible to a place of safety and hand him over to his superiors. If he cannot fulfil these obligations he must set him free on the spot, provided this does not endanger the prisoner's life.

QUESTION 2: "ARMED PROTECTION"/THE PRINCIPLE OF NEUTRALITY

Comments:

The provisions relating to non-international armed conflict in the Conventions of 1949 are insufficient (Art. 3 common to C I-IV).

Only one paragraph in the 28 articles of Protocol II of 1977 deals with relief actions for the civilian population (P II, Art. 18, para. 2). Relief actions must be "exclusively humanitarian" and "impartial", conducted without any adverse distinction and undertaken subject to the consent of the Contracting Party "concerned".

All that is required is the consent of the Contracting Party. There is no mention of that of the dissident armed forces. However, it is unimaginable that anything should be attempted without the consent of the dissident forces in the areas they control, or in the "contact zones" as in the present case (P II, Art. 1, para. 1). Art. 3, para. 3, of C I-IV, which states that special agreements are necessary, therefore still applies. The ICRC cannot impose its relief actions on the parties involved.

In 1977 respect for the emblem in non-international armed conflicts and prohibition of its improper use became principles of written law (P II, Art. 12).

The trust of all parties concerned is indispensable for the ICRC. That trust is based on respect for the protective emblem, ICRC readiness to engage in dialogue, and the search for common ground for agreement. This is binding on all parties, independently of each other. This does not, however, remove danger from relief actions; there is no such thing as absolute protection in armed conflicts; international humanitarian law is not a life insurance policy! In practice the danger is increased by nearby fighting and military objectives.

Answers:

1. After realistic assessment of the situation the ICRC should make sure that the above-mentioned conditions are being respected and thereafter rely on the rules of humanitarian law.
2. No, the offer to provide an armed escort must be politely but firmly refused.
3. The refusal must be explained by saying that the Red Cross does its work without weapons, that one of its fundamental principles is its neutrality, that it cannot place itself under the protection of one of the parties to a conflict, and that the only effect of an armed escort would be to provoke a violent reaction by the other party; and that misunderstandings could aggravate distrust and danger.
4. This whole approach is based on the principles of neutrality and independence.

**QUESTION 3: INTERNATIONAL ARMED CONFLICT/
MURDER OF PRISONERS/REPRISALS**

Comments:

The Geneva Conventions must be respected in all circumstances (C I-IV, Art. 1), and reprisals against protected persons and property are prohibited. *This provision is designed to curb the escalation of violence in war that leads to inhuman acts and barbarity.*

Only members of the armed forces, with the exception of religious and medical personnel (C I and II, Art. 13; C III, Art. 4) are entitled to take a direct part in hostilities (H.IV.R, Art. 1; P I, Art. 43, (para. 2).

Civilian persons are not entitled to take part in military operations (H.IV.R, Art. 1) and are consequently not entitled to the protection of Conventions I-III (C IV, Art. 4, para. 4).

Murder, bodily injury etc. are penal offences.

It is not stated whether the pilot making a forced landing had any opportunity to surrender (see P I, Arts. 42, para. 2, and 85, para. 3(e)), but this seems unlikely. He was not under any legal obligation to surrender to civilians.

The pamphlets threaten the civilian population and its property. Such threats are prohibited as being measures of terrorism (C IV, Art. 33, para. 1; P I, Art. 51, para. 2).

Answers:

1. The civilian population was not entitled to kill the pilot even if he would not lay down his arms. Art. 4 A (6) of C III is not relevant to this case.
2. The reprisals with which the pamphlet threatens the civilian population and civilian property are prohibited (C IV, Art. 33; P I, Art. 51, para. 6, and Art. 52, para. 1).
3. Yes, because any threat, even if illegal and unjustified, has to be taken seriously. This applies to hospitals, whether or not they bear the protective emblem (C IV, Art. 18, para. 1 (for field hospitals), and C I, Art. 19).
4. The following measures may be taken to avoid the threatened escalation of violence:

Under C IV, Art. 146, para. 2, the State concerned will undertake to search for the persons responsible for murdering the pilot, punish them severely and take steps to prevent any repetition of such occurrences (C IV, Art. 146, para. 3).

An enquiry into a violation of international law must be instituted in a manner to be decided between the interested parties (C IV, Art. 149), through the intermediary of the Protecting Power, if any (C IV, Art. 9, para. 1).

The ICRC remains entitled to carry out humanitarian activities even where there are Protecting Powers and in addition to their activities (C IV, Arts. 10, 30, and 143, para. 5). Representations must be made at diplomatic level.

As a result of these threats consideration should be given to evacuating the field hospital in good time, even though the conditions mentioned in C IV, Art. 19, para. 1, are not present.

It would probably be unwise to make use of the mass media to draw attention to the situation, as this could easily cause both sides to harden their attitudes.

5. The action intended by the enemy air force is a war crime (P I, Art. 85). The best thing to do would be to inform the International Fact-Finding Commission (P I, Art. 90), which would carry out an enquiry on the spot and make recommendations. Unfortunately, only the Powers that expressly recognize this Commission as competent are bound to accept its findings, and there have been few declarations of recognition so far (see P I, Art. 90, and Commentaries on the Protocols).

QUESTION 4: PRISONERS OF WAR/REPRISALS

Comments:

Since 1949 the Third Convention's rules for protection, which are complementary to Section 2 of the H.IV.R (C III, Art. 135) have been applicable to prisoners of war.

The principle is that prisoners of war must be humanely treated (H.IV.R, Art. 4, para. 2; C III, Art. 13). These provisions also state that any unlawful act causing the death of prisoners of war is prohibited and would be regarded as a grave breach of the Convention. (For "grave breaches" see C III, Art. 130).

If the above-mentioned parachutists are, as the Ministry of Foreign Affairs implies, regular soldiers openly bearing arms and wearing uniform they are prisoners of war and are therefore protected. In any event, sanctions against them may be taken only by the courts. At the place of capture they must all be treated as prisoners of war.

It is not possible to determine who gave the information that these men were murdered after capture. The report may be true or it may be propaganda.

Under Art. 6, paras. 1, 2 and 4 of the Statutes of the International Red Cross and Art. 4, paras. 1(c) and 1(d) of its own Statutes, both of which are internationally accepted, the ICRC is recognized as a neutral and impartial organization and is therefore entitled to supervise situations involving humanitarian law. This role of custodian of the Law of Geneva is confirmed by C III, Art. 9 and Art. 126, para. 4.

The weakness of the enquiry procedure prescribed in the Convention (C III, Art. 132) lies in the need for the parties concerned to agree on it, the long-drawn-out procedure for tackling urgent problems, and finally the lack of results in the cases that have arisen (it remains to be seen whether P I, Art. 90, headed "International Fact-Finding Commission", will give better results).

It is not the function of the ICRC to act as a judge.

The enquiry procedure is the first stage of a lawsuit and the resulting litigation does nothing to help the victims.

Experience has therefore led the ICRC to adopt "rules" to be observed in the event of breaches of humanitarian law (*International Review of the Red Cross*, March-April 1981, p. 76: "Action by the ICRC in the event of breaches of international humanitarian law"; see also IRRC offprint).

Besides following formal enquiry procedures the ICRC can take action without endangering its overall mission - delegates on the spot may have reliable and verifiable sources of information.

The conclusion will be reached either that a violation took place or did not take place, or that it will be possible to put an end to it or prevent it. In making such enquiries the ICRC will take proper precautions to rule out any danger that the findings of the enquiry are used for political purposes (the third fundamental principle of the Red Cross is neutrality).

As the President of the ICRC said at the press conference of April 1979, "Our only obligations are to those who suffer, not to those who cause their suffering".

In spite of the very clear provisions of C III, Arts. 13, para. 3 (prohibition of reprisals), 101 (a time lapse of six months' before execution of the death penalty) and 121 (enquiry into the death of prisoners of war), allegations that the Conventions have been violated must be investigated at once to avoid unforeseeable and possibly prohibited reactions.

Answers:

1. He must get the authorities to grant time for representations to be made to the adverse Party through ICRC headquarters in Geneva.
2. Murder of prisoners of war is a grave breach of the Conventions.
Even if the accusation proves to be correct, this would not justify reprisals. Reprisals, too, are a grave breach of the Conventions.
3. There is little likelihood while the conflict lasts of any agreement on the subject of an commission of enquiry. Nevertheless the facts may be confirmed by trustworthy witnesses, and this will lead to pressure on the guilty Power, that will probably oblige it to cease such violations and possibly to prosecute those guilty of them.

QUESTION 5: OCCUPYING POWER/SECURITY/ REPRISALS

Comments:

The persons concerned are civilians in an armed conflict between Contracting Parties. The point at issue is the penal sanctions taken by the Occupying Power (C IV, Art. 64 ff.).

Under C IV, Art. 71, no sentence shall be pronounced except after regular trial. This means that no penalty may be imposed except pursuant to a conviction pronounced by a court (C IV, Art. 71; P I, Art. 75, para. 4). In the case under consideration there has been a breach of C IV, Arts. 33 and 147, relating to unlawful deportation and destruction of property.

Articles 49 and 53 of C IV forbid sanctions of the kind taken by the Occupying Power.

Acts of destruction are lawful only if rendered absolutely necessary by military operations.

In its definition of a military objective, Protocol I uses the phrase “definite military advantage”. But in this case the acts of destruction give no such advantage and they are not rendered absolutely necessary by military operations.

Answers:

1. The sanction is out of all proportion to the offence and must be considered as illegal revenge. You can draw the attention of the Occupying Power to C IV, Arts. 146, para. 2, and 147, in whatever way is most suitable — and you will need *moral courage* to do so!
2. All breaches of the “law of war” are punishable.
3. You may also approach the Protecting Power or the ICRC (C IV, Art. 30, para. 1). In the armed forces, breaches must be reported to the competent authorities (P I, Art. 87).

QUESTION 6: INTERNATIONAL ARMED CONFLICT/MURDER OF PRISONERS AND REPRISALS

Comments:

The perpetrators of the bomb explosion are not involved in a non-international armed conflict, for no such conflict as defined by C I-IV, Art. 3, para. 1, or by P II, is taking place in the country.

These are isolated acts of violence, and their perpetrators cannot claim combatant status (P II, Art. 1, para. 2).

Governments have the right and duty to maintain public order by all legitimate means.

Two different things must be examined:

- a) the bomb explosion and the consequences for its perpetrators
- b) the attack carried out by the first countries' air forces.

Answers:

1. Air attack is an activity that under C I-IV, Art. 2, leads to the application of the Geneva Conventions even where there is no declaration of war.
2. The terms in which the aggressor refers to his act (for example as a police operation or reprisals) are irrelevant.
The duration of the armed attack is also unimportant in this context.
No one can evade these humanitarian obligations.
3. Military operations (defined in P I, Art. 49, para. 1, as acts of violence whether in offence or in defence) may be directed only against military objectives.
Attacks on the civilian population or civilian property are prohibited by P I, Arts. 51 and 52. The attack on the factory and crèche and the death of civilians are all violations of that provision (as well as of C IV, Art. 33, para. 3).
It is not stated whether civilian objects were used for military purposes (see P I, Art. 52, para. 3). But in any case, reprisals directed against civilians are forbidden (C IV, Art. 33, para. 3, and P I, Art. 51, para. 6).
Under Additional Protocol I, which reflects the opinion of the international community, this attack is prohibited and even criminal (P I, Art. 51, para. 4) if it was not carried out against a specific military objective, but was an "indiscriminate attack".

QUESTION 7: EQUAL TREATMENT OF THE SICK

Comments:

There can be prisoners of war only in armed conflicts between States (C III).

The unit commander's reference to "his prisoners of war" is open to criticism; prisoners of war are prisoners of the enemy Power (C III, Art. 12, para. 1).

It is not clear whether the two sides are Parties to the Conventions. There are four possibilities:

- both are Contracting Parties;
- one is a Contracting Party and the other has agreed to apply the Conventions;
- one is a Contracting Party and the other is not yet a Contracting Party;
- neither is a Contracting Party.

Since, on the one hand ratification or accession, and on the other hand acceptance and application, entail the same consequences (C III, Art. 2, paras. 1 and 3), the first two cases have to be treated alike and call for one and the same reply.

Prisoners of war must be protected; wounded and sick in enemy hands must be protected, respected and humanely treated (C III, Art. 13, C I, Arts. 12 and 14).

The wounded in the hospital have lost the protection of their own Power and therefore become protected persons within the meaning of the Conventions. The fact that members of the armed forces are being nursed in a civilian hospital (C IV, Art. 19, para. 2) is not exceptional.

The Additional Protocols of 1977 place civilian and military establishments on an equal footing (P I, Art. 8(e)).

Under C I, Art. 12, para. 2, the wounded or sick, whether friends or enemies, must be cared for without distinction; only urgent medical reasons will authorize any distinction in or priority of treatment (C I, Art. 12, para 3, the principle of which was reaffirmed in 1977 by P I, Art. 15, para. 3); it is also prohibited to deprive them wilfully of care and medical assistance.

These provisions are binding on both the chief physician and the unit commander.

C III, Art. 30, para. 2, allows prisoners of war to be admitted to either military or civilian medical units.

In the present case there are two categories of wounded: those who can be moved and those who cannot be moved; humanity and the above-mentioned provisions require the latter category to be given priority. The order to evacuate all enemy wounded is therefore illegal, and this is what has to be explained to the commander (see 1977 P I, Art. 82, and Art. 16, para. 1).

The latter two possibilities also require a single answer. As a general rule a Convention does not create any rights or obligations until ratification of or accession to it (Art. 34 of the 1969 Vienna Convention on the Law of Treaties). However, the provisions of a Convention are sometimes recognized as “customary rules of international law”, in which case nothing precludes them from becoming binding even on non-signatories (see Art. 38 of the Vienna Convention). The principles of the Geneva Conventions belong to international customary law, which may be said to be derived from established custom, the principles of humanity and the dictates of public conscience (see the Martens clause of 1907, reaffirmed in 1977 by P I, Art. 1, para. 2, and P II, Preamble consideration 4).

Under customary law, States are bound as subjects of international law.

Modern opinion tends to believe that a supranational humanitarian law has grown up parallel to inter-State and national law, and that both in peacetime and in time of war it is directly binding on individuals and groups of persons; it originates in the common conscience of all human beings, and may be described as mandatory.

In non-international armed conflict, Article 3 common to C I-IV is binding not only for representatives of the State but also for representatives of the opposing Party.

hors de combat must in all circumstances be humanely treated and cared for, without any adverse distinction between governmental or rebel combatants, friends or enemies, nationals or aliens, rank-and-file or officers.

Violence to life, even by omission, is prohibited at all times (C III, Art. 3, para. 1(a)). The wounded must be cared for.

Pictet’s Commentary III states that this clause expresses a categorical obligation which cannot be restricted and needs no interpretation (see 1977 P II, Art. 7, para. 2, and Commentary, C III, Art. 3, sub-para. 2, p. 41 *in fine*).

N.B.: The opinions expressed in these comments are the author’s and do not necessarily represent those of the ICRC.

Answer:

The unit commander's order to evacuate the wounded is illegal, whether the conflict is international or non-international.

QUESTION 8: REPATRIATION OF NEUTRAL MEDICAL UNITS

Comments:

A Party to a conflict which, after having duly recognized and authorized voluntary aid societies of its own country, places medical units of those societies upon the same footing as its military medical personnel, must formally notify the adverse Party that it has done so.

Notification must be likewise be given if medical units from another State are also authorized to give help.

Neutral States, too, are interested in the protection of their nationals working in the aid societies and are responsible for the aid they send. They must therefore notify this assistance to the adversary of the Party receiving it (C I, Art. 27, para. 2).

Humanitarian assistance of this kind shall not be considered as an interference in the armed conflict.

The identity card referred to in C I, Art. 27, para. 4, must be issued by the neutral country, and stamped by the authorities of the belligerent country.

The medical personnel and the members of the aid society of the belligerent State may be retained by the adverse Party if they fall into its hands (C I, Art. 28, para. 1).

Answers:

Article 32, para. 1, of C I applies to the personnel of the neutral country's field hospital.

They can continue to work under the direction of the adverse Party, but only pending their repatriation.

The said personnel are entitled to take their personal effects with them when they leave.

The real and personal (immovable and movable) property of aid societies shall be regarded as private property (C I, Art. 34, para. 1).

The material and buildings that are not private property may be seized, requisitioned or confiscated provided that they continue to be reserved for the care of the wounded and sick, for at least as long as necessary (C I, Art. 33; H.IV.R, Art. 53).

The field hospital is private property and must therefore be given back. Retention of the hospital beyond the emergency period may not be ordered, for such an order is contrary to C I, Art. 28, para. 1, and Art. 34, para. 2.

**QUESTION 9: THE RIGHT TO KEEP SILENT/
WAR CRIME**

Comments:

The first point is that the armed conflict is an international one (C I-IV, Art. 2; P I).

Occupied territories are the subject of C IV, Arts. 47-78.

It is not known why the village was destroyed.

Under C IV, Art. 53, and P I, Art. 54, its destruction would have been justified only if rendered absolutely necessary by military operations and if it was a military objective (P I, Art. 52).

This necessity is often pleaded as an excuse.

The village, being civilian property, was already entitled to protection under H.IV.R, Arts. 23g and 25, long before P I, Art. 52, para. 1.

If the destruction of the village is deemed to be a grave breach of international humanitarian law (C IV, Arts. 146 and 147), particularly in view of the loss of life among the civilian population (C IV, Art. 27; P I, Art. 51), it is subject to penal sanctions (a war crime).

Answers:

1. Only the Contracting Parties (States) are under the obligation to search for war criminals (C IV, Art. 146, para. 2).

The obligation to lay information on crimes committed does not normally exist in national law.

The Red Cross is not a judge, and as a witness it may invoke its obligation of confidentiality. Pictet states in his Red Cross Principles 1956, p. 73, that one cannot “be at one and the same time a champion of legal justice and of charity”.

This principle also applies to the assistant nurse (see P I, Art. 16), who is a member of the medical profession and can therefore, like a doctor, refuse on the grounds of medical ethics to testify as a witness.

Any act that may harm a patient must be avoided.

2. The nurse’s duty to protect the persons she looks after is incompatible with reprisals or passing on information that has come to her notice in the course of her work.
3. Whether other persons know the facts is irrelevant.
4. She is not only required by medical ethics to keep her knowledge to herself, but also has the right to do so as set out in P I, Art. 16.

QUESTION 10: COMBAT ZONE/RESCUE OF WOUNDED

Comments:

The conflict is an international armed conflict covered by C I-IV, Art. 2, and P I. The situation described relates to the combat zone (C IV, Arts. 15, 16, 20, para. 2; P I, Art. 33, para. 4).

This medical aid unit does not enjoy the protection granted by the Geneva Conventions of 1949, but that granted by P I, Art. 8(c) (ii) and 8(e). It is neither a Red Cross unit under C I, Art. 26, nor medical personnel under C IV, Art. 20, nor a civil defence unit (P I, Art. 8(c) (i)).

The members of the unit also enjoy the protection granted to civilian persons.

In principle they are entitled to wear the Red Cross armlet, subject to the consent and under the supervision of the competent authority (P I, Art. 18, para. 4), i.e. the local military authority, who may not object thereto without good cause (security reasons).

Answers:

1. The intervention is permissible (C I, Art. 18; C IV, Art. 16, para. 2; P I, Art. 15). P I, Art. 17, extends the possibilities of intervention and clearly states that protection must be granted.
2. Military medical staff and the staff of duly authorized aid societies are competent to collect, transport and care for wounded or sick soldiers (C I, Arts. 24 and 26; P I, Arts. 15 and 8(e)).

Hospital staff, too, are competent as regards the civilian population (C IV, Art. 20, para. 1). This category of persons is also entitled to protection by medical personnel of civil defence organizations (P I, Arts. 61(a), 8(a), 8(c) and 8(e)). But compare P I, Art. 13, para. 2(d), and C IV, Art. 19, para. 2.

3. In view of the provisions enumerated in para. 1 above, the head of the unit should be recommended to contact the local military commander or health officer, for care has to be taken to ensure that auxiliaries are given such protection as the circumstances require.

QUESTION 11: TERRITORY OF A SOVEREIGN STATE/MEDICAL AUTHORITIES

Comments:

In this case domestic and international law overlap.

In a conflict between States party to the Geneva Conventions, the four Conventions apply. So does P I if it has been ratified. The Fourth Convention applies from the outset of an occupation (C IV, Art. 6, para. 1).

This case concerns the whole national territory of a Party to the conflict (C IV, Arts. 35 ff.), not merely an occupied zone or a combat zone.

The Fourth Convention applies to all persons to whom Conventions I to III do not apply and who are not nationals of the country (C IV, Art. 4, para. 4).

Health services exist to serve the whole population, not only nationals of the country. In so far as the Fourth Convention does not provide additional safeguards, foreigners must enjoy the same treatment as in peacetime. Mothers of children under seven years are entitled to preferential treatment (C IV, Art. 38, para. 5).

The health service in question is responsible for providing consultations for mothers and infants, consisting largely in elementary advice on child care.

To get help quickly, the women can apply to the National Red Cross Society, to the ICRC delegate or to the Protecting Power (C IV, Art. 30, para. 1).

Persons of enemy nationality may also be compelled to perform some kinds of work if they are on the territory of the adverse Party, for example health work (C IV, Art. 40, para. 2, and Art. 51, para. 2). Any administrative compulsion would stem from national law.

Health service offices do not qualify as “medical units” (P I, Art. 8(e)) authorized to use the distinctive emblem (P I, Art. 18, para. 1).

If Protocol I has been ratified, each State must decide for itself whether health service offices come under the general clause of P I, Art. 61(a) (xv), and whether they may therefore display the international distinctive sign of civil defence (P I, Art. 66).

Answers:

1. Yes, for foreign doctors must accept the obligation to work in their profession even if the administrative procedure detailed above is not used (see comments).
2. No, for internment can be ordered only for security reasons (C IV, Art. 42) and, under the procedure laid down in C IV, Art. 43, is subject to immediate reconsideration and possible amendment. But administrative sanctions are possible.
3. No, neither the Geneva Conventions of 1949 nor the 1977 Protocol I authorize the health service offices to display the distinctive emblem of the red cross (see also C I, Art. 44).
4. No, for to exclude the women from such services is contrary both to internal and international law and is a violation of human rights. Furthermore, reprisals are forbidden (C IV, Art. 33, para. 3, and P I, Art. 20).
5. No, there are several channels of appeal: the women have a choice of state legal channels or the means provided for by international law, which probably take effect more quickly (representations at diplomatic level).

QUESTION 12: NAVAL WARFARE/MILITARY HOSPITAL SHIPS

Comments:

The Second Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea of August 12, 1949 is applicable.

Hospital ships (C II, Art. 22 ff.) and ships chartered to transport medical material (C II, Art. 38) play a prominent part in this Convention.

By intervening in the combat zone the captain of the hospital ship was acting at his own risk and peril (C II, Art. 30, para. 4).

It was not possible for the nationals of the other Party to the conflict to exercise the right of control provided for in C II, Art. 31, para. 1.

No mention is made in this case of neutral observers (for example ICRC delegates) on board (C II, Art. 31, para. 4).

Under C II, Art. 34, the protection to which hospital ships are entitled may cease if they are used to commit acts outside their humanitarian duties, but only after due warning.

Such acts shall not be deemed to include acts that are purely “war propaganda” (directed for example at the enemy) and the situations enumerated in Art. 35, of which para. 5 (on the simultaneous use of hospital ships to transport medical personnel and equipment) should be given special consideration with reference to the situation in question (see also Art. 38 - equipment and medical personnel landed after a bridgehead has been established).

C II, Art. 53, provides for an extremely cumbersome enquiry procedure. No Party can be absolved from responsibility (C II, Art. 52), and denunciation of the Convention (C II, Art. 62, para. 3) during an armed conflict may not take effect until peace has been concluded.

Answers:

1. The relevant Convention and provisions are C II, Art. 34.
2. The truth can be established by neutral advisers and by an enquiry procedure.
3. A belligerent that is a Contracting Party to the Geneva Conventions may not divest itself of or avoid the responsibilities imposed by that Convention on the grounds that the other Party does not respect them.

QUESTION 13: HOSPITAL SHIP/INSTRUCTIONS

Comments:

The Falkland Islands (Malvinas) conflict took place from April to July 1982. Argentina ratified the Conventions in 1956 and Great Britain in 1957.

The geographical area in which military operations may be conducted comprises the territory of the belligerent States and, provided they are not part of the territory of neutral States, the high seas and air space.

The part of that area in which military operations actually take place is the “theatre of operations” (or contact zones in the terms of P I, Art. 26). At sea, blockade zones, forbidden zones and combat zones make up the theatre of operations. If a whole part of the seas is declared a forbidden zone ships may in principle be sunk there without prior warning.

A zone for hospital ships is an area of the seas exempted from classification as a forbidden zone. Hospital ships may in no circumstances be attacked (C II, Art. 22, para. 1).

Answers:

1. C II, C III and P I are applicable.
2. In forbidden zones the movements of hospital ships must conform to the instructions of the belligerent Parties (C II, Art. 31, para. 1).
3. In naval warfare the duty of the task force is to exercise the right to capture enemy ships (the captor in the 1907 Hague Convention No X). Mail, coastal fishing vessels and vessels on humanitarian missions are exempt from capture. Hospital ships may therefore not be attacked or captured (C II, Art. 22, para. 1) but may be controlled and searched to verify their character (C II, Art. 31, para. 1). This is one of the duties of the task force. It was accordingly entitled to board the hospital ship.
4. The takeover of wounded at sea should if necessary be regulated by special agreements (C II, Arts. 6 and 16), according to circumstances.
5. P I, Arts. 9, 22 and 23, supplements the Second Convention by extending to civilians and to other medical craft the protection already given to shipwrecked members of the armed forces and to hospital ships.

QUESTION 14: OCCUPIED TERRITORY/MISUSE OF THE EMBLEM

Comments:

In an armed conflict between contracting Parties the legal status of civilian hospitals and hospital personnel is regulated by C IV, Arts. 18 ff.

The armband, identity card and staff list entry are requirements laid down by the Convention (C IV, Art. 20, paras. 2 and 4).

The distinction drawn between persons “solely” and “regularly” engaged in the operation of the hospital and “other personnel” engaged in the operation of the hospital is in accordance with C IV, Art. 20, paras. 1 and 2 (see also C I, Arts. 24 and 25).

Article 150, para. 1, of C IV states that the English and French texts of the Convention are equally authentic. In C IV, Art. 20, paras. 2 and 3, those texts use the following phrases: “carrying out their duties” for “*en service*” (para. 2), and “employed on such duties” for “*pendant l'exercice de ses fonctions*” (para. 3). According to page 168 of Pictet's Commentary IV, para. 3 should probably have read “only while actually carrying out hospital duties either inside the hospital or outside it”.

Accordingly the permanent staff, but not the non-permanent staff, are considered to be carrying out their duties when travelling between their homes and workplace.

As is clear from C IV, Art. 21, it is illegal to use the emblem to mark the private car.

Answers:

1. The confiscation of the part-time doctor's armband and of the car so as to avoid misuse of the emblem is in accordance with the Convention.
2. The confiscation of the identity card is not in accordance with the Convention, for it was not being improperly used. You should ask for the identity card and armband to be returned and try to obtain the release of the car, which the doctors certainly need for their journeys. Its impoundment is a very severe penalty for their misuse of the emblem, which was probably due to ignorance of the regulations.

QUESTION 15: INTERNATIONAL LAW/ NATIONAL LAW

Comments:

The provisions relating to the protective emblem are contained in C I, Art. 38. As civilian and military medical units are placed on the same footing, reference must be made to P I, Art. 18.

The use of the red cross sign by any unauthorized person is expressly prohibited (C I, Art. 44). The prohibition also applies to imitations.

Answers:

1. No, under C I, Arts. 53 and 54, the Contracting Parties are under the obligation of ordering protective measures. The purpose of C I, Art. 53, is not to introduce a direct national law, for Art. 54 expressly envisages implementary legislation. This also applies to States that directly apply public international law in their internal law.
2. States are required to implement the legislative or regulatory measures necessary to give effect to the provisions of the Conventions protecting the emblem against abuse.
3. In terms of protection against misuse, signs and designations constituting imitations must be treated in the same way. This applies equally for the red cross and the red crescent.

Protection against misuse of the protective emblem dates back to 1906 and protection against imitations to 1929.

Red crosses are still permissible in coats of arms of municipalities, and in an ecclesiastical context.

In 1949, the red shield of David (the medical service emblem in Israel) was not accepted.

In August 1980, Iran dropped the emblem of the red lion and sun and adopted the red crescent emblem.

By October 1987, 120 of the 145 National Societies recognized by the ICRC and members of the League had adopted the red cross, and 24 the red crescent. One (USSR) had adopted both emblems.

QUESTION 16: PROTECTIVE EMBLEM AND CAMOUFLAGE

Comments:

A dressing station is a mobile medical unit of the medical service, and may in no circumstances be attacked (C I, Art. 19, para. 1).

Conversely the armed forces' supplies depot makes an effective contribution to military action and its destruction offers a definite military advantage. It is therefore a military objective and may be attacked (P I, Art. 52, para. 2).

Attacks on military objectives may not endanger protected objects, but these must be situated in such a manner that attacks against military objectives cannot imperil their safety (C I, Art. 19, para. 2; C IV, Art. 18, para. 5). These principles are confirmed by P I, Art. 58. Medical units must be identifiable (P I, Art. 18: the protective emblem, distinctive signals); but it is for the military authorities to decide whether to display the emblem (C I, Art. 42, para. 1; P I, Art. 18, para. 4).

Answers:

1. The dressing station is a military medical unit. Therefore C I and P I are jointly applicable (P I, Art. 8(e)).
2. The proximity of the military supplies depot places the dressing station in great danger.
3. Military and civilian medical units must if possible use only the emblem (C I, Art. 42, para. 4; P I, Art. 18, para. 4) and refrain from camouflage, which may cause them to be taken for combatant units.
4. If the dressing station is hit during an attack on the nearby military objective, a grave breach as defined in C I, Art. 50, is not committed, for that attack is lawful and is not a wilful, unlawful and wanton act not justified by military necessity.
5. P I confirms and clarifies the concepts that have been in force since 1949.

Had the Law of Geneva been properly known and respected (C I, Art. 47; P I, Art. 83), the described situation endangering the protection granted to medical units and establishments would never have arisen.

QUESTION 17: RUSES OF WAR/ACTS OF PERFIDY

Comments:

This is an international armed conflict, for only in a conflict of this kind can there be occupied zones. An internal armed conflict takes place only within the borders of a State (cf. C I-IV, Art. 2).

All four Conventions, and Additional Protocol I, are therefore applicable.

The 1949 Conventions place Red Cross auxiliary units on the same footing as military medical personnel (C I, Art. 26), provided those units are subject to military laws and regulations. This is not the case here; consequently the auxiliaries benefit by the protection granted to civilian persons.

Only since 1977 (P I, Art. 8(c) (ii)), have civilian medical personnel been protected equally with military medical personnel.

The Additional Protocols of 1977 develop the 1949 law in so far as aid societies are unconditionally permitted, even on their own initiative, to collect and care for the wounded (P I, Art. 17, para. 1). The special permission formerly required (under C I, Art. 18, para. 2) to do this is no longer necessary. A great measure of trust is therefore placed in national aid societies. But the white flag — if possible of large size — bearing the emblem of the red cross or red crescent may not be displayed except with the agreement of the competent authorities. This rule was not modified in 1977 (C I, Art. 39, P I, Art. 18, para. 4).

In the situation described above, Red Cross members are asked by a soldier of their own country to misuse the protective emblem of the Geneva Convention (H.IV.R, Art. 23f). Article 37, para. 1, of P I lists feigned incapacitation in order to continue fighting as an act of perfidy. This is a grave breach of the Protocols (P I, Art. 85, para. 3(f)).

Any such breach endangers the entire humanitarian structure of this part of international law, for the mandates of the Red Cross and medical personnel are founded on respect for international humanitarian law.

As far back as 1907 (H.IV.R, Art. 24) ruses of war were permitted, but not acts of perfidy.

Answers:

1. The wounded man's requests are unacceptable. To comply with them would be to destroy the trust that is essential to Red Cross work.
2. In doing its work the Red Cross observes the principles of 1965* (in this case impartiality and neutrality).
3. The request must be firmly refused. In accordance with the principles of independence and neutrality, the Red Cross may not take part in the fighting in any way, even indirectly.
4. The unit of Red Cross auxiliaries must continue to come to the aid of genuine victims, giving priority to the most urgent cases of distress (as required by the principles of humanity and impartiality).

* The 20th International Conference of the Red Cross (Vienna, 1965) proclaimed the Fundamental Principles on which Red Cross activities are based.

QUESTION 18: SUSPENSION OF HOSTILITIES (TRUCE) AND PERFIDY

Comments:

It takes two to make a quarrel, but only one to produce a state of war.

A declaration of war as defined by the 1907 Hague Convention No. III (which has not acquired the status of international, universal and mandatory custom) is a unilateral expression of will addressed by one State to another. It is subject to acceptance but may be refused.

Partly as a result of the condemnation of war by the Briand-Kellog Pact of 1928 and the Charter of the United Nations (1945), modern wars start without a declaration of war, solely at the will of one of the Parties. Hostilities open with the first shot fired or the first move of an invasion.

Even if one of the Parties does not recognize the state of war, the Conventions and Protocol I must be respected and applied in all circumstances (C I-IV-, Art. 1 and Art. 2, para. 1; P I, Art. 3(a)).

The soldier ordered to protect the unit did not behave properly; he should have disarmed the wounded soldier immediately (see the Henry Dunant Institute's offprint *The Law of War and the Armed Forces* p. 27, and *Rules for Behaviour in Combat*, p. 3).

It is not stated whether the Red Cross medical unit is subject to C I, Art. 26, or to P I, Art. 8(c), (civil defence). Under the First Convention, auxiliaries not subject to military laws and regulations are not authorized to wear the white armband bearing the protective emblem (C I, Art. 40, para. 1).

Answers:

1. It does not matter that the state of war has not been recognized. Provided that hostilities exist, the Conventions are applicable.
2. A truce is an agreement for the suspension of hostilities for a specified time and at a specified place. It is generally used to evacuate the wounded (C I, Art. 15, para. 2). It should not be confused with an armistice, which is wider in scope and is often a preliminary to the end of hostilities (H.IV.R, Arts. 3641).
3. The members of the Red Cross unit have civilian status. Even under C I, Art. 26, the unit would not become part of the military medical services, but only be *placed on the same footing*. Article 8(c) of P I does the same for civil defence organizations (but the term used is *assignments*).
4. The enemy soldier has violated the truce and has ceased to behave like a person *hors de combat*. Military action may be taken against him (H.IV.R, Art. 40 in this sense and P I, Art. 41, para. 2). He has infringed the prohibition of resort to perfidy (H.IV.R Art. 23, para. 1b). Under the pretext of being slightly wounded he has pretended to be *hors de combat* (here P I, Art. 37, para. 1b applies). He is punishable for this breach of the law.
5. Articles 35 ff. of P I take up and develop the provisions of H.IV.R Arts. 22 ff. P I, Art. 37, defines perfidy and gives examples of it; also by means of examples it differentiates it from ruses of war. Acts of hostility and attempted escape, for example, suspend the protection to which a wounded person is entitled.

NB.: The opinions expressed are the author's and do not necessarily represent those of the ICRC.

QUESTION 19: OBLIGATION TO WORK

Comments:

This is an international armed conflict (C I-IV, Art. 2; P I, Art. 1, para. 3). As soon as combatants fall into enemy hands the Geneva Convention relative to the treatment of prisoners of war is applicable to them (C III, Art. 5, para. 1). The rights conferred by this Convention are inalienable (C III, Arts. 7, 6, 130). Prisoners of war must be humanely treated (C III, Art. 13). Article 16, C III, contains the principle of equality of treatment.

Articles 49 to 57 deal with work by prisoners of war. Prisoners of war may not be compelled to do work of a military character (C III, Art. 50).

However, they may volunteer for dangerous work (C III, Art. 52, para. 1). Evacuating a munitions depot must be regarded as dangerous work. Provided the living conditions of the prisoners of war are in conformity with Arts. 25 to 28 of C III, it is not an unacceptable form of pressure to promise them better treatment (better food, or freedom of movement) (see Pictet, Commentary on Art. 51, para. 1 of C III).

In another context, Additional Protocol I stipulates that for consent to be regarded as free, no coercion or inducement must be used (P I, Art. 11, para. 3). If these conditions are fulfilled there is no violation of the Law of Geneva (C III, Art. 130).

The prisoners have however infringed their obligations towards their own country, which forbid any military co-operation with the enemy.

Answers:

1. It is not contrary to the Law of Geneva to use prisoners of war for dangerous work if the prisoners volunteer for it.
2. By volunteering the prisoners renounce the protection conferred on them by the Conventions.
3. In this particular case the promises are not an unacceptable form of pressure but merely express an intention to recompense the prisoners' voluntary work.

QUESTION 20: RELIGIOUS ASSISTANCE

Comments:

War takes place between States and not between individuals (C III, Art. 12, para. 1).

Courts of law continue to function in occupied territory (C IV, Art. 64; H.IV.R, Art. 43).

The Diplomatic Conference explicitly prescribed only that penal law should remain in force. This is because it had not been sufficiently observed in previous conflicts. However, there is no reason to infer *a contrario* that the occupying authorities are not also bound to respect the civil law of the country, or even its constitution.

Pictet's Commentary IV, p. 335, states that the continuity of the legal system applies to the whole of the law in the occupied territory.

Answers:

1. Yes. The provisions for the protection of prisoners of war are contained in the Third Convention of 1949. The question of religious services for prisoners of war is dealt with in Art. 34.

When prisoners of war do not have the assistance of a retained chaplain or of a prisoner-of-war minister of their faith, they may ask for a minister of their faith to be appointed from outside to give them religious assistance (C III, Art. 37).

2. Under C III, Art. 35, chaplains shall be granted the necessary facilities to exercise their ministry (passive protection) and shall be protected (active protection). They shall not be regarded as prisoners of war, but may be retained in the same way as medical personnel. See C III, Art. 33, para. 1.

Auxiliary religious personnel (sacristans, deacons, etc.) are not placed on the same footing as chaplains.

Prisoners of war who are ministers of religion without having officiated as chaplains to their own forces shall be at liberty to minister freely to the members of their religious community (C III, Art. 36).

For this purpose they shall receive the same treatment as chaplains, but shall still be prisoners of war although enjoying certain prerogatives.

A minister from outside the camp shall be appointed provided the prisoners of war, the Detaining Power and, if necessary, the religious authorities of that faith so agree.

3. The term “religious personnel” (chaplains) is now defined in P I, Art. 8(d) (persons attached either to the armed forces, or medical units or civil defence organizations).

They are in duty bound to observe disciplinary and security regulations and professional responsibility, and to refrain from any hostile act.

In return for establishing relations of trust by such conduct, chaplains shall be allowed to exercise their ministry, use transport facilities, conduct correspondence; and visit all groups of prisoners inside and outside the camp (C III, Art. 35).

QUESTION 21: ESPIONAGE

Comments:

Spies caught in the act may not be punished without previous trial (H.IV.R, Art. 30).

If they are not caught in the act but are made prisoners later, they acquire the status of protected persons (H.IV.R, Art. 31, C III, Art. 13).

The Third Convention makes no mention of spies.

Relations between C III and H.IV.R of 1907 are based on Art. 135 of C III, which is complementary to H.IV.R.

Article 31, H.IV.R, indicates that the fact of being captured in the act is decisive.

The provisions of P I, Art. 46, para. 4 are to the same effect.

Answers:

1. You are going to base your defence on the above provisions. Your client must be acquitted! (See also C III, Art. 91, para. 2)).
2. The argument put forward by the counsel for the prosecution is not determinative.

Substantial breaches of a treaty generally entitle the other party to withdraw from it, but no such right exists here since the Conventions are humanitarian ones.

In any event, their denunciation requires a political decision by the government, and has no effect during the conflict (C III, Art. 142).

3. In this context it would be a reprisal to apply the *rebus sic stantibus* clause, and reprisals against prisoners of war are forbidden (C III, Art. 13).

QUESTION 22: UNITED NATIONS CONTINGENT AND THE LAW OF GENEVA

Comments:

Art. 2, paragraph 7, of the Charter of the UN forbids the UN to interfere in a country's internal affairs. In UN practice this prohibition also generally applies to non-international armed conflicts.

The armed conflict in question must therefore be between two States (N.B. It can also be between two parts of a divided State, one of whose parts attacks the other so as to restore national unity, as happened in Korea).

The UN has no armed forces of its own. Member States place armed national contingents at its disposal (as in Korea, Lebanon, Sinai, the Golan heights, Congo, etc.), sometimes at the request of a State that feels that it is threatened by another Power and has insufficient means of defence.

The Security Council authorizes the use of the UN flag together with that of the State supplying a contingent (see P I, Art. 38, para. 2, and Art. 39, para. 2).

Although a judgment rendered by the International Court of Justice in The Hague in 1949 declared that the UN had a legal personality under international law — and was therefore able to conclude agreements with States — it has not so far adhered to Geneva Conventions.

The member States retain their juridical capacity, and the contingents that they supply remain under their responsibility. This also applies to the declaration of acceptance in accordance with C I-IV, Art. 2, para. 3.

Answer:

The Geneva Conventions must be respected in all circumstances by all the contingents and by their adversaries (C I-IV, Art. 1).

The States that supply the contingents and are party to the Conventions are no less responsible than individuals for applying the Conventions (C III, Art. 12, para. 1).

Ill-treatment and coercion are inhumane acts violating C III, Arts. 13 and 17, para. 4, and are grave breaches as defined by C III, Arts. 129 and 130. No argument can possibly justify the methods of interrogation used. They are absolutely contrary to any humanitarian regulation in any circumstances whatsoever, whether in peace or war and whatever the place or victim.

QUESTION 23: NEUTRAL DETAINING POWER

Comments:

The USSR has been bound by the four Geneva Conventions since 1949, and Afghanistan since 1957. Resolution IV of the International Conference of the Red Cross in Manila in 1981 made no pronouncement as to the nature of this armed conflict and expressed regret that the ICRC was not allowed to visit the prisoners in accordance with the Conventions.

According to the Kabul Government, Arts. 2 and 3 of C I-IV were not applicable to the situation in Afghanistan (ICRC Annual Report 1981). The USSR referred the ICRC to the Kabul authorities. The (dissident) opposition had not formed a government in Afghanistan (there were several dissident movements). In those circumstances the Third Convention was considered to be applicable.

Thus the differing political opinions of the Western and Eastern blocks became less important (International Review of the Red Cross, 1982, No. 229, p. 234). Irrespective of whether C III applied by analogy or Art. 3, para. 3, of C I-IV was applicable, the agreement of the Detaining Power (the resistance movements), together with that of the country of origin (USSR) and the neutral country (Switzerland) was necessary to “transfer” the captured Soviet soldiers, who were protected by C III, Art. 3, para. 1(1), or C III, Art. 13, para. 2). To this extent the ICRC was acting only as a neutral intermediary (in accordance with its right to offer its services).

When prisoners of war are transferred, the Power accepting them is responsible for them while they are in its custody (C III, Art. 12, para.2).

This applies also to escape and to the matter of when escape shall be deemed to have succeeded (H.IV.R, Art. 8, para. 2; C III, Art. 91, para. 2). The 1949 regulations are more flexible than those of 1907. Henceforth all depends on the Detaining Power, and no longer on the Power that has captured the prisoners (C III, Art. 92, para. 3)! The FRG was not allied with any of the belligerent states in Afghanistan. As soon as the escapee had entered the territory of the FRG his escape would have been deemed to have succeeded and he was not liable to punishment for it (C III, Art. 91, para. 1 (2)).

Answers:

1. The classification of the armed conflict in Afghanistan lies between C I-IV, Art. 2, para. 2 and C I-IV, Art. 3 (see International Review of the Red Cross 1982 No. 230 p. 263).
Switzerland did not become a Party to the conflict by consenting, as a neutral State, to undertake humanitarian tasks.
2. The Soviet soldiers came to Switzerland under a special agreement.
3. The FRG would have been under no obligation either to extradite or to intern the soldier.

QUESTION 24: DEATH SENTENCE

Comments:

The corporal is a soldier in a conflict between Contracting Parties. He therefore has combatant status and is not protected in battle (H.IV.R, Art. 1, para. 1). On being captured, however, he becomes a protected person in accordance with C III, Art. 5, para. 1; Art. 12; para. 1; and Art. 13, para. 1.

In the event of legal proceedings Arts. 99 ff. of C III are applicable.

The national courts must decide on the basis of their own competence whether the death sentence and its execution were in accordance with the Law of Geneva (see C III, Art. 84 and Art. 87, para. 1).

The necessary guarantees are stated in C III, Art. 84, para. 2.

Rights and means of defence are dealt with in C III, Art. 105.

The appointment of an advocate or counsel for the defence must be in the following order: choice by the prisoner of war, choice by the Protecting Power and, failing such choice, appointment by the Detaining Power.

Only one advocate or counsel for the defence was assigned for all four accused, although their respective interests may have conflicted.

A defending advocate or counsel bound by instructions cannot put up a defence upholding the rights of the accused.

Furthermore, the right to a fair defence is a human right (Universal Declaration of Human Rights, Art. 10). Wilfully depriving a prisoner of war of the rights of fair and regular trial is a grave breach of international law (C III, Art. 130).

Answers:

1. No, the trial was not in accordance with the Law of Geneva.
2. The lawsuit brought by the widow and her son may well succeed, for no Party may absolve itself or any other Party of its responsibilities (C III, Art. 131).

QUESTION 25: RELEASE OF PRISONERS OF WAR

Comments:

In the event of war between two or more States the four Geneva Conventions and Additional Protocol I are applicable and must be applied in all circumstances (C I-IV, Arts. 1 and 2), provided that the belligerent States are party to the agreements of 1949 and 1977.

The Third Geneva Convention relates to the treatment of prisoners of war. Any combatant who falls into enemy hands must be considered as a prisoner of war (C III, Art. 4(2); P I, Arts 44, 43).

Combatants are regarded as being all persons belonging to organized armed forces under the command of a Party to the conflict, whether such forces are the army or militias or volunteer corps conforming to the following conditions: (C III, Art. 4A; P I).

- a) that of being commanded by a person responsible for his subordinates;
- b) that of having a fixed distinctive sign recognizable at a distance when they are taking part in an attack or a military operation preparatory to an attack;
- c) that of carrying arms openly during military operations;
- d) that of conducting their operations in accordance with the laws and customs of war.

Article 118, para. 1, of C III stipulates that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

It is important to note that to determine the date on which hostilities are deemed to have ceased, the term “cessation of active hostilities” is used to mean a situation rather than a legal one.

Under P I, Art. 85, para. 4b, any unjustifiable delay in the repatriation of prisoners of war is a grave breach of the Protocol.

When several States are involved in a conflict, it may be difficult to decide which is responsible for the repatriation plan and its execution. The question whether prisoners of war who refuse to be repatriated should be repatriated or not may cause difficulties. So may the question whether these prisoners are able to take their decision freely without any influence or constraint being brought to bear on them.

Answers:

1. The ICRC has pointed out to the Party concerned its obligations under the Conventions. That Party then declared that hostilities had not ceased and called for peace to be concluded. The ICRC continued to visit the prisoners of war until they were actually repatriated.
2. Protection continues until the final release of prisoners takes place (C III, Art. 5, para. 1; Art. 126, para. 4); ICRC delegates visit the prisoners, distribute relief materials, transmit family messages and interview without witnesses the prisoners' representatives and the prisoners themselves (C III, Arts. 79, 81, 75, 125 and 126).

QUESTION 26: EARLY REPATRIATION OF PRISONERS OF WAR

Comments:

There was an armed international conflict between Iran and Iraq from 1980 to 1988.

The state of war having led to the severance of bilateral diplomatic relations, each country's diplomatic staff left after appointing a Protecting Power. Peacetime law, covering traffic on land, sea and air, was no longer applicable.

The four Geneva Conventions of 1949 had been binding on Iraq since 1956 and on Iran since 1957.

Under the Third Convention (Art. 9) the ICRC accordingly had the right to undertake humanitarian activities and to set up a Central Prisoners of War Information Agency (C III, Art. 123), to have free access to prisoner-of-war camps (C III, Art. 126), to organize the dispatch of relief supplies and material (C III, Art. 125), to co-operate with prisoners' representatives (C III, Art. 81), and to act as a substitute for the Protecting Power (C III, Art. 10, para. 3); under C IV, Arts. 10, 11,

140, 30, 142, 143, 108, 109 and 104, provision is made for similar tasks in aid of civilian internees. All this is confirmed by P I, Art. 81.

The ICRC, not Cyprus, acts as *de facto* Protecting Power in this conflict.

Answers:

1. The purpose of the mandate is protection. The mandate as a whole is conferred by the international community in agreements and resolutions (see the Geneva Conventions of 1949, the Additional Protocols of 1977, and Art. 4, para. 1, of the ICRC Statutes of 1977, Art. 6, para. 5 of the Statutes of the International Red Cross) and more specifically in e.g. C I, Art. 10, para. 3, and C IV, Art. 11, para. 3.
2. This was not a one-for-one exchange but repatriation of persons chosen as being in particular distress (C III, Art. 109, and C IV, Art. 132, para. 2).
3. Repatriation becomes possible immediately after the cessation of active hostilities (C III, Art. 118, para. 1, and C IV, Art. 133, para. 1). It does not have to wait until peace has been concluded.

After the cessation of active hostilities all prisoners of war and civilian internees must be released and repatriated.

4. P I, Arts. 41, para. 3, and 85, para. 4(b), confirms, in essence, the regulations in the Third and Fourth Conventions.
5. Cyprus had been bound by the Geneva Conventions of 1949 since 1962 and was a neutral State in the conflict between Iraq and Iran. Neutral States having diplomatic relations with belligerent States were appropriate transit points for travel between those States.

**QUESTION 27: CIVIL DEFENCE/
PROTECTED ZONES**

Comments:

In an international armed conflict the four Geneva Conventions of 1949 are applicable together with P I of 1977, provided that it has been ratified by the Parties concerned or reaffirms customary law.

Article 58(c) of P I requires the Occupying Power to take all the necessary precautions to protect the civilian population under its control “to the maximum extent feasible”.

Answers:

1. Depending on the military situation, it may not be absolutely necessary to establish an undefended locality or demilitarised zone, or to build shelters (P I, Arts. 59, 60 and 61(a) (iii)).

Evacuation from the besieged town, and the establishment of a small hospital zone or safety zone (C IV, Arts. 14 and 17) are measures that need not be carried out if only a few persons are endangered.

Of all the measures provided for by the Conventions, the one that might still be considered is the establishment of a neutralized zone under C IV, Art. 15. Such zones have often proved their value in the past. However, the mayor must be aware (C IV, Art. 144) of this possibility so that the appropriate steps may be taken.

2. To establish a neutralized zone (which can be small) the mayor must contact the ICRC delegate, the local Red Cross section and the personnel qualified to facilitate application of the Conventions (P I, Art. 6). He must also contact the officer commanding the besieged garrison and ask him to raise the matter direct with his counterpart in the besieging forces (H.IV.R, Art. 32) either directly or by radio, or by civilian messenger, or via the ICRC, etc.
3. It should be possible to shelter from the effects of war all the wounded and sick who are *hors de combat* and all civilian persons not taking part in hostilities (C IV, Art. 15, para. 1(a) and (b)). Consequently the Occupying Power may also give shelter there to its own sick and wounded.
4. P I, in Arts. 48-79, greatly improves protection of the civilian population. The provisions of the Protocol that are valid under customary law have already been pointed out.

The attack by the liberating forces requires a number of precautions to be taken, especially in the way in which the attack is conducted (P I, Art. 57). They will be all the more ready to take these precautions since the civilian population are of the same nationality as themselves.

QUESTION 28: DISTINCTION BETWEEN COMBATANTS AND NON-COMBATANTS

Comments:

Until 1977 wars of liberation were not considered as international conflicts (C I-IV, Art. 3). Since Additional Protocol I, they are classed as international armed conflicts and C I-IV are therefore all fully applicable.

P I, Art. 48, ruling that Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives, merely confirms a basic principle of the law of armed conflicts.

All the acts enumerated in the description of the situation are grave breaches (C IV, Art. 147; P I, Art. 85).

Answers:

1. The protection of non-combatants is based on C IV, Art. 3, para. 1; P I, Arts. 48 and 51; and P II, Art. 13.
2. The obligation to respect non-combatants, not to use force against them and to protect them (active aid) must be known. Consequently, the above rules must be made known and disseminated in all circumstances (C IV, Art. 144; P I, Art. 83; P II, Art. 19; and C I-IV, Art. 1.

QUESTION 29: TERRITORY OF A SOVEREIGN STATE/FIRE BRIGADE

Comments:

Under C I-IV, Art. 2, all four Conventions and Protocol I (which, if not ratified, only reaffirms customary law, but when ratified also develops it in greater detail) are applicable in this conflict.

It must be noted that the fire did not break out in the contact zone (combat zone) (P I, Art. 26, para. 2) or in occupied territory (H.IV.R, Art. 42). The fire prevention laws normally state that fire-fighting is a matter for the fire brigade.

Fire brigades are generally civilian organizations and as such enjoy the protection granted to the civilian population (P I, Art. 51, paras. 1, 2 and 3). They may not be attacked and are entitled to protection. To date, they form part of the special organizations of a non-military character that ensure the living conditions of the civilian population by organizing rescues (C IV, Art. 63, para. 2).

Fire-fighting is part of the duties of civil defence (P-I, Art. 61(a)(vii); under P I, Art. 61(b), fire brigades are civil defence organizations and must accordingly be respected and protected (Art. 62, para. 1) and be identifiable by an equilateral blue triangle on an orange ground (P I, Art. 66, para. 4). They are not however shielded from damage resulting from attacks on nearby military objectives (P I, Art. 51, para. 5b and Art. 57, para. 2). The protection to which the firemen are entitled shall cease if they are used to commit acts harmful to the enemy (P I, Art. 65). This legal principle is not recent (H.IV.R, Art. 27, para. 1) but has merely been reaffirmed. In any event, protection ceases whenever firemen take a direct part in hostilities (P I, Art. 51, para. 3, and Art. 65).

Overlapping of civilian and military administration can give rise to disputed marginal (almost combatant) activities.

Nowadays war has become so industrial and technical that as for instance industrial workers or non-military employees of transport services, the civilian population are increasingly engaged in and associated with the preparation and maintenance of war material, side by side with the armed forces. As a result the civilian population can no longer be defined except (non-member of the armed forces) (C III, Art. 4A, sections 4 and 5 = C I, Art. 13, sections 4 and 5; P I, Art. 50, para. 1).

Answers:

1. Local military administration headquarters are a military objective.

The fire brigade should put out the fire, accept the aid offered and rescue the wounded soldiers. This does not deprive them of their protection.

Fire fighting to protect civilian property is not an activity harmful to the enemy (P I, Art. 65).

Accepting the aid of the army does not compromise the protection granted to the fire brigade, for the fire brigade is not taking part in a military operation. On the contrary, the army is taking part in a civil defence task (P I, Art. 65, para. 2b).

By laying down the rule that all victims of fighting must be helped, the Law of Geneva has enabled the international principle of humanity to be put into effect.

2. A munitions factory is a military objective. The question whether such a fire is being put out to preserve the war potential and is therefore a direct or indirect act of participation in hostilities is problematic, as to perform non-humanitarian tasks may entail loss of protection (P I, Arts. 61(a), 62 and 52).

In this case there is no indication of improper use of protective installations and material. Furthermore, the civil defence personnel are giving no direct or indirect support to military operations, and putting out the fire does no harm to the enemy (P I, Art. 61, para. 1). Although the task in this particular case does not directly protect the civilian population (P I, Art. 61(a) (i), defining civil defence) this is a borderline case that justifies the intervention of the fire brigade as in point 1 above.

3. The considerations set out under point 1 are valid. The victims of the road accident must be rescued (principle of humanity) (91 P I, Art. 65, para. 2(c)).

However, the fire brigade is not entitled to use the fire engine to take soldiers to battle or cause them to be taken to battle (see misuse of the distinctive sign, P I, Art. 66, para. 8) for this would be taking an active and direct part in the fight against the parachutists.

4. Railway lines are of vital military importance and are therefore military objectives (see in this respect the 1954 Hague Convention for the Protection of Cultural Property, Art. 8, para. 1a). So are petrochemical products. Storing kerosene for use in mili-

tary operations gives a direct and definite military advantage. This, therefore, is not a borderline case in which action or inaction by the fire brigade could equally be justified.

On the other hand a leakage of kerosene is a serious and large-scale danger to the water supply and the environment. Once Additional Protocol I is ratified, it expressly protects drinking water and the natural environment (P I, Arts. 54 and 55).

Under P I, Art. 54, para. 3(b), an adverse Party may not take military action to reduce an already insufficient water supply. This is a generally applicable legal principle. Consequently, in the hypothetical case described the fire brigade has some latitude in deciding what to do.

When the fire brigade goes into action its commander must be careful not to expose its members to the dangers of further attacks. Moreover, as members of a civil defence organization firemen must always be trustworthy both within and outside their community. They have to be trusted by their fellow citizens (P I, Art. 62, para. 2) and by the enemy (P I, Art. 65). The connotation given to civil defence rules out violence against the enemy, even for defensive purposes (P I, Arts. 61 and 65).

QUESTION 30: SITING OF BUILDINGS/ MILITARY OBJECTIVES

Comments:

No armed conflict, whether international or internal, is in progress. Nevertheless the Law of Geneva provides for measures to be taken in peacetime (e.g. C IV, Arts. 2, 14 and 144; P I, Arts. 6, 60, 66, and 83, all of which are applicable even before any situation of armed conflict arises).

Accordingly this is not, strictly speaking, a matter of preparing for war, but of taking rational legal and political steps to limit the evils to which persons and property are exposed in time of war (see also C IV, Annex I, Art. 7, para. 1).

Military objectives such as the headquarters of a military administrative service attract and are therefore a danger to their surroundings.

Article 8, para. 5, of the Hague Convention of May 14, 1954 for the Protection of Cultural Property in the Event of Armed Conflict provides that in the event of war a Contracting Party may undertake not to make use of military objectives, so as not to endanger the special protection granted in special conditions to cultural property of very great importance (Regulations for the Execution of the Convention, Arts. 12 to 15).

The headquarters of the Health Service and the other buildings mentioned are civilian property.

Accordingly, only P I, in particular Art. 52, but also Art. 58 on general protection, is applicable in this case, as the conditions necessary for application of C IV, Art. 18, para. 1, on the protection of civilian hospitals are not fulfilled. Article 18, para. 5, of C IV (recommending that hospitals be situated away from military objectives) is therefore not directly applicable.

The legal principle on which this provision is based (see also C IV, Art. 28) is that protected persons and property must be kept as far away as possible from military objectives (combatants, weapons, equipment, and military installations). These principles appear in H.IV.R, Art. 27. In 1977 they were reaffirmed by P I, Art. 58, recommending that civilians and civilian property should be removed from the vicinity of military objectives and that such objectives should not be located in or near densely populated areas.

The provisions of 1977 (P I, Art. 8(e)) do not authorize the Health Service to use the distinctive emblem (P I, Art. 18, para. 4). In any event, civilian property may not be used to shield military objectives (C IV, Art. 28; P I, Art. 51, para. 7).

Answers:

1. The experts' opinion is correct (P I, Art. 6) and could be confirmed by any legal adviser in the armed forces (P I, Art. 82).

The arguments of the military administrative service are not conclusive, for Second World War experience led to the adoption of new provisions in 1949 and 1977.

2. The qualified personnel have the mandate, under the Conventions (P I, Art. 6, para. 1), of facilitating the application of the Law of Geneva and the activities of the Protecting Powers. Their mandate includes the peaceful task of advising the authorities and trying to reconcile the Law of Geneva with the internal state law.
3. If it is in the interests of the individuals or population groups at risk, and if private talks fail, it might perhaps be advisable, in accordance with the above-mentioned guidelines, to put the question to public opinion.

The qualified personnel do not act in this way to win public favour. Their job is to ensure that the authorities respect and carry out the obligations they have undertaken.

QUESTION 31: CIVILIAN HOSPITALS/ REQUISITION

Comments:

This is an international armed conflict between Parties bound by the Conventions. Articles 47 ff. of C IV are applicable.

The hospital is civilian property (P I, Art. 52 ff.). It is a principle of the Conventions that hospitals must be respected and protected, and may be requisitioned only on certain conditions (C IV, Art. 57; P I, Arts. 8 and 14).

The Occupying Power has the duty to ensure and maintain the medical and hospital establishments and services in occupied territory (C IV, Art. 56).

C IV, Art. 57, sets out exceptions to the principle that hospitals may not be requisitioned.

Answers:

1. The requisition is legal.
2. The compulsion to work is permissible under C IV, Art. 51, para. 2.
3. Nothing can be done, but requisition is not the same as expropriation. The corporation is still the proprietor of the hospital (see H.IV.R, Art. 52). Destruction and appropriation (see C IV, Art. 33, para. 2) of property (C IV, Art. 53) are breaches of the Convention (C IV, Arts. 146 and 147).
4. You should negotiate with the competent medical officer of the Occupying Power to ensure that the needs of the civilian population continue to be met (C IV, Art. 57, para. 1), as the Occupying Power is responsible for the well-being of the civilian population of occupied territory and for enabling it to lead as far as possible a normal life.

Under Protocol I, Art. 14, requisition may continue only for so long as it is necessary for the adequate and immediate medical treatment of the wounded and sick members of the Occupying Power. Immediate arrangements must be made to ensure that the medical needs of the civilian population continue to be satisfied.

QUESTION 32: PILLAGE/EMERGENCY ACTION

Comments:

The Geneva Conventions are applicable even if war has not been declared (C I-IV, Art. 2.).

Civilian hospitals are the subject of C IV, Art. 18-20.

In occupied territory the Occupying Power has the duty of ensuring and maintaining the hospital establishments and services for the civilian population (C IV, Art. 56, para. 1).

Civilian persons are protected persons (C IV, Art. 4, para. 1).

Particular protection must be given to the sick (C IV, Art. 16, para. 1).

Articles 48-51 of P I confirm the respect and protection due to the civilian population (see also P I, Arts. 8(a) and 10 for the sick), whilst P I, Art. 50, defines the terms “civilian population” and “civilians”.

The soldier commits a grave breach of the Law of Geneva (C IV, Art. 147). He cannot be prevented from doing so because the Occupying Power (in this case, its military police), which should protect the patients (not only passively; it must also actively protect the sick and wounded) cannot be reached.

In cases such as this international law permits self-defence. The authorities’ monopoly on the use of force is temporarily substituted by the individual use of force (C I, Art. 22(1)).

Consequently the doctor has not committed a hostile act prohibited by his status as a doctor and has not contravened his humanitarian mission.

Answers:

1. Even although it is questionable whether it was necessary to strike a mortal blow, the defender appointed on the basis of C IV, Art. 72, para. 2, can demand that the prosecution be suspended, that the charge be dismissed, and that his client be released from detention and set free.

The defender should also plead legitimate self-defence and could also point to the parallel provision in C I, Art. 22(1).

2. There can be no question of closing the hospital, because reprisals are prohibited and the hospital is essential to the civilian population. The defender should therefore not be intimidated by threats of reprisal.

QUESTION 33: REUNITING OF DISPERSED FAMILIES/FAMILY NEWS

Comments:

The conflict is an international armed conflict within the meaning of C I-IV, Art. 2.

The state of war puts an end to friendly relations between the two countries. Postal communications are part of the services rendered by States to each other in peacetime.

In both World Wars the ICRC set up a special service for the transmission of *civilian messages*, as part of the Central Agency for Prisoners of War.

The legal basis for this activity is now Art. 140 of the Fourth Convention.

Answers:

1. Although the closure of frontiers interrupts all relations between belligerents, C IV, Art. 25, para. 2, provides for the transmission of family messages, which includes the right to send and receive such news.

This correspondence must be forwarded speedily and without undue delay, but not necessarily by air mail. Censorship must be done quickly.

Should the belligerent States have difficulty in fulfilling these obligations, under C IV, Art. 25, para. 2, they may apply to a neutral intermediary.

That intermediary — see C IV, Art. 140, on the Central Information Agency for protected persons, which in 1960 became the Central Tracing Agency of the ICRC (P I, Art. 33, para. 3) — must, in consultation with the competent transport and censorship organizations of the Parties to the conflict, decide how to ensure that their obligations are fulfilled in the best possible conditions (speed and safety).

Therefore the Red Cross cannot in fact take the place of the Post Office (Universal Postal Union 1874, 1878, 1964 and 1979). It may however deliver and receive family messages where the postal services are not, or are no longer, working.

2. The local Red Cross administration will transmit the letter to the official National Information Bureau (C IV, Art. 136), or to Red Cross headquarters, which will send it on by the most appropriate channels, i.e. via the ICRC Central Tracing Agency in Geneva.
3. Any person, regardless of nationality, may invoke C IV, Art. 25. The same applies to “own nationals”.
4. It is not for the Red Cross, but for the censorship authorities of the States concerned, to verify the strictly personal character of news. This correspondence does not enjoy the exemption from postal dues granted to prisoners of war and civilian internees (C III, Art. 74; and C IV, Art. 110) and must therefore be stamped.

QUESTION 34: POLITICAL REFUGEES AND “ENEMY ALIENS”

Comments:

An armed conflict between two States fulfils the conditions for application of Art. 2 common to all four Geneva Conventions.

Refugees are not nationals of the State of refuge. They are protected persons in the terms of C IV, Art. 4, para. 1. However, the sole duty of the Protecting Powers is to safeguard the interests of the Parties to the conflict (IV, Art. 9, para. 1).

Since precisely that is the mandate of the Protecting Power designated by the Party from which the refugees have fled, and since their country of origin shows no interest in them, they cannot hope for any protection from that Power.

Therein lies the difference between the Protecting Power’s activities and the humanitarian activities of the ICRC (C IV, Art. 10, and Art. 143, para. 5). In the situation described the ICRC delegates are the refugees’ last hope.

The country of refuge regards the refugees as “enemy aliens”, even if they do not support their own government’s policy, and although Art. 44 of C IV states that in applying the measures of control the detaining Powers shall not treat them as enemy aliens exclusively on the basis of their nationality of an enemy State.

The relevant Convention and articles are: Fourth Convention, Part III, Arts. 27-34 (the most vital of the provisions for the protection of civilians) and 35-46. Part III of the Fourth Convention applies because the condition stated in its Art. 6, para. 1, is fulfilled.

Yet Article 5, para. 1, of C IV reflects wartime mistrust of aliens, since the suspicion of being engaged in any activity endangering State security suffices to justify restriction of measures of protection. But in that case P I, Art. 75, is applicable, if the Protocol has been ratified.

Aliens must be treated in accordance with the principle that the provisions concerning aliens in time of peace shall apply to them (C IV, Art. 38, para. 1).

However, the Parties may take such measures of control and security as may be necessary (C IV, Art. 27, para. 4), of which the most severe are assigned residence or internment (C IV, Art. 41). These measures may be ordered only if they are absolutely necessary (C IV, Art. 42, para. 1). They may not be taken against refugees exclusively on the basis of their nationality (C IV, Art. 44).

C IV, Art. 43, para. 1 provides for review of the latter two measures, in order to avoid abuses on the grounds of “necessity” and “security”.

On the subject of C IV, Art. 42, Pictet states:

“A belligerent may intern people or place them in assigned residence if it has serious and legitimate reason to think that they are members of organizations whose object is to cause disturbances, or that they may seriously prejudice its security by other means, such as sabotage or espionage; the provisions of Article 5 of the present Convention may also be applied in such cases. On the other hand, the mere fact that a person is a subject of an enemy Power cannot be considered as threatening the security of the country where he is living; it is not therefore a valid reason for interning him or placing him in assigned residence. To justify recourse to such measures the State must have good reason to think that the person concerned, by his activities, knowledge or qualifications, represents a real threat to its present or future security.”⁽¹⁾

(Commentary, IV, p. 258)

On the subject of C IV, Art. 44 relating to refugees, Pictet states:

“Various belligerent countries introduced laws exempting such persons from measures taken against enemy aliens. This course was, for example, adopted in certain English-speaking countries where the number for refugees was particularly high. The countries in question entrusted the consideration of individual cases to special tribunals set up in different parts of the country; their task was to establish a clear distinction between enemy aliens (“real enemies”) and refugees who originally came from an enemy country (“friendly enemies”). The latter enjoyed a status which was appreciably more favourable than that possessed by the former. (Ibid., p. 263). In the absence of more detailed rules, which it did not appear either possible or advisable to lay down, it is to be hoped that belligerents will apply this Article in the broadest humanitarian spirit, in order that the maximum use may be of the resources it offers for the protection of refugees.” (Ibid., p. 265)

Furthermore P I, Art. 73, extends the scope of C IV, Art. 4, to stateless persons and refugees who before the outbreak of hostilities are considered as such by international agreements (Convention on the Legal Status of Refugees of 28 July 1951), Arts. 1-8, and its Protocol of 1967), or by the national legislation of the State of refuge or residence (right of asylum).

⁽¹⁾ “The fact that a man is of military age should not necessarily be considered as justifying the application of these measures, unless there is a danger of him being able to join the enemy armed forces”.

Answer:

You should therefore advise them to take their case to the court or administrative board mentioned in C IV, Art. 43 (pleading that law, security and order are not in danger, and that freedom of opinion is guaranteed), or alternatively to leave the country for a third State, or apply for the aid mentioned in C IV, Art. 30.

QUESTION 35: ALIEN CHILDREN

Comments:

In principle, any persons caught by an armed conflict involving their country, whilst they are on the territory of the adverse Party, are entitled to leave that territory (C IV, Art. 35, para. 1).

However, the right to leave the country may be refused for security reasons, for example to men of military age. The decision must be considered by an administrative court.

In practice, flight is often a reasonable decision, but dangerous.

C IV, Art. 4, protects enemy aliens, including stateless persons in the territory of a Party to the conflict. Since 1949 such persons have no longer been subject to automatic internment (C IV, Art. 42).

The Youth Bureau may be the competent service, even for children of foreign nationality. Suleika has been suddenly deprived of her parents' protection, and the Youth Bureau must therefore see to her physical, mental and moral well-being (C IV, Art. 24).

As it is not immediately possible for her to rejoin her parents, and it is equally impossible to get in touch with them, it is urgently necessary to get the tutelary authority to appoint a tutor.

1. Since 1938 the ICRC has been trying to introduce a Convention for the protection of children (pursuant to the International Conference of the Red Cross, London 1938, Resolution XIII, Protection of Women and Children). That intention was superseded to some extent by the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war (see C IV, Arts 24, 38, 82, 89 and 132, and, as from 1977, P I, Arts. 73, 74, 76-78, and P II, Art. 4, para 3).
2. It is the responsibility of the Parties to the conflict (C I-IV, Art. 1) to respect and apply the Conventions, and therefore Art. 24, para. 2

of C IV). In this connection Pictet writes (on page 188 of Commentary IV):

“However well organized child welfare measures may be, they will never be able to protect the children completely from all the various privations suffered by the population of a belligerent country.

Paragraph 2 therefore makes provision for a more effective measure: it recommends that Parties to the conflict should facilitate arrangements for accommodating children in neutral countries”.

On the subject of these two guarantees Pictet continues:

“The reason why the consent of the Protecting Powers is required is to prevent children of enemy nationals from being evacuated for ideological reasons and sent to countries from which they may never come back. Children must only be evacuated for strictly humanitarian reasons.” (Ibid)

Furthermore the host country must be able to fulfil the conditions set out in C IV, Art. 24. This means that children in the neutral State will have better living conditions than in the detaining State. The neutral State does not necessarily have to be a party to the Conventions.

Answer:

Because of the child’s language, the tutelary authority will have to choose a person of the same cultural background. This could lead to insurmountable difficulties! Preferably, the child should be transferred to a neutral country, where it should be easier to find persons able to educate her in her mother tongue. The Protecting Power, and especially the ICRC, can help in this respect.

QUESTION 36: WORK IN THE CAMPS

Comments:

The Fourth Geneva of 1949 is applicable to civilian persons in occupied territory. The key article of the Convention is Art. 27.

Supervisory or security measures may be taken with regard to protected persons (C IV, Art. 27, para. 4). The most severe measures the Occupying Powers may take are internment or assignment to forced residence (C IV, Art. 78, para. 1); the need for such measures must be reviewed every six months (C IV, Art. 78, paras. 2 and 4).

Answers:

1. The provisions relating to internment are stated in C IV, Arts. 79 ff. Internees are entitled to be informed about them in their own language; either by their being posted up in the camp (C IV, Art. 99, para. 2), or by their being made available on application to the Internees' Committee (C IV, Art. 102).

2. Yes, the Detaining Power may oblige internees to perform certain work, including work for their protection against aerial bombardment (C IV, Art. 95, para. 3), for it is the duty of the Detaining Power to take protective measures of this kind (C IV, Art. 88).

Whether internment camps are indicated by the letters IC (*internés civils*) depends on military considerations (C IV, Art. 83). Such marking does not relieve the Detaining Power of the duty to build shelters.

It is allowable to threaten and impose disciplinary punishments (C IV, Art. 119) for refusal to carry out required work that is in accordance with the Fourth Convention, for such refusal is a disciplinary offence.

For the procedure regarding disciplinary punishments see C IV, Art. 123, and Pictet p. 491 (adaptation of C III, Art. 96, para. 4, provisions applicable to prisoners of war).

3. If working conditions are not in accordance with the laws of the occupied territory or are inferior to those applied in the same district, the internees may exercise their right of complaint.

They may also address complaints to the Protecting Power (C IV, Art. 101, para. 2) or to the ICRC (C IV, Art. 143, para. 5; see also Art. 30).

Yes, people may be physically unsuited for work they are not used to. Whether they are so unsuited must be decided by a doctor (C IV, Art. 95, para. 3).

QUESTION 37: POLITICAL PRISONERS

Comments:

Legal advisers have important duties in international humanitarian law (P I, Art. 6 — Qualified persons, and Art. 82 — Legal advisers in armed forces). Internment camps are not, however, obliged to have legal advisers available.

It is a basic rule of the Law of Geneva that it must be applied without any adverse distinction based on political opinion (P I, Art. 75, para. 1, and C IV, Art. 27). State security is not endangered unless opinions are “translated into action” (see Pictet on Art. 5, para. 1, in Commentary IV, p. 56). prejudicial to the State.

Among the protected persons interned in camps under C IV, Art. 42, there may be “political prisoners” who are not nationals of the Detaining Power (C IV, Art. 4, para. 1).

Under C IV, Art. 143, ICRC delegates have access to all places of internment and premises and must be able to interview without witnesses all protected persons (and accordingly all enemy nationals) therein. (For the ICRC’s entitlement to access and associated rights, e.g. lists of names, etc., see C IV, Art. 143, para. 5).

However, in the situation described some of the internees are “political prisoners”, who are not protected persons as defined by C IV, Art. 4, para. 1, for they are not enemies but nationals of the State detaining them.

Although the Conventions (C IV, Arts. 4, 18, 25 and 26) and the Protocols (P I, Arts. 15, 58, 62 and even 75) do also contain certain obligations of the State towards its nationals, the general law of the Conventions is not applicable between States and their own nationals. The aforesaid ICRC entitlement must therefore be based on its right of initiative, and must have the government’s consent.

In internal armed conflicts (C I-IV, Art. 3, and P II), on the other hand, international humanitarian law is applicable in relations between the State and its nationals. Although there is not yet a Convention protecting political detainees against their own State except in an armed conflict, in the opinion of the Red Cross there is no reason why the extremely well thought out inspection procedure defined by international law should not also be used within a State, since its purpose is to determine conditions of detention, not the reasons for that detention. Moreover, in conformity with the principle of neutrality, reports on visits are strictly confidential. This confidentiality does not make the ICRC a party to the decision to intern; its sole purpose is to protect the detainees. The legal adviser will not find it easy to convince his own officials! But after all, the only way to enforce respect for humanitarian principles is by reason and persuasion.

Answers to the head of the camp's three allegations:

1. The legal basis for visiting the political detainees is not the Conventions but the consent given by the higher authorities.
2. The ICRC is entitled to a list of the internees, including the political detainees.
3. The visit must take place in accordance with the ICRC's normal procedure of interviews without witnesses.

*For further information see also: **The International Committee of the Red Cross and internal disturbances and tensions, ICRC, Geneva, August 1988.***

QUESTION 38: ATTEMPTS TO ESCAPE

Comments:

Internment camps are marked with the letters IC. Zacharias is therefore not a prisoner of war. Articles 79 ff. and 83, para. 3, of C IV are applicable.

Provisions on "escaped prisoners" were included in the H.IV.R as early as 1907, but they relate to prisoners of war (Art. 8). The principle they contain has nevertheless been taken over to apply to internees as well!

Prisoners of war are considered to be under a moral obligation to rejoin their own armed forces, and the same considerations apply to civilian internees. Loyalty to their country requires them to try to escape from the Detaining Power. It is also legitimate to try to escape from the hardship of deprivation of liberty (Pictet, Commentary IV, p. 485). Digging a tunnel is the beginning of an attempt to escape.

Internees are liable only to disciplinary punishments (C IV, Arts. 119 and 120, para. 1) consisting in a fine which shall not exceed 50 per cent of wages during a period of not more than thirty days, discontinuance of privileges granted over and above the treatment provided for by the Conventions, fatigue duties not exceeding two hours daily, and confinement for a maximum of thirty days.

Is housebreaking also liable to disciplinary punishment, since it was committed in connection with an attempt at escape?

It is a punishable act under ordinary penal law. However, when a prisoner of war attempting to escape breaks into a house without offering violence to any person he is liable only to disciplinary punishment (C III, Art. 93, para. 2).

Conversely, civilian internees are liable to less favourable treatment in such circumstances. The Detaining Power may choose disciplinary or judicial punishment (C IV, Art. 121). In the latter case judges must exercise leniency. Trying to protect the internees too much might do them harm, for it would lead to stricter surveillance and so to harsher conditions of internment (Pictet, Commentary IV, p. 487).

Answers:

1. The nurse is not protected by the Conventions; Art. 75 of P.I could be applicable to her if her government considers that it applies to its own residents. In any case she is subject to domestic law, which must take into account that the code of medical ethics forbids her to denounce patients to the authorities, otherwise patients would not dare to seek treatment. She should be given only disciplinary punishment.
2. Zacharias can be brought before the ordinary courts to answer for his housebreaking, but the counsel defending him must try to get his offence dealt with as merely a disciplinary matter.
3. Internees who (like Zacharias' fellow detainee) have aided and abetted an escape without themselves escaping are also liable only to disciplinary punishment (C IV, Art. 120, para. 3). "Accomplice" and "complicity" are penal law concepts and should therefore not be applied here, as escape by civilian internees and prisoners of war is not a penal offence. The fellow detainee will of course not be liable for any punishment for the housebreaking, since he took no part in it.

QUESTION 39: OCCUPIED TERRITORY/LEGAL POSITION

Comments:

1) In the event of war between two States party to the Geneva Conventions, all four Conventions (C I-IV, Art. 2) are applicable, as well as Additional Protocol I if the two States have ratified it (P I, Art. 1, para. 3).

In occupied territory the following provisions are applicable: C IV, Arts. 47-48; (H.IV.R, Arts. 42-56; P I, Arts. 3, 4 and 85; and C IV, Art. 147).

Evacuation is permissible only if the security of the population or imperative military reasons so demand (C IV, Art. 49, para. 2).

Where these conditions are present, the evacuated persons must be transferred back to their homes as soon as hostilities in the area have

ceased (C IV, Art. 49, paras. 2 and 3). This provision first appears in the 1934 Tokyo draft (it was too late to call a diplomatic conference in 1939). It is justified by the experience of the Second World War. Art. 49, para. 5 (requiring that protected persons shall not be detained in an area particularly exposed to the dangers of war) shows that this provision is not intended to restrict the freedom of protected persons.

2) There are different opinions on the legal position of occupied territory:

Under Art. 43 of the H.IV.R of 1907, which is still valid, and Arts. 7, 8, 47 and 154 of C IV, the legal position of protected persons (in this case civilians of another nationality) may not be modified. The Occupying Power is only the administrator of the foreign territory. This means that no State can possibly avoid the responsibilities incumbent on it under C IV, Art. 1.

Article 4 of P I reaffirms this principle, which is applicable even if not ratified, for it is merely a confirmation.

Answers:

1. Yes, the inhabitants of the occupied territory are, and remain, protected persons.
2. Articles 49 and 143 of C IV have been violated. The legal result is that C IV, Art. 147 (grave breaches) becomes applicable.

QUESTION 40: DEPORTATION

Comments:

The two States are Contracting Parties to the Geneva Conventions. Consequently all the provisions of all four Conventions are applicable. The victims are civilians (non-combatants) and application is therefore limited to the Fourth Convention, especially Arts. 47-78 and 27-34 concerning occupied territories.

Deportation has taken place, for the conditions of an evacuation as authorized by C IV, Art. 49, paras. 2 and 3, do not appear to have been fulfilled. Deportation being prohibited regardless of its motive, these persons should be returned to their homes as soon as possible.

Deportation, one of the grave breaches enumerated in C IV, Art. 147, cannot be “justified” on the grounds of security of the population and military necessity.

Reprisals against protected persons are forbidden (C IV, Art. 33).

Although the internment described is illegal the rules of the Fourth Convention must be applied. Both C IV, Art. 41 (foreigners) and C IV, Art. 78 (occupied territories) stipulate that forced residence and internment are the most severe measures of control permissible, and C IV, Art. 43, furthermore provides for an appeals procedure.

As a last resort the persons concerned are entitled to apply to the delegates of the Protecting Power or of the ICRC (C IV, Arts. 30 and 143).

The right to leave the territory should also be given (C IV, Art. 35, para. 1).

Under C IV, Art. 41, para. 2, the rules for internees’ welfare must be followed as closely as possible. Under C IV, Arts. 38-40, they are entitled to the following: means of existence, relief consignments, medical attention, religious observance, safety, and preferential treatment for children, pregnant women and mothers of children under seven years.

Internment being unjustifiable, as soon as hostilities end all internees should be returned to their homes (C IV, Arts. 33, para. 1; 132 and 133).

P I, Arts. 51(6), 75 and 78 confirms the prohibition of reprisals against a civilian population (C IV, Art. 33, para. 3) and the principle of ensuring as normal treatment as possible.

Answer:

The occupants of the camp are not legally internees; nevertheless the rules for the protection of internees will have to be applied and, in so far as camp conditions allow, the provisions for the treatment of foreigners in time of peace will have to be applied.

QUESTION 41: DUTY OF PROTECTION

Comments:

The duty to receive refugees stems from the principle of humanity (see the Declaration on Territorial Asylum adopted by the General Assembly of the United Nations, Resolution 2312 (XXII) and Convention of 1951 and Protocol of 1967 relative to the status of refugees).

According to international custom a State is responsible for acts of violence perpetrated from its territory against the territory of another State.

However, in the present case there have been no serious armed clashes between the armies of the two countries (no armed resistance: C I-IV, Art. 2, para. 2).

The Fourth Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949 is nevertheless applicable (C IV, Art. 2 al. 2 and Art. 6 para. 1).

Answers:

1. Yes, for under the Law of Geneva, invading the territory of a neighbouring State makes the Conventions applicable, even without a declaration of war. For the sake of the victims the situation must be taken into consideration.

In its relations with the civilian population the invader is fully bound by the provisions relating to occupied territories (C IV, Arts. 27-34 and 47 ff.).

2. The Occupying Power is responsible for public order (H.IV.R, Art. 43). If it declines to occupy and administer the invaded territory it remains responsible for any disturbances that may break out as a result.

Non-combatant refugees are protected persons, and the occupier or invader must protect them from any kind of violence, in accordance with C IV, Arts. 27 ff., which are applicable in this case. These provisions are regarded as the most vital part of the Fourth Convention of 1949.

3. The invading or occupying Power has not complied with its duty of protection as described above. Consequently it is required to make reparation and must prosecute the guilty parties (C IV, Art. 29).

The Occupying Power is indirectly responsible for the massacre even though none of its soldiers took part in it; if the Occupying Power had ordered the militias to carry out the massacre Art. 29 of the Fourth Convention would be fully applicable.

As just stated, these obligations entail civil and penal responsibility (C IV, Arts. 29 and 147 and the Hague Convention No. IV of 1907, Art. 3).

QUESTION 42: CIVILIAN HOSPITAL

Comments:

Civilian hospitals are granted special protection in an international armed conflict (C IV, Art. 18; P I, Art. 12).

In occupied territory the Occupying Power is responsible for hospitals (C IV, Arts. 56 and 57).

The special protection to which civilian medical units are entitled (P I, Arts. 8(e) and 12) ceases if they are used to commit acts harmful to the enemy (C IV, Art. 19; P I, Art. 13).

Answers:

1. This is a civilian hospital, but if it belongs to a Party to the conflict (i.e. if it is a state hospital) or is recognized or authorized by that Party in accordance with P I, Art. 12, it must be considered as a medical unit and will accordingly be placed on the same footing as a military hospital.
2. C IV, Art. 18, mentions two certificates. The first is to the effect that the State recognizes the establishment as a civilian hospital. The second is the State's authorization to display the protective emblem.
 - a) This recognition has the effect of a notification. Even if it is lacking the hospital is still a hospital, provided that it does the work specified in C IV, Art. 18, para. 1, and P I, Art. 8(e). It is entitled to protection as civilian property. To this extent the commander's conclusion is correct. In principle any special protection is subject to the State's consent.
 - b) However, marking the hospital with the protective emblem is subject to a constitutive authorization. After the occupation the authority competent to continue or grant such authorization is the Occupying Power (C IV, Art. 56, para. 2).
3. Yes, the personnel engaged in the care of the sick in a recognized civilian hospital is entitled to use whilst on duty the armlet bearing the protective emblem supplied by the State, and must be issued with an identity card. In that respect the military authorities are mistaken (C IV, Art. 20, para. 2) if the hospital is recognized by the State.
4. P I, Art. 12, para. 2(b), reaffirms the principle already contained in C IV, Art. 56, that the Occupying Power is competent to authorize hospitals and their personnel engaged in caring for the sick to display the emblem. Thus even if the national authorities had not granted this permission, it can be granted later by the competent occupation authorities provided that they recognize the hospital.

QUESTION 43: LABOUR LAWS

Comments:

Territory has been occupied in this conflict. It is therefore an international conflict and all four Conventions and Protocol I are applicable if they have been ratified.

The Fourth Convention is the most relevant one.

The Law of Geneva provides for different treatment according to age, as follows:

- up to 7 years: residence in hospital zones and safety zones;
- up to 15 years: preferential treatment;
- from 18: adult: compulsion to work, death penalty possible (C IV, Arts. 14, 38, 50, 23, 24, 68, 51 para. 2; P I, Art. 77; P II, Art. 4, para. 3, and Art. 6, para. 4).

War between States is the subject of C I-IV, Art. 2, and P I, Art. 1, para. 3; all five treaties are applicable if they have been ratified or acceded to. The 1907 H.IV.R already contained provisions governing the requisitioning of services in occupied territories (Art. 52).

The conditions for compulsory work (C IV, Art. 51) are as follows:

- minimum age 18 years;
- the work must be necessary for the authorized needs of the army of occupation;
- the work may not involve taking part in military operations;
- or ensuring the security of workplaces by forcible means;
- the work shall be carried out only in the occupied territory;
- in return for a fair wage;
- and shall be proportionate to the workers' physical and intellectual capacities;
- working conditions shall be in accordance with the legislation in force in the occupied territory (e.g., as regards wages).

Answers:

1. As a cleaner Mrs. Petra does not take part in military operations (H.IV.R, Art. 23, para. 2) and her work is not directly connected with the conduct of military or semi-military operations (C IV, Art. 51, paras. 2 and 4). She can therefore be called up to do work of the nature required from her.
2. The principle that the legislation in force in the occupied territory as regards working conditions should be applied stems from the work of the International Labour Organization (see Pictet, Commentary IV, p. 298, humanitarian and social safeguards).
3. In occupied territories two legislations are applicable, that of the Occupying Power and that of the occupied country. If no satisfactory solution can be arrived at (conciliation boards, or courts of the Occupying Power), the Protecting Power may intervene in the event of violation of the rights conferred by international humanitarian law (C IV, Art. 52, para. 1, and Art. 30).

QUESTION 44: LOCAL GOVERNMENT OFFICIALS

Comments:

Occupied territory is possible only in a conflict between States (H.IV.R, Art. 42). The Geneva Conventions and Additional Protocol I (if it has been ratified) are therefore applicable.

The Occupying Power is only the administrator and usufructuary of the territories it occupies (H.IV.R, Art. 55).

Under C IV, Art. 4, this employee is a protected person. He is also a public official and as a result has close ties with his own country. The basic principle of the Convention of 1949 is that the personal status of each individual - and therefore that of public officials as well - must be respected.

However, C IV, Art. 54, para. 2, quotes the very ancient right that allows the Occupying Power to remove holders of public office from their posts. The public officials working in civil defence enjoy exceptional protection in this respect (C IV, Art. 63; P I, Arts. 61 and 63), for the Occupying Power may not change the structure or personnel of such organizations in any way that might jeopardize the efficient performance of their mission.

The supply of drinking water, energy, public transport and health are public services of vital importance to the population (cf. C IV, Art. 51; P I, Arts. 52 and 54).

The Occupying Power must therefore encourage officials of these services to continue working in them.

Answers:

1. The Occupying Power is entitled to remove public officials from their posts, except those assigned to the civil defence services, whose smooth running must not be disturbed.
2. The Occupying Power must accept the fact that any public official may refuse for reasons of conscience to continue in his work (C IV, Art. 27, para. 1, Art. 54, para. 1). It would be illegal to force him to remain at his post.

However, under C IV, Art. 51, para. 2, the Occupying Power may in this case oblige this public official and any other protected civilian person to work for the public utility services vital to the civilian population. (The link is thus established between Arts. 51 and 54 of C IV).

It may reasonably be said that for the sake of his fellow citizens this public official has a moral obligation to continue in his work, which is not political and consists in ensuring that the local population's water supply is maintained.

3. This official has no need to fear prosecution (see C IV, Art. 52, para. 2, and C IV, Art. 56, on hygiene and public health).
4. If the public official were to go into hiding with his colleagues, continuance of the town's water supply would at first be the responsibility of a special organization (C IV, Art. 63, para. 2, and P I, Art. 61, para. 1(a) (xii)), and finally that of the Occupying Power (C IV, Art. 56).

It should be noted that in order to defend its territory against enemy invasion, and in cases of imperative military necessity, a belligerent Party is entitled to destroy property essential to its own civilian population on that part of its own territory still under its control.

However, the enemy is *not* entitled to do so (P I, Art. 54, para. 5).

QUESTION 45: PENAL LIABILITY OF PUBLIC OFFICIALS

Comments:

The Contracting Parties to the Geneva Conventions are under the obligation to apply them in all circumstances (C IV, Art. 1). States that have not acceded to the Conventions are bound by them if they accept and apply their provisions (C I-IV, Art. 2, para. 3). Pictet states in his Commentary on the Fourth Convention, p. 24, that an explicit declaration to that effect is desirable. In any event, in applying the provisions relative to occupied territories (C IV, Arts. 47-79, the Occupying Power must show clearly in one way or another that it wishes to be bound by them.

The public official arrested by the Occupying Power does not belong to any of the categories mentioned by Conventions I-III (C III, Art. 4). Consequently he is a protected person within the meaning of C IV, Art. 4, para. 1. His status of public official must not be detrimental to him (C IV, Art. 54, para. 1). The Occupying Power has no right to prosecute him for acts committed before the occupation, with the exception of breaches of the laws and customs of war (C IV, Art. 70, para. 1). The internments he ordered might constitute illegal detention under C IV, Art. 47, for internment may be ordered only in accordance with C IV, Arts. 41-43, 78 and 79; the mere fact of having enemy nationality is not a sufficient reason.

Internment may not be ordered unless the security of the Occupying Power makes it absolutely necessary (C IV, Art. 78). The guarantees given by Art. 78 (rights of appeal and review) appear sufficient to nullify the dangers of arbitrary decisions (see Pictet, Commentary IV, pp. 368-369).

Answers:

1. Yes, the public official is protected by the Geneva Conventions.
2. The deciding factor is that he acted for reasons concerning the security of the State to which he belongs, and not in arbitrary fashion.

To obtain a verdict of guilty the prosecution would have to prove that the public official on trial committed a violation of the laws and customs of war (C IV, Art. 70).

QUESTION 46: REGISTRAR OF BIRTHS, MARRIAGES AND DEATHS

Comments:

This is an international armed conflict between States party to the Conventions and Protocols, C I-IV, P I and H.IV.R must therefore be applied. A territory is considered to be occupied when it is *de facto* under the authority of enemy armed forces. The occupation extends only to the territory where such authority has been established and can be exercised (H.IV.R, Art. 42).

The limits to the power of the Occupying Forces are fixed by H.IV.R Arts. 32-56, and C IV, Arts. 47-78.

Under C IV, Art. 4, the civilian population are among the persons protected by that Convention. The Occupying Power must maintain the normal course of public life and if necessary restore it whilst respecting the laws in force in the country (H.IV.R, Art. 43).

The Occupying Power may oblige the public services to continue working (C IV, Art. 51, para. 2). This provision is closely linked to C IV, Art. 54. The Occupying Power may not alter the status of public officials and must respect their refusal for reasons of conscience to continue in their work (e.g. the refusal to serve under a foreign Power). In his commentary on C IV, Art. 54, on p. 306, Pictet uses the term “public utility services”, which undoubtedly include registration of births, marriages and deaths.

The powers of a registrar of births, marriages and deaths are conferred on him by his certificate of appointment. Where no person or body in the occupied territory is able to do his work, the Occupying Power acts as a temporary substitute. It has a legitimate interest in the smooth running of the public services: a normal life helps to relax tension.

However, the replacing official does not acquire the title and status of the public official who has fled his post, who in all circumstances retains his status, which is not compromised by the acts of the Occupying Authority. Just for the time being, the Occupying Power appoints someone to replace him.

Answers:

1. In this case the official deputizing as Registrar of Births, Marriages and Deaths is not only apparently that Registrar but is also authorized to act as such. He is not a fictitious public official.
2. The marriages he celebrates are therefore valid, for the official documents issued by him during the term of his appointment authorized by the Occupying Authority, and necessary to the conduct of civilian affairs, are valid even in the eyes of international jurisprudence.
3. After the withdrawal of the Occupying Forces the deputizing official is no longer entitled to continue in his office.

QUESTION 47: PENAL PROCEDURE

Comments:

When an armed conflict breaks out between Contracting Parties (165 States are Contracting Parties) all four Conventions and in some cases P I are applicable in full.

The persons involved in this case are civilian persons who in accordance with the key principle of the Geneva Conventions must be humanely treated and protected against all acts of violence or threats thereof.

Civilian persons lose their protection if they take a direct part in hostilities (P I, Arts. 48 and 51; C IV, Art. 27 ff.; P II, Art. 13).

Articles 47 ff. of C IV apply to occupied territories. The principle is that the penal laws of the occupied territory shall remain in force (C IV, Art. 64, para. 1).

For security reasons in particular the Occupying Power may subject the population to other provisions (C IV, Art. 64, para. 2).

Preventive detention is therefore possible, but its duration must be deducted from any period of imprisonment awarded (C IV, Art. 69).

It is permissible to hand over the accused to a military court (C IV, Art. 66).

The requirement that the court must sit in occupied territory may be regarded as an invaluable protection.

Articles 71 ff. of C IV enumerate the conditions that comprise a regular trial (P I, Art. 75, para. 4). Under C IV, Art. 147, infringements of these provisions are grave breaches.

As is clear from C IV, Art. 72, para. 2, advocates may continue in the regular exercise of their profession (Pictet, Commentary IV, p. 357: “The defending counsel may be an officer in the army of occupation or an advocate or counsel from the occupied territory itself.” (See also H.IV.R, Art. 43).

Answers:

1. Yes, the Occupying Power may enact penal law provisions.
2. You will demand:
 - a) that the hearing on the territory of the Occupying Power be made null and void, and that a new hearing be given in the occupied territory (C IV, Art. 66);
 - b) that the indictment be communicated, in writing, to the accused person in a language which he understands (C IV, Art. 71, para. 2) and to the Protecting Power in a language it understands (C IV, Art. 71, para. 2);
 - c) the assistance of an interpreter (C IV, Art. 72, para. 3).

QUESTION 48: REQUISITION OF RED CROSS OR RED CRESCENT PROPERTY

Comments:

The Contracting Parties (States) are under the obligation to respect the Conventions in all circumstances (C I-IV, Art. 1).

According to certain sources there can be no war without a declaration of war (Hague Convention No. III of 1907). But since 1907 many wars have been started without that formality. International humanitarian law refuses to enter upon discussion about the state of war and confines itself to the actual circumstances that make IHL applicable (C I-IV, Art. 2).

As Pictet comments, the purpose of humanitarian law is to serve mankind and not the interests of States.

If one believes in the unique value of each human being, the number of victims is not of decisive importance.

The occupation mentioned suffices to make the Conventions applicable: persons are in the power of a State of which they are not nationals (C IV, Art. 4, para. 1).

Answers:

1. H.IV.R, Arts. 42-56, C IV, Arts. 47-78, C I, Art. 34, and P I, Art. 81, are the relevant instruments.
2. The officer's arguments are unsound. Even before the Conventions, H.IV.R, Arts. 56 and 46, forbade confiscation of property belonging to private "institutions dedicated to charity". According to Pictet's Commentary on C IV, Art. 63, para. 1 (pp. 331 ff.), such societies must consist mainly of persons pursuing their activities in accordance with the Red Cross principles. This provision, however, postulates that the occupation authorities must not paralyse relief societies by depriving them of the property and the means necessary for carrying out their task. The officer did not even allege urgent necessity (see C I, Art. 34, para. 2, to that effect), which is a condition of requisition.
3. In the first place the officer should be referred to C IV, Art. 63.
4. Contact the officer's immediate superior officer (P I, Art. 87, para. 1), the legal adviser of the armed forces (P I, Art. 82), the qualified personnel of his own country (as provided for in P I, Art. 6, para. 1), the Protecting Power, and the ICRC (C IV, Art. 30, para. 1).

QUESTION 49: COURT MARTIAL

Comments:

The Conventions of 1949 give no clear or precise definition of "non-international armed conflict" (C I-IV, Art. 3).

Once it is acceded to or ratified, P II, Art. 1, develops and supplements Art. 3 common to the Geneva Conventions by specifying that P II applies to all armed conflicts which are not covered by Art. 1 of P I and which take place in the territory of a Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement Protocol II.

Protocol II does not apply to situations of internal disturbances and tensions such as riots and isolated and sporadic acts of violence.

Calling upon the population and troops to kill the officers is incitement to murder, and unlike urging people to change their political allegiance it is not a permissible act of hostility or propaganda.

On the other hand, Art. 3 of P II is not intended to strengthen the power of the dissidents and places no limitation on the government's right to fight and conquer the opposing forces. The article requires only what is in any event customary in civilized countries, and this does not cause the slightest extra risk. Accordingly the security of the government side will not be endangered if the pilot is not tried immediately.

Nobody can be prevented from appearing before his proper judge. Humanitarian law shares this principle with State law.

Martial law is emergency law, and courts martial are emergency courts, not regularly constituted courts offering the judicial guarantees recognized as indispensable (right of defence, right of appeal, and the right of petition for pardon or reprieve - C I-IV, Art. 3, para. 1(d); C IV, Arts. 27, 31-34, 64w29-).

In this connection Art. 3 of the Conventions, relating to non-international conflicts, prohibits summary conviction without fair and regular trial.

P II, Art. 6, confirms this rule and requires courts to offer guarantees of independence and impartiality. Therefore, to carry out a death sentence passed by a court that did not offer these guarantees would be purely and simply to commit murder, and a sentence to imprisonment would be an illegal deprivation of liberty, committed in the exercise of official functions.

Answers:

1. You must refuse to carry out this order, giving as your reasons those set out above, for it is illegal.
2. You must propose that the captured pilot be handed over to the authorities competent to institute penal proceedings, together with a report.

Article 3 common to the Conventions, and P II, do not affect the right of the State to prosecute, sentence and punish in accordance with the law.

QUESTION 50: RELIEF SOCIETY

Comments:

If no special agreements relating to non-international armed conflicts are in force (C I-IV, Art. 3, para. 3), para. 1 of Art. 3 common to the four Conventions of 1949, and possibly Additional Protocol II also, are applicable.

Non-international armed conflicts are armed conflicts which take place within the territory of a State (P II, Art. 1, para. 1). The aforesaid Art. 3 of the Geneva Conventions contains no provision relating to National Red Cross and Red Crescent Societies or to the protective emblem, but P II, Art. 12 does, and Art. 18, para. 1 allows the National Society to offer its services.

No-one shall be punished, for example, for having met rebels in order to lend assistance to victims of the conflict. The fact that members and sections of a country's sole Red Cross Society perform their tasks in the parts of the territory controlled by the various armed factions there does not have the effect of dividing the Society into two parts.

Answer:

In a non-international armed conflict Red Cross workers active in any part of the country shall be entitled to the consideration, protection and aid required by respect for Red Cross principles. In return they are subject to the obligations of discretion, neutrality and impartiality; they must respect every human being, protect the sick, and refrain from showing or parading their preference for one side or the other (P II, Arts. 7-9).

Persons engaged in medical activities may not be punished for these (P II, Art. 10), and no person may be punished for humanitarian acts of the kind mentioned above (cf. P I, Art. 17).

QUESTION 51: PROTECTIVE EMBLEM AND PERSONS TAKING TO FLIGHT

Comments:

It is universally accepted that it is prohibited to attack personnel and material identified by the protective emblem. To maintain the trust placed in the emblem, any form of misuse of it is prohibited both in peacetime and in time of war (H.IV.R, Art. 23, para. 1f; P I, Art. 37 and Art. 38, para. 1; and P II, Art. 12).

Under international law, an emblem derives its protective value either from agreements to that effect, or from explicit or *de facto* recognition

of it. Armed groups in a non-international armed conflict, although fulfilling the conditions of P II, Art. 1, para. 1, have neither signed nor accepted the Geneva Conventions.

Whether such groups are bound by the humanitarian Law of Geneva was discussed as early as 1949 at the Diplomatic Conference. None of the three views expressed is satisfactory: they are (a) that in ratifying the humanitarian instruments the government represents the whole population; (b) that the citizens themselves are subject to international law and are bound by C I-IV, Art. 3, which has the force of international customary law; (c) that all citizens are directly bound, for the Conventions are constitutionally considered as self-executing regulations. Another opinion seems much more convincing; it is that since the First World War a transnational humanitarian law has grown up parallel to the usual inter-State law, and is directly binding on private individuals and associations of persons. That humanitarian law has been codified to some extent in international agreements.

These agreements are in fact only a reflection of the common conscience. The result is that international humanitarian law in the internal conflicts to which it relates (for example C I-IV, Art. 3, and P II) is absolute and compulsory. Persons taking no active part in the hostilities (non-combatants, i.e. civilians, medical units and medical transports) may not be the subject of any direct attack (C I-IV, Art. 3 (1) (a); similarly P II, Art. 9, para. 1, Art. 11, para. 1 and Art. 13, para. 2). Combatants taking to flight are not considered as *hors de combat* and therefore do not enjoy protection of any kind.

The ICRC worker who is among the combatants taking to flight is therefore in danger, but he may not in any circumstances be fired at.

Answers:

1. Yes, the attackers were entitled to fire on the combatants taking to flight, but not to aim directly at the ICRC worker.
2. It is hard to conclude beyond question that the ICRC worker was murdered, or that he was not.
3. The conclusions to be drawn from this event are that protected persons must be separated from combatants (the principle set out e.g. in C I, Art. 19) and that the white flag (H.IV.R, Art. 32) or the protective emblem (see for example C I, Art. 24; P II, Art. 9) must be relied upon for safety.

N.B.: The opinions expressed are author's and do not necessarily represent those of the ICRC.

QUESTION 52: THE OBLIGATION OF DISCRETION

Comments:

At first sight it would seem that the same humanitarian rules should be applicable to all armed conflicts, whether international or non-international, but this is not what happens. Generally speaking, States claim that non-international armed conflicts are internal matters that should not be used as a pretext for intervening (cf. P II, Art. 3, para. 2). For these reasons the relevant regulations in C I-IV are reduced to the common Article 3, and P II was abbreviated. In accordance with the Preamble to P II (para. 2), the human rights conventions for the protection of the human person are also applicable. Dissidents and dissident combatants are often regarded as “disturbers of the peace”. To facilitate the restoration of peace and dispel the climate of hatred, P II, Art. 6, para. 5, recommends that the broadest possible amnesty be granted at the end of hostilities. The stipulation that “The wounded and sick shall be collected and cared for” (C I-IV, Art. 3, para. 1 (2)) is clear, concise and mandatory.

It is reaffirmed by P II, Art. 7, which requires that all the wounded shall be respected and protected and shall receive the necessary medical care and attention, stating that “There shall be no distinction among them founded on any grounds other than medical ones”. P II, Art. 8, further stipulates that they shall be protected against pillage and ill-treatment. There is therefore a right to medical care. Medical personnel must not be required to perform tasks incompatible with their humanitarian mission, such as informing against the wounded.

P II, Art. 10, para. 4, expressly provides that subject to national law, doctors shall be entitled not to inform against such persons. As confidentiality is part of medical ethics, that requirement should not normally cause difficulties.

The Attorney-General’s wife is on the horns of a personal dilemma. If she decides that she is duty-bound to secrecy (a duty which under P II, Art. 9, is applicable by extension to all medical personnel) she can invoke the first and fourth Fundamental Principles of the Red Cross (humanity and independence). She would then be affirming that she is acting independently of her capacity as wife of the Attorney-General. After all, denouncing the wounded man would only be an act of revenge for the price put on her husband’s head. Acts of revenge only strengthen the enemy’s will to resist and are therefore stupid as well as illegal.

Answers:

1. The fact must not be reported.
2. The wounded man must be humanely treated and cared for like any other human being.
3. The Fundamental Principles of the Red Cross and the provisions applicable to medical personnel justify that course of action.
4. P II of 1977 contains provisions relating to protection of the work of medical personnel. Subject to national law, no persons engaged in medical activities may be penalized for failing to give information on the wounded who have been under their care. Red Cross personnel must refrain from giving information obtained during their mission if to do so might be a violation of the principles of neutrality and impartiality.

QUESTION 53: MERCENARIES

Comments:

This is not an international conflict.

The State whose government it is intended to overthrow and the State in which the *coup d'état* was prepared are not at war with each other. The *mercenaries* do not belong to the armed forces of the State in which the coup is being prepared.

Admittedly, UN resolutions prescribe that no State shall tolerate in its territory acts intended to overthrow the government of another State; but generally speaking the only obligation this imposes is that of paying damages.

The conditions for application of Art. 2 common to the Conventions are not fulfilled, nor are those of Art. 3 common to the Conventions nor of P II, Art. 1, para. 1. The mercenaries do not control any part of the territory of the State in which they landed.

Moreover, the liberation movement concerned must be regarded as not having been recognized by any foreign country (whereas some States have recognized, for example, the Polisario Front in Western Sahara, the PLO in the Middle East, and SWAPO in Namibia).

Answers:

1. No, this is not a non-international armed conflict.
2. P II (non-international armed conflicts) does not define “mercenary”; P I (armed conflict between States) does. Mercenaries are not regular members of the armed forces, they are paid at higher rates than such members, and take part in hostilities only for “private gain” (P I, Art. 47).

They enrol voluntarily out of love of money and a spirit of adventure. The United Nations is preparing a new convention for the repression of mercenary action. P I, Art. 47, is due to the initiative of African States; it is intended to discourage mercenaries and augment the risks they run.

It may seem contradictory to the spirit of a humanitarian convention to refuse combatant status to persons taking part in the fighting, but mercenaries do benefit by the fundamental guarantees given by P I, Art. 75 (humane treatment and regular judicial procedure).

No, mercenaries cannot claim prisoner-of-war status. Moreover, such a status does not exist in situations of non-international armed conflict.

3. Yes, this is the first time that international law deals with this matter (P I, Art. 47).
4. Since this is neither a non-international armed conflict nor an international armed conflict, it is a sporadic act of violence within the meaning of P II, Art. 1, para. 2, and should be dealt with in accordance with penal law and human rights provisions.

QUESTION 54: RELIEF OPERATION

Comments:

In a non-international armed conflict, Art. 3 common to the four Geneva Conventions, and possibly also P II, are applicable. Under the Geneva Conventions the ICRC’s activities require special agreement as stated in C I-IV, Art. 3, para. 3.

Relief actions in aid of a civilian population suffering undue hardship require the consent of the Party concerned (P II, Art. 18, para. 2).

With the approval of that Party, relief personnel, for example from national relief societies of the country in which the civil war is taking place, or from another country, may be used (P I, Art. 71, para. 1).

Under no circumstances may relief personnel exceed the terms of their humanitarian mission (P I, Art. 71, para. 4).

N.B.: It may be noted that in both, the Comments and the Answers, the references to the Conventions (except article 3) and Protocol I are by way of analogy.

Answers:

1. Protected persons and property may also be subjected to checks and controls during an international war (C IV, Art. 61; P I, Art. 15, para. 4). Such verification encourages mutual trust and must consequently be allowed, especially in a non-international armed conflict.
2. Members of the armed forces who are not do not benefit from the protection of the Conventions. C I, Arts. 38 ff., and P I, Art. 81, indicate the purpose of the protective emblem.

If soldiers were to be carried in a vehicle displaying the emblem they would be feigning non-combatant status. This would be an act of perfidy under P I, Art. 37, para. 1, and a grave breach of the Law of Geneva, punishable under P I, Art. 85, para. 3(f) and endangering the credibility of the emblem. This must be explained to the officer to justify your refusal to grant his request.
3. Any relief material sent must in no way be diverted from its original destination (P I, Art. 70, para. 3(c), confirms C IV, Arts. 60 and 23, para. 2, on this point) and must accordingly not be given to combatants or used for trading purposes. Verification of the recipients, for example with the aid of check-lists, is therefore necessary.
4. The wounded and sick must be protected and cared for without distinction, whether or not they have taken part in the conflict (C I-IV, Art. 3, para. 1, and P II, Art. 7). The only checking to which they may be subjected is to single out persons feigning wounds or sickness.
5. The convoy's return at night raises the problem of its identification as a protected unit (P I, Art. 71, para. 2; C I, Art. 44, para. b3). If possible a flashing blue light signal should be used (P I, Annex I, Art. 6). Failing this the protective emblems will have to be illuminated.

QUESTION 55: TREATMENT WITHOUT DISCRIMINATION

Comments:

An armed conflict within the territory of a Contracting Party is regarded as a non-international armed conflict (C I-IV, Art. 3; P II, Art. 1).

A non-international armed conflict within the meaning of P II is one in which both sides have organized armed forces under responsible command that exercise control over a part of the territory of the State, and in which it is possible to implement common article 3 and the said Protocol.

In this case all those conditions appear to be present.

The question arises whether the dissident forces, being under the command of *facto*, not *du jure*, authorities which cannot accede to the Conventions because only internationally recognized States may accede to them, are nevertheless bound by them.

Although humanitarian law is the subject of international agreements, it is above all the expression of opinions held in common. It is therefore mandatory, i.e. it is also directly binding on individuals, and therefore on dissidents although they are not signatories to it.

Answers:

1. No, the Red Cross exists to serve human beings and not governments, and helps without discrimination (in accordance with the second Fundamental Principle of the Red Cross, impartiality). The wounded and sick must be collected and cared for without any adverse distinction (C I-IV, Art. 3, para. 1(2). P II, Art. 10, reaffirms this principle.
2. The Fundamental Principles of the Red Cross, P II, Art. 7, para. 2, and the human rights conventions (Preamble to P II, para. 2, and the Universal Declaration of Human Rights, Art. 7, on the prohibition of discrimination) are the guidelines you should follow.

QUESTION 56: SEPARATED FAMILIES/FAMILY MESSAGES

Comments:

The citizens (i.e., inhabitants) of a country who belong to ethnic groups different from the principal ethnic group are minorities. After the First

World War the protection of minorities became very important. After the Second World War the emphasis was placed on human rights, which include and go beyond the question of ethnic minorities or majorities.

The rights of minorities are, for example, mentioned in Article 27 of the International Covenant on Civil and Political Rights of 1966, and Article 14 of the European Convention on Human Rights of 1950.

By virtue of the Geneva Conventions of 1949 and the Additional Protocols of 1977, the rights of war victims are protected, and some of them are similar to basic human rights.

According to the Convention on Human Rights, the principal rights, which are, so to speak, the most vital of human rights, are fundamental and therefore inalienable, whilst Art. 16, para. 3, of the Universal Declaration of Human Rights of 1948 states that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”. Similarly, the rights arising from the Law of Geneva are inalienable: C I, Art. 7; C II, Art. 7; C III, Art. 7; C IV, Art. 8.

However, in the case in point, the armed conflict is an internal one. Consequently the Geneva Conventions are not applicable as a whole. Only Art. 3, common to all four Geneva Conventions allows the ICRC to offer its services and to draw attention to the respect due at all times to the human person and the minimum provisions that must be applied.

The provisions relating to the protection of the family are contained in C IV, Arts. 24-26, and P I, Art. 74 (for occupied territory, see e.g. C IV, Art. 49, para. 3).

Answers:

1. The measures to be taken by the ICRC on either side of the *de facto* “frontier”* will be to register tracing requests and initiate enquiries, collect and transmit family messages (over two million family messages sent and half a million tracing requests handled between 1939 and 1945), and reunite dispersed families.
2. Articles 25 and 26 of the Fourth Convention form the legal basis for such activities, after the explicit or tacit agreement, in accordance with Art. 3, para. 3, of the Parties to the conflict.

* *A “frontier”, in public international law, is always an international frontier.*

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.



ICRC