



SUPPLEMENT

VOL. II

REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

SUPPLEMENT

Vol. II, 1949

GENÈVE

1949

REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

SUPPLEMENT

November 1949

Vol. II, No. 11

CONTENTS

	Page
The Geneva Conventions of August 12, 1949 : Preliminary Remarks	454
Gandhi and the Red Cross	477

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

INTERNATIONAL COMMITTEE OF THE RED CROSS

THE GENEVA CONVENTIONS OF AUGUST 12, 1949

PRELIMINARY REMARKS

The International Committee of the Red Cross has, from the outset, been the sponsor of the Geneva Convention for the protection of wounded military personnel, and of the humanitarian Conventions which supplement it. Each of these fundamental international agreements are inspired by respect for human personality and dignity ; together, they establish the principle of disinterested aid to all victims of war without any discrimination—to all those who, whether through wounds, capture or shipwreck, cease to be enemies and become merely suffering and defenceless human beings.

Throughout the years the International Committee has laboured unremittingly for the greater protection in international law of the individual against the hardships of war. In this endeavour, the Committee successively elaborated the humanitarian Conventions and adapted them to current needs, or instituted new instruments. In the period between the two World Wars the Committee's main achievement lay in the establishment of a number of draft Conventions, chief among which was the Convention on the treatment of prisoners of war ; this was signed in the summer of 1929 and, during the last conflict, was a safeguard for millions of captive men. Other new or revised draft Conventions were to have been presented for official sanction at a diplomatic conference which the Swiss Federal Council planned to convene early in 1940 ; unfortunately, hostilities intervened.

The year 1945 marked the close of war waged on an unprecedented scale ; there remained the considerable task of developing and perfecting the humanitarian content of international public law in the light of the experience gained. The International Committee's proposals in this regard met with the early approval of Governments and National Red Cross Societies, and it immediately set to work.

The task before it consisted in the revision of the three former Conventions—the Geneva Convention of 1929 for the relief of the wounded and sick in armies in the field, the Xth Hague Convention of 1907 for the adaptation to maritime warfare of the principles of the Geneva Convention, and the 1929 Convention on the treatment of prisoners of war. Furthermore—and most important—there was need for a Convention for the protection of civilians, the lack of which had, during the world conflict, led to such grievous consequences.

The International Committee carried out this task along the lines it had followed after the 1914-1918 War ; first, it collected the fullest possible preliminary information on those aspects of international public law that required confirmation, enlargement, or amendment ; then, with the help of experts from various countries, it prepared the revised and new draft Conventions which were submitted, first to an International Red Cross Conference, and lastly to a Diplomatic Conference empowered to give these treaties final validity.

The first meeting of experts was held in October 1945 and comprised the neutral members of the " Mixed Medical Commissions " which, during the conflict, had visited wounded or sick prisoners of war and decided on their repatriation.

The second meeting was the " Preliminary Conference of National Red Cross Societies for the study of the Conventions and of various problems relative to the Red Cross ", which the International Committee convened at Geneva, in July and August 1946, and before which the first drafts were laid.

Having thus gathered the suggestions of Red Cross agencies on points which were within their particular fields, the Committee made a close study of the subject during the months that followed and collected very full data, bearing this time on all the provisions of the proposed Conventions. Amongst other enquiries, the Committee conferred, in March 1947, with the representatives of the religious and secular bodies which had collaborated with it in giving spiritual and intellectual aid to victims of the war.

From April 14 to 26, 1947, the "Conference of Government Experts for the study of Conventions for the Protection of War Victims" was held in Geneva. This was attended by seventy representatives of fifteen Governments that had detained large numbers of prisoners and civilian internees during the war, and which were therefore particularly experienced in the matters under discussion. Using the Committee's proposals, the suggestions made by the Red Cross Societies and the drafts prepared by several Governments, the Conference established texts for the revised Conventions and the first draft of a new Convention for the protection of civilian persons in time of war.

The International Committee also sought the advice of several Governments which had not attended the April Conference; some of these sent experts to Geneva in June 1947. Furthermore, the drafts in preparation were submitted by the Committee to a "Special Commission of National Red Cross Societies", which met at Geneva in September of the same year.

After considerable adjustment early in 1948, the Draft Conventions were sent by the Committee in May to all Governments and National Red Cross Societies, in preparation for the XVIIth International Red Cross Conference.

This conference sat in Stockholm from August 20 to 31, 1948; it was composed of the representatives of fifty Governments and fifty-two National Red Cross Societies. With a few amendments, the drafts submitted were adopted.

After passing through the many preparatory stages briefly described, these texts were eventually adopted as the sole working documents of the Diplomatic Conference of Geneva, which gave them their final form.

* * *

The " Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of the War ", convened by the Swiss Federal Council, as trustee of the Geneva Conventions, was held in that town from April 21 to August 12, 1949.

Of the sixty-three Governments represented at the Conference, fifty-nine had full powers for discussion, whilst four attended as observers. Experts from the International Committee were invited to take an active part in the meetings.

After four months of continuing and exhaustive debate, the Conference established the four following Conventions, the texts of which are given below :

- I. — Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949 ;
- II. — Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949 ;
- III. — Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949 ;
- IV — Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949.

In order to facilitate its task, the Conference at once divided into four Committees ; the First, for the

revision of Conventions I and II ; the Second, for the revision of the Convention relative to Prisoners of War ; the Third, to establish the new Convention relative to the protection of Civilian Persons ; and lastly, the Joint Committee, to deal with the provisions common to the four Conventions. Further, a Co-ordination Committee and a Drafting Committee met towards the end of the Conference and endeavoured to lend a degree of homogeneity to the various texts. When necessary, the Committees themselves divided into working parties.

At the closing meeting, the delegations of the following States signed the Final Act :

Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Canada, Chile, China, Columbia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Eire, Ethiopia, Finland, France, Greece, Guatemala, the Holy See, Hungary, India, Iran, Israel, Italy, Jugoslavia, Lebanon, Liechtenstein, Luxemburg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Poland, Portugal, Principality of Monaco, Rumania, Siam, Socialist Soviet Republic of Bielorrussia, Socialist Soviet Republic of Ukraine, Spain, Sweden, Syria, Turkey, Union of Socialist Soviet Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Switzerland.

Seventeen delegations also signed the four Conventions, whereas the others availed themselves of their right to sign only at the Special Meeting to be held for this purpose on December 8, 1949.

According to their provisions, the new Geneva Conventions will come into force six months after the deposit of two instruments of ratification.

* * *

*PROVISIONS COMMON
TO THE FOUR CONVENTIONS*

A new departure was that the Diplomatic Conference of Geneva amplified and grouped together all the provisions of a general scope, which had hitherto been rudimentary and dispersed, and which are now practically identical in all four Conventions. They have been subdivided under the following three headings.

General Provisions

These consist of a dozen Articles of great importance, in that they determine the method of application of the Conventions ; they will be found at the beginning of each. These provisions deal with respect for the Conventions and their application in the event of international conflicts, occupation or civil war. They are followed by provisions as to the duration of application, special agreements which Contracting Parties may conclude, the inalienability of the rights of protected persons, the duties of Protecting Powers or their substitutes, the activities of the International Committee of the Red Cross, and conciliation procedure between the Contracting Parties.

Repression of Breaches of the Conventions

These are Articles 49 to 52 of the First Convention, 50 to 53 of the Second, 129 to 131 of the Third, and 146 to 149 of the Fourth.

The XVIIth International Red Cross Conference had expressed the view that the provisions then existing in this field were inadequate, and had requested the International Committee to continue working on this important question. After consulting lawyers of international repute, the Committee placed before the Governments attending the Diplomatic Conference, in a volume entitled "Remarks and Proposals", suggestions which the Conference used as the basis of its deliberations.

The first Article imposes penal sanctions for breaches of the Convention, in particular for "grave breaches", as defined in the succeeding Article.

There can be no doubt that these texts will be an important contribution to international law in regard to "war crimes"—a term which today is frequently used and seen in print, but which still awaits a generally acceptable legal definition.

Final Provisions

This Section, which appears at the end of each Convention, defines the diplomatic procedure for the signature, ratification and entry into force of the Conventions, and for accession to them.

FIRST GENEVA CONVENTION (WOUNDED AND SICK OF ARMED FORCES)

The traditional "Geneva Convention", brought into being by the newly created International Committee of the Red Cross in 1864, is the source of the "Geneva Conventions" which are now of world-wide acceptance. The original Convention gave the impetus to the Red Cross movement throughout the world; it in fact inspired the great trend in international law towards the increasing regulation of conflicts and, most recently, the restriction and prohibition of recourse to arms itself. This first international instrument, the fundamental principles of which have remained unshaken, was nevertheless marked by omissions and imperfections, and as early as four years after the signature, a Conference was convened to discuss its revision. From the debates emerged a number of draft additional articles, dated October 20, 1868, which provided in particular for the extension of the Convention to maritime warfare, but which were never ratified. A recommendation by the First Hague Conference in 1899 gave a new impulse to the idea of revising the Geneva Convention. At the

Diplomatic Conference of 1906, a revised text was established, representing a complete recast and a considerable enlargement of the 1864 text.

It became apparent after the first World War that the Geneva Convention must be adapted to the conditions of modern warfare. During the Diplomatic Conference of 1929, held at Geneva, the text was once more revised, although to a lesser extent than on the first occasion, and was given its present form.

Another revision of the Geneva Convention was planned in 1937, after a Commission of international experts had been convened by the International Committee. The draft, which had previously been submitted to the XVIIth International Red Cross Conference (London, 1938), was placed on the agenda of the Diplomatic Conference planned for 1940 and postponed on account of the second World War.

It has already been shown how the International Committee developed the 1937 Draft in the light of the experience gained during the six most strenuous years in history. The help of the National Red Cross Societies, which are closely involved in the application and development of the Geneva Convention, was particularly valuable in this task.

* * *

The revised text of the Convention as produced by the 1949 Conference, follows the traditional lines throughout. It serves the same fundamental principles that prompted the former versions, namely, that the wounded or sick, and therefore defenceless combatants should be respected and cared for, whatever their nationality, and that the personnel attending to them, the buildings which shelter them and the equipment used for their benefit should also be protected, and that a red cross on a white ground should be the emblem of this immunity. The greatest divergence from traditional principles was, as will be seen

later, that conditions of modern warfare have made it necessary to restrict the privileges formerly granted to medical personnel and equipment when in enemy hands. On the other hand, the Articles have almost all been clarified.

The above-mentioned "General Provisions", with which the Convention is now provided, are followed by Chapter II, dealing with the wounded and sick. Article 13, drawn from the Prisoners of War Convention, enumerates the categories of persons to be regarded as equivalent to members of the armed forces and therefore entitled to protection under the Convention. Whereas the 1929 text only demanded respect and protection for the wounded, Article 12, which is new, gives a list of acts such as attempts upon life, torture, wilful abandonment and others, which are prohibited. The information to be given on wounded captives and the honours due to the dead have been defined (Art. 16 and 17). A new provision (Art. 18) gives inhabitants and relief societies the right to assist the wounded and sick.

Chapter III, which concerns medical units and establishments, has not undergone any alteration, with the exception of a provision for the creation of safety localities and zones (Art. 23).

Chapter IV, however, on medical personnel and chaplains, has been greatly modified. Hitherto, the immediate repatriation of this personnel falling into enemy hands had been strictly compulsory; the 1949 Convention now provides that they may, in certain circumstances, be retained to care for prisoners of war. Their special status and the conditions for the repatriation of those not required (Art. 30 to 32) have been carefully defined (Art. 28), thus filling a serious gap.

Chapter V, concerning medical equipment, has, on account of the adjustment for the personnel, also been substantially altered. Equipment will no longer be handed back to the belligerent to whom it belongs.

In Chapter VI similar provision was made for transport vehicles (Art. 35). One humanitarian advance should

be noted : medical aircraft are now authorised, in certain circumstances, to fly over neutral countries (Art. 37).

Chapter VII, on the distinctive emblem, maintains the former principles. Nevertheless Article 44, the wording of which left so much to be desired in the 1929 text, is now rendered in logical and well-balanced terms. While the "protective" emblem is subject to strict safeguards, the purely "indicatory" emblem may be widely used by Red Cross Societies.

Chapter VIII (Application of the Convention) calls for no comment.

Reference has already been made to Chapter IX (Repression of breaches) and the Final Provisions. Article 53, which is peculiar to the First Convention, is intended to prevent abuse of the distinctive emblem.

SECOND GENEVA CONVENTION (WOUNDED, SICK AND SHIPWRECKED AT SEA)

The Diplomatic Conference held at Geneva in 1868 formulated the first provisions for the adaptation to maritime warfare of the principles of the Geneva Conventions. This Convention was not ratified, but later became the Hague Convention of 1899, and afterwards the Xth Hague Convention of 1907, which was ratified by forty-seven States and remained in force, in the form adopted, up to the present day.

Nevertheless, owing to the evolution of methods of warfare and, in particular, to the fact that the First Geneva Convention was revised in 1929, a recast of the Xth Hague Convention became essential. After preliminary study, the International Committee, with the help of a conference of naval experts, drafted in 1937 a Revised Convention which was placed on the agenda of the Diplomatic Conference scheduled for 1940.

This Draft was in 1945 enlarged in the light of the experience gained during the last conflict and served as a basis for the work of the Diplomatic Conference of 1949.

The so-called Maritime Convention is an extension of the First Geneva Convention on the Wounded and Sick, the terms of which it applies to maritime warfare ; it is therefore natural that it should again become, as at its origin, one of the Geneva Conventions.

As the general plan of this Convention covers the same field and protects the same categories of persons as the First Geneva Convention, no comment is necessary as to basic principles. It should however be emphasised that the new Maritime Convention contains no less than sixty-three Articles, whereas the 1907 version had only twenty-eight. This is because the 1949 text (similar to the 1937 Draft) of the Maritime Convention, in adapting the provisions of the " Land " Convention, follows these very closely. It has now become an independent Convention, whereas the 1907 text was more particularly concerned with humanitarian provisions applying only to naval warfare.

Following the General Provisions common to the various Conventions, to which we have referred, Chapter II gives protection to a separate category in addition to wounded and sick military personnel, namely, the shipwrecked.

Under the terms of Article 13, members of the Merchant Service are accorded the protection of the Convention, where they are not entitled to more favourable treatment under other provisions in international law. This addition to treaty law is nevertheless in conformity with ordinary practice.

Chapter III, obviously applicable only to maritime warfare, deals with hospital ships and other relief craft.

Chapter IV relates to medical personnel who, on account of the conditions prevailing at sea, are given wider protection than those on land. In particular, the medical personnel and crews of hospital ships, who form a vital component of the vessels, may not be captured or retained. The personnel of other ships, while they may in some cases

be retained, must be put ashore as soon as possible and will then be covered by the Convention for land forces.

Chapter V (Medical Transports) corresponds to the Convention for land forces, but the Maritime Convention does not include a special provision for the equipment, since this is, in a sense, part and parcel of the vessel itself.

There were no Air Forces in 1907, and Chapter VI of the revised Convention, in its chapter on the distinctive emblem, therefore provides for the more efficient marking of hospital ships.

Chapters VII (Execution of the Convention) and VIII (Repression of abuses and infractions), as well as the Final Provisions, call for no special comment.

THIRD GENEVA CONVENTION (PRISONERS OF WAR)

The Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, contains one hundred and forty-three Articles, besides the Annexes. The corresponding 1929 Convention consisted of ninety-seven Articles, whereas the chapter on prisoners of war in the Hague Convention numbered only seventeen. While this increase is doubtless explained by the vast scale of captivity in modern warfare, it also interprets the desire of the countries which recently met at Geneva, and which represented the whole international community, to bring this situation entirely under humanitarian international law.

This is not of course a new aspiration. Under the influence of natural law concepts and, above all, the humanitarian movement of the nineteenth century and the ideas of Henry Dunant, who applied himself to the problem of the prisoner of war after solving that of the wounded and sick, the conscience of the civilised world has finally received the notion that the prisoner of war is not a criminal, but merely an enemy no longer able to participate in the conflict, to be liberated at the close of hostilities and to have respect and humane treatment

while in captivity. Since then, liberal-minded lawyers and diplomats have succeeded in putting these ideas into practical use through a series of regulations binding on all States and successively extended or amplified when experience has shown them to be inadequate. They have thus eliminated violence and caprice from a field of warfare where these were neither necessary nor inevitable. The Brussels Draft of 1874, the Hague Convention of 1899 and 1907, the special agreements made between belligerents in Berne in 1917-18, and the Geneva Convention of 1929, in which all or part of the texts concern prisoners of war, represent the principal stages of this evolution.

Wherever it was applied, the 1929 Convention effectively contributed to the protection of the millions of prisoners of war who relied upon it during the last conflict. Nevertheless, it was quite evident, both to those who benefited thereby and those by whom it was applied, that the Convention required revision on many points, in view of the change in the methods and the consequences of warfare, and even in the living conditions of the peoples. It was necessary to broaden the categories of persons entitled to prisoner of war status, to ensure that this status is in fact attributed to members of armed forces after capitulation and that prisoners are not arbitrarily deprived of that status at any time. A more precise ruling was also required, as regards the conditions of captivity, in view of the importance of prisoner of war labour, of the relief they receive, and the proceedings instituted against them. The principle of the immediate liberation of prisoners on the close of hostilities had also to be reaffirmed. Finally, it was essential that the agencies appointed to look after the prisoners' interests and to ascertain that the regulations concerning them are applied in full, should be placed upon a proper basis, as far removed as possible from the political relations existing between the belligerents. The above are merely the most urgent of the problems that the experiences of the last War revealed.

Thus, before hostilities had ceased and while engaged upon the even more urgent task of preparing the Civilians Convention, the International Committee began to work upon the revision of the 1929 Convention relative to prisoners of war.

* * *

As already pointed out, the 1949 Convention is far longer than the agreement it replaces. Whilst many of its provisions are standard regulations which are a logical development of the 1929 Convention, experience has shown that the prisoners' living conditions depend upon the interpretation which is given to general rules. An attempt has therefore been made to put into explicit terms the rational interpretation which certain regulations should have been given, but did not receive. Further, principles which it was felt would have greater force for being tersely worded, as in Article 2 of the 1929 text, have been so seriously abused that the Conference has recast them in terms comprehensive and clear enough to make any future infringement immediately apparent.

The foregoing remarks do not in any way detract from the fact that another group of provisions of equal importance is designed to provide a satisfactory solution for the numerous problems outlined above. This task was more arduous; in many instances, the Conference had to devise entirely new regulations—as in the section dealing with the financial resources of prisoners of war—or deliberately to break with certain rules which, in 1929, had been transferred more or less bodily from Hague Regulations: an instance is the rule concerning the liberation of prisoners at the close of hostilities.

Some of the details may seem superfluous, and some of the repetitions or discordances between certain provisions may cause surprise. It should, however, be remembered that, whilst throughout concerned to preserve the full validity of the Convention as an instrument in inter-

national law, the Conference was constantly aware of the special use to which it was to be put—that is, as a set of regulations to be posted in prisoner of war camps and to be understood not only by the authorities, but by all men in all places. Further, the Conference did not hesitate to sacrifice neatness of solution in the interests of unanimous agreement. These reasons, together with the difficulty of establishing official legal texts simultaneously in two languages, account for, and even justify most of the textual imperfections to be found in the Prisoners of War Convention.

The Table which appears at the end of the Convention and the marginal notes on each article make it easy to grasp the general plan, which is, as far as possible, similar to that of the 1929 Convention. The general outline is as follows.

Amongst the General Provisions (Art. 1 to 11), which have already been dealt with, Article 4, defining the categories of persons entitled to prisoner of war treatment, is a vital element of the Convention.

Part II, entitled “General Protection of Prisoners of War” (Art. 12 to 16), contains the essential principles which will, at all times and in all places, govern the treatment of prisoners.

Part III (Art. 17 to 108) deals with the conditions of captivity itself and is divided into six sections. The first, (Art. 17 to 20) covers events immediately after capture and deals with such matters as interrogation of prisoners, disposal of their personal effects, and their evacuation. The second, comprising eight chapters (Art. 21 to 48), regulates living conditions for prisoners in camp or during transfer, and deals with the places and methods of internment, accommodation, food and clothing, hygiene and medical attention, medical and religious personnel retained for the care of prisoners (a new chapter which partly reproduces the provisions of the First Geneva Convention), religious needs, intellectual and physical activities, discipline, prisoner of war ranks, and transfer after arrival in

a camp. Prisoners' labour is dealt with in the third section (Art. 49 to 57); the fourth section (Art. 58 to 68) is new and concerns the financial resources of prisoners. The fifth section (Art. 69 to 77) covers everything concerned with correspondence and relief shipments. The sixth and last section (Art. 78 to 108), which is in three chapters, covers the relations between prisoners of war and the detaining authorities, complaints regarding captivity, prisoners' representatives, and penal and disciplinary sanctions. This last chapter (Art. 82 to 108) constitutes in itself a brief code of penal and disciplinary procedure.

The various measures for the termination of captivity are contained in Part IV (Art. 109 to 122), which is divided into three sections. The first (Art. 109 to 117) refers to repatriation and accommodation of prisoners in neutral countries during hostilities, the second (Art. 118 and 119) to repatriation at the close of hostilities, and the third (Art. 120 to 121) to the death of prisoners of war.

Part V (Art. 122 to 125) contains provisions for Prisoners of War Information Bureaux and all organisations formed to assist prisoners.

Part VI, entitled "Execution of the Convention" (Art. 126 to 143) contains, in the first section (Art. 126 to 132) a variety of most important stipulations requiring belligerents, in particular, to give neutral organisations free access to prisoner of war camps for inspection purposes, and to disseminate the text of the Convention as widely as possible. Articles 129 to 131 further contain the provisions common to the four Conventions for the repression of breaches.

Mention should also be made of the five Annexes, which are closely connected with the Convention. Annex I (Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war), Annex III (Regulations concerning collective relief), and Annex V (Model Regulations concerning payments sent by prisoners to their own country) are intended to supply any lack of agreements on these

questions between the belligerents concerned. Annex II (Regulations concerning Mixed Medical Commissions) is of a compulsory nature. Annex IV proposes standard models of documents for prisoners of war, such as identity or capture cards, correspondence cards, death notifications etc.

FOURTH GENEVA CONVENTION (CIVILIANS)

The Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War, as drawn up by the Diplomatic Conference, constitutes an important accomplishment of written international law in the humanitarian domain.

Strictly speaking, this Convention introduces nothing new in a field where the doctrine is sufficiently well established. It adds no new ideas to international public law on the subject, but merely ensures that, even in the midst of hostilities, the respect for the dignity of the human person which is universally acknowledged in principle, shall in fact be forthcoming.

At the outset of humanitarian legislation, the First Geneva Convention of 1864 provided only for "combatants", as at that time it was evident that "civilians" would remain apart from hostilities.

The Regulations concerning the Laws and Customs of War on Land, annexed to the Fourth Hague Convention of 1907, did not provide for civilians (apart from spies), except in the case of the occupation of a territory by enemy armed forces. It merely set forth a small number of elementary rules, in pursuance of the principle that the occupant shall "take all the measures in his power to restore, and as far as possible ensure public order and safety while respecting, unless absolutely prevented, the laws in force in the country". Thus "family honour and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected"

—“ pillage is formally forbidden ”—“ no general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible ”. These were the main provisions, essential whilst tersely expressed, which were in force for occupation.

The development of arms and the increased radius of action of armed forces owing to the inventions of the present century have made it apparent that, notwithstanding the ruling in force, civilians were certainly “ in the war ” and exposed to at least the same dangers as the combatants.

The Xth International Red Cross Conference in 1921—the first held after the 1914-1918 World War—set forth some general principles in regard to deported, evacuated or refugee civilians; these prohibited deportation *en masse*, or without preliminary trial, and the taking of hostages; they enjoined liberty of movement, and the right to correspond and to receive relief. In 1923, the XIth International Conference called for a Convention to supplement the Hague Regulations. The XIIth Conference devised some regulations for the protection of civilians on the territory of an enemy State; these recognised the right to leave the territory unless the safety of the State was involved, and provided for speedier enquiries, the Mixed Medical Commissions for the examination of prisoners unfit for service, transmission of lists of retained civilians to the International Committee, the grant of the same privileges as those enjoyed by prisoners of war, inspection of places of internment, and agreements between belligerents in favour of civilians.

The 1929 Diplomatic Conference, which revised the First Geneva Convention and drew up the Convention for the treatment of prisoners of war, unanimously recommended that “ careful study should be made with a view to the conclusion of an international convention on the conditions and protection of civilians of enemy nationality

in the territory of a belligerent, or in belligerent-occupied territory ”.

The International Committee wholeheartedly entered into the task thus defined, setting up a Legal Commission which prepared a draft convention in forty articles. This draft was approved by the XVth International Red Cross Conference (Tokyo, 1934) and is generally known as the “Tokyo Draft”. It was intended for submission to the Diplomatic Conference planned for 1940 but postponed on account of the war. The International Committee was at best able to obtain an undertaking from the belligerent States that the essential provisions of the Convention on the treatment of prisoners of war would be extended to interned civilians who were in enemy territory at the outbreak of hostilities—as in fact was prescribed in the Tokyo Draft.

The events which followed were to show the disastrous consequences of the failure to provide, in addition to the above few principles embodied in the Hague Regulations, an international convention for the protection of civilians in wartime, particularly of those in occupied territories, for this tragic period was one of deportations, mass extermination, taking and killing of hostages, and pillage.

Immediately hostilities ceased, therefore, the International Committee, in keeping with its humanitarian duties, informed all Governments and Red Cross Societies throughout the world of its intention to resume its efforts to set up an international Convention for the protection of civilians. This statement met with the highest approval.

* * *

The Diplomatic Conference of Geneva was not called to revise the Fourth Hague Convention. The Civilian Convention of August 12, 1949, therefore in no way invalidates the Regulations concerning the Laws and Customs of War on Land; it is not a substitute for that text, which remains in force. In the happy wording

of the Conference, the Convention "shall be supplementary to Sections II and III" of the said Regulations. (See Art. 154 of the new Civilian Convention).

The new Convention contains one hundred and fifty-nine Articles and two Annexes. According to the text of a draft Preamble submitted by the French and Finnish Delegations—but not adopted, as the Conference decided to follow the precedent of the Geneva Conventions, which contain no Preamble—it is inspired by "the eternal principles of that Law which is the foundation and the safeguard of civilisation", and is designed to "ensure the respect of human personality and dignity by putting beyond reach of attack those rights and liberties which are the essence of its existence".

It therefore prohibits in particular :

- (a) Violence to life and person, in particular torture, mutilations or cruel treatment.
- (b) The taking of hostages.
- (c) Deportations.
- (d) Outrages upon personal dignity, in particular humiliating or degrading treatment, or adverse treatment founded on differences of race, colour, religion, beliefs, sex, birth or social status.
- (e) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees recognised as indispensable by civilised peoples.

In the present publication a table is appended to the text of the Convention, showing the division into parts, sections and chapters, and reproducing the marginal notes which accompany each Article. Reference to this table will afford a complete outline of the subjects dealt with and the position they occupy in the Convention.

Among the General Provisions already mentioned, Article 4 gives the following definition of the persons who will benefit by the Convention :

“ Persons protected by the Convention are those who, at a given moment and in any manner whatsoever find themselves, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals ”.

The same Article specifies that :

“ Nationals of a State which is not bound by the Convention are not protected by it ”

and that :

“ Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are ”.

The last two notions were added by the Geneva Conference to the text of the draft, which was found too narrow on this particular point.

Part II (Art. 13 to 26) concerns the general protection of populations against certain consequences of war. It goes beyond the limits set up by Article 4 and covers the population as a whole, that is to say, not only the “ protected persons ”, but also those who cannot avail themselves of this protection and, in particular, those who are nationals of the Party to the conflict or of the Occupying Power by whom they are held.

There is thus provision for hospital and safety zones and localities, and neutralized zones (Art. 14 to 15), for the protection of civilian hospitals (Art. 18), for measures in behalf of children (Art. 24), and for the exchange of family news (Art. 25). In all cases these measures are

quite general in scope, giving neither the grounds, nor indeed any practical opportunity, for discrimination.

Part III (Art. 27 to 141) defines the status and treatment of protected persons ; these are, in fact, the principal rules for the application of the Convention. Following the precedent of the Tokyo Draft, it distinguishes between foreign nationals on the territory of a Party to the conflict, and the population of occupied territories. It is divided into five Sections.

Section I contains provisions common to these two categories of persons, dealing with the responsibilities of the State and of its agents (Art. 29), application to Protecting Powers and relief organisations (Art. 30), interdiction of corporal punishments (Art. 32), prohibition of collective penalties, terrorism, pillage and reprisals (Art. 33) and prohibition of the taking of hostages (Art. 34).

Section II relates to aliens in the territory of a Party to the conflict, and deals with the right to leave the territory (Art. 35), protection in the case of internment (Art. 41), and refugees (Art. 44).

Section III contains the prescriptions for occupied territories, on such subjects as inviolability of rights (Art. 47) deportations, transfers and evacuations (Art. 49), children (Art. 50), labour (Art. 51), food (Art. 55), hygiene and public health (Art. 56), spiritual assistance (Art. 58), relief (Art. 59 to 63), penal legislation (Art. 64 to 75), and treatment of detainees (Art. 76).

Section IV deals with internment. It is divided into twelve chapters, the contents of which are in general analogous to the provisions adopted for prisoners of war. (Chapter I—General Provisions ; Chapter II—Places of internment ; Chapter III—Food and clothing ; Chapter IV—Hygiene and medical attention ; Chapter V—Religious, intellectual and physical activities ; Chapter VI—Personal property and financial resources ; Chapter VII—Administration and discipline ; Chapter VIII—Relations with the exterior ; Chapter IX—Penal and disciplinary sanctions ; Chapter X—Transfers of internees ; Chapter XI

—Deaths ; Chapter X —Release, repatriation and accommodation in neutral countries).

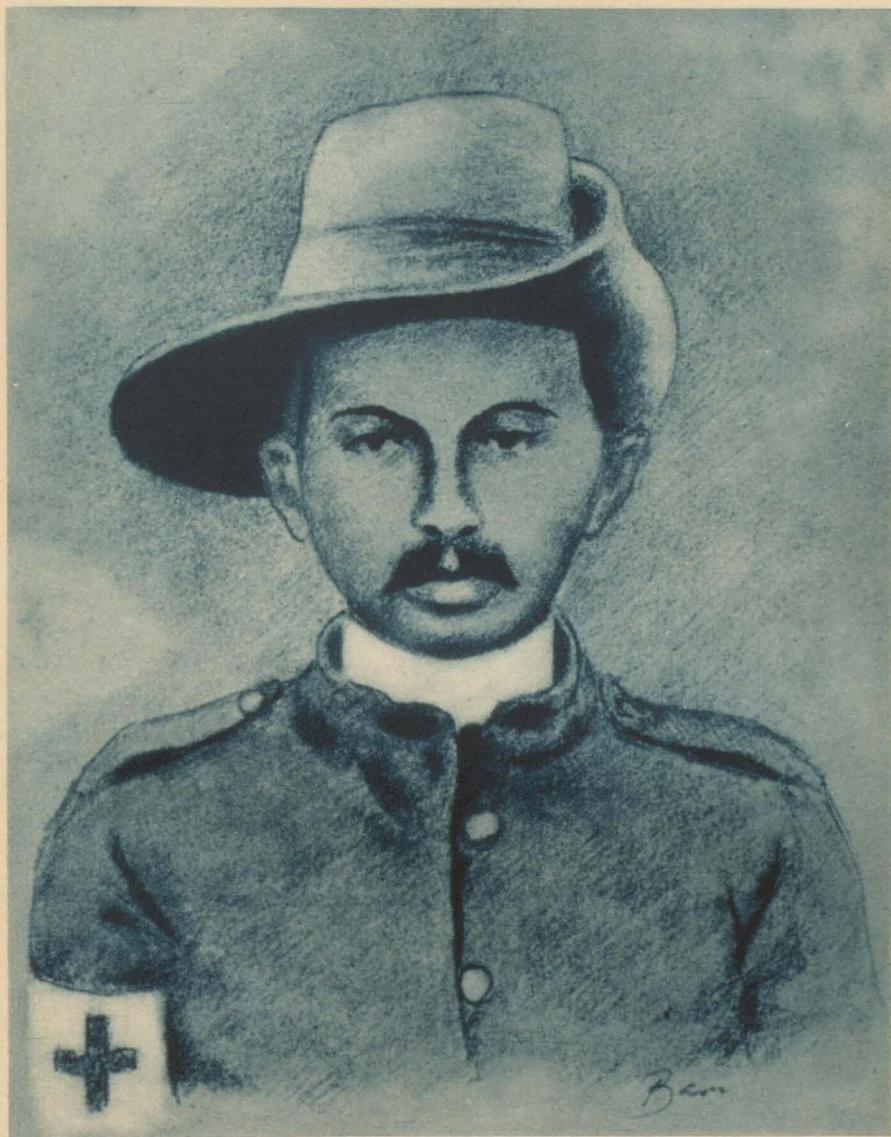
Section V is devoted to Information Bureaux and the Central Agency, the functioning of which is to follow that of the Central Prisoners of War Agency.

Part IV (Art. 142 to 159 and last) concerns the execution of the Convention. Section I (General Provisions) contains, besides others, the provision on the repression of breaches of the Convention, of which mention has already been made.

* * *

Finally, the Diplomatic Conference of 1949 passed, in relation with the Geneva Conventions but not within their framework, eleven Resolutions, which will also be found in the present edition.

GANDHI AND THE RED CROSS



1. Gandhi as a member of the Indian Ambulance Corps.
(Drawing by Lieut.-Colonel S. M. Basu, after a photo taken in 1906 during the Zulu rising).

GANDHI AND THE RED CROSS



2. Mahatma Gandhi shortly before his death, receiving Dr. O. Wenger, delegate of the ICRC.
(Gandhi, right centre; Dr. O. Wenger, second row, left centre).

GANDHI AND THE RED CROSS

Mahatma Gandhi always displayed a lively interest in the Red Cross and its work. His advocacy of the Red Cross movement was indeed not merely verbal, but practical. He strove to make his daily life a testimony to the greatness of the humanitarian ideal. In view of Mahatma Gandhi's great personal sway, it may be useful to quote some of the incidents of his earlier life.

It will be recalled that, after practising as a lawyer at Bombay, Gandhi emigrated to South Africa. It was during his prolonged stay in that country that he twice enlisted under the Red Cross emblem. Both in the Boer War of 1899-1902 and again during the Zulu rebellion of 1906 he wore the khaki uniform and Red Cross armlet of the Ambulance Corps, and launched a recruiting campaign for volunteer stretcher-bearers and orderlies.

In 1899 he formed a corps of some 1,100 volunteer helpers, which included 400 Indian workers. This corps, with 40 unit commanders, was called the "Natal Volunteer Indian Ambulance Corps". The men received the usual pay for stretcher-bearers, whilst the leaders gave their services free. The corps was highly efficient in the transport of wounded, covering sometimes as much as 30 to 40 kilometres a day. On one occasion Gandhi himself, who was leading one of these units, found General Woodgate mortally wounded on the battlefield and transported him to a base hospital.

In 1906, at the time of the Zulu rebellion, Gandhi, who was then living at Johannesburg, sent his wife and children to Phoenix, where he recruited an ambulance corps similar to that to which he had belonged during the Boer War. This unit, called the "Indian Stretcher Bearer Corps", was attached to a flying column. On several occasions Gandhi accompanied convoys of wounded Zulus, covering as much as 60 kilometres a day. But for his prompt action many Zulus would have died for lack of care.

For his services, Gandhi was awarded the Queen's South Africa Medal, 1899-1902, and the Natal Medal, 1906.

As the outbreak of the first World War in 1914, Gandhi was in England. He at once began to gather about him a number of Indian students, whom he successfully formed into an Indian volunteer ambulance unit ; together with these he took a six weeks course in first aid. He was seconded in this work by Shrimati Kasturba and Shrimati Sarojini Naidu. At Gandhi's instance, over 100 Indian students in London enlisted in this unit, the India Office making itself responsible for their training.

Gandhi's example was followed in other parts of the country. Thus, in Scotland, eighty Indian students formed an ambulance section in Edinburgh and were trained on the same lines as the Scottish University volunteers. After finishing their course in November 1914, the Indian students were detailed to Indian hospitals in Great Britain and to hospital ships, where they served as orderlies and interpreters. Some of them also served as orderlies in France.

Mahatma Gandhi was appointed Honorary Colonel of this ambulance corps, but in consequence of a severe attack of pleurisy he was compelled to return to India in the month of December.

Some months later, on June 3, 1914, he was awarded the Kaisa-i-Hind medal, First Class, for services rendered to India.

From that time onwards Gandhi played an ever-increasing part in the nationalist movement. Then began the long period of his life during which he personified, in the eyes of his countrymen, the independence of India, and in the eyes of the world, a steadfast and all-compelling spiritual force.

Two incidents relating to the Red Cross deserve to be recalled, since they must inspire and comfort all members of the Red Cross Societies.

Shortly before his death, Mahatma Gandhi received Dr. O. Wenger, then delegate of the International Committee in India. Gandhi told his visitor of the keen interest with which he followed the development of the Red Cross and its work.

More recently, on January 16, 1948, during his fast, Mahatma Gandhi received M. Paul Ruegger, at that time Swiss Minister in Great Britain, who had gone to India on an official mission. Gandhi requested M. Ruegger to transmit a message to the International Committee in Geneva, telling them of his deep appreciation of their work. He added his best wishes for the Committee and his hope that their efforts in the field of international understanding and goodwill would be successful.

Having thus, at the outset of his manhood, shown his faith in the ideal of human tolerance and unity, under the Red Cross flag, he was still, at the close of a lifetime rich in experience, convinced of the ideal of positive goodwill which he had actively supported in his youth.
