



# SUPPLEMENT

VOL. VI

REVUE INTERNATIONALE  
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL  
DES SOCIÉTÉS  
DE LA CROIX-ROUGE

*SUPPLEMENT*

August 1953

Vol. VI, No. 8

---

CONTENTS

	Page
International Committee of the Red Cross	
Principal Items of Interest . . . . .	136
Chronicle	
The Origins of Humanitarian Law. The Red Cross ( <i>Henri Coursier</i> ) . . . . .	138
Press Release	
Suspension of the Work of the International Committee of the Red Cross in Korea . . .	150

---

## INTERNATIONAL COMMITTEE OF THE RED CROSS

### *PRINCIPAL ITEMS OF INTEREST*

*Korea.* — (See Page 150)

*Indochina.* — During the months of April and May the Delegate of the ICRC in Indochina continued visiting military prisoners and internees of the "Vietnam Democratic Republic" in French hands. He visited eleven camps in North Vietnam and Laos and distributed some relief supplies.

In July the International Committee's representative visited Cambodia, where he had interviews with the Cambodian and French authorities. He also visited camps where prisoners having served in the "Vietnam Democratic" Forces are held.

*Greece.* — The statistics for the relief supplies distributed or transmitted by the ICRC Delegation in Athens for the first six months of the present year show a total of 27,551 Kgs. representing 181,386 Swiss francs in value. It will be recalled that these relief supplies come from various donors including the ICRC and, as hitherto, the beneficiaries were chosen among interned and exiled persons, the disabled, refugees and the civilian population.

*Refugees.* — Miss Marion Rothenbach, a social worker, sent by the ICRC on a mission to Trieste on behalf of tuberculous refugees, left Geneva to take up her post on July 20. Swiss Relief to Europe made a most generous contribution to the cost of this action.

Miss Rothenbach will be attached to Prosecco Hospital, where about one hundred refugees are now under treatment, and her principal work will be the promoting of functional re-training of these patients to facilitate their return to normal life, as well as assistance with the formalities necessary for

their emigration by submitting their applications to the various specialized organisations concerned.

Before her departure Miss Rothenbach followed a preparatory course at the ICRC headquarters and visited the various centres for the tuberculous in Leysin, Montana, Evian and Männedorf.

The Social Service of the Italian Red Cross sent to the ICRC a report on the use made of a large portion of the 2,700,000 lire which the latter made available some months ago for the benefit of refugees in Italy.

In the course of three distributions, the last of which was terminated at the end of March, the refugees in Frascette di Alatri and Farfa Sabina Camps, and a few isolated refugees, were given relief supplies to a total value of about 1,500,000 lire out of this donation, in the form of articles of every-day use (handkerchiefs, towels, footwear, etc.) cigarettes, postage stamps, some foodstuffs and medicaments and small amounts in cash.

*Disabled.* — In July the ICRC sent several Braille watches to France, Berlin and Finland. The watches sent to the last-mentioned country were purchased by means of the Australian Pridham legacy. The total number despatched was 261.

In Germany the action for providing apparatus for disabled refugees of German-speaking ethnical minorities is being regularly pursued.

---

# CHRONICLE

## THE ORIGINS OF HUMANITARIAN LAW

### IV

#### *THE RED CROSS*<sup>1</sup>

##### 3. THE LAWS OF WAR

In "Un Souvenir de Solférino" Henry Dunant did not merely put forward the ideas which form the basis of the law of the Red Cross. Besides advocating respect for the wounded and the organisation of relief societies, he said: "At a time when we hear so much about progress and civilisation, is it not important, since wars can unfortunately not be avoided, to look in a humanitarian and truly civilised spirit for means of preventing or at least alleviating their terrible consequences?"

It was just this question which the codification of the laws of war, helped by the concomitant progress of contemporary thought on the subject, was shortly to answer. But this was the work of Governments. The Governments insisted on treating the matter as a political issue, independent of any technical participation by humanitarian institutions.

#### *The St. Petersburg Conference (1868).*

Russia, under the influence of the philanthropic Tsar Alexander II headed the movement. In 1868 this Sovereign called an international conference in St. Petersburg for the prohibition of explosive bullets. The Conference resulted in definite engagements, and a resolution was passed to the effect that "the progress of civilisation should lead to the attenuation

---

<sup>1</sup> See *Supplement*, May 1953, page 90.

as far as possible of the disasters of war". By this text the signatories also pledged themselves to consult one another in future, whenever the progress of science was likely to promote armaments of a more deadly nature.

*The Hague Conferences (1899 and 1907).*

Encouraged by this first success, the Tsar proposed in 1874 that a conference should meet in Brussels in order to codify the laws of war. The proposal was based on the idea that, war (and accordingly violence) being permissible, all unnecessary violence was unjust and to be avoided. At the same time the Powers were invited to establish a convention "to lay down regulations which, unanimously adopted by all civilised countries, would serve to lessen as far as possible the disasters of international conflicts by specifying the rights and duties of governments and of armies in war-time". The undertaking was not however a complete success. Two opposite opinions were voiced at the Conference. The representatives of heavily armed States such as Prussia urged the necessity of eliminating partisan movements, whereas the small Powers, sponsored by Great Britain, maintained the right of populations to rise against the invader. This scission nearly caused the failure of the Tsar's generous efforts. The Conference having failed in its aim, the Russian Government suggested that the question should again be discussed in St. Petersburg; but the Foreign Office refused to be associated with any arrangement which would have as its object the facilitating of aggressive wars and the stifling of patriotic resistance on the part of a people suffering invasion <sup>1</sup>.

The International Committee had the honour to reopen the question at the instigation of Gustave Moynier, who published in 1895 his "Essai sur les caractères généraux des lois de la guerre".

---

<sup>1</sup> Letter from Lord Derby to the British Ambassador in St. Petersburg 20 January 1875, quoted by the *Revue des Deux Mondes* of 15 March 1875, page 465.

In legal circles however interest was shown in the effort of the Brussels Conference: At its Oxford meeting in 1880 the Institute of International Law submitted to the Governments a Manual of the laws of war on land containing 15 articles.

In 1898 the Cabinet in St. Petersburg once more took the lead in the proceedings it had initiated twenty-five years earlier, and suggested a new meeting of the Powers for the " maintenance of general peace and a possible reduction of excessive armaments ".

The Conference was held at The Hague in the following year, and led with other resolutions to the establishment of the Regulations for the Laws and Customs of War on Land. This text did not however formally commit the Powers signatory to the Final Act of the Conference.

In 1904 the President of the United States proposed the meeting at The Hague of a second Peace Conference. The Russo-Japanese War caused him to put aside his plan. On the close of hostilities however the Emperor of Russia, pursuing his former policy, requested the Netherlands Government to convene the Conference. It was this Second Hague Conference, which in 1907 finally produced a series of international conventions of an executory nature. These included the well-known *Hague Regulations for the Laws and Customs of War on Land*. This text settled the difficult question of partisans by assimilating them to regular combatants, provided they were commanded by a person responsible for his subordinates, had a fixed distinctive emblem recognisable at a distance, carried arms openly, and conducted their operations in accordance with the laws and customs of war. In addition general principles of very great importance were established :

*Article 46*: Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

*Article 47*: Pillage is formally forbidden.

*Article 56*: The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property...

In regard to maritime law, the Declaration of Paris of 1856 had established certain rules to be applied in time of war.

Shortly after the adoption of the Hague Regulations the laws of war at sea were codified by the Declaration of London of 26 February 1909<sup>1</sup>; and the London Procès-verbal of 1936 codified the laws of submarine warfare.

*The Limitation of Armaments.*

After the First World War the League of Nations adopted, on the instigation apparently of the American Observer, the *Geneva Protocol of 17 June 1925* concerning prohibition of the war-time use of asphyxiating, poisonous or similar gases and of bacterial weapons<sup>2</sup>. It failed however in its attempt to limit armaments. The United Nations Organization, its successor, is to-day contending with the same problem, which is essentially political in nature and is particularly aggravated by atomic discoveries.

This question, so ominous for the future of mankind, was raised by the Soviet Union Delegation at the Geneva Conference, which met for the drawing up of the four Geneva Conventions of 12 August 1949; but the majority of the plenipotentiaries declared that they were not competent to deal with it, in view of the limits prescribed for the application of the Geneva Conventions and the discussions pending between Governments for the settlement of this fundamentally political question.

Nevertheless, in view of the deadlock which the Powers had apparently reached in their discussions concerning atomic weapons, the International Committee had no hesitation in offering its services in the attempt to reach a settlement on purely humanitarian lines. Just as the Hague Conferences have in several instances furnished occasion for the extension of Geneva law—various provisions of the 1907 Regulations served for example as a theme for the Geneva Conventions of 1929 and 1949 relative to prisoners of war and the protection of

---

<sup>1</sup> At its meeting in Oxford in 1913 the Institute of International Law adopted a manual of the laws of maritime warfare.

<sup>2</sup> The First Hague Conference (1899) had made a declaration relative to abstention from "the use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases": but, as we have seen, this declaration was not an agreement of an executory nature. The Protocol of 1925 was in fact put into effect, no use of gases having been made during the Second World War.

civilians—so it was natural to suppose that the Geneva spirit might assist in solving a problem on which depends in the last resort the future of mankind. The argument was based moreover on the provision of the Hague Regulations to the effect that “in cases for which the Regulations do not provide . . . the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience”.

We have now to examine a part of humanitarian law which although unconnected with war is nevertheless closely related to the law of the Red Cross—namely the rights of man.

### THE RIGHTS OF MAN

The essential rights of man—his right to life, to freedom and to security—are based on the dignity of the human person, and are proclaimed as applicable to all men in all times and in all countries.

The origin of this notion dates back to Christianity. The English Magna Carta of the 13th Century, the United States Constitution and the Declaration of the Rights of Man and of the Citizen in France at the close of the 18th Century, were the first systematic declarations on the subject. But it remained for the 19th Century to introduce into positive international law these findings of the “philosophical” doctrine until then embodied separately in certain national constitutions.

This movement, of which the first Geneva Convention was the origin, developed to some degree before the First World War, expanded in connection with the social work of the League of Nations, and was later taken over by the United Nations Organization.

Thus Geneva, already an international capital by virtue of the Convention which created the Red Cross, became the centre within which a body of universal legislation, based on multi-lateral conventions ratified by all Powers, has spread over the globe a network of regulations proclaimed in the name of human

dignity. The principal agreements concern the prohibition and repression of slavery, the traffic in women and children, the drug traffic, pornographic literature, the protection of ethnical minorities, assistance to refugees, and the Universal Declaration of Human Rights.

### *The Abolition of Slavery.*

Before the Christian era slavery was considered to be in conformity with natural law <sup>1</sup>. It is true that the Stoics doubted whether it conformed to nature and to reason ; and we have already seen how under the influence of Christianity this fundamental institution of antiquity gradually fell into disuse, to be replaced by serfdom, which in its turn was abolished more or less belatedly in the different European States <sup>2</sup>.

Certain forms of slavery continued nevertheless, by right of conquest in the case of prisoners of war, and by the so-called "droit d'épave" in the case of the shipwrecked. In 1199 the Lateran Council denounced such practices with excommunication. But the Rôles d'Oleron, the Ordinance of Charles the Fifth in 1522, decreed severe penalties against these practices, which proves that they had not entirely ceased.

In spite of these relics of the past the public law of Europe had almost completely eliminated slavery.

Guy Coquille wrote that "France knows no slavery" ; and a decree of the Toulouse Courts may be cited to the effect that "Slavery has no place in all the kingdom, so that even the slave of a foreigner is emancipated as soon as he sets foot in France, according to a former judgment of the Court against an ambassador ; and I recall being in Toulouse when a Genevese passing through the city was obliged to emancipate a slave he

---

<sup>1</sup> Bodin, in the 16th century, quoted Aristotle to the effect that the servitude of slaves was a natural law. See A. GARDOT *Recueil des Cours de l'Académie de droit international de la Haye*, 50, pages 549 ff.

<sup>2</sup> In his History of Charles XII Voltaire states that in 1700 the King of Denmark promised their freedom to all of his subjects who would take up arms against the Swedish invader. He adds : " This declaration was of great consequence in a country, which had been free in the past, and where today all the peasants and even many of the bourgeois are slaves " (*Histoire de Charles XII*, II, 43.)

had bought in Spain, seeing that the magistrates were about to declare him a free man, not only by virtue of the general custom of the Realm but also under a special privilege accorded to them by the Emperor Theodosius the Great " 1.

The law in this matter spread progressively to the different countries of Europe, all of which abolished slavery in their territory, with the consequence that any slave entering therein became *ipso facto* a free man.

All this while Moslem pirates were filling the gaols of Salé, Tunis and Algiers with Christian slaves 2.

After the discovery of the New World, slavery was not confined to the Moslems : for the Christian Powers engaged in the traffic of African negroes, in order to obtain the necessary man-power for exploiting their American colonies. This practice, sanctioned to some extent by international instruments such as the Treaty of Utrecht in 1713, began to encounter opposition in the early 19th Century. The famous declaration of the Treaty of Vienna remained, it is true, inoperative, though it was repeated in the Additional Act of the Second Treaty of Paris of 20 November 1815, as well as at the Congress of Aix-la-Chapelle in 1818 and the Congress of Verona in 1822. But the adversaries of England, which posed as the champion of the abolition of slavery, only saw therein a pretext for this Power to secure a political advantage through its claim of search of merchant vessels 3. All these declarations remained therefore without effect ; and nothing more could be done but to wait until each State had on its own initiative abolished slavery in the

---

1 Judgment of the Toulouse Courts against the Seigneur de Roche-Blanche of Gascony (1558) quoted by A. GARDOT, *op. cit.*, page 643.

2 The Crusades of St. Louis and the bombardment of Algiers by Louis XIV had for their object the freeing of the captives. Religious orders such as the Trinitarians, the Brothers of Mercy and the Lazarists made every endeavour for centuries to trace these unfortunate people and to help them, in particular by establishing some contact between them and their families. When Algiers was taken by the French forces in 1830, the city prisons still contained 122 slaves, most of whom were French.

3 This claim would have enabled Great Britain, on account of the superiority of its battle-fleet, to obtain absolute control of the world's navigation.

colonial territories it occupied<sup>1</sup>. This result was attained in the first half of the century in every country except the United States. A violent anti-slavery campaign was launched with Harriet Beecher Stowe's book "Uncle Tom's Cabin" as its evangel<sup>2</sup>. This campaign was the cause of the War of Secession (1860-1865) between the slave States in the South and the anti-slave States of the North. It ended by the victory of the Northern States, whereby the abolition of slavery was maintained, and the constitutional links between the several States of the U.S.A. were strengthened.

Nevertheless it was not until the passing of the Berlin Geneva Act in 1885, and the General Act of the Brussels Declaration in 1890, that an international agreement could be recorded for the complete suppression of slavery in all its forms, and of the slave traffic by land and on sea.

In 1924 the League of Nations Council nominated a temporary Commission on Slavery. Its Report was sanctioned by the Convention relative to Slavery, which was opened to signature in Geneva on 25 September 1926<sup>3</sup>.

This Convention defines "slavery" as the state or condition of an individual who is subjected to a right of ownership or particular attributions thereof, and the "slave traffic" as any act of capture, acquisition or cession of an individual. It further adds that recourse to forced or compulsory labour may have serious consequences, and contains an obligation to take steps to prevent forced or compulsory work leading to conditions similar to those of slavery.

#### *Repression of the traffic in women and children.*

The traffic in women and children was prohibited by the terms of an agreement signed in Paris on 18 May 1904, and

---

<sup>1</sup> Portugal under the rule of Pombal had legislated to this effect at the end of the 18th Century; and Bolivar, when establishing the independence of the Spanish colonies in America, made the abolition of slavery one of the articles of his Constitution (1821).

<sup>2</sup> This book was published in 1852. The author passed through Geneva in the following year; and Henry Dunant, then aged 25, made her acquaintance.

<sup>3</sup> This Convention has to date been ratified by all the great Powers, with the exception of the USSR.

by a Convention also signed in Paris on 4 May 1910. The Convention for the Suppression of the Traffic in Women and Children, opened for signature in Geneva on 30 September 1921, confirmed both texts and added a few provisions. It provides for instance for the posting up in railway stations and ports of notices warning women and children of the dangers of this traffic and indicating places where they may find shelter and assistance<sup>1</sup>. A Protocol signed at Lake Success, New York, on 12 November 1947 amends the text by conferring upon the Secretary General of the United Nations Organization the functions previously assumed by the Secretary General of the League of Nations.

#### *Prohibition of Pornographic Publications.*

The Convention for the repression of the circulation and sale of pornographic publications, concluded in Geneva under the auspices of the League of Nations, was amended for the same purpose by a Protocol signed at Lake Success on 12 November 1947.

#### *Repression of the Drug Traffic.*

The traffic in drugs was prohibited by the International Opium Convention signed at The Hague on 23 January 1912. In the days of the League of Nations a number of agreements, of which the last was dated 26 June 1936, were passed to supplement this Convention. A Protocol signed at Lake Success on 11 December 1946 conferred upon the Secretary General of the United Nations Organization the functions previously exercised by the Secretary General of the League of Nations in succession to the Netherlands Government.

#### *The Protection of Ethnical Minorities.*

The Convention on the Prevention and Punishment of the Crime of Genocide was signed on 9 December 1948 at the

---

<sup>1</sup> See on this subject R. BEYER, *Aspects de l'activité sociale de la SDN, la Traite des femmes*, Montpellier, 1926.

General Assembly of the United Nations in Paris. The object of this Convention is to prohibit mass executions of ethnical groups of different race to that of the majority of the inhabitants of any particular country. It prohibits collective massacres and racial persecution of all descriptions.

### *The Status of Refugees.*

International legislation for refugees has not by any means met with similar approval by Governments. The Conventions passed between the two World Wars for the purpose of ensuring for refugees conditions similar to those of the nationals of the countries of resettlement were ratified only by a few States. The refugee problem having grown to considerable proportions after the Second World War, a suggestion was placed before the United Nations General Assembly for the recognition of joint responsibility by the States forming the international community for the assistance of these persons, where their support was beyond the means of the country of resettlement. This general principle was not admitted ; but the United Nations Organization to some extent recognised the obligation to assist in the settlement of this problem. At the instance of the High Commissioner appointed by the United Nations for the protection of refugees a new International Convention (which reproduces the principal points of the conventions passed between the two wars) was signed in Geneva by 18 Powers on 28 July 1951.

### *Universal Declaration of Human Rights*<sup>1</sup>.

The Universal Declaration of Human Rights adopted and proclaimed in Paris by the General Assembly of the United Nations on 10 December 1948 sets forth the guiding principles of civilisation. It is partly an enumeration of the rights recognised by the various Conventions mentioned above, and partly a definition of rights not yet established by existing texts.

---

<sup>1</sup> See *Revue Internationale de la Croix-Rouge*, April 1949, pages 244 to 264.

But, as opposed to multilateral conventions, this simple declaration has no executory effect. To give it effect, a Convention between the Powers will be needed ; and such a Convention is in fact now in course of preparation. Nevertheless the Declaration of Human Rights is an outstanding feature in the history of humanitarian law, of which it constitutes, so to speak, a synthesis. " Respect for the personality and dignity of human beings constitutes a universal principle, which is binding even in the absence of any contractual undertaking." This formula, proposed by the International Committee of the Red Cross to serve as a common preamble for the four Geneva Conventions of 1949, might also be applied to the Universal Declaration of Human Rights as an expression of the juridical force of this text, and indeed (it is to be hoped) as the preamble of all future international law.

\* \* \*

From this brief outline of the growth of humanitarian law we have seen the outcome of centuries of effort founded on the dignity of the human being. This law has as its two elementary concepts the *universal* and the *human*.

We have seen how these two concepts finally emerged from the vicissitudes of history until they reached the height of their present radiance.

Antique civilisations, opposed to the formation of international law on account of the narrow limits of their municipal conception of citizenship, were unable to rise to universal ideas ; and, although the worship of the gods had to its credit a merciful attitude towards humanity in general, no protective measures for men as men were recognised by Roman Law, although it created the State system and was a bulwark of peace for generations.

In founding the dignity of the human person upon the creation of man in the image of God, and his redemption by the blood of Christ, Christianity established the universal concept which the Papacy has never ceased to assert.<sup>1</sup> But the Christian

---

<sup>1</sup> The etymological meaning of " Catholic " is " universal ".

World, compelled by the struggle against Islam, limited the scope of these principles in fact. Mankind was once again saved by religion thanks to the Scholastic philosophy, which created the laws of war and was an obstacle to man exploiting man in the colonising of the New World.

The Reformation called in question the theological bases of law. Under its influence the law of nations came into being which, though conceived as an element of natural law (which was not in itself inconsistent with Christian principles) was built up in the sole name of human reason. This was a definite triumph of the principle of human dignity independent of all theological considerations ; but the universal note, which was thereby again embodied in the conception of law, was not always conspicuous in the new world issuing from the French Revolution in so far as respect for the human person was concerned.

It is to the great honour of the Red Cross that the human concept is again restored in the relations between man and man. The first Geneva Convention, the foundation of the law of the Red Cross, set an example for multilateral conventions on the laws of war, the limitation of armaments and the social organisation of the world—that corpus in fact of texts, which at the present day determine the standards of the law of nations in the humanitarian field.

*Henri Coursier*

*Member of the Legal Section  
of the International Committee  
of the Red Cross.*

PRESS RELEASE

*SUSPENSION OF THE WORK  
OF THE INTERNATIONAL COMMITTEE  
OF THE RED CROSS IN KOREA*

Geneva, August 7, 1951.

The happy circumstance of the signature of an Armistice in Korea has enabled the International Committee of the Red Cross in Geneva to instruct its Delegation in South Korea to suspend the work it has been carrying on since the outbreak of the conflict. The cessation of hostilities will allow National Red Cross Societies, under the Armistice, to deal with the work of assisting prisoners of war being repatriated.

For the last three years the International Committee, whose action was sanctioned in South Korea only, has regularly visited prisoner of war camps, carrying out its traditional work on behalf of prisoners and other victims of the conflict and giving them assistance. Further, its Central Prisoners of War Agency in Geneva made periodical transmissions to North Korea of the lists of prisoners held in South Korea.

Although it is now in a position to suspend the work of its Delegation, the International Committee nevertheless remains ready and willing to give its services for the welfare of war victims, wherever its help may be considered necessary.