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Commentary on the Second Geneva Convention

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

The application and interpretation of the four Geneva Conventions of 1949 have developed significantly in the sixty years since the International Committee of the Red Cross (ICRC) first published its Commentaries on these important humanitarian treaties. To promote a better understanding of, and respect for, this body of law, the ICRC commissioned a comprehensive update of its original Commentaries, of which this is the second volume. Its preparation was coordinated by Jean-Marie Henckaerts, ICRC legal adviser and head of the project to update the Commentaries.

The Second Convention is a key text of international humanitarian law. It contains the essential rules on the protection of the wounded, sick and shipwrecked at sea, those assigned to their care, and the vessels used for their treatment and evacuation. This article-by-article Commentary takes into account developments in the law and practice to provide up-to-date interpretations of the Convention. The new Commentary has been reviewed by humanitarian-law practitioners and academics from around the world, including naval experts. It is an essential tool for anyone working or studying within this field.

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COMMENTARY ON THE SECOND GENEVA CONVENTION

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

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FOREWORD BY PETER MAURER

President of the International Committee of the Red Cross

When the new Commentary on the First Geneva Convention was published in 2016, I noted the contradicting realities we were facing: on the one hand, a stronger and more comprehensive normative legal framework than ever before and, on the other hand, a disregard for the law.[1] The updated Commentary was presented as part of the endeavour to close the gap between the law as it stands and the law as it is applied on the ground. While it is too early to say whether the Commentary has succeeded in reducing this gap, its usefulness as a practical guide to the First Convention has already been demonstrated on several occasions.

The history of the ICRC's engagement in promoting the protection of victims of armed conflict *at sea* has been characterized by a different kind of gap, namely the need to adapt the principles applicable to warfare on land to the conditions of warfare at sea. Already in preparation for what became the first Geneva Convention of 1864, the ICRC proposed that States agree on similar provisions relating to naval warfare. With the protection of the wounded and sick in the armed forces eventually being extended to the shipwrecked, the ICRC's role as promoter and guardian of international humanitarian law focused on assisting in the proper application and interpretation of the new rules for warfare at sea. The update of the Commentary on the Second Geneva Convention is thus but the most recent expression of the ICRC's long-standing commitment to protecting victims of armed conflict at sea.

More than 55 years have passed since publication of the first edition of the Commentary on the Second Geneva Convention. The factual and legal landscapes have changed, but the imperative to protect the wounded, sick and shipwrecked in case of armed conflict at sea has not diminished. For that protection to be effective, the rules of the Second Geneva Convention must be understood in light of the operational realities of today.

The work of the ICRC combines the perspectives of law and operations. It is accordingly in a unique position to oversee the updating of the Commentaries. In addition to benefiting from the contributions of colleagues representing

[1] See 'Foreword by Peter Maurer', in ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edition, Cambridge University Press, 2016, p. xi.

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these aspects of our work, the updated Commentary was opened to external input from a global network of practitioners and scholars. Importantly, this included people with expertise in both the law applicable to naval warfare and its operational aspects.

With this updated Commentary, the ICRC presents a new tool for practitioners and scholars, as part of the continued effort to alleviate human suffering during armed conflicts at sea. The new Commentary provides guidance on and contextualization of the Convention's rules. It presents the ICRC's interpretation of the law, but it also indicates the main diverging views and issues requiring further discussion and clarification. The ICRC will duly take this updated Commentary into account in its daily work, while being aware that practice and interpretations may evolve over time.

The ICRC expresses its gratitude to the experts who gave freely of their time and expertise, in particular the external contributors and peer reviewers. It also thanks the members of the Editorial Committee, the project team and other staff members who brought the updated Commentary to fruition.

In presenting this volume to the States party to the Geneva Conventions, to National Red Cross and Red Crescent Societies and other humanitarian organizations, to judges and scholars and to other interested parties, the ICRC sincerely hopes that this Commentary, along with the one already published and the others to come in the years ahead, will clarify the meaning and significance of the Geneva Conventions and help to ensure greater protection for war victims.

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Editorial Committee

The Editorial Committee supervised the drafting and reviewed all drafts prior to the peer-review process and again prior to publication. It consisted of two ICRC staff members: Knut Dörmann, Chief Legal Officer and Head of the Legal Division, and Philip Spoerri, ICRC Permanent Observer to the United Nations in New York and Director of International Law and Cooperation from 2006 to 2014, as well as two external members, Liesbeth Lijnzaad, Legal Adviser of the Ministry of Foreign Affairs of the Netherlands and Professor of the Practice of International Law at the University of Maastricht, and Marco Sassòli, Professor of International Law at the University of Geneva and Associate Professor of International Law at the University of Quebec in Montreal.

ICRC project team

The ICRC project team was composed of Jean-Marie Henckaerts, who, as head of project, was responsible for the project's overall coordination and final harmonization, and Lindsey Cameron, Bruno Demeyere, Eve La Haye and Heike Niebergall-Lackner, legal advisers in the ICRC Legal Division.

The project team organized, coordinated and supervised the research, drafting and review of this Commentary throughout the various stages. In addition, it conducted most of the research for the Commentary. Its members contributed numerous drafts, revised, edited and harmonized all drafts, and integrated the peer-review feedback, in consultation with the authors. In this process, Bruno Demeyere played a leading role in relation to most of the articles and issues that are specific to the Second Convention.

Reading Committee

The Reading Committee consisted of the external contributors, in addition to the project team. It reviewed the drafts to ensure the cross-subject coherence and overall consistency of the Commentary. It comprised:

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The drafts were submitted to a large and geographically representative group of peer reviewers, who, between February 2016 and March 2017, reviewed the drafts and provided comments in their personal capacity. The feedback from the peer-review group was enormously helpful in completing the drafting process.

The peer-review process would not have been possible without the assistance of ICRC legal advisers in delegations around the world.

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ABBREVIATIONS

AU	African Union
COLREGs	International Regulations for Preventing Collisions at Sea
DRC	Democratic Republic of the Congo
ECCC	Extraordinary Chambers in the Courts of Cambodia
EU	European Union
IAMSAR	International Aeronautical and Maritime Search and Rescue
ICC	International Criminal Court
ICJ	International Court of Justice
ICJ Reports	International Court of Justice, Reports of Judgments, Advisory Opinions and Orders
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHFFC	International Humanitarian Fact-Finding Commission
IHL	International humanitarian law
ILA	International Law Association
ILC	International Law Commission
IMO	International Maritime Organization
IMRF	International Maritime Rescue Federation
IMT	International Military Tribunal
ITLOS	International Tribunal for the Law of the Sea
LOAC	Law of armed conflict
MSC	Maritime Security Committee
NATO	North Atlantic Treaty Organisation
OAS	Organization of American States
OAU	Organization of African Unity (now African Union)
PCIJ	Permanent Court of International Justice
SAR	Search and Rescue
SCSL	Special Court for Sierra Leone
SOFA	Status-of-forces agreement
SOLAS	Safety of Life at Sea
UDFR	Union des forces démocratiques pour le rassemblement
UN	United Nations

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UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Emergency Fund
USSR	Union of Soviet Socialist Republics
UK	United Kingdom of Great Britain and Northern Ireland
US(A)	United States (of America)

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