

*Problem of
definition
unsolved*

the vote. This decision ultimately resulted in a move by the representatives of the Third World to enable these movements to sign the Final Act. Such a decision, albeit the final act of a conference has no legal significance other than to record what has actually happened, would have constituted an important precedent — for, regardless of any reservations to the contrary, once such an event occurs it does constitute a precedent — and could well have been used to support the view that the PLO, for example, now enjoyed full treaty capacity and an international status that had not, at that time, been conferred on it by any United Nations organ. Ultimately, a way out of the dilemma was found by agreeing to reproduce the exact terminology of the resolution granting observer status and arranging for national liberation movements to sign the Final Act on a page separate from that used by any state participating in the conference.

One of the major problems left unsolved by the conference and inherent in the decision to describe wars of national liberation as international armed conflicts, and subject, therefore, to the full range of the international law of war is that of definition. It is true that the United Nations has adopted a policy of recognizing as national liberation movements only such bodies as are accepted as such by the appropriate local regional organization (virtually restricting them, therefore, to the Arab world and Africa), but there is no reason why this practice should be followed elsewhere and no attempt was made at Geneva to set standards to enable a decision to be made. In practice, many of the Third World countries referred during debate to what they described as “true” national liberation movements, but even they went no further than reiterating UN attitudes. The situation was by no means clarified when a representative of the Irish Republican Army issued a statement to the media announcing that, since it was a national liberation movement, its members were fully entitled to prisoner-of-war status regardless of what the British or Irish Governments might say, especially as it was also agreed by the conference that such movements could make unilateral declarations of adherence. If such a declaration were made, it would appear that the Swiss Government, as depositary of the protocols, and the International Committee, as the intermediary through which much of the observance would be ensured, would be obliged to accept it. The former would have to inform all signatories to the protocol, which

would presumably decide, subjectively and individually, what attitude to adopt, while the latter might find itself obliged to fulfil all the duties envisaged for it in the document.

Definition

The problem of definition referred to above is by no means academic, but is of profound practical significance, as may be seen from the case of Angola, when various groups contended that they were each the national liberation movement entitled to recognition. Furthermore, if the conflict in question is not one between states or one involving a national liberation movement seeking self-determination, it is not an international conflict, but falls within the purview of Protocol II, concerning non-international conflicts. However, the definition issue is only complicated as a result of this. Protocol II applies to conflicts occurring on the territory of a party to the Protocol “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 this Protocol [but] not to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”. This means, in effect, that Protocol II will only operate in what is, in fact, a civil war of the type that was fought in Spain, and the decision as to whether a Protocol II situation had arisen or not is likely to be made by the party in whose territory it occurs rather than on any objective basis. It is perhaps worth mentioning here that the Canadian delegation had hoped to reduce this threshold to ensure some international legal standard that would be applicable to non-international armed conflicts even though they had not reached this sophisticated organizational level.

Who is to decide that what starts with sporadic acts of violence, hardens into internal disturbances amounting to insurrection, becomes so aggravated that it amounts to civil war, with the partisans opposed to the government contending they are engaged in an anti-colonial manifestation, seeking their self-determination on the basis of national liberation and so entitled to be treated as an international conflict in the meaning of Protocol I is, in fact, a Protocol I situation? Formerly, it might have been argued that, if the combatants were wearing a recognizable uniform and comporting themselves as