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ET

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INTERNATIONAL COMMITTEE OF THE RED CROSS

AIDE-MEMOIRE ON THE REFUGEE QUESTION

The International Committee has addressed the Aide-Memoire reproduced below to the Diplomatic Conference which opened at Geneva on July 2, 1951, to examine a draft Refugee Convention. It should be read in conjunction with the appeal on Refugees and Stateless Persons of May 1, 1950 (See English Supplement to the Revue, 1950, Vol. III, No. 5, p. 82 et seq).

* * *

June 15, 1951.

In view of the opening on July 2, 1951, in Geneva, of a Diplomatic Conference with a mandate from the United Nations General Assembly to establish a statute for refugees, the International Committee of the Red Cross believes it may be useful to recall the principles which have led it, on various occasions, to intervene in this field.

In 1948, the Committee submitted to the XVIIth International Red Cross Conference a draft Convention for the Protection of Civilians which contained the following provision :

Article 127. — RETURN TO DOMICILE. EMIGRATION

The High Contracting Parties shall, upon the close of hostilities or occupation, endeavour to facilitate the return to their domicile or the settlement in a new place of residence of all persons who, as a result of war or occupation, are unable to live under normal conditions in the place where they may happen to be.

The High Contracting Parties shall ensure, in particular, that such persons are allowed, if they so desire, to travel to other countries,

and that they are provided for this purpose with passports or equivalent documents.

Without actually mentioning the word "refugee", the first paragraph gives an empirical but humane definition of this term. Article 127 was adopted without change by the Red Cross Conference and formed part of the working document for the 1949 Diplomatic Conference in Geneva.

The Article does not, however, figure in the Fourth (Civilian) Geneva Convention; it is one of the few provisions of the 1948 Drafts which were not incorporated, with or without amendment, into the definitive text.

It would be wrong to deduce from this that the 1949 plenipotentiaries departed from the principle of Article 127; the Conference agreed rather with the opinion expressed by one Delegation that the refugee problem was too large to be dealt with in a few lines of a Convention—whose object, moreover, was quite different. The Delegate who spoke took care also to express his agreement with the "admirable principles and ideals expressed in this text".—No Delegation disagreed with the principles; two—one from South America and the other from Northern Europe—pressed strongly in the appropriate Commission for the retention, in one form or another, of Article 127.

The Conference decided otherwise, apparently because the Economic and Social Council of the United Nations was already well advanced in its study of the refugee problem. In fact, a draft international Convention, constituting a definite statute for refugees, was drawn up some months later by the Council and submitted by it to the United Nations General Assembly.

It is this draft that the forthcoming Conference at Geneva will discuss.

The International Committee can only pay tribute to the spirit in which this draft was conceived. To some extent, it codifies various previous Conventions, many of which had been left unratified; it sets out precise obligations in an attempt to remedy one of the gravest existing human evils.

It may however be asked if, in spite of its detail, the pro-

posed text entirely fulfils the intention briefly stated in Article 127 of the Stockholm Draft. It is true that that Article merely made a declaration, and was still further limited by being optional ; but it at least left it to be clearly understood that a *humane* solution, excluding all unjustified discrimination, should be sought.

It is natural that Government should consider the responsibilities, political, economic and social, they undertake in signing a Convention based on so wide a principle. The Committee, nevertheless, would like to see the general agreement shown at the 1949 Geneva Conference carried over into the texts, at least in so far as the principles are concerned.

Looking at the problem from its own, strictly humanitarian, point of view, the Committee believes that the following ideas should be incorporated :

Every person forced by grave events to seek refuge outside his country of ordinary residence is entitled to be received.¹

He shall be entitled, moreover, to assistance from the Authorities if unable to lead a normal existence in the territory to which he comes.

Should the resulting charge be excessive in relation to the resources of the Authority concerned, the responsibility for it shall, in virtue of their common humanity, become an obligation for the community of nations.

This common responsibility shall be accepted and given effect by the appropriate political bodies.

Humanitarian organizations shall be entitled, so far as their means allow, to second the action taken by the Authorities.

The International Committee had these principles in mind when, in its Appeal dated May 1, 1950, it drew the attention of Governments and the responsible institutions to the vital

¹ This is a new and enlarged conception of the right of asylum. Obviously, reservations similar to those contained in the second paragraph of Article 14 of the Universal Declaration of the Rights of Man also apply here, so that the provision would exclude common law criminals recognized as such by International Law.

importance of not limiting, by a too strict definition, the categories of persons who may be entitled to that status, but of leaving the scope wide and comprehensive, taking into account only the unfortunate position of those who, today as in the future, may have to avail of it.

The Committee has felt it necessary to clarify its position in regard to this grave problem, in the hope that the views of the Red Cross, expressed above, may be borne in mind by all who regard that institution as a valuable agency for the alleviation of human suffering.

PRINCIPAL ITEMS OF INTEREST

Germany. — In the Western Sectors of Berlin, the Delegation distributed 1,900 kilos of milk, a gift of the American Quakers, to five hundred cancer patients, notified to it by the Public Health Services as being in extreme poverty. In December last, the Delegation had assisted these patients in similar circumstances; the aid then given had helped them for the moment, physically and morally.

Medical supplies and household articles were handed to the German Red Cross in the Western Sectors of Berlin for issue in various refugee camps, hospitals, homes and clothing workshops.

About ten tons of medical supplies were given to the Public Health Services of the German Democratic Republic, for issue according to plans drawn up with the Delegation's approval, to hospitals in the five provinces of Eastern Germany and in the Eastern Sector of Berlin.

A gift of one kilo of streptomycin was handed to the same authorities for distribution centres named by them; it will be used to treat children suffering from tubercular meningitis.

War Invalids. — The War Invalid Section has provided a mass radiography apparatus for the Tuberculosis Services in the German Democratic Republic. Accessories were also sent and sufficient film to take 115,000 pictures.

A further gift to Eastern Germany included Braille watches, typewriters and steno-typewriters for the blind; leather and straps for the manufacture of artificial limbs were given to numerous workshops.

"Volksdeutsche". — On June 22, 126 Volksdeutsche children from Jugoslavia arrived in Austria, 98 of them travelling on to Western Germany. This brings to 739 the number of these

children brought back from Yugoslavia, as part of the Committee's scheme to reunite dispersed families.

Jordan. — On June 9, the Delegate visited Israeli civilians detained in Ramallah Prison.

Korea. — On May 23, Delegates visited prisoners of war in U. N. Transit Camp No. 1; on May 29 and June 9, U. N. Prisoner of War Camp No. 1 (Koje-do), and the Mainland Enclosures and Hospitals at Pusan.

During the month of June, the Central Prisoners of War Agency received from U.N. Command nominal rolls of 23,481 prisoners of war, and 1,593 dead. This information—together with 81 requests for enquiries, some 50 letters and messages referring to, or intended for, prisoners in North Korean hands, and 320 messages from North Korean prisoners to their relatives—were sent, as usual, to the Embassy of the People's Democratic Republic of Korea in Moscow.

Lists concerning Chinese Volunteers taken prisoner were, in addition, communicated to the Chinese Red Cross. This Society also received duplicates of a number of enquiries and messages from relatives of men in the United Nations forces posted missing or presumed taken prisoner.

From unofficial and unverified sources, the Agency also received the names of 647 prisoners in North Korean hands; these have been communicated to the home authorities.

While recently in Peking, the President of the ICRC had requested the good offices of the Chinese Red Cross, asking it to undertake in North Korea certain of the customary duties of the Committee until the latter was in a position to deal with them itself, through its Delegates.

This request, favourably received by the Chinese Red Cross—but subject to the agreement of the North Korean authorities—was brought officially to the notice of the Government by a telegram which M. Ruegger addressed on May 28 to M. Pak Heun Young, Minister for External Affairs at Pyongyang.

Some time ago, the Committee had asked the Hungarian Red Cross to act as intermediary in sending a certain quantity

of pharmaceutical supplies to North Korea. The Society had agreed, but by letter of June 13, 1951, has stated that it is not in a position to forward the consignment.

Vietnam (Indo-China). — At the end of May, Delegates visited Hac-Mon, Phu-Lam, Thu-Duc, and Mytho Camps in Southern Vietnam, and on June 5, Sdoc-Ach-Romers Camp in Cambodia. From June 20 to 27, visits were paid to camps of military prisoners in Central Vietnam.

A Red Cross organization of Democratic Vietnam addressed a radio message to the chief Delegate, M. Paul Kuhne, at the end of June, stating it was willing to allow medical supplies to be parachuted in territory controlled by the Vietminh, for issue to prisoners of war. M. Kuhne, in replying, stated that relief at the disposal of the Delegation was also for the military wounded and sick, and for civilian victims. He proposed a meeting with the organization, to discuss conditions of issue.

Indonesia. — Dr. Pflimlin, Delegate at Djakarta, paid a three-weeks visit to the Southern Molucca Islands, including Amboina and Ceram.

Refugees. — During the Diplomatic Conference at Geneva to establish an international Refugee Convention, M. Ruegger was invited by the Chairman, M. Knud Larsen, during the general discussion, to make a statement on the International Committee's position in regard to refugees, and its various interventions in connection with them.

The text had been drafted for the Conference ; it has been communicated, further to the Committee's Memorandum of May 1, 1950 : " Refugees and Stateless Persons ", to all Governments and National Red Cross Societies.

JEAN S. PICTET

Director for General Affairs of the I.C.R.C.

THE RED CROSS AND PEACE

IS THE WORK OF THE RED CROSS PREJUDICIAL TO THE MOVEMENT TO OUTLAW WAR?

Before we look to what the Red Cross can do for peace, charges repeatedly made, and again heard during the Geneva Diplomatic Conference in 1949, must first be dealt with. They are absolutely groundless, but recur so persistently that it seems necessary to refute them here. Stated in different ways, they amount to the following : the work of the Red Cross, in practice and in law, is harmful to the movement to outlaw war.

Curiously enough, the same reproach was made to the founders of the Red Cross. Gustave Moynier, opening the 1863 Conference which gave the organization a semi-official existence, declared :

“ It has been said that instead of seeking ways to render war less murderous, we should do better to attack the scourge at the root, and work for universal and lasting peace in the world. To hear our critics, it would really seem that we are as good as trying to have war accepted as a necessary evil.”

Since then, the Red Cross is supposed, by preparing to serve in time of hostilities and by its advocacy of Conventions to protect the victims, to give war a certain “ recognition”, or at least make it appear to be inevitable. It has been maintained that the Red Cross placidly accepts the idea of war ; that in making war less brutal, it makes it less odious ; that the Conventions mask the reality and create a misleading sense of security.

Others, without reproaching the Red Cross, question the validity of its mission. Unbending pacifists assert that war can only be met by absolute passivity. Some believe contradictory any attempt to lessen the evils of war, because the object of war is to do as much evil as is possible ; it is vain to imagine that war can be made more humane, when it is of its nature opposed to humane sentiments. Others even have gone so far as to say that the most terrible wars are the most humane, because they are the shortest.

* * *

We can preface our reply by affirming that the foundation of the Red Cross and the first Geneva Convention—bound up inseparably with it—constituted one of the most powerful onslaughts made on war since the world began.

It was, nevertheless, since the beginning of the century that war received an unprecedented extension, embracing whole continents, and drawing down death and suffering on ever-increasing numbers. But it was precisely because war was becoming more bloody and “ total ” that the Red Cross and the Geneva Conventions came into existence. Without them, the development would have been the same—but with the difference that the millions whom they saved would also have perished. To be convinced, we need only compare the lot of persons to whom their protection could be extended with those deprived of it. During the second World War the estimated mortality amongst prisoners of war, protected by the 1929 Convention, was 10%, against 90% amongst political detainees who had no such protection.

Until very recently, International Law depended essentially on the principle of State sovereignty.¹ States were completely independent, co-existing simply and each seeing that its own rights were respected—if necessary by recourse to the extreme measure of war. Although the principle was put forward at

¹ See MAX HUBER : *The Red Cross : Principles and Problems*, Geneva, 1940, p. 10 et seq.

the Congress of Vienna in 1815 that the moral values common to humanity should be protected in International Law, this latter was itself still overshadowed during the nineteenth century by the primacy of material interest.

It is difficult to realize today the extent of the revolution accomplished by the 1864 Geneva Convention, and appreciate how fundamental it was. In ratifying the treaty Governments agreed to limit their own powers ; they forbade violence against the military sick and wounded, their nursing personnel and the buildings and material devoted to their use. Thus the Geneva Convention established a barrier, protected by the Red Cross emblem, beyond which war dared not penetrate.

With the exception of certain existing regulations which refer to shipping, war now for the first time conceded something to law. Moreover, moral ideas touching the human person now entered into relations between States. Political and military interests no longer had the field to themselves. It was still necessary to ensure that, even at the height of the struggle, the humane principle should prevail, that the person who suffers must be respected and aided with equal care, whether friend or enemy.

The boldness of the 1864 treaty had few counterparts in its time ; on it, the whole construction of the Geneva Conventions has been built. The principle, limited in application at first to wounded combatants, slowly extended to other categories of persons disabled, or not directly participating. Prisoners of war and the shipwrecked were the first to benefit by the extension. Today, civilians have at last obtained, against arbitrary treatment by an enemy, the safeguards which they were so long without.

Red Cross initiative has not been confined to its specific domain ; it has given an impulse to the great modern tendency in International Law to limit the recourse to arms, substitute the pacific settlement of disputes, and, finally, outlaw war. The first in line was the St. Petersburg Declaration of 1868 against the employment of certain projectiles, by which the Powers bound themselves to consult in future ; then came the Brussels Conference in 1874, certain proposals of which were embodied

in the Hague Conventions of 1899 and 1907. The latter attempted to define the laws of war and opened the way to the creation of Inquiry Commissions and Arbitration Courts. Shortly before the first World War agreements were signed subordinating the recourse to war to a procedure of impartial inquiry. In 1919, the Covenant of the League of Nations went still further, imposing the settlement of disputes by arbitration, or, in default, mediation of the League and application of the new idea of sanctions. The next stage was that of treaties of arbitration and conciliation, which require peaceful settlement in every circumstance. Finally, by the Kellogg Pact of 1928, States renounced the recourse to war in settlement of their differences. These principles were taken up again at the end of the recent War, and on them the work of the United Nations is founded.

These constant efforts over a quarter of a century gave rise to great hopes. In this relatively short period all that was hoped for has not been realized; inevitable—and often unjustified—disappointment has followed. But the Red Cross does not depend on the progress of the international spirit, any more than it is shaken by its setbacks. Existing before this evolution, the organization remains independent of it and continues its own way. Whether efforts to outlaw the recourse to arms are regarded sceptically or with optimism, no one can deny the changed position of war in International Law since 1864. The founders of the Red Cross, raising their standard on the field of battle, and securing treaty recognition for the right to do so, struck a shrewd first blow against the Moloch of war.

* * *

Some think contradictory the fact that the same Powers which solemnly outlaw the recourse to arms send their plenipotentiaries to Geneva to revise and develop Conventions to attenuate the horrors of war. If contradiction there be, it is that inherent in all things human, and which is at the same time the bane of man and his salvation. For the Red Cross, however, there is no contradiction. From the very first, those who devote themselves to the Red Cross have had no more ardent wish than to see

peace and justice triumph over war and violence. Nor did they confine themselves to pious aspirations. In the very centre of the fighting, their actions were those of peace. They did not shut their eyes to the facts, however distressing they might be, nor to the grim reality of war. The cause is best served by facing the worst.

The preparation of the Red Cross and of Medical Services throughout the world, and the revision of the Geneva Conventions, presuppose that wars are still possible. This possibility cannot be seriously ignored. In 3,400 years of recorded history, there have been some 3,150 years of war, local or general, and only 250 of peace; more than 8,000 peace treaties have been signed.¹ Since 1914, there has not passed a year, or even a day, without armed conflict, international or civil, in some part of the globe.

At present, and without hazarding any idea about the probability or improbability of new conflicts, it cannot be denied that security and armaments weigh heavily in international politics. Armies, navies and air forces are being increased, the techniques of war developed; after the atomic bomb, we are told of weapons even more terrible.

When all States shall have laid down and destroyed their arms, and when it will have been made impossible to replace them—on that date the Red Cross can also dispense with its arsenal, or rather, turn it over entirely to working for the health and betterment of peoples. But where Governments, maintaining and developing large forces, even for purely defensive purposes, themselves show that they do not believe war impossible, there is a clear duty on those to whom it falls to assist non-combatants, to ensure that protective measures are taken while there is still time. The responsibility is not determined by the probability of war at any particular moment, but only—and always—by the worst eventuality, however improbable it may be. The Red Cross must be ready, whether the chances are nine out of ten,

¹ See the communication to the International Diplomatic Academy, January 17, 1930, by Prof. Pella: *The Briand-Kellogg Pact and its consequences in International Law and the Municipal Law of States.*

or one in a thousand. This " war preparation " of the Red Cross is the last which can be abandoned.

We must learn also from dearly-bought experience. When the first World War ended, there was a great wave of optimism : this war would be the last, there never will be another. People asked if the Red Cross should not simply disappear, or at the most, be preserved as a museum piece. What actually and most fortunately happened was that a good part of Red Cross energies were diverted to peacetime work : helping those stricken by disease, disaster, and want ; assisting children, the weak, and have-nots generally.

The change was salutary and inevitable ; but in making it, the Red Cross wisely remained true to its historic principles. It continued to take the practical and legal precautions war might render necessary. The event has well justified this prudence : had the unthinking optimism of 1918 prevailed, there would today have been many with guilty consciences.

Wishful thinking did, however, lead to one disaster. The first World War had, with cruel effect, shown how great the need was for a Convention for the effective protection of all civilians. At the Armistice therefore, the International Committee began a study of ways to prevent a repetition of the incidents it had had to meet by improvised means. In 1921, it proposed to the Tenth International Red Cross Conference that a treaty to protect civilians should be studied concurrently with that for prisoners of war. With the support of the entire Red Cross, it prepared the necessary drafts.

But this attempt proved abortive. It was believed in high places that the moment was ill-chosen for suggesting to Governments the preparation of a charter for civilians in wartime ; the very idea would appear, in international circles, a betrayal of the cause of universal peace. Protests were even made when the Red Cross took up the new and redoubtable problem of chemical warfare. For these reasons, the 1929 Diplomatic Conference dealt only with the armed forces.

The Committee none the less persevered ; it prepared a new and comprehensive draft which was adopted by the Fifteenth International Red Cross Conference (Tokyo, 1934) ; this draft

should have been submitted to a Diplomatic Conference called by the Swiss Government. Replies to the invitation were slow in coming in—the urgency of the question was then far from being apparent—and it was only in 1939 that it was possible to fix the date: early in the year 1940.

It was too late. War prevented the adoption of an agreement which would have assured to all civilians, including those in occupied territory, protection equal at least to that enjoyed by prisoners of war under the 1929 Convention. There is no need here to dwell on the persecution suffered by so many civilians, the massacres of hostages, mass deportations, death camps. No one would now dare to say that it was wrong to establish finally, in 1949, a Geneva Convention for the protection of civilians.

The elaboration of humanitarian Conventions has something of a parallel in Pascal's famous proposition. Either there will be wars or there will not; if there are, the Conventions will save what can still be saved of humanity and civilization; if there should not be, the labour spent—a few years work by a handful of men in each country—will be largely compensated by the knowledge that the Conventions are, and will for the future be superfluous.

* * *

Peace will always ultimately depend on moral factors. The founders of the Red Cross wrote: "The great collective iniquity which is called war is no other than one of the manifestations of evil in the world".¹ In our civilization, where men are increasingly interdependent, peace can be established only if it is deeply rooted in every individual. Each must look to his own heart, banish hatred and make peace with his fellows, beginning with the nearest.

The Red Cross is the outcome of an attempt to eliminate war from human relations by the action of moral forces. Its role is decisive, beginning with its value as a symbol and an

¹ See *La guerre et la charité*, by G. MOYNIER and L. APPIA. Geneva, 1865.

example. On the battlefield, it forces enemies to conclude a truce; when war makes its tragic divisions, it forms a last bridge. In the middle of violence, it intervenes without ever resorting to violence. It sets the idea of brotherhood and love as a perpetual reproach.

The Red Cross has also a more direct influence for peace. It has created a propitious international climate, and, in its own field, is one of the surest foundations of peace. It works for better relations between peoples by making them conscious of their interdependence; it induces friendly competition, creates a network of responsibilities assumed in common for the good of all. Better than most, the Red Cross knows the wounds inflicted by war for having bound them up; far from hiding them, it shows their repulsiveness, in order to disgust men with war. A valuable auxiliary of propaganda for peace, it loses no occasion of proclaiming that its most urgent desire is that peace shall not be troubled.

But even more directly, the Red Cross combats war by making it more humane.¹ Although its ultimate object is world peace, it could not, in its present state, hope to banish the scourge of war; it therefore concentrates on lessening the ravages. There is no want of logic in this, it being universally recognized as desirable to try attenuate evils which cannot be wholly suppressed forthwith. Peace requires that each should make the best use of the means at his disposal.

Every practical act of the Red Cross in wartime comes under this heading, and there can be no doubt of the justification for this attitude. No one questions the need for an efficient health organization or a fire brigade, but it is not for any love of disease or fire. Nor does anyone think of blaming doctors or firemen because sickness and fires still occur.

In the field of law, there are also attempts to make war more humane: such is the origin of the laws of warfare. The ravages and cruelty which hostilities bring in their train must

¹ See Louis DEMOLIS: *De l'action préventive de la guerre à son humanisation*. *Revue internationale de la Croix-Rouge*, September, 1936, page 713, and *La Croix-Rouge et son action internationale*, May, 1940, page 372.

be foreseen and resisted ; otherwise they will take on frightening proportions. If war is a crime, to wage war inhumanely is a double crime.

The advocates of "total war" discountenanced any attempt to limit war or spare anyone, on the pretext that excessive suffering would automatically shorten the fighting. We do not believe that a single authority could be found today to support such a theory. This was the language of executioners, who may have wanted war, but never expected to be themselves its victims. Independently of all moral considerations, the experience of two World Wars and a large-scale civil war has adequately shown that the brutality of war does not affect its duration, and that terroristic measures prolong the hatred and spirit of revenge to which they give rise or save up for the future.

Moreover, the existence of humanitarian Conventions does nothing to promote war. A belligerent who ignores these basic principles will find that resulting indignation and resistance is greatly intensified.

It therefore cannot be said that the Red Cross is complacent about war. Its existence, its work, its policy, are a living protest against the misuse of material forces. If ever the red cross on the white ground, symbol of disinterested sacrifice, is torn down and disappears, it will soon be replaced by another emblem, also universally known : the black flag with the skull and cross-bones. There is no doubt that this flag will bring peace—R.I.P.

The Red Cross is the only great idea in whose name men have never slain ; it remains one of the few reasons for not losing hope. Its work during many years offers the certainty and proof that love is stronger than death.