



SUPPLEMENT

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REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

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DES SOCIÉTÉS
DE LA CROIX-ROUGE

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INTERNATIONAL COMMITTEE OF THE RED CROSS

*MESSAGE FROM M. PAUL RUEGGER
TO THE INTER-AMERICAN RED CROSS
CONFERENCE AT MEXICO*

M. Rodolfo Olgiati, member of the ICRC, delivered on October 9 to the Inter-American Red Cross Conference at Mexico, the following message from M. Ruegger, President of the Committee :

“ It is with great pleasure, tempered by deep emotion, that I am sending the present message to the distinguished gathering at Mexico of representatives of the Inter-American Red Cross Societies, under their eminent Chairman, Don Alejandro Quijano. This meeting, convened by the Mexican Red Cross and the League of Red Cross Societies, is taking place at a propitious but decisive moment in the history of mankind. Amongst the dearest hopes of the founder of our world movement, the Genevese philanthropist Henry Dunant, was one which I now see being carried into effect : the peoples of the whole American Continent united in a common belief in, and attachment to, the ideals, work and future of the Red Cross.

“ In 1863, the International Committee of the Red Cross, with Henry Dunant as Secretary and General Dufour as first President, launched an idea which has, since then, successfully extended to all the countries of the world. The Committee can therefore but rejoice at the spirit which informs your meeting, and gladly respond to the desire of all National Societies here assembled, to develop the scope and influence of the Red Cross. I was myself fortunate, last year, to gain personal and first-hand experience of the remarkable manner

in which the principle of charitable assistance is applied in this great country, which is your host today. I was satisfied that the Red Cross plays a very considerable part in the minds of the Mexican people.

“ We live at a time in which conflicts of opinions and ideologies are sharper than ever. Whole countries, nay whole continents, are divided into strictly separated compartments. The stern principle : “ *cujus regio, ejus religio* ” (my creed is that of my masters), which emerged as the fruit of the wars that devastated Europe during the 17th and 18th centuries, is again current, and renders antagonisms still more acute. If we refuse to despair of the future of mankind, we must needs cling to everything which still *unites* us, in a world of contrasts and conflicts.

“ Common denominators are growing daily fewer ; those that survive are the more valuable. The desire which we all nourish to raise the standard of public welfare is one of these—despite the fact that ways and means suggested are so strictly opposed, and spiritual values so diversely appreciated. Another factor is the development of science, considered as a powerful agent of human progress. Most effective of all is the yearning of the peoples for the abolition of war and the institution of lasting peace. And, as far as we are concerned, I would speak of that world unity which is the recognition of the admirable work of the Red Cross organization. That unity, it is our privilege to maintain, to proclaim and to strengthen by all possible means.

“ The Red Cross flag, symbol of fraternal assistance in the struggle against human distress, has quickly earned, in a few score years, instinctive acceptance by men and women of goodwill in every nation. This rapid success implies heavy responsibilities—that especially of keeping intact the heritage of the Red Cross and upholding our common principles, despite the influence of passing modes and opinions. The Red Cross will be strong and effective in the crusade against human suffering, in so far as it remains united. Such unity must not be sought only within the framework of its national or international agencies—a purpose fairly easy of attainment, if all

manifest their goodwill—but also, and especially, in the basic conception of what is the essential task of the Red Cross. It is not enough that every country and every continent should recognize the symbol, and the same name of Red Cross, or Red Crescent. Name and symbol must be living entities; they must everywhere correspond strictly to a living idea and belief, of which our founder, Henry Dunant, was the messenger: every victim, whether friend or enemy, has a claim to fraternal, generous and disinterested assistance; there can be no discrimination made in the fight against distress, but only constant regard for the dignity of the human individual.

“ If such be our doctrine, if such be the foundations of the Red Cross, universally recognized as intangible, we shall find in it a guarantee—the most essential, perhaps—of the harmony to which mankind aspires.

“ The Red Cross Societies of the American Continent can, by their work and union in a common effort, lead the world on the path of future progress. It is in this spirit that the International Committee of the Red Cross, true to its mission to establish a common belief in a will for peace, greets the representatives of the American Societies assembled here today. ”

PRINCIPAL ITEMS OF INTEREST

San Francisco Conference. — The President of the ICRC, M. Paul Ruegger, has returned from the San Francisco Peace Treaty Conference, which, with M. Roger Gallopin, Executive Director, and M. Max Wolf, Counsellor, he attended on the invitation of Mr. Dean Acheson, United States Secretary of State and Chairman of the Conference. On his arrival in Geneva, M. Ruegger gave a general account of the mandate which the Powers signatory to the Treaty wished the Committee to assume, in providing relief to former Allied prisoners of war in Japan.

At San Francisco, M. Ruegger and his advisers explained in detail to the principal Powers concerned how, in accepting such a task, the Committee had to be governed by traditional Red Cross principles of neutrality and impartiality. This point of view was sympathetically received.

Highly complex questions are now involved, and discussions on the Committee's possibilities of action are continuing with the States interested. Letters exchanged between Mr. Kenneth Younger, British Minister of State, Ambassador John Foster Dulles, Deputy Leader of the United States Delegation, and M. Ruegger underlined the necessity for the Committee's complete independence in all circumstances.

During the San Francisco Conference, M. Ruegger had cordial talks with M. Yoshida, Japanese Prime Minister and Minister for Foreign Affairs, and other members of the Japanese Delegation.

Conference of Welfare Organizations. — The Standing Conference of Welfare Organizations at Geneva, under the Chairmanship of Mr. Elfan Rees, of the World Council of Churches, met on September 28, to consider, *inter alia*, the problem of legal assistance for refugees.

M. Rodolfo Olgiati, member of the ICRC, opened the discussion and reviewed the present situation. He recalled the recommendation adopted by the Stockholm Red Cross

Conference in 1948, for a programme of legal assistance to be undertaken by the Red Cross. The Conference held at Hanover in April last, which the ICRC attended, had approved the establishment in Germany of an autonomous section of the German Red Cross, on the lines of the similar department of the Italian Red Cross, known as Agius. M. Olgiati added that other Red Cross Societies were similarly interested.

On May 1, 1950, the ICRC issued an appeal to Governments on behalf of refugees and submitted a Memorandum on the same subject to the Geneva Diplomatic Conference on refugees in July, 1951. It was in the spirit of these documents, M. Olgiati said, that the Committee recommended the establishment of an international system of legal assistance to refugees.

Greece. — The ICRC Delegation in Athens supervised the issue to Greek detainees of further relief supplies provided by welfare organizations in France, Hungary, Norway, Sweden, and Switzerland. The goods, which include foodstuffs, clothing, footwear, toilet requisites and medicaments, are first assembled and packed at Geneva, and dispatched monthly to Athens.

Consignments since June last are valued at 52,000 Swiss francs. Further shipments of clothing, footwear and blankets, estimated at 11,500 francs, were sent direct from London to the Piraeus, and distributed by the ICRC Delegation.

The Committee also supplied its Delegation with medical relief, in the shape of antibiotics and bandages valued at 10,500 francs.

The Secretary-General of the Delegation, M. Germain Colladon, reached Geneva from Greece on September 20. Before his departure from Athen he visited the following prisons and penitentiary colonies in the Dodecanese: Chios, Mytilene (Lesbos), Vathy (Samos) and Syra (Syros). He also saw several prisons in Athens and at the Piraeus.

War Invalids. — During August, 1951, the Committee's Department for War Disabled dispatched further collective and individual relief. The supplies included 650 million units of penicillin, for the use of hospitals in Western Germany.

A shipment of 158 kilos of felt, for the manufacture of surgical appliances, was sent to Eastern Germany for the benefit of war amputees.

Iran. — M. Pierre Gaillard, ICRC Delegate in the Middle East, recently spent a week in Teheran, where he had informal talks with leading members of the Red Lion and Sun Society, and with the Foreign Minister and other Government representatives.

M. Gaillard noted keen interest for the 1949 Geneva Conventions; these have been translated into Persian, and their ratification is being considered. He reported on the wide range of the Red Lion and Sun's activities. The Society has some forty thousand members, in sixty regional branches, and maintains over seventy medical centres, including twelve hospitals, which are managed by the Society's own staff.

Relief Work in Jerusalem. — Reference has been made on several occasions to the scheme for assisting Christian communities in the Old Town of Jerusalem, which are situated in Israeli territory. Help was given by the ICRC Delegation by convoying transports of foodstuffs supplied by Christian communities in the part of the Old Town held by the Arabs.

In view of the closing down of the Jordan Delegation, arrangements have been made with both Israel and Jordan to continue these transports as in the past. The last transport convoyed by the ICRC Delegation arrived safely on August 31.

Korea. — During the first fortnight of September, the ICRC Delegates in Korea visited the following camps :

UN POW Camp No. 1 ;
Transit Camp No. 1 (Jongdungpo) ;
Collecting Centre, 1st Corps (Uijongbu) ;
Transit Camp No. 2 (Wonju) ;

and the four following Collecting Centres :

1st Marine, 8th Division ;
ROK Division ;
1st Marine Preregiment ;
Treatment Front Line.

Japan. — Dr. Otto Lehner, ICRC Delegate, who recently returned to Geneva from Indonesia, left for Tokyo on September 18. He was due to take over responsibility for the ICRC Delegation in South Korea.

Publications. — The Committee published, a few months ago, a leaflet entitled "Some Advice to Nurses". The leaflet was written by Mlle. Lucie Odier, member of the ICRC, and is for the use of personnel attached in wartime to the Medical Services of the forces and called on to nurse the sick and wounded. It gives, in simple language, a summary of the rights and duties of nursing personnel under the 1949 Geneva Conventions.

Following suggestions made by Red Cross Societies and Army Departments, a revised edition of the leaflet has been issued, to apply not only to nurses but to the medical personnel of armed forces in general.

This publication has been already translated into seventeen languages, including Chinese, Korean, Siamese, Arabic, Persian and Afrikaans. National Red Cross Societies and Army Medical Services of twenty-four countries have issued it to their personnel.

*CONTRIBUTIONS BY NATIONAL SOCIETIES TO THE
INTERNATIONAL COMMITTEE*

(Contributions made from Jan. 1 to Sept. 30, 1951)

National Societies	1951	Previous years
Australia	25,680.—	
Belgium		17,520.— (for 1950)
Canada	30,345.—	30,336.65 (for 1950)
Colombia.	2,000.—	
Costa Rica	480.—	
Denmark.	2,000.—	
Dominican Republic	427.70	
Finland	5,000.—	
Greece	2,280.—	
Great Britain	24,460.—	
Guatemala	600.—	
Hungary		2,250.— (add. for 1949) 3,600.— (for 1950)
Iceland	500.—	
India	4,512.50	
Iran	1,200.—	
Iraq	2,160.—	
Ireland	2,443.—	
Lebanon	840.—	
Luxemburg.	600.—	600.— (for 1950)
Netherlands	20,000.—	
New Zealand	6,051.85	
Norway	3,000.—	
Pakistan	12,950.—	
Peru.		2,168.90 (for 1950)
Philippines	3,840.—	
Carried forward	151,370.05	56,475.55 Swiss Francs

National Societies	1951	Previous years
Brought forward	151,370.05	56,475.55
Poland	12,360.—	12,360.— (for 1950)
Portugal		2,500.— (for 1950)
San Salvador	132.—	
South Africa	14,653.55	
Turkey	11,880.—	5,070.— (add. for 1949)
		2,100.— (add. for 1950)
United States	107,500.—	
Totals	<u>297,895.60</u>	<u>78,505.55</u> Swiss Francs

Further contributions, advised or in course of transfer, will figure in the next list, to appear in our December issue.

Referring to the applications to National Societies by the Finance Commission of the ICRC, the Committee would be grateful to all Societies whose contribution have not yet been remitted or advised, to take the necessary steps at their earliest convenience.

INTERNATIONAL RED CROSS

MEETING OF THE STANDING COMMITTEE OF THE INTERNATIONAL RED CROSS CONFERENCE

The Standing Committee met recently in Paris at the offices of the French Red Cross, under the Chairmanship of M. André François-Poncet. The ICRC was represented at the session by its President, M. Paul Ruegger, who was accompanied by M. Martin Bodmer, Vice-President, M. Jean Duchosal, Secretary-General, and M. W. Michel, principal Delegate of the Committee in France.

The meeting decided to accept the offer of the Canadian Red Cross to hold the XVIIIth International Red Cross Conference at Toronto, in the month of July, 1952.

Following the meeting, M. Ruegger had talks, amongst others, with the President of the French Red Cross, Professor Brouardel, and General de Lattre de Tassigny, French High Commissioner in Indo-China.

CLAUDE PILLOUD

Head of the ICRC Legal Service

THE QUESTION OF HOSTAGES AND THE GENEVA CONVENTIONS

“ The taking of hostages is prohibited ”.

Such is the text of Article 34 of the Fourth Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War. If this is the shortest of all the Articles in the Convention, there are few whose importance is greater ; it ends a practice repugnant to every right-thinking person and forms a remarkable advance in International Law as applied to war.

DEFINITION AND BACKGROUND

Under the term “ hostages ” so many different categories of persons have been included, in theory and in practice, that it is not easy to give a definition that will cover all. The word “ hostage ” derives from the idea of a pledge given ; it was in this sense that the Romans employed the term *obses*. In a general way, it may be said that by hostages, we should understand citizens of a belligerent State who, willingly or not, are in the power of an enemy State, and who answer with their lives or their liberty for the fulfilment or non-fulfilment of certain acts.

This definition could hardly be called explicit ; a number of examples may help to make it clearer.

(a) — In the Middle Ages and up to the seventeenth century, persons, generally chosen from the immediate entourage of the

Sovereign or from amongst the notabilities of a city, were handed over to a conquering State or faction, or taken by them, as pledges for the execution of a treaty, an armistice, or some other agreement. In case of non-fulfilment, they were at the mercy of those who held them. One of the best-known examples is that of the Burghers of Calais.

In more recent times, there is the case of Lords Sussex and Cathcart, who, under the treaty of Aix-la-Chapelle in 1748, remained on parole in Paris until Cape Breton Colony was restored to France. The *Dictionnaire diplomatique* mentions that in 1861, France held four hostages, sons of the leading chieftains of the Upper Cazamance (Senegambia), as guarantees of the treaty of February 14 of the same year.¹

This type of hostage has completely disappeared in modern times; temporary occupation of all, or part, of the territory of the defeated State is resorted to as a means of assuring the execution of an armistice or peace treaty.

(b) — “ Travelling ” hostages are inhabitants of an occupied territory forced to accompany railway trains or road vehicles, to ensure the security of the transports and prevent attacks by the population. 1

This practice was apparently employed for the first time by Germany during the Franco-German war of 1870-1871; it was also used by British troops in the Boer War. During both World Wars it was a frequent occurrence. The practice may appear to have a certain justification in given cases, it being clearly understood that it is a means of protecting a train or convoy against illegal acts, and not against attack by regular troops. It has never been considered admissible, for example, that advancing troops should try to protect themselves by driving inhabitants or prisoners of war before them.

During the first World War, because of the torpedoing of many hospital ships by German submarines, Great Britain put German officer prisoners of war on board her hospital ships.

¹ See *Dictionnaire diplomatique*, published by the Académie diplomatique internationale, Paris, s.d., Vol. II, p. 275, under the heading “ Otages ”.

This case is slightly different, as it is not subordinate to the occupation of a territory.

(c) — The most frequent example during the two World Wars was the taking by Occupying Powers of persons—generally notabilities of a town or district—as hostages to ensure order and the security of the occupying troops. The hostages were shot or held prisoner if there were attacks against the occupation forces and the guilty could not be arrested.

This practice appears to be comparatively recent. During the Italian campaign, Napoleon I took hostages to ensure order, but the only penalty inflicted was deportation to France.¹ Germany took hostages on a large scale during both World Wars (we shall revert to this), as did the Japanese in the Philippines in 1941-1942.

(d) — After an outrage in occupied territory, a number of inhabitants might be arrested and the threat made that they would be executed or held in prison, unless the guilty were denounced.

(e) — Hostages were also taken and held by Occupying Powers to ensure the delivery of food and provisions, or the payment of an indemnity.

(f) — Hostages have also served to guarantee the lives of those taken by the enemy, or the lives of persons arrested for other reasons and threatened with execution.

Thus, during the recent War, the Germans arrested a certain number of Dutch citizens in the Netherlands in reprisal for the internment of Germans in the Dutch Indies; they were termed hostages. They were first interned in Buchenwald Camp, where ICRC Delegates saw them on several occasions, and later transferred to Hertogenbosch in Holland, where the ICRC was also able to afford them relief.

It should be remarked that until the 1929 Prisoners of War Convention, prisoners were to some extent treated as hostages, on whom reprisals might be taken. The first World War afforded notorious examples.

¹ See Arthur KUHN, *American Journal of International Law*, 1942, p. 27 et seq.

Again, during the recent War, the Germans frequently arrested persons and put them to death in reprisal for attacks against German soldiers. These were not properly speaking hostages, because their arrest followed the attacks the occupant decided to punish, but there are close analogies between them and hostages.

THE LAW UP TO THE WAR OF 1939-1945

The idea that the innocent may be punished for the guilty has always been considered revolting, and this principle has been held as true in natural law since ancient times. Protests were raised in Roman times against the ill-treatment and killing of hostages. More recently the protest was taken up again by the great lawyers Grotius and Vattel.

The term "hostage" was applied only to persons detained to guarantee the execution of an undertaking (see (a) above). The opposition of Grotius and Vattel to this practice was not useless, and it has entirely disappeared.

The earliest regulations concerning hostages, *lato sensu*, were those inserted into the Hague Conventions of 1899 and 1907. The Regulations annexed to the Fourth Hague Conventions have no express provision concerning hostages. Two Articles should however be borne in mind :

Article 46: "Family honour and rights, the lives of persons, and private property... must be respected."

Article 50: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be considered as jointly and severally responsible."

Respect for the "lives of persons" is obviously incompatible with the killing of hostages—which might also be looked upon as a "general penalty". This opinion is shared by most authorities. Nevertheless, opinion is not unanimous, and it was claimed, especially on the German side, that in the absence of express prohibition, the taking and execution of hostages may be regarded as legitimate when it becomes necessary to ensure order in occupied territory.

After the first World War, the Allies demanded the trial of a number of German military and civilians who had committed war crimes. The Paris Peace Conference appointed a Commission to enquire into responsibilities in relation to the War. The Commission drew up a list of war crimes which it considered should be punished ; the list included the killing of hostages. During the Leipzig prosecutions which followed, however, the question of hostages was not brought up.

The ICRC, for its part, did not let the matter rest. Under Art. 2 of the 1929 Prisoners of War Convention, drafted by the Committee, reprisals against prisoners of war are forbidden, and henceforth prisoners could under no circumstances be looked upon as hostages by the Detaining Power. This was a great step forward.

At the same time, the ICRC drew public attention to the necessity for a Convention to protect civilians in time of war. It did not prove possible to submit the question to the 1929 Diplomatic Conference in Geneva, which however recommended that such a Convention be drawn up in the near future. A draft was made by the ICRC and adopted by the Tokyo Red Cross Conference in 1934 ; the Diplomatic Conference to examine it in 1940 was called off. This "Tokyo Draft" deals with hostages in two provisions : (1) Article 4, applicable to enemy civilians on the territory of belligerents, prohibits the taking of hostages ; (2) In the case of enemy civilians on territory occupied by a belligerent, Article 19 (a) provides as follows :

"Where, as an exceptional measure, it appears indispensable to an occupying State to take hostages, the latter must always be treated humanely. They must under no pretext be put to death or submitted to corporal punishment."

While it did not prohibit the taking of hostages, the Tokyo Draft at least forbade their execution.

THE 1939-1945 WAR AND SINCE

In September 1938, the ICRC proposed that belligerents should put the Tokyo Draft into force by agreement. Un-

fortunately, they either refused, or did not reply.¹ The most they agreed to do was to apply to enemy civilians interned on their territory the provisions relative to prisoners of war.

Thus, civilians in occupied territory were protected only by the provisions of the Hague Regulations, which were to prove lamentably inadequate.

The Committee's appeal of July 24, 1943, to belligerent States urged them to respect, even in the face of military considerations, the natural right of men to be protected against arbitrary treatment and not made responsible for acts they have not committed. This appeal likewise remained almost unheeded.

We need not go into details about the way in which hostages were taken and executed during the War. The Courts which tried German war criminals examined the matter at great length; all occupied countries from France to Greece, and Norway to Jugoslavia, suffered bitterly by this practice.

The War ended, the Allied Powers, who had proclaimed their intention of punishing those guilty of war crimes, concluded the London Act of August 8, 1945, concerning the trial and punishment of major European war criminals. In the Charter annexed to this agreement (Art. 6 (b), War Crimes) the "killing of hostages"² is mentioned. This reference was not made in the original draft and was introduced towards the end of the Conference which established the London Act, without any indication being given as to the reason for its previous omission or for its inclusion.³

The killing of hostages was also included as a war crime in Law No. 10 of the Control Commission in Germany, and was entered in the legislation of most States.

¹ The German Government alone declared itself ready to discuss the conclusion of a Convention on the basis of the Tokyo Draft. See *General Report of the ICRC, 1939-1947, Vol. I, p. 567-572.*

² The term "killing of hostages" is sometimes translated in French by "*exécution d'otages*". This is not altogether satisfactory, as the word "*exécution*" gives the idea of death after sentence of a Court; this obviously does not apply to hostages.

³ Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945. Department of State, Publication 3080, February, 1949.

In a judgment delivered on September 30, 1946, the International Military Tribunal, sitting at Nuremberg, admitted that ill-treatment of the civilian population in occupied territory and the killing of hostages—both, according to the London Act, to be considered as war crimes—are contrary to the laws and customs of war, as expressed in Article 46 of the Hague Regulations.¹ In regard to Field Marshal Keitel, the International Military Tribunal took the following acts as proved :

“ On September 16, 1941, he ordered that attacks against German soldiers in the East should be answered by the shooting of 50 to 100 Communists. On October 1, he gave orders to his subordinates to retain hostages permanently, to be executed, should there be attacks on German soldiers.”²

There is therefore no doubt that the International Military Tribunal considered the execution of hostages as contrary to the existing laws and customs of war, and it does not appear that there was any discussion on the subject.

This opinion was not shared by the American Military Tribunal which judged Field Marshal List and a number of co-accused. The judgment pronounced by this Court on October 18, 1948, is particularly interesting and, both on account of its detail and the care with which it was drawn up, is a valuable contribution to International Law. It gives a comprehensive review of the question of hostages in law, and attempts a constructive solution. The Tribunal began with the idea that it was not the object of Article 50 of the Hague Regulations to suppress all reprisals ; this is shown by the minutes of the Hague Conference of 1899. Although many authorities condemn the execution of hostages, opinion is not unanimous. Finally, and most important, the rules of war drawn up by several States for their troops were determinant for the Tribunal.

The following passage is taken from the judgment :

“ In two major wars within the last thirty years, Germany has made extensive use of the practice of killing innocent members of the

¹ *Jugement du Tribunal militaire international*. Imprimerie des journaux officiels, Paris, 1946, p. 22.

² *Loc. cit.*, p. 40.

population, as a deterrent to attacks upon troops and acts of sabotage against installations essential to its military operations. The right to do so has been recognized by many nations, including the United States, Great Britain, France, and the Soviet Union. There has been complete failure on the part of the nations of the world to limit or mitigate the practice by conventional rule. This requires us to apply customary law. That international agreement is badly needed in this field is self-evident.”¹

The texts of the military regulations on which the Tribunal relies are so important that it is worth while reproducing them here :

United States, *Rules of Land Warfare*. F. M. 27.10.1940, 358, letter (d) :

“ Hostages taken and held for the declared purpose of ensuring against unlawful acts by the enemy forces or people may be punished or put to death if the unlawful acts are nevertheless committed.”

Great Britain. *Manual of Military Law* (1939), Article 458, *Collective Punishments* :

“ Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible, it may be necessary to resort to reprisals against a locality or community for some act committed by its inhabitants or members who can not be identified.”

Having come to the conclusion that, in certain cases, International Law unfortunately sanctions the killing of hostages, the Tribunal tried to determine the conditions under which such decision might be lawful. Close study of the judgment reveals the seven following conditions :

- (1) The step should be taken only “ as a last resort ” and only after regulations such as those elaborated by the Tribunal had first been enforced.
- (2) Hostages may not be taken or executed as a matter of military expediency.
- (3) “ The population generally ” must be a party “ either actively or passively ” to the offences whose cessation is aimed at.

¹ *Law Reports of Trials of War Criminals*. H. M. Stationery Office, London, 1949, vol. VIII, p. 63.

- (4) It must have proved impossible to find the actual perpetrators of the offences complained of.
- (5) A proclamation must be made, "giving the names and addresses of hostages taken, notifying the population that upon the recurrence of stated acts of war treason, the hostages will be shot".
- (6) "The number of hostages shot must not exceed in severity the offences the shooting is designed to deter."
- (7) "Unless the necessity for immediate action is affirmatively shown, the execution of hostages or reprisal prisoners without a judicial hearing is unlawful."¹

It was because these conditions were not observed, and on account especially of the disproportion between the gravity of the act committed and the number of hostages shot, that the Tribunal had found Field Marshal List and certain of his co-defendants guilty. It applied the same rule in the case of persons whom the German authorities put to death in reprisal for attacks, without their being first designated as hostages and arrested.

The Netherlands Special Court of Appeal had also to deal with the question of hostages in its judgment delivered on January 12, 1949, against H. A. Rauter. The Court declared the execution of hostages in the Netherlands illegal, adopting a very different line of argument, which extended to all measures of reprisals against the populations of occupied territories. The relevant passage of the judgment reads:

"In the proper sense, one can speak of reprisals only when a State resorts, by means of its organs, to measures at variance with International Law, on account of the fact that its opponent—in this case the State with which it is at war—had begun, by means of one or more of its organs, to commit acts contrary to International Law, quite irrespective of the question as to what organ this may have been, Government or legislator, Commander of the Fleet, Commander of Land Forces, or of the Air Force, diplomat or colonial governor.

"The measures which the appellant describes... as "reprisals" bear an entirely different character; they are indeed retaliatory measures taken in time of war by the occupant of enemy territory, as a retaliation not of unlawful acts of the State with which he is at war,

¹ *Loc. cit.*, p. 78.

but of hostile acts of the population of the territory in question, or of individual members thereof, which, in accordance with the rights of occupation, he is not bound to suffer.”¹

The Special Court was thus led to the conclusion that acts committed by the population of occupied territory against the occupant can not give rise to reprisal; only acts committed by the enemy State can justify it. In other words, in the opinion of the Special Court, inhabitants of occupied territories are not organs of the State, even if they succeed in forming organized resistance groups and are aided from abroad.

Lord Wright, Chairman of the United Nations War Crimes Commission, has devoted a most valuable article to the problem of the legitimacy of putting hostages to death.² The particular competence in the matter of this writer makes his opinion the more valuable. His personal conclusion is that the killing of hostages is contrary to the laws of war, that it is not permissible in any circumstances, and that it amounts to murder. He is particularly critical of the American Military Tribunal judgment in the List case—especially of the fact that the judgment admitted the killing of hostages in certain circumstances. He quotes in support authorities from Grotius to Professor Hyde. The opinion stated seems certainly in keeping, as we have said, with the logical interpretation of Articles 46 and 50 of the Hague Regulations, and with the principles of natural law. Wright relies especially on the principles of natural law, side by side with the legal decisions already mentioned. His thesis is somewhat weakened, however, by his disregard of the facts of the case, and of the instructions given by States to their own armies.

Moreover, Wright, while quoting Paragraph 358 of the *American Manual of Land Warfare*, points out that another paragraph provides that hostages, once taken, shall be treated as prisoners of war; this, in his opinion, can not be reconciled with the idea that these hostages may be put to death. As reprisals against prisoners of war are forbidden by the 1929

¹ *Law Reports of Trials of War Criminals*. H. M. Stationery Office, London, 1949, vol. XIV, p. 132.

² *British Year Book of International Law*, 1948, p. 296.

Convention, prisoners of war shall not in any circumstances be put to death unless they have committed acts which, after regular trial, may involve the death sentence. Nevertheless, the fact of saying that persons shall be treated as prisoners of war does not necessarily imply that they shall be given prisoner of war status. This has been brought home to the ICRC on many occasions. What is generally implied is that the persons in question shall, while detained, be given the material treatment of prisoners of war. In any case, the expression used is ambiguous, and if it was intended that these hostages should be prisoners of war in actual fact, it should have been expressly stated. This important point seems to have escaped the notice of the writer.

Conclusions. — The three judgments quoted and the opinion stated by Wright are based on rather different conceptions. It is especially disquieting that three of the highest instances should have reached conclusions which vary a good deal, and the reader is entitled to ask which of them he should rely upon.

We believe that Articles 46 and 50 of the Hague Regulations do not, if logically interpreted, permit the taking or killing of hostages. Moreover, the principles of natural law are entirely against such practices, which contradict the ideas of equity that men of goodwill acknowledge; it was probably this idea which confirmed Wright in his views. The present writer fully concurs, feeling that it is wholly in accordance with the general principles of the Preamble to the Hague Convention, especially where it says that "inhabitants remain under the protection and the rule of the principles of the law of nations". To that is added the innate repugnance of punishing innocent persons.

This being clearly understood, it must at the same time be noted that many provisions of the Hague Regulations have fallen into disuse, either because they were not applied by all belligerents (e.g., Articles 25 and 23 (*g*)), or because one belligerent failed to apply them, and this did not cause any reaction on the part of the adversary.

Moreover, whatever the opinion of legal experts, only States are competent to give an authoritative interpretation of a

Convention they have ratified. In preparing the instructions for their armed forces, the United States, Great Britain and Germany (and as appeared from the List trial, France and Soviet Russia), interpreted Articles 46 and 50 in a sense which allowed them to take hostages and put them to death. This is a fact which can not be ignored, even if in practice it appears that Germany alone had recourse to these methods. When a rule of International Law is intentionally ignored by several great Powers, it is somewhat difficult to claim that it continues to be in force.

Thus, for example, the International Military Tribunal at Nuremberg refused to admit that Admiral Doenitz had conducted submarine warfare against British armed merchant ships in a manner contrary to the rules of International Maritime Law, because it was proved before the Tribunal that the British Admiralty and Admiral Nimitz, in the United States, had given similar instructions to their own forces.¹

We are therefore inclined to the opinion that, in view of the interpretation given to the Hague Regulations by several great Powers, it is not possible to claim that International Law wholly forbids the taking and killing of hostages. This is borne out of the fact that the Tokyo Draft contained express provisions on the subject of hostages which would have been pointless if it had been thought that existing prohibitions were adequate. Similarly, the 1949 Diplomatic Conference in Geneva thought it necessary to introduce in the Civilian Convention a provision expressly forbidding the taking of hostages.

In the List case, the American Military Tribunal set forth with great care the conditions under which hostages might legitimately be taken, and, in certain cases, put to death. It is not our business to discuss these questions, which in any case appear to be in accordance with current International Law, with a possible reserve as to judicial competence in such matters.

Nevertheless, there remains an extremely serious gap, and the remark applies to all measures of reprisal: the proportion which should exist between the breach and the penalty. In the

¹ *Jugement du Tribunal militaire international*, Imprimerie des journaux officiels, Paris, 1946, p. 47.

List trial, the German authorities had ordered the execution of one hundred hostages for every German soldier killed. There is here a manifest disproportion ; but what number would be reasonable? The Tribunal gave no reply. The question then arises : Should we apply the law of retaliation—eye for eye, and so forth ?

The truth is, that when it comes to killing innocent people for acts committed by third parties, equity is ruled out. Reprisals on the innocent are always immoral, and it is useless to try and make them legitimate by regulating them. The only solution to the problem is total prohibition ; this, the 1949 Diplomatic Conference in Geneva has done.

Lastly, we may note that the very interesting argument put forward by the Netherlands Special Court of Appeal does not appear to take into account the position adopted by other States in this problem, and the instructions given to their armed forces. The American and British War Manuals do not distinguish between acts committed by organs of the State and those committed by individuals. In our opinion, the attempted distinction between such acts remains illusory, and would be a further source of difficulty in establishing the facts. Moreover, the Netherlands Court did not deal with the root of the problem, namely, the taking and killing of hostages.

THE NEW LAW

In the preparatory work and revision which it began on the Conventions in 1945, the ICRC considered from the start that a clear and unequivocal prohibition of the taking of hostages should be an essential element of the Convention for the protection of civilians in wartime. The proposal was adopted without discussion by all the meetings to which it was submitted : the Preliminary Conference of National Red Cross Societies (1946) ; the Government Expert Conferences (1947) ; the XVIIth International Red Cross Conference (1948), and finally, the 1949 Diplomatic Conference, where it became Article 34 of the Fourth (Civilian) Convention.

The text was not changed during any of these discussions. Certain Delegates proposed the amendment: "The taking of hostages is strictly forbidden." They were quickly convinced that the introduction of the word "strictly" added nothing to the sense, that a prohibition can not be more, or less, strict; furthermore, the Convention contained prohibitions in other Articles, and it would be scarcely feasible to establish distinctions of degree between them.

Other Delegates suggested the wording: "The taking of hostages and their execution are prohibited." This proposal was also dropped without difficulty; it is slightly illogical, since it is difficult to see how hostages can be executed if they cannot be taken.

Article 34 is in Part III of the Convention, in the Section which contains provisions common to the territories of the Parties in conflict and to occupied territories. It thus applies to all protected persons, as defined in Article 4.

It should be noted that Article 34 gives no definition of hostages. We have seen that there may be many definitions; here, the word is to be taken in its widest sense, to include all the categories we have mentioned.

Article 33 very happily completes and considerably reinforces the prohibition of the taking of hostages. It runs as follows:

"No protected person may be punished for an offence he or she has not personally committed...

Reprisals against protected persons and their property are prohibited..."

Thus, under Article 33, the arrest and execution of persons, following an attack on occupation troops, is likewise ruled out. In addition, the fact that there must be individual responsibility for offences is irreconcilable with the taking of hostages.

Article 33 and 34 therefore establish, without any possible doubt, the illegality of all the practices we have examined above, and bring the law into complete harmony with the principles of natural law—ignored with such tragic consequences during the War.

It is true that Article 5 contemplates certain derogations, where there is a menace to the security of the State or of an Occupying Power. It is quite clear, however, that such derogations can not go to the length of disregarding the fundamental rules of Articles 33 and 34, and especially to the point of executing a person without trial and without a precise and specific charge. The necessary safeguards are imposed by Paragraph 3 of Article 5.

Finally, even in civil war, Article 3, common to the four Conventions, prohibits the taking of hostages. The Diplomatic Conference considered that the principle was fundamental and should be applied at all times and in all places.

Thus, the new Convention banishes a repugnant practice from International Law, and gives full satisfaction on this point to all who believe that justice is an essential element of civilization.