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FOREWORD

On June 10, 1977, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts came to a close with the adoption of two new Protocols additional to the Geneva Conventions of August 12, 1949. Protocol I contains provisions applicable in *international* armed conflicts. Protocol II contains provisions applicable in *noninternational* armed conflicts. When the Protocols were opened for signature on December 12, 1977, forty-six nations—including the United States—signed these additional protocols.

The adoption and signature of these two additional protocols culminated over twenty years of effort by the International Committee of the Red Cross (ICRC), other organizations, and states to update the rules adopted in the 1949 Geneva Conventions for the protection of the victims of war. The effort had its formal beginning when the ICRC proposed its Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War in 1956. It was given impetus by a resolution of the 1968 U.N.-sponsored Tehran Conference on Human Rights, which called on the General Assembly to require the Secretary General to look at the need for updating the law protecting the civilian population. The General Assembly did this in September, 1968.

As a result of this new interest, the ICRC sponsored conferences of government experts in 1971 and 1972 to review the draft rules it had prepared. Building on the work of the government experts, the government of Switzerland, which is the depositary of the 1949 Geneva Conventions and has traditionally had close ties with the ICRC, convened the Diplomatic conference in 1974. The result—after annual sessions of the Conference in 1974 through 1977—was the two Protocols.

Although a casual glance at the contents of the two Protocols will disclose that the Conference addressed itself principally to those matters which are the concern of the 1949 Geneva Conventions—the protection of the victims of war (prisoners of war, the wounded and sick, and the civilian population)—Protocol I in particular goes beyond those subjects to lay down rules for the actual conduct of warfare, an area not traditionally considered to be within the scope of the Geneva Conventions. Part III of Protocol I, whose sec-

tion I deals with the "Methods and Means of Warfare," and whose section II contains provisions on spies and mercenaries, appears not only to have gone beyond the scope of protection of victims of war but, together with article 1's reference to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes" (CAR conflicts), to have politicized the law of armed conflict to a degree that was avoided in the 1949 Geneva Conventions themselves. It remains to be seen whether these aspects of the Protocols will prevent their receiving the near universal acceptance that characterized the 1949 Conventions.

It is the purpose of this symposium to publish a series of articles that present a diversity of viewpoints on some of the key issues addressed at the Diplomatic Conference.

In the first article, Professor Mallison and Ms. Mallison address a subject that has been particularly troubling during the past several decades as a result of the increased incidence of guerrilla and similar types of warfare fought by irregular forces on one or both sides. The personnel of many of these irregular forces would not be considered "privileged combatants" under the traditional tests of the Brussels, Hague, or Geneva rules and would thus not be entitled either to exercise coercion and violence or, if captured, to have prisoner-of-war status. Protocol I significantly relaxes the standards applicable to irregular forces, conditioned upon their adherence to the law of war. The Mallisons conclude that Protocol I's system "offers the prospect of promoting the central humanitarian objective of the international law of armed conflict by minimizing the destruction of human and material values."[1]

Professor Nahlik, who served as a member of the Polish delegation to the Diplomatic Conference, examines how the Conference dealt with the controversial problem of belligerent reprisals. His personal participation in the Conference's negotiations on reprisals—particularly the informal negotiating sessions of which there are no formal conference records—provides a valuable insight into the meaning of the Protocol's provisions on reprisals. His suggestion of the need for further progress in this area—under both the Geneva and the Hague rules—should receive the careful attention of decisonmakers as well as scholars of the law of warfare.

Professor Sundberg's article provides a chilling view of the enormous powers that the current law of war gives to an occupying belligerent when it gains control of the government apparatus of a socialist state (such as Sweden). Professor Sundberg finds the failure of the Diplomatic Conference to improve the law in this respect to be discouraging.

Major Gehring's article takes up the status of persons who comprise the ci-

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1. Mallison & Mallison, *The Juridical Status of Privileged Combatants Under the Geneva Protocol of 1977 Concerning International Conflicts*, 42 LAW & CONTEMP. PROB., Spring 1978, at 31.

vilian infrastructures of the warring entities, analyzing their standing under the Hague Rules, the Geneva Conventions, and the two new Protocols, as well as, where applicable, the Genocide Convention and the International Covenant on Civil and Political Rights.

Finally, in his article, aptly titled *Law in the Control of Terrorism and Insurrection: The British Laboratory Experience*, Professor Bishop transports the restraints of law—principally British domestic law—from the paper pronouncements of scholars and diplomats to the crucible of violence that has characterized Northern Ireland for more than a decade. Although this article may at first glance appear to be out of place in an issue devoted principally to the Geneva Protocols, it is nevertheless submitted that it is very much in place. The question of whether an advanced system of law—respectful of the rights of those who break it—can continue to function in a situation in which violence and terrorism are practiced on a large scale by a dissident faction is very pertinent to any consideration of the substance and workability of an international system of law proposed for situations not substantially different from those which have existed in Northern Ireland during its most violent periods. It is thus fitting that Professor Bishop's article should conclude this symposium.

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