



# SUPPLEMENT

VOL. VI

REVUE INTERNATIONALE  
DE LA CROIX-ROUGE  
ET  
BULLETIN INTERNATIONAL  
DES SOCIÉTÉS  
DE LA CROIX-ROUGE

SUPPLEMENT

*Vol. VI, 1953*

GENÈVE

1953

REVUE INTERNATIONALE  
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL  
DES SOCIÉTÉS  
DE LA CROIX-ROUGE

*SUPPLEMENT*

February, 1953

Vol. VI, No. 2

---

CONTENTS

	Page
International Committee of the Red Cross	
Principal Items of Interest . . . . .	24
Publication: The International Committee of the Red Cross and the Conflict in Korea. . . . .	27
Chronicle	
The Origins of Humanitarian Law: The Law of Nations ( <i>Conclusion</i> ) ( <i>Henri Cour-</i> <i>sier</i> ) . . . . .	28

---

Published by  
Comité international de la Croix-Rouge, Genève  
Editor: Louis Demolis

## INTERNATIONAL COMMITTEE OF THE RED CROSS

### *PRINCIPAL ITEMS OF INTEREST*

*Germany.* — With the consent of the authorities concerned, the delegate of the ICRC again visited the three prisons where German prisoners judged and sentenced by the Allied Tribunals for war crimes are held. The visits took place on November 7, 1952 (Allied National Prison, Werl, British Zone), December 2, 1952 (War Criminal Prison No. 1, Landsberg, American Zone) and December 9, 1952 (Central Prison, Wittlich, French Zone).

The delegate ascertained that the conditions of internment in these three establishments were satisfactory. He was able to converse freely with the persons under detention who made no complaint with regard to their treatment.

*Floods.* — The Press has made known throughout the world the seriousness of the floods which simultaneously devastated five of the most flourishing East Anglian counties, the Dutch province of Zeeland, islands situated in the Rhine and Scheldt estuaries, part of Brabant and, to a lesser degree, the Belgian coasts and the French Northern seaboard.

The Press made the point that the floods were due to the rare coincidence of a cyclone reaching its peak at the actual moment when the weakest points of these coasts were threatened by a heavy tide.

Some 2,000 persons lost their lives and enormous damage was caused. It is estimated that 275,000 hectares have been flooded and that the reconstruction in the submerged areas will take many years; some of the destruction caused is even apparently beyond repair.

The Netherlands were the chief sufferers from the catastrophe.

When the first news of this disaster, which has stricken and bereaved so many families, became known, the International Committee of the Red Cross joined in the spontaneous relief action of the National Red Cross Societies in behalf of the suffering populations.

A cable was despatched placing the Committee's services at the disposal of the British Red Cross ; and an offer was made to the Belgian and Netherlands Red Cross Societies to send off immediately a convoy of eight 5 ton lorries for transports in the flood areas, and to carry persons from regions under water to the receiving centres. The Netherlands Red Cross having accepted this offer on February 4, a convoy of lorries left Geneva the same day for Rotterdam, carrying 500 blankets donated by the ICRC and a supply of medicaments offered by a Swiss commercial firm, as well as relief supplies rapidly collected by the Basle Branch of the Swiss Red Cross.

On arrival at Rotterdam on February 6 the lorries and their drivers were at once placed at the disposal of the Netherlands Red Cross in response to the appeals made throughout the world in favour of the flood victims.

*Re-uniting of families.* — Thanks to the comprehensive attitude of the Yugoslav authorities and the close co-operation of the Yugoslav Red Cross, 1551 children have, since 1949, been able to join their parents in East and West Germany, Austria, France, the United Kingdom, etc. But these transfers of children are incomplete, as they do not fully solve the problem of the re-uniting of families dispersed in numerous countries on account of events of the war.

In Jugoslavia it was a question of gradually proceeding from the re-uniting of children with their parents to the general uniting of adults, which has now been brought to a successful conclusion. After lengthy negotiations and the sending of a special mission to Belgrade in June 1952, an agreement was reached under which some 6,000 persons have so far been able to join members of their families in other lands and to start new homes. This action will be continued in so far as the countries sheltering a part of the dispersed families are prepared

to receive members of these families who have hitherto remained in Jugoslavia.

The number of persons transferred to date from Poland, Czechoslovakia, Jugoslavia, Austria, etc. having reached over 71,000, this action has thus allowed for the uniting of at least 200,000 persons.

*Indochina.* — During the month of January the International Committee of the Red Cross sent to Indochina from Geneva Dr. Aguet, a doctor-delegate of Swiss nationality. The latter examined about 600 wounded and sick Chinese military internees in Phu-Quoc Camp, whose cases had been made known by a French Medical Commission by which these men had already been examined. The doctor-delegate of the International Committee reported about 400 whose state of health made them unfit to remain in internment.

The delegate of the International Committee also visited wounded and sick prisoners of war held by the French forces who are being cared for in French military hospitals in Saïgon, Hanoï and Haïphong, and also in camp infirmaries Nos. 13 and 71.

Dr. Aguet is now on his way back to Geneva where he will present the Committee with a complete and detailed account of his work.

*PUBLICATION:*

*THE INTERNATIONAL COMMITTEE  
OF THE RED CROSS AND THE  
CONFLICT IN KOREA*

The September 1952 number <sup>1</sup> of the *Revue internationale de la Croix-Rouge* announced the publication of the first volume of a collection of documents entitled " Le Comité international de la Croix-Rouge et le conflit de Corée ", containing the most important and most significant documents with regard to the efforts of the ICRC in connection with the conflict.

A second volume <sup>2</sup> has now appeared, covering the period 1 January - 30 June 1952.

After indicating the approaches and activities of a general character on the part of the ICRC during the first half of 1952 vis à vis the two belligerent parties, it contains documents relating to the action taken in South Korea by the ICRC in various connections, such as the Central Prisoner of War Agency, prisoner of war camps, civilian prisons, guerilla camps, repatriation, and alleged breaches of international law.

The second volume concludes with a table recapitulating the documents published in the two volumes.

Study of these documents will show that the International Committee of the Red Cross has not neglected any steps with a view to giving aid and protection to the war victims in Korea.

---

<sup>1</sup> Page 767.

<sup>2</sup> *Le Comité international de la Croix-Rouge et le conflit de Corée*, Recueil de Documents No. II, 1 Jan-30 June 1952, Geneva, 1952, 4to (210 x 300), 159 pages.

# CHRONICLE

## THE ORIGINS OF HUMANITARIAN LAW <sup>1</sup>

### III

#### *THE LAW OF NATIONS (Conclusion)*

##### *Civilian populations.*

The beginning of modern times is marked by two events which well show the contempt of the conquerors for the conquered, even though non-combatants.

In 1453 Mahomet II, mounted on horseback, entered the Church of Hagia Sophia, which he converted into a mosque. Such was the blood-stained end of the thousand year old Byzantine Empire; and the Mohammedans plundered the Christians unmercifully.

In 1492 the Catholic Kings took Grenada. The Caliph Boabdil gave himself up. The population was spared only on condition of conversion or exile.

The civilian population was then considered in time of war as belligerent and exposed to the same dangers as the military. A manifesto by François I during his fight against Charles V runs as follows: "Let it be known that We have declared the said Emperor, his followers and partisans, and all the subjects of his patrimonial lands to be enemies of Us and of Our Kingdoms, domains and subjects, and We hereby allow and give authority to all Our men to take up arms against the said parties in war, on sea and on land <sup>2</sup>."

<sup>1</sup> See *Supplement*, January 1953, p. 9.

<sup>2</sup> Quoted by REVON, *op. cit.*, page 71.

The jurist Bodin from the moral point of view protests against such contentions. "It is impossible", he writes, "for a republic to flourish in religion, justice, charity, integrity of life and, in short, in all liberal sciences and mechanical arts, if the citizens do not enjoy a true and lasting peace. But such peace is the ruin of warriors, who are useless to themselves and to the community save for their tools in peacetime. Who is more of an enemy to a peace-loving man than the furious soldier, to an easy-going peasant than the bloody warrior, to a philosopher than the captain, to wise men than fools? For the greatest pleasure known to warriors is that of ravaging the countryside, robbing the peasants, burning the villages, besieging, defeating, breaking into and pillaging towns, massacring the good and the wicked, young and old, of all ages and sexes, violating girls, washing in the blood of the slaughtered, polluting holy things, razing the temples, blaspheming the name of God and trampling on every divine and human right<sup>1</sup>".

A first attempt to bring the protection of non-belligerents under law was made by Cardinal Bellarmine in 1619<sup>2</sup>. He maintained that those unfit for war such as persons under age, women, old people and others incapable of bearing arms ought not to be molested on grounds of humanity. Humanity, he says, demands that those who cannot fight should not be killed. Priests, monks, clergy, foreigners, merchants and peasants cultivating the land should, he insists, be exempt from capture in virtue of the custom of all nations. But that contention was one of those moral rules which theologians proclaimed in their capacity of "Confessors of Princes" rather than as jurists. Positive contemporary law ignored it, and Grotius wrote: "The massacre of women and children is included in the law of war<sup>3</sup>." He is followed by Wheaton

---

<sup>1</sup> BODIN, *République*, V, 5, quoted by André GARDOT, *Jean Bodin se place parmi les fondateurs du droit international*, course of lectures given at the International Law Academy of the Hague, Vol. 50, page 670.

Another study by M. André GARDOT, *Le droit de guerre dans l'œuvre des capitaines français du XVI<sup>e</sup> siècle*, same course, Vol. 72, pages 397 ff., is especially interesting for reference.

<sup>2</sup> Cardinal BELLARMINE, *De officio principis christiani*, Ch. XXI.

<sup>3</sup> French translation by Pradier Fodéré, I. III. Ch. 4-9.

who states that "all members of the enemy State may legally be treated as enemies in a public war"<sup>1</sup>, while Klüber is of the opinion that "violence against individuals is justified for the sole reason that they form part of the hostile State"<sup>2</sup>.

Such was the doctrine. It is not surprising that the practice was barbarous. The horrors of the Thirty Years War have remained notorious. Callot's extremely realistic engravings have served as reminders of it. Scheidl writes that after the death of Gustavus Adolphus all remains of humanity disappeared, and war became "a butchery". He quotes a German historian according to whom during the Thirty Years War "the human beast was aroused on both sides. Against the civilian population, friend or foe, there were crimes committed that only the most savage madness could invent. Peasants and townsmen were pillaged, flogged and tortured. Crushed thumbs, sewn up tongues, liquid manure poured down throats by force, torture by fire and many other kinds of brutality were inflicted to cause the hiding places of treasure to be disclosed. Men, women and children were massacred for sheer diversion. Women were carried off to act as servants to the soldiers (a regiment of 3000 men, for example, carried off 2000)"<sup>3</sup>. He adds that during this terrible war the population of Bohemia was reduced from 3 millions to 750,000 persons, that of Würtemberg from 400,000 to 48,000, and that of Augsburg from 80,000 to 18,000<sup>4</sup>.

The law of nations at first recognised a State's right to retain enemy foreigners at the beginning of a war. Grotius, once again influenced by Roman law, endorsed this view<sup>5</sup>.

But ideas evolved quickly. The former practice was never so strict in observance as in doctrine; and even in the Hundred Years War there were edicts proclaimed by English sovereigns and by King Charles V of France, according a truce of forty

---

<sup>1</sup> WHEATON, *Eléments de droit international*, II, 4.

<sup>2</sup> KLÜBER, *Droit des gens moderne*, No. 232.

<sup>3</sup> HENNE AM RHYN, *Geschichte der deutschen Kultur*, Vol. II, page 132.

<sup>4</sup> SCHEIDL, *op. cit.*, page 33.

<sup>5</sup> GROTIUS, *De jure belli ac pacis*, Vol. III, Ch. IX, paragraph 4.

days in which enemy foreigners could leave the country. In 1666 Louis XIV in similar fashion accorded the English a period of three months in which to leave the kingdom with their goods.

A century later, in 1758, Vattel wrote: "The Sovereign who declares war may not retain enemy subjects." Since then this principle has been generally accepted in modern doctrine <sup>1</sup>.

The evolution of ideas and customs in favour of the protection of civilian populations was the same in occupied countries. Voltaire, describing the capture of Copenhagen by Charles XII in 1700 says: "Provisions were brought to the King of Sweden; for he had to be obeyed. But it was hardly expected that the conquerors would condescend to pay for them. Those who brought them were certainly surprised to be generously paid without delay by the lowest ranks of the army. The discipline which had reigned for a long time in the Swedish army had contributed not a little to their victory; and the young King increased its severity still further. A soldier would not have dared to refuse to pay for his purchases: still less would he have dared to go looting, or even to leave the camp <sup>2</sup>."

The practice of reprisals however made its appearance from time to time as a form of sanction for shortcomings in a branch of public law which was not yet firmly established, and was in any case difficult to observe for troops traditionally trained to live on the country.

Voltaire again gives us an example in connection with the burning of Altona by the Swedish General Stenbock on 9 January 1713: "The inhabitants had not all left the town when the Swedes set fire to it. Altona burned from midnight until ten o'clock the next morning. Nearly all the houses being of wood, everything was burnt up. The next day it seemed as if there had never been a town on the site. The old people, the sick and the most delicate of the women, who had taken refuge

---

<sup>1</sup> See BONFILS, *op. cit.*, page 746.

<sup>2</sup> VOLTAIRE, *Histoire de Charles XII*, II, page 42.

on the ice while their houses were burning, dragged themselves to the gates of Hamburg and begged to be let in to save their lives. They were turned away however, for in Altona there were several contagious diseases and the people of Hamburg were not so fond of the people of Altona as to risk exposing their own town to infection by receiving them. So most of the poor wretches died under the walls of Hamburg, calling the heavens to witness the barbarity alike of the Swedes and of the Hamburgers, who seemed no less inhuman. All Germany protested against this outrage ; and the Generals of Poland and Denmark wrote to Count Stenbock reproaching him for such unnecessary and inexcusable cruelty against which (they said) heaven and earth alike protested. Stenbock replied that his only motive in resorting to such extreme measures was to teach the enemies of his master the King to cease waging a war of barbarism and to respect the law of nations. They had filled Pomerania, he said, with their acts of cruelty, laid waste that beautiful province and sold nearly one hundred thousand of its inhabitants to the Turks. The torches which had reduced Altona to ashes were reprisals for the 'red' (incendiary) bullets by which Stade had been consumed <sup>1</sup>."

In spite of such excesses, certain rules for the protection of civilians made headway in the middle of the century, as for example the Convention of 1759 between Prussia and Austria, drawn up with a view to neutralising the health resorts of Teplitz, Carlsbad, Landeck and Warmbrunnen for the benefit of soldiers under treatment there, and above all the Letters of Safe-Conduct by which the Prince of Soubise, for the French army, and the Duke of Brunswick, for the Prussian army, in 1762 recognised the town of Pymont as neutral and inviolable territory. The last-named instrument being unreserved operated for the benefit of the civilian population as well as for the military receiving treatment.

This is the first example of "hospital and safety zones", the principle of which was recently introduced into positive

---

<sup>1</sup> VOLTAIRE, *Histoire de Charles XII*, VII, page 200.

law by the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War.

The progress of the humanitarian spirit of the eighteenth century marks an epoch in history.

Thus there came into being, after the disturbances of the wars of religion and the ensuing territorial changes in Europe a new Christendom, divided in dogma but united in respect for a law of nations inspired by Christianity.

This monarchic rule of the different sovereigns favoured a patriarchal conception of the relations between man and man and the humanization of war. Louis XV's words at Fontenoy have already been quoted. This same King ordered the inventor of an explosive, judged by him to be too deadly, to be thrown into the Bastille <sup>1</sup>.

His grandson Louis XVI, receiving the embassy of the Grand Moghul in splendour at Versailles in 1788, asked for the liberation of all the English soldiers retained as prisoners by Tippoo Sahib <sup>2</sup>.

Other European sovereigns, such as Frederick of Prussia, Maria-Theresa of Austria, and Catherine of Russia, only to mention the three most famous, were inspired with the same feelings. It was the period of "enlightened despotism". Armies were few and were composed of mercenaries, whose upkeep was costly and who were treated with as much consideration as possible. All Princes were "cousins"; and, although war was one of the arguments of their policy ("ultima ratio regum" was what they engraved on their cannons), they did not hate each other. Fighting was not furious; and, as M. Gillouin, and Ferrero before him, observes, "this limitation and humanization of war" remains to the credit of the eighteenth century.

It was at this time that the voice was heard of Jean-Jacques Rousseau, whose intervention was of the first importance in the formation of humanitarian law.

---

<sup>1</sup> See R. GILLOUIN, article published in the *Ecrits de Paris*, March 1951, page 86.

<sup>2</sup> See Ch. GIRTANNER, *op. cit.*, page 160.

Expressing for the first time as a principle of the law of nations an idea which was itself the product of the evolution of custom, he writes in the "Contrat social" in 1762: "War does not involve man to man relations, but State to State relations in which individuals are but accidentally enemies, not as men, not even as citizens, but as soldiers<sup>1</sup>." This statement was bound to have considerable effect on the science of law and on political practice. The same words are found again under the pen of Portalis on 14 Floreal in the year VIII (1801) on the occasion of the institution of the Prize Court by the First Consul, and are again used by Talleyrand on 20 September 1806 in a despatch to Napoleon.

Jean-Jacques Rousseau, commenting on his own formula, thenceforth famous, says further in the "Contrat social": "The end of war being the destruction of the enemy State, one has the right to kill its defenders while they still bear arms; but, as soon as they lay them down and give themselves up, thus ceasing to be enemies or instruments of the enemy, they simply become men once again, and one has no longer the right to take their lives." The Geneva philosopher is justified in adding: "These principles are not those of Grotius", and he concludes: "they arise from the nature of things and are based on reason."

New words heralding new times! In the name of an ideology which claimed to draw inspiration from sources other than those of Religion, the Encyclopedia was soon to state that "the law of nature imposes limits on the law of war". It added: "*Inter arma*, we are told, *silent leges*. Laws must be silent amid the clash of arms. I reply that, if civil laws, and the laws of the Courts of this or that State, which operate only in peacetime, are to be silenced, the same does not hold true of the immutable laws which are made for all times and all peoples and are embodied in nature itself<sup>2</sup>."

This universalism was to become the law of the French Revolution.

---

<sup>1</sup> J.-J. ROUSSEAU, *Le Contrat Social*, I, 4. Ed. Dalibon, page 14.

<sup>2</sup> *Encyclopédie "ou Dictionnaire raisonné des sciences, des arts et des métiers"*, see the article "Guerre", Vol. XVI, page 775.

The Deputies of the French Constituent Assembly of 1789, following the example of their elders, the American Insurgents, considered that, as human nature was everywhere and always identical, the rights which Man derived from his nature could never change with times or climates. In the preamble of their Constitution they set forth that they were resolved solemnly to declare "the natural, inalienable, sacred laws of Man. "You have demanded", exclaimed Duport on 18 August 1789, "a Declaration applicable to all peoples and all nations... Let there be no fear to state here the truths of all times and of all countries." Dupont de Nemours said: "It is a question of the fundamental law of the laws of our nation and those of other nations, which must last with the centuries<sup>1</sup>." This "cosmopolitan side", this "humanitarian side", of the French Revolution has been dwelt on by numerous jurists who think with Holzendorff that "the idea of justice, the equality of all men in face of the law, freedom of thought, the abolition of slavery, the individual freedom of the citizen, in short, all the great principles proclaimed by the French Revolution, which have become the common inheritance of civilised nations, make the Revolution of primary importance in the history of the law of nations"<sup>2</sup>.

The Constituent Assembly thought that the corollary of these great principles would be universal peace. Unfortunately, this idealistic and optimistic pacifism came up against realities; before which it broke up into a bellicosity far more dangerous than the conception of the "guerre en dentelles", towards which the Ancien Régime in its last days had been drifting.

The whole nation was mobilized to save the Revolution. "Conscription, compulsory service, *levée en masse*, requisitioning of all material, moral, intellectual, and emotional resources"—no stone was left unturned; and "these means proved so

<sup>1</sup> Texts quoted by René BRUNET, *La Garantie internationale des droits de l'Homme*, Geneva 1947, page 25.

<sup>2</sup> From HOLZENDORFF, *Eléments de Droit international*, paragraph 8, page 26.

efficient, and were later to secure such triumphs for France that the other Powers in self-preservation were compelled, pending recovery of their lost advantage, to follow and imitate her on all fronts. Thus began the era of wars "aux allures déchaînées", to use the words of Maréchal Foch, which were to tear the modern world to its very bowels<sup>1</sup>,"

The wars of the Revolution and the Empire had lasting consequences. The ancient monarchies, reestablished for a time after the defeat of Napoleon, maintained national armies in the name of the Holy Alliance. Combats of handfuls of mercenaries were from that time on replaced by conflicts of masses ; and this extension of war was to create needs that could no longer be met by private charity alone. Governments themselves were to have to take over this responsibility ; and the Army Medical Services in their turn were so soon to be found inadequate that private charity was again to be called upon to step into the breach. Here was to be the origin of the Red Cross.

Before dealing with the progress of this great organization, it remains to mark the stages of humanitarian law in the first half-century of the new times.

*The wounded and sick in armies in the field.*

In his " Etudes sur le Service de santé militaire en France ", published in Paris in 1849, Bégin makes the following remark : " The soldiers of the King could accept tokens of royal kindness, one might almost say of royal charity ; but citizens called upon by the law to defend thier land and their liberty had an inde-feasible right to medical care, if in the course of their service they were wounded or fell sick." This " right " had in fact been proclaimed by the National Assembly on 21 and 27 April 1792. The Convention, in accordance with its universalist principles, decreed on 25 May 1793 the institution, of " compulsory and equal treatment of enemy and national soldiers

---

<sup>1</sup> R. GILLOUIN, *art. cit., passim.*

in military hospitals" <sup>1</sup>. Thus that which for so long had only been done by States in virtue of special conventions, or had depended on the orders of an army leader, was raised to the level of a general rule. But this decree of the Convention was subject to reciprocal treatment by the other party or parties to the conflict, which hardly represented any improvement on the previous legal position.

In 1800 Percy, Head of the Medical Service of the French Army, induced General Moreau to approve a very precise draft convention in five Articles, establishing the neutrality and protection of military hospitals considered "as inviolable refuges, where unlucky valour is to be respected, assisted and always free, no matter to what army the hospitals belong or on what ground they may stand". This draft, which was not approved by the Head of the adverse Austrian army, ended with the following clause: "The present convention, applicable only to military wounded, will be published in the Orders of the two armies, and read in each corps twice a month. The execution of these Articles is recommended to the fairness and humanity of all the brave; and each army undertakes to inflict exemplary punishment on whosoever contravenes these regulations."

Gurlt quotes the famous German doctor Bernhard Christoph Faust, writing in a newspaper article of 10 October 1805 to propose the adoption of a convention to alleviate the sufferings of war wounded, with particular attention to the refutation of possible arguments against the suggestion. He also notes that in 1807 after the Stralsund engagement, when the Swedes took prisoner all the wounded that were fit to be removed from a French military hospital, Doctor Johann-Philipp Graffenauer made the following remarks: "It is desirable that hospitals should be declared neutral by a mutual Convention between the belligerent Powers. The unfortunate sick and wounded persons who find themselves in the hands of doctors and surgeons, especially those who find themselves in the hands of the latter, should not be regarded as prisoners of war. The

---

<sup>1</sup> See BASDEVANT, *La Révolution française et le droit de la guerre continentale*, Paris, 1901, page 109.

refuge of the wretched war victims should be considered a sacred place, and respected by all nations. But unfortunately we have not yet reached that degree of humanity ! ”

Again according to Gurlt, Doctor August Ferdinand Wasserfuhr of the Prussian army urged in 1820 that nations should agree to declare wounded and sick prisoners neutral, and should undertake not only to give full freedom to hospitals but also to assist them in every way.

This period of history is dominated by Napoleon, who missed nothing and did much for the condition of the wounded. An engraving of the time depicts him saluting the enemy wounded “ to honour their misfortune ”. In Saint Helena on 23 August 1821 a few days before his death he had a long conversation with the English Doctor Arnott. As usual, he plied his interlocutor with a number of specific questions. Here are the main passages of this curious conversation, which the Grand Maréchal Bertrand has recorded for us in his “ Journal ” :

“ Do many people ask you for news of me ? ”

“ No, although everyone knows that I see you.” (A moment’s silence.)

“ Which of the two nations tended the wounded on the battlefield the best ? ”

“ I believe that the French removed and evacuated them better than we did.”

“ Ah, that comes from habit. Which nation lost the most wounded ? ”

“ France, I believe.”

“ Why ? ”

“ Because we do amputations better than you, I think.”

“ Who cried most on the battlefields, the English or the French ? ”

“ Both about the same, I think.”

“ Did the English cry much when being operated ? ”

“ Some terribly ; others were silent.”

“ Were you satisfied with the organization of our first aid units and our army medical service ? ”

" Very much so."

" Is it as good as yours? "

" I think so."

" Were you satisfied with our hospitals? "

" Yes."

" Did you find them well kept? "

" Yes."

" Are yours kept better? "

" No."

" Did your wounded complain of the way they were looked after and treated? "

" No."

Several months earlier on 26 November 1820, in the course of a particularly bloody war in which both parties were guilty of reprisals of indescribable barbarity, Bolivar, another great figure of the period, had signed a Convention at Truxillo with General Morillo, in which it was said :

" The Governments of Spain and Colombia, desiring to make known to the world their abhorrence of the war of extermination, which up till now has laid waste this territory and has turned it into a slaughter-house, and desiring to take advantage of the first moment of calm to regulate the war, which still exists between the two Governments, according to the laws followed by the most civilized nations and the most worthy and humane principles, have agreed to appoint commissaries to conclude a treaty setting forth the way to wage war.

.....

" IV. The military or other individuals in the trail of an army corps, who have been taken wounded or sick from hospitals or elsewhere, are no longer to be prisoners of war, but are to be free to return under their own flag as soon as they have recovered. As humanity speaks highly in favour of these unfortunate persons who have sacrificed themselves for their country and their Government, they are to be treated as prisoners of war, but with even greater consideration, and are to be given the same assistance and care as the wounded and sick of the party who took them prisoner."

Aulic Councillor Kaspar Lehmann, citing this Convention as an example in the Austrian Military Gazette in 1836, suggested that the European Powers should take advantage of the prevailing peace to draw up an international convention on behalf of the wounded in war-time. A similar proposal had been made in 1826 in the same Gazette by Count Cancrin, Intendant General of the Russian army.

Meanwhile the obligation to treat enemy wounded and nationals alike was not everywhere respected.

Among the pioneers, who preceded the Société d'utilité publique de Genève in the dissemination of this noble idea, a special place is due to an Italian surgeon, one Ferdinand Palasciano.

Born at Capua in 1815, he was on the medical staff of the Neapolitan army of the Bourbons. At the siege of Messina in the Revolution of 1848, in spite of the military authorities' orders to spare no enemy, even wounded, Palasciano gave the same treatment to the enemy wounded as to those of the army to which he belonged. He was arrested on this account, and owed his deliverance solely to the personal intervention of King Ferdinand. Convinced of the value of his idea, he immediately did his utmost to spread it throughout Italy, France, Switzerland and Germany. Everywhere he preached the doctrine of "the neutrality of wounded and seriously sick combatants".

The Crimean War in 1854 brought to light in Florence Nightingale a benefactress of humanity, whose example, self-sacrifice, courage and success in the amelioration of the condition of the wounded makes her one of the principal leaders of the humanitarian movement.

One of her biographers wrote: "Henry Dunant, the founder of the Red Cross, professed that all credit for the Geneva Convention fell to Miss Nightingale. It was, he said, her work in the Crimea that inspired him to go to Italy during the war of 1859<sup>1</sup>." Struck by the inferiority of English first aid units compared with those of the French, which had the advantage

---

<sup>1</sup> Mme. KREBS-JAPY, *Florence Nightingale: sa vie, son œuvre*, Paris, 1932.

of the assistance of sisters of charity, Florence Nightingale succeeded in training a body of nurses who also worked with religious devotion.

Another source of inspiration in connection with the Crimean War was the work of Prince Anatole Démidoff, Attaché to the Russian Embassy in Vienna who made use of his many friends and his great fortune to assist the wounded, whether Russians or foreigners, who were tended in the first aid units of his country. His work in this connection has been described as follows <sup>1</sup>: " Prince Démidoff appealed to all his acquaintances ; and the most aristocratic Russian, Austrian and Italian ladies in Vienna and Florence vied with one another in enthusiasm to make lint, which he arranged to have regularly sent to Russian hospitals, where the wounded, friend or foe, were promiscuously treated. Even on his estates in Siberia the many children in the Homes which he maintained were kept busy making lint, and funds were raised among the population on behalf of the wounded."

### *The Prisoners of War.*

The theories of Jean-Jacques Rousseau had a marked influence on the condition of prisoners of war.

War being an " inter-State relation ", belligerents are only enemies by accident ; and the right to kill one's adversary exists only when he is armed, and ceases when he surrenders. The only action which can be taken in regard to an unarmed enemy is to deprive him of his liberty ; and, when the war is over, the prisoners on both sides are entitled to have their liberty back.

The Treaty of Friendship and Commerce, concluded in 1785 between Prussia and the United States under the signatures of no less illustrious personages than Frederick II and Benjamin Franklin, both of them notable exponents of the

---

<sup>1</sup> Octave JAUNEZ-SPONVILLE, *Les prisonniers de guerre des Puissances belligérantes pendant la guerre de Crimée*, Paris, 1870, Avant-propos.

current "philosophic" ideas, is based on this conception, and is of the utmost theoretical importance for the purposes of the present study. Article 24 of the Treaty lays down<sup>1</sup> that :

"in order to alleviate the lot of the prisoners of war, and to save them from the risk of being sent to distant and rigorous climates, or immured in confined or insanitary quarters, the two Contracting Parties solemnly undertake to one another and before the world that they will not adopt any such practices... The cantonments shall be as spacious and as convenient as those of the troops of the Power in whose hands the prisoners are... The rations shall be the same as those issued to the enemy's own troops... Each of the two Powers shall be entitled to maintain a Commissioner of its own choice in every cantonment of prisoners held captive by the other Power. The said Commissioners shall be free to visit the prisoners as often as they please : they may receive and distribute the gifts which the relations or friends of the prisoners send them : and they may make their reports by open letters to those by whom they are employed. The two Contracting Parties have furthermore declared that neither the pretext that war supersedes treaties nor any other similar pretext shall cancel or suspend this or the preceding Article, and that on the contrary it is for the case of war that the said Articles provide, and are accordingly to be observed during the same no less than any such other articles as are most universally recognized by the law of nature and the law of nations."

Too much emphasis cannot be laid on the humanitarian character of these provisions. They were far in advance of the practice of the time, and constitute already a prisoners of war statute, the guiding principles of which reappear in the Geneva Convention of 1929. But the provisions of this 1785 Treaty were valid only between two contracting Powers, who were not at the time at war with one another. They afforded none the less a striking example for the future both in respect of their contents and in respect of the fact that they were drafted with a view to war, and were intended to come into force automatically in the event of war. That certainly was an advance on the previous usage, which did not go beyond the conclusion of *ad hoc* agreements of limited duration, applicable to particular conflicts.

---

<sup>1</sup> The text is reproduced in Article XII of the revised Treaty of 1828 between the two countries.

Towards the end of the century the custom of belligerents sending envoys to one another to look after the interests of their captive compatriots became established. There are references to the practice in the Anglo-French Cartel of 13 September 1796, in the Washington Cartel of 12 May 1813 between the United States and Great Britain, and in the Convention, which has been already cited, of Truxillo between Colombia and Spain.

It would not however be true to say that prisoners were in practice always treated in accordance with such generous principles.

In the insurrection of San Domingo in 1803 Rochambeau put 500 prisoners to death. The native leader Dessalines had 500 Frenchmen hanged by way of reprisals. Many similar incidents occurred in the wars of independence of the Spanish colonies. In 1823 in spite of the Truxillo Convention the entire garrison of Porto Cabello was put to the sword. Elsewhere we find the English hulks, the mines of Siberia and the atrocities of the Spanish war.

Nor did the exchange of prisoners always proceed without obstacle. "Even today"; we read in Wheaton in 1836, "this usage is not obligatory among nations. They prefer to insist on the ransom of the prisoners they take, or to leave their fellow citizens in the enemy's hands until the end of the war".

Nevertheless the internal legislation of civilized States made more and more concessions to humanitarian ideas. In France for example a Navy Ordinance of 1832 ordered naval officers to instruct their men "to show themselves generous to prisoners, and to treat each prisoner with the respect due to his rank".

Prince Démidoff in the Crimean War did not confine his solicitude to the lot of the wounded. "Under his interesting direction", says the biographer from whom we have already quoted, "an Association was formed with the object of giving aid of every sort to prisoners of war, studying their requirements, and taking all necessary steps to supply anything

lacking to their comfort. The Association was to send news of them to their families, and to convey news from their families to them. It was to see that they received the money which their relatives wished to send them. It was to furnish them with the means of celebrating happily the national holidays, which they had been accustomed to observe in their own homes. It was in a word to alleviate the tedium and the privations of their captivity. Furthermore—and this was perhaps entirely unprecedented<sup>1</sup>—the Association displayed as much zeal for the comfort of the prisoners of nations at war with its own country as for its own compatriots. Thanks to Heaven and to the progress of civilization we are no longer living in an age when prisoners of war were treated like wild animals on exhibition to the public curiosity, or were parked in hulks or insanitary hovels, where private charity was almost the only agency to cope with their needs. Today in all the civilised nations of Europe prisoners of war are treated with humanity, and assimilated in the matter of pay and rations to national troops of the same rank.”

In striking illustration of his point the writer quotes a letter, in which the Archpriest Iosif Vassilieff, who had been authorised to look after Russian prisoners in France, wrote as follows: “I forgot to tell you that I invited the French authorities, both at Ile d’Aix and at Tours, to come to the evening reception of the officer prisoners, and they all made a point of coming, and were in general on excellent terms with the prisoners.”

### *The Civilian Populations.*

In the nineteenth century the distinction, which Jean-Jacques Rousseau had made between combatants and non-

---

<sup>1</sup> The Report published in 1759 by the President of the English Committee for the Maintenance of the French Prisoners in England, to which reference has been made above, is evidence in refutation of this claim, but does nothing thereby to detract from the merits of Prince D mido ff’s action.

combatants, definitively became a part of European Public Law.

“ The only enemies in the true sense of the word are the belligerent States. The citizen subjects of a belligerent State, are not, in their capacity as human beings, enemies either of the subjects of the enemy State or of the enemy State itself. They are not, as individuals, belligerents<sup>1</sup>.”

Such was the principle, on which the Capitulations of Flushing (1809) and Pampeluna (1813) were based. The former of these instruments provided that “... any Frenchman, who was not an inhabitant of Flushing before 1807, shall be sent to England, and shall be subject there to such treatment as the two Governments may agree to lay down for non-combatants. Their private and personal property shall be respected, and they shall be permitted to retain any papers which may relate to the statements of their accounts, or be of use thereto.” The other agreement provided that “... French non-combatants at present in Pampeluna shall not be deemed to be prisoners of war, and shall be free to return to France ”.

In principle therefore the civilians were not exposed to the same dangers as the armed forces. But there were exceptions to the rule, e.g. in the case of civil wars, where the laws of war were not held to be applicable to such conflicts. In international conflicts on the other hand the principle was in general respected. Moreover weapons of war had not yet attained such a measure of potency as to constitute a serious menace to the civilian populations outside the immediate proximity of the fields of battle.

Accordingly the last days of the Ancien Régime and the beginnings of the new age witnessed a continuous development of humanitarian ideas in the formation of the law of nations and in the elaboration of the laws of war. But it could not be said that this congeries of legislation amounted to a corpus of what could be called “ Law ”.

The numerous agreements, cartels, capitulations and other conventions determining the lot of wounded, prisoners and

---

<sup>1</sup> BONFILS, *op. cit.*, page 742.

civilians were always, with a few exceptions, episodic parts of treaties relating to particular wars. When the wars were over, the Contracting States were no longer bound by these instruments in relation to one another. Even where, as in the case of the Treaty of 1785 between Prussia and the United States, there were provisions specially relating to the eventuality of war, which were of unspecified duration, it was only the two signatories of the treaty who were bound by them. The other nations knew nothing of these treaty provisions. There were no doubt certain pioneers, to whose memory we have paid tribute in passing, who argued in favour of an international Convention, applicable to all times and to all countries, for the purpose of determining in anticipation of war the status of war victims. But nothing of the sort had been negotiated by the Governments. Humanitarian lessons had been given by certain heads of States or army chieftains, by doctors or philanthropists, which the legislators could take as a source of inspiration; but nothing had yet been put into the form of positive international law.

It was left to the promoters of the First Geneva Convention to lay the foundations of humanitarian law; and we shall see the extent of the triumph they achieved in the sketch which the next Chapter will contain of certain particulars in the history of the Red Cross.

*Henri Coursier*

*Member of the Legal Service  
of the International Committee of the Red Cross*