



SUPPLEMENT

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REVUE INTERNATIONALE
DE LA CROIX-ROUGE
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DE LA CROIX-ROUGE

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*VISIT OF THE PRESIDENT
OF THE INTERNATIONAL COMMITTEE
TO THE ALLIANCE OF SOVIET RED CROSS
AND RED CRESCENT SOCIETIES*

The President, accompanied by Mme Ruegger, left for Moscow on November 8, 1950, with an International Committee mission.

This important first personal contact took place in the capital of the Soviet Union with the President and Council of the Alliance of Soviet Red Cross and Red Crescent Societies.

The other members of the mission headed by M. Ruegger were : Dr. Ernest Gloor, Vice-President, M. Rodolfo Olgiati, Member of the Committee, MM. Frederick Siordet and Max Wolf, Counsellors, and M. David de Traz, Deputy Executive Director.

A special Swiss airplane took the party to Prague, and from there on, they travelled in a Soviet Aeroflota machine.

Consultations, which continued for a week, gave ample opportunity for a detailed exchange of views, and discussions of present plans and objectives on each side. The mission exposed its lively satisfaction of the spirit in which the talks were conducted ; M. Ruegger and his colleagues were especially appreciative of the cordial welcome extended to them by the President of the Alliance, M. Holodkof, and the members of his Executive Committee.

On November 17, the President of the International Committee, and Dr. E. Gloor, Vice-President, were received by the Soviet Vice-Minister for Foreign Affairs, M. Gromyko.

The mission left Moscow on November 18, but was held up for two days by bad weather at Minsk, capital of the Soviet Republic of Bielorussia. Advantage was taken of the occasion to visit the President of the Bielorussian Red Cross, by whom the members of the mission were again received with the utmost courtesy.

PRINCIPAL ITEMS OF INTEREST IN OCTOBER

Korea. — The Delegate in Korea visited North Korean prisoners of war held by United Nations Forces, in the following camps: Eusak Camp No. 1 (October 14), Eusak Camp No. 2 and Fusan POW Hospital (October 15).

Relief sent by the Committee to North Korea included one ton of medical supplies (vaccines, serums, surgical instruments and drugs). The goods were handed to the Hungarian Red Cross, which undertook to arrange forwarding.

Indonesia. — The Delegate in Indonesia, accompanied by an Indonesian Red Cross mission, made a series of visits to the Southern Molucca Islands. Covering a distance of some 3000 miles, he was present at issues of relief in the main islands of the Archipelago, and at Macassar visited Amboinese prisoners of war.

Greece. — Delegates in Greece have completed a further tour of internee camps in the Greek Islands, including those of Ghiura, Aghios-Efstratios and Trikeri. Relief was given to the internees.

Greek children. — At the end of October, a Delegate, representing both the Committee and the League, went to Athens to discuss various matters connected with the repatriation of Greek children at present in Jugoslavia.

Bengal. — The hospital for Moslem refugees at Chittagong (East Pakistan) was closed in October 31, following decrease in the number of refugees in the camps. Elsewhere in Bengal, the work of the ICRC mission continued without change.

North Africa. — M. R. Vust, Delegate at Algiers, who still has often to help persons who have neither identity papers nor means, was recently in Geneva, to report on his work.

East Germany. — Child relief in the Soviet Sector of Berlin continued unchanged during October.

Jerusalem. — Since the Palestine conflict, Jerusalem has been divided between two States. Certain Christian religious institutions, situated in the Israeli section, have sometimes difficulty in obtaining foodstuffs.

The Committee, at the request of the communities concerned, got the Jordan and Israeli authorities to agree to the passage each month of consignments of food provided by Christian institutions in the Old Town for those in the New Town; consent was made conditional on Red Cross escort.

For now almost a year, the monthly convoy—usually two lorries, under the Red Cross flag and escorted by a Delegate—has crossed the boundary line in Jerusalem. The October convoy carried 3900 kilos of food—eggs, olive oil, potatoes, onions, cereals, vegetables, fruit—for various religious institutions, including those of the Poor Clares, the Franciscans, the Salesians, the Carmelite and Benedictine Brothers, the Saint Vincent de Paul Hospice, the Terra-Sancta College, and the French and German Hospitals.

*Reunion of Families*¹. — After a Conference in December 1949 had decided on the general lines to be followed, operations were begun in the Spring of 1950, and have been continued with success. According to latest reports, 27,023 *Volksdeutsche* from Poland, on their way to join relatives in Germany, passed through Friedland Camp up to November 4, 1950, and 11,419 from Czechoslovakia through Furth-im-Walde Camp. The Committee provides both camps with clothing and articles of daily use for the poorest of these refugees.

¹ See *Supplement*, April (p. 80) and June (p. 96), 1950.

Publications. — A brochure containing an additional fifteen replies from Governments to the Committee's Appeal in behalf of Refugees and Stateless Persons was sent to all Governments, Red Cross Societies and organizations to whom the Appeal was originally addressed.

A new leaflet, "Some Advice to Nurses" gives, in simple language, the principal rights and duties under the Geneva Conventions of nurses serving with the Medical Services in wartime ¹.

Published in English, French, German and Spanish, copies have been sent to all National Societies; several have had the leaflet translated into the national language and are issuing it to all nurses on their rolls. It is of topical interest to note that copies in Swedish have been sent to the Swedish team operating in Korea.

Information. — The War-Disabled Section loaned the International Labour Office four films dealing with rehabilitation of the disabled, to illustrate a series of lectures given in Italy by the ILO Medical Adviser on Vocational Training. Shown in Milan and Rome before specialists, the films aroused a very lively interest.

A reel made between 1946 and 1948 by the Berlin Delegation, showing how the Committee organized its relief in Berlin, was sent to the Danish Red Cross.

Legal Assistance to Refugees. — A meeting called by the International Centre for Relief to Civilian Populations (Centre d'Entr'aide) to discuss the question of legal assistance to refugees, took place on October 25, with M. Rodolfo Olgiati, member of the ICRC, in the Chair.

After a general discussion, it was decided that a provisional Committee would study the advisability of setting up, in Geneva, a Central International Legal Assistance Bureau. The present composition of the Committee is: M. Olgiati, member

¹ The text, prepared by M^{lle} Odier, member of the Committee, appeared in the *Supplement*, September, 1950.

of the ICRC; M. S. Horneffer, representing the Genevese Bar Council; M. Buensod, Pax Romana; M^{me} Silberschein, Comité international pour le placement d'intellectuels réfugiés, and M. H. Coursier, ICRC.

The Committee is open to all groups which have wide experience of refugee questions (e.g. Caritas Internationalis, World Council of Churches, Jewish and other agencies). Members act as individuals, without committing the organizations they represent. M. de Preux, Centre d'Entr'aide, is responsible for the Secretariat.

Tibet. — In view of the events in Tibet, cables were sent on November 3 to the Peking and Lhasa Governments, drawing attention to the humanitarian principles of respect for the human person and relief to war victims—principles again underlined recently by the 1949 Geneva Conventions. Particular attention was drawn to Article 3, common to the four Conventions. The Governments were requested to acquaint the troops in action with these principles. The Committee stated its readiness, in these circumstances, to carry out its traditional work, in so far as the necessary facilities were made available.

Missions ¹. — As part of the general policy of the Committee to make periodical contacts with the National Societies, Dr. Gloor, Vice-President, and M. de Weck, of Geneva headquarters, went to Belgrade early in October. Useful conversations took place with leading members of the Yugoslav Red Cross and with M. Mattes, Deputy Minister for Foreign Affairs. Questions of common interest were discussed, including the return of Yugoslav children from Germany and Austria, the repatriation of children of German stock still resident in Jugoslavia, and the bearing of the new Geneva Conventions on the work of the Societies and the Committee.

¹ See also p. 196.

FRÉDÉRIC SIORDET

Counsellor to the International Committee of the Red Cross

THE GENEVA CONVENTIONS AND CIVIL WAR
(Concluded ¹)

In spite of—or perhaps because of—the care taken by the Working Party to examine all the suggestions made, this first Draft gave rise to numerous criticisms.

After three meetings, the Working Party was asked to establish a new Draft, taking into account as far as possible the observations made on the first. It submitted, not one, but two Drafts. The first, somewhat detailed, referred to the first three Conventions; the second, much shorter, to the Civilian Convention only. At the opening discussion, several speakers remarked that the strict application of the Conventions to civil war would, in many cases, be materially impossible, too many provisions applying to situations which could occur only in international war. This objection, largely true, referred with greater force to the Civilian than to the other three Conventions.

The new Drafts read as follows :

FIRST, SECOND AND THIRD CONVENTIONS

(I) — In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the provisions of the present Convention, provided :

- (a) that the *de jure* Government has recognized the status of belligerency of the adverse party, even for the sole purpose of the application of the present Convention, or

¹ See *Supplement*, Vol. III, No. 7, Aug. 1950, pp. 132-144; No. 8, Sept. 1950, pp. 166-174.

(b) that the adverse party possesses an organized civil authority exercising *de facto* governmental functions over the population of a determinate portion of the national territory, an organized military force under the direction of the above civil authority, and the means of enforcing the Convention and the other laws and customs of war; application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict.

(2) — This obligation presupposes, furthermore, that the adverse Party likewise recognizes its obligation, in the conflict at issue, to comply with the present Convention and the other laws and customs of war.

(3) — The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the Parties to the conflict. In the absence of such agreement, an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

(4) — In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, but which does not fulfil the conditions as set out above, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with its underlying humanitarian principles.

(5) — In all cases foreseen in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict.

FOURTH CONVENTION

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with its underlying humanitarian principles.

In these Drafts, the first three Conventions would maintain the conditions (less rigidly stated) which a non-international conflict should present, if all the provisions of the Conventions (except those which refer to the Protecting Power) are to

apply¹. For other conflicts, the Parties would be requested to conform at least to the humanitarian principles underlying the Conventions, complete freedom being left to make the other provisions applicable by special agreement.

In the Fourth Convention, the latter formula is taken, irrespective of the nature of the non-international conflict.

Even before the Draft was discussed in the Special Committee, amendments were put forward. The Italian Delegation proposed to make the application of the principles of the Conventions in conflicts of the second category subject to *de facto* reciprocity. A British Delegate suggested appeal to the International Court of Justice in case of dispute about the existence of the required conditions. A French amendment wished to limit the application of the four Conventions to the principles only, with an express reference to the draft Preamble to the Civilian Conventions; but the Parties in conflict would be recommended to apply all or part of the other provisions by special agreements.

Study of the Working Drafts and the amendments show the trend of opinion clearly. It shows also that the idea of restricting the application of the Conventions to the principles only had made progress. A new difficulty then arose: what are the fundamental principles? They were, in reality, insufficiently defined; no Chapter in the drafts bore the title "Principles". Only in the Preamble to the Draft Civilian Convention were there certain summary rules, namely:

"The High Contracting Parties, conscious of their obligation to come to an agreement in order to protect civilian populations from the horrors of war, undertake to respect the principles of human rights which constitute the safeguard of civilization and, in particular, to apply, at any time and in all places, the rules given hereunder:

¹ The reserve was justified. The automatic application of the provisions regarding the Protecting Power would not only have encouraged, but rendered unavoidable, the interference of a foreign Power in the domestic affairs of the State. It is unthinkable that citizens should be represented with their own authorities by a foreign Government.

- (1) — Individuals shall be protected against any violence to their life and limb.
- (2) — The taking of hostages is prohibited.
- (3) — Executions may be carried out only if prior judgment has been passed by a regularly constituted court, furnished with the judicial safeguards that civilized peoples recognize to be indispensable.
- (4) — Torture of any kind is strictly prohibited.

These rules, which constitute the basis of universal human law, shall be respected without prejudice to the special stipulations provided for in the present Convention in favour of protected persons”.

The ICRC had also been occupied with this question. It had thought that, by virtue of the decision made at Stockholm, each of the Conventions might be given a Preamble. Whilst the Stockholm draft Preamble sets forth certain principles which derive from the principles of International Law, the ICRC considered that what was needed was rather a definition of these principles. In its *Remarks and Proposals*, submitted to the Diplomatic Conference—but not as a working document—it suggested the following formula¹:

“ Respect for the personality and dignity of human beings constitutes a universal principle which is binding even in the absence of any contractual undertaking.

Such a principle demands that, in time of war, all those placed *hors de combat* by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war, and that those among them who are in suffering shall be succoured and tended without distinction of race, nationality, religious belief, political opinion or any other quality.

The High Contracting Parties solemnly affirm their intention to adhere to this principle. They will ensure its application, by the terms of the present Convention, to the wounded and sick of armed forces in the field, and pledge themselves to respect, and at all times to ensure respect for, the said Convention”.

To stipulate that, in case of non-international conflict, each of the Parties is bound to apply the principles of the

¹ See *Remarks and Proposals submitted by the ICRC*. Geneva, Feb. 1949, p. 8.

Conventions would have been too vague ; it would have allowed endless divergences on what was to be understood by " principles ". Fortunately, the French Delegation, in its amendment, again took up the idea of defining these principles. It did so by a simple reference to a text which had not yet been voted —and which was in fact never accepted. But the underlying idea was right.

The amendment immediately attracted attention. The second draft of the Working Group excited almost as much criticism as the first ; the principal objection was that it would lead to protracted debate about the nature of a conflict, as soon as it had begun : there was no authority to decide whether or not the required conditions had been fulfilled. It was pointed out that rarely would the conditions be really found together, and that, in fact, the application of the Convention, and consequently the character, inhuman or otherwise, which the conflict took on, would depend solely on the whim of the legal Government. A majority therefore thought it necessary to follow the line indicated by the French amendment, whereas a simple reference to the Stockholm draft Preamble would not suffice. The Special Committee finally considered that a definition of the principles and certain essential rules should be inserted in the Article itself ; the definition was based on the International Committee's draft, and the rules on the Stockholm Preamble.

A second Working Group was invited to draw up a text and proposed the following :

" I. — In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions :

- (1) — Persons taking no active part in the hostilities, and those placed *hors de combat* by sickness, wounds, captivity or any other cause, shall be treated humanely in all circumstances, and without any discrimination.

To this end, the following acts are and shall remain prohibited with respect to the above-mentioned persons :

- (a) Violence to life and person, in particular homicide of all kinds, mutilation, cruel treatment and torture ;

- (b) Taking of hostages ;
 - (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment ;
 - (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) — The wounded and sick shall be collected and cared for.
- (3) — No discrimination shall be practised on the basis of differences of race, colour, religion or faith, sex, birth or wealth.

II. — An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

III. — The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

IV. — The application of the preceding provisions shall not affect the legal status of the parties to the conflict ”.

This Draft was discussed, word by word. Certain Delegations were not sure that the enumeration in sub-paragraph (1) covered all non-combatants, and wondered if the proposed wording would not allow the extermination of surrendered combatants, as they could not be said to have taken “ no active part in the hostilities ”, and had not been “ placed *hors de combat* ”. It was also suggested that it should be made more clear that the condition in sub-paragraph (3) applied to sub-paragraph (1).

The Working Group revised the text and produced the following substitute for sub-paragraph (1).

“ Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth “.

This new Draft marked a decisive step in solving the problem. It did not meet with unanimous acceptance ; certain Delegations continued to reject the idea of an automatic application,

even simply of the principles of the Convention, to every non-international conflict. Others, on the contrary, suggested that provisions as important as those of the four Conventions could not reasonably be condensed to this extent, since their applications was, for the most part, as much justified in civil war as in international conflict.

Nevertheless, in spite of some objections and criticisms of detail, this last Draft seemed most likely to reconcile the different tendencies. As the rapporteur of the Working Group emphasized, it had the advantage of allowing an automatic application of definite provisions which summarize what is essential in universally recognized humanitarian regulations. Again, it had the merit of not requiring any political or military condition which might give rise to dispute. Unanimity proving impossible, an attempt was made to take up again the second Draft of the first Working Party, but it seemed even less likely to secure majority approval.

In extremis, a new Draft was presented by the Soviet Delegation. Four texts were proposed, identical in the first part and adapted in the second to each of the four Conventions. We give the text of the First and Second Conventions, with the variations for the Third and Fourth between brackets :

In the case of armed conflict not of an international character occurring in the territory of one of the States parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention, guaranteeing :

humane treatment for the wounded and sick (III—*for prisoners of war*) (IV—*for the civilian population*).

(III—*compliance with all established rules connected with the prisoners of war regime*); (IV—*prohibition on the territory occupied by the armed forces of either of the Parties, of reprisals against the civilian population, the taking of hostages, the destruction and damaging of property which are not justified by the necessities of war*);

prohibition of all discriminatory treatment of wounded and sick; (III—*of prisoners of war*); (IV—*of the civilian population*), practised on the basis of differences of race, colour, religion, sex, birth or wealth.

This Draft made no allusion to the possibility of special agreements, nor to the intervention of the International Committee. In reply to questions on this subject, however, the Soviet Delegation declared themselves ready to include both. Apart from this, the Soviet Draft followed the same general idea as that of the second Working Party, aiming at the application not of the Conventions as a whole, but of their essential principles. The difference was one of method. Whilst the Working Party set out fundamental principles and rules which should be respected, the Soviet Draft referred, through a general definition, to those provisions which should be applied. This very interesting conception was based on the following idea: it was generally agreed that integral application of all the Conventions was impossible. As it was not feasible to summarize the 429 Articles of the Conventions, or even the most important, in a few lines, it was better to refer to existing Articles, on which the Conference would agree.

The formula put forward, however, still allowed divergent interpretations and more discussion. Apart from certain Articles obviously referred to, how many of the others should apply? Must one, each time, go through the 429 Articles? This last-minute proposal therefore, though attractive, did not convince those who favoured the second Working Group text, and still less those who wished to revert to the Draft of the first Group.

It was decided to submit the three Drafts to the Joint Committee, where arguments for and against each were again put forward. There was even a request to delete the Article altogether. In the voting there was a clear majority: twenty-two were in favour of the second Working Group Draft, which had arisen out of the French amendment; five voted for the first Working Group Draft, and nine for the Russian proposal.

Even so, the discussion was not yet closed. The subject was too delicate and important for the Conference, in plenary session, to decide at once (as it did for other provisions) on the recommendation of the appropriate Committee. Not only was the text, approved by the Joint Committee, critically examined once more, but the Russian Draft was again put

forward, commented and supported. Moreover, a further amendment was proposed, this time by Burma, to delete every Article dealing with the application of the Conventions in non-international conflicts. Finally, after protracted debate, there was again a majority—even larger—in the Joint Committee for the Draft of the second Working Group. The Draft was adopted, as Article 3 in each of the Conventions, by 34 votes to 12, with one abstention. The final text was given at the head of this paper and we reproduce it here :

Article 3:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

- (1) — Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons :

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;
 - (b) taking of hostages ;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment ;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples.
- (2) — The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

* * *

We have thus traced the idea of extending the Conventions to civil war, through its various transformations from the Resolution of the Preliminary Conference in 1946 to the hybrid Stockholm text, which provided for total and unconditional application of the first two Conventions, and total but conditional application of the other two. Finally, we have seen how the two extremes—complete absence of provision for the case of civil war, or the Stockholm formula (First Convention)—were both dropped at the beginning of the Geneva discussions, and a practical solution patiently worked out.

It now remains to examine the Article as a whole and in detail, to see how far it has achieved its object, while eliminating the fears to which its principle had given rise.

As a Delegate expressed it, Article 3 is a "Convention in miniature". Giving up the idea of an integral application of the Conventions as a whole, it requires the application of their principles only. But it defines these principles and adds certain formal obligations. Two drawbacks are thus eliminated:

(a) controversies as to what are "the principles of the Convention";

(b) the material impossibility of applying all provisions of the Conventions in non-international conflicts.

"In the case of armed conflict not of international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: ».

There were difficulties about the expression "armed conflict not an international character", which some considered would cover all forms of anarchy, disintegration of the State, and banditry. It was alleged that the Conventions, or their principles, would become applicable if even two or three individuals should revolt against the State, and that their application would confer the status of belligerents on groups not capable of making war.

Every Government has the right to suppress domestic rebellion : the exercise of this right would be curtailed. Therefore, non-international conflicts would have to be defined, or the application of the Convention made subject to precise conditions.

We believe that the Conference did well not to impose definitions and conditions ; they would have led to endless discussions at the outbreak of any conflict, during which time many helpless people would have been without protection. Moreover, such a solution would have been useless. Article 3, even if it has the appearance of a miniature Convention, is not in itself a separate agreement relating to non-international conflicts. It is only one provision, amongst others, of four Conventions which have a very definite object : to protect the victims of *war*. The very titles of the Conventions eliminate doubt as to when any of their provisions—including Article 3—apply. The first two refer to the wounded and sick of *forces in the field on land, or at sea*. The third concerns *prisoners of war*, the fourth deals with civilians *in time of war*.

Taken in this light, it would be clearly absurd to regard police forces in pursuit of criminals or rioters, who retaliate their fire, as “ forces in the field ” ; or to look upon demonstrators arrested by the police and released after questioning, as “ prisoners of war ”. There is no reason why the adoption of Article 3 should change the value of words, and why every-day crimes should henceforth be considered as “ non-international armed conflicts ”.

The very place of Article 3 in the four Conventions, the titles of the latter, and the other provisions, all show that events only are in mind which, without constituting international war, have all the characteristics of war and produce comparable suffering. During the first discussion at the Conference, a suggestion was made that armed conflict should be held to exist in the sense of the Convention, from the moment when the police no longer sufficed and the Government was obliged to call upon the military, while the rebels themselves had armed and more or less organized units. It is surprising that this formula, which has the merit of simplicity, was not retained when the first Working Group was looking for a defini-

tion of an armed conflict, and was trying to fix the conditions which rebels should fulfil. Even this criterion would, however, have been useless. The provisions that the Parties in conflict are called upon to respect are such that no civilized Government should have to worry about deciding whether circumstances obliged it to conform, or whether it had the right to ignore them. We shall return later to this question.

“Each Party to the conflict shall be bound...”

These words show how much International Law has evolved in a few years. We noted above how unconceivable, from a legal point of view, the idea appeared to be, of binding by international Convention a Party not signatory and not even yet existing. Strangely enough, although this objection was raised at the Conference, it did not constitute a major obstacle, and comparatively little attention was devoted to it. There was, from the outset, a clear majority who considered that both parties should be bound in case of domestic conflict. Much more important and difficult to refute was the argument, that to bind a rebel party through the Convention would be to give it the legal status of a belligerent, and thereby enhance its prestige. This thesis was the most often quoted against the Stockholm Draft—providing for the application of all clauses of the Convention—and used against each of the later Drafts, and against the final text.

The argument was certainly founded when the integral application of the Convention was under discussion—which would have empowered rebels to appeal to a Protecting Power. Since Article 3 requires only the observation of certain rules and does not mention Protecting Powers, the argument loses its force—the more so, because care was taken to stipulate, in answer to the disquiet of the Government Experts in 1947, that *“the application of the preceding provisions shall not affect the legal status of the Parties to the conflict”*. Therefore, the legal Government is in no way bound, by the fact that insurgents respect Article 3, to recognize them as belligerents, nor may the insurgents legitimately plead their respect for the said Article to obtain recognition by foreign States.

The wording of Article 3 should thus dispel the apprehension that it would give legal status to insurgents, or even to criminals. This is not, however, to say that the Article prevents a third Power from recognizing the rebel party as the only legal Government. In the present state of International Law, Governments may do so, and have repeatedly done so during the last twenty years, on the outbreak of non-international conflicts. What they could do before the 1949 Conventions they can still do today. But if Article 3 does not prohibit this course, it certainly does not facilitate it.

What are the obligations of the Parties in conflict ?

“(1) *Persons taking no part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*”.

The formula referred to above¹, suggested by the International Committee in its *Remarks and Proposals*, is here taken up and developed. It is fortunate that, as the Conference abandoned the idea of a Preamble or preliminary Article, which would have defined the essential principles of the Conventions², these principles should be defined in some other place, even if for international war only. The wording seems comprehensive : every person who is not combatant, even if he had recourse to arms only the moment before, must be treated humanely.

There is, however, a gap in the list of adverse distinctions : “nationality” was deliberately omitted. This does not imply the right of refusing humane treatment to aliens, who have taken part in the rebellion, or on the contrary to treat only aliens humanely and refuse such treatment to nationals. Such a conception would be the negation of the principles first proclaimed in 1864—those precisely which the new Conventions are designed to extend.

¹ See above, p. 204.

² See *Revue internationale*, July 1949, p. 477.

But the Conference had a reason for this surprising decision. It had been impressed by the idea that in the case of disturbance or revolt, the State, responsible for order in its own territory, is entitled to punish an alien, who rebels against the authority of his country of residence, more severely than a citizen. In itself, the idea is to some extent justified, but it came at an inopportune moment. The clause in question has nothing to do with the repression of criminal acts. The "treatment" which is referred to, is not concerned with the severity of punishment—fine, imprisonment, or death sentence—which the tribunal may legally inflict on the ringleaders. If the criterion of nationality had been added, as in the other clauses, it would still not have prevented the court from judging freely of the alien's guilt, and passing a heavier sentence than on nationals. "Humane treatment" here means only the minimum of respect owed to the human person, regardless of any judicial punishment his acts may entail.

Thus, because of a remark which, although justified, was untimely, the literal application of the Conventions could lead to most unexpected situations. Theoretically, one or other of the Parties may treat victims of the conflict, because of their nationality, in ways which it is precisely the purpose of the Conventions formally to prohibit. There is, however, no reason for alarm; the very enormity of the paradox nullifies it. No Government, or belligerent could suggest so literal an interpretation, and nationality will, by common consent, be included amongst the "other similar criteria".

"To this end the following acts are and shall remain prohibited"

The imperative stipulations here stated flow from the general principle laid down at the beginning of the Article. It will be noted that the Article proceeds solely by prohibitions. The acts forbidden are those which, committed on a wide scale during the War, most deeply shocked the public conscience. The list may be regarded as incomplete: it was suggested that reference to biological experiments—a sinister memory—should be added. The addition would have been useless: such acts are included under sub-paragraph (a), which is sufficiently

explicit. Lists which are over-full are always dangerous, as they give the appearance of being limitative—there has been sufficient evidence of this.

(2) “ *The wounded and sick shall be collected and cared for...*”

No long commentary is needed. The principle, basic to the Red Cross and the First Geneva Convention, is reaffirmed and generalized. The brief provision, which bears the number (2), is independent of the first, and thus has particular force. No doubt is possible: there cannot be two interpretations of a categorical imperative which admits of no restriction.

“ *An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.*”

This reference may appear meagre and without much practical value. It is nevertheless sufficient, and the Committee did not ask for more. To act usefully, it must be wholly independent. Moreover, the Committee cannot bind itself in advance to undertake specific actions: the nature of its intervention will be decided by circumstances, and the means available to it. Therefore, a too explicit text could only compromise its independence, or limit its power of initiative—if the clause did not indeed raise false hopes, by requiring tasks impossible to carry out when moment came. The 1929 Prisoner of War Convention did not give the Committee any more definite basis of action; it was nevertheless sufficient during the last war to permit eleven thousand camp visits, to relieve millions of prisoners, and to transport and issue supplies worth 3,400 million Swiss francs in the camps. The reference in Article 3 will, therefore, allow the Committee to act quickly in case of civil war and organize indispensable relief, as far as means are available.

“ *The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.*”

This clause gives the advocates of an integral application in civil war, if not all they were looking for, at least a measure

of satisfaction. A civil war, if it continues, may come to resemble genuine international war. The situation of thousands, whether military or civilians, is then such, that respect for Article 3 is not enough, and it becomes desirable to make detailed arrangements to govern their treatment and relief.

There is no reason for a legal Government to fear that this clause would strengthen the rebel party by implicitly according it belligerent status. The legal Government is free to conclude or refuse such agreements, and it may specify that its adhesion does not imply any recognition of the adversary's legality.

In addition, this clause is, as the preceding ones, covered by the last clause of Article 3, which we have already discussed :

“ The application of the preceding provisions shall not affect the legal status of the Parties to the conflict. ”

* * *

What, finally, is the practical value of Article 3 ? It is difficult to say ; experience alone can show, and no one is anxious to witness a practical demonstration. We may safely assume, however, that if a civil war were to break out after the new Conventions have come into force, Article 3 would save much human life.

Doubt has been repeatedly expressed—so often that we must refer to it once more—that Article 3 could be binding on a rebel party that is not yet in existence ; it is also feared that the legal Government may be hindered in its task of repression. We have said that Article 3 had in view non-international conflicts presenting certain analogies with war, and not the sort of police action which happens almost daily in all great cities. But even taking the widest application, the formula adopted offers all the advantages and has none of the drawbacks suggested. If a number of people try to foment revolution, they will have reason to respect Article 3, to distinguish themselves from criminals. This, surely, is not a cause of complaint, either to the victims, the population at large, or the Government. Even if the latter considers the rebels as

ordinary law-breakers, it is in no way hindered by the observation of Article 3. No civilized Government is authorized by its own legislation to apply the treatment which the Article prohibits: torture, and execution without trial. One can only subscribe to the declaration made by a Delegate, who said in substance: "My Government is in no way dismayed by the prospect of applying Article 3 to rebels, even should they be law-breakers, because its provisions are no more than the minimum of humanitarian law, universally admitted and respected every day even in regard to the worst criminals." It should not be forgotten, too, that Article 3 in no way limits the right of prosecuting and condemning rebels in accordance with municipal legislation, for infractions of the said law.

Whatever its imperfections, Article 3 still has great moral importance, insofar as it recognizes the universality of the principles on which the Geneva Conventions are based. It is not a compromise text. The idea from which it derives has been slowly developed. It had its enthusiastic supporters, but so many opponents also that at one moment it seemed that time was not yet ripe for it. In spite of all obstacles, however, the Conference doggedly continued to search for a solution. Discussion and amendment of the text occupied no less than twenty-five meetings of the Conference in plenary session, the Joint Committee responsible for the common Articles, its Special Committee, and two successive Working Groups—not counting the days and evenings spent by Delegations, working independently and in groups, drawing up amendments or suggestions, searching for improvements in the substance or the wording. In view of so many opinions and difficulties, it would not have been surprising, had sheer weariness led to a facile solution, or some vague and empty formula. It was not so, however, and the earnestness of the work has brought its own reward. The problem was examined under all its aspects, and if the final text does not satisfy everyone, at least no other would have secured a majority.

The spirit of the discussions must also be mentioned. In spite of the length of the Conference and the number of meetings

devoted alone to Article 3, there was no break in the spirit of friendly co-operation. The most impassioned supporters of an opinion were always entirely open to argument, and even those whose suggestions had been dropped completely, and who persisted up to the last moment in trying to convince others of their views, helped none the less constructively in the search for an acceptable formula. This attitude was so remarkable, that it is not out of place, in this impartial account, to pay a special tribute to the members of the twelve Delegations which formed the Special Committee of the Joint Committee, and to its Chairman, Dr. Plinio Bolla, the Swiss Federal Judge.

Finally, it is noteworthy that the Article was not alone accepted, but that none of the sixty States which signed all four Conventions made any reserve on it ¹. We said in the first part of this paper, that the Conventions should gradually lose the character of reciprocal treaties, and become more and more unconditional engagements. In Article 3 we have already arrived at this point. In it, Governments bind themselves individually without any *per contra*. None of the other signatory Governments is, or will be, party to the contract when it is due for execution. The party will be a group, a political party, a military faction, still anonymous, who may refuse to apply agreements that they have not signed. In signing the new Conventions, Governments have to some extent made the following proclamation: "The provisions of Article 3 represent a minimum which civilization requires every man to observe in regard to his fellow-men. For our part, we respect this condition at all times and in all circumstances".

At the beginning of this paper we called this a revolutionary Article. Revolutionary it certainly is, but it is also a triumph of lasting principles over material considerations.

¹ The Argentine representative signed "under the reserve that the common Article 3, to the exclusion of all the others, shall be the only one applicable in the case of armed conflicts which are not of an international character". This declaration in no way limits the scope of the Article: it confirms it.