

SUPPLEMENT

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REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

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INTERNATIONAL COMMITTEE OF THE RED CROSS

NEW YEAR'S MESSAGE FROM THE PRESIDENT OF THE ICRC

Five years ago sixty-one States signed in Geneva the four Conventions for the protection of war victims. Following a generous impulse, the drafts proposed by the International Committee of the Red Cross were accepted by Governments representing every political opinion. There was hope therefore that all non-combatants would at last be assured of the protection which universal humanitarian sentiment demands.

The procedure of ratification of these Conventions is, however, too slow, especially in the case of the greatest Powers. The founder organization of the universal movement of the Red Cross considers that it must impress upon the Powers the importance of ratifying these treaties, of endorsing the obligations which they incurred when endeavouring to give a wider scope to the Geneva Conventions. Thus they will give the world a further proof of their desire for peace, whilst at the same time assuring their citizens that, as far as individual protection promised by treaty can be assured, in case of war, this will be done.

It must be hoped that, in the same spirit they will also make progress towards finding a solution to the great problem of the protection of civilian populations against weapons of massive and indiscriminate destruction—a problem, towards the solution of which the International Committee in Geneva has never ceased to devote its undivided attention and the study of which it will continue to pursue in the hope of a better future.

RECENT ACTIVITIES

Re-uniting of families. — Over 80,000 persons have so far benefited from the efforts which have been made for several years past by the International Committee of the Red Cross, with a view to re-uniting members of families who were dispersed throughout various countries as a result of the war or post-war circumstances. The credit for this successful issue is also due—it should be emphasised—to numerous governmental agencies and National Red Cross Societies, of both East and West European countries, whose co-operation and understanding attitude were necessary for carrying out work of this nature. This co-operation is still essential, for the re-uniting of families is by no means terminated, and many tens of thousands of unfortunate people are still waiting for authority to join their families or to receive them.

Apart from the role of negotiator which it was its duty to assume, the International Committee had to give material assistance to many necessitous evacuated persons. Its relief action has been particularly effective in the transit camps, where it has already distributed clothing, underwear, etc. worth over 100,000 Swiss francs; and even greater sums were spent on supplying artificial limbs for the mutilated, in order to help them to take their place in the economic life of countries willing to receive them.

In this field, as unfortunately in many others, its means fall far short of the actual needs.

Mention has not yet been made in these columns of the representations which the International Committee began to make some two years ago, in order that a start might be made in bringing together those persons of German ethnical origin ("Volksdeutsche")—of whom some were in Austria and some in Germany—who wished to join their families in either country. For some time this action was beset with many difficulties; today it is however taking shape.

On the initiative of the International Committee of the Red Cross, meetings took place at Salzburg in May 1952, which were attended by representatives of the German Federal

Republic, the Austrian Minister for Internal Affairs, and two Delegates of the International Committee. These discussions led to a general agreement for exchanges to be made on the basis of equal numbers.

The lists exchanged by the two Governments showed that 450 persons wished to go from Germany to Austria. For their part the German authorities stated that they were willing to accept an equal number of "Volksdeutsche" from Austria, together with a further 450 persons, to count against future transports, in view of the fact that the "Volksdeutsche" wishing to enter Germany were greatly in excess of persons in the same category requesting their transfer to Austria.

In consequence, the Austrian Minister for Internal Affairs gave instructions to Austrian consular agents in Germany to grant entry visas to the persons who were to be included in these transfers. It was also decided that no difficulty would be made about giving these persons permanent residence permits as soon as they reached their destination.

Thus, the initiative of the International Committee of the Red Cross, and the kind interest of the German and Austrian authorities, have for the time being enabled 1,350 "Volksdeutsche" to join their families.

Sundry relief actions. — At the close of the year, particularly for Christmas, the International Committee sent off several relief consignments.

In response to an appeal launched by a group of journalists on behalf of a holiday centre at Vercors for children of combatants who fell in the Resistance movement, the Committee presented this institution with 15 divan beds, together with sheets and blankets, to a total value of 3,200 Swiss francs.

The Christmas consignments were in general intended for refugees. Thus, 12,000 packets of 20 cigarettes were sent to Piding Camp where "Volksdeutsche" from Jugoslavia are assembled at the Austro-Bavarian frontier. The refugee camp in Fraschette di Alatri, Italy, received footwear, clothing and also sports equipment (sent at the request of the International Social Service of the Italian Red Cross). Parcels were also

despatched for Rumanian refugees in Germany, Austria, Italy and Jugoslavia. In response to various requests, the International Committee also sent cases of clothing to a number of refugee institutions in Germany (Ungarischer Hilfsdienst, Munich; Verband polnischer Flüchtlinge, Brunswick, Russisches Komitee, Landshut, Bavaria; Litauischer Jugendheim, Diepholz).

The ICRC Delegation in Paris also presented social workers visiting prisons with small sums for detained refugees who receive no help from their families.

Disabled. — In November the International Committee sent 75 pairs of crutches to the German Red Cross in Berlin, and to the Jugoslav Red Cross a number of Braille repeater watches, donated by Swiss manufacturers. These watches are intended for the war-blinded who have suffered arm amputations.

In December the International Committee sent 50 Braille watches to Germany, 50 to Jugoslavia and 300 to the blind in Korea.

In addition, the action on behalf of disabled "Volksdeutsche" refugees in camps in Germany has been continued by the supplying of artificial limbs and surgical boots. Similar help is being given to persons under detention in Greece.

The International Committee also provided large quantities of Isoniazide for tubercular military disabled in Indochina.

Indochina. — The Delegate of the International Committee in Indochina visited in July and August four prisoner of war camps in South Vietnam. He also had the opportunity of visiting several prisons in this region. In addition, twelve camps situated in Central Vietnam were visited in October and November.

Mutilated Children. — One of the dramatic and less well-known consequences of the last war is the number of victims still being made by explosions of military appliances left lying in the ground, which have caused the mutilation of numerous children. In Italy the average number of these tragic accidents amounts to about 1,600 every year.

The President of the International Committee of the Red Cross, M. Paul Ruegger, being deeply concerned for these innocent victims of the consequences of war, concluded an agreement with Professor Longhena, President of the Italian Red Cross, whereby some of the children, who are in particularly distressing circumstances (and who would be chosen by the ICRC Doctor-Delegates and Italian doctors) will be admitted to suitable orthopaedic establishments in Switzerland.

The funds necessary for this have been provided from an amount placed at the International Committee's disposal by the Swiss Confederation for some measure to help Italy, which the Committee was left free to decide. The amount in question, 100,000 francs, was drawn from the funds handed over to the Swiss Confederation by the International Centre for Relief to Civilian Populations (Geneva) when it was closed down. The International Committee decided to make use of this amount for relief to persons directly affected by the events of war—in the present instance, mutilated children.

This work comes within the International Committee's general activities on behalf of Italy, which concern in particular prisoners of war, tuberculosis sufferers and refugees.

*PRESIDENT PAUL RUEGGER'S
VISIT TO THE IRISH RED CROSS*

The Irish Red Cross Society, founded in July 1939, and recognised on the international level as from November 1939 by the International Committee of the Red Cross, held from the 12th to the 14th of November 1953 its first General Meeting in Dublin, which will be convened every three years in the future. Over 200 district delegates of this young but very active Society took part in the four days' meetings. On the invitation of the Irish Red Cross Society, the President of the International Committee and Mme Paul Ruegger were guests of honour at this most important manifestation.

One of the principal problems which the Convention examined was the need for more new members. This was stressed by several speakers since it is a principle of the Red Cross movement in the world that each country's national organisation should be self-supporting. This factor is of course conditioned by the number of their contributing members. In Ireland the position has not yet been reached where members' contributions entirely cover expenditure. Each year's deficit has been covered up to date by a substantial Government grant. A larger membership would provide more workers and enable the Society to end the need to call on funds other than those it has itself collected. It is however interesting to note that though the Irish Red Cross Society only comprised 746 members in 1949, their number is today over 2000.

In spite of this relatively small number of members however, the Irish Red Cross has nevertheless been able since its foundation to give most appreciable help to various countries victims of wars or acts of God, such as India, France, Turkey, Holland, Britain, Germany, Greece and Italy for instance. It is also interesting to remember that Ireland initiated a new method of providing relief, not by gifts of money, which was the generally accepted procedure, but by gifts of goods, food, clothing, bedding, medical aids of every kind, including a fully-equipped

hospital. Since Ireland showed the way, many other countries have adopted this form of help and it is coming to be recognised as the more useful and acceptable form. Thus the Irish Red Cross was so to speak a pioneer in this particular field.

At home the Society is playing an ever-increasing part in such services as mass radiography, antitubercular activities and blood transfusion. In many places its members attend sports fixtures, public meetings, parades, etc., such as the Dublin Horse Show for example, which is now universally recognised as the most important manifestation of its kind in the world today, where they are able to give skilful first-aid. An important and characteristic activity of the Irish Red Cross Society is the Junior Red Cross which is growing every year.

Mrs. Tom Barry, the very active and dynamic President of the Irish Red Cross underlined in her opening speech in which she introduced the President of the International Committee, how very attached the Irish people are to the founder organisation of the Red Cross in Geneva as well as to the universal Red Cross movement. She added that in her capacity as Chairman she was especially happy in presiding at the opening of the first National Convention of the Society, to welcome in Dublin delegates from all over Ireland.

Mrs. Barry further said

“ Though the Irish Red Cross is almost the infant of this world-wide movement, it maintained, all through the 1939-1945 emergency, units of trained personnel for service, and a complete voluntary ambulance service. In the post-war period refugee children were taken in, made healthy, educated, and even adopted here, an Irish Red Cross Hospital was opened in devastated Normandy, hundreds of Baltic refugees were given refuge and to all calls for help to those in other countries who suffered from floodings and earthquake, the Society gave immediate attention. ... Our relations with every department of our Government are on the most co-operative of terms, and in our external affiliations, the International Committee of the Red Cross will always have our first allegiance.”

Mrs. Barry concluded by saying

“ Our country with its long history of missionary work will always be a shining light in any movement of voluntary effort for the common good, and our guarantee of Red Cross survival here lies in the fact that we see in the emblem of the organisation, the Cross, Redemption, and in each person succoured under its aegis, we see not only a suffering human being, but the image and likeness of our Creator.”

We give hereunder the full text of M. Paul Ruegger's opening speech which he made before the delegates on the occasion of the first plenary meeting of the Convention, on November 12th in the presence of members of the Government and the diplomatic corps in Dublin. He particularly underlined the more than generous aid given by the Irish Red Cross since its foundation to the victims of the second world war and its direct consequences.

SPEECH OF H. E. PAUL RUEGGER, PRESIDENT,
INTERNATIONAL COMMITTEE OF THE RED CROSS, GENEVA,
TO THE FIRST NATIONAL RED CROSS CONVENTION,
12TH-13TH NOVEMBER, 1953

Madam President,
Your Excellencies,
Ladies and Gentlemen.

There could be no greater honour and pleasure for me than to bring personally to this magnificent and active assembly on this happy, auspicious, and no doubt memorable occasion of the First Convention of the Red Cross of Ireland, the sincerest, most heartfelt greetings and wishes of the International Committee of the Red Cross.

The International Committee in Geneva, as you know, is the founder organisation of the Red Cross movement which we all serve, a movement which, in less than a century, has peacefully conquered—or rather convinced and rallied to its

aims—the intellect, the feelings, the emotions of those who previously had instinctively been aware that, according chiefly to the Christian doctrine, the help to the defenceless, the wounded, the wounded in warfare, but also the wounded and maimed on the everlasting and often so cruel battlefield of daily life, —was not only an individual humane duty, but a duty the fulfilment of which had to be *organised*; organised, beginning from the most evident and palpable cases of active warfare with all the hardship this entails, gradually extended to civil war, to strife; furthermore, to fighting human suffering in all forms, in epidemics, in the terrible cases of natural catastrophes which we witness yearly in all continents. Organised, but organised always keeping in view what is and what *must* ever be the foundations of a human welfare action; the respect of the human personality, of the individual human being as created of God.

We may recall to-day that the banner of the Red Cross, which had been raised just ninety years ago, has to its credit already achievements which are just short of a miracle. This shows, I believe, that providence helps and furthers our efforts and the endeavours of valiant Red Cross Societies, as of the International Red Cross organisations, that we may put our trust in the future, providing that humbly, but energetically, we pursue that task which has been assigned to us.

I feel sure that this first Convention of the Irish Red Cross Society is, and will be considered in future, an occasion of which your National Organisation can be justly proud. In the measure in which the Red Cross idea is spreading and striking always deeper roots, this pride will be justly shared by the generous people of Ireland, who have spontaneously shown themselves always anxious to participate, on a large scale, in the crusade against human suffering in wartime and in the sometimes almost more tragic periods of a generalized suffering which, in many regions of Europe and other continents, were temporarily even more acute after the war than during open hostilities, in periods when swift action and rapid help were so obviously important for saving many lives, for assisting the helpless, children, women and aged people.

May I, in this connection, recall one great instance of this instinctive generosity of Ireland :—the gift of the Irish people to war victims which was authorised by the Irish Parliament in 1945 and the total amount of which attained the magnificent figure of 12 million pounds. This gift, which similar to the “ Don Suisse ” of 210 million Swiss francs, gave a shining proof of the thankfulness of a people who had the privilege of seeing their soil spared from the horrors of warfare—the Irish people and Parliament, the Swiss people and Parliament—that they were anxious to take their share in relief to famine-stricken regions, in help for the homeless and the sick. The distribution of more than half of this splendid gift of the Irish people¹ was entrusted to a special organisation of the International Red Cross, the so-called “ Mixed Commission ” which our International Committee in Geneva, together with the League of Red Cross Societies, had taken the initiative of creating in wartime. Thus I may be entitled to recall to-day and here in this assembly of the Irish Red Cross Society the truly great and lasting achievements the world owes, in the field of Red Cross charity, to your gallant country. Indeed the “ Blue Book ” relating to the gifts of the Irish people, sent in 1945, remains an outstanding testimonial of human solidarity. Also, in later years the contributions of Ireland, through the Red Cross, to various necessary welfare activities in the international field, has been of the greatest avail. It is my privilege to express to Ireland, in this respect too, the gratitude of the International Committee of the Red Cross for the most valuable assistance given, for instance, to our endeavours on behalf of prisoners of war who were retained, for some time after hostilities had ceased, in France and in the Benelux countries and, perhaps chiefly, for the relief put at the disposal of our Geneva Committee in critical post-war years, for assistance to aged people and children in Germany, chiefly in Berlin,—but also to hospitals and children in Eastern Germany, at a time when our Com-

¹ See *Blue Book* on the Irish Gift, International Centre for Relief to Civilian Populations, Geneva, 1949, and Final Report of the Joint Relief Commission of the International Red Cross, Geneva, 1948.

THE IRISH RED CROSS



I. First National Convention of the Irish Red Cross Society

(from left to right) Colonel MacKinney, Director; Madame Ruegger; Mrs. Hackett, Vice-Chairman; Monsieur Ruegger, President ICRC; Mrs. T. Barry, Chairman Irish Red Cross; Mr. Traynor, Minister for Defence; M. de Burg, Swiss Minister to Ireland; Lord Killanin, Hon. Secretary; Mr. J. Moran, Hon. Treasurer and Mr. A. N. O'Brien, General Secretary.

THE IRISH RED CROSS



2. M. Paul Ruegger, President of the International Committee of the Red Cross, delivering a speech.

mittee was the only organisation from outside permitted to distribute relief in the latter regions.

May I recall here one personal experience? Towards the end of 1948 I had the opportunity, during the blockade of Berlin when it fell to the airlift system to ensure the communications between that capital city and the West, of visiting some of the more than a hundred distribution centres organised by the International Committee of the Red Cross in all four sectors of occupied Berlin and of making also, naturally, a personal contact with the representatives of all four occupying Powers. In all these distribution centres which together ensured a hot meal a day to one hundred thousand aged people¹, there were, together with the universal Red Cross symbol which unites us all, the emblems of the donors whose generous help made this action possible. In each of these centres I saw the emblem of Ireland.

Truly, there cannot be a more convincing, more impelling, more uplifting form of international activity than that of carrying abroad the national colours together with the emblem of help to defenceless fellow creatures.

I should like to add one word more in this connection relating a fact which was, for evident reasons, not disclosed at that period, but which is significant for the force of the Red Cross idea. Whilst Berlin was blockaded, one wedge was tolerated in this blockade. Whilst all ground traffic from the West to Berlin was interrupted, there was one exception. The relief trains with the emblems of the ICRC in Geneva wound, slowly but surely, their way—this even to the surprise of some of the highest Western Representatives. And these Red Cross trains from Basle, the arrival of one of which I witnessed, carried relief—foodstuffs, medicines—owing to gifts from several small but generous countries, including, of course, Ireland.

For this precious help to war victims and of victims of the consequences of war, which was evident since before the days when in Spring, 1944, a splendid Irish hospital team of the

¹ See Summary Report on the Work of the International Committee of the Red Cross (1st July 1947-31st December 1951), Geneva, 1952, pages 42-43.

Irish Red Cross Society landed promptly in Normandy, to bring assistance to the wounded of all countries in St. Lô —for all this the Red Cross world owes your country and your Society sincerest gratitude.

Our thanks go to His Excellency the President of Ireland, Mr. Seán T. O'Kelly, the President of your Society, who so rightly wishes national and international Red Cross organisations to be always ready in every way for the tasks which suddenly may be theirs, to the Taoiseach, His Excellency Éamon de Valera, whose constant, active and most encouraging interest in matters of the International Red Cross we so much appreciate, as well as that of his Government, to the Chairman of the Central Council, Mrs. Barry, to the Vice-Chairman, Mrs. Hackett, whom we also know well so in Geneva, to Mr. Seán Moran, your Honorary Treasurer, as well as Lord Killanin, your Honorary Secretary, who but recently we had the great pleasure of seeing at meetings at our Headquarters, and to your General Secretary, Mr. A. N. O'Brien.

The International Committee remembers, likewise gratefully, Colonel McKinney, who took an active part in International Red Cross Conferences, Mr. McNamara, the former Secretary-General of the Society, whose all too sudden departure we deplore, and all the members of the Irish Government Delegation to the Diplomatic Geneva Conference of 1949 on whose friendly support in all fundamental matters we could always rely. I can mention here only too few names of those men and women who, on behalf of Ireland were, and are, active for the Red Cross in the international field.

Since July, 1939, the day on which the Irish Red Cross Society came into being, since November, 1939, when the International Committee of the Red Cross was happy to notify, under its statute, to the Red Cross world as a whole the birth and the recognition of what was to become a most active and splendid member, many Irishmen and Irishwomen could lay claim to high distinction in the Red Cross. Let me but recall the memory of Mrs. Linda Kearns MacWhinney, on whom the ICRC bestowed on her death-bed the Florence Nightingale medal for exceptional devotion to duty.

But let us not forget either the many less known Red Cross workers, men and women, throughout the land upon whose sense of duty and of sacrifice so much always depends. These are indeed the "invisible legions" who carry our banner, without whose steady, selfless endeavour and achievements everywhere our Red Cross movement as a whole could not have risen to its present heights.

You may wish, Ladies and Gentlemen, to hear now a few words on some of the problems with which the ICRC, as founder organisation of the Red Cross and as the institution bound to fight for the observation and the development of the Red Cross principles, is faced to-day. The task is heavy, though by the grace of God it does not at present entail, as during the two world wars, a supreme exertion in practically every field. The task is, however, yet of such dimensions that the small central body in Geneva can hope to master it only by keeping constantly in closest touch (as is our ardent desire) with the National Red Cross and Red Crescent Societies that are anxious to preserve Henri Dunant's heritage and give their moral support and, frequently, their inspiration to our endeavours.

In a very short outline I should like to mention, in the first place, the duties of the International Committee of the Red Cross in as far as the constant reaffirmation and development of Red Cross principles is concerned; thereafter, and also most summarily, we can dwell on some of our present activities in the field.

In time of war the Red Cross acts—in the words of my great predecessor, President Max Huber—as trustee between belligerents. As a trustee it pleads the cause of humanity and advocates help for prisoners of war of every class, and for the civilian population of any occupied country. The first Geneva Convention of 1864, promoted by the International Committee, inaugurated a new era in the history of international laws.

By laying down the legal rule that, if sick or wounded on the battlefield, friend or foe should be treated alike, warfare, as an institution of international law, was for the first time restricted; a platform was also laid for the later Hague Convention. Step by step the Red Cross function in wartime was

extended. In 1929 the first Convention for the protection of prisoners of war, also drafted by the Geneva Committee, was ready for signature by the Governments.

At the International Red Cross Conference which met in Tokyo in 1934 the Committee produced a draft on the problem of the civilian population in war-time. Though accepted by the Red Cross Societies, this draft did not then become a treaty as the examination by the Governments of the problems involved was not sufficiently advanced before the second World War broke out. I do not need to recall the tragic fate of so many civilians to whom under the existing Conventions help could not be brought.

Immediately after the war the efforts were renewed ; Red Cross representatives and then Government experts met in Geneva. A new draft was worked out, submitted to the Stockholm Conference in 1948, finally to the Geneva Diplomatic Conference of 1949 and signed by practically all Governments. It provided that every endeavour would be made to ensure a general ratification of this vitally important (4th) Geneva Convention, as well as of the other Conventions revised in 1949.

It is, unfortunately, true that the Conventions were not sufficiently observed during the Korean War. The ICRC could fulfil its traditional task in South Korea only, its delegates were not admitted to the North nor was any other neutral intermediary in action there. Furthermore, there was no " Protecting Power ", neither in the North nor in the South and another main instrument of control for the benefit of war victims was, therefore, lacking.

The inobservance of the law, in a particular case, may not however affect the law itself. The ratification of the universally signed Conventions is all the more necessary, to give more force to the generally accepted principles and Rules.

It appears evident that new Conventions in the humanitarian field can hardly be worked out before the existing Conventions receive the fullest and most general endorsement.

Nevertheless the development of International Law in the humanitarian field is a " continual creation " and must be

unceasingly pursued at least along the lines of preparatory work which can lead to the establishment of international custom. In this respect I can mention the following :

In June last year a commission of experts, composed of eminent jurists of various countries met at the Committee's Headquarters in Geneva and prepared a valuable report on the question of assistance to political detainees¹. The mere fact of the publication of this report has already had favourable results in various quarters.

A further problem to be shortly dealt with in co-operation with interested Red Cross Societies is that of greater protection of the civilian population in case of bombardments. Finally I should like to mention our circular letter to Red Cross Societies and Governments asking for observations on the subject of Hospital and safety zones. The possibility of establishing such zones is contemplated in the 4th Geneva Convention. Indeed the experiences of the Committee in Jerusalem were conclusive. Zones were established there in 1948 during the war of Palestine and have saved several thousands of lives. The practical side of the question must, however, be gone into further with the help of the Red Cross world.

In general, the furthering of humanitarian law in the international field is a problem of greatest import. This has been recently underlined in the noble message sent by His Holiness Pope Pius XII—whose benevolent interest in the endeavours of our Committee is so encouraging for us—at the Congress of International Penal Law held in Rome last month².

As to the " field activities " of the International Committee of the Red Cross, they are at present, of course, restricted compared to several years ago and we pray God that they remain so : that some of the present " danger spots " throughout the world shall not develop into a situation which would call upon our institution to muster again all its, chiefly voluntary, reserves. But we are in duty bound to endeavour to be ready for every emergency.

¹ See *Revue Internationale de la Croix-Rouge*, June 1953, page 440 and English supplement, page 107.

² See *Osservatore Romano*, No. 230, 4th October 1953.

What can be done in such emergency is shown by a few figures relating to the Committee's work during the second world war¹: 120 million letters received and despatched; 36 million index cards; more than 11,000 camp visits, 24 million civilian messages forwarded, 450,000 tons of relief supplies valued at three thousand million Swiss Francs carried overseas by a fleet of at one time forty vessels flying the ensign of the ICRC.

As regards the present moment—as I am afraid I have already strained your patience—I can merely mention now some headlines: the activities of our delegations in South Korea, in Indochina, in Greece. The work in Central Europe which had led to the reunion of dispersed members of some 100,000 families². In the last years the rather large action following riots in Bengal³, the assistance to victims of hostilities in Indonesia. Just in these days the endeavours to give shelter in Switzerland to sick members of the refugee group in Trieste.

Now finally, I mention shortly that the ICRC has undertaken on principle the mandate offered it under Article 16 of the Peace Treaty of Japan to ensure the equitable distribution of some Japanese assets, voluntarily conceded by Japan to former prisoners of war in Japanese hands or to their relatives.

By this very summary outline you have seen, Ladies and Gentlemen, that our present task is—alas—by no means limited to “Stand By Activities”. The call on a neutral intermediary is frequent, I may say, more frequent than it appears from published reports.

In our Red Cross world of to-day much can be achieved by multilateral discussions and agreements in an international organisation representing Red Cross Societies from every Continent. Herein lie splendid possibilities of realisation and constructive Red Cross work in the peace-time activities which are entrusted to the great federation of the national Red Cross

¹ See General Report in 3 volumes of the International Committee of the Red Cross on its activities during World War II (1st September 1939-30th June 1947).

² See Summary Report on the Work of the International Committee of the Red Cross (1st July 1947-31st December 1951), pages 27/29.

³ See *idem*, pages 58/62.

organisations, the League of Red Cross Societies, a federation which was most earnestly called for—this fact is, I believe, not sufficiently known—by the International Committee itself, already during Conferences held in early stages of our movement, as early as the eighties of the last century, hardly twenty years after the Red Cross was born.

But apart from the vast and glamorous future of the Red Cross in its daily endeavours in peace-time, there are fields which appear to need permanently the services, in the spirit of Henri Dunant, of our old founder organisation of the Red Cross. For defence of the Red Cross principles the development of international humanitarian law, and, chiefly, on behalf of those who suffer, the rapid initiative in times of war and conflicts, above all the role of a neutral and impartial intermediary. These heavy duties, the Geneva Committee, as a homogeneous body—international in its outlook, although Swiss as regards the nationality of its members—will continue to fulfil to the best of its powers.

It can only fulfil these duties, however, in closest contact with the national Red Cross and Red Crescent Societies who share its ideals, who support our Committee, by their advice, their help and their inspiration.

The Irish Red Cross Society, already so brilliantly active on the international field since its creation in 1939, is for us, in this and in every respect, a source of rejoicing.

My wife and I were happy to come to join you in your First and memorable Convention. In the name of the International Committee, I have the privilege, not only of expressing all best wishes for your debates and the progress of your Society, but also to offer you the tribute of our sincere gratitude”.

Finally, Mr. Oscar Traynor, Minister for Defence, spoke in the following terms :

“ I would like to say how much I appreciate the invitation extended to me to be present here today at this Convention of the Irish Red Cross Society and I am glad to have this opportunity of saying a few words to such a very representative gathering from practically all parts of the country. Since the

establishment of the Society in 1939, a very close relationship has existed between the State and the Society. This relationship was expressly symbolized in the Red Cross Act of 1944 when it was provided that by virtue of his office the President of Ireland was also the President of the Society. As a member of the Government and particularly as Minister for Defence, I naturally have a deep interest in the Society which I am very gratified to see is a strong, virile, growing organisation. So, on behalf of the Government, I would like to express our gratitude to the organisation, to the Council of the Red Cross Society, for the excellent work which they are doing, especially in the international field. I would also like to pay a special tribute to the members of the Central Council who manage its affairs so competently and particularly to the Chairman, Mrs. Barry."

The President of the International Committee of the Red Cross and Mme Ruegger were received during their visit by the President of Ireland, who is also President of the Irish Red Cross, as well as by the Prime Minister Mr. Eamon de Valera, whose unflinching and positive interest in Red Cross work is well known, and also by Mr. Aiken, Minister for External Affairs. Before leaving Ireland, M. Ruegger spoke of the International Committee's work and duties as well as of Red Cross activities in general with the Cardinal Archbishop of Armagh, Primate of Ireland, and with the protestant and catholic Archbishops of Dublin.

INTERNATIONAL RED CROSS

HANDBOOK OF THE INTERNATIONAL RED CROSS

The 10th Edition of the Handbook of the International Red Cross, compiled by the International Committee of the Red Cross and the League of Red Cross Societies, has just been published. Like the previous edition, it is published in French, English and Spanish.

It may be recalled that this work was first brought out in 1889. It was published by the International Committee of the Red Cross in the form of a booklet of twenty-two pages, containing the essential resolutions of the first International Red Cross Conferences.

Increasing in size with each successive issue, it became, as from 1930, the Handbook of the International Red Cross, a joint publication of the International Committee and the League of Red Cross Societies. The plan then adopted was continued through subsequent editions. Part I contained the Geneva Conventions and several others with a bearing on Red Cross work ; Part II gave the Statutes and Rules of Procedure of the international agencies of the Red Cross ; Part III was devoted to the main Resolutions of the International Conference of the Red Cross and of the Board of Governors of the League of Red Cross Societies.

Several items of general interest were added to the Handbook in the course of time. For 1951 the 9th Edition marked an important further stage by the addition of the four Geneva Conventions of August 12, 1949. The Resolutions of the Diplomatic Conference of Geneva (April 21-August 12, 1949), and the Resolution of the United Nations General Assembly on the subject of the Red Cross were also included in the Handbook, as well as several new Regulations of the League of Red Cross Societies and the Deed of Establishment of the Foundation for the Organisation of Red Cross Transports.

Anticipating alterations to several important texts, in particular as a result of the XVIIIth International Red Cross Conference, the publishers of the Handbook had in any case planned to complete the 9th Edition in due course. The present publication therefore includes, in their most recent form, the Statutes of the International Red Cross, the Rules of Procedure of the International Red Cross Conference, the Statutes of the International Committee of the Red Cross, the Regulations of the Health Advisory Committee of the League, the Regulations of the Standing International Commission for the Study of Medical Equipment, the Regulations for the Florence Nightingale Medal, and those for the Augusta Fund.

The Resolutions voted by the XVIIIth International Red Cross Conference and by the XXIIInd Session of the Board of Governors of the League of Red Cross Societies have been inserted in Part III, in accordance with the order adopted for the previous edition. The Resolutions of the International Red Cross Conference are easily distinguished as they are in italics. The Agreement concluded on December 8, 1951, between the International Committee of the Red Cross and the League of Red Cross Societies, for the purpose of defining their respective competence in certain fields, is also included in the Annexes to the new edition.

This work, revised and up-to-date, and in a convenient form, should prove most useful.

PRESS RELEASE

*PROTECTION OF CIVILIAN POPULATIONS
IN TIME OF WAR*

Geneva, January 11, 1954.

A press release from Tokyo states that a conference would appear to have been convened by the International Committee of the Red Cross in Geneva in order to "outlaw atom bombs and hydrogen bombs as well as other types of bombing from the air". In order to avoid all possible misunderstandings the International Committee of the Red Cross wishes to say that this text does not altogether correspond with the facts.

The International Committee of the Red Cross has been concerned for a long time now with the problem of the protection of civilian populations against the dangers of aerial warfare. Within this framework it hopes to be able, with the assistance of certain National Red Cross Societies, to gather together in some months time a number of experts invited exclusively in their personal and private capacities in order to consider if and how far it is possible to clarify and to develop the current legal rules in this sphere.

REVUE INTERNATIONALE
DE LA CROIX-ROUGE
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BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

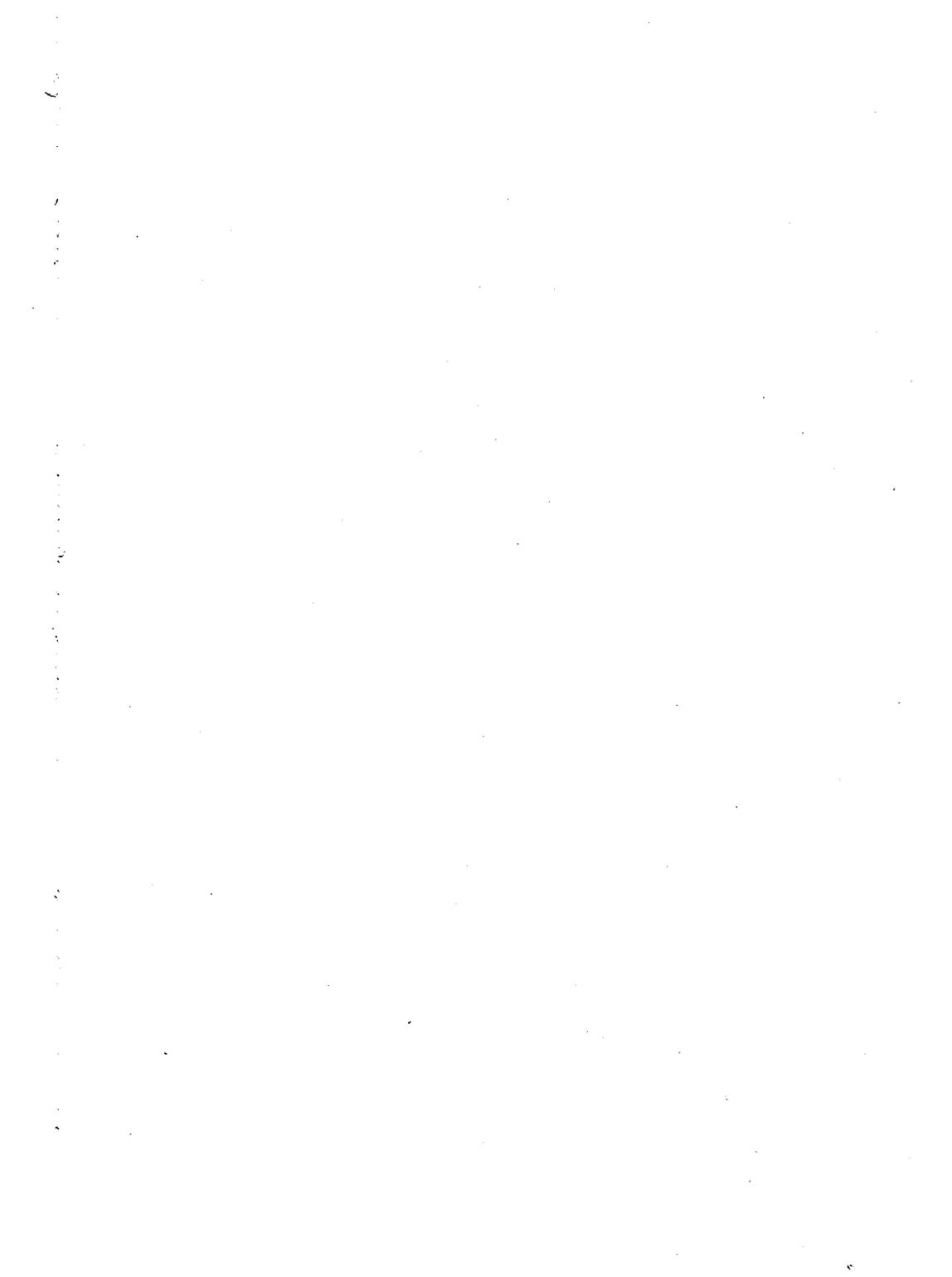
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OSCAR M. UHLER

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

CIVILIAN HOSPITALS AND THEIR PERSONNEL¹

Commentary on Articles 18 to 20 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

ARTICLE 18. — PROTECTION OF CIVILIAN HOSPITALS

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorized by the State.

The parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

¹ See *Revue internationale de la Croix-Rouge*, August 1953, page 610.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

GENERAL AND HISTORICAL

Article 18 is the first of a group of three Articles on the protection of civilian hospitals and their personnel. There were two reasons why it was found necessary to lay down precise rules in the matter. In the first place the Geneva Conventions did not previously protect civilian hospitals, but only military hospitals.

In the second place experience, especially in the last World War, showed how difficult, and often impossible, it was in view of modern technical developments of warfare to ensure respect for civilian hospitals on the sole ground of the abstract principle that anything "civilian" should be sheltered from hostilities. The few general rules of Article 27 of the Regulations concerning the Laws and Customs of War on Land, which were annexed to the Fourth Hague Convention of 1907, and again Article 5 of the Ninth Hague Convention on bombardment by naval forces of the same date, both of which covered civilian hospitals, no longer conformed to the conditions of modern war.

Article 27 of the Hague Regulations merely cites in summary fashion the problem of the protection of hospitals, as well as buildings dedicated to religion, art, science or charitable objects, and provides that they should be marked by "distinctive and visible signs" without specifying what signs. Article 5 of the Ninth Hague Convention stipulates that "hospitals, and places where the sick or wounded are collected" should be protected and indicated "by visible signs, which shall consist of large, stiff, rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white". Here therefore there is specification of the marking; but it is only to afford protection against bombardment by naval forces that any particular sign is proposed.

It was in order to remedy the notorious inadequacy of these provisions that the attempt was made immediately after the First World War to take steps to adapt the law to the new material circumstances, on the lines of the solution embodied in the Convention of 1864 concerning the Sick and Wounded for Army Medical establishments, by the provision of a distinctive sign to indicate the presence of hospitals, on the ground that the practical value of a principle depends on its application.

Certain countries accordingly had recourse to a system for giving civilian hospitals the benefit of the Geneva Convention. The idea was to "militarise" civilian hospitals by placing them under military authority, management and discipline. But, if this system is to be recognised as valid by the enemy, there is a second condition which must at the same time be realised; and that is that the "militarised" hospitals must be effectively, or at any rate partially, used for military sick and wounded. The militarisation of civilian hospitals in wartime would not therefore bring them *ipso facto* under the benefits of the Fourth Convention. A hospital would have therefore to fulfil both the conditions above indicated, before it could make an undisputed claim to protection under the Convention, and obtain from the military authority the right to display the white flag with the red cross.

Certain belligerents (including Germany and Italy) towards the end of the Second World War marked civilian hospitals by a red square on a white circle; and the sign was recognised by the enemy Powers. The Singhalese authorities also took similar action in regard to their civilian hospitals by the adoption of a sign consisting of a red square in a white square covering a ninth part of the latter.¹

But these systems, though they may have rendered service, were no more than palliatives, occasional solutions which did not meet the need for a general rule affording effectual protection to civilian hospitals, based on provisions under a Convention of universal application.

¹ *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pages 708-709.

There were three possibilities open in such case :

1. The Geneva Convention might be extended to cover all civilian sick and wounded (including the protection of civilian hospitals),
2. The establishment of a quite separate Convention dealing with the protection of all civilian sick and wounded (as a corollary to a Geneva Convention relating exclusively to military sick and wounded),
3. The establishment of special provisions by Convention for the protection of civilian hospitals, the existing Convention itself in part covering civilians, who are victims of an act of war and sick persons in military hospitals.

The preliminary Conference of National Societies of the Red Cross, to which the International Committee in resumption of its enquiries, which had been abruptly interrupted by the war, submitted the question in 1946, was definitely in favour of the first of the above three solutions, on the ground that it was desirable for civilian hospitals to be protected on the same footing as military hospitals by the Geneva Convention. That was only logical, inasmuch as the Conference had recommended the extension of the Convention to civilian sick and wounded, as well as to the personnel, buildings and equipment dealing with them.

In addition to this question of principle the Committee had submitted to the Red Cross Conference two subsidiary questions.

The first of these questions was whether purely civilian hospitals should be entitled to use the sign of the red cross on a white background for their protection, or whether a special distinctive sign should be adopted to mark them, as certain belligerents had done in the Second World War.

The Conference was of opinion that civilian hospitals should be given the right to use the Geneva Convention emblem and that the idea of creating a new emblem should be dropped as liable to lead to confusion.

The second subsidiary question was that of the extent of the protection to be accorded to the different buildings concerned.

What buildings should be protected? Should the term "civilian hospitals" include dispensaries, maternity homes, clinics, orphanages, refuges and so on?

The Conference was of opinion that "civilian hospitals" should mean hospitals giving treatment to wounded and sick civilians under authorisation by the State to do so: so that it would be these buildings alone, which would come under the Geneva Convention, and be entitled to display the Red Cross emblem¹.

In the following year the Conference of Government Experts, differing from the Conference of Red Cross Societies, took the view that the Geneva Convention should retain its traditional field of application and be confined to the protection of armed forces. It was accordingly in favour of applying certain main principles of the Convention to sick and wounded civilians by the introduction of special Articles in the draft of the Convention for the general protection of civilians. In regard to civilian hospitals the Experts agreed with the Conference of Red Cross Societies that the hospitals should have special protection, if (a) recognised by the State and (b) organised for the permanent purpose of treatment of sick and wounded civilians. The problem of marking hospital establishments was thus solved by the Experts in accordance with the proposal of the Preliminary Conference of Red Cross Societies, that is to say, by the adoption of the red cross emblem on a white background, its use being left subject to the consent of the military authority².

The provisions, which the International Committee of the Red Cross proposed to the XVII International Red Cross Conference of 1948, were closely based on the ideas of the Experts, and were approved by the Conference without marked change. The Conference adopted the statement of the qualifications of a civilian hospital, and made the joint consent of the

¹ See *Report on the Work of the Preliminary Conference of National Red Cross Societies*, Geneva, 1947, pages 63-64.

² See *Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims*, Geneva, 1947, pages 69 ff.

State and of the National Red Cross Society a condition for its use of the emblem¹.

The Diplomatic Conference of 1949, being called upon to take the final decision on the Draft Convention, was unanimous in recognising the need for better protection of civilian hospitals and for provision for their marking. There were however very marked differences of opinion on the restrictions to their marking and the way it should be done. The difficulties arose at first chiefly in connection with the definition of "civilian hospitals", and the conditions to be laid down with regard to their marking; and it was not until after prolonged and animated discussions² that the opposing views were reconciled in the wording which the Conference finally adopted — a wording which as we shall shortly see, has all the characteristics of a compromise.

PARAGRAPH I. — DEFINITION AND PROTECTION

I. *Object of Protection*

A. *General Principles.* — The principal object of Article 18 is to protect "civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases". Indirectly it at the same time protects the patients (wounded, sick, infirm and maternity cases) in these hospitals. The enumeration of patients, which except for the case specified in the second paragraph of Article 19³ is exhaustive, does not provide a precise definition of civilian hospitals.

The wording of paragraph 1 appears to repeat itself. In ordinary language civilian hospitals are precisely establishments organised to give care to the wounded and sick, the infirm and maternity cases. No establishments, which were not organised

¹ See *XVII International Red Cross Conference: Revised and New Draft Conventions for the Protection of War Victims*, Geneva, 1948, page 120.

² See *Final Record of the Diplomatic Conference of Geneva 1949*, II-A, pages 701-703, II-B, pages 392-395 and 469-472.

³ See below, page 49.

for these purposes, would be civilian hospitals. The repetition would to some extent be eliminated, if the clause "organised to..." were between commas, thus becoming an attribute in opposition to the words "civilian hospitals". This would seem to be the proper interpretation of the definition. Logically therefore the opening words of the paragraph should read as follows: "Civilian hospitals, *that is to say, establishments* organised to give care to the wounded and sick, the infirm and maternity cases..."

Why was this assuredly not very satisfactory definition inserted in the Convention? The answer is to be found in the preparatory work for the Diplomatic Conference, and especially in the discussions in the Conference itself. The text, which emerged from the XVII International Red Cross Conference, provided for "Civilian hospitals, recognised as such by the State and organised on a permanent basis to give care to..." That was a clear definition, inasmuch as it made the civilian hospitals subject to two restrictive conditions, namely (1) official recognition and (2) permanence in the exercise of their functions as hospitals. As however agreement could not be reached on this wording, the Conference appointed a Working Party *ad hoc* to study the Article. The Working Party succeeded, after the elimination of very numerous difficulties, in finding a wording which all accepted. It was their primary anxiety not to upset the fragile and painful measure of accomplishment attained, which led the Plenary Assembly to pass without objection this definition of civilian hospitals.

Careful study of Article 18 nevertheless makes it possible to disengage the serviceable elements of a definition of civilian hospitals in accordance with the intentions of the Diplomatic Conference and at the same time in harmony with the spirit and general structure of the Convention.

In the first place, the enumeration of the different types of patients (wounded, sick, infirm and maternity cases) in paragraph 1 is not to be taken as cumulative in character. It is not therefore necessary for a civilian hospital, in order to conform to the definition in Article 18, to be prepared to treat all the different types of patients specified in the enumeration. It is

sufficient that a hospital should handle one of these types, as e.g. maternity homes do with maternity cases.

The main emphasis is on the fact that, to conform to the definition in Article 18, a civilian hospital must have an organisation to enable it to give care to one or more of the types of patients enumerated. A civilian hospital must therefore have at its disposal the staff, buildings and equipment required to enable it to fulfil its functions, such as doctors, pharmacists, medical personnel, administrative personnel, operation rooms, medical departments, kitchens, drugs and surgical instruments.

A civilian hospital need not be a permanent hospital. A provision to that effect, which was contained in the Stockholm text, was cut out in Geneva, the Diplomatic Conference taking the view that establishments equipped in an emergency in war as auxiliary hospitals ought not to be excluded from the protection of the Convention¹. In recent conflicts it was a frequent occurrence for schools, hotels, churches etc. to be converted into civilian hospitals to meet the requirements of the population. Such improvised hospitals work more often than not with improvised resources and buildings. But the fact that they are provisional hospitals, and that their equipment is sometimes rudimentary, cannot deprive them of the benefit of Article 18. On the contrary, it is often in regions which are the scene of military operations that such auxiliary hospitals are established, so that the hospitals are in special need of protection. The decisive factor is whether they are effectively in a position to give hospital treatment and care, which necessarily implies a minimum of organisation.

The capacity of the establishment cannot constitute a criterion in determining what a "civilian hospital" is. Article 18 makes no allusion to capacity; and it is clear from the preparatory work for the Conference that any such criterion was deliberately abandoned. The Conference of Government Experts of 1947 considered the possibility of limiting the application of the provision to hospitals with at least 20 beds, but finally abandoned any such condition. There is however

¹ See *Final Record*, II-A, page 702.

nothing to prevent States in their national legislation in application of the Convention from retaining a quantitative criterion, and making State recognition depend on a minimum number of beds. The number of 20 beds contemplated by the Government Experts appears to be a reasonable minimum limit.

Civilian hospitals are entitled to the protection of the Convention, whether occupied or empty. That is plain from the text itself with its sole mention of the factor of "organisation" and of the types of cases entitled to the hospital's care. The whole spirit of the paragraph also points to such an interpretation, because it is the specific property of hospitals to appear worthy of protection, even in the very hypothetical event of their not yet containing sick or wounded, or having ceased for the moment to do so. It is however clearly understood that, if it is to have the special protection of the Convention, a civilian hospital may not in any case be used for other than hospital purposes. For example, if a school is converted provisionally into an auxiliary hospital, classes may not continue to be held there, even if the building ceases for the time being to house wounded or sick.

Lastly, it should be noted that the legal status of hospitals under national law does not affect the application of Article 18. Whether hospitals are private or State-owned, or belong to a commune or community, they are entitled to the special protection of the Convention, provided they observe the prescribed conditions.

B. *Practical Application.* — How do the above general criteria, which are the basis of Article 18, apply in practice?

There is no difficulty in the case of establishments coming under the generally accepted definition of "civilian hospitals" —that is to say, primarily establishments devoted to the treatment of all or some of the typical cases enumerated. It does not matter what such establishments are called. They may have a large variety of names such as "hospitals", "clinics", "sanatoria", "policlinics", "eye-hospitals", "psychiatric clinics", "children's clinics" and so on. But in all these cases there can be no question that the establishments are civilian

hospitals within the meaning of Article 18, and there is no necessity to labour the point.

The problem is more complicated in the case of establishments housing people who, without being actually ill, are nevertheless not in perfect health. There are limits in practice in such cases, e.g. in the case of Children's Homes, crèches, Old People's Homes, Preventoria, Homes for Disabled Persons, spas etc.

It is plain that the Convention does not anywhere contain a definition of a sick or disabled person. But it should nevertheless be possible to determine the effect of the Article, on the basis of general principles and the objects the Article has in view, in such a way as to draw a line of distinction between establishments which do, and establishments which do not, exercise genuinely hospital functions.

Old People's Homes are not civilian hospitals. Their purpose is to allow elderly people and people without relatives, who are not sick persons, to pass the remaining years of their lives without having to take thought for their lodging or upkeep. Such homes are not however there for the purpose of giving hospital treatment to the persons they house, and are more in the nature of pensions or Homes than hospitals. They are so considered both in everyday language and in the dictionary; and to seek to treat them as hospitals would be to go contrary to what is commonly understood by that term. Old People's Homes cannot therefore be covered by Article 18.

On the other hand, establishments whose sole purpose is to house sick, infirm or incurable old people, must be treated as civilian hospitals within the meaning of Article 18.

Homes for the sole purpose of housing infirm persons, such as *Homes for the Blind* or *Homes for Deaf-Mutes* should come within the category of civilian hospitals within the meaning of Article 18, in so far as they give treatment to their occupants.

Disabled persons are not included in the enumeration in Article 18. But establishments where they are treated may be regarded as civilian hospitals, since the disabled persons are also wounded or sick persons, so long as they require hospital

treatment. But Article 18 does *not* cover establishments, which merely house the disabled, when their health is no longer such as to require hospital treatment.

Crèches and Children's Homes are like Old People's Homes insofar as they house weak beings, to whom care is given, though their health is not affected. They cannot therefore be regarded as civilian hospitals.

Preventoria, or a good many of them, may reasonably (it would seem) be treated as on the same footing as sanatoria and hospitals. The line of distinction between preventoria and sanatoria will often be difficult to draw. No doubt, their name would indicate that they do not in principle house persons suffering from a declared disease, but only persons with a predisposition to such a disease. In so far however as they are organised on lines similar to civilian hospitals, and the persons they house are subject to medical discipline and to preventive treatment, it appears justifiable to assimilate them to civilian hospitals. Moreover, preventoria frequently take persons who are already sick, if only slightly so, so that the name "preventoria" is in many cases a euphemism.

The great majority of *spas* are not frequented solely by sick and infirm persons, but also (for a number of very different reasons) by persons who are in good health, or at any rate are not sick in the strict sense of the term. Moreover the persons who frequent these spas live for the most part in hotels or pensions: they are not subject to medical supervision outside the actual thermal establishments, and are consequently not hospital patients. It may therefore be concluded that spas are not in the ordinary way covered by Article 18. One can however conceive of cases where a spa might be organised on the lines of a civilian hospital with occupants who are sick in the strict sense of the word. In such cases assimilation to civilian hospitals might be contemplated.

It follows from the above observations that, in view of the diversity of cases which may arise in practice, it is difficult to give *a priori* a general definition of the civilian hospitals to which Article 18 relates. It is therefore very desirable that national legislation in application of the Convention should

determine as precisely as possible the conditions required for the recognition of a civilian hospital. Such legislation might well be based on the principles disengaged above. The question whether these different definitions should take the form of Law or Regulations is a matter for the legislative practice of the different countries.

If, in the consideration of the various types of establishment which can be considered to be civilian hospitals within the meaning of the Convention, a number of institutions have been excluded, that does not mean that these institutions are not protected under other provisions of the Law of Nations. It is certain for instance that many of the establishments excluded in the foregoing remarks are devoted to "charitable objects", and are entitled on that account to claim the benefit of the provisions of The Hague Conventions cited above¹.

2. *Respect and Protection*

Having dealt with the subject of protection, paragraph 1 specifies what the protection is directed against. It gives two indications on this point. The first, which is negative, says that hospitals may not be the object of attack. The second, which is positive, imposes certain obligations on belligerents.

If the text, instead of saying "may not be attacked", uses the words "may in no circumstances be the object of attack", that is for a good reason. This wording forbids any intentional attack on hospitals, without excluding cases where a hospital undergoes accessory and accidental effects owing to its being too close to a military objective, against which the attack is directed.

The words "in no circumstances" show clearly that the prohibition is absolute, and admits of no exceptions. It does not signify whether the aggression comes from the air by bombing or by directed missiles, or from the land by long-distance artillery for example, or again from the sea. The hospitals are protected wherever they are, whether in the national territory

¹ See above, page 28.

of the belligerent, or in a zone of military operations, or in an occupied territory.

This negative principle is followed by the classical wording, borrowed from the First Geneva Convention, which orders the Parties to a conflict to respect and protect civilian hospitals at all times. Whereas the word "respect" expresses in positive terms the idea which is at the basis of the prohibition of attacks—that is to say the prohibition either to attack hospitals or to injure them in any way—the expression "protect" strengthens this obligation by ensuring respect and imposing it on third parties. Moreover the term implies the idea of giving assistance and coming to the aid of the hospitals¹. Like the prohibition to attack, the obligation of respect and protection is absolute and applies to all places. Notwithstanding which, civilian hospitals in occupied territory are subject to the right of requisition within the limits laid down by Article 57 of the Convention.

PARAGRAPH 2. — OFFICIAL RECOGNITION

In order to benefit by the protection of the Convention, civilian hospitals must have been recognised by the State. Only recognised establishments can claim the right to marking. The recognition is conveyed in a certificate showing that they are civilian hospitals and that "the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19".

It is easy enough to understand that the recognition is to be given in a certificate ; but it is difficult to see what the second stipulation, which was added by the Diplomatic Conference, for an assurance that the hospital is not used for acts harmful to the enemy can mean in practice. The value of such an assurance will be very doubtful, for it is not possible for a State to give a binding assurance at the beginning of a war, or even in peacetime

¹ See *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva 1952, page 135.

(when it is much more likely to be required), that a hospital will effectively abstain in the future from acts harmful to the enemy. All that can reasonably be done is to state that at the moment of issue of the certificate the hospital is strictly reserved for humanitarian purposes, and does not contain anything which can be used for military purposes. The addition of the clause in question is therefore useless and illusory.

What form should the recognition take? In the first place it should be an act of Public Law by the State concerned. It is not specified what competent authority is to issue the certificate of recognition. The States are therefore free to designate the authority themselves in accordance with their internal legislation. They may delegate their powers to a governmental or non-governmental organisation (e.g. the national Red Cross Society). There is nothing in the Convention to prevent such delegation of powers. The possibility of such a step was even explicitly confirmed in the course of the discussions in the Plenary Assembly of the Diplomatic Conference¹.

The wording of paragraph 2 shows clearly that belligerents have the duty, and not merely the option, of issuing the certificate of recognition. The provision is imperative in character. Whenever a hospital fulfils the conditions of paragraph 1, it has a right to official recognition.

The corollary to this State guarantee of a hospital is the responsibility of the guaranteeing State; and the responsibility is not affected by the State delegating its powers of recognition to a non-governmental organisation. The State accordingly retains its responsibility vis-à-vis other Contracting Powers for any consequences of abuses committed by the organisation entrusted with the administrative functions in question.

PARAGRAPH 3. — MARKING

I. *State Authorisation*

This provision is important as entitling civilian hospitals to be marked by the emblem of the Red Cross defined in

¹ See *Final Record*, II-B, page 469.

Article 38 of the First Geneva Convention of 1949, which enacts that "As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces". The second paragraph of the Article provides for the exceptional emblems (red crescent and red lion and sun) used by certain Mohamedan countries¹.

The present paragraph begins with a general provision to the effect that "Civilian hospitals *shall* be marked..." But this provision is subject to authorisation by the State; and the authorisation is optional. Consequently, while the marking of civilian hospitals is obligatory in principle, the application of the principle depends on authorisation by the State.

The marking of civilian hospitals is therefore distinct from their recognition, and does not necessarily follow on the latter. All civilian hospitals marked by the protective emblem must necessarily have been officially recognised; but not all recognised civilian hospitals need necessarily be marked. It is true that in practice the official recognition will usually be accompanied by the authorisation to display the distinctive emblem; but it is also possible that a belligerent will authorise particular hospital establishments to be marked by the protective emblem because of their situation or importance, while refusing the right to other recognised hospitals, in the case of which he may consider such marking for one reason or another undesirable. It may for example happen that a State wishes to keep marking for the bigger civilian hospitals, and lays down standards to be observed in that connection.

This system of leaving the States to form their own judgment undoubtedly reflects the solicitude of the Diplomatic Conference in the matter, its consciousness of the dangers involved in any extension of the emblem, and its consequent preference for the prudent course of making marking optional. Marking is thus to depend on State authorisation, leaving the Powers free to make use of this facility in accordance with circumstances and

¹ See *Commentary*, pages 297 ff.

experience. Where their practice has had good results, it will be applied extensively. On the other hand it will be carefully restricted, if experience shows that extension of the use of the red cross leads to abuses, which harm its prestige and consequently the cause of the very persons it is there to protect. The States, conscious of their responsibility, will thus be in a position to take regulatory action in this novel field of their activities.

Like the preceding paragraph, paragraph 3 does not say what authority is competent to authorise marking. It merely says that the power to do so rests with "the State". This provision is therefore as elastic as could be desired; and it will be for the legislation of the different countries to designate the responsible authority.

The system of joint authorisation by the State and the national Red Cross Society, which had been approved at Stockholm, was not taken over by the Diplomatic Conference. Nor was the system of military consent, proposed in the draft by the Government Experts, which certain Delegations at the Diplomatic Conference would have liked to see reinstated in the Convention.

There is nothing however in the present wording to prevent States from delegating their powers to the military authorities, or to the national Red Cross, or to any other qualified organisation. The important thing is that, however the national legislation of the country may settle the question, the responsibility of the State is clearly laid down by the Convention.

The marking of hospitals is essentially a wartime measure, for it is in wartime that its true significance becomes apparent. But this rule may admit of relaxations in application as indicated by practical considerations in connection with the full effectiveness of marking. There is no reason why a State, which has to take every possibility into consideration, should not be able to mark its civilian hospitals in peacetime, running the risk thereby in the event of attack of being less well equipped from the humanitarian than it is from the military standpoint. The aims of the Convention would clearly be stultified, if any of its provisions could have such consequences as that.

As to the most opportune moment for displaying the emblem, it is desirable, in view of the numerous intangible factors which have to be taken into account, to leave a large power of judgment to the Governments concerned. A State would appear for example to be justified in marking its hospitals with the emblem in peacetime, when the circumstances are such that war may be considered imminent, and the State is taking other preparatory measures with a view to facing a conflict (such as preparations for mobilisation, partial mobilisation, general mobilisation or the like).

But it appears to be plainly indicated in such cases to do no more than display such fixed emblems as take a certain amount of time and effort to fix (e.g. emblems painted on the roofs of buildings). Removable emblems such as flags can very well be left for display until the outbreak of the war.

The useless multiplication of red cross emblems in peacetime on buildings which do not belong to the Red Cross Society is liable to give rise to confusion in the minds of the public¹. It will not only affect the Society, whose own establishments will be confused with the buildings thus marked, but will also lower the prestige and the symbolic force of the emblem.

2. *Scrutiny*

It would appear indispensable that the organisation, to which the national legislation entrusts the task of issuing the certificates of recognition and the authorisations to mark hospitals with the red cross emblem, should also have the necessary powers of scrutiny. The exercise of strict and permanent scrutiny of *all* establishments having State recognition is important: and in the case of hospitals, to which the right to display the emblem has been accorded, it is essential. This rigorous scrutiny is an inevitable consequence of the expansion of the applicability of the red cross emblem, which would otherwise be in danger of wrongful use, and thereby of loss

¹ To avoid confusion, the national Society will find it useful to show its name distinctly by the side of the emblem which it displays for the indication of its own establishments and properties.

of its high significance and authority. Hence the need for the right to mark a civilian hospital being always accompanied by the obligation to submit to such scrutiny.

PARAGRAPH 4. — VISIBILITY OF MARKING

The protective sign is of no practical use except in so far as it is visible. Accordingly the Convention recommends the Parties to the conflict to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces.

To be recognisable from a distance, especially from high altitudes, but also from all sides, the emblems must be sufficiently large.

Experiments made by one Government at the request of the International Committee of the Red Cross have shown for example that a red cross on a white ground five metres square, displayed on top of a building, is hardly visible at a height of over 2,500 metres¹.

To be seen from a distance and from all sides, rigid panels horizontal, vertical or oblique may be used: large red crosses on white backgrounds may be painted on the roofs and walls of hospitals, or may be traced on the ground with suitable materials.

It is of course desirable that civilian hospitals should be marked at night, for example by means of a string of lights to outline the crosses. As however total black-out is the most effective and practical safeguard against air attack, the military command is not likely to assent. Civilian hospitals lit up after their site is located during the day will give enemy aircraft useful landmarks. Lighting might conceivably be used only in case of an attack on a military objective. As will be noted under the next paragraph, the safety of civilian hospitals is best assured by keeping them away from military objectives.

The risk of favouring the operations of the enemy by marking exists not only by night but also by day, though the risk is very

¹ See *Revue internationale de la Croix-Rouge*, May 1936, page 409 (inset).

much less by day. Accordingly the obligation to ensure complete visibility for the protective emblem is made subject to military considerations, like the corresponding provision in Article 42, paragraph 4, of the First Geneva Convention. This qualification, though of less practical importance here than it is in the First Convention, is nevertheless justified, since the marking of a hospital might for one reason or another assist the enemy forces. The military authorities will then have a word to say in the matter. It is with a view to this eventuality, i.e. to a conflict between humanitarian exigencies and military necessities, that the qualification was inserted.

PARAGRAPH 5. — REMOTENESS OF MILITARY OBJECTIVES

Paragraph 5 requires the competent authorities to see that hospitals are situated as far as possible from military objectives. The idea was clearly to provide against the dispersed effects of projectiles. A similar wording was introduced in Article 19, paragraph 2, of the First Geneva Convention for the benefit of establishments and medical units of armed forces¹.

The meaning of "military objectives" is not defined any more than it is in the corresponding provision of the First Convention. All the attempts made outside the framework of the Geneva Conventions to arrive at a precise and legally determined definition of this vacillating conception have come to nothing. But there does not appear to be any doubt that the expression "military objective" should be understood in the strict sense of the words as a defined and clearly delimited point of actual or potential military importance². Never, let it be said, can a civilian population be regarded as a military objective. That is a verity constituting the very foundation of all the law of war.

¹ See *Commentary*, pages 198-9.

² See on this subject R.-J. WILHELM, *Les Conventions de Genève et la guerre aérienne*, in the *Revue internationale de la Croix-Rouge*, January 1952, page 32. M. Wilhelm points out that the conception of "military objective" in those terms is first legally employed in an international convention in force in the Geneva Convention of 1949.

We have seen in our consideration of paragraph 1 that the words " may not be... the object of attack " mean that civilian hospitals as such may not be the object of attack, and that no aggressive action may be directed against them¹. On the other hand, the turn of the phrase, which was deliberately chosen, indicates clearly that the right to attack military objectives is in no way restricted thereby. The immunity of hospitals cannot be spread (so to say) round about them, in such a way as to cover indirectly the military objectives situated in their periphery. A belligerent is therefore entitled to attack a military objective (for example a concentration of troops or a dépôt of arms), even when such an objective is in the immediate vicinity of a hospital. It is to be hoped however that in such cases a reasonable proportion will be observed between the military advantage to be obtained and the harm done. Hence the practical necessity of attaching material safeguards as an adjunct to legal protection by situating civilian hospitals as far distant as possible from military objectives, so as to save them from the accidental effects of attacks on the latter. Otherwise there is a great risk of the protection being illusory in spite of clearly recognisable marking.

Many civilian hospitals cannot be moved ; and it is for this reason that the provision of the paragraph is not imperative in character, but is merely a recommendation. In such cases the precautions to be taken are, first, to see that no military objective is established in the vicinity and, secondly, where such a military objective is already so established, to have it moved, if possible, to a distance. Close co-operation between the responsible civilian and military authorities is (it need hardly be said) eminently desirable.

ARTICLE 19. — CESSATION OF PROTECTION

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humani-

¹ See above, page 38.

tarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

Article 19 deals with the contingencies which may deprive a civilian hospital of the protection to which it is entitled. It is reproduced *mutatis mutandis* from the First Geneva Convention of 1949, Articles 21 and 22, Nos. 3 and 5¹.

PARAGRAPH I. — CONDITIONS FOR THE SUSPENSION OF PROTECTION

Paragraph 1 is an exception to the principle of respect and protection for civilian hospitals embodied in the preceding Article².

I. *Substantial condition: Acts harmful to the enemy*

The immunity conferred on civilian hospitals can only be suspended where it is used to commit acts harmful to the enemy. By the wording, which it used, the Diplomatic Conference of 1949 was anxious to emphasise the exceptional character of this provision, and to make it clear that the protection could not cease except in the single case exceptionally specified.

It did not prove possible, in spite of the attempts made by the Diplomatic Conference of 1949³, to give more concrete form to the conception of "acts harmful to the enemy" (French text: "actes nuisibles à l'ennemi"), which was already embodied in the 1929 version of the First Geneva Convention. The Diplomatic Conference finally took the view that there

¹ See *Commentary*, pages 200-202, 204-205.

² See above, page 38.

³ See *Final Record*, II-A, pages 632, 702.

was no need to define the expression on the ground that its meaning was self-evident, and that it must be left very general. A useful point of definition was however made by the insertion of the reference to "humanitarian duties".

The International Committee of the Red Cross had drawn up a form of words in case the Conference desired to be more explicit¹. This form of words is equally relevant to the present Convention; and it is proposed accordingly to quote it here in the belief that it may throw light on the words "acts harmful to the enemy". It would have been possible to say: "acts the purpose or the effect of which is to harm the adverse Party, by facilitating or impeding military operations".

The following are examples of harmful acts—sheltering in a hospital combatants or healthy deserters, using it as a deposit for arms or munitions, establishing an observation post in it or a post of liaison with combatant troops. The idea will be still clearer, when we come to consider paragraph 2 below², in which two acts are specified which are not to be considered harmful acts. It is quite certain that civilian hospitals ought to observe the same neutrality in relation to the adverse belligerent as they claim for themselves and are accorded by the Convention. Situated as they are *au-dessus de la mêlée*, they ought to abstain loyally from any intervention, direct or indirect, in military operations. An act harmful to the enemy is not merely culpable because of its treacherous character: it may involve the most serious consequences for the lives and safety of the hospital patients, and generally weaken the protective value of the Conventions in other cases.

The performance of a humanitarian duty may conceivably be harmful to the enemy, or may—wrongly—be so interpreted by an adversary lacking in understanding. In this way the presence or the activities of a hospital may impede tactical operations.

The Diplomatic Conference by the insertion of the words "outside their humanitarian duties" has explicitly emphasised

¹ See *Final Record*, II-A, page 59.

² See page 49.

the fact that in no circumstances can the performance of a humanitarian duty ever be said to be an act harmful to the enemy.

2. *Formal condition: Warning and time-limit*

The second sentence of paragraph 1 has the effect of mitigating the rigour of the steps which may result from the application of the principle embodied in the first sentence. It was necessary to provide humanitarian safeguards for the hospital patients, who cannot be made responsible for any illegal acts which may have been committed.

It is accordingly stipulated that protection may cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

The enemy will accordingly warn the hospital to put a stop to the harmful acts, and will name a time limit, on the expiry of which he will be entitled to attack, if the warning has remained unheeded. The period of the time limit is not specified. It is only stated that it must be reasonable. How is the length of the period to be fixed? Obviously it will depend on the particular case. But it may be said that it should be fixed in such a way as to allow both of the cessation of the illegal acts and of the evacuation of the hospital patients to a safe place. Such a time limit will enable the hospital to answer an unfounded reproach and to clear itself of the charge.

It follows that in principle the suspension of a civilian hospital's immunity cannot take place *ipso facto*, but is subject to the formal condition of previous warning. But the warning is obligatory only in "appropriate cases". There may well be cases where a warning cannot be given. If for example troops approaching a hospital are greeted by steady fire from every window, there will be an immediate response.

PARAGRAPH 2. — ACTS WHICH DO NOT SUSPEND PROTECTION

Paragraph 2 specifies two particular contingencies, which are not such as to deprive a civilian hospital of protection,

and are not therefore to be regarded as acts harmful to the enemy. The first of these contingencies is where sick and wounded members of the armed forces are taken in by civilian hospitals—by which the right of the sick and wounded in question to respect and protection is not affected. Civilian hospitals within the meaning of the Fourth Geneva Convention are accordingly authorised to include amongst their patients combatants whose health is impaired. This provision corresponds to Article 22, No. 5, of the First Geneva Convention, which allows units or establishments of Military Medical Service to collect and care for civilian wounded and sick¹, and to Article 35, No. 4, of the Second Geneva Convention, which has an identical provision for hospital ships and sick-bays.

This provision merely embodies the principle that all wounded and sick, whether civilian or combatant, are on the same footing for purposes of receiving relief. This conception became essential in view of the character assumed by modern war, and especially by war from the air, in which a single warlike act may affect both civilians and combatants, friends and enemies. This being so, they must be relieved by the same nursing staff, and treated in the same buildings.

Secondly, combatant sick and wounded entering a civilian hospital may still have about them small arms and ammunition. These will be taken from them, and subsequently handed over to the competent Service. But the handing over may take time. If the enemy visits the hospital before the latter has been able to get rid of these arms, it must not be open to the enemy to make a charge out of this. Hence the latter part of paragraph 2.

(To be continued).

¹ See *Commentary*, page 205.

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INTERNATIONAL RED CROSS

AN APPROACH TO ACCELERATE THE RATIFICATION OF THE GENEVA CONVENTIONS OF 1949

It will be recalled¹ that on October 30, 1953, the International Committee of the Red Cross took advantage of the presence in Geneva of numerous delegates of National Red Cross Societies, who were taking part in the sessions of the Executive Committee of the League, and arranged a meeting at its headquarters, to enable them to make a joint survey of sundry questions of common interest with members of the International Committee.

One of the most important questions discussed was the progress made in regard to the ratification of the 1949 Geneva Conventions by Governments. Those taking part in the meeting were deeply concerned by the fact that a great many States, including the majority of the great Powers, were not bound by these Conventions which are intended to protect the victims of war — especially civilians. Various measures were considered and it was decided that a special message, emanating from the highest Red Cross authorities, should be sent to the National Societies of the countries which were not yet parties to the Conventions of 1949.

The message, in the form of a personal letter signed by the President of the International Committee of the Red Cross and the Chairmen of the League of Red Cross Societies and the Standing Commission of the International Red Cross, was sent on December 28, 1953, to the Presidents of the National Societies of States which had signed the Conventions but had

¹ See *Revue internationale de la Croix-Rouge*, November 1953, page 837 ff.

not yet ratified them. The message, in a slightly different form, was also sent to the Presidents of the National Societies of countries which, not having taken part in the 1949 Diplomatic Conference, had not signed the Conventions and had not yet acceded to them. The letter was sent in all to thirty-nine National Red Cross Societies.

The International Committee of the Red Cross feels that the readers of the *Revue* may be interested to know the contents of the letter :

Geneva, December 28, 1953.

Mr. Chairman,

At the meeting held at the headquarters of the International Committee of the Red Cross on October 30th last during the session of the Executive Committee of the League, many representatives of the National Red Cross Societies expressed their concern at the fact that the new Geneva Conventions, signed in 1949 by sixty-one Powers, are so far legally binding on only thirty-three States, which duly deposited with the Swiss Federal Council in Berne the instruments of ratification of, or accession to, those agreements. The majority of States, including—a disquieting fact—most of the great Powers, are not yet formally bound by the agreements, although these mark a decisive step forward in humanitarian law and are based on principles recognized by all civilised nations.

As the purpose of these Conventions is to ensure that henceforth victims of war, and in particular civilians, shall be spared a recurrence of the indescribable sufferings undergone during the last world war, the unanimous desire arose that an end be put without delay to this paradoxical situation.

Sharing this desire and these anxieties, we feel it our duty to make a joint appeal to you for help, and to invite the National Society of which you are Chairman to intensify its action vis-à-vis the Government of your country, to ensure that it takes the earliest possible steps to deposit its instrument of ratification with the Swiss Government, which is the only way in which a State can become officially Party to the agreements of 12 August 1949.

In case of war or civil war, the Geneva Conventions provide the Red Cross with the most effective basis for its action, which is then so necessary. We know that, realizing this, you have already approached your Government with a view to hastening ratification of the Conventions by your country, and we thank you for your action ; you will, however, we are sure, agree that to reach the final goal it is necessary to persist in such action ceaselessly.

We are therefore sending this letter to the Chairmen of the National Societies of the Red Cross (Red Crescent, and Red Lion and Sun) of all countries which are not yet Parties to the new Geneva Conventions.

Our great desire is to help you in the action you take. We should therefore be grateful if you would kindly let the Interational Committee of the Red Cross know exactly how the matter stands in your country, and the reasons for any possible further delay in the formalities of ratification. When this information is studied together with that sent us by the other Chairmen of National Societies, there will be a clearer indication of the means by which the Red Cross as a whole can best take steps to hasten ratification, and to support what you yourself are doing in this connection.

Whether the difficulties are technical—in which case the solutions adopted by others, of which the International Committee of the Red Cross will hasten to inform you, may be of assistance—, or whether delays are due to other causes, the desire of the Red Cross organizations and of the peoples of the world that there should be universal acceptance of the essential guarantees to which humanity is entitled, makes it our duty to overcome all obstacles by setting in motion the forces of the great Red Cross movement and the spirit of fellowship by which it is inspired.

Thanking you in advance for your response to these two requests, and looking forward to your reply, we take this opportunity of renewing to you, Mr. Chairman, the expression of our high regard.

(signed)

E. Sandstroem
President
of the
League of Red Cross
Societies

(signed)

A. François-Poncet
President
of the
Standing Commission
of the International
Red Cross

(signed)

P. Ruegger
President
of the
International Committee
of the Red Cross

René-Jean WILHELM

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

*THE GENEVA CONVENTIONS AND WAR
FROM THE AIR*

I

In February 1950 a leading French illustrated weekly, "Radar", devoted a whole page to the dissemination of the new humanitarian Conventions signed at Geneva in 1949. Among other things the page contained illustrations showing the meaning of the four Conventions. In connection with the Fourth Convention (relative to the Protection of Civilian Persons in Time of War) there is a supplementary picture with the caption "Its application", representing a man reading his newspaper peacefully in a little house, the roof of which consists of the text of the Convention, while overhead there is a big bomb which is about to fall on the house and destroy it completely.

That picture appears to us characteristic of a certain conception which prevails with regard to the Fourth Convention, as also in regard to the Third Convention (relative to the Treatment of Prisoners of War). What is the main object of both these Conventions? The protection of civilians or military, not against the inherent effects of the use of arms—that is rather the object of The Hague Conventions—but against arbitrary dangers to which they may be subject at the hands of an enemy Power. The purpose of the Fourth Convention is therefore to ensure humane treatment for all civilians subjected to the rule of an enemy Power, and to preclude for example the horrors of concentration camps and executions of hostages.

In illustration however of the possible application of the Convention the "Radar" journalist did not speak of firing squads, but only of bombing, i.e. of the air arm; and in so doing made himself the interpreter of the principal anxiety which haunts the minds of the populations at the present time. It is in the war from the air, and especially in atomic bombing, that they see the greatest danger they are liable to incur in case of armed conflicts. They are at the same time actuated, by the very general notion—which the title of the Fourth Convention itself encourages—that the protection conferred by that Convention and by the other Geneva Conventions is mainly directed against this danger, which (as we have seen) is not the case.

There is therefore no such direct connection as the general public has been led to expect between the new Geneva Conventions and protection against the effects of war from the air. But it is worth while, if only in view of this major anxiety of the populations, to enquire whether, and to what extent, the Conventions in question take war from the air into account. Such an enquiry is the object of the present article.

Let it be said in the first place that at the Diplomatic Conference, which drew up the new Geneva Conventions, one Delegation took the view that the two subjects, atomic war from the air and the protection of the populations, were closely allied, and advocated the passing of a Resolution to the effect that the use of bacteriological, chemical, atomic or other means for the extermination of populations, are incompatible with the elementary principles of international law. The Resolution was rejected by a majority of Delegations on the ground that the question of atomic weapons was already before the United Nations.

At bottom there can be no question that there is some connection between the humanitarian Conventions and the use of weapons for extermination *en masse*. In its Appeal on 5 April 1950 to the States parties to the said Conventions ¹ on the subject

¹ See *Revue internationale de la Croix-Rouge*, April 1950, page 251: English translation in the (English) *Supplement*, Vol. III, No. 4 of April 1950.

of atomic weapons and non-directed missiles the International Committee of the Red Cross rightly pointed out that the use of such weapons and missiles vitiated any attempt to protect non-combatants by forms of law. "Law", it wrote, "written or unwritten, is powerless when confronted with the total destruction the use of this arm implies ¹."

In this article however we shall not deal with the problem of atomic weapons and other non-directed missiles. Not that we have any sort of doubt as to the fundamental incompatibility between these weapons, in any case as they have been employed in wartime, and the principles underlying the laws of war. Nor again that we seek to establish a natural or fundamental difference between the bombing of Hiroshima or Nagasaki and the bombing of certain European cities. But it must be admitted, in view of the circumstances in which the two atomic bombings were committed and the exceptional character attached to them, that they may be said to constitute a problem of their own. It appears to us preferable not to touch on that problem here, and to confine our enquiry to the relations between the Geneva Conventions and the "habitual" forms of war from the air.

Another reason for such limitation of the field of enquiry is this. In a future war the use of atomic weapons, in the form which is at present contemplated, is by no means inevitable, whereas the continuance and intensification of bombing from the air are almost certain developments, judging by the combats, by which (alas!) the world has been involved in bloodshed since 1945. Furthermore recent allusions to the "tactical" poten-

¹ The Appeal also said: "The use of this" (atomic) "arm is less a development of the methods of warfare than the institution of an entirely new conception of war, first exemplified by mass bombardments and later by the employment of rocket bombs. However condemned—and rightly so—by successive treaties, war still presupposed certain restrictive rules; above all did it presuppose discrimination between combatants and non-combatants. With atomic bombs and non-directed missiles, discrimination becomes impossible. Such arms will not spare hospitals, prisoner of war camps and civilians. Their inevitable consequence is extermination, pure and simple. Furthermore, the suffering caused by the atomic bomb is out of proportion to strategic necessity; many of its victims die as a result of burns after weeks of agony, or are stricken for life with painful infirmities. Finally, its effects, immediate and lasting, prevent access to the wounded and their treatment."

tialities of atomic energy suggest that the latter may come to find a place in one form or another in the habitual method of bombing¹, which would bring us back to the permanent and capital problem of war from the air and bombing from the air as already before the last world war and until now.

II

Even if the Geneva Conventions of 1949 has not for their main object the protection of persons against war from the air, they could certainly not pass over its scope and importance. This aspect of warfare is reflected in several of their provisions : sometimes it serves as a basis, sometimes it is merely understood. To make this more apparent, we will make a brief summary of the various provisions.

In the First Convention (Wounded and Sick of Armies in the Field), Article 19 specifies that medical establishments "may in no circumstances be attacked"². This new addition, which further strengthens the terms of the 1929 Convention concerning the respect and protection to which hospitals are entitled, can moreover apply to attack from the air.

This same article has a new second paragraph of which the principal object is to preserve hospital establishments from air attacks, and which reads as follows :

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Article 23 gives the High Contracting Parties the possibility of organising hospital zones and localities "to protect the

¹ If however it proved impossible to limit at the same time the radioactive effects, would not such bombing be contrary to the principle of The Hague Regulations of 1907 prohibiting the use of weapons "calculated to cause unnecessary suffering" (Article 23; letter e) ?

² This wording had already been suggested in 1947 by the Conference of Government Experts. See Report on the work of this Conference, page 23.

wounded and sick from the effects of war". The term " effects of war " mainly applies to the effects of war by air. The Draft Agreement annexed to the Convention, which the belligerents can take as a pattern, for the recognition of these zones and localities is still more definite ; according to Article 4 (c) these zones " shall be far removed and free from all military objectives, or large industrial or administrative establishments ". In addition, (d) " they shall not be situated in areas which, according to every probability, may become important for the conduct of the war ".

Article 36 concerning medical aircraft takes into account the effective rapidity of aircraft. In addition to the protection conferred upon such aircraft by the distinctive emblem (a somewhat illusory protection when flying at great speed), it introduces more adequate protection in the shape of an agreement between the two adversaries as to certain times, heights and routes reserved for medical aircraft flights.

Article 37, new as compared to the 1929 text, regulates the case of medical aircraft flying over the territory of neutral countries, such flights being authorised in so far as the neutral countries and the belligerents have made previous agreements on the subject.

In the Second Convention (Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea), Articles 39 and 40 adopt, for application in maritime warfare, the regulations of the First Convention for medical aircraft.

This Convention also seeks to increase the safety of hospital ships, particularly against the dangers of war from the air. For this purpose Article 26 requests belligerents to endeavour to utilise, for the transport of wounded, sick and shipwrecked on the high seas, hospital ships of over 2,000 tons gross, whose dimensions thus make them more clearly visible. Further, Article 43 urges the marking of hospital ships in such a way as to afford the best visibility " from the air " and from the sea.

The Third Convention relative to the Treatment of Prisoners of War also contains a few provisions referring to war from the air. Article 20 concerning the evacuation of prisoners of war

after capture, and Article 48 relative to their subsequent transfers, prescribe the establishing beforehand of a list of prisoners to be evacuated or transferred—an imperative precaution resulting from numerous deaths of prisoners caused by attacks from the air.

Article 23 is entirely devoted to the protection of prisoners of war against the effects of war, and in the first place of attacks from the air. In particular it provides for belligerents to inform each other of the geographical location of prisoner of war camps, and for the latter to be, if military circumstances allow it, indicated by the letters PW or PG “ placed so as to be clearly visible from the air ”, and for the prisoners to be provided (to the same extent as the local civilian population) with “ shelters against air bombardment and other hazards of war ”.

The first paragraph of this Article, which prohibits prisoners being exposed to the fire of the combat zone, or being used to render certain points or areas immune from military operations, is entirely applicable to military air operations, although it dates back to agreements between Germany and the Allies in the 1914-1918 War, which related as then conceived to artillery fire.

The Fourth Convention relative to the Protection of Civilian Persons contains a special chapter entitled “ General Protection of Populations against certain consequences of War ”. Those who drafted the text were fully alive to the effects of war from the air to which three provisions in the chapter refer directly or indirectly.

Article 15 provides for the establishing of safety zones and localities “ to shelter from the effects of war ” the wounded, sick, infirm, expectant mothers and children. According to the specimen Agreement concerning these zones which is annexed to the Convention (on similar lines to the specimen Agreement for Hospital Zones) these safety zones are to be far removed and free from “ all military objectives ”.

Article 18 protects civilian hospitals and in provisions based on those of the First Convention it also provides that “ in view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives ”.

Article 22 extends the principles of the two first Geneva Conventions to the medical air transport of civilians.

There will also be found in the Fourth Convention—

Article 28, based on a provision of the Third Convention, which states that “ the presence of a protected person may not be used to render certain points or areas immune from military operations ” ;

Article 49, which allows the Occupying Power to undertake evacuations of populations, if required for their security ;

Article 63, paragraph 3, which provides that in the event of occupation the relief societies and essential public utility services shall continue to function and refers, among these bodies' activities, to “ the organization of rescues ”, which term more particularly applies to assistance in the event of bombardment from the air.

Finally, the regulations for the treatment of internees contain several Articles which grant civilian internees the same security measures against the effects of war from the air as those provided for prisoners of war, whether in respect to the marking and mutual notification of camps (Article 83), air-raided shelters (Article 88), or the establishing of lists of internees in the event of transfers (Article 127).

To close and summarize this survey, it seems possible for these provisions to be roughly divided into two groups. Firstly, there are the few Articles which introduce new regulations for aircraft of such a special type (medical aircraft) that it would be improper to speak of new regulations on war from the air. Secondly, there are the stipulations, far more numerous, of which the essential aim is to protect military or civilian persons referred to in the Convention from the effects of war from the air, either by removing them from areas where these effects are the most severe (hence the Articles on safety zones), or by making such areas more clearly visible to air forces, so that the latter may more easily spare them.

Whereas the Geneva Conventions may be said to have a “ positive ” attitude in regard to dangers, to which individuals may be exposed by the fact that they are in the enemy's power

—they define the exact limits of his power—their attitude in regard to dangers resulting from war in the air would at first sight seem to be rather “negative”. They appear to make no attempt to moderate the conduct of such warfare, accepting it in its present form and merely endeavouring to enable defenceless persons to escape from what it has become, that is to say, a struggle in which no regulations whatever are acknowledged, especially in regard to bombing. This attitude seems to be particularly apparent in the provisions concerning safety zones.

Closer consideration however causes us to modify this first impression. In the provisions we have just surveyed there are two elements which in our opinion distinctly imply a limitation of aerial warfare, particularly in the matter of bombing. We refer to the provisions relating to the protection of military or civilian hospitals (First Convention, Article 19; Fourth Convention, Article 18), and the conception of military objectives which is to be found in the Conventions in several instances. To our knowledge this is the first time that this conception, couched in these terms, has been explicitly embodied—the point is worth noting—in an international Convention in force.

For our enlightenment, let us recall the origin and present meaning of the conception of military objectives by a rapid survey of the history of the principal laws of aerial warfare.

III

At its annual meeting in 1949 the American Society of International Law considered, among other items, the desirability of revising the laws of war. Major Downey of the Department of War, who introduced the discussion and strongly supported the idea of such revision, stated in connection with the question in point: “As you are all probably aware, there are no rules governing aerial warfare.¹” We cannot endorse

¹ See “Proceedings of the American Society of International Law”, 1949, page 107.

this statement. It is however characteristic of current opinion on the subject and, it must be said, of the alarming position which this rapid survey will reveal.

It was the Hague Conference of 1899 which introduced for the first time into international public law a regulation concerning war from the air. It settled the question in trenchant fashion by prohibiting "the launching of projectiles and explosives from balloons, or by other new methods of similar nature". This prohibition was only valid for five years, and at the Second Hague Conference of 1907 several of the Great Powers of that time refused to sign a declaration intended to prolong it. This declaration, with the "clausula si omnes", was not obligatory for either the First or the Second World War. Moreover it needly hardly be pointed out that it was in direct opposition to the actual development in the launching of projectiles by "new methods of a similar nature", developments which had already been foreseen in 1907.

In face of the opposition encountered at the 1907 Conference to the renewal of the above-mentioned declaration, its supporters endeavoured to insert its fundamental elements in Article 25 of the Hague Regulations, which prohibits "the attack or bombardment of towns, villages, dwellings or buildings which are undefended". On their initiative the words "by whatever means" were inserted after "bombardment"; Article 25 thus became a provision for the laws of war on land also applicable to aerial warfare, or more exactly to bombing from the air¹.

At the present day however this regulation is very rarely quoted in connection with bombardment from the air², and the

¹ See in this connection Alex Meyer "Völkerrechtlicher Schutz der friedlichen Personen und Sachen gegen Luftangriffe", Königsberg 1935, pages 132 ff.

The first bombardments from the air in fact only occurred in 1911 during the Italo-Turkish War, as pointed out by J. S. Pictet in his article "La protection juridique de la population civile", *Revue internationale de la Croix-Rouge*, 1939, page 278.

² The Soviet review "Sovietskoye gosudarsto i pravo" (The Soviet State and the Law), 1950, No. 10, page 2, nevertheless refers to it in speaking of the American bombardments in Korea. President Roosevelt's appeal of September 1, 1939, for the mutual imitation of aerial warfare also referred to "civilian population or unfortified cities".

most recent theoretical works on the subject (such as Guggenheim's "Lehrbuch des Völkerrechts")¹ consider it to have fallen into disuse. What is the reason? According to some authors, whose explanation seems to be apposite², this regulation was based on the relatively small artillery range of the period, and on the fact that the bombardment of a locality was for the sole purpose of its *occupation*. As an undefended or "open" town could be taken without firing a shot, it was quite superfluous for the assailant to bombard it, and thus risk the destruction of property which he would anyway seize on the occupation of the town. Hence the prohibition to bombard an undefended town.

When it was extended to bombardment from the air, this regulation had a meaning, so long as it was supposed (as was the case at the time) that air bombing was another way of enabling land forces to capture a locality (occupational or "tactical" bombing). For bombardments of this description, which are still practised, this regulation is still fully valid. But the type of bombardment from the air with which we are now dealing, and which has become the commonest form, is no longer connected with the occupation of the bombed area by the land forces. The assailant's primary object is to destroy particular buildings or plant without seeking to take possession of the locality (destructive or "strategic" bombing). For this type of bombing (independent of land operations) which only developed after the First World War, how can the principle of a "defended town" be applied, since in such case the assailant's target lies in the buildings and plant of military importance in the locality, whether defended or not?

With the evolution of the air arm therefore this criterion for the legality of bombardments was gradually abandoned. But the same process of evolution was to give prominence to another conception contained implicitly in the Hague Regulations, and relating to cases where bombing was not considered so much as having for its object the occupation of a bombed

¹ See page 898 of this work.

² Here we have principally followed Alex Meyer's work above-mentioned.

area, but rather as an object in itself—the case namely of bombardment by naval forces. The Ninth Hague Convention of 1907, which is exclusively concerned with this question, duly adopted the previous rule by prohibiting the bombardment by naval forces of undefended ports, towns, villages, dwellings or buildings. But it made an important exception by adding that “ Military works, military or naval establishments, depots of arms or war material, workshops or plant which could be utilised for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition ” (Article 2).

Thus, even for undefended localities, it was lawful for the naval forces to bombard these works and establishments of a military nature or for military use. Destructive bombardment was thus established as an object in itself, in so far as it was limited to the type of objective which in the course of time has finally become known as “ military objectives ”.

At the outbreak of the First World War bombardments from the air were still of a tactical nature ; but little by little they became destructive, and some artillery bombardments were of the same description. After the conflict it was realised that aerial warfare on account of its importance required to have its own regulations. On the initiative of the Disarmament Conference in Washington (1922) a Legal Commission¹ nominated for the study and drafting of regulations for aerial warfare met at The Hague in 1923 and submitted a code entitled “ The Hague Regulations for Aerial Warfare ” which was, unfortunately, never sanctioned by any Government.

This failure may have been caused by the fact that it was premature to attempt to codify the use of an arm whose possibilities had become apparent during the First World War, but which in 1923 had only just started to develop. Moreover, this arm held a prominent place in the Anglo-Saxon States’ defence system and, as the American jurist Royce² so aptly stated

¹ Composed of representatives of the United States of America, the United Kingdom, France, Japan, Italy and the Netherlands.

² See his legal opinion in the work published by the ICRC in 1930 under the title “ La protection des populations civiles contre les bombardements ”, p. 75.

Where the weapon or method of warfare, however, held an important place in the defence scheme of a State or group of States, attempts at its abolition invariable failed.

At all events the Hague Regulations of 1923 represent the most important official effort made so far to provide laws for aerial warfare. In particular their authors tried to define the idea of a military objective, the only conception generally put forward by the belligerents on the approach of and during the Second World War in regard to bombardments. Article 24 of the 1923 Hague Regulations stipulated in the first two paragraphs—

1. An air bombardment is legitimate only when it is directed against a military objective, i.e. an objective whereof the total or partial destruction would constitute an obvious military advantage for the belligerent.

2. Such bombardment is legitimate only when directed exclusively against the following objectives: military forces, military works, military establishments or depots, manufacturing plants constituting important and well-known centres for the production of arms, ammunition or characterised military supplies, lines of communication or of transport which are used for military purposes.

IV

On the outbreak of the Second World War, when the ICRC launched an appeal to belligerents submitting the question of the protection of the civilian population against bombardments, the principles which had inspired the appeal were approved by all. Among these principles, in particular, there appeared the limitation of bombardments to military objectives alone. Several Governments explicitly confirmed that their air forces had received instructions to bombard such objectives only.

But what did the Governments mean by military objectives? Were they adhering to the definition given by the jurists at The Hague in 1923? Can any conclusion be drawn from the

practice followed by them during the Second World War inasmuch as it was characterized by the bombing of entire cities, by the advent of the V 1, the V 2 and finally the atom bomb?

It seems nevertheless that there are certain lessons which can be drawn from their practice, provided we exclude from the start weapons of indiscriminate destruction which, as we have already indicated, we consider to be fundamentally opposed to the general principles of law. If we are dealing with "habitual" bombardments from the air, figuring not as measures of intimidation or reprisal, but as measures for the essential purpose of destroying the enemy's military potential, two aspects of the question are worthy of special attention.

First of all, in the light of experience, the direct or indirect criticism expressed as to the too restricted nature of the 1923 definition of a military objective appears to be justified. The Swiss expert Zublin consulted by the ICRC in 1930¹ considered it necessary to include among military objectives those he described as "mixed objectives", that is to say, objectives intended for non-military purposes but acquiring great importance for armies in the event of war, such as railways, roads, power stations and telegraph or telephone exchanges.

These objectives were in fact frequently attacked, and they are not entirely covered by Article 24 above-mentioned, in particular by the second paragraph. On the whole the enumeration given in this paragraph is concerned mainly with the existing actual and effective military use of an objective which can be bombarded ("important and *well-known* centres"... "*characterised* military supplies"... "lines of communication or of transport which *are used for* military purposes") rather than with the normal "military purposes" of an objective in present conflicts, on which the French expert Sibert consulted by the ICRC² insists. Even if Article 24 is too restrictive on this point, it nevertheless appears to us in spirit (especially when one compares the second paragraph with the first) still to constitute

¹ See the work cited, page 11.

² See the work cited, page 157.

at the present day a sufficiently proven basis, acceptable to all concerned, for the legal definition of a military objective.

The second aspect of the question is as follows. How can the destruction which took place (particularly in Europe) of cities such as Rotterdam, Coventry and Hamburg, be compatible with the conception of military objectives which the principal belligerents supported at the outbreak of the conflict? Can these destructions be explained as acts of reprisal only or had the belligerents given up their conception of a military objective for a new conception?

Very little has been published on this point since 1945. It is therefore all the more interesting to quote at this stage the English jurist Spaight, a specialist on the laws of aerial warfare. In the third edition (published in 1947) of his basic work "Air Power and War Rights" he discussed the development of the air arm during the last war. According to this author the most important change which occurred in the practice of bombardments by the British air forces took place in 1942, at which time these forces made systematic use of what he calls "target-area bombing"—

Circumstances had in fact made impossible to maintain the practice of selecting individual targets for attack. The previous practice was still continued in enemy-occupied countries, where the defences, on the ground and in the air, were not so formidable as they were in the Reich, and the system of camouflage and smoke-screens was less thoroughly organised. In Germany itself, the bombing at target areas became the practice... Target-area bombing, it must be emphasised at the risk of some repetition, was the natural and indeed inevitable reply to the intensification of the defence.

In a more recent work¹ Spaight confirms that the idea of "target-area bombing" is by no means an abandonment, but merely the inevitable development of the conception of military objectives.

Is this new conception justified in law? Spaight attempts to answer this question by stating that—

¹ See the work cited, pages 270 and 273.

² "The Atomic Problem, A New Approach", London 1948, page 15.

... that question will be long debated and opinions may be divided but to the present writer the answer that should be returned seems to be simple. If in no other way than by target-area bombing can a belligerent destroy his enemy's armament centres and interrupt his enemy's process of munitionment, then target-area bombing cannot be considered to be against the principles of the international law. To hold that it does offend against them is to subject bombardment from the air to a stricter test than has been applied in the past to bombardment from land or sea. Military effectiveness has been the test, and by that test target-area bombing passes muster. It could be condemned only if it involved acts repugnant to humanity. It was approved, however, by public opinion generally, in Britain and America. There was no such wide-spread doubt about it as there was about the subsequent resort to atomic bombing which did gravely disturb the public conscience ¹.

The question also arises as to whether the approval referred to by the author, i.e. the approval of public opinion in the two countries at war, one of which had recently suffered devastation by the air arm, can be regarded as absolute general assent, uninfluenced by circumstances, which alone can initiate and justify a practice.

Be that as it may, military efficacy constitutes, according to Spaight, the standard of legitimacy for target-area bombing. It is legitimate when its military efficacy is beyond doubt. The author reverts in several instances to the decisive factor of bombardment in the defeat of the Third Reich—

Beyond any possibility of doubt, the strategic air offensive was a powerful factor in that victory.²

He also quotes the German Minister Speer who, on being asked—

Do you believe that strategic bombing alone could have brought about the surrender of Germany?

replied " the answer is Yes " ³. In his Introduction he states—

Had the people of Germany been free to decide their own destiny, or the " divine right of the fifty one per cent " been theirs, those

¹ " Air Power and War Rights ", London 1948, page 271.

² See the work cited, page 272.

³ See the work cited, page 280.

terrible raids of 1943-1944 would probably have taken Germany out of the war".¹

In his recent work above-mentioned, "The Atomic Problem", Spaight restates his point of view in regard to target-area bombing. However, perhaps because he has had the opportunity of consulting various English works on bombing published between 1946 and 1948², Spaight is far more reserved as to the use made of target-area bombing—

Precept was unexceptionable but whether practice invariably conformed to it is less certain. What inclines one to feel doubts upon this point is the apologia put forward by the distinguished Commander who was responsible for translating the precept into practice.

Sir Arthur Harris was Air Officer Commanding-in-Chief, Bomber Command, from February 1942 until the war in Europe ended. He held strong views about the way in which air offensive should be conducted. He had no patience with the policy of bombing selected targets such as oil plants or key factories; "panacea targets" he called them. He considered that the most profitable objectives were the great centres of industry and population. By attacks on them, in sufficient strength, he held that Germany's war potential could be destroyed and her resistance brought to an end...

Sir Arthur Harris was evidently in agreement with the policy advocated. He had no doubt that it was the right policy, operationally, and that it was free from ethical and legal objections. In his book, "Bomber Offensive" (pp. 176-7), he deals with the complaint that "bombing is specially wicked because it causes casualties among civilians". That, he says, happens in all wars. Our blockade in the First World War caused nearly 800,000 deaths, and artillery on land had killed its thousands in every war. He even uses the argument that in the old sieges every living being used to be put to the sword in a city that refused to surrender.

"International Law", he says, can always be argued pro and contra, but in this matter of the use of aircraft in war there is, it so happens, no international law at all³.

Spaight finally states: "One cannot escape the conclusion that much of the bombing in Germany in the last two years of the war came perilously close to indiscriminate bombing"

¹ See the work cited, page 37.

² Sir Arthur Harris "Bomber Offensive", London 1947; Liddell Hart "The Revolution in Warfare", London 1946; Lord Tedder "Air Power in War", London 1948.

³ "The Atomic Problem", pages 16 and 17.

The least that can be said after these remarks is that target-area bombing must have particularly good reasons to justify it for its partisans to persist in its defence. As we have seen, Spaight finds such justification in the indubitable military value of this type of bombardment.

But there seem to be a great many reasons to doubt its value after reading the work of Mr. P. M. S. Blackett, "The Military and Political Consequences of Atomic Energy"¹, in which the author analyses with care the practice and the results of bombardments during the Second World War. In the Introduction to this work he states in particular—

Owing to the lively controversy of the years since the first world war as to the relative merits of different methods of using air power, the Allied bombing offensive in the second world war has been far more scientifically documented than most other aspects of the war. Published documents and reports are available from which it is possible to assess with a considerable accuracy the part which long range bombing played in the final defeat of Germany and Japan.

It is a significant fact that the excellent and comprehensive reports of the bombing of Germany and Japan, published by the United States Bombing Survey have had only a limited circulation in America and have neither been reprinted in England nor attracted press attention. This lack of notice, especially in England, is certainly connected with the contents of the reports, which prove the surprising ineffectiveness, as judged by their impact on German moral and industrial production, of the bombing attacks on German cities which constitute such an important part of the British war effort².

Further on we also read—

The results of this bombing offensive, as analysed by the American strategic bombing survey, are summarized in appendix I. The remarkable and unexpected result was the discovery that German total war production continued to increase till the summer of 1944 in spite of the very heavy bombing... The rapid fall of all that production which started in August 1944 (when the Anglo-American armies were already in Paris, and the Russian armies had freed the whole of their homeland and were well into Poland), was due not to the destruction of

¹ "The Military and Political Consequences of Atomic Energy", Turnstile Press, London 1948.

² See the work cited, page 3.

factories or the mobilization of the civilian population, but mainly to the success of the air attacks on the German transport system which impeded the flow of coal, food, etc. and to the shortage of oil ¹.

And further—

The oil and transport offensive achieved very important military results without inflicting much general destruction ; the area bombing of cities gave very small general useful results and inflicted enormous general destruction on Germany. The former offensives demanded precision attacks ; and, as has clearly been shown, these became only possible at a late stage of the war, when the Allies possessed a large degree of air superiority and had advanced bases near the German frontier, to enable radar navigational methods to be more effectively employed and fighter escorts to extend their range farther into enemy country. On the other hand, the area bombing, which was originally adopted just because of the inability to do precision bombing, did little to help win the war and greatly increased our difficulties afterwards ².

Further—

In spite of the great developments of air power, it is clear that Germany's defeat in the second world war, as in the first, was brought about primarily by her huge losses in man-power and material incurred in the land battles, particularly on the Eastern front. A clear indication of this is seen from the figures of the German casualties up to November 1944 in the various theatres of war...³

We see therefore that Blackett's views on the efficacy of strategic bombing, based on careful analysis, are entirely opposed to those of Spaight quoted above. But, if the efficacy of target-area bombing is questionable, how can this bombing still be justified? In quoting an extract from the United States Bombing Survey—

From the appointment early in 1942 of Sir Arthur Harris as Chief of the Bomber Command, the picture changed ; for he regarded area bombing not as a temporary expedient but as the most promising

¹ See the work cited, pages 19-20.

² See the work cited, page 26.

³ See the work cited, page 26.

method of aerial attack. Harris and his staff had a low opinion of economic intelligence and were sceptical of "target systems". They had a strong belief in Germany's powers of industrial recuperation and doubted that her larger potential should be significantly lowered by bombing. At the same time, they had a strong faith in the moral effects of bombing and thought that Germany's will to fight could be strangled by the destruction of German cities ¹.

Blackett makes the following comments—

The analysis of the results of the bombing offensive which are quoted in appendix I show that Harris was correct in assuming that Germany's power of industrial recuperation was likely to be great, but was wrong in supposing that her will to fight would be broken by the destruction of her cities ².

In short, the idea behind target-area bombing appears to be the idea of attacks for the essential purpose, not of destroying the enemy's military potential, but of undermining the morale of the population. Is not this an approach to what had been termed "terror-bombing"? In giving his opinion states for the ICRC in 1930 (which at the present day still retains its full value) the American expert Royse stated—

The right of general devastation for political or psychological ends, on the other hand, was not officially claimed by any of the belligerents in the late war. Demoralization of the enemy by means of widespread bombardment was, however, accepted by the military services as part of the functions of the bombardment groups, but technical equipment during the (1914-18) World War had not advanced to the point where sufficient destruction could be carried out by aircraft ³.

The idea of "terror-bombing" for undermining the morale of the enemy is therefore not new. It reveals itself as a measure to which the authorities in war, often under the pressure of public opinion, are inclined to resort.

¹ See the work cited, page 18.

² See the work cited, pages 18-19.

³ "La protection des populations contre les bombardements", page 100.

V

This brief summary of laws and conceptions concerning bombardment from the air has only one object, we repeat—namely to reveal more clearly in what respects certain elements of the new Geneva Conventions (the provisions for the protection of hospitals and the references to the institution of military objectives) point in our opinion to a definite limitation of aerial warfare, and aerial bombardments in particular.

We can now define our attitude in two respects—

(1) We have quoted the Articles of these Conventions for the prohibiting of attacks upon military or civilian hospitals. Here is a further affirmation of the principle of the 1929 Geneva Convention which demands respect and protection of military hospitals, or the principle set forth in Article 27 of the Hague Regulations which prescribed that in sieges and bombardments belligerents should in particular spare, as far as possible, hospitals and places where the sick and wounded are collected. But, in our opinion, the affirmation draws particular strength from the actual terms employed (“hospitals may in no circumstances be attacked”), and especially from the fact that the principle is reaffirmed with a full knowledge of circumstances, that is to say, after taking into account the development of aerial warfare at the present stage.

The said principle, whether in its present form or as set forth in the 1929 text, appears to us fundamentally incompatible with the notion of target-area bombing. Most cities of any size, especially those in Europe, contain civilian hospitals as well as buildings and plant which in the case of war may be considered as military objectives. In order to reach the latter, and to spare the hospitals, a discrimination in the choice of targets is required, whereas target-area bombing is essentially an indiscriminating bombardment of the area in point.

The objection may be raised that there is often no practical difference between the effects of bombing a specific military objective and those of target-area bombing. This may be the case; but the two things are entirely distinct. In the bombing

of military objectives bombs which fall beside the mark do so as the result of involuntary error which is inevitable, but which modern technical methods seem to be reducing, and should endeavour to reduce¹. In target-area bombing, the bombs which fall beside the mark in the area concerned, and perhaps in consequence on civilian hospitals, do so, not as the result of an error of marksmanship, but are intentional. Moreover the location of a military objective is not a subjective element of appreciation on the assailant's part, as would be the case when fixing the limits of the target area.

Our feeling as to the incompatibility of target-area bombing with the principle affirmed by the Articles of the Geneva Conventions relative to hospitals is again confirmed by the final provisions of these Articles.

These provisions recommend that States should, as far as possible, place hospitals at a distance from military objectives on account of the dangers to which they are liable to be exposed in attacks against such objectives. There is therefore no question of removing them from the areas or regions where the objectives may be situated: they are merely to be distant from these objectives. The provision concerning civilian hospitals even makes reference to dangers to which hospitals may be exposed by being close to military objectives, an expression which clearly implies their more or less immediate vicinity. Thus a hospital at an adequate distance from a military objective, but nevertheless fairly near to an area containing industrial establishments (which may be considered as military objectives in a war) would be in entire conformity with the recommendation.

While it is true that the Geneva Conventions do not define the conception of a military objective, it may be said that the authors of the Conventions intended to give the expression the

¹ In the work mentioned Blackett points out (page 25) that the accuracy of bombing in Germany and especially night-bombing, during the years 1943 and 1944, gradually improved thanks to technical reasons, in particular: development of navigation methods (radio, radar, etc.), improvement in bomb-sights, better technical training, adjustment in methods of ground-lighting by flares and, after the liberation of France, the setting-up of radio-guidance stations.

exact sense in which it is generally understood, and in which we have used it in these pages—namely a point whose limits have been precisely and objectively determined in view of its actual or possible military nature, and not as a more or less extensive area subjectively estimated by the assailant. The purpose of the occasional references to this conception (as in the case of the hospitals or safety zones above-mentioned) was to provide additional protection for the persons referred to in the Conventions. The conception should not therefore be understood in a sense which would make such protection inadequate or even fallacious.

On the other hand, it might be contended that the recommendation to place hospitals at a distance is liable to weaken the principle of the respect due to every hospital. Not at all. In the first place the contention concerns a recommendation which, however useful it may be, is not an obligation¹. It is also attenuated by the words "as far as possible". In every city certain hospitals, or at least first-aid centres, must of necessity be maintained within the area itself, in the interest of both the patients and of those caring for them, whether the cities are of an industrial or a residential character.

In brief, by whatever name it may be covered, the destruction of a marked hospital during an air raid owing to the lack of precaution (for it could hardly be imagined that it could be deliberate) appears to be fundamentally contrary to the standards of the Geneva Conventions; and all the more so, if the hospital is at an adequate distance from any military objective, even if, in order to fulfil its purpose more efficiently, it is situated in the centre of the town. Take for example a city, where the hospital is situated at 600 metres distance from a bridge across a river, which circumstances during a conflict may cause to become a military objective. A bombardment, which for the more effective destruction of the bridge extended over an area so wide as to allow of projectiles hitting the hospital would

¹ The authors of the provision concerned purposely avoided giving it an imperative character, in order not to entail the displacement outside the towns of hospitals at present within the areas. See Final Record of the Conference, II-A, pages 632 and 818/819.

obviously be contrary not only to the spirit, but also to the letter of the Fourth Convention.

(2) It naturally follows that the principle of hospitals not being the object of attack is even less compatible with the type of bombing which, under the name of target-area bombing or any other extension of the idea of military objectives, is in reality only terror-bombing. The latter is the very type of indiscriminate bombing, which can cause direct harm to just those persons for whom the Geneva Conventions require protection and respect in all circumstances; and that provision is valid for all attacks to which they may be subjected, including those from the air.

It is true that the Conventions demand respect and protection in favour of certain categories of civilian or military persons only, and not for the whole of the population. With regard to bombing intended to harm the population itself, the Hague Rules of 1923 above-mentioned, or the Monaco Draft of 1934 were more explicit. The Hague Rules stipulated in Article 22: "Any air bombardment for the purpose of terrorizing the civil population or destroying or damaging private property without military character or injuring non-combatants is forbidden".

In the same manner the Monaco Draft provided that "The civil population shall be left out of any form of hostilities" (Chap. IV, Art. 1, par. 1) and further on "The civil population is in no case a military objective" (Chap. IV, Art. 4, par. 2).

Though such prohibition is not explicitly stated in the new Geneva Conventions, it is permissible to affirm that it is in entire conformity with their spirit. Further, it may logically be deduced from Article 3 concerning civil war, which is common to all the Conventions. In particular this article prohibits inhuman treatment, violence to life and personal dignity of "persons taking no active part in hostilities". It therefore also concerns the civilian population in so far as the latter commit no hostile acts. As the Contracting Parties have recognised the principle of the inviolability of peaceful populations in the event of civil war, in which case they have merely

shouldered minimum and essential duties, there is all the more reason to consider that they admit this principle for cases where they are bound by far more extensive commitments, that is to say in conflicts of an international nature.

We believe we have thus shown that the Geneva Conventions by no means disregard aerial warfare, and contain passages which clearly show that they do not accept such warfare, and bombing from the air in particular, being carried out without regard to the conception of military objectives *stricto sensu* and the respect to which peaceful populations are entitled. But, as we have already pointed out, their main object is not the protection of war victims or the population in general against the effects of the air arm, so that the prohibitions they contain in this respect are on that account set forth with less precision than in other fields, and also with less force than they should be, or might be desired under present-day conditions to be.

VI

This gives rise to another inevitable question. Is it not necessary, has not the time come, to proclaim forcibly and without ambiguity in a formal international act the prohibitions above referred to? In short, is it not time to endeavour to attach regulations and limits to aerial warfare, particularly as regards bombing from the air, in order to replace the clauses of 1907, which are today so generally unknown?

In the previous pages we recalled the suggestion made in 1949 to the American Society of International Law to revise the laws of war, including those for aerial warfare. This proposal nevertheless met with violent opposition from such an eminent jurist as Professor Fenwick who stated in particular in his objections—

Our distinguished military guest here did not tell us whether we are to continue to bomb cities from altitudes which make it perfectly impossible to distinguish between combatants and noncombatants.¹

¹ "Proceedings of the American Society of International Law" 1949, page 109.

Dr. Kulski, who also participated in the discussion, added—

One should make the distinction between such rules of warfare which cannot be observed in any total war... and other rules of warfare which one may reasonably expect to be observed even in a total war, because they do not contradict the nature of a total war... such as those concerning the treatment of prisoners of war or hostages.

... For instance, there is no hope of enforcing during a total war any rules which would pretend to prevent an indiscriminate aerial bombardment.

... Therefore, any suggestion to regulate the use of mass destruction weapons and to transform a total war into a medieval tournament is not very realistic ¹.

These objections, and those of Dr. Kulski especially, seem characteristic to us of a certain attitude which exists, according to which the laws of war can only be valid where they do not prevent belligerents from conducting military operations by all means they may think proper. This attitude would appear *prima facie* to be sufficiently serious and prevalent for us to endeavour to show that it is unfounded.

In reality the regulations which Dr. Kulski considers to be compatible with total warfare, the regulations we call "humanitarian", also constitute—there can be no mistake on this point—definite limitations on the operations of war. These limitations are not in general an acute problem for belligerents though they may become so in certain circumstances, but they have none the less to continue to be observed.

Take the case of regulations for the protection of prisoners of war quoted by Dr. Kulski. The obligation not to kill an enemy who surrenders, to treat him with the greatest possible humanity, to evacuate him from the combat area, etc., may raise very delicate problems in mobile operations carried out by small detachments, or when troops fall into the adversary's power in great numbers. The combatant may then be tempted to depart from these regulations, and will only be prevented from so doing—for there will be no control from the outside until later—by the respect he has personally acquired for these regulations, even in the most difficult circumstances.

¹ See the work cited above, pages 124, 125.

The case of hostages, to which Dr. Kulski also referred, is still more conclusive. The taking and killing of a great number of hostages, for the purpose of terrorization, has been one of the means employed by certain belligerents for occupying enemy territory with the smallest possible number of troops. The taking of hostages being henceforth prohibited by the Geneva Conventions, the Occupant will be obliged, for efficient occupation of the territory, to employ a greater number of troops who might be of greater utility to him on other fronts. The new prohibition will therefore constitute a definite obstruction to his plans.

Nevertheless, even as limitations to warfare and the so-called total warfare in particular, these humanitarian regulations are unanimously accepted for two main reasons. Firstly they correspond to the highest aspirations of civilized mankind's conscience at the present time. They have received "social sanction", the notion to which particular prominence was given by the jurist Royse who stated in his opinion for the ICRC mentioned above—

The difficulty or uncertainty of anticipatory regulations, however, can hardly condemn all regulation. Some restrictive force runs continuously through all time, in spite of changes in means and methods of warfare. This is the force of social sanction, a force made up of the *mores* of a period and crystallized into a world opinion. Social sanction defines and limits violence and remains the only provision for enforcing observance of the minimum standards of a society or civilization...

In conclusion it may be repeated that nations will employ an effective weapon to its utmost extent, checked only by social sanction as manifested in the accepted minimum standards of the time ¹.

Secondly, these regulations are accepted because the military utility of the practices they prohibit—which at a certain moment can be very great—has shown itself in the course of time to be of doubtful issue, equally onerous for the victor and the vanquished and especially opposed to the maintenance of human civilization. The English military expert Liddell Hart in his recent work "The Revolution in Warfare" laid stress on the

¹ "La protection des populations civiles contre les bombardements", pages 114/15.

need for limitations in the conduct of war following the dictates of reason and the desire for mutual security. "For only manners in the deeper sense—of mutual restraint for mutual security—can control the risk that outbursts of temper with political and social issues may lead to mutual destruction in the atomic age".

It will now be seen that the pretension to limit the regulations for the conduct of hostilities to minor issues "compatible with total warfare" will not bear examination, for it takes no account of the vital forces of these regulations. There is presumably no inherent impossibility in these regulations, which show humanity's spontaneous reaction to its own destruction, being extended to the field of aerial warfare.

A mere interdiction of bombing, however desirable it may be, seems nowadays too difficult to be reached. Therefore it is rather a question of finding out definite regulations to fill the present void, and to prevent in war from the air, and bombing from the air in particular, attacks and destruction which are not only repugnant to the world conscience at the present day, but ultimately are seen to be without military utility. Why should terrorization by the taking of hostages appear to be a crime against humanity, and bombing from the air for the same purpose of terrorization, although far more injurious, not be thus considered?

VII

But, some doubt may be voiced as to whether conditions for such regulations really exist. In our opinion they exist, even if dormant rather than manifest.

With regard to the argument as to the ultimate military inutility of certain methods of bombing from the air, which constitutes one of the conditions, we have quoted above at some length from Blackett's findings on the 1939-45 conflict. These findings should be brought to the knowledge not only of military circles, but also of the general public. The Korean conflict is still too recent for definitive conclusions to be drawn; but in

view of the piling up of destruction there, the extent of which has been pointed out by various Press Correspondents, the question may some day be asked whether such destruction was in all cases inevitable for military purposes ¹.

The argument as to this inutility and the need for the limitation as a pledge of mutual security will in our opinion be further strengthened by a new element. The numerous trials which have taken place since 1945 for violations of the laws of war have firmly established the notion of war crimes in international public law, whether the notion is welcome or not. We know that at Nuremburg the prosecution thought it preferable not to include acts of aerial warfare in the charges brought against the accused. This discretion will perhaps not always be observed by belligerents. During the last world conflict the Japanese Government at the time had already gone so far as to enact a law prescribing the death penalty for those responsible for bombing non-military objectives, and in conformity with this law they sentenced several American aviators to death ².

The course of future conflicts might therefore be marked by convictions for violations of the regulations of aerial warfare. But—without considering here other dangers which such forms of procedure might cause to the individual—would not the lack of precision or even (according to some) the lack of regulations on aerial warfare be likely to expose airmen to quite iniquitous or abusive judgments? The interest which the States have in the security of members of their air forces, impels them accordingly to try to avoid judgments of this description by laying down as accurately as possible the regulations, upon which the

¹ In his analysis of the results of the American air offensive entitled "Operation Strangle" ("Tribune de Lausanne", January 1, 1952) the military expert C. Rougeron stated, as a special point, that confidence in a practically exclusive development of the air arm overlooks in fact two coefficients of limitation of its power which are not peculiar to it—the saturation of the objectives and rapid adaptation to the new means of destruction.

² See "Law Reports of Trials of War Criminals" by the United States War Crimes Commission, Volume V, page 3. The Japanese judges were in turn sentenced in 1946 for not having held regular trials of the aviators in question; but no study was made of the principle of the sentence passed by them.

trials of aviators, if any, should be based, i.e. regulations for aerial warfare.

What of the other condition, of still greater importance, that is to say, the "social sanction" referred to by Royse? Has it already sufficient force? This does not appear to be the case. Public opinion, attracted by so many objects, and more particularly concerned with the question of the atomic arm or with peace, has so far only had occasion to give sporadic or occasional proof of its fundamental dislike of certain methods of war from the air.

In Europe, which has so greatly suffered from this type of warfare, there is no doubt of this sentiment. This has been proved in many instances. We will merely refer here to a remark of General Guderian quoted in a French newspaper¹. He says that it is essential to have close strategic collaboration between the air force and land forces, even though war from the air, as we have known it, seems sordid and gives much food for thought. Objectives assigned for long-range bombing should be designated exclusively with regard to military exigencies, while taking into account humanitarian considerations, which have been conspicuously neglected for the last half century.

In the United States feeling of this description cannot draw its substance from the actual experience of devastation caused by bombing. It can however find it in the American people's generous impulse to sympathy with the misfortunes of other nations. We see one aspect of this generous attitude in the appeal of the jurists who have already solicited the setting up of certain regulations for aerial warfare. At the annual meeting of the American Society of International Law in 1949, to which we referred above, Major Downey finished his opening speech by this revealing remark—

The person who first drafts an acceptable code of rules for use in aerial warfare will receive the thanks of the peoples of all nations and he will become the Francis Lieber of the 20th century.

A distinguished jurist, Joseph Kunz, published in the American Journal of International Law in 1951 a particularly

¹ "Le Monde", September 7, 1951.

warm-hearted, well-founded and convincing plea in favour of the revision of the laws of war.

It seems to us that the regulating of war from the air would meet the wishes of the peoples of Asia no less than the peoples of Europe. Proof of this can be found in the declarations of the Delegates of India and Nationalist China to the United Nations Security Council, when the latter was considering the Soviet resolution concerning bombing in Korea¹.

Our conclusion is self-evident. It is this. Similar opinions to those quoted should be made known as soon as possible and with increasing force, and should in short build up the "social sanction" to which we have referred, in order to make it obligatory for Governments to place aerial warfare under a minimum of essential regulations.

We have been informed that in certain areas, and in towns where industry is by no means predominant², plans are already under consideration for evacuating a large proportion of the population to areas far out in the country in the event of a conflict, in order to give them greater safety against bombing from the air³.

Are not these plans premature? If for instance "terror bombing", whether camouflaged or open, is not definitely

¹ "United Nations Bulletin" of October 15, 1950. The (Nationalist) representative for China stated, in particular—

"Some of the modern implements of war, including bombing from the air, undoubtedly had the tendency to encroach upon the principle of humanity and undermine the foundation on which the laws of war had been developed... His Government would therefore welcome any move which honestly aimed at checking that tendency... Some might think that no restriction should be placed upon the activities of its (United Nations) armed forces. Such a view, if ever entertained, should not be countenanced. Even an individual criminal had certain rights as a human being that should be respected."

² In this connection we refer for instance to the plan for the town of Lausanne mentioned in the "Tribune de Genève" of February 7, 1951.

³ We have seen that the Geneva Conventions affirm the notion of safety zones. But the protection offered to the population in these zones is not only due to their being distant from city areas, but rather to their being recognized, and as such respected, by the belligerents concerned. This aspect of the question cannot be too greatly emphasized, for recognition can practically be given only in the event of war; and it is by no means certain that safety zones set up in peace-time will be finally recognised by the belligerents, if hostilities occur.

prohibited, there can be no assurance that these areas will not serve as the best target for the assailant who seeks to undermine the enemy's morale through attacks on the population.

Is it, we ask, appropriate or indeed worthy for men of the XXth Century to coldly contemplate exposing all they most cherish to bombing from the air—their homes and their cities, so varied in aspect and in past history—without making every possible effort to obtain the unanimous agreement of all and sundry for the necessity of confining this devastating scourge within impassable bounds? ¹

* * *

Before concluding this study, we should wish to give forcible expression to a sentiment, which will probably be shared by our readers and which they will excuse us for not having mentioned until now, as we wished to avoid breaking the thread of our study, and in particular to present the theories and opinions upon bombing from the air to which we have alluded, with all necessary objectivity.

There is certainly no branch of warfare which shows, even in the mere study of the means of regulating its course, such a measure of inhumanity in present conflict as that of the air arm. There is no other type of war which gives rise to such an ardent desire for the abolition of great armed conflicts for all eternity. Although our study of the question is not directly related to the realisation of this ideal, it nevertheless proceeds

¹ Major Downey, quoted above, also stated that the three principles laid down by Neville Chamberlain in 1938 could serve as a guide: "The first principle is that it is against international law to bomb civilians as such and to make deliberate attacks on the civilian population. The second principle is that targets which are aimed at from the air must be legitimate military objectives capable of being identified. The third principle is that reasonable care must be exercised in attacking these military objectives so that by carelessness a civilian population in the neighbourhood is not bombed" (p. 108).

from this desire. Other writers ¹ in considering the question in this *Revue* made it definitely clear that regulations for more humane conflicts do not by any means constitute an acceptance of war, but are a first step towards the founding of a lasting peace within the international community. The limits we should like to see applied to a branch of war which at present seems to be limitless, would also aim at facilitating the establishment of peace. This profound belief has guided us throughout our work.

¹ See "L'œuvre de la Croix-Rouge nuit-elle aux efforts tendant à proscrire la guerre?", J. S. Pictet, *Revue internationale de la Croix-Rouge*, March 1951.

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CIVILIAN HOSPITALS AND THEIR PERSONNEL¹

(Continued)

ARTICLE 20. — PERSONNEL OF CIVILIAN HOSPITALS

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognisable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armband which they shall wear on the left arm while carrying out their duties. This armband shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armband, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

¹ See Supplement, February 1954, page 27.

GENERAL AND HISTORICAL

After dealing with hospital establishments, the Convention goes on to regulate the protection of their personnel. To this end it distinguishes between two different categories of hospital personnel—namely, persons regularly and solely engaged in a hospital (to whom the first two paragraphs relate), and personnel temporarily attached to a hospital (to whom the third paragraph relates). The final paragraph is concerned with the list of names of all the hospital personnel.

The Article underwent numerous and considerable changes in the preparatory stages of its drafting, and did not receive its final form until an advanced period of the 1949 Diplomatic Conference. It originated in a provision drafted by the Conference of Government Experts of 1947. The Experts had wondered whether it was necessary to establish a system of protection applying to the whole body of persons engaged in the treatment of civilian wounded and sick, or whether the protection should be limited to the personnel of civilian hospitals alone. The latter alternative was preferred.

In the following year the International Committee of the Red Cross in Article 18 of the draft convention, which it submitted to the XVII International Conference of the Red Cross, proposed provisions closely in accord with the Experts' views. The first paragraph laid down the principle of the protection of the personnel of civilian hospitals and the provision of an identity card for them. The use of the Red Cross emblem was not proposed in their case, as it was in the case of the hospitals. The second paragraph provided for a list of names of the personnel.

The XVII Red Cross Conference approved the marking of civilian hospitals by the Red Cross emblem, but further decided to adopt a new second paragraph in favour of the use of the distinctive emblem by the personnel of civilian hospitals.

The attention of the Diplomatic Conference was concentrated from the outset almost exclusively on the definition of the civilian medical personnel, to be authorised to use the

distinctive emblem ; but the problem gave rise to very marked differences of opinion. There were two opposing attitudes. The wider view was to go beyond the Stockholm text, and extend the use of the protective emblem to the authorities in charge of the Public Health and Hygiene Services, and to representatives of civilian defence organisations.¹ The other view was on the contrary to restrict the use of the emblem recommended in the Stockholm draft.

The International Committee of the Red Cross for its part had also stated its opinion on the subject, which closely affected its interests. In the memorandum "Remarks and Proposals",² which it published on the eve of the Diplomatic Conference for the consideration of Governments invited to the Conference, it felt bound to point out the dangers of too extensive a use of the Red Cross emblem, writing as follows :

" Any widening of the applicability of the red cross emblem will inevitably entail a far greater risk of misuse and violation ; this in turn might compromise the repute attaching to the emblem and undermine its very great significance and good name. Hitherto, the use of the emblem has been confined to a clearly defined category of persons who are subject to military discipline. Even in these circumstances, the prevention of misuse has met with no small difficulties. If, therefore, the use of the emblem is extended to ill-defined categories of civilians, scattered over the country, who are not subject to discipline, proper registration or strict supervision, the combating of abuse would become impracticable, and the consequences would be borne by those who are legally entitled to the protection of the emblem.

Members of the army medical personnel were authorized to wear the emblem solely because they belong to the category of military personnel, that is to say, those who may lawfully be attacked.

The law of nations however rests on the principle that hostilities should be confined to armed forces, and that civil

¹ cf. *Final Record*, II-A, pages 632 and 819.

² See pages 72 and 73.

populations should be generally immune. The whole economy of the new Civilian Convention derives from this acceptance. Since it is illegal to fire upon any civilian, clearly it is inadmissible to fire upon civilians in charge of the sick. Article 13 of the present Convention expressly states, in fact, that the parties to the conflict shall allow medical personnel of all categories to carry out their duties. To seek protection for certain categories of civilians would be an admission, at the outset, that the new Convention would not be respected in the case of other civilians; this would be a confession of poor faith in the new treaty, and would weaken its authority.

No doubt the XVIIth Conference was prevented by want of time from studying all the aspects of the problem and from assessing the full effect of the proposed extension. An exception might perhaps still be made for the use of the emblem by the regular staffs of civilian hospitals, who are a well defined category of persons, duly registered by the State and holding identity documents to this effect. If a protective emblem for all civilian medical personnel is still desired, however, it would be better to examine the possibility of using a special device, entirely distinct from the Red Cross emblem."

It was this prevailing anxiety, on the one hand to avoid a dangerous "inflation" and concomitant depreciation of the value of the distinctive emblem, and on the other hand to establish a reasonable relation between the use of the sign by new categories of persons and the practical possibilities of really effective checking, which finally led the Conference to adopt the solution embodied in the present Article of the Convention, the effect of which is:

- a) to limit the use of the distinctive emblem solely to the personnel of civilian hospitals, i.e. to a clearly defined class of persons, constituting an organised unit, relatively easy to check, and subject to discipline, and
- b) to limit the use of the emblem solely to occupied territories and zones of military operations.

PARAGRAPH I. — THE PERMANENT PERSONNEL

This paragraph relates to the permanent personnel of a civilian hospital, as opposed to the temporary personnel, which is dealt with in the third paragraph.¹

I. *Status and Functions*

To have the benefit of the special protection of Article 20, the personnel must be regularly and solely engaged in the operation and administration of a civilian hospital, as defined in Article 18 of the Convention.

The term "regularly" excludes all occasional personnel, attached to the hospital only temporarily, and consequently not forming an integral part of it.

The term "solely" implies the permanent character of the engagement, i.e. the attachment of the personnel to the hospital to the exclusion of any other occupation.

The two qualifications of "regular" and "sole" engagement are cumulative stipulations. A surgeon for example, working regularly in a hospital but not exclusively because some of his time is given to his private practice, or again laboratory workers or voluntary aids, who work only part of the day at the hospital or are there only for a day or two in the week, would not fulfil the exclusive conditions of the paragraph, or consequently come under its protection.²

The close connection which the Convention establishes between the personnel and the hospital is also a primary factor applicable to the case.

The enumeration of the functions of the personnel of the hospital furnishes some further details. The personnel covered by the paragraph consists of personnel "engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting

¹ See below, page 100.

² See *Final Record*, II-A, pages 705-706 and 819; see also Paragraph 3 below, page 100.

of and caring for wounded and sick civilians, the infirm and maternity cases". This wording, embodying as it does a general idea ("operation and administration"), followed by five particular specifications, is limiting in character. But that does not mean that the personnel must be engaged solely on a single one of these functions. They can be given a number of these functions, provided they exclude occupations not figuring in the list.

It is clear from the text of the paragraph that it covers the personnel, not only when they are in the hospital itself, but also when they are sent out on some duty outside the building. If for example, after there has been bombing from the air, the Management of a hospital sends out relief parties consisting of its personnel to the bombed area, in order to collect and care for the wounded and bring them in to the hospital, such personnel will be covered by Article 20, even when engaged on the work described outside the hospital.

If the outside activities of the personnel of a hospital are subject to certain restrictions, their internal activities (i.e. their work inside the hospital) are subject to no such limitations. Thus the protection extends, not only to the personnel directly in contact with the patients in the hospital, especially the doctors and nurses, but also to all the personnel necessary for the operation and administration of the hospital, including persons working in the laboratories or X-ray services, dispensary, supply department, kitchens, cleaners service and the like.¹ The idea at the base of this rule is that a hospital is a complete organised whole, the mechanism of which cannot work effectively, unless all its parts are operating normally. Individuals, who do not belong to the medical staff properly so-called, are nevertheless an integral part of the hospital, since without their collaboration it cannot render the services which are expected of it.² For this category too therefore the stipulation with regard to regular and exclusive employment in the hospital is applicable.

¹ See *Final Record*, II-A, page 819.

² See *Commentary*, pages 219-220.

There are numerous hospitals with auxiliary undertakings such as farms for the production of milk or kitchen-gardens for the supply of vegetables. What is the legal status of the personnel employed on these undertakings? Can they be regarded as "persons engaged in the operation and administration of civilian hospitals"? In our opinion they can not. There is none of the close connection, which the Convention requires, between such personnel and the hospital patients, as there is between the latter and the medical and administrative staff. The medical and administrative staff generally live under the same roof as the patients, and perform functions there which are of vital importance in the treatment of the latter, so that they constitute a community with them united by a common bond. It is accordingly desirable on this point to interpret Article 20 in a restrictive sense, and to admit that the expressions "operation" and "administration" refer only to the hospitals themselves, and not to auxiliary undertakings. Consequently the personnel of auxiliary undertakings attached to civilian hospitals are not covered by Article 20, and do *not* enjoy the special protection symbolized by the Red Cross sign.

2. *Respect and Protection*

The permanent personnel of a civilian hospital must be "respected and protected". It is the classic wording, which has been in use since 1906 in the First Geneva Convention. We have met it already in Article 18 in connection with the protection of civilian hospitals. Its force and carefully graded significance have already been pointed out in the commentary on Article 18.

To benefit by the immunity, the personnel of a hospital must of course abstain from taking any part, even indirectly, in any hostile action. We have already seen in connection with Article 19 that the protection due to civilian hospitals would cease, if they were used to commit "acts harmful to the enemy". It is obvious that this provision is also applicable to hospital personnels.

The fact of a hospital personnel enjoying special protection is not to be interpreted *a contrario* i.e. as meaning that civilian medical personnel not attached to a hospital are deprived of protection. Such persons are an element of the population, and enjoy as such the general immunity accorded to the latter. Moreover their humanitarian tasks single them out as specially worthy of respect. If Article 20 only provides explicitly for the protection of hospital personnel, that is (as we have seen) because of the use of the distinctive emblem, as regulated in the following paragraph.

PARAGRAPH 2. — IDENTIFICATION OF PERMANENT PERSONNEL

Having defined the permanent personnel of civilian hospitals, specifying their functions and proclaiming their inviolability, the Convention proceeds to enumerate measures for their practical protection.

I. *The Identity Card*

In proof of its right to immunity and legitimate use of the armlet bearing the protective emblem (which, it is proposed, should constitute the second means of identification) the personnel of a civilian hospital is to be recognised by an identity card.

The identity card is to attest the holder's status by giving at the least his name, first names and date of birth, with the specification of the hospital to which he is attached, and a statement as to whether he belongs to the medical staff properly so called or to the administrative personnel. It may well go further, and specify the holder's professional qualifications, e.g. as doctor, surgeon, nurse, chemist, secretary, cook etc.

Another essential element of identification is the photograph of the holder, which has to be attached to the card.

On the other hand the use of finger-prints, as contemplated by the Stockholm Conference, was rejected by the Diplomatic Conference for reasons of convenience.¹

¹ See *Final Record*, II-A, pages 633 and 705.

Another condition imposed by the Convention is for the affixing of a stamp by the responsible authority. It is the stamp which gives the card its authentic quality. It was thought necessary to specify that the stamp should be "embossed" by pressing, experience having shown that rubber ("pad") stamps can be obliterated, and are relatively easy to imitate.

Who is to be the "responsible authority"? The Conference purposely refrained from saying. The system had to be given all requisite flexibility. It is for each State as a matter of its internal competence to determine by national legislation who the competent authority is. What is important is that the use of the card should be regulated by the State with a full sense of its responsibility.

2. *The Armlet*

The permanent personnel of civilian hospitals is to be recognised by an armlet which "shall bear the emblem provided for in Article 38 of the Geneva Convention of August 12, 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field". The emblem in question is the red cross on a white field.

We have already pointed out¹ the importance of this change in the previous legal position, in that it extends to an entirely new category of persons the benefits of an emblem hitherto reserved exclusively for the medical personnel of armed forces. It thus supplements Article 18, which by its provision for the marking of civilian hospitals by the red cross had already taken a first step in this direction.

A. *Characteristics of the Armlet.* — The distinctive emblem being the red cross on a white field, it is not theoretically essential that the armlet itself should be white.

It appears however eminently desirable for a hospital personnel to bear a white armlet with a red cross in accordance with a practice which has become general in the case of military

¹ See above, page 90.

medical personnel.¹ It is only such an armband with its contrast of colours, which will be clearly visible.

The Convention provides that the armband is to be "water-resistant". This provision, the purpose of which is to preserve the condition of the armband, should be regarded as in the nature of a recommendation. Obviously, the protective character of a non-waterproof armband could hardly be contested!

As in the case of the red cross emblem in general, the form and size of the armband have not been fixed. A rigid definition would be liable to open the door to dangerous abuses: what is there to prevent attacks on persons protected by the armband being "justified" on the ground that the armbands are not of the prescribed proportions?

As in the case of the provision with regard to military medical personnel, it is laid down that the armband is to be worn on the left arm,² it being desirable that it should have a specified place, so that it is known where to look for it. But here again it would be wrong of a belligerent to attempt to deny protection to a medical unit wearing for some plausible reason his armband on his right arm.

B. *Issue of armbands — The Stamp.* — The Convention lays down that it is the "State" which has to issue the armbands. This provision was intended to reflect the importance which the Conference attached to the point.³ The competence, and with it the responsibility, of the State being thus settled, it rests with the national legislatures to determine the manner in which they intend to exercise their competence and act on their responsibility.

As the armbands will not be able to be worn except in occupied territory or in zones of military operations,⁴ it seems essential

¹ See *Commentary*, pages 310-311.

² The corresponding Article of the First Convention goes further, and stipulates that the armband should be "affixed" to the left arm, so as to prevent its being removed and placed anywhere. The argument is less cogent in the case of civilian hospital personnel, and especially temporary personnel, who need to be in a position to remove the armband when not performing hospital functions. See below, page 102.

³ See *Final Record*, II-B, page 396.

⁴ See below, page 99.

that the States should delegate their powers for the issue of the armllets. A tract of country may today be transformed into a zone of military operations in a manner wholly unforeseen, rendering the distribution of armllets particularly urgent. It is important therefore that the armllets should always and everywhere be at the disposal of the hospital personnel; and that does not seem possible except by an extensive decentralisation of the system of distribution. No doubt the hospital Managements will serve in the first instance as agents.

Decentralisation on these lines in the issue of armllets is hardly, it is true, calculated to lessen the risks of abuse; but it appears to be necessary, if the system embodied in the Conventions is to be put rapidly into operation. The hospital Managements must be conscious of their responsibility, and must exercise rigorous and continuous control of their personnel.

But the most important thing of all is to make sure of correct assignment of the armllet. It must not be worn by anyone except those who are entitled to wear it under the Convention.

Nor is the armllet in itself sufficient. As has already been said, nothing is easier than to make an armllet, and put it on. Even if worn with good reason in a relief action for wounded persons, the wearer may be liable to penalties. The belligerents must have effective safeguards against abuse.

The armllet will not therefore be valid, and will not be entitled to be worn, unless it has been stamped and issued by the State. This is an obligatory and absolute condition. Issue alone is not enough. It must be accompanied by an official mark. The Convention does not say who is the authority entitled to stamp the armllets. It will probably be whoever issues them.

C. *Conditions for the wearing of the Armllet.* — The wearing of the armllet, as also the carriage of the identity card, is only proposed in occupied territories and zones of military operations.

An "occupied territory" must be understood to mean an enemy territory, on which one of the belligerents has been able to repel his adversary, and to establish his authority. The

occupation may cover either the whole of the territory of a country or only a part of it.

“Zones of military operations” must be taken to mean primarily the scene of the combats. But the expression applies also to the regions, in which there are movements of troops, without active combats.

The possible extension of bombing from the air (which is obviously a military operation) might point to the interpretation of zones of military operations as covering the entire territory of the belligerent concerned. But such a wide interpretation would not be in accordance with the idea underlying this provision. The armlet with its distinctive emblem in small dimensions is not recognisable except at short distances, and not at all from the air. It would thus be without any practical value for the purposes of war from the air. Accordingly the fact of being bombed from the air is not in itself a sufficient reason for making a territory a “zone of military operations” within the meaning of the present provision. On the contrary, contact with the land forces of the enemy must have been established, or at least be imminent; and it is only then that the wearing of the armlet is justified, and can exercise effective protection, enabling the wearer to circulate freely without being arrested by the invader etc. In that respect the armlet differs from the emblems on civilian hospitals, which (as we have seen) are mainly intended to preserve such buildings from the effects of war from the air.

In addition to this territorial restriction, the Convention imposes a second condition: the armlet may not be worn by the permanent hospital personnel except “while carrying out their duties”. This means that members of the personnel in question are not entitled to wear the armlet when on leave (e.g. on holidays), or when they have an evening out, but only when they are actually working in the hospital, or are engaged on one of the special missions to which paragraph 1 relates.¹

The basis of this restriction in the wearing of the armlet is the idea that there should be a close connection between

¹ For the exact meaning of the words “while carrying out their duties” see also below, page 103.

the distinctive emblem and the functions it is intended to protect. It is not for themselves that the hospital personnel have special protection, but because of the essentially humanitarian work that they do for the wounded and sick. The restriction is moreover calculated to diminish the risks of abuse, since the wearing of the armband out of service hours is difficult, if not impossible, to control.

The restriction (it may be repeated) relates only to the armband, and not to the identity card: the latter may always be carried by the members of the hospital personnel, even when on leave.

PARAGRAPH 3. — THE TEMPORARY PERSONNEL

I. *Status and functions*

Whereas the characteristic of the permanent personnel is exclusive attachment to a hospital, we now come to a special category of hospital personnel, whose attachment to the hospital is not exclusive but partial. The Convention speaks of "other personnel", meaning by that the whole body of persons working in a hospital without being regularly and solely attached to it. This category accordingly includes such individuals as surgeons who (apart from their private practice) come regularly to operate at the hospital, nursing aids who come on two afternoons a week to make themselves useful to the hospital, and the night watchman who has other work of his own in the day. The characteristic common to all these persons is that they are not engaged exclusively at the hospital, and for that reason are not covered by paragraph 1, even when working at the hospital. It was in order to give greater flexibility to this strictly limited interpretation of the personal applicability of paragraph 1 that paragraph 3 was inserted with its omission of any reference to "regular" and "sole" employment.

It is a *sine qua non* for this category of personnel, as for the permanent personnel, that it should belong to the organised and hierarchic unit which we call a hospital. Medical personnel who are not attached, even temporarily, to a hospital are not,

as we have shown,¹ covered by Article 20. Here again the decisive criterion is the attachment to a hospital. Consequently the temporary personnel must be in a position of subjection to the Management of the hospital. The latter must be in a position to give orders of an administrative character to temporary personnel when at work in the hospital.

It would not seem to follow from the fact of paragraph 3 repeating the wording "engaged in the operation and administration of... hospitals" of paragraph 1 *without* the enumeration of the four specified duties that the protection covers only personnel on duty inside the hospital. The enumeration of the four specified duties merely develops and defines the meaning of the words "administration and operation of the hospital", and is tacitly assumed to apply equally to paragraph 3. The only criterion which the Diplomatic Conference wished to set up between the two categories of personnel was the connection between the hospital and its personnel, and not the nature of the personnel's duties.² It is thus immaterial in the application of paragraph 3 whether the temporary personnel is working in the hospital itself or is engaged on one of the duties specified in paragraph 1, viz. search for, removal, and transporting of and caring for wounded and sick civilians, the infirm and maternity cases outside the hospital. In either case the temporary personnel will be protected.

2. *Respect and Protection*

Temporary personnel are to be respected and protected on the same footing as permanent personnel.³ The fact of their devoting themselves to hospital work raises them to the same rank as the permanent personnel, and renders them equally worthy of special protection.

Such immunity will not however be accorded them except for the period during which they are employed at the hospital :

¹ See above, page 92.

² See *Final Record*, II-B, pages 395-397.

³ See above, page 95.

it will cease when they revert to their regular profession, but will be revived if they again do hospital work.

In short it is obvious that strict abstention from any participation, direct or indirect, in hostile actions is imperative in the case of temporary personnel just as it is in the case of permanent personnel.

3. *Identification*

Having laid down the principle of respect and protection, the Convention goes on to determine the practical measures for its application, keeping closely to the system provided in the case of the permanent personnel. It is proposed, following the order of Article 20, to discuss first the armlet and then the identity card.

I. The Armlet

A. *The conditions for the use of the armlet.* — The temporary personnel are to be entitled to wear the armlet “as provided in and under the conditions prescribed in this Article, while they are employed on such duties”.

What does this phrase mean? It means in the first place that the armlet can only be worn in occupied territory and in zones of military operations.¹ Temporary personnel cannot have more rights than permanent personnel.

It also means that the armlets of temporary personnel will be the same as those of permanent personnel—that is to say, they are to be issued and stamped by the State, to be water-resistant, and to show the emblem of the red cross on a white ground. They are to be worn on the left arm.²

It is then laid down that the armlet may not be worn except during the performance of one or other of the duties enumerated in paragraph 1. This restriction recalls the similar limitation in the preceding paragraph to the effect that the armlet is not to be worn by the permanent personnel except “while

¹ For the meaning of these terms see above, page 99.

² For further details on the subject of these particulars see above, page 97.

carrying out their duties".¹ The meaning of this restriction is readily comprehensible: temporary personnel cannot reasonably claim to wear the armband except during the performance of hospital duties, i.e. not in the course of other occupations, which may have nothing to do with the care of sick and wounded. But it is more difficult to establish a definite distinction between the restriction imposed on permanent personnel and that which is imposed on temporary personnel.

B. *The differences between the wearing of the armband by permanent personnel and temporary personnel.* — The two expressions used by the Convention are not the same: one says "while carrying out their duties", while the other says "while they are employed on such duties". In this particular case it is difficult to see a difference of meaning between the two wordings. This is confirmed by the wording in the French text of the Article,² where the same resemblance is found between the two clauses. The first of the two clauses ("while carrying out their duties") corresponds to the French "pendant qu'il est au service"; the second ("while they are employed on such duties") corresponds to the French "pendant l'exercice de ces fonctions", the former applying to permanent and the latter to temporary personnel.

Grammatically there hardly seems to be any substantial difference between the two clauses. It is not easy therefore to see why any distinction should be made between them.

Reference should be made to the labours of the Diplomatic Conference, in order to ascertain the intentions of the authors of the Article, and to determine—if not its exact meaning—at any rate the considerations by which its drafting was governed.

The Third Committee of the Conference submitted to the Plenary Assembly a text in the following terms:

Persons regularly engaged in the operation and administration of civil hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.

¹ See above, page 100.

² The French and English texts of the Convention are both of course authentic.

In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armband which they shall wear on their left arm while carrying out their duties. This armband shall be issued by the responsible authorities and shall bear the emblem provided for in Article ... of the Geneva Convention of 1949 for the Relief of the Wounded and Sick in Armed Forces in the Field.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.¹

The draft was logical. It allowed the wearing of the armband in the case of *all* personnel, permanent or temporary, in civilian hospitals, while restricting its wear to the time of the personnel being on duty.

In the Plenary Assembly amendments to the Article were proposed, being submitted jointly by a number of different Delegations. The Assembly passed them by a small majority, the effect of which was to give the Article its present form.² The amendments were accompanied by a written statement of reasons, which ran as follows :

In the case of hospital personnel the protection of the Red Cross, etc., emblems is at present extended by Article 18 (now Article 20) to all personnel regularly engaged in hospital duties. This would cover all part-time employees, e.g. persons who devote a few hours a day to work in hospitals but who engage in other activities, such as work in munition factories, during the rest of the day. It is clearly wrong that such persons should wear Red Cross, etc., armbands and receive full protection while engaged in factory work, and it is therefore proposed that the full protection of the Article should be restricted to persons " regularly and solely " engaged in hospital work.

To cover other hospital employees, e.g. part-time workers, it is proposed to add a new paragraph affording them full protection and entitlement to wear the armband while they are actually engaged in hospital work.³

¹ See *Final Record*, II-A, page 851.

² See *Final Record*, II-B, page 397.

³ See *Final Record*, III, page 109.

As will be apparent from the written statement of their attitude, the authors of the amendments were concerned to establish two categories of personnel—on the one hand the permanent personnel with the right to wear the armlet at all times, and on the other hand the temporary personnel to have the protection of the armlet only when actually employed on their duties in a civilian hospital. In the light of the above account the interpretation of the Article is quite satisfactory; and, if there were no other text involved, the intentions of the authors of the Article would be relatively easy to establish. But one of the Delegations, which had proposed the amendments, made observations to the Plenary Assembly, which appear to run counter to the statement of reasons, as follows:

In the Geneva Convention the protection of medical personnel rests on the early conception of Henry Dunant that they are outside the fight; they take no part in the actual fighting, and their position is that of looking after the victims of the battle. In the same way if we are to maintain effective protection for those who look after civilian sick and wounded we must secure that the persons protected are not, in fact, actually fighting in the war against the enemy.

Now it is perfectly possible—may be it did indeed happen—that doctors or other staff of hospitals engaged during part of the day, or even during the full day, in looking after wounded and sick felt their patriotism demanded that in their spare time they should take a more active role in resisting the enemy. If medical personnel in a hospital become involved in that kind of military operation, then the difficulty of protecting them while occupied with their hospital duties will be tremendously increased. Therefore we propose that in the first paragraph of the Article the words “and solely” should be added after “regularly” so that the full-time staff of hospitals shall be precluded from taking part in activities incompatible with their hospital duties.¹

The above observations show that it was clearly intended by the authors of these amendments to prevent members, even permanent members, of the personnel of civilian hospitals from engaging in their leisure time outside the hospital in acts of resistance to the Occupying Power. One does not see how these wishes can be satisfied except by restricting the wearing of the armlet to the time when the personnel in question

¹ See *Final Record*, II-B, pages 395-396.

are engaged on hospital duties, whether inside or outside the hospital.

The Final Record of the Diplomatic Conference does not therefore make it possible to determine with certainty the intentions of the authors of the Article. There remains something of obscurity as to the exact extent of the distinction between the two categories of personnel.¹ It does not however seem impossible in the light of study of the text and origin of the Article to draw conclusions as to its interpretation. Thus it may be said generally that the intention of the Diplomatic Conference in contemplating two categories of personnel was undoubtedly to create a different status for each of them. As a result of the expressions employed the Conference did not succeed in making the difference clear. It is therefore for national legislation to make the distinction. The following are the principles, which in our opinion may contribute to a satisfactory solution of the problem, taking into account the presumptive wish of the authors of the Article, and at the same time not conflicting with the Article's text.

1. *Temporary personnel* may not wear the armlet, except when actually performing hospital duties, either inside the hospital or outside when they are engaged on one of the duties specified in paragraph 1.

2. *Permanent personnel* seem to be entitled to a more liberal use of the armlet. It may therefore be assumed that, where they do not live in the hospital, they are entitled to wear the armlet when going directly from their homes to the hospital and back. On a more extended view it may even be held that the journeys to and fro are covered by the words "while carrying out their duties". That interpretation would appear to be in accordance both with the logic and with the common sense, which should govern the implementation of any legal provision.

¹ It is certain that the distinction made in the First Geneva Convention of 1949 between permanent and temporary medical personnel (see *Commentary*, pages 218 to 224) was not without its influence in inducing the Conference to decide to adopt the same solution in the case of the Civilians Convention. See in this connection *Final Record*, II-B, page 390

II. The Identity Card

Temporary personnel are, like permanent personnel, to carry an identity card proving that they are attached to a civilian hospital and justifying their right to wear the armlet.

Their identity card is to be the same as the identity card of the permanent personnel.

It has therefore to contain the following particulars and markings—status of the holder, his photograph, and the embossed stamp of the authority.¹ It is further laid down that the identity card of the temporary personnel must specify the holder's duties.

PARAGRAPH 4. — LIST OF NAMES OF HOSPITAL PERSONNEL

The Management of each civilian hospital has regularly to keep up-to-date a list of names of all its personnel, permanent and temporary, specifying the duties of each.

This is a necessary form of check. It will enable civilian hospital Managements to guard against abuse of the armlet.

The list has moreover to be held at the disposal of the competent national or occupying authorities on demand, so that the latter can verify at any time whether the armlet is in fact being worn only by those who are entitled to it. The list of names, kept continually up-to-date, is thus seen to be an indispensable means of checking in the hands of those to whom the national legislation in application of the Article has entrusted the task of seeing that there is no abuse of the armlet—a task which is frequently beset with difficulties and heavy responsibilities, but is a necessary corollary of the extension of the red cross emblem to new categories of persons.

¹ For further particulars of the identity card see above, page 96.

PRESS RELEASE

MEETING OF EXPERTS AT THE I.C.R.C.

Geneva, April 6th, 1954.

This morning, April 6, saw the opening at the headquarters of the International Committee of the Red Cross in Geneva and under its auspices of a private meeting of persons well-known for their profound and extensive knowledge of law, military practice or civilian defence. These personalities have been invited by the ICRC to take part in their personal and private capacity in a Commission of Experts, the object of which is to study the legal protection, in time of war, of civilian populations and victims of war in general against the danger of bombardments and the use of blind weapons.

The International Committee has, indeed, for some time now viewed with concern the effect which the development of aerial warfare, and the appearance on the scene of blind weapons, might have on the practical application of the humanitarian Conventions. In April 1950 it had already drawn the attention of Governments to this serious problem.

The prescribed aim of the present meeting is, therefore, to ascertain, by a preliminary study, the restrictive rules, inspired in particular by the essential laws of humanity, which apply or should be applied to aerial bombardments which are liable to affect non-combatants.

The Commission includes American, British, Dutch, Finnish, French, Indian, Italian, Japanese, Norwegian and Jugoslav personalities as well as from the Federal Republic of Germany. The International Committee has also made representations, but so far without success, in order to secure the participation of experts from the German Democratic Republic, Poland and the USSR.

*A MEETING OF EXPERTS
AT THE ICRC HEADQUARTERS*

Geneva, April 3, 1954.

The Commission of Experts which opened on April 6, 1954, at the headquarters of the International Committee of the Red Cross, came to an end on April 13. It will be recalled that the Experts, who were invited in their private and personal capacity, were to be consulted by the ICRC on the question of the legal protection of the civilian population and war victims in general from the dangers of aerial warfare and blind weapons.

The Experts have supplied information and particularly authoritative opinions which will be of great value to the ICRC when pursuing its work in this field. On the conclusion of their deliberations the Experts made the following unanimous declaration :

This Commission of Experts having thoroughly discussed and deliberated upon the problem of the legal protection of populations and war victims from the dangers of aerial warfare and blind weapons, and having considered all the opinions expressed, particularly by the Experts connected with the armed forces,

comes to the conclusion that if the destructive power of the weapons of war remains unlimited, and their use unrestricted, as would be the case with atomic and various nuclear weapons, selective bombing of targets in order to distinguish between combatants and non-combatants or legitimate military targets and protected areas would be virtually impossible.

The Commission is therefore definitely of the opinion that if the population is to be adequately protected the primary condition is the limitation of the destructive power of the weapons of war.

The Commission is of the opinion that it would be failing in its responsibilities to present and future generations if it did

not reaffirm the general principles of humanity accepted in the past by way of laws of war or minimum humanitarian standards which belligerents would be expected to follow in case of hostilities, in order to eliminate unnecessary suffering both to combatants and non-combatants.

URGENT APPEAL

Geneva, April 12, 1954.

The International Committee of the Red Cross at Geneva, greatly alarmed by the news that both medical units and convoys of the Peoples' Army of Viet-Nam, and medical air transports of the Franco-Viet-Nam Forces, would appear to have suffered seriously in the battle of Dien-Bien-Phu, has just addressed an urgent appeal to both belligerents to grant immunity to persons who are placed legitimately under the protection of the Red Cross emblem.

The International Committee requests both sides to take all appropriate steps to allow the wounded who have remained in the front line to be evacuated, and to guarantee that medical establishments, units and means of transport, marked with the Red Cross emblem, will be fully respected. It further suggests that consideration should be given to the possibility of setting up neutralized zones for the accommodation of the wounded and sick as provided by the Geneva Conventions.

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DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

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INTERNATIONAL COMMITTEE OF THE RED CROSS

RECENT ACTIVITIES

Accommodation of Trieste Refugees in Morzine. — An account was given in the January issue of the "Revue" of the arrival in Leysin of about one hundred tubercular refugees from Trieste. Their accommodation in Switzerland was carried out by the International Committee of the Red Cross, with the help of many persons of good-will, and with funds specially allocated for the scheme by the Intergovernmental Committee for European Migrations (ICEM) and the Allied Military Government of Trieste. A question remained, however, which was of the highest importance for the refugees' moral well-being—that of their relatives, also stateless refugees, who had been left in Trieste. For the refugees to know that their families were safe from want, and for the latter to have the possibility of visiting them, was one of the most important factors for the success of their cure.

When the plan was put into action, the transfer of the sick persons' relatives, and their accommodation as near as possible to the Swiss frontier, was envisaged. The International Committee immediately made approaches in this connection to the Italian and French authorities; it chose the village of Morzine (Haute-Savoie) where, after receiving the necessary authority for the refugees' accommodation from the French Government and the Prefect of the Haute-Savoie, all arrangements were made for the refugees to be received, and for them to be housed in two hotels.

In order to organise the transfer of the families (65 persons in all), Miss Rothenbach, the social welfare worker for the refugees under treatment in Leysin, and M. Schwager, appointed by the International Committee to carry out similar duties in

Morzine, proceeded to Trieste. Their work was greatly facilitated by the kind offices of the French, Italian and Swiss consular services, and by the valuable assistance afforded by the Allied Military Government in Trieste, particularly in attending to the refugees' clothing requirements. Before the departure a thorough medical examination of each refugee took place, after which they were all certified to be free from contagious diseases, in particular tuberculosis. They travelled from April 11 to 13. At Domodossola they were given a meal by an Italian Red Cross team. A second medical examination was made on their arrival. Seven tons of luggage, sent by train to Geneva, were carried to Morzine by the International Committee's motor lorries.

The stateless persons' accommodation in the Haute-Savoie also gave rise to numerous problems of a practical order which have been dealt with by the International Committee. For instance the question of work for the refugees, which can only be arranged in so far as it would not be prejudicial to local workers ; also the question of education for the children. French courses for the latter have already been started. The International Committee has also made all necessary approaches for the refugees to be authorised to visit their relatives in Leysin at regular intervals. A first general meeting was arranged on May 9. It should be mentioned here that in taking those practical measures—which have such a great bearing upon the refugees' physical and moral well-being—the International Committee highly appreciated the comprehensive attitude of the French authorities towards its efforts.

Indochina. — From March 9 to April 1, the delegate of the ICRC in Indochina visited six camps for prisoners of war in French hands, in North Viet-Nam.

In Geneva, the International Committee renewed on April 28 its appeal to the belligerents of April 9, of which particulars were given in these pages. The appeal, sent simultaneously to the High Command of the People's Democratic Republic of the Viet-Nam and to the French Commander-in-Chief, read as follows—

Greatly alarmed by news according to which the medical units and convoys of the People's Army of the Viet-Nam and the medical air transports of the Franco-Viet-Nam Armed Forces would both appear to have been attacked in the battle of Dien Bien Phu, the International Committee of the Red Cross in Geneva feels that it is its duty to address an urgent appeal in order that those persons who are placed legitimately under the protection of the Red Cross emblem may be granted full immunity. The International Committee believes that it is necessary to recall that the members of armed forces, who have been put out of action for any reason whatsoever, and especially the sick and the wounded, must be spared and that in implementation of the principle laid down in the Geneva Conventions, hospital establishments and medical convoys clearly marked with the sign of the Red Cross must be respected. To attack them constitutes a grave infringement of the laws of war and each of the parties to the conflict is bound to abstain from taking offensive or defensive action which would have the consequence of endangering, even indirectly or unwittingly, such establishments and convoys. The International Committee of the Red Cross therefore appeals to the belligerents on both sides to take all appropriate steps to allow of the evacuation of the wounded who have remained in the front line and to guarantee the absolute respect of medical establishments, units and means of transport bearing Red Cross emblems of sufficient size to avoid all possible risk of error. It further suggests that consideration be given to the possibility of setting up neutralized zones for the accommodation of the sick and wounded as provided for by the Geneva Conventions.

Iraq. — In order to assist the victims of floods which recently occurred in Iraq, the International Committee of the Red Cross presented the Iraqi Red Crescent Society with two surgical kits for carrying out emergency operations in first-aid posts; 250 blankets were despatched at the same time.

A TRIBUTE TO FLORENCE NIGHTINGALE

A BIRTHDAY MEMENTO: FLORENCE NIGHTINGALE AND THE CRIMEAN WAR (1854-1855)

In March 1954, France and Great Britain went to war with Russia.

Soon afterwards the allied armies landed in Gallipoli, and then in May and June at Varna ; a British medical base was set up in Scutari, a large village situated on the eastern shores of the Bosphorus.

The troops who were quartered in the Dobrudja marshland were however soon decimated by typhus and cholera. In September they re-embarked, in shocking medical conditions, to attack Sebastopol, the great Russian naval base in the Crimea.

A hundred years have passed, therefore, since the tragic events of that period of history, when the courage of men and the cruelty of war reached their highest peak, a period illuminated by the pure image of Florence Nightingale, the British nurse, whose remarkable exploits remain a cherished memory.

Florence Nightingale was born on May 12, 1820, at the Villa Colombaia in Florence. She received a good education, was attracted at an early age by the study of medicine and felt the urge to devote her time to visiting the sick in hospitals. At that early stage she already deplored the fact that doctors were not assisted by better trained and more conscientious nurses.

In 1845, with the parents and sister, Florence Nightingale travelled extensively in Germany, Italy, France, Egypt and Turkey. Everywhere she went, she sought to obtain details of the efforts made in those various countries to look after the

sick poor. She then decided to take a personal study course with the Sisters of Charity in Paris, followed in 1849 by a similar course with the Deaconesses of Kaiserswerth, about whom she published an article in English, in 1850. As her plan for founding an institution for Evangelist Deaconesses in her own country could not be realised, she gave her time, strength and money, on her return to England, to the reorganisation of a home for sick governesses at 90, Harley Street, London.

In October 1854, Florence Nightingale and her group of voluntary nurses—the Band of Angels—who belonged like her to the upper classes of Society, were called upon by the British Government ¹ to look after the wounded and sick in the Scutari hospitals, at the time of the so-called “Scutari disaster” ², the serious nature of which had been brought to public notice by the Press, and the “Times” ³ in particular. At the time the death rate in the hospital centre amounted to 60% of the wounded. Florence Nightingale, the “energetic dreamer”, who rose from her dreams and plunged into action with burning enthusiasm, accomplished there a superhuman task, thanks to her courage, intelligence, willpower and perseverance; thanks also to her high ideal.

Faced with the abominable state of the British medical service, and the negligence which prevailed in the Scutari military hospitals and later at Balaclava ⁴, where she organised the hospital services and herself contracted cholera, Florence Nightingale accomplished the miracle of putting order into what had been a hideous and evil chaos. She had a genius for general planning and an orderly grasp of details; she knew how to set up her services and to stimulate the zeal of authorities; in disaster she was the first to become fully aware of the real situation.

Owing to her natural benevolence, her astonishing capacity for work and her remarkable intuition of the real motives of other persons' conduct or character, only Florence Nightingale

¹ See below Page 192.

² See below Page 195.

³ See below Page 191.

⁴ See below Page 198.

could have successfully unravelled the threads of such an intricate problem in organisation, and continued her course in spite of the many obstacles in her path. She had the thoughtful restraint and good sense of a mind which was governed by reason.

A eye-witness of those admirable and distressing scenes stated that each day brought further complications which were always overcome by the administrative genius of the "head"; each day brought its particular problem to one who had shouldered the burden of an immense responsibility in an unknown field and whose staff, of her own sex, were unaccustomed to the work. When drafts of sick men were brought in, she was often seen to remain on duty for twenty-four hours at a stretch, allotting accommodation, distributing rations, superintending the sisters' work, attending the most distressing operations where her presence could be a help and solace to the patient, or watching for hours by the bedsides of men dying from cholera and typhus. The image of Florence Nightingale, lamp in hand, pacing at night through miles of wards, noting the condition of each patient, and procuring them their most essential needs, will ever remain in the hearts of those who received or who witnessed her charitable efforts, and the tradition of her devoted care will be for ever recorded in history.

Completely exhausted by her vigils and stupendous effort, she fell ill, but insisted on remaining although she was suffering from "Crimea fever"; her sense of duty and great love for the wounded gave her the heroic force to remain at her post, loyally and keenly continuing her work until the campaign ended in 1856. She had succeeded in saving great numbers of lives.

Thus involved in the tragic events of that unhappy period in man's history, Florence Nightingale brought to the suffering men of the British forces not only moral comfort, in its most direct and simplest sense, but also the boon of her humanitarian ideals and stirring example to others.

Although born in wealthy circumstances and of high social rank, and in spite of her parents' opposition, she had the courage to mingle (in the XIXth Century) with nurses in British hospitals and to be concerned with all suffering. Her desire to help

suffering people became the basis of her existence and her essential aim in life. She had a philosophy of charity which was rarely met with in her time. Her humanitarian ideals greatly surpassed the understanding of the majority of her contemporaries. She carried the spirit of charity to all places where men toiled and suffered—in alms-houses and shelters, in prisons and orphanages—wherever charity led her, she gave her services. For Florence Nightingale charity had become a spiritual habit ; by giving herself up to charity, she found in action essential elements of the intense inner life which was necessary to her.

She was humane, even in her imagination ; she was able by her example to encourage the vocation of secular nurses in great numbers whose help in war, as in peace, was soon found to be indispensable. Her charitable action gave remarkable impetus to the feeling of esteem and gratitude of the public for “ nurses ”, who had formerly been regarded with an apparent indifference inconsistent with what reason and common-sense demanded. She thus played a great part in ennobling and promoting their conception of charity.

On account of her leadership in presence and in action throughout her long life, the Red Cross considers Florence Nightingale as the leading figure in the field of relief to the wounded, as one of the propagators of the Red Cross movement and the International Council of Nurses, and as the mother of all voluntary nurses.

When Florence Nightingale returned to her country in August 1856, she was received with countless tokens of gratitude. The sultan sent her a valuable bracelet ; Queen Victoria presented her with a diamond-studded cross and invited her to visit Balmoral. A public subscription was opened on her behalf, the proceeds being handed to her for a charitable object of her choice. Florence Nightingale used the fund of £ 43,400 first for founding the nursing school which bears her name, and is attached to St. Thomas' Hospital in London, secondly for the upkeep of a midwives' school at King's College Hospital. From that time on until the end of her life, this generous friend of the sick gave all her devoted care to those two establishments. Her advice had also a marked influence on the reorganisation of

British ambulances, the setting up of nursing schools according to her system and the formation of Red Cross Societies.

In 1908, on the occasion of her eighty-eighth birthday, Florence Nightingale received the freedom of the City of London.

She passed away in 1910, a legendary figure who had been able to reconcile the harshest realities of history with the greatest compassion.

In 1910, at a few weeks' interval, the deaths occurred of the three persons who were most closely connected with the birth of the great Red Cross movement, and whose thought and action remain engraved in our memory. Florence Nightingale, one of the most prominent among the precursors, the great forerunner of the Red Cross died on August 13, aged 90; Gustave Moynier, the "Architect" of the institution died on August 21 in his 83rd year, and finally Henry Dunant, who conceived the idea, followed them to the grave two months later on October 30, at the age of 82.

Florence Nightingale and Henry Dunant, the nurse and the voluntary worker, had the same mental attitude to the idea of suffering, an attitude which Gustave Moynier embodied, as it were, in the 1864 Convention.

And with the widening of the legal horizon, through the knowledge and development of humanitarian law, there blossomed forth for the first time what could be termed a civilisation of the human being which is undoubtedly one of the finest moments in history.

In the midst of the brutal conflict of primitive instincts, the individual conscience of man was formed, it has been said, and at the same time charity and the notion of human fellowship became manifest.

Florence Nightingale was one of those graceful beings, charitable in heart and in mind, who passed through life leaving a radiant trail.

Let us do homage to her memory.

Louis Demolis

FLORENCE NIGHTINGALE AND HENRY DUNANT

The anniversary which we are celebrating this year is an important one for the cause of humanity, and in particular for the Red Cross.

Although it is doubtful whether the Army Medical Services were any worse during the Crimean war than they had been during earlier wars, the human conscience in 1854 was more sensitive than before to deficiencies and failures to cater for the needs of man, look after his health and respect his personal dignity. Public opinion, enlightened by newspapers, lampoons, pamphlets and publications of every description, paid greater attention than it had done to injustices and failures to provide mutual aid.

At the time the lamentable situation of the sick both in Scutari and in the Crimea was not fully realized in Europe. Little was known, in particular, of the difficulties which Miss Nightingale was encountering in carrying out the task entrusted to her by the British Ministry of War ¹. For how could anyone imagine the way in which she would be constantly obstructed and attacked day after day by the head of the medical services of the British Expeditionary Force, a typical example of the type of doctor who systematically rejects new ideas and bold initiatives, as others were to do later in the time of Semmelweiss and Pasteur.

But Miss Nightingale's fame had spread and reached the ears of Henry Dunant, a young, ardent man, who was concerned about human suffering and took part in the religious movement of the *Réveil*. We must not forget that at that time everything

¹ Mrs. Cecil Woodham-Smith, in her splendid book on Florence Nightingale, quotes the following remark made by Stafford: "The nature of her difficulties is not understood and perhaps never will be" (p. 215). A translation of this work into French has just appeared (Albin, Michel, Paris, 1953).

English was the rage in the town in which he lived : the English language had to be learned, surnames and Christian names were anglicized and books which appeared in London were read. Dunant must certainly have learnt very soon of the prodigies accomplished by Florence Nightingale. Songs about the heroic actions of the " Woman with the Lamp " were being sung in Great Britain and a small book about her and her exploits was actually published and sold throughout the country ; it had an enormous circulation and her fame was such that it is bound to have spread to Geneva. Besides, Miss Nightingale had already stayed in Geneva several years before ; she had come there with her parents and moved in cultured Genevese circles, where she had the opportunity of meeting the economist Sismondi, the botanist de Candolle and other personalities. Dunant must have already heard people speak of her even then.

But when he learned of Miss Nightingale's achievements, he must have experienced the feeling which was to animate him throughout his life, and which Florence Nightingale herself experienced in the highest possible degree, that of our personal responsibility in the presence of suffering. When they spoke of sick and wounded soldiers, they expressed themselves in similar terms and described what they had seen and heard with the same indignation. Florence Nightingale, referring to the Crimean war, wrote in February 1857 in a moment of discouragement : " I have had to see my children dressed in a dirty blanket and an old pair of regimental trousers, and to see them fed on raw salt meat. And nine thousand of my children are lying, from causes which might have been prevented, in their forgotten graves ".¹

The very same tone is used in *A Memory of Solferino*. And in personal notes which the author of that great book wrote at Heiden towards the end of his life, and which have never been published², we find some lines where, after recording the influence his mother had on him, he adds that he should also

¹ Quoted by Mrs. Woodham-Smith in her book on Florence Nightingale, page 278.

² Manuscripts of Henry Dunant, Public and University Library of Geneva.

mention the influence of three ladies of Anglo-Saxon origin for whom he always had the greatest admiration: "Mrs. Beecher Stowe, the admirable author of *Uncle Tom's Cabin*, to whom we owe the abolition of slavery in the United States. Then Miss Florence Nightingale, the devoted heroine of the Crimean war, *the Woman with the Lamp*, as Longfellow called her. Finally Mrs. Elizabeth Fry, the rich quakeress, who devoted her life to improving prison conditions both in England and on the Continent..."

* * *

The connection between Henry Dunant and Florence Nightingale was only an incidental one; both had the same enthusiasm and the same resolute faith which made them live their whole life with one single idea, always imperative, always the same one: to help the suffering and, for that purpose, to build up organizations and introduce new customs.

We should, however, say at once—and the differences between them will then become apparent—that it was above all action in the national field that Florence Nightingale envisaged, while Dunant considered that any solution must be on the international level. "*The Woman with the Lamp*" saw continually before her, like a nightmare, the terrible misery of her country's soldiers in the General Hospitals of Balaclava and Scutari. It was the British soldier she thought of, and the administrative services of her own country. The splendid efforts she made on returning from the hell of war, her untiring approaches to the War Ministry, her requests to Sydney Herbert, the struggles which she maintained to the day of her death and the incessant projects she put forward—all these were aimed at helping the British soldier. A work like this which succeeded in improving the condition of the military wounded and sick beyond all recognition and in establishing the dignity of the nursing profession on a basis of facts, naturally had repercussions beyond the British frontiers.

But in his enthusiasm "*the Man in white*", the visionary, ignored all frontiers. He was not concerned with the soldiers of one nation or of another, but with men whose only common

bond of fellowship was suffering. That was why Florence Nightingale, devoted as she was to the great cause of the victims of war, did not, when she read the *Souvenir de Solferino*, see at first the essential idea contained in the book, the idea which was nascent there—that of the internationalization of the wounded ; or at least, to be more exact, although she approved of the idea of a permanent organization for bringing aid to the wounded in time of war, she did not believe in the possibility of founding an international society for the purpose. This is clear from the letter written at her behest in January 1863 to the person whom Dunant had asked to give her his book, published three months before. Mr. B. Gagnebin, keeper of manuscripts at the Public and University Library of Geneva, has already published the letter in question in this review ¹, but it may be of interest to reproduce it here :

Dear Mademoiselle,

Miss Nightingale has read with attention and great interest the horrible recital of the battle described by Mr. Dunant and considers it all too faithful a picture of reality.

She has no doubts in regard to the object aimed at by Mr. Dunant, but has nevertheless certain objections to raise :

1. A society of the nature described would assume duties which are in fact the responsibility of the Government of each country, and any attempt to absolve Governments of a responsibility which is really theirs, and which they alone are fully able to assess, would give them increased opportunities for undertaking new wars.

2. It is proposed to establish *in time of war* means of action which should *always* exist if they are to be truly effective, and which now, after much care and anxiety on the part of the military authorities, exist in England.

The completest possible system of hospital treatment, including paid and unpaid nursing and nursing by women, which would in case of war constitute the essential basis of a system which appears to be as perfect as possible, has been established here, and no further extension of this system appears necessary.

I am sorry to send you a message which appears bound to damp the ardour of a philanthropist, but I am sure that he will recognize the importance of the objections raised by Miss N... ²

¹ See *Revue internationale*, June 1950, pages 419-429.

² Translated from the original French.

It will be noted that Florence Nightingale did not immediately perceive the essential genius of Dunant's proposal—namely the idea of organizing the relief of the wounded on a basis which was at the same time both permanent and international. History, however, was to show that Henry Dunant was right, as the signature of the first Geneva Convention a year later proved.

Time passed, and Dunant left his native city, without however losing interest in the great cause which he always regarded as his own. Always in advance of the times, he had launched another generous idea at the International Red Cross Conference held in Paris in 1867—that of relief to prisoners of war. He put it forward publicly a second time in London on 6th August 1872 in a lecture to members of the "Association for the Development of Social Sciences" on the subject of the "unification of conditions concerning prisoners of war".

In Dunant's personal notes we find the wording of the summary which was proposed as a preliminary basis for discussion. He calls it a "special draft Convention in favour of prisoners of war". The text reads as follows: "A draft diplomatic Convention, as short as possible and composed of general Articles, will be drawn up on the basis of the Convention relating to Russian prisoners which was signed between England and France during the Crimean war. The draft should, in so far as possible, stipulate a uniform standard of treatment for prisoners of war (officers and other ranks) in all civilized nations. It should place them, in each of the belligerent countries, under the high protection of the diplomatic or consular corps".

The lecture was a very great success; it was discussed in the newspapers and Lord Elcho, who presided, promised his support. The speaker began his discourse with a tribute to Miss Nightingale, saying that all the honour of the Geneva Convention was due to her. He added—forgetting, it seems, the real reasons for his journey—that it was the memory of the work accomplished in Crimea which had inspired him to go to Italy thirteen years before.

This tribute, which is to be found in a pamphlet which Dunant circulated and which he sent to Florence Nightingale, was expressed in the following words:

I would first remark that I was inspired with the idea of this work by the admirable devotion and the immense services rendered by Miss Nightingale to the English army in the Crimea. Her noble spirit, her generous heart, called forth the gratitude of the whole of England; but her lofty mission, in a patriotic point of view, has had results far greater than are generally supposed and surpassing even the imagination of the self-sacrificing heroine herself...

To so many who pay their homage to Miss Nightingale, though a very humble person of a small country, Switzerland, I beg to add my tribute of praise and admiration. As the founder of the Red Cross and the originator of the diplomatic Convention of Geneva, I feel emboldened to pay my homage. To Miss Nightingale I give all the honour of this human Convention. It was her work in the Crimea that inspired me to go to Italy during the war of 1859, to share the horrors of war, to relieve the helplessness of the unfortunate victims of the great struggle of June 24, to soothe the physical and moral distress, and the anguish of so many poor men, who had come from all parts of France and Austria, to fall victims of their duty, far from their native country, and to water the poetic land of Italy with their blood.

These words must have reached the ears of the lady to whom they referred, since Dunant wrote on August 10th from the St. James Hotel, Picadilly, where he was staying, to his brother Pierre in Geneva, saying: "Miss Nightingale has arranged for me to be invited by her brother-in-law, Sir Henry Verney, M.P., to spend 2 or 3 days at Claydon (which is an hour by train from London)." He does not appear to have gone to Claydon and thus missed seeing Florence Nightingale. A few days later, however, on September 4th, she wrote him the following letter from London:

Dear Sir,

May I express my very sincere gratitude to you for having sent me the Lecture which you gave in London at the meeting presided over by Lord Elcho. Permit me to congratulate you at the same time on the success of your noble work—a true work of God and of God's civilization. I am pleased to note your kindness in associating my poor name with the great Work, because it seems to me that this recognizes the way in which all English women, from the very poorest to the very richest, have worked during the last war—under your patronage, we must say, and under that of the Cross—(sic). They have given not only what they could spare, but even what they themselves needed.

You will be kind enough to excuse me for writing only these few poor lines. My niece Emily Verney, the only daughter of Sir Henry Verney, died yesterday. She it was who worked more than any of us here in 1870. She was truly the presiding genius of the Work for the wounded. God has called her back to Him—so lovable, so loving and so loved. The incessant business and the illnesses with which I am overwhelmed prevent me, dear Sir, much to my regret, from doing more than offering you an expression of my profound admiration.

(signed) Florence Nightingale ¹

Henry Dunant was to remain for more than another year in England. He gave lectures at Plymouth and Brighton, and later returned to London where he wrote a new pamphlet on the condition of prisoners. He does not appear to have exchanged any further correspondence with Florence Nightingale, but he continued to feel a veneration for her of which we find traces in the notes he wrote throughout the course of his life and, finally, at Heiden: notes, memories and detailed descriptions which he intended to use as a basis for a history of the Red Cross. He wrote of her, many years after his stay in London, as a "noble woman who has inaugurated a new era, a new spirit of universal charity".

Jean-G. Lossier.

¹ Translation from the original French.

REVUE INTERNATIONALE
DE LA CROIX-ROUGE
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DES SOCIÉTÉS
DE LA CROIX-ROUGE.

SUPPLEMENT

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the need for a systematic approach to data collection and the importance of using reliable sources of information.

3. The third part of the document focuses on the analysis and interpretation of the collected data. It discusses the various statistical and analytical tools used to identify trends, patterns, and relationships within the data.

4. The fourth part of the document discusses the importance of communicating the results of the analysis. It emphasizes the need for clear and concise reporting that effectively conveys the findings and conclusions to the relevant stakeholders.

5. The fifth part of the document discusses the importance of maintaining the integrity and confidentiality of the data. It highlights the need for strict security measures and protocols to protect sensitive information from unauthorized access and disclosure.

6. The sixth part of the document discusses the importance of regular monitoring and evaluation of the data collection and analysis process. It emphasizes the need for continuous improvement and the use of feedback loops to refine the process and ensure its effectiveness.

7. The seventh part of the document discusses the importance of staying up-to-date with the latest developments and best practices in the field of data collection and analysis. It emphasizes the need for ongoing education and professional development to ensure the highest quality of work.

THE NINETIETH ANNIVERSARY OF THE GENEVA CONVENTION

FREDERIC SIORDET

Vice-Président of the International Committee of the Red Cross

THE GENEVA CONVENTION IS NINETY YEARS OLD

In a few weeks' time we shall be able to celebrate the 90th anniversary of the Geneva Convention of 1864. At that age many international treaties have long since fallen into abeyance. The Geneva Convention, on the contrary, has steadily grown and developed. Revised and amplified three times, extended to cover in turn first armed forces at sea, then prisoners of war, and finally civilians, its modest provisions have developed into a veritable arsenal of shields and bucklers protecting us against certain effects of war. For the four Conventions of 1949, with their 430 Articles, are nothing else but a reaffirmation, and the rules of application, of the principle proclaimed in 1864—namely, respect for the human person.

The Red Cross may well feel proud when it contemplates the legal edifice which the old Convention has now become, and the series of other treaties which it has, to a greater or lesser extent, inspired. For the fact that a privately-founded voluntary movement, poor in material means, has induced the Governments of nearly all the States of the world to embody the principle it proclaimed in international law, give that principle effective form, and limit their own sovereignty in a way which would have been inconceivable not long ago, bears witness to remarkable faith and perseverance in the service of a just idea.

But this feeling of pride is tinged with bitterness when one considers the causes which have at intervals led the Red Cross to renew its efforts to draw up humanitarian law. For whereas

the 1864 Convention did in fact represent a victory of the spirit of humanity over a state of affairs which had existed for centuries, its successive revisions and extensions are hardly more than dams or dykes erected to stem the fury of war.

In past centuries war, cruel as it was in its ignorance of written rules, nevertheless respected certain bounds set by its very object and by reason. But hardly had it been legally regulated by the original Geneva Convention and the Hague Conventions, than scientific developments in their application to armaments led to even worse excesses. That is how we have arrived at the veritable paradox represented by the Fourth Geneva Convention of 1949 (relating to the protection of civilians): after having, 85 years earlier, proclaimed the principle that a wounded or sick soldier, being no longer able to fight, should be respected and protected to the same extent as a simple civilian, it was now found necessary to provide that patients in civilian hospitals, women and children must enjoy respect and protection at least on a par with that assured to members of the armed forces!

It will be seen, therefore, that although the Geneva Conventions undeniably represent legal progress, they nevertheless point, at each stage in their development, to the progressive degradation of civilization.

Ours is the age of a lightning development of the field of science, the creation of man's mind. But whereas the mind of man was able, for thousands of years, to keep his discoveries under control, to give them the form desired and decide on their use in accordance with his moral beliefs, we now note the contrary phenomenon: it is the use to which scientific creations are put, and their effects, which are forming the mind and determining man's moral outlook. That man is becoming to an ever increasing degree a slave of the machine is today a truism—a self-evident fact which is more atrociously true in war than in any other domain. We are in the presence here of a slipping of mind and conscience which, if nothing stops it, will lead straight to the end of all civilization. Formerly war had a definite objective. The warrior, armed with sword or spear, or even with the first cannons, knew at whom he was striking; if

he missed, no harm was done. But with the increase in the range of fire-arms, and later in the power of explosives, the character of battles altered. From that time forward the most carefully aimed shots might carry beyond their objective and hit harmless people. Lamentable accidents occurred; to begin with they were in fact regarded as deplorable, but their repetition, instead of impelling men to find a means of eliminating them, gradually led to their being considered inevitable, as something inherent in a state of war. The "inevitable" came to be regarded as something authorized, and then as something lawful and legitimate. If an infantry officer orders his men to kill the women and children in a village into which he penetrates, he is regarded as a war criminal, even in his own country. But if he is transferred to the air force and orders his squadron to drop bombs on that same village and raze it to the ground, no one, even on the side of the enemy, will think twice about the matter. "That is war", they feel, "What else can be expected with present-day weapons?"

This mental trend did not stop there, however. Such accidents, after being in the first place accepted as inevitable, were referred to as a "military necessity" and finally came to be used deliberately as a means of combat. It is not necessary to harp on this point; there have been all too many recent examples. But there have also been all too many new discoveries—all too many cynically realistic speeches—which make one fear that the above trend may be accentuated until the means becomes an end. Then war, changing its character completely, will no longer be aimed at making the enemy State see reason, but at wiping it purely and simply from the face of the earth by exterminating its inhabitants.

The very basis on which the Red Cross was established is thus assailed. The Red Cross proclaims that there should be "no unnecessary suffering!" But modern warfare, with its blind weapons, takes unnecessary suffering for granted, when it does not aim deliberately at producing it as a means of waging war. One may well wonder whether the human person, although still respected in theory, will count at all in a future war except by a reason of its capacity for suffering.

It will be thought that such remarks are too pessimistic and little suited to the celebration of the anniversary of a glorious event ! But this is not pessimism ; or if it is, Dunant himself was a pessimist when he observed that there would always be war and that the States were engaged—even then—in an armament race. It was because he believed that something could be done that Dunant stigmatized the mental outlook of his time. And it was because he saw battles as they really were that he was able to conceive of and build up his instrument for saving life. Similarly, it is because we believe that all is not yet lost that we must consider facts and ideas as they really are today. A man who wishes to achieve his object does not set out blindly. He explores the terrain ; and if he takes time to study or envisage the obstacles he may meet, it is in order that he may more readily assemble the means of overcoming them.

Besides, since we are speaking of the Geneva Conventions, real pessimism would only be justified if they had completely failed to achieve their object. And that is not the case. It is true that the Red Cross has not yet won the day in its struggle against war. War has up to now been the stronger. But the Red Cross has at least rescued millions of war victims, and the Conventions have limited the damage done. To convince ourselves of this we need only compare, for example, the fate of prisoners of war in countries where the 1929 Convention was legally in force with that of prisoners to whom this legal protection was refused.

Man is small and insignificant compared with the great forces of nature. Yet one has seen how men, by uniting their efforts, have actually been able to hold back the seas. Why should not the same thing be true in face of great human catastrophes, in face of war ? We, for our part, believe that here also men can save, re-erect and rebuild. Everyone must unite in a constant effort to perfect the weak protective barriers which the Conventions represent, reinforce them, and ensure that they are ratified and respected. And at the same time, while enjoying the shelter provided by these barriers which limit the extent of the disaster, let us go right to the source of the latter and endeavour to divert the encroaching tide, or in other

words, turn civilization from the fatal course it is allowing itself to pursue.

There are many means of achieving this—religions, moral codes, a sane policy, and, finally, the arguments of plain good sense, not to speak of the instinct of self-preservation which the menace of military science may in the end arouse. The choice of these various means is open to each of us ; and they are not mutually exclusive. But there is one which is peculiar to the Red Cross, whatever the religion, the philosophy, or the policy which incites its adherents to take part in the work of saving lives : it is to be true to the Red Cross itself in one's daily life, to be willing at all times to recognize a replica of oneself in every human being, and never to tire of renewing, time after time, one's charitable actions on behalf of the suffering.

At the beginning of May 1954, a new " Convention for the protection of cultural property in the event of armed conflict " was signed at the Hague. A passage in the preamble to this Convention expresses the conviction that damage to cultural property, whatever the nation to which it belongs, constitutes damage to the cultural heritage of the whole of mankind, inasmuch as each nation makes its contribution to world culture.

We share that conviction. And we think that what is true of things is still truer of men. Just as humanity as a whole is made poorer by the destruction of a cathedral or a museum, so all men, however far removed from the fighting, are diminished in their stature as men by war crimes. Conversely, just as the whole world is made richer by a single work of art, so also the noble action of one man gives everyone a sense of being better.

What richer contribution could be made to world culture today, in the XXth century, than a mental and spiritual revival? For that is the only means still available to men to turn civilization back from the suicidal course on which it has embarked.

(MISS) SHIO HAYASHI

*Chief of Nursing Section, Japanese Red Cross Society
President of Japan Nurses' Association*

*THE INFLUENCE
OF MISS FLORENCE NIGHTINGALE
ON THE NURSING PROGRAMS IN JAPAN*

It is next to impossible to trace the exact date when the story of the "Angel at Crimea", Florence Nightingale, was first introduced to Japan, but, judging from the fact that a story entitled "Miss Nightingale and a Puppy" is found in a state-textbook for morals used in primary schools about the middle of the Meiji Era (1868-1911), it can safely be said that the story was introduced to this country about that time. The story about a dog owned by an old shepherd, hit by a stone thrown by a naughty boy, got hurt at his knee and left alone in pain and a pretty girl, Florence, who was kind enough to take care of the poor dog was taught to the Japanese boys and girls through this textbook, affected a great influence on their pure hearts and did much in fostering their philanthropic minds. The life of this pretty girl, Florence, who became a nurse, volunteered to serve at front line when Crimean War took place, devoted herself in giving nursing care to many officers and soldiers at the Scutari Field Hospital struggling with many kinds of difficulties and who, when the Crimean War ended in a victory for the allied forces, was given a great appreciation and gratitude by the whole people of England, gave a strong influence on Japanese people in the Meiji Era when nurses' social position was so low and the nursing programs were not in favorable condition.

The fact that a lady of a British noble family became a nurse and took care of sick and wounded officers and soldiers helped very much to raise the standard of nursing in Japan.

During the three hundred years under the Tokugawa Shogunate regime preceding the Meiji Era, the feudalism was firmly rooted and the habit of predominance of man over woman deeply founded in the society of this country thus making women servants who always stay at home to serve men. All the women working outside were persons of low birth. Women of good parentage never worked outside at all ; consequently, no progress was made in nursing, a calling of women.

When the civil war took place at the beginning of the Meiji Era (1868), and many officers and soldiers of the Government forces were wounded and accommodated at the medical stations, the servicemen were rough-tempered and members of the army medical teams failed in giving proper medical treatment to them, so there arose the opinion to use women for taking care of these servicemen. Thus women to engage in nursing were recruited. As I have mentioned above, in those days, women working outside were less educated and most of them were called "Abazure" (Jades) and, moreover, the sick and wounded servicemen of the Government forces were rumoured to be rough-tempered, so the women who applied for the job were most shameless women of the community. However, nursing was indeed the calling of women. These women did a wonderful job in nursing the servicemen and the servicemen became very gentle and willing to receive medical treatment, which naturally brought a very good result. Among those women there were some who were unexpectedly good-natured and gradually they became interested in studying nursing. These women were the first nurses in Japan. Such being the case, those women who became nurses at first were of low birth, so nursing was considered a mean job, though there had been a proverb in this country saying "Nursing should come first and then medicine". Thus the general public of this country did not have good impression on this job of nursing. To our regret, the above mentioned fact had been hindering a great deal the development and progress of nursing as a profession in this country. The introduction of the story of Florence Nightingale who was born in a noble family and yet

applied for a nursing job to go to the front line and render service for the sick and wounded servicemen changed the misled notion of nursing profession completely.

Since about the beginning of the Meiji Era (1868-1911), Western civilization, coming into this country, gave a grave influence on many phases of Japanese life, and the feudalism had been gradually broken down until at last the light of modern society began to beam on this country. The Western medical science introduced to Japan, the methods of nursing were changed and, consequently, there arose the need for well-educated nurses. The nurses up until that time had not been well qualified.

When the rebellion in the South-Western provinces broke out in the 10th year of Meiji (1877), an association was founded under the name of the Hakuaisha (Benevolence Society) with the purpose of caring for the sick and wounded at the seat of hostilities and in the 19th year of Meiji (1886) when the Government of Japan acceded to the Geneva Convention, the name of this association was changed to "The Japanese Red Cross Society"; and one of the first programs taken up by the Society was the training of nurses.

It is true that the origin of the Red Cross is based on the benevolent mind of Henry Dunant who happened to be on the scene of one of the most savage battles of history—the battle of Solferino, but what encouraged him very much then was the sublime acts of devotion done by Miss Nightingale at the Crimean War. This was just the same with the origin of nurse training of the Japanese Red Cross Society. We cannot tell the origin of our nurse training without thinking of the strong influence of Miss Nightingale. It was in the 23rd year of Meiji (1890) that the Japanese Red Cross Society started its nurse training program, and, in the previous year, the regulations and rules of the Nightingale Nurse Training School in the St. Thomas Hospital in London were carefully studied and many of them were adopted. The purpose of nurse training was primarily to train nurses with Miss Nightingale's benevolence and Henry Dunant's humanity in their hearts. The Japanese Red Cross needed excellent nurses in order to carry on its

valuable mission of taking care of sick and wounded servicemen without discrimination of nationalities and races. An excellent nurse means a nurse who stands on philanthropy and humanity like Miss Nightingale and Henry Dunant.

The Red Cross Hospital which was located only in Tokyo at that time was completely equipped with things necessary for the purpose of nurse training, and this was the only one hospital in Japan which was organized just for this purpose. According to the regulations of this nurse training school, students allowed to enter the school should be, at the lowest, of middle class, of good conduct and should be equal to or surpass primary school graduates in scholarly attainments. (In those days primary school education required six years in Japan.) As for the age, they should be between twenty and thirty years of age and the emphasis was specially put on their good character.

These qualifications for the applicants of our Red Cross Nurse Training School and those of the Nightingale Nursing School seem very much alike especially in point of the age. This is very interesting when we think of what Miss Nightingale said about the age. She said that the students to enter her Nursing School should be more than (about) twenty-five, in view of the fact that nurses cannot give good nursing care to patients unless they were mature as women.

The number of student nurses allowed to enter the school were only eight at first, but they were very strictly chosen. The first six months following the entrance to the school were the probation period. The educational policy of the school was so strict and the class works and practical exercises were so difficult that it gave to the general public the impression that it was not easy to become a Red Cross nurse. This was very good, for it helped very much get the credit of Red Cross nurses, and, not only that, it changed not the whole but some of the misled attitude of the general public of despising nurses and the job of nursing. In those days there were three nurse training schools in Japan and the standard of qualifications for entrance and that of training of these schools were lower than that of Red Cross Nurse Training School. The student nurses were trained

three years in the latter, while one or two years in the former.

The Sino-Japanese War (1894-1895) broke out, severe battles were fought in China Proper, and a great many sick and wounded officers and soldiers were sent back to the Army Hospital in Hiroshima. In the Army Hospital the number of members of Army Medical Team was not enough to care for so many hospitalized patients and, consequently, the treatment was not effective.

At this moment Mr. Tadanori Ishiguro, Commander of Army Medical Teams in Front (later, President of the Japanese Red Cross Society), suggested to despatch Relief Teams composed of Red Cross nurses to the Army Hospital. But the army authorities refused this suggestion on the ground that they did not think it proper to despatch relief teams of nurses, women of low birth and mean character, to the Army Hospital and let them take care of the honourable sick and wounded servicemen, for, if there should arise the rumour on the corruption of morals among the soldiers of the Great Empire of Japan, it would bring disgrace on them.

Commander Ishiguro strongly opposed this opinion insisting that the corruption of morals would never arise among patients and nurses, if only the nurses were well trained as Red Cross nurses. He earnestly requested the army authorities to give, at this critical moment of the nation's history, Red Cross nurses the opportunity to serve for their country. At last the army authorities sanctioned the request and eight nurses were elected to compose a relief team and they were despatched to the Hiroshima Army Hospital. These eight nurses, struggling with many difficulties, did their very best in caring for sick and wounded servicemen for about two years until the end of the war. Meanwhile, there never arose such problem as feared at first and, not only that, they worked so faithfully that the efficiency of treatment was better than expected and the general public started to praise nurses gradually.

People who know the distinguished service given by Miss Nightingale at the time of the Crimean War called them Misses Nightingales in Japan and they also made a song on

Red Cross nurses calling them beautiful flowers of civilization. As the time went on, the number of nurses despatched as the members of relief teams increased. The lamp of love raised high up by Miss Nightingale at Crimea gave the same light of love by the hand of Japanese nurses here in Japan after forty years.

After the end of the Sino-Japanese War, the Japanese Red Cross Society, recognizing the necessity of training many nurses for the purpose of social welfare, continued to make strenuous efforts in nurse training and established Red Cross Hospital in every Prefecture to train nurses. The regulations set up by the nurse training school in Red Cross Hospital in Tokyo have been strictly observed even in these Red Cross Hospitals in local places, thus maintaining the highest standard of nursing education in this country.

Unfortunately, in 1904, the Russo-Japanese War broke out, which was so much bigger in its scale than the Sino-Japanese War as to decide the fate of this nation, and, accordingly, the number of the sick and wounded servicemen was greater than before. Therefore, this time, the army authorities made a request to the Japanese Red Cross Society for the despatch of Red Cross medical relief teams and the general public expected and believed in the work of Red Cross nurses. As the Japanese Red Cross Society had trained a great many nurses utilizing the experiences it had in the Sino-Japanese War, it could organize and despatch many medical relief teams to the Field Hospitals, Hospital-ships, Army Hospitals in Japan proper, etc.

When this war was over, the whole people of Japan, to say nothing of the sick and wounded servicemen, praised the wonderful work done by these nurses, very much just as it was the case with Miss Nightingale when the Crimean War was over. Thus the reputation and credit of Red Cross nurses became higher than after the end of the Sino-Japanese War.

In other words, what these great praises and reputations meant was how well the general public recognized the necessity and importance of nursing service for both social and individual human life. When we look back the history of nursing, we find the fact that wars have played an important part in developing

nursing programs in all the countries both in the Orient and Occident without exception. However, it would be safer to say that when human lives are exposed to danger or many people have to suffer from difficulties as in the time of war, people really understand how necessary the nursing service is and how valuable it is in such cases than to say that wars have contributed to the development of nursing service. The deeper the understanding of people in the necessity and value of nursing service becomes, the greater the development of this program be made.

Miss Nightingale, Mother of nursing service, not only raised the lamp of humanity at the time of the Crimean War but also she put on the first light in the dark age of nursing. The Japanese Red Cross nurses trained in the spirit of Miss Nightingale did really contribute a great deal for the development of nursing service and the enlightenment of the general public of this country.

After the end of the Russo-Japanese War, a great improvement was brought on the medical treatment in Japan owing to the development in medical science and the progress of society; and hospitals were established in many places in this country and nurses were trained to work in these hospitals. These excellent hospitals throughout the country invited Red Cross nurses to ask them to train nurses and give guidances in nursing, so the spirit of Miss Nightingale has been living in every corner of nursing programs in this country through our Red Cross nurses.

Through the World War I and II Japan has made progress in some fields and took a backward step in another, but so far as the nursing service is concerned, it has been making remarkable progress.

The Japanese Red Cross Society has been keeping its nursing education at the highest standard and trying to raise the standard of nursing in this country. In Japan the spirit and the achievement of Miss Nightingale have been highly estimated and she is respected and adored by most Japanese.

Japanese Red Cross nursing service based on the humanism of Miss Nightingale has been understood and appreciated by

the general public and it is generally believed that the standard of Japanese Red Cross nursing service is the goal for those who start to learn nursing and those who are engaged in nursing education. In other words, the Japanese Red Cross Society has been playing the part of a pioneer in nursing service in Japan.

In 1932 the Japanese Red Cross Society raised the standard of minimum entrance qualification for the nursing school in order to raise the standard of nursing education of Red Cross. Until that time eight years schooling had been required to enter the school but they changed it to eleven years schooling. The period of education in the school is still three years. After the end of the World War II, in 1948, a law on nurses was enacted in Japan. This was the first time in Japanese history that a law on nurses was enacted. The standard established by this law is almost the same with what was made by the Japanese Red Cross Society in 1932. Thus the standard made by the Japanese Red Cross Society which had the sixty-year-old history in nursing became that of nursing throughout this country.

The part the Japanese Red Cross Society has played in the development of nursing in Japan in its seventy-five-year-old history should be especially remembered. It really contributed very much to the welfare of society of this country. It goes without saying that what made the Japanese Red Cross Society do such a valuable contribution to this country is no doubt the spirit of philanthropy of Miss Nightingale. As it is widely known, Henry Dunant, the founder of the Red Cross, was also greatly influenced by Miss Nightingale.

The reason why Miss Nightingale is so much respected and adored in this country is this that her spirit of philanthropy together with the lamp she raised at Crimea has been guiding the course of nursing programs in this country and the lamp is increasing its light here in Japan devastated after the last war, even after one hundred years to bring the service for humanity into action which is the ideal of nursing profession.

(March, 1954)

REVUE INTERNATIONALE
DE LA CROIX-ROUGE
ET
BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE.

SUPPLEMENT

July 1954

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INTERNATIONAL COMMITTEE OF THE RED CROSS

HENRI COURSIER

Legal Department of the ICRC

THE GENEVA CONVENTION IN INTERNATIONAL LAW

The Geneva Convention of August 22, 1864, occupies a prominent place in international public law, less by reason of its text than by its new outlook and the consequences to which it gave rise.

For the first time in the history of law, a moral idea, namely that of respect being due to man as a human person, inspired an international Convention which was to become universal and which subjected the development of war to certain limitations.

The Convention was destined to inspire and serve as a model for sundry agreements of a general nature, such as the Hague Regulations concerning the laws and customs of war, as well as for the multilateral agreements concluded under the auspices of the League of Nations to oppose various threats of outrages to personal dignity.

Taken as a whole these regulations, which spring from the same moral source, form the part of international law which may be described as humanitarian law.

Humanitarian law thus originated with the Geneva Convention, and did not in fact exist before 1864.

It is true that (during the wars of the XVIIIth Century in particular) numerous cartels were drawn up for the treatment of wounded on the battle-field. It was not unusual at that time for the commanders of armies to conclude agreements by which hospitals, and even whole towns, were excluded from the combat area ; the exchange of prisoners was, moreover, frequent. But these were merely conventions of an occasional nature, limited

in their effect to the duration of specific military operations. In other theatres of war those same enemy States were quite at liberty to refrain from applying such rules, and there was no guarantee that they would be respected in other circumstances. The agreements in question were after all merely bilateral agreements, and of no value for non-signatory Powers, except as examples. Such Powers were free, either to refer to them or not in similar circumstances, but the agreements did not, strictly speaking, constitute rules of war.

It is interesting to note the progress made towards instituting laws of war by the Convention concluded in 1785 between Prussia and the United States (of which the signatories were none other than King Frederick II and Franklin—the illustrious sponsors of an idea which was to bear rich fruit). The treaty formulated mutual pledges in regard to the treatment of the wounded and of prisoners of war, in the event of a conflict between the two countries. It was precisely based on the hypothesis of war. The formulating in advance of rules which were accepted by both sides and were to be automatically applied, constituted a marked improvement on the previous lack of agreement of any description between States for the regulation of possible conflicts. But once again the arrangement was merely bilateral. There was absolutely no obligation on third parties to follow the example set, and although it constituted the established law between the parties concerned, it could not, in view of its limited scope, be considered as a regulation of international law. It lacked the great innovation of universality embodied in the Geneva Convention.

Although the principal theorists on the subject were then of the opinion that international law was simply natural law applied to relations between States (the title which Vattel gave to his work is, in particular, most revealing), the rules of natural law were far from being generally recognised in positive law. Though human rights were not denied, the rights of the ruling authority were always given precedence.

In their anxiety to guard their sovereign rights, States were more particularly concerned with their own interests. The Conventions concluded between them dealt exclusively with

those interests ; and since the decline of pontifical supremacy there was no international organisation to place restrictions on the liberty of Powers. War, *ultima ratio regum*, was considered to be legitimate, and it was not customary for sovereigns (taken up with the settlement of their disputes) to come to an understanding on moral problems concerning individual men and women. That was the domain of philosophy or doctrine, but it had no connection with international law.

The philosophers, roused to indignation by certain practices—such as the African negro slave-trade—sometimes made ironical comments on the situation : “ Some small minds ” wrote Montesquieu, “ exaggerate the wrong done to the Africans ; for, if it is as they say, would it not have occurred to the Princes of Europe, who enter into so many useless agreements, to make a general pact in favour of mercy and pity ? ” ¹

But public opinion was not then strong enough to triumph over the self-interest of Sovereignties.

With regard to slavery, however, the opinion of the general public had some weight when, at the end of the Napoleonic Wars, a first attempt was made to constitute some form of permanent organisation in international life. The Congress of Vienna made a formal Declaration denouncing slavery. Unfortunately the Declaration was confined to a statement of principles, and did not make their application obligatory. The signatory Powers were willing to condemn the slave-trade and slavery; but they did not bind themselves to take the necessary measures for the suppression of the evil. The Declaration of the Congress of Vienna was an eloquent manifesto, but not a Convention of an executory nature. It remained a dead letter for many years, its principles not being put into force until well after 1864.

The Geneva Convention, on the contrary, at once met with moral and general approval.

The sufferings endured by the sick and wounded during the wars of the XIXth Century—which led to far greater bloodshed and horror than those of the previous century—had shown

¹ Translated from the original French.

how great a need existed for practising "mercy and pity". The Crimean conflict revealed, in particular, the inadequacy of the medical services, and public opinion (so powerful in Great Britain) commended the salutary work of Florence Nightingale, who founded a nursing corps worthy of the name and raised the British soldier's standard of existence.

Henry Dunant's gesture on the evening of Solferino, the stirring book he wrote in 1862 to relate the horrors of the combat—40,000 dead or wounded lying on the battle-field while the medical services could only deal with 8,000—the charity of the Piedmontese women who gave aid to friends and enemies without distinction, saying that they were "all brothers", the personal approaches of the promoter of the Red Cross to Sovereigns and to the principal leaders of public opinion, all helped to create a favourable moral climate for the work of the Geneva Committee. In 1863, the latter obtained the approval of a Commission of Experts for the plan of setting up private aid societies in the different countries, qualified to assist army medical services in their work, and to it is due the credit of having, the following year, convened the meeting of the diplomats who established the Geneva Convention.

When the meeting opened, the diplomats in question were not all plenipotentiaries. Only the representatives of Switzerland and France had the necessary powers to sign an international agreement. Had their colleagues from other countries continued to be "observers", no Convention could have resulted from the Geneva Conference. An ingenious solution was however found by inviting them to ask for powers and, until they were forthcoming, by opening the discussion in the meantime on a draft Convention drawn up by the International Committee. By the end of the discussion ten further participants had been invested with signatory powers, which sufficed for the signature of the Convention by the representatives of twelve countries: Baden, Belgium, Denmark, France, Hesse, Italy, the Netherlands, Portugal, Prussia, Spain, Switzerland and Wurtemberg. The Convention was left open for the accession of other Powers, which speedily took place. In less than twenty years the Geneva Convention had been ratified by all the great States.

Before the end of the century it had conquered the whole world.

But what did the Geneva Convention contribute to international law ?

Considered textually, it contributed very little, and there is no doubt that the promoters of the agreement showed great wisdom in confining their ambition to a few very simple and very definite ideas, of such indubitable value that they could fairly easily be accepted, even by the Sovereign States which guarded their autonomy the most jealously.

Morally, however, its contribution was of considerable value. It could be induced from the very simple rule set forth in Article I ; " Ambulances and military hospitals shall be recognised as neutral and, as such, protected and respected by the belligerents as long as they accommodate wounded and sick ", that bounds had at last been set to the unlimited power of war : and the essential principle of Article 6 : " Wounded or sick combatants, to whatever nation they belong, shall be collected and cared for ", gave rise to the notion of the fellowship of all mankind—the forerunner of international mutual aid.

In that dual connection, experience has shown that the effects of the Geneva Convention were much greater than those which the signatories to this international act had, no doubt, anticipated.

Since the publication of the works of Vittoria, the codification of the laws of war had been a subject of constant study by jurists. It had not, however, been the object of any enactment in positive law.

In the same year (1863) that the Geneva Committee convened the meeting of experts whose work preceded the decision of the Governments, President Lincoln, then at grips with the War of Secession, promulgated an important code of rules for the United States armies in the field. This gave a valuable example, especially as the regulations, drawn up by the jurist Lieber, reflected a very humane outlook ; but there was still no question of international regulations ; the code was merely part of the United States domestic legislation.

Nevertheless, the development of the humanitarian ideal, encouraged by the various National Red Cross Societies which

the Conferences of 1863 and 1864 had brought into being, soon led Governments to consider the idea of at last formulating appropriate laws for the humanization of war, in a general form and for all time.

In 1868, a philanthropic Czar convened a diplomatic conference in St. Peterburg to prohibit the use of explosive bullets. Taking as a basic principle that all unnecessary suffering should be eliminated and that a wounded enemy should be cared for when once placed hors de combat, Alexander II suggested that the Powers should prohibit the use of such bullets, wounds inflicted by them being mortal in every case. His idea was immediately followed and the St. Petersburg Convention (November-December, 1868) was the first consequence of the Geneva spirit in international law.

The Emperor of Russia, encouraged by this successful issue, then proposed convening an international conference to codify the laws of war. The conference was held in Brussels in 1874. The inclusion of the Geneva Convention in the codification was naturally envisaged, and some even thought the moment would be propitious for the adaptation of the principles of the Geneva Convention to maritime warfare (an adaptation which had been recommended by a diplomatic conference in 1868). The Brussels Conference was unable to come to an agreement, however ; it failed in its attempt to codify the laws of war.

It was not until the Peace Conferences, held at The Hague in 1899 and 1907, that an international agreement was reached and given expression in the Regulations concerning the Laws and Customs of War annexed to the IVth Hague Convention of October 18, 1907.

The text, which was largely inspired by the Lieber laws, merely refers back to the Geneva Convention so far as the wounded and sick are concerned. Article 21 provides that "The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention." A dividing line is thus drawn between the laws of The Hague and Geneva, whose fields of application are distinct, although they issue from the same humanitarian source.

The initial idea of the Geneva law was to be developed

further in successive international conventions drawn up to take into account either the experience gained during wars, or the trend of ideas and the necessity of granting continually greater protection to war victims.

The Convention of 1864 was first revised in 1906, following the Russo-Japanese War, and again in 1929, after the First World War. In the same year a new Geneva Convention for the treatment of prisoners of war was concluded. In this text an important part of the Hague law was incorporated with the Geneva law (the subject having already been dealt with by the 1907 Regulations). It contained the principles of the Regulations, completed by numerous provisions concerning, in particular, the work of the Red Cross on behalf of prisoners of war. The International Committee of the Red Cross (the initiator of the first Geneva Convention) had greatly contributed to the improvement of conditions for prisoners of war by instituting the Central Prisoners of War Agency, and it was only natural that the result should be sanctioned by a text of an international scope. The Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, did not replace the Hague Regulations which, though less complete, still remained applicable in so far as the Powers which had not so far adhered to the new agreement were concerned. This was the case, in particular, for the USSR and Japan during the Second World War.

The effect of the Geneva Conventions upon the laws of war was not to stop there. Developments in methods of attack and the use of new weapons having exposed the civilian population to the effects of war, combatants were no longer the only victims involved; non-combatants had also to be considered. The provisions of the Hague Regulations which were applicable to the latter did not appear to be adequate for their future protection. It had become urgently necessary to adapt the laws of war to the new situation, especially as the security measures practised by Governments in time of war resulted in greater numbers of civilian internees. That was the object of the Fourth Geneva Convention of August 12, 1949, for the protection of civilian persons in time of war

It will be seen that the Geneva law has encroached very largely on the terrain of the Hague law. Nevertheless, the distinction between the two laws subsists. In 1949, when the question arose in Geneva of introducing provisions dealing with the reduction of armaments, it was decided to refrain from so doing as this question was, in particular, one for a future revision of the Hague Regulations. For questions of lesser political importance, however, the two laws blend without difficulty. Thus Part II of the Fourth Geneva Convention, which deals with the "general protection of populations against certain consequences of war", forms a valuable complement to the provisions of the Hague Regulations which establish rules in regard to occupation. In the same way, the adaptation of the principles of the Geneva Convention to maritime warfare, embodied in the Tenth Hague Convention of October 18, 1907, was revised in Geneva in 1949 and became the Second Geneva Convention of August 12, 1949.

Henceforth the Geneva law is essentially embodied in the four Conventions of the above date—the First relating to the wounded and sick in armed forces in the field, the Second, to the wounded, sick and shipwrecked of armed forces at sea, the Third to prisoners of war and the Fourth to civilians.

The four texts proceed directly from the Convention of 1864; but the St. Petersburg Convention, the Hague Regulations and other international regulations such as the Geneva Protocol of June 17, 1925, for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, may also be said to originate from it; for those documents, like the Geneva Convention, are in the form of multilateral agreements intended to have a universal scope, and are animated by the same humanitarian spirit.

Such is, in broad outline, the contribution of the Geneva Convention to the formulation of the laws of war.

In so far as the laws of Peace have proceeded by way of multilateral conventions, it may also be said that the Geneva Convention has served as an example for the organisation of international society. The new technique was particularly suitable for putting into effect the moral principles which it

was thought desirable to insert when codifying international law.

When, after the First World War, a need was felt (as at the time of the Vienna Congress) for strengthening the bonds between the nations, it was naturally thought that Geneva, the headquarters of the International Committee of the Red Cross, might also become the headquarters of the League of Nations. A new Geneva spirit, favourable to international collaboration, which made no distinction between friends and enemies, and which had for its purpose the alleviation of human suffering, proposed to suppress, by means of international conventions, the evils to which mankind was subject, without losing sight of war in itself.

However ineffectual the work of the League of Nations may have been in regard to the total suppression of war, it cannot but be given credit for its successful campaigns against slavery, traffic in women and children, the use of drugs, obscene literature and other serious outrages upon personal dignity.

As for the Red Cross, whose peace-time activities were formally recognised by Article 25 of the Covenant of the League of Nations, it has fought epidemics with successful results and assisted the victims of natural calamities, in the true spirit of social service which springs from the sentiment of charity and human dignity. The idea of social service, when placed on the international level, is nothing more or less than international aid.

In a recent commentary upon Article 25 of the Declaration of Human Rights, which lays down that everyone has the right to an adequate standard of living, the official organ of UNESCO, "Le Courrier" states "The name of a Swiss, Henry Dunant, is associated with the foundation of the Red Cross Societies. These have played an outstanding part, by providing not merely material services but an example of aid to mankind transcending national frontiers and passions. As such, the Red Cross is a true herald of that universal organisation of mutual assistance which the Declaration of 1948 enjoins." This extract is drawn from an article under the heading "A Short History of Human Rights", a title which fully conforms

to Red Cross traditions, and which will serve to conclude our survey.

The reign of humanity corresponds to the message of the Geneva Convention: the humanization of war, followed by the humanization of peace, is the road which leads to the abolition of war itself. And thus one understands that the Red Cross is in truth animated by the spirit of peace, since to search for the humane is to seek for peace even in war, and is a presage of peace through the triumph of love over hatred.

BALANCE SHEET AS ON

ASSETS

	Sw. Fr.	Sw. Fr.
AVAILABLE AND REALISABLE		
Cash in hand	19,965.72	
Postal Cheque Account	26,316.94	
Balance at Swiss Banks	1,794,285.59	
Foreign currency holdings	11,696,735.49	
Public Securities and other deposits at the Swiss National Bank . .	11,340,805.70	
		24,878,109.44
EARMARKED		
Advances to ICRC Delegations and Delegates abroad	180,582.15	
National Red Cross Societies, Governments and official organisations	97,867.32	
Sundry debtors, advances and repayable costs	304,024.73	
Temporary assets (Costs paid in advance)	89,390.23	
Pharmaceutical and other stocks for relief	22,168.93	
Reserve stocks	244,549.35	
		938,582.71
OTHER ASSETS (nominal)		
Capital shares in "Foundation for the Organisation of Red Cross Trans- ports"	1.—	
Furniture and office equipment	1.—	
		2.—
MEMO-ACCOUNT		
Allocation to ICRC Personnel Provident Fund		1,220,999.34
	Grand total . . .	27,037,693.49
Debtor for security		400,000.—

GENERAL INCOME AND EXPENDITURE

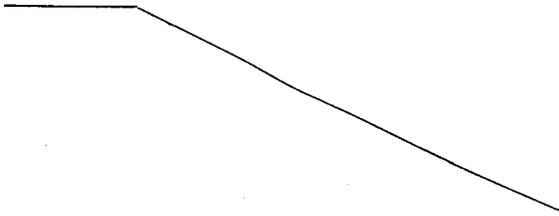
EXPENDITURE

	To 1953	To previous years	Total
	Sw. Fr.	Sw. Fr.	Sw. Fr.
OVERHEAD EXPENSES AT GENEVA HEADQUARTERS			
Salaries and wages	1,957,661.60	—	1,957,661.60
Family and cost of living allowances, insurance and other social charges	621,338.05	428.90	621,766.95
Postage, telegrams, telephone	57,925.62	124.55	58,050.17
Equipment, maintenance and general supplies	109,561.47	1,692.47	111,253.94
Upkeep of cars and lorries	52,079.45	37.45	52,116.90
Reception of visitors and travelling expenses in Switzerland	32,665.60	3,147.50	35,813.10
Sundry Expenditure (allowances for various surveys, audits, revisions, consultations, insurance, etc.)	82,082.40	4,434.50	86,516.90
SPECIAL EXPENSES			
Publications, information	179,102.83	244.35	179,347.18
Allowance for expenses, Members of the Presidential Council	52,216.—	—	52,216.—
Red Cross Conferences and Meetings	26,103.90	—	26,103.90
Missions from Geneva and study courses for foreign visitors	44,741.81	1,282.—	46,023.81
MISSIONS ABROAD			
Salaries and insurance of delegates	150,428.20	—	150,428.20
Travelling and maintenance expenses	145,599.—	—	145,599.—
Overhead expenses	160,845.87	—	160,845.87
<i>Total Expenses</i>	3 672,351.80	11 391.72	3,683,743.52
Transfer to the Reserve for general risks of surplus receipts over expenditure concerning previous years	—	382,472.42	382,472.42
Grand total	3,672,351.80	393,864.14	4,066,215.94

Table II

ACCOUNT AS ON DECEMBER 31, 1953

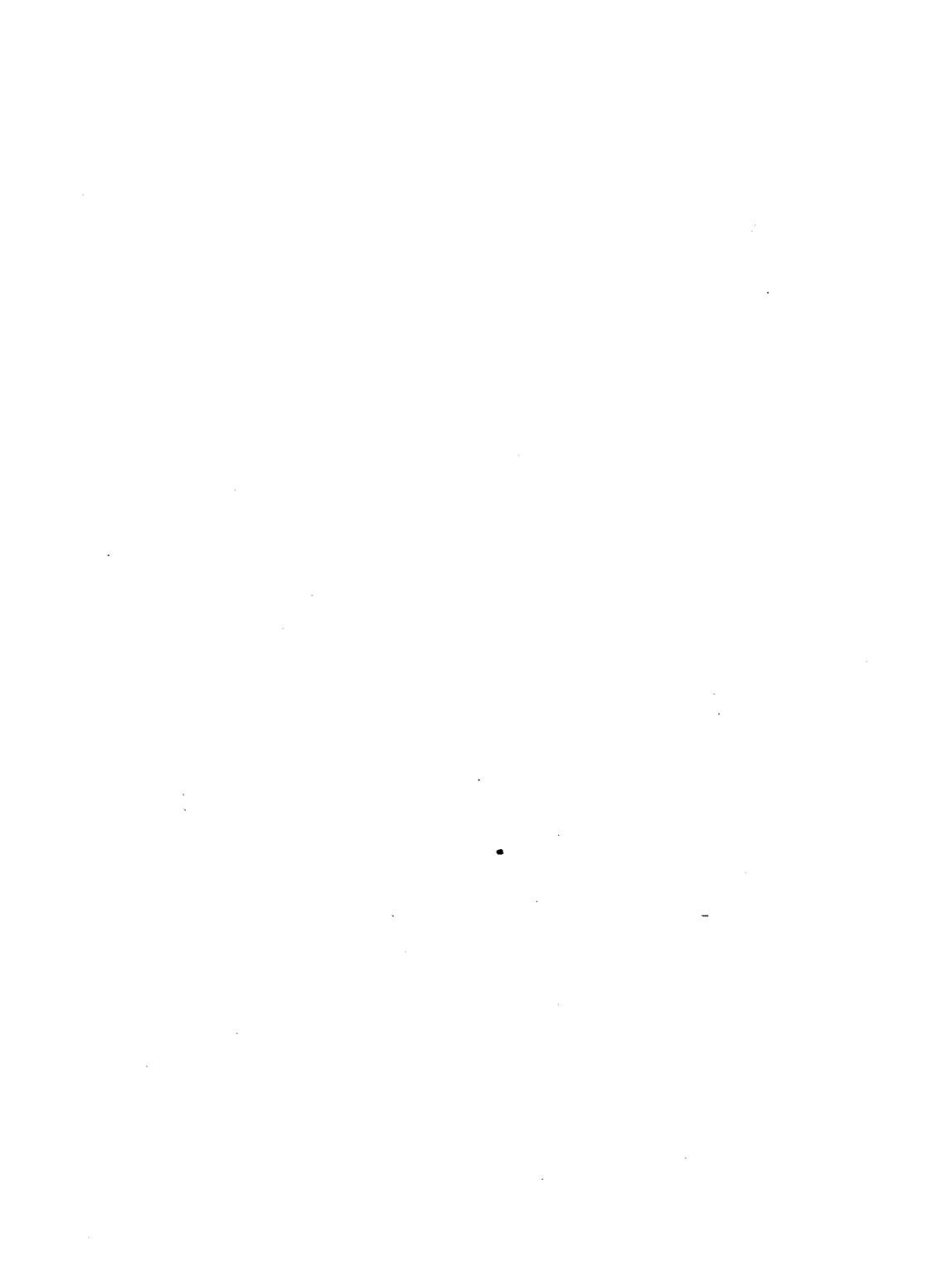
RECEIPTS

	To 1953	To previous years	Total
	Sw. Fr.	Sw. Fr.	Sw. Fr.
CONTRIBUTIONS AND GIFTS TOWARDS FINANCING OF THE GENERAL WORK			
Contributions by National Red Cross Societies	283,083.80	35,008.20	318,092.—
Contributions by Governments	936,259.30	198,978.23	1,135,237.53
Sundry gifts	299,695.08	—	299,695.08
INCOME FROM INVESTMENTS			
Interest from Public Securities and Banks	73,499.96	297.82	73,747.78
ICRC Foundation	28,031.40	—	28,031.40
SUMS RECOVERED AND SUNDRY RECEIPTS			
Sums recovered	395,698.77	49,498.79	455,197.56
Sundry receipts	52,292.67	110,081.10	162,373.77
<i>Total Receipts</i>	2,068,510.98	393,864.14	2,462,375.12
DEFICIT FOR 1953	1,603,840.82	—	1,603,840.82
Written off by withdrawal from reserve for general risks			
			
Grand total	3,672,351.80	393,864.14	4,066,215.94

We certify that the above General Income and Expenditure Account of the International Committee of the Red Cross for 1953 has been drawn up on the basis of the Annual Accounts for 1953, which have been audited by us and found true.

Geneva, March 15, 1954.

SOCIÉTÉ FIDUCIAIRE ROMANDE OFOR S.A.



REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

SUPPLEMENT

August 1954

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Editor: Louis Demolis

INTERNATIONAL COMMITTEE OF THE RED CROSS

RECENT ACTIVITIES.

Nuns of the Congregation of the Holy Cross. — The transferring from Czechoslovakia to Switzerland of a number of nuns of the Congregation of the Holy Cross, which started on April 13, came to an end on June 13 last. This group of nuns (German speaking and of German origin), who wished to return to their parent establishment in Ingenbohl, Switzerland, was transferred by air in the most favourable conditions, at the rate of 40 persons per week.

This action, due to the initiative of the International Committee of the Red Cross, was brought to a successful conclusion thanks to the comprehensive attitude of the Czechoslovak authorities, and the active co-operation of the Czechoslovak Red Cross Society which undertook arrangements for the flights. The International Committee, for its part, made the necessary approaches to the Federal authorities for the nuns' arrival in Switzerland, and its representatives, accompanied by members of the Swiss Red Cross Society, met them at Zurich-Kloten Airport.

Disabled. — During the first six months of the present year, the relief work of the Disablement Section was particularly concerned with the following matters :

The action which was started in the spring of 1953 on behalf of disabled "Volksdeutsche" refugees living in camps in the German Republic, was continued in Lower Saxony by the sending of artificial limbs and orthopaedic boots. A similar action in Austria has enabled "Volksdeutsche" refugees to be provided with artificial limbs.

The Disablement Section also supplied artificial limbs and orthopaedic apparatus to persons under detention in Greece, and artificial limbs to prisoners in Indochina. In addition, 21 parcels of fibre for the manufacture of artificial limbs and

a consignment of dental supplies were sent to the Albanian Red Cross Society. Further, it made a donation of DM. 2,000, through the German Red Cross Society, to the Association of Brain-Wound Sufferers of the German Federal Republic, for the purchase of an encephalograph apparatus. This Society was also supplied with 100 Braille watches for German war-blind.

Indochina. — M. Durand, Delegate of the ICRC in Indochina, recently proceeded to Luang-Prabang (Laos), to be present on the arrival of some 850 seriously wounded from Dien-Bien-Phu, whose repatriation had been arranged, after the fall of the entrenched camp, by direct negotiations between belligerents.

The French authorities having decided, in their turn, to liberate a quota of seriously wounded of the Democratic Viet Nam forces in their hands, M. Durand accompanied the convoy, on June 16 and 17 last, to the place of exchange, situated on the edge of the Red River Delta, to the North East of Hanoi.

In Geneva, the Central Prisoners of War Agency continued to transmit letters, at the request of families of prisoners of war belonging to the French forces held by the Democratic Viet Nam, to the zone under the control of the Ho-Chi-Minh Government.

In addition to letters received from France the Agency has recently been forwarding those sent by the families of German nationals serving in the Foreign Legion who were taken prisoner during the fighting at Dien-Bien-Phu.

Moreover, in order to be equipped more adequately for its work in Indochina, the ICRC decided to reinforce its representation in Viet Nam by sending a second Delegate. M. de Reynier, who had already been entrusted with a mission in that country, was chosen for the purpose and left Geneva on July 3 to take up his new post.

Guatemala. — During the recent conflict in Guatemala, the International Committee was requested to give its traditional services by both the parties concerned. Wishing to fulfil its strictly humanitarian mission on behalf of all victims of the events, the ICRC, on June 21, offered the Guatemalan Red Cross Society its good offices suggesting, in particular, that it should send a delegate from Geneva. The offer was accepted on June 27

and M. P. Jéquier, Deputy-Director of the Central Prisoners of War Agency, was appointed to represent the ICRC in Guatemala.

On June 26 the adverse party made a similar approach to the International Committee, but the truce which occurred soon afterwards made the appointment of a second delegate purposeless.

In the meantime the ICRC had broadcast an appeal to the combatants, which was repeated on several occasions on June 24 and 25. In its appeal the ICRC again renewed the offer of its services and drew attention to Red Cross principles, in particular those which concern the protection of civilian populations and assistance to the wounded.

M. Jéquier left Geneva on July 2 for Mexico, where the Mexican Red Cross, and especially its President, M. A. Quijano, gave him a most cordial reception and valuable facilities for carrying out his mission. All the appeals for assistance received by the ICRC having referred to the shortage of medicaments, M. Jéquier immediately collected a few emergency relief supplies locally, with the help of the funds placed at his disposal by the Committee. On his arrival on the terrain (July 11), the International Committee's Delegate received a cordial welcome from M. Roberto Saravia, President of the Guatemalan Red Cross Society, and the other Members of the Society's Executive Committee.

In conjunction with the above Society and the Guatemalan government authorities, M. Jéquier's duties will mainly consist in ensuring the application of Article 3 of the Geneva Conventions of 1949 which, as is generally known, have been ratified by the Government of Guatemala. The Article in question stipulates the minimum safeguards to which the victims of non-international conflicts are entitled. M. Jéquier will also try to ascertain the actual need which still exists for relief supplies, and the extent to which further consignments may be necessary.

JEAN S. PICTET

Director for General Affairs of the ICRC.

*THE INTERNATIONAL COMMITTEE
OF THE RED CROSS
IN THE NEW GENEVA CONVENTIONS*

I. INTRODUCTION

During the greater part of its existence, the International Committee of the Red Cross (ICRC) had no legal basis in positive international law. There is no reference to it either in the Geneva Conventions of 1864 and 1906 or in the Hague Conventions. Indeed, it only appeared for the first time in codified international law owing to the fact that in the 1927 Convention setting up the International Relief Union, to organize relief—especially in cases of natural calamities—, express provision was made for the support which the ICRC would give to the Union.

It was, however, the 1929 Convention relating to the treatment of prisoners of war which gave the ICRC its first firm bases in law. These are three in number. Firstly, Article 79 recognizes the ICRC's right to propose to the Powers the setting up, on neutral soil, of a Central Information Agency for prisoners of war. Then, Article 87, though this is of secondary importance, provides that a representative of the ICRC may be called upon to take a part in the meetings which may be convened in order to put an end to any disagreements between belligerents in regard to the application of the Convention. The essential reference is, however, that contained in Article 88 which states that the provisions of the Convention "do not constitute any obstacle to the humanitarian work which the ICRC may perform

for the protection of prisoners of war with the consent of the belligerents concerned". A similar reference is to be found in Article 79. The clause in question recognizes what the ICRC commonly calls its right of initiative, though this actual expression does not figure in the text. The ICRC has always attached the greatest importance to the mention of this right which covers everything that it considers possible or advisable to undertake on behalf of prisoners, with the consent of the belligerents, over and above the specific tasks which the Convention entrusts to it and which consist essentially in the setting up of the Agency. The scope of this right of initiative is determined by the statutes of the ICRC and by its traditions.

It was upon this legal basis, which is in the final analysis a very weak one, that the ICRC was able to base the majority of the widespread activities upon which it was engaged during the Second World War. The ICRC has, however, derived force out of this apparent legal weakness. Not being bound by specific terms of reference it was unhampered in its initiatives. It was thus able to intervene with great freedom in cases not expressly foreseen or regulated by the Conventions, going, in its humanitarian proposals, far beyond what the texts prescribed. More than that, its action, being independent of the Conventions, was not contingent upon their entry into force between States. The ICRC was therefore able to bring assistance in situations beyond the scope of the existing legal system—in cases, for instance, where a belligerent was not a party to one or other of the Conventions, or considered them inapplicable, or when the parties to a conflict denied each other sovereign status.

When the ICRC undertook, as from 1945, the preparation of the revised texts of the Geneva Conventions, it endeavoured to reconcile two divergent tendencies: it tried firstly to obtain a firmer legal basis for its work, confirming the development of its activities during the last world war and allowing it to have its principal humanitarian missions recognized very rapidly in the future; and secondly, to maintain all the necessary flexibility in regard to its rôle and the future mandates it might receive, and also to retain its independence and defend its right of initiative. In the course of the drafting of the Conven-

tions, the ICRC actually had to restrain the generosity of the Governments' delegates, in order not to be cited too often or to see itself entrusted with too many specific mandates. Having been closely associated with the work of the Diplomatic Conference and having itself drafted the preliminary texts, the ICRC was able, in some measure, to influence the decisions in the sense which it desired, so that in the majority of cases the present texts appear to it to have attained the ends it set out to achieve.

The ICRC today possesses numerous points of support in the texts of the four new Conventions. No less than sixty Articles—nearly half of which are to be found in the Convention for the protection of civilians—mention the ICRC or the Central Information Agency. These references are not, of course, all of the same importance; a number of them merely cite these two bodies as an example, or refer back to previous Articles. Generally speaking, it is the activities engaged in by the ICRC from 1939 to 1947 which have now been codified. Supervision of the application of the Conventions continues to be the specific responsibility of the Protecting Powers. The fact that the delegates of the ICRC have now been vested with the same prerogatives as the representatives of the Protecting Powers does not, in any wise, modify the meaning of the Articles of a general nature which lay down the respective competencies of the Protecting Powers and of the ICRC; but the latter will in future be in a position to undertake any investigations which its traditional interventions render necessary.

The Geneva Conventions being now applicable, in principle, in neutral countries on whose territory belligerent nationals have been received, the ICRC's action will in future also extend to these regions.

Thus the position of the ICRC is now firmly established in international law, and its rôle on behalf of war victims fully recognized by the community of nations.

Though the ICRC may now find many points of support in the Geneva Conventions, it is not governed by those Conventions any more than in the past. It cannot, indeed, modify its fundamental characteristics or its exclusively Swiss composition,

since the Conventions have counted upon its remaining essentially what it is today. But its internal organization and choice of methods of action are not affected, and it has not, itself, any obligations. How could it have any, for that matter, since it is not a party to the Conventions and does not depend in any way whatsoever upon the signatory Powers? At the most it is, perhaps, under a certain moral obligation, that of carrying out its recognized tasks as conscientiously and as efficiently as possible.

2. THE RIGHT OF INITIATIVE

The ICRC's right of initiative, the essential basis of its work, has been maintained and extended to all four Conventions. Whereas in 1929 this principle was laid down only in the Convention on prisoners of war, it is now the object of an Article common to the four Conventions (Article 9/9/9/10).

The formula adopted in 1949 does not differ appreciably from the old text. We should, however, note that the right of initiative, defined in 1929 as covering the activities undertaken by the ICRC "for the protection" of prisoners of war, is today completed by the words "and for their relief". Moreover the new text does not apply exclusively to the ICRC but also to "any other impartial humanitarian organization". This indication would allow another institution working in the same spirit as the ICRC to replace it should it be unable to act, or to support or reinforce its action, and the text may be said to give legal sanction to the rôle played during the last conflict by organizations which did not belong to the Red Cross movement as such, but whose beneficent action it is impossible to forget.

The introduction of the conception of the right of initiative of the ICRC in the four new Conventions is of definite theoretical importance, especially with regard to civilians. It should, however, be borne in mind that as the rules and regulations governing the position of war victims are developed and as the ICRC acquires increasingly firm and precise legal bases for its activity, so its right of initiative will become less important,

or will at least be used to a lesser extent. "Extra-conventional" representations will certainly become rarer. Hence, the ICRC will in future have to direct its efforts more towards obtaining full and complete application of the Conventions. The circumstances under which a new war may be fought, however, include so much that is unforeseeable, that it is wise to be prudent in one's predictions. We should never forget the words of President Max Huber: "The activity of the ICRC is founded, above all, upon the natural law of the individual: it is only in the second instance that it bases itself on positive law." The ideals of the Red Cross therefore impose "supra-conventional" duties upon the ICRC.

3. CIVIL WAR

An important conquest in the humanitarian field was the extension of the ICRC's right of initiative to cover conflicts which are not of an international character, that is to say civil war and other troubles within the confines of a State.

Article 3, which is common to all four Conventions, and one of the most striking innovations of 1949, lays down that in the case of civil war each of the Parties to the conflict shall be bound to apply the essential principles of the Conventions, as enumerated in the Article; moreover, the two parties to the conflict must further endeavour to bring into force, by means of special agreements, the other provisions of the Conventions. Article 3, which might be described as a Convention in miniature, mentions that "an impartial humanitarian body, such as the ICRC, may offer its services to the Parties to the conflict". This reference is of far greater importance than might at first be thought. Let us not forget that it was on a similar basis—the mention of the right of initiative in the 1929 Convention—that the ICRC has been able to base the greater part of its action during international conflicts. This reference will, therefore, give the ICRC a valuable basis for future activities, which is particularly necessary in the case of civil wars, when the difficulties attending impartial humanitarian interventions are accentuated. For experience has shown that in a civil

war each party to the conflict is only too inclined to consider assistance to the adversary, even of a purely humanitarian nature, as tantamount to aiding and abetting criminals. Furthermore, the lawful Government is also inclined to consider any intervention by the Red Cross as unwarrantable interference in the internal affairs of the State. It may be recalled, in this connection, that the IXth International Red Cross Conference which met in 1912, refused to discuss the problem of assistance in cases of civil war, one of the delegates having expressed the opinion that the Red Cross could not be held to have any obligations in regard to insurgents, who could only be considered as criminals. The obligations of the Red Cross in this field were not recognized until the 1921 Conference, and were only codified in 1938.

During the Spanish civil war, the ICRC undertook activities comparable to those which it exercises in the case of a major international conflict, involving the application of the principles of the Geneva Conventions, camp visits, relief work and the exchange of civilian message forms. It was, incidentally, during this conflict that the ICRC first introduced civilian message forms for the exchanging of news between members of the same family on different sides of the battle-front. It was, however, difficult to push this initiative through, and a long time passed before the Committee's activities in general were finally admitted by both parties. The 1949 reference is likely to facilitate such activities very considerably in the future.

4. THE CENTRAL INFORMATION AGENCIES

As was the case in the 1929 Convention, the ICRC has the option of proposing the organization of a Central Information Agency for prisoners of war to the Powers concerned. The existing regulations were rendered more precise in 1949, but were not fundamentally modified. The Agency's mandate has, however, been expressly extended to cover belligerents interned by neutrals, and also the dead picked up on the field of battle (information, death certificates and personal valuables), mem-

bers of the medical personnel, the capture cards of prisoners of war, medical certificates, receipts for money confiscated, and other official documents.

The new Convention also gives the ICRC the means whereby the Central Agency may carry out both its former and its new mandates as efficiently as possible. Thus provision is made for exemption from telegraphic charges, and free postage facilities are expressly stipulated. In general, Article 123 of the IIIrd Convention lays down that the Agency is to receive "all facilities" for the transmission of information. It will, therefore, be able to request priority for its communications and will have the right to make free use of broadcasting facilities. Finally, the same Article requests the Powers to furnish the Agency with the necessary financial support.

Let us stress here that the Agency will also remain, over and beyond the requirements of the Convention, what it has always been since its origin, that is to say an institution at the free disposal of anxious families. It will thus continue to collect all the private data which it can obtain, as distinct from official information.

There is one fundamentally new departure in the Geneva Conventions, namely the provisions, parallel to those just mentioned, which concern the setting up of a Central Information Agency for civilians. According to the terms of the IVth Convention, this Agency may be the same as the one which caters for prisoners of war. Moreover, the provisions in question merely give formal sanction to initiatives already taken in this connection during the last world war. A point of difference between these two Agencies should, however, be stressed here. Whereas the Prisoners of War Agency is bound to transmit all the information it receives to the adverse Party, the same thing is not true for the civilian Agency, an express exception being made of cases where the transmission of such information might be detrimental to the persons concerned, or to their families.

It is the Central Information Agency for civilians which will be called upon to organize, with the assistance of National Red Cross Societies, the exchanging of family news, by the trans-

mission of "civilian messages" on special forms, should normal correspondence be difficult. This is once again no more than the giving of official sanction to previous initiatives taken by the ICRC in actual practice; 20 million such message forms were exchanged from 1939 to 1945.

5. THE ROLE OF DELEGATES

It is known that during the two world wars, and especially during the second one, delegates of the ICRC systematically visited prisoner of war camps in the same way as the representatives of the Protecting Powers. From 1939 to 1945, the International Committee's 180 delegates in the field made 11,000 visits to camps. This highly important rôle was not, however, the result of any obligation incumbent upon States. It has now been expressly codified. In future, the ICRC's delegates will be authorized to enter all places where prisoners of war are held, and speak to them, and especially with their prisoners' representatives, without the presence of witnesses. No limit may be placed on the frequency and the duration of such visits and the delegates will be completely free to choose the places to which they wish to go.

It will also be remembered that in the last war access to those tragic camps, where so many civilian detainees and deportees met an atrocious death, was refused both to the ICRC and to the Protecting Powers. Today, in virtue of the IVth Convention, all places where civilians may be interned, for whatever motives, will be open to inspection.

But even greater concessions have been accorded. Article 143 of the Convention lays down that the representatives of the Protecting Powers, together with those of the ICRC, who enjoy the same prerogatives, "shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work". This means that they may also visit the free civilian population in occupied territories. We do not, however, think that the ICRC will undertake the inspection, on a systematic and permanent basis, of the entire civilian population of occupied territories. That would be a

task beyond the scope of a private organization. It will doubtless be carried out in the first instance by the representatives of the Protecting Powers which remain, in the 1949 Geneva Conventions, the proper instruments for the supervision of the application of the Conventions. What is important, however, is that the ICRC will be free to carry out such visits and inspections, should circumstances warrant it. On the other hand, the ICRC will certainly wish to visit at regular intervals all places where civilians are interned.

We should mention that although it is laid down in the first two Conventions, relating to the wounded, the sick and the shipwrecked, that they will be applied with the cooperation and under the scrutiny of the Protecting Powers, it is not said that the representatives of the ICRC will carry out visits or enjoy the same rights and prerogatives as the representatives of the Protecting Powers. Apart from the specific tasks laid down in the Convention, the only reservation is in regard to the ICRC's right of initiative, i.e. the activities which it may undertake "for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains". The ICRC will not, therefore, be called upon to extend its traditional rôle to any great extent in connection with these two Conventions. There is no question of its automatically visiting hospitals in which there are no prisoners of war, hospital ships, air ambulances, etc. The most important tasks which the ICRC will be called upon to undertake with regard to these two Conventions will therefore be identical to those which it will carry out on behalf of prisoners of war, i.e. supervision of the way in which wounded and sick prisoners, as well as the retained medical and religious personnel, are treated. This supervision will be effected, in the majority of cases, in the course of visits to prison camps, since retained medical personnel enjoy all the advantages accorded to prisoners of war. It may happen, however, that on certain occasions the ICRC will have to undertake special visits to medical personnel not accommodated in the camps.

All matters relating to the transmission of information concerning the wounded, the dead and medical personnel will

be handled by the Central Information Agency in the same way as for prisoners of war. It should be noted, however, that the transmission of personal valuables found on the dead at the front may, as experience has shown, reach considerable proportions. But since the Agency is mentioned in this connection concurrently with the Protecting Powers and since in this particular field duplication is not possible, as it is in the case of information, the ICRC may share this task with the Protecting Powers.

What will the international status of the delegates of the ICRC be in the future? They cannot, of course, be assimilated to "protected personnel"—that is to say to members of the medical and religious personnel, on whom the first Convention confers special immunities, though only when they are employed on duties of an exclusively medical nature.

Though the delegates of the ICRC may often carry diplomatic passports, one cannot infer from that that they do, in fact, enjoy full diplomatic status; experience has shown, however, that belligerent States usually accord them facilities which are equivalent in practice to diplomatic privileges and immunities. It may here be added that international usage has accorded to the ICRC, in the exercise of its humanitarian activity, the prerogatives of an institution existing in international law. This character can but be reinforced by the new Conventions according to which—and this fact merely confirms former practice—the nomination of ICRC delegates is subject to the approval of the Power upon whose territory their activity will be exercised.

6. THE ICRC AS A SUBSTITUTE FOR THE PROTECTING POWERS

One of the most noteworthy innovations introduced into the 1929 Convention on the treatment of prisoners of war was the institution of an efficient system for regularly supervising its application. This supervision was entrusted to the Protecting Powers and it would be difficult to imagine a better choice. The Protecting Powers greatly contributed towards

ameliorating the conditions of captivity of prisoners of war in the course of the last conflict. But it must here be stressed—and this is a most alarming fact—that approximately seventy per cent of all prisoners of war were without the assistance of any Protecting Power. In many cases the Convention was, in fact, not applicable, or else one of the belligerents did not recognize its adversary as being a sovereign Power, or denied that a state of war existed between them. The ICRC endeavoured to mitigate the consequences of this lack of protection and, in so far as it was able, exercised activities replacing, to some extent, the missing Protecting Power. It succeeded in this task to a greater or lesser degree according to the nature and variety of the facilities granted it by the Detaining Powers.

The supervision exercised by the Protecting Powers was extended in 1949 to cover the application of all four Geneva Conventions. There remained, however, the problem of replacing the Protecting Powers should they be unable to carry out their mission. Remembering what the Committee had on its own initiative undertaken and accomplished in this sense, some people thought for a moment of making the ICRC the automatic substitute in such circumstances. The ICRC, however, the first to be conscious of the fundamental differences between the tasks it is called upon to accomplish and those of the Protecting Powers, and not moreover being equipped for such action, declared to the Diplomatic Conference that it could not function as a real substitute. What the Committee can do is to assume, on its own strictly humanitarian and impartial plane, a proportion of the tasks devolving, in virtue of the Conventions, upon the Protecting Powers.

As we know the Conference provided that the Contracting Parties should have the option of agreeing at any time to entrust to an "organization which offers all guarantees of impartiality and efficacy" the duties incumbent on the Protecting Powers by virtue of the Conventions. This organization may either be an entirely new institution or one already in existence. If one is aware of the difficulties which the creation of such an organization entails, it may well be thought that recourse will be had to an existing institution. If, furthermore,

one is conscious of the obstacles with which an internationally composed body is faced in time of war, it is not impossible to believe that the Powers might address themselves on such an occasion to the ICRC.

According to the terms of Article 10, in cases where "protected persons" are not benefiting by the services of a Protecting Power, no matter for what reason, the Detaining Power must request a neutral State or an impartial organization as indicated above—brought into being or designated by agreement between the parties—to undertake the functions performed by a Protecting Power. If even such protection cannot be arranged, the Detaining Power must request a humanitarian organization such as the ICRC to assume the humanitarian functions performed by Protecting Powers, or at any rate agree to it doing so.

It is thus likely that, although recourse to the ICRC is naturally not obligatory, its services will be called upon in the absence of a Protecting Power. Moreover, even if no call is made on it, the ICRC will nevertheless intensify its activity on its own initiative, for obvious humanitarian reasons, when war victims are without any other form of protection.

But what are the functions normally performed by Protecting Powers, which the ICRC will agree to fulfil when acting as a substitute? Let us underline that practically all of the many tasks entrusted to Protecting Powers are of a humanitarian nature. Many of them are identical to those of the ICRC or very like them: viz. the transmission of information, camp visits, and supervision of the distribution of relief. The ICRC could easily undertake them without unduly extending its organization.

There are, however, other tasks of a very different nature, such as legal assistance to prisoners under trial—an onerous task for which the ICRC is not specially equipped, though during the last conflict it was a rôle which it endeavoured to fulfil. It is probable that on any future occasion it would also endeavour to face this necessity.

Another sphere of action is much more problematic in view of its magnitude—namely the supervision of the application of the IVth Convention in favour of civilian populations in

occupied countries. This Convention makes express provision for the intervention of the Protecting Power in the following domains: transfers and evacuations of the population, the protection of workers, the verification of food and medical supplies in occupied territories, the distribution of relief, and legal assistance. This intervention may even be extended to other fields by reason of the general duty of supervision which falls on the Protecting Power. One can therefore well imagine that should vast territories be occupied, the tasks to be accomplished might easily exceed the International Committee's possibilities of action.

It should further be mentioned here that if, as can be foreseen, the ICRC only replaces one of the Protecting Powers and is thus called upon to act concurrently with other Protecting Powers, certain inconveniences might result from the inherent differences between the nature of the work undertaken by the ICRC and the activities of a Protecting Power. It should be remembered that the ICRC is no one's agent, but acts on its own initiative, and that its action is the more supple and the more practical, being based less on the strict letter of the law than on the principle of the respect due to the human being. Its normal rôle is to work, on principle, on behalf of victims of all nationalities; this gives the ICRC an overall view of the situation and enables it to count on reciprocity. But it is, of course, true that the fact of recourse being had to a substitute for the Protecting Power implies that this is a purely palliative measure, a makeshift solution.

7. RELIEF

It is a well known fact that in the course of the last world war the ICRC carried out important relief programmes. For prisoners of war alone it served as an intermediary for the transportation and distribution of relief parcels to a value of more than three thousand million Swiss francs, and for this purpose chartered a fleet of fifteen vessels. To provide relief for the civilian population it collaborated with the League of

National Red Cross Societies within the framework of the Joint Relief Commission of the International Red Cross, through whose agency medical supplies, food and clothing to a value of five hundred million Swiss francs were distributed. In order to feed Greece, the ICRC worked in collaboration with the Swedish Government.

The codification which has taken place in the 1949 Conventions is no more, in short, than recognition of the rôle previously played by the ICRC. In the domain of relief to prisoners of war and to civilian internees, the situation will probably be very little if at all different in a future conflict from what it was in the past. In the case of occupied territories, however, the new Articles contain an implicit invitation to the Powers to call upon the services of the ICRC. Its activities in occupied territories, though on a very considerable scale, have not in the past been systematic. A considerable extension of its action in this field may therefore be anticipated.

We have already mentioned above that the 1929 definition of the ICRC's right of initiative, as applying to the protection of prisoners of war, was completed in 1949 by a reference to the relief to be brought to them. Furthermore, it is laid down in Article 125 of the IIIrd Convention, concerning the rôle of relief Societies, that the special position of the ICRC in the field of relief must be recognized and respected at all times. This provides the ICRC with an important legal basis, and also means that the ICRC will not be subject to restrictions which apply to other relief Societies, or at any rate that it should be the last of them to which such restrictions should be applied.

Article 75 of the IIIrd Convention concerns "special means of transport". If, owing to military operations, the Powers are no longer able to fulfil their obligations in regard to the transportation of relief supplies, they are obliged to agree to the ICRC or any other approved organization undertaking to ensure the conveyance of the shipments in their place. The methods to be used in effecting such shipments have been purposely left vague, in order that they may be freely adapted to practical requirements.

8. THE RED CROSS EMBLEM

The new rules governing the use of the red cross emblem are a great step forward from those laid down in 1929. The fundamental distinction between the "protective sign"—which appears on the buildings, persons and objects whose respect the First Convention enjoins—and the "purely indicative sign"—whose only purpose is to indicate that a person or object has some connection with the Red Cross as an institution, without any intention of placing them under the protection of the Convention—has at last been clearly defined. The fundamental distinction having been established, it was then possible to reconcile two necessities: first, to surround the protective sign with the strictest safeguards and, secondly, to allow National Red Cross Societies to indicate their connection with the movement by making extensive use of an emblem which has become popular and to which they are clearly entitled.

It is perhaps not known that the ICRC did not, up to this time, have a recognized right to use the red cross sign, though nobody ever contested this right in practice and though the ICRC was the initiator and promoter of the sign and the first to use it. The 1929 Conventions were still silent upon this subject.

The 1949 Conference made good this curious oversight, and the international Red Cross organizations are now officially authorized to use the red cross sign without any restriction. This means that when circumstances and the nature of their activities demand it, the sign may have a protective character. The ICRC needs this imperatively under certain circumstances, especially for the transportation of relief supplies on the high seas. We may, however, rest assured that it will only use it when fully justified in so doing, and then only with due circumspection. In other cases, the use of the sign will be purely indicative.

9. OTHER REFERENCES

There are of course many other references to the ICRC in the new Conventions. We shall only mention here the more important ones without going into any details.

Provision is, for instance, made, as in 1929, for the intervention of the ICRC in cases of disagreement between Powers regarding the application of the Conventions (Article 11).

It may, moreover, be called upon to lend its good offices in connection with the setting up of hospital and safety zones (Ist Convention, Art. 23; IVth Convention, Art. 14).

Persons protected under the Civilians Convention (Art. 30) will always be entitled to make application to the ICRC. This may give rise to many and important tasks. Prisoners' representatives and members of Internee Committees also have the right to address themselves directly to the ICRC (IIIrd Convention, Art. 79; IVth Convention, Art. 102).

Provision is likewise made for the participation of the ICRC in the setting up and constitution of the Mixed Medical Commissions responsible for visiting wounded and sick prisoners and making decisions in regard to their possible repatriation (Annex II to the IIIrd Convention).

Finally, we should like to mention that in a final resolution the Diplomatic Conference of 1949 recognized the necessity of providing the ICRC with regular financial support—over and beyond that already mentioned in connection with the Central Information Agency—in order that it might be ready at all times to accomplish the humanitarian tasks entrusted to it by the new Geneva Conventions. When one knows the magnitude and diversity of these tasks, of which the present survey has only given a summary picture, it is easy to see how vitally important it is that the ICRC be given the material means to cope with them, so that it may be able to alleviate, to an even greater extent than in the past, the sufferings which war, more and more implacably, brings down upon so many innocent victims.

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INTERNATIONAL COMMITTEE OF THE RED CROSS

GREEKS RETURN TO THEIR COUNTRY

Geneva, September 2, 1954.

On August 17 last, 916 Greek nationals, who had been in Rumania for several years and now desired to return to their native land, arrived in Salonica on board a vessel placed at the disposal of the Greek Red Cross by the Greek Government. This was the conclusion of an extensive repatriation scheme carried out under the auspices of the International Committee of the Red Cross and the League of Red Cross Societies.

Two days before, in the port of Constanza, the Rumanian Red Cross, represented by its Vice-President, M^{me} A. Mesaros, and several of its members, had given these Greek nationals into the care of a Greek Red Cross mission headed by Admiral D. G. Phocas. Mr. F. Ehrenhold, Delegate of the International Committee of the Red Cross, Geneva, and Mr. B. Aaman of the Swedish Red Cross, Delegate of the League of Red Cross Societies, were present and gave their collaboration.

Several difficulties which arose at the time of embarkation were overcome, thanks to the goodwill shown by all concerned. The Rumanian Red Cross for instance kindly obtained permission for the Greeks leaving Rumania to take with them (in addition to their luggage and in spite of regulations in force in this connection) some small sums in foreign currency which they had in their possession.

The repatriated persons were received and looked after by the Greek Red Cross Society whose Secretary-General, Mr. G. Mindler, was present, Mr. A. Lambert representing the ICRC and the League on this occasion. During the brief ceremony the Minister for Social Welfare gave an address of welcome and expressed the gratitude of his Government to the International Red Cross.

*THE RED CROSS AND THE REFUGEES
IN INDOCHINA*

Geneva, September 9, 1954.

The Government and Red Cross of the Viet Nam State have recently sent appeals to the international Red Cross agencies in Geneva on behalf of the refugees from Tonking who are flowing into Southern Indochina, especially the Saigon area.

In view of the widespread distress suffered by several hundreds of thousands of persons affected by the direct consequences of hostilities, the International Committee of the Red Cross and the General Secretariat of the League of Red Cross Societies immediately brought the facts to the notice of National Red Cross Societies and asked for their help in organising relief action.

A first appeal was launched by the International Committee to certain of these Societies on August 27 last. On August 31 the League made a similar appeal to the charity of all National Societies. These two messages indicated the most urgent needs, in particular medicaments, clothing and material for building light shelters.

Several National Red Cross Societies—Australia, the Philippines, India, Canada, South Africa, Japan, Norway, New Zealand and Switzerland—have already given a favourable response to the appeals. The Red Cross Societies of Belgium, the United Kingdom, the United States and Ireland have stated that the appeals made to them are under consideration.

The practical organisation of the relief work has been planned by the two institutions in the following manner: the delegate of the League on the spot will deal with the reception and the coordination of relief supplies in South Viet Nam, in conjunction with the International Committee's delegate, who is already in Saigon: the International Committee is preparing to assume

similar duties in the Northern Zone, which has suffered the most from the recent conflict.

In this connection the International Committee offered its services to the Democratic Viet Nam Republic, with a view to possible relief action in behalf of refugees and of elements among the civilian population who have been affected by events.

HENRI COURSIER

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THE SLAVE QUESTION

INTRODUCTION

The International Convention for the prohibition of slavery of September 25, 1926, defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". Strictly speaking this is a very narrow juridical definition for such an extensive phenomenon.

A number of institutions or customs similar to slavery continue even today to cause relations between men which appear to us to be incompatible with the respect due to the human being. The explanation is that if all men are "born free and equal in dignity and rights" the facts are still far from corresponding everywhere to this generous formula.

Slavery, which is to be found at the origin of all communities, corresponds to that division of labour which is essential to a uniform organisation. The family itself, the initial cell of human groups, calls for the subservience of its members to the head of the family, and traces of this attitude may still be found in the patriarchal conceptions of a part of humanity.

But it is war, under all latitudes, which has made the greatest contribution to the development of slavery. It should be noted moreover that the fact of reducing vanquished enemies to slavery is a mark of definite progress, compared to the extermination to which they were originally condemned. Reaffirming to some extent this origin of slavery, the *Institutes* of Justinian (Book I, Chapter III, Par. 2) explain that *Servi autem ex eo*

*appellati sunt, quod imperatores captivos vendere jubent ac per hoc servare nec occidere solent*¹.

A division of labour is thus established between the free man who makes war, attacks the enemy or defends the city, and the slave who works to feed the warrior.

But in the course of society's development, and in particular with the disappearance of primitive insecurity, slavery takes on the odious aspect of the exploiting of man by man. Hence the efforts of moralists and legislators to abolish it, or at least to render its practice as humane as possible.

Slavery appears to us therefore as an absolutely general phenomenon. Its extent varies with the stage of evolution of society and this explains its continued existence, in various forms, in many parts of the world, according to the prevalent ethnical and economical conditions, in spite of the measures taken in other, more advanced, regions to abolish it.

The suppression of slavery wherever it exists corresponds to moral and legal requirements as set forth in the Universal Declaration of Human Rights ; but between law and the practice of law there often remains a painful reality of obstacles to be overcome.

The slave question still exists therefore. It would even seem that since the signature of the 1926 Convention, the Second World War, with the events which led up to it and its subsequent effects, marked a regression which has now to be faced when organising the world of the future.

In order to understand fully the general scope of the question, and to grasp its particularities, it must be studied in chronological order.

We shall see, first of all, that slavery, which was the basis of the economic equilibrium of the old world, eventually became an institution subject to the rules of law. This was the case everywhere, in Egypt, China and India, for the Hebrews and the peoples of the Middle East, as well as in Greece and in Rome.

¹ Slaves take their name (*servi*) from the fact that the generals have the prisoners sold, thus sparing them (*servare*) instead of putting them to death.

The coming of Christianity marked a new stage in the history of slavery. The idea that every human being is created in the image of God—and this is the basis of that human dignity which every man should respect in his fellowman as in himself—is in fundamental contradiction with an institution which assimilates certain human beings to animals or objects. St. Paul's announcement that there were "neither bond nor free" was an indication for the Roman world of a great transformation.

It did not follow however that slavery was immediately abolished. This ancestral practice was linked with interests of all descriptions which were still too powerful to yield immediately to the reprobation of the Church. The latter had at least sufficient influence gradually to inspire a new law which, towards the end of the middle Ages, in the principal States of Christian Europe, took a bold stand against slavery and proclaimed the automatic emancipation of any slave who had entered those States.

The effects of this influence were however limited. As a result of the struggle between Islam and the Christian world, and the raids of Barbary pirates, Christian slaves were to be found until quite recently in the convict prisons of Africa and, reciprocally, Moorish galley-slaves on the Pope's vessels. The discovery of America brought the maritime Powers face to face with economic problems the solution to which was not always sought in conformity with Christian principles. The oppression of the Indians and the slave traffic are historical facts of a gravity which cannot be denied.

It was then realised that Christian ethics alone were not sufficient to check the personal aims which opposed such principles. The campaign against slavery, if it were to be effective, had to become international. Just as the secularization and transposition of Christian ethics within the domain of the law had formed international law, so Christian principles, reviewed by the philosophers of the XVIIIth Century, led to the renowned Declaration of the Rights of Man and of the Citizen which, following upon the Declaration of Rights in the United States and proclaimed for all men and for all time, opened a new era in the life of nations.

In 1815 the Declaration of the Congress of Vienna concerning slavery indicated the beginning of a third period during which we shall see international action, by a series of bilateral and multilateral agreements, result finally in the abolition of slavery by the terms of the Convention of September 25, 1926, under the auspices of the League of Nations.

Nevertheless the question is not yet solved, or all forms of slavery suppressed. A final chapter will describe the situation at the present time and the efforts made by the United Nations to deliver humanity once and for all from the scourge of slavery.

I

SLAVERY IN ANCIENT TIMES

Slavery was known and practised by all the societies of ancient times.

It existed in all the great eastern monarchies, such as Egypt, Chaldea and Assyria, and also in China and India.

The Assyrians in particular, who systematically made war a national industry, brought back thousands of slaves after each of their campaigns. The latter appear, in chains, in the bas-reliefs which have come down to us—evidence of a warlike and powerful civilisation.

In China slavery developed with conquests. At first, about the XIIth century before Christ, it was merely a matter of public servitude in carrying out sentences imposed by law. Individual ownership of slaves then increased, either through war in foreign lands, or on account of poverty which forced the poor to sell themselves or to sell their children. At the close of the IIIrd century before Christ the Han Decrees proclaimed the right to sell oneself or one's children.

Although the master had an absolute right of ownership over his slave which allowed him to sell the slave or the latter's children, moral principles in China intervened fairly soon to limit the consequences of this law. In 35 A.D. Kwang-Wu

protected the lives of slaves and prevented their mutilation, stating that " among the creatures of heaven and earth man is the most noble ; those who kill their slaves cannot depreciate their crime ; those who dare to brand them with the iron shall be judged in conformity with the law ; men thus marked shall become citizens again " .

Emancipation was not infrequent and numerous cases are cited where, after deadly combats, the princes liberated slaves *en masse* in order to bring their armies up to strength.

It should be noted that this shows the incompatibility of military conditions with slave labour. For a slave to be allowed to fight, he must first be liberated, for only free men have the right to assume this honour and duty. This was the case in all the ancient civilizations and it will be recalled that, after the disaster of Cannes, the Romans preferred to emancipate a great number of slaves, in order to rebuild their army, rather than make a peace which would have given them back the prisoners taken by Hannibal.

The life of slaves in China was no doubt not too hard a one, for it is recorded that in the scale of theological virtues " to speak harshly to a slave counts as one fault ; not to care for him in sickness and to burden him with work, ten faults ; to prevent him marrying, one hundred faults ; to refuse to allow him to buy his freedom, fifty faults " .

The Chinese being naturally peace-loving, slavery developed more slowly in China than in the territories of warlike nations. It would appear, in any case, that free work had preponderance over slave labour, and that the latter was limited to domestic service only.

In India the Laws of Manu make a distinction between seven types of slave—

the prisoner of war,
the man who gives his services voluntarily to another in exchange for food, clothing and lodging,
the son of a female slave born in the owner's household,
one received as a gift or purchased,
one inherited by a son from his father,

one who has been reduced to slavery through his inability to pay the forfeit.

Slavery among the Hebrews dates back to the legendary era of the Patriarchs.

Abraham possessed slaves whom he had purchased or who were born in his household. They were inherited, like a herd of cattle, by his son Isaac.

The slaves' status was governed by the Laws of Moses. As in China, a free man was allowed to sell himself and to sell his children. It was however forbidden to reduce to slavery a Jew who had suffered defeat in a civil war. On the other hand foreign prisoners of war could be sold. The slave was protected by the law. He ranked as a man and the owner who killed him was punished by death. Like his master he had the right to rest on the Sabbath Day. He could marry and have a family and, moreover, he had the right to demand his freedom after six years of service. At the beginning of the seventh year of service, if the slave wished to renounce this right, he went before his master and had his ear pierced as a mark of servitude. This custom shows the warlike origin of slavery—to mark his victory the conqueror originally mutilated his enemy; later he merely made a symbolic gesture; piercing the ear instead of cutting it off¹.

Homer's poems give a wealth of information concerning the origin of slavery and the life of slaves in Greece. They describe how the Greeks raided the shores of Asia and Sicily, and carried off slaves. The Trojan War was an expedition of this type, and the essential theme of the Illiad is Achilles' wrath concerning Briseis the slave. The Odyssey abounds in details which show us the humane way slaves were treated in the patriarchal society of the Heroic Age. The guardian of Ulysses' flocks, Emmaeus, was bought from pirates and was brought up in the house and with the children of his master, Laertes. On the return of Telemachus he embraced him as if he had been his son. He possessed nothing, but disposed as

¹ In the same way the Burmese, who considered themselves to be the slaves of their sovereign, had the custom of piercing their ears.

he pleased of the property in his care ; he even erected buildings of which Laertes and Telemachus had no knowledge.

Wars between Greeks were continuous and were the cause of the rapid decrease in numbers of the free rural population which had still been preponderate in Attica at the time of the Median Wars. The peasants took refuge within the walls of the towns and the owners of land had to cultivate it by slave labour.

The State itself possessed a great number of slaves whom it used for work in the mines or the cultivation of land. Thus a proletariat of slave workers was created and these slaves received far less humane treatment than domestic slaves.

The census taken by Demetrius of Phalera in Athens, early in the IIIrd century before Christ, showed 20,000 citizens, 10,000 foreigners and 400,000 slaves. These figures give some idea of the great importance of slavery in the life of the Greek cities.

The working class was almost exclusively composed of slaves. Demosthenes, whose father was a wealthy manufacturer, possessed two workshops where weapons were made ; one employed 33 slaves, the other 20. He tells us that these slaves were worth on an average 300 drachma each—or the price of thirty oxen. Their market value corresponded to the ransom for prisoners of war, which steadily increased from 200 drachma during the Median War period, to 300 and 500 drachma at the time of Philip of Macedonia.

In law the slave was his owner's property ; he had no civic rights, no married or family status, no property. In actual fact, many slaves attained an enviable standard of living. By engaging in commerce in their masters' names they gained small fortunes which were the property of the owner, but the possession of which enabled them to live in luxury. " It may seem surprising " wrote Xenophon (Republic of Athens, I, 10) " that slaves should be allowed to live in luxury and some in splendour ; this practice is nevertheless based on reason. In a country where the navy calls for considerable expenditure, one is obliged to spare the slaves, and even to leave them their freedom, if one wishes to benefit by the fruit of their labour ".

In the course of time slaves came under the protection of the law. The penalty for killing a slave was as severe as for killing a free man.

When the owner made abusive use of his right to chastise, the slave who had been ill-treated could ask to be sold. He was given a counsel for his defence, and took sanctuary in the Temple of Theseus until his case was tried. It is however true that, except in cases of bad treatment, the slave, having no personal status, could take no action in court. His evidence was worthless and he could be tortured.

This inhuman lot was a source of embarrassment to Plato, who wrote (Laws VI) : " The question of slavery is embarrassing in all respects. The reasons set forth are good in one sense and bad in another, for they prove both the utility and the danger of keeping slaves... It is not surprising that one is undecided in one's choice... I can see but two expedients, the first is not to have slaves of one nationality only... the second is to treat them well, both in their and in one's own interests. This good treatment consists in not allowing oneself to commit offences against them and in being, if possible, even more just towards them than towards our equals ".

Aristotle gives us, in his writings and by his deeds, the fair measure of ancient wisdom in regard to slavery. He agreed to war being waged on inferior races in order to procure slaves, but like Plato, he considered that it was not proper for Greeks to reduce one another to slavery (for fear that, divided, they might themselves fall under the domination of the barbarians). On his death-bed he emancipated five slaves and bequeathed eight.

His doctrine, although it calls for the humane treatment of the slaves, tends to justify by philosophical argument the permanent condition of slavery. He considers that the highest precedence should be given to the developement of intellect and virtue, but this search for moral perfection implies leisure. The citizen must be freed from worry about the necessities of life, and part of the State should undertake agriculture and industry, as well as private service. This part of the State is the slave class. Thus the family necessarily consists of three persons ; the man at the head, the woman who perpetuates

it and the slave who serves it. The slave is as it were therefore part of his master, and Aristotle adds this essential comment : " The master is only the master in relation to the slave ; the slave, on the contrary, is not only the slave in relation to the master, he is one with his master... With an instinct for preservation, Nature created some beings to command and others to obey. By her desire the being endowed with foresight commands with authority, and the being whose physical faculties enable him to obey orders acts as a slave ; at this point the master's interests blend with those of the slave ".

The same conclusion was reached in Roman Law. The *Institutes of Justinian* (I,III,2) state : *Servitus autem est constitio juris gentium* ¹.

In their conquest of the ancient world the Romans, a military race, carried slavery to its highest peak of development. By the victories of Paulus Aemilius, seventy Greek towns were destroyed and their inhabitants reduced to slavery. This also happened after the fall of great cities such as Carthage and Jerusalem. The flow of slave-labour not only supplied Rome with domestic servants (who were in general fairly well treated) but also with the bulk of the gladiators and of the agricultural labourers on the great rural estates or *latifundia*.

In comparison with the domestic slaves, the lot of the rural proletariat tended to be a wretched one. Old Catos' harsh treatment of his slaves has become proverbial. He recommends that they should be sold, like old horses or scrap-iron, when they have lost their youthful vigour, without any regard to the services they have rendered.

Such treatment explains the slave revolts which on several occasions threatened the power of Rome. In Thrace for two years Spartacus, with 70,000 men at his command, held at bay the armies of the Senate, and the capture of Rome by Alric early in the Vth Century was partly due to the revolt of the Goth slaves, of whom there were a great many in the city.

However, the philosophical schools of Rome, and in Greece, were not without some scruples in regard to slavery.

¹ Slavery is an institution of the law of nations.

They taught that slaves should be given humane and gentle treatment and it is certain that in the capital of the Roman Empire, as in Athens, some slaves led a comfortable and even opulent life. Emancipation was moreover frequently practised and under Nero it was freed slaves who governed the Empire. Before then poets and philosophers (Terence, Phaedra) had been emancipated by their masters. It is true that these masters were Augustus and Scipio and the favourable impression created by such examples cannot be taken as a general standard.

All things considered, in Rome the slaves remained what they had been in Aristotle's opinion—persons without legal status, the living part of a master from whom they could receive good or evil but whose absolute authority might well have a corrupting effect.

The Stoics nobly declared that "he who is a slave and accepts his fate is no slave", but this was merely an aristocratic attitude which was in general far above the poor slaves' comprehension. It is however interesting to note, because at the dawn of the Christian era, it already proclaimed a spiritual world, detached from the grasping instincts of the material world, a conception which was to raise a new hope in the hearts of the most unfortunate.

(to be continued.)

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HENRI COURSIER

Member of the Legal Service of the ICRC

*THE SLAVE QUESTION*¹

II

THE CHRISTIAN FAITH AND SLAVERY

This hope which the Christian religion awakened was based on the concept of human dignity—doubly affirmed, both by the idea of the creation of man in the image of God and by that of the redemption of mankind by the blood of Jesus Christ. All men, being possessors of an immortal soul, are equal in God, and this essential equality obliges each of us to respect others. Man must treat man as his fellow, as his neighbour, or in other words, as a person and not as a beast or a thing. “There is neither bond nor free” wrote St. Paul in the epistle to the Galatians, “for ye are all one in Christ Jesus.”

What a revolutionary impact that sentence must have had on a world which had been based from time immemorial on servitude! The Christian doctrine was thus essentially opposed to the practice of slavery, and we shall see how the Church, as its power grew greater, made every effort to combat that practice, the struggle being taken up later by the Christian moralists and philosophers. In this second chapter we shall trace these efforts, by way of the decisions of Governments and doctrinal trends, to the moment when the development of philosophical ideas and advances in international law led to an international campaign against slavery.

¹ See, *Supplement*, September 1954, p. 184.

During this century-long struggle those on the side of morality and natural law were by no means always successful. Although slavery may be regarded as having practically disappeared in Western Europe towards the end of the XVth century, it subsisted until much later in other European countries; outside Europe it continued to flourish, and even increased to a considerable extent as a result of the traffic in negroes shipped from Africa to the New World.

In spite of the boldness with which St. Paul had proclaimed his principles, he did not go as far as to believe in the possibility of an immediate and unconditional liberation of all slaves; nor did he recommend such a course. Showing some indulgence to slavery where it was tempered by a patriarchal spirit, the Church endeavoured first of all to attack the most inhumane forms of the practice. If a man in bondage can follow the rites of his religion, receive the sacraments, marry and found a family, then his life is not intolerable. But it becomes intolerable if these actions are forbidden him. The support which the Church gave to the slave in the matter of marriage was therefore of cardinal importance. It held that slaves were free to marry, even against the will of their masters, and that marriages between slaves could not be annulled. The support thus given to the founding of families was a decisive factor in the evolution of moral customs.

When the Barbarians overthrew the Roman empire they began by behaving in the same way as all other warlike peoples, treating those they had conquered as slaves. But later, having been converted to Christianity, they relied on the Church's support to establish their authority and, yielding to its influence, showed little objection to freeing their captives.

Pope Gregory I (St. Gregory) records the heroic example provided by St. Paulinus, bishop of Nola, in Campania, towards the end of the IVth century. A widow whose son had been carried off by the Vandals asked St. Paulinus for the wherewithal to buy him back. As the bishop had no money to give her, he decided to offer his own person in exchange. He was enslaved and taken to Africa, and was cultivating the gardens of the king of the Barbarians when the king discovered his holy cha-

racter and wished to send him home loaded with presents ; he refused to go alone, however, and asked for his companions to be freed. His request was granted and a ship loaded with wheat was provided to take them home. To this day the town of Nola continues to commemorate the return of St. Paulinus every year on Christmas Eve.

The bishops made constant attempts to ransom slaves. In 378 A.D., after the capture of Adrianople, St. Ambrose, Bishop of Milan, sold the sacred vases to buy back men, women and children who had been carried off into slavery by the Goths. When he was criticised for so doing he replied : " Souls are of greater value to Christ than precious metals ". A similar spirit of generosity was shown by St. Eligius whose goldsmith's shop provided him with a large income. Most of his resources were used to ransom captives. The chronicles tell us that he often redeemed up to a hundred slaves, men and women, at a time and then gave them the choice of returning to their homes or embracing a monastic life ; according to their choice, he would give them money for their journey home or make arrangements for their admission into a convent or monastery. The Ecclesiastical Councils always ratified such decisions, for, in the words of St. Gregory, " the holy canons intend the goods of the Church to be used for the ransom of captives ".

Where a slave could not be redeemed, the Church could at least protect him from inhumane treatment. In 549 A.D. the Orleans Ecclesiastical Council recognized the right of slaves who had been treated too harshly to take sanctuary in churches. They were only returned to their masters if the latter swore not to inflict corporal punishment on them, nor overburden them with work, nor brand them.

By restoring to manual labour the prestige it had lost, the Rule of St. Benedict helped in the VIth century to raise the social level of slaves, many of whom obtained their freedom by entering the monastery.

Serfdom gradually replaced slavery ; feudal law only recognized serfs, and although serfdom tied men permanently to the land they cultivated—a serious infringement of their liberty, it is true—it nevertheless allowed them to have a

family life and to possess personal property, and gave them a recognized status as real persons.

With the decline of the feudal system, serfdom, in its turn, tended to disappear. In France it was the Crown which first set the example of freeing serfs. In 1315 all the serfs on the royal estates were freed *en bloc* by a decree of Louis X. This example was followed generally and by 1350 serfdom was no more than a memory. The "churls" remained on their land and were dependent in certain respects on their lords, but they were not subject to the penalties which had been previously inflicted for flight. The freedom of the peasant population was thus progressively established in France, and by the end of the XVth century French jurists were able to declare that slavery was no longer practised in their country. They went still further and concluded that any slave who arrived on French soil was automatically freed by the mere fact of having breathed the air of a free country. In this connection Bodin¹ cites an order of the Parlement of Toulouse in 1558 by which a slave brought from Spain by a Genevese subject, who was passing through the town, was freed.

The same juridical progress was apparent in England and the Netherlands.

In the reign of Queen Elizabeth, an English jurist wrote that "the air of England is too pure for a slave to breathe therein".

The customary law of Antwerp laid down expressly that: "all slaves who come within the town and its franchises are free and beyond the power of their masters and mistresses; if the latter wish to keep them as slaves and make them serve against their will, they may appeal *ad libertatem patriae* and summon their masters and mistresses to appear before a magistrate, and be declared free by process of law"².

The position was the same in Amsterdam.

In other European countries, however, the practice of enslavement on account of debts had the effect of keeping

¹ BODIN: *Les six livres de la République*, Book I, Chapter 5.

² Translated from a text cited by Cino VITTA in *Liberté et moralité individuelles*, « Recueil des Cours de l'Académie de droit international », 45, page 564.

slavery in existence. Voltaire records that after the capture of Copenhagen by Charles XII, the King of Denmark proclaimed in his rolls that anyone who took up arms against the Swedes would be granted liberty. This declaration, adds the historian, had considerable weight "in a country which used to be free, but where all the peasants and many even of the upper classes are slaves today".

But it was above all in Russia that slavery flourished. It should incidentally be noted that the word "slave" did not come into use until the Xth century, when the German emperor, Otto the Great, repulsed the Slav invasion and reduced a vast number of prisoners of war to slavery. Even the name of these "Slavs" replaced the term used until then to describe the servile condition which had been transformed into serfdom in the countries of Western Europe, but had been maintained in all its rigour in Eastern Europe.

In spite of the conversion of the Principality of Kiev to Christianity, *Russkaya Pravda*, a collection of laws published by Yaroslav the Wise in the XIth Century, takes official account of slaves as a class. The *Kholopy* were former prisoners of war, either foreigners, or Russians from other principalities, or else insolvent debtors or men who had voluntarily sold themselves to a master. They were very numerous and could be sold. There was a busy trade in such slaves with the Byzantines who resold them in Venice, where the Riva dei Schiavoni perpetuates their memory.

In Russia, as in other Eastern countries, the Church no doubt endeavoured to transform slavery into serfdom. But the process of development of serfdom in Western Europe was reversed in the case of Russia. Instead of gradually progressing towards a system of free peasantry, Russian serfdom was transformed, from the XVIIth century onwards, into a new form of slavery almost as harsh as the old one.

The Russian Church also encouraged landed proprietors to free their peasants in their wills, but the peasants, having no means of establishing themselves, often sold themselves back either to the heirs or to new masters ¹.

¹ See WELTER : *Histoire de Russie*, page 53.

Although certain princes tried to set limits to this voluntary bondage¹, such impulses were not maintained in view of the Crown's dependence on the support of the nobility, the class from which the officers of the army were recruited. The Code of 1649 abolished all limitation on the hunting down of fugitive slaves and may be said to have legalized slavery by authorizing the nobility to sell their serfs—even individually, separating members of the same family. Peter the Great felt the shame attaching to an institution which reduced men to the level of beasts, a state of affairs which was not, he said, “to be found in any country”. By a decree of 1721 he ordered the Senate to “put an end to this selling of men, and”, he added, “if it is not possible to suppress it entirely, let them only be sold by whole families”. But this law remained a dead letter. It would appear, incidentally, that the Emperor was himself resigned to this, as he speaks of “the untamed character of the Russians and the impossibility of making them work without compulsion”. In his absolute dependence on his owner, the Russian serf had become a mere thing.

The tendency of the Russian form of Christianity to consider man from the point of view of sin, and to humiliate rather than exalt his personal dignity, appears to have contributed to this result, whereas the less sombre Christianity of the West led to a blossoming forth of the individual.

In 922, for instance, the Coblenz Council had declared that anyone who carried off a Christian to sell him was guilty of homicide. In 1179 the Lateran Council had prohibited the selling into slavery of any Christian prisoner of war. Jurists had, in their turn, proclaimed the principle that anyone who was baptized immediately became free.

It should be noted that these theories implied some limitation of the universal bearing of the Christian idea at its origin. For if a man was preserved from slavery through being a Christian, did it not follow that he could be reduced to slavery if he was

¹ In 1605 Dimitry the pretender decreed that only the heads of families could sell themselves, and prohibited the hunting down of fugitive slaves.

not a Christian, especially in the case of war and capture, since custom demanded that prisoners of war should become slaves ?

That was certainly the interpretation accepted and practised through the centuries, during the struggles between Moslems and Christians—first of all after the Islam Conquests, then after the Crusades, and finally after the reconquest of Spain from the Moors.

Hence the presence of Moslem slaves in Spain, and the slave markets of Florence, Sicily and Catalonia ¹.

In return the Moslems reduced Christians to slavery. The pirates of the Barbary Coast even made this a flourishing industry.

The object of St. Louis' two crusades in 1250 and 1270 A.D., was to deliver the Christians captive in Barbary ; but as we know, they did not succeed. It was then that the religious Orders, the Trinitarians and the Fathers of Our Lady of Mercy, were organized and devoted themselves to the work of redeeming slaves, who, imprisoned in hulks in Algiers, Tunis and Saleh or on the Barbary galleys, were often ill-treated, beaten with knotted cords and deprived of all aid. Cervantes, who knew captivity in Tunis, describes in one of his plays the deplorable fate of a family of Christians who were seized by pirates while at sea, brutally separated from one another and sold by auction. It is true that in certain cases slavery was less harsh than this ; it even happened sometimes that slaves, after being converted to the Moslem faith, rose to high positions, like the French renegade who became the engineer and architect of the port of Mogador. On the whole, however, the condition of the Christian slaves was a miserable one, and the Barbary piracy an affliction for Christianity. It is estimated that when Louis XIV ordered Duquesne to bombard Algiers in 1648, there may have been from 5,000 to 6,000 French slaves there.

The Trinitarian Order was authorized to collect contributions towards the ransoming of captives in all the dioceses of the Kingdom of France. The Order had 150 lodges and was helped by the White Penitents who specialized in the exchange of currency ². The Marseilles Office of the Trinitarians arranged

¹ Slaves were also sold at the Champagne and Provence fairs during the XIIth and XIIIth centuries.

² The Berbers would only accept Mexican or Sevillian piastres.

passages for the agents who arranged the ransoms, and chartered ships to bring back the liberated captives ¹.

But they could not all be ransomed, and, concerned about their lot, St. Vincent de Paul, who had like Cervantes been a slave in Tunis, created the African Mission of Lazarists the object of which was to bring instruction and moral comfort to the Christian slaves in Barbary. This mission organized a correspondence service between prisoners and their families. Besides this the Lazarists ransomed prisoners with the alms at their disposal and, during the last fifteen years of his life, St. Vincent de Paul spent no less than a million pounds in buying back some 1,200 slaves.

In spite of the efforts which the Powers made to suppress it, the scourge of piracy continued to flourish for a long time. When France captured Algiers in 1830, there were still 122 slaves there—most of them French.

The discovery of America set Christian consciences a major problem. Were the natives of the continent really men? Many of the newcomers acted to begin with as though they doubted it. Don Juan de Zumarraga, the first bishop of Mexico, suspected, for example, that the Aztecs were not descended from Adam, and in order to destroy all traces of what he considered to be their diabolic origin, had several thousands of documents and manuscripts, which recorded their history and the results of their scientific investigations for centuries, burned.

The Church immediately reacted against such tendencies. In 1537 Pope Paul III published the famous papal bull *Veritas Ipsa* which "solemnly recognized these Indians as real men" adding that "they must not be reduced to slavery".

This pontifical act came as confirmation of the views which the monk Victoria had taught with incomparable brilliance at Salamanca for several years past. The illustrious Dominican rejected the idea of conquest. He based Spain's rights in America on the international rule which obliges the inhabitants of a country to give a friendly reception to those who visit them and

¹ See Gaston BONET MAURY: *La France et la rédemption des esclaves en Algérie à la fin du XVII^e siècle*. « Revue des Deux-Mondes », 1906, p. 989.

try to develop their territory without doing them any harm. This right was not that of military conquest (which might give rise to slavery through the application of the laws of war), but only a right of peaceful occupation. War was only justified for the purpose of repressing an *unprovoked* aggression by the natives against the Spanish. Victoria also denied the discoverers of the new world the right to make war on the native population and reduce them to slavery on the pretext that they were heathens ; “ because ”, he said, “ we cannot give the name of infidels to those who, not having been initiated into the Christian faith, are ignorant of the moral principles which condemn their customs and their way of life ”.

The influence of the Salamanca School on Charles V was strong enough to make him promulgate the wise and humane *Laws of the Indies*, under which the Indians were to be considered as free men, vassals of Spain. They were to be safeguarded and protected in the same ways as minors and could dispose of their property as they wished, or even—an exceptional measure—terminate their contracts in cases where they had been seriously wronged. The penalties inflicted on them for offences were less severe than the ordinary penalties in such cases, and in many respects they were subject to the common law of the Kingdom of Spain ¹.

This generous legislation obviously prevented all the natives being considered generally as slaves. It must, however, be admitted that the law was very often circumvented, the *encomienda* and *repartimiento* systems contributing in particular to this. The *encomienda* authorized the requisition of savages for a number of services, on condition they were well treated and given religious instruction. It was accorded as a favour to persons who had distinguished themselves in the Indies, and was valid during lives of the person to whom it was granted and his heir. The *repartimiento* was a privilege of a similar nature, but in respect of a lesser number of Indians and easier to obtain. It is certain that in all too many cases the rights thus granted led to the reestablishment of slavery.

¹ See R. OCTAVIO : *Les Sauvages américains devant le Droit*, « Recueil des Cours de l'Académie de droit international », 31, p. 222.

In Brazil, under the rule of the Portuguese, an attempt was at first made to establish slavery generally among the Indians. In 1511 a ship carried 30 Indian slaves to Portugal. But the mother country opposed such practices, and a code of regulations issued in 1548 recommended that the natives should be well treated and banned unprovoked attacks and the making of war on them under pain of death and confiscation of property. An exception was, however, made in the case of legitimate defence, authority being given to "fight those who act as enemies, to destroy their villages and hamlets, to kill and to take prisoners". It followed from this and later laws that Indians captured during a lawful war could be treated as slaves. In the same way, Indians who were handed over by their fathers for instruction, or who sold themselves after attaining their majority (i.e. when over 20 years old), became slaves, and so did natives who were taken prisoner by other tribes and preferred to be slaves of the Christians. This last clause encouraged a practice which developed, under the name of redemption (*resgate*), into a real hunt for Indians.

The situation became so scandalous that in order to end it Pope Benedict VII issued a papal bull in 1741 excommunicating anyone who deprived the Indians of their liberty; but the situation was only really changed by the vigorous action of Pompal, the all-powerful minister of Joseph I, who enfranchised the Indians entirely and placed them under Portuguese common law.

In North America the legal attitude of the British Government was originally similar to that advocated by Victoria and the Salamanca School. In the concessions for the establishment of colonies in America, the English Crown—which maintained the feudal system and reserved for itself the bare ownership of all land—accorded no privileges at the expense of the Indians. The letters of concessions related only to land which the Indians had abandoned of their own free will or to land conquered in a just war in which violence was repelled by violence ¹.

¹ See CARLIER : *La République américaine*, Vol. I, p. 4.

But here again the good intentions of the Government were circumvented by the abusive use made by the colonists of the right of legitimate self-defence. After fighting the Indians in order to protect themselves, they carried on the war in order to take prisoners and so have slave labour at their disposal.

The treatment of the Indians in the French colonies in Canada, which were established later, reflected a much more liberal outlook.

Richelieu's regulations were aimed at converting the Indians to Christianity with a view to making them subjects of the King of France. In general they were won over by gentle methods and persuasion except in the case of the Iroquois, whom it was necessary to fight before they could be pacified ; but the military operations were never accompanied by the reduction to slavery of the conquered.

It will be seen, then, that the enslavement of Indians was not carried out systematically in America ; it was to disappear, moreover, either through crossbreeding, the extermination of the Indians, or their confinement in reserves. On the other hand, traffic in negroes imported from Africa to work the newly aquired lands, had the effect of spreading slavery very considerably, especially in Brazil and in the United States.

Slavery was a normal practice in Africa as a result of inter-tribal warfare, and there was a considerable trade in black slaves with the Moslem countries.

Before the discovery of America, Henry the Navigator, the founder of Portuguese maritime power, had forbidden the slave trade. But private interests prevailed over public ethics and, by the end of the XVth century, Portuguese traders has established the trade in the Canary Islands and Guinea.

Consequently, when the laws of the Indies came to hamper the recruiting of slave labour among Indians, the colonists were greatly tempted to turn to the reservoir of manpower which existed in Africa. Nor did the State lag behind the colonists ; as early as 1501 the Catholic Kings advised the Governor of Hispaniola to procure negroes rather than Jewish or Moslem slaves for work in mines and on military constructions.

But that was not all : the slave trade provided the Spanish

Government with a large source of income, since, in addition to the proceeds of customs duty (which was calculated on the basis of the selling value of these human cargoes), the Government received two ducats per slave for import licences. As the need for manpower continued to grow, the Kings of Spain began to make real contracts with the slave traders. This was the origin of the *Assiento* (contract), the income from which was so assured that it was finally used as security for stock issued by the Treasury to enable it to pay its foreign debts.

The trade being very profitable, the Spanish State reserved it exclusively for its nationals. But smugglers were active, the English buccaneers vying with the Spaniards the most keenly for the profits of the slave trafic. Seamen who were later to win distinction in operating the British fleets served their military apprenticeship as slavers, and the day came when the settlement of a long war enabled England to obtain an official *assiento* from Spain, its terms being embodied word for word in the Treaty of Utrecht. A special clause in this Treaty authorized an English company to furnish America with 4,800 "Indies pieces" a year for a period of 30 years. The term "Indies pieces" meant a tall and perfectly formed negro. It often needed more than one individual to constitute a single Indies piece. Children at their mothers' breast did not count, and three young negroes under 15 years old counted as two Indies pieces. As M. George Scelle observes¹: "From the commercial point of view slaves are mere cattle. Animals are normally sold singly; slaves are sold by quantity like some form of provisions".

In 1786, one of the last years for which statistics of slaves entering America were kept, England introduced 38,000 negroes into the American colonies, France 20,000, Portugal 10,000, the United Provinces 4,000 and Denmark 2,000.

It is estimated that at this rate some twelve million negroes were carried off from Africa and transported to America. The traffic took place under such harsh conditions that at least the same number of individuals must have succumbed either to the

¹ G. SCELLE : *La Traite négrière aux Indes de Castille*, Paris 1906.

brutalities inflicted when they were captured or to ill-treatment during the voyage.

The development of the black slave traffic in America had certain repercussions in Europe, weakening the legal rules which had been hallowed by usage since the XVth century. By custom, negroes brought to Europe by their masters should have become free the very moment they landed. But that is not what happened. In France an edict of 1716, interpreted by a royal declaration of 15 December 1738, laid down specifically that the slaves of French colonists would be refused their freedom¹. It thus came about that in 1738 there were several thousand slaves in Paris. The Duke of Penthièvre, Admiral of France, certainly protested in 1762 against such provisions, which he regarded as illegal—and which would not appear to have been endorsed by Parliament. It is nevertheless true that serious concessions had had to be made, in practice, to interests which conflicted with legal principles.

In England the situation was exactly the same. In 1729, Attorney-General York and Solicitor-General Talbot formulated the opinion that the transportation of a slave did not affect his status. As a result the slave traffic was engaged in openly in London during the middle of the XVIIth century².

Thus, in spite of the part played by the Christian Powers in the discovery of the World, slavery remained in force in many lands, in defiance of the principles of Christianity.

When the Philosophers, ignoring all question of religious doctrine, took over the moral stock of Christianity and established a new code of ethics, they were indignant at the existence of such a situation. Montesquieu speaks of it with cutting irony in his *Esprit des Loïs* (Book XV, chapter V), using the following words: "One cannot conceive that God, who is a very wise being, should have put a soul, especially a good soul, into a completely black body. It is impossible for us to suppose that

¹ If the latter ceased to be colonists and remained in France, they had to send their slaves back to the colony within a year.

² See *Report of the Royal Commission on fugitive slaves*, Blue Book, 1876, Memorandum of Lord Chief Justice Cockburne, p. 64.

such people are men, because if we were to suppose that they were men, one would begin to believe that we ourselves were not Christians. Small minds exaggerate the injustice done to Africans ; for if what they tell us is true, would the princes of Europe, who establish so many useless conventions among themselves, not have thought of drawing up a general convention in favour of mercy and pity ? ”

These last words of Montesquieu were the words of a prophet. International action was soon to hasten the adoption, in the different States, of decisive measures against slavery, which would henceforward be regarded as a shameful survival in a civilized world.

(to be continued)

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INTERNATIONAL COMMITTEE OF THE RED CROSS

THE PROTECTION OF THE CIVILIAN POPULATION IN ATOMIC, CHEMICAL AND BACTERIOLOGICAL WARFARE

As reported in the April number of the *Revue*, the International Committee of the Red Cross convened a private meeting of some fifteen legal and military experts at Geneva during the spring, the purpose of the meeting being a joint examination, by the Committee and the experts, of the possibility of giving the civilian population increased protection, by a development of international law, against the dangers of of war from the air and the use of blind weapons. It is hardly necessary to recall the growing concern with which the Committee views these dangers. At it pointed out in its appeal of April 1950, they constitute a menace to humanitarian action itself.

Since then the National Red Cross Societies have been more fully informed of the work and results of the meeting and have been asked to send their observations on the subject to the International Committee. They have in the meantime already had an opportunity, at the 23rd Session of the Board of Governors of the League of Red Cross Societies which was held in Oslo in May, of showing the great interest they take in the International Committee's initiatives in this field. At this Session they adopted, by, be it noted, a unanimous vote, a resolution, submitted by the Brazilian Red Cross and worded as follows :

The Board of Governors,

Considering the resolution passed in its present session exhorting the Powers to renounce the use of atomic weapons, chemical and bacteriological warfare,

Considering that the role of the Red Cross is to protect civilian populations from the devastating and indiscriminating effects of such warfare,

Requests the International Committee of the Red Cross to make a thorough examination of the subject and propose at the next International Conference of the Red Cross the necessary additions to the Conventions in force in order to protect civilian populations efficiently from the dangers of atomic, chemical and bacteriological warfare.

When this resolution was being considered, the representative of the International Committee, its Vice-President, Mr. F. Siordet, spoke a few words. He thanked the authors of the resolution and recalled the efforts pursued by the International Committee for the purpose of strengthening the legal protection of civilian populations. Mr. Siordet emphasised the extreme importance to the Red Cross of the question raised by the Brazilian resolution. He pointed out that the use of blind weapons was in fundamental contradiction with the respect and application of Red Cross principles, in particular because it would no longer be possible to make any distinction between combatants and non-combatants and—more serious still—because the Red Cross itself could no longer bring to the victims the help which it must always be able to give them.

While he admitted that the experts convened by the International Committee had been fairly pessimistic on some points, and that some of the old rules of the Law of War had perhaps lost part of their value, Mr. Siordet emphasised that it was certainly no sufficient reason for being resigned to the present situation. He declared in forcible terms that "The Conventions were intended to protect human beings; they were drawn up for their benefit and not in the interests of weapons of war. Our duty, therefore, seems absolutely clear: we must see that the rules of the Hague Conventions which are still valid receive fresh life and force—for we are not concerned here with the Geneva Conventions of 1949, which answer their purpose to the full."

Mr. Siordet concluded by saying that the International Committee of the Red Cross, in accordance with its traditions, wished therefore to forge ahead, fully aware that it would be setting out on a difficult path but knowing, also, that it would be accompanied by all members of the great Red Cross

family. He added that " It is in this spirit that the International Committee gladly accepts the draft resolution submitted to you, accepts it as evidence of the common interest taken in this problem, and as a mark of encouragement to pursue its efforts without respite ".

It will be observed that the resolution quoted above refers mainly to atomic, bacteriological and chemical warfare. The recent studies undertaken by the International Committee convinced it that it was necessary for it to concern itself with the dangers with which persons not taking part in the hostilities are threatened as a result of aerial warfare *in general*, irrespective of the methods or arms employed. But it goes without saying that in these studies the new weapons, and in particular the atomic arm, are given the attention which their great importance warrants.

Bacteriological and chemical warfare have also long engaged the attention of the Red Cross world. In the period between the two wars, and again recently, the International Red Cross Conferences asked States to renounce the use of such methods of warfare.¹ The International Committee of the Red Cross, for its part, can but pursue its efforts in this field, endeavouring in particular to ensure that international agreements prohibiting bacteriological and chemical warfare are respected as widely as possible, and really applied.

¹ Thus Resolution No. 24 of the XVIIth International Conference (Stockholm 1948) and Resolution No. 17 of the XVIIIth International Conference (Toronto 1952) requested States which had not yet adhered to the Geneva Protocol of June 17th, 1925, to do so.

HENRI COURSIER

Member of the Legal Service of the ICRC

THE SLAVE QUESTION ¹

III.

THE ANTI-SLAVERY CAMPAIGN IN THE SIXTH CENTURY

England was the champion of the anti-slavery campaign during the XIXth Century.

The country which had succeeded, early in the previous century, in being granted the monopoly of the slave trade as the reward of a victorious conflict, and which had reaped the greatest profit from an immoral commerce, was later, by its tenacious action, to induce other nations to repress the slave-trade in the first place, then slavery itself, and finally to conclude under the auspices of the League of Nations the International Convention of September 26, 1926, concerning slavery.

The sudden change of attitude which occurred in England at the close of the XVIIIth Century was not only the issue of an ideological campaign of generous inspiration, but was also due to the great change which had taken place in the country's material interests.

With the loss of the American Colonies through the independence of the United States, the British Crown had no longer the same reasons for favouring the slave-trade, the object of which was to procure man-power for the planters of the New World. On the other hand the possession of the East Indies, with a superabundant population, enabled the British to solve all questions of man-power in that new colony, without having recourse to slavery, and even to consider competing with the Americans by cultivating rival plantations in the colony.

¹ See Supplement, October 1954, p. 196.

The conflicts of the time, of the French Revolution and the Empire, which gave Great Britain the opportunity of occupying numerous overseas territories, also accustomed the powerful British Navy, present in all seas, to the supervision of all international trade by exercising the "right of search".

By suppressing the slave-trade which it no longer needed England was thus able to continue to exercise the precious "right of search" which was so favourable to its commercial interests.

It was obvious that the above circumstances could but encourage the movement started by Wilberforce, friend of William Pitt and Member of the House of Commons, who had founded the Abolition Society in 1787, and submitted the cause of the abolition of slavery to Parliament in 1790; it cannot be denied, however, that both Wilberforce and his followers showed great merit in devoting their services to a moral cause and to human fellowship.

When the Empire fell the British Government obtained a declaration from the Government of France in conformity with its views. It may be imagined that Talleyrand seized the opportunity of giving diplomatic circles across the Channel a pledge for which he intended to reap due payment in the course of future negotiations. The Treaty of Paris of 1814 stated that "His Most Christian Majesty, in full agreement with His British Majesty's sentiments in regard to a trade which is repellent to the principles of natural justice and the enlightened era in which we live, undertakes to join all his efforts to those of His British Majesty at the forthcoming Congress, in order that the abolition of the negro slave-trade may be declared by all the Christian Powers"¹.

By its famous declaration of February 8, 1815, the Congress of Vienna in fact condemned the slave-trade by stating that it was "repugnant to the principles of humanity and moral ethics", and proclaimed the desire of European Sovereigns "to put an end to a scourge which has for so long caused distress in Africa, degraded Europe and afflicted humanity". But in

¹ Translation from the original French.

practice the plenipotentiaries assembled in Vienna confined themselves to concluding that "the fixing of the period when this trade must be universally abolished will form the object of future negotiations».

If, therefore, the Congress of Vienna was of great importance as the starting point of the universal movement for the abolition of slavery, it must be admitted that the Congress itself did not achieve any practical result. The abolition of the trade was consequently discussed again by each of the Diplomatic Conferences which followed the peace negotiations in Vienna, i.e. at London (in 1817 and 1818) at Aix-la-Chapelle (in 1819) and at Verona (in 1822). At Verona, in particular, Lord Castelreagh, the apostle of anti-slavery, proposed that the negro slave traffic should be assimilated to piracy, a measure which would have subjected any merchant vessel suspected of being engaged in the slave-trade to the right of search in peace-time. But France, then represented by Chateaubriand, would not consent to such a right in favour of the British Navy.

Being unable to settle the question it had so much at heart by general agreement, the Cabinet of St. James then pursued the negotiations it had undertaken with a view to reaching a settlement, step by step, by individual bilateral agreements.

England had already concluded agreements for the repression of the slave-trade with Portugal and Spain in 1815, the Netherlands in 1818 and the new States of Spanish America towards 1821. It signed a treaty with Norway and Sweden in 1824 and entered into negotiations with the United States; but the latter country was opposed to the right of search in the vicinity of American coasts, which prohibited any agreement. With regard to France, the Revolution of 1830 and the return to State affairs of Talleyrand (appointed as Ambassador in London by the new regime) were favourable to the resumption of negotiations. A treaty was drawn up in 1831, and confirmed in 1833, whereby France and England mutually agreed to accept the right of search for the repression of the slave-trade, on condition that prizes would be brought for judgment before their national courts—an important success for British policy. The success soon became greater with the accession of Denmark

and Sardinia in 1834, and the Hanseatic Towns and Tuscany in 1837, to the Franco-British Treaty.

The Papal Brief of 1839 also prohibited the slave-trade and declared that offenders were unworthy of the name of Christians.

Great Britain then judged that the time was appropriate for giving effect, by an agreement of a general scope, to the Declaration of the Vienna Congress. In agreement with the French Government, Lord Palmerston sent invitations to Austria, Prussia and Russia, to meet in London ; the invitation was accepted and resulted in the signature of the Treaty of the Five Powers in London, on December 20th, 1841.

The High Contracting Parties to the Treaty assimilated the slave-trade to the crime of piracy and laid down that any attempt by a vessel to engage a vessel in the trade would cause it to lose thereby all right to the protection of its flag. In consequence, it was mutually agreed that their warships should exercise a right of search over all merchant vessels carrying the flag of any one of the States concerned.

By the combination of individual treaties and the new Treaty of the Five Powers, England thus succeeded in grouping 26 great and small Powers—16 European and 10 American—in a pacific blockade directed against the slave-trade, which covered the African coasts and part of the coast of America.

The result achieved was all too brilliant, for the slave-trade was not the only question involved. The right of search gave the British Navy, by far the largest in the world, a mission of policing the seas which threatened to hamper trading and favour British competition. The question was viewed in that light by the United States in particular, which was the reason for the lack of agreement between the British and American Governments. For since 1794 the United States, while continuing to practice slavery within their own frontiers, had forbidden American citizens to engage in the slave-trade ; the importing of slaves had, moreover, been prohibited by a law passed in 1808, and the U. S. Congress had declared in 1819 that their importation would incur the death penalty. But the right of search of an American merchant vessel by a foreign warship was firmly refused. The most that was conceded was that the

American Navy might, in certain waters, be given instructions to keep a check on United States merchantmen. An agreement on the above basis was finally reached between London and Washington by the Ashburton Treaty of 1842.

The negotiations for the treaty in question had an unexpected repercussion in regard to the Treaty of the Five Powers.

While the question of the ratification of the latter Treaty was being considered in Paris, an anonymous pamphlet was published in English and French under the title "An examination of the question now in discussion between the American and British Governments concerning the right of search, by an American". It soon became known that the author was none other than the United States Ambassador, Mr. Cass. Public opinion in France, which had all along been opposed to the right of search—even though it was allowed under the Treaty of 1831—urged Guizot to bring his policy into line with the American principle. France refused to ratify the Treaty of the Five Powers, and opened negotiations with England for a new treaty which provided that the right of search and of visit should be conferred upon a squadron of 26 vessels on either side, each squadron only being authorised to search vessels of its own nationality.

Towards 1860, the French and British naval authorities finally agreed upon a definition of the right of search, having established that the term *right of visit* in English merely implied the right to ascertain the ship's identity, whereas the *droit de visite* in French was equivalent to *right of search* in English. It was thus possible to put an end to the fraudulent practice of displaying the flag of a Power which was not subject to control, in order to escape lawful investigation. The United States also agreed that their flag could not be used to cover trading under false colours. Mr. Cass himself, who had become Secretary of State in 1950, acknowledged this.

Finally, in 1862, when the War of Secession was at its height, the United States and Great Britain agreed to grant each other the right of visit and search. France refused to grant the right of search; she continued however to recognise the right to ascertain the ship's identity.

The various international agreements to which the Declaration of the Vienna Congress gave rise only sought the prohibition and repression of the slave-trade, but made no reference to the actual practice of slavery. They provided for more or less efficient measures for preventing the transport of slaves by sea, but had no effect upon national legislation in regard to slavery itself. We will now examine the principal stages of the campaign against slavery within the States.

As we have seen, in the early XIXth Century slavery had been abolished for many years in the home territories of the majority of Christian Powers, but this was by no means the case in the colonies of the said Powers. Moreover, the Moslem countries and several American States still practised slavery; serfdom still flourished in Russia in conditions equivalent to slavery.

The Czars of Russia, dependent as they were upon the support of the nobility, from whom the officer classes of the army were drawn, were led to ignore deliberately practices which were similar to slavery in all respects. The serf, who could be sold and be torn from his family for that purpose, was in reality a slave. Catherine II, who was a friend of the Philosophers and desired to follow the principles of the Encyclopedists, submitted a draft order for the liberation of the serfs to a legislative committee in 1767. The text was rejected and in spite of her sovereign power the Empress took heed of the refusal, having realised, with some resentment, that she "reigned over a nation of slaves and by the will of the owners of the slaves"¹. She gave vent to her indignation by merely stating in a written message to the Committee "If the serf is not to be recognised as a human being, then you should say, without more ado, that he is an animal, which, in the eyes of the world, would reflect no great credit on our love for our fellow-men. All that you say about slaves applies to animals and is, moreover, invented by animals".

Serfdom remained unchanged. In 1785 the Charter of Nobility gave the nobleman an absolute right over everything his property contained, whether men, animals or objects.

¹ G. WELTER - *Histoire de Russie des origines à nos jours*, Payot, Paris 1946, Page 250.

Further, as State control over industry (then in its first growth) had been suppressed by the Ukase of 1780, and the Customs tariff of 1782 limited the importation of manufactured products, a great many noblemen availed themselves of their rights by setting up factories and exploiting their serfs as factory workers.

Catherine's successors had the same scruples as that illustrious Sovereign. Her grandson, Alexander I, who was a pupil of Laharpe and also imbued with philosophical ideas, published a law in 1806, giving noblemen the right to free their serfs, but the law was not applied. A Russian refugee in France, the memorialist Nicholas Turgeniev, wrote in 1847 that men were at that time still being sold by auction, even within sight of the Imperial Palace.

Nicholas I often said that the serfs would be freed before his death. He used to point to a cupboard in his study and say "There are documents which will enable me to take action against slavery." His death occurred however before any action was taken. Moreover, most of the serfs were handed over as security to their owners' creditors. It was estimated that at the time of the Czar's death, 9 million out of 11 million male serfs were mortgaged.

The honour of having liberated the serfs is due to his son, Alexander II. A few days after the conclusion of the peace which brought the Crimean War to a close, he declared to the representatives of the nobility that it did not seem possible to him to keep indefinitely in force a statute which concerned the "property of souls". He instituted a secret committee for improving the situation of the peasantry, and on the sixth anniversary of his succession to the throne (February 19, 1861) he signed a manifesto to his people proclaiming the abolition of serfdom. The measure made no provision however for giving land to the peasants, who generally only owned their own house and yard. In most cases the land continued to be the collective property of rural communities. In consequence the population's mental outlook continued to be very different to that of farmers in Western Europe and when, at the time of the 1917 Revolution, Kerenski was faced with the mass desertion of troops who rushed away in order to share in the land, all

he could do was to give way to vain indignation, and taunt them with being "slaves in revolt".

In the United States the mass importation of negroes had been brought to an end by the measures taken to suppress the slave-trade. Nevertheless, until the War of Secession, slaves continued to increase in numbers through smuggling, and above all as a result of the natural excess of births over deaths. Slavery had become essential to the economic equilibrium of the Southern States which, on account of their tropical climate, could probably not have been cultivated with a view to large-scale agricultural production by white man-power. The Northern States on the contrary, with their established industry, had no need of slaves, the increasing flow of white emigrants being sufficient for their economic development by a free population. The idea of slavery fostered the antagonism between the North and the South. The very puritan North blamed the South for the practice, on moral and religious grounds, but the South, accustomed to what it called its own "domestic institution", remained strongly in favour of slavery; nor could it imagine how it could exist without it. Many planters, who believed themselves to be good Christians, viewed the matter in the same light as one of the characters in Mrs. Beecher Stowe's book¹ "Uncle Tom's Cabin" (which, published in 1852, created such a stir and had so important an effect upon the campaign for the abolition of slavery on account of its moving and truthful appeal): "Slavery is a very bad thing, a great many people think so; I do myself. I heartily wish there were not a slave in the land, but then I don't know what is to be done about it." The Americans of the Southern States replied to those of the North, or to the British who tried to reason with them, that no scruples were felt by Manchester industrial circles in purchasing cotton produced by slave labour from the United States. When Mrs. Beecher Stowe visited London, the *Times* published the letter of a dressmaker's apprentice, who said that the dress ordered by the illustrious guest was being made, piece by piece, in the most revolting,

¹ See *Revue internationale de la Croix-Rouge*, December 1952, p. 949.

poverty-stricken slums of London, by poor people, unfortunate white slaves, who suffered far worse treatment than the slaves on American plantations. Which goes to prove that great circumspection should be exercised when passing judgment upon institutions!

Strictly speaking the abolition of slavery was not, as is too often believed, the issue at stake in the United States War of Secession. The war was the result rather of the economic and political rivalry between the North and the South. At the outset its only object was to save the Union and Lincoln wrote, as late as 1862, that if he could save the Union without setting a single slave free he would do so. But it happened that, in the course of hostilities, the United States troops freed slaves whom they had confiscated as "war contraband". In retaliation the Confederates seized the property in Southern territory of citizens of the Northern States, to which the Lincoln Government replied by freeing all slaves in the States opposed to the Union.

The victory of the Northern States finally led in 1865 to the total abolition of slavery throughout the territory of the Union, in accordance with the terms of the XIIIth Amendment to the United States Constitution.

In Spanish America slavery had been prohibited by the Bolivar Constitution since 1821.

In Brazil, however, in spite of the measures taken by Pombal, the traffic in African negroes had reconstituted a large slave population. In 1866, the Minister Eusébio de Queros caused a law to be voted which recognised the freedom of all the children of slaves at birth, although obliging them to remain in the service of their parents' owners until they attained their majority. In 1888, the "great abolitionist movement" led by Joaquim Nabuco, joined its efforts to those of the Holy See, which issued an encyclical letter to the bishops of Brazil, and the abolition of slavery was proclaimed in that country, some 800,000 slaves being thus set free.

With regard to slavery in the colonial territories of European Powers, it should be recalled that the *Code Noir* of 1685 recognised the practice in countries under the authority of France. In 1788 the *Société des Amis des Noirs*, under the leadership of Mirabeau and the Abbé Grégoire, started to rouse public

opinion on the question of slavery. In the following year the Declaration of the Rights of Man and of the Citizen proclaimed the equality of all races, which immediately gave rise to a protest on the part of the French West Indies settlers. In 1794 however, the Abbé Grégoire secured the unanimous adoption by the National Convention, of a law abolishing slavery. It is true, however, that as a result of pressure by the settlers, the law was repealed by the First Consul in 1802 (which led to the Santo Domingo rebellion), and it was not until 1848 that slavery in the French possessions was finally abolished by the provisional Government of the Second Republic.

In England, as in France, the anti-slavery campaign met with opposition on the part of the settlers. In 1823 Canning had 800,000 slaves transferred to England, in order that they might be freed and given work. Measures for the final abolition of slavery were taken in 1838.

The exploration of Africa strengthened the hold of European Powers upon territories where slave-traders were still recruiting slaves, either for domestic service in Moslem countries, or for contraband slave traffic. The Berlin Act of February 26, 1885 (also known as the Congo Act), signed by 13 European States, including all the great Powers of the time as well as the United States, provided in Article 9 that: "... in conformity with the principles of international law as recognised by the signatory Powers... the Powers which do or shall exercise sovereign rights or influence in the territories forming the Conventional Basin of the Congo declare that these territories may not serve as a market or means of transit for trade in slaves of whatever race they may be. Each of the Powers binds itself to employ all the means at its disposal of putting an end to this trade and for punishing those who engage in it.

It will be observed that this text extends to slave traffic on land the censure and prohibition which had until then only been applied to slave-trading on the seas. There was still no question of the total abolition of slavery in territories where the practice, in accordance with national customs, could be considered as essential. Cardinal Lavigerie, the apostle of the abolition of slavery, recognised in a lecture given in Saint-

Sulpice Church, Paris, on September 20th, 1890, that " Slavery is an essential factor in African social conditions ; its sudden disappearance would lead to incalculable ruin, to immense chaos where nothing would survive. For the moment we must be content with fighting the slave-trade ; it is the slave-trader, the torturer of millions of men, who must be hunted down and mercilessly destroyed " ¹. The previous year he had envisaged calling a general Anti-Slavery Congress in Berne, but the project was not successful. It was taken up by King Leopold II of Belgium who, in agreement with the British Government, convened in Brussels the Powers signatory to the Berlin Act, as well as the representatives of the Congo State, the Shah of Persia and the Sultan of Zanzibar. The object was to complete the Congo Act, which organised the policing of the western regions of Africa, by extending it to the eastern side of the continent.

The Act of the Brussels Conference, signed and ratified by 17 States including the Ottoman Empire, Persia and the Sultan of Zanzibar, effectively repressed the slave-trade in the Red Sea and Indian Ocean. It established an international central office in Zanzibar, and a similar office in Brussels (attached to the Belgian Ministry of Foreign Affairs), for the centralization and exchange between participators in the Brussels Act of all relevant information relating to legislation, seizures, judgments and reports calculated to assist in tracking down slave-traders.

A consequence of the First World War was the abrogation, by the Treaty of St. Germain-en-Laye in 1919, of the Berlin and Brussels Acts, in regard to the signatories, that is to say the victorious Allies (the United States, Belgium, the British Empire, France, Italy, Japan and Portugal). Article 11 of the Treaty provided that those Powers should, in particular, make every effort to ensure the total abolition of slavery in all its forms, and of the negro slave-trade on land and on sea.

The provision required, of course, to be defined in greater detail. This was to be the work of the League of Nations.

(to be continued).

¹ Translation from the original French.

PRESS RELEASE

*THE STANDING COMMISSION
OF THE INTERNATIONAL RED CROSS*

Geneva, November 12, 1954.

The Standing Commission of the International Red Cross met on November 11, 1954, in Geneva, under the Chairmanship of M. André François-Poncet.

Present at the Meeting—M. Paul Ruegger, President of the International Committee of the Red Cross, and M. R. Olgiati; Judge Emil Sandström, Chairman of the League of Red Cross Societies, and the Countess of Limerick; Mr. J.T. Nicholson; Mr. T.W. Sloper.

The place of Princess Amrit Kaur, Member of the Commission, was occupied by Mr. Sen, Indian Consul-General in Geneva, and that of Professor Pachkov, Vice-President of the Alliance of Red Cross and Red Crescent Societies of the USSR, by Mr. Tchikalenkov.

After taking note of the minutes of the Meeting of the Three Presidents (Standing Commission, International Committee of the Red Cross and the League of Red Cross Societies), held in London on September 30 last, the Commission examined the questions raised by the numerous relief actions which had recently been carried out to meet a number of exceptionally serious disasters. The Commission decided that a summary report of the relief actions should be submitted to the next International Red Cross Conference. The public would thus have a clearer view of the enormous and efficient efforts of human solidarity which were made, in all circumstances and in

all parts of the world, by the International Red Cross organisation. This International Conference, which is held at intervals of four years, will be convened between November 1956 and January 1957.

In addition, the Standing Commission was informed of the services rendered by the International Red Cross organisations, in conjunction with the Guatemalan Red Cross Society, to improve conditions for political detainees in Guatemala. That example made it possible to consider that political detainees might subsequently be the object of conventions similar to those which now deal with the wounded and prisoners of war, and the protection of civilian populations.

The Commission took note of the recognition by the International Committee of the Red Cross of the Afghan Red Crescent Society, and the Red Cross Society of the German Democratic Republic. As a result of the representations made by the Three Presidents, two-thirds of the signatories to the 1949 Conventions have now obtained the ratification of the Conventions by the parliaments of their respective countries.

The Commission fully approved the plan to erect a monument on the Solferino battlefield to commemorate the initiative taken by Henry Dunant, which was the starting point of the Red Cross movement throughout the world.

With regard to the International Conference which will be held in India between November 1956 and January 1957, the Standing Commission studied the draft agenda for the Meeting. It will examine the list of items for discussion, and make a study of the important subjects of general interest which should lead to a vast exchange of international views.

The Standing Commission will hold its next Meeting in the spring of 1955.

REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

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INTERNATIONAL COMMITTEE OF THE RED CROSS

RECENT ACTIVITIES

Indo-China. — The situation created by the armistice agreements, signed in Geneva on July 20, caused the International Committee of the Red Cross to be faced with new duties, which made it necessary to modify its representation in Viet Nam. Prior to that date M. J. de Reynier had already been sent on a mission to the Zone to the North of the 17th parallel, while M. A. Durand continued his work in the Southern Zone and in Laos and Cambodia ¹.

In the course of the last few months the International Committee's delegates have been present during several exchanges of prisoners of war and military internees held by either side. They accompanied the convoys of prisoners belonging to the Viet Nam People's Forces, who had until then been in French hands, whose camps they had often visited in the past few years. With the approval of the parties concerned they were able to proceed to the exchange posts. On several occasions they were also present during the return of members of the French Union Forces who had been prisoners of the Democratic Republic of Viet Nam. The delegates of the International Committee informed the two military commands of the points which had thus been brought to their notice in regard to the prisoners' condition after the period of their captivity.

These duties were soon followed by others, made necessary by the tragic plight of the refugees. The cease fire provided for the free passage of civilians wishing to proceed from one zone to another, and as a result several hundred thousand persons streamed into the assembly centres in Tonking, to be evacuated

¹ See *Revue internationale de la Croix-Rouge*, July 1954, p. 530.

to the South. To meet the serious situation caused by this exodus, the Government and the Red Cross of Viet Nam asked, as we know, for the assistance of the International Red Cross agencies in Geneva¹. The two appeals to the generosity of the National Red Cross Societies, the first launched by the International Committee on August 27, and the second by the League on the 31 of the same month, met with a favourable response on the part of some twenty Red Cross Societies, which were able to send relief supplies at once to the area, or to announce contributions in the near future. As already stated the work was shared between the International Committee and the League, the latter dealing with Red Cross relief supplies for the Southern Zone, while the International Committee held itself in readiness to fulfil the same function in the Northern Zone.

The close of hostilities has thus by no means diminished the duties which the International Committee has to perform in Viet Nam. In Saïgon in particular—where before the arrival of Dr. Thurler, the delegate of the League, M. Durand had received and stored the first relief consignments—the work of the delegation rapidly increased, making it necessary to nominate a second delegate, M. Nicolas Burckhardt. The latter, who was previously one of the International Committee's delegates in Korea, took up his post at the end of September and immediately started to visit refugees in camps and the dispensaries where they were being cared for by the Viet Nam Red Cross, while the International Committee studied the question of financing relief action on their behalf from its funds. In addition, the delegates began to make stores in Saigon of gift consignments received from National Societies for possible relief action in the North. It may here be mentioned that M. de Reynier remained in Hanoi after October 10, on which date the Democratic Republic of Viet Nam Forces took possession of the city. A short time previously the International Committee instructed one of its former delegates, Dr. Aguet, to discuss various medical and pharmaceutical questions with M. de Reynier. Dr. Aguet has just returned to Geneva to give a report on his mission.

¹ See *Revue internationale de la Croix-Rouge*, September 1954, p. 703.

Reuniting of families. — Over 2,000 children of German origin or German-speaking have so far been able to leave Jugoslavia in order to join their relatives in other countries.

The most recent convoy arrived on October 26 at the Austrian frontier, where members of the Yugoslav Red Cross Society handed over to the delegates of the International Committee of the Red Cross, and the National Red Cross Societies concerned, 201 children of whom the majority were proceeding to Germany and Austria, whereas about fifteen were awaited in Belgium, the USA, Canada, Venezuela and Australia.

The convoy had been extremely well organised by the Yugoslav Red Cross Society, for the ninth time in succession. As on previous occasions, the individual assembling of the children had required long and careful tracing on the part of this Society's services. It should also be mentioned that, apart from these convoys, many children accompany their parents who, themselves beneficiaries of the general action for the reuniting of families, leave Jugoslavia to join their near relatives.

Repatriation of Greeks from Rumania. — 568 Greek nationals, who had been in Rumania for several years, have been able to leave that country and return to Greece. They embarked at Constanza on October 28 and arrived the following Saturday in Salonika. Arrangements for repatriation had been made between the Rumanian and Greek Red Cross Societies, through the International Committee of the Red Cross and the League of Red Cross Societies, in Geneva. Two delegates of these organisations were present in Constanza and accompanied the repatriated persons to Greece. An earlier repatriation of a similar nature took place in August last.

THE RED CROSS AND THE MENACE OF TOTAL WARFARE

During the recent session of the Executive Committee of the League of Red Cross Societies, numerous representatives of National Societies participating in the session met at the headquarters of the International Committee of the Red Cross, in order to take cognizance of the work the latter is doing to strengthen the legal protection of populations against the dangers of modern warfare.

This work follows the meeting of experts convened by the International Committee last April, in Geneva, and the resolution which was unanimously adopted by the National Red Cross Societies in Oslo, in the spring.

The representatives of the International Committee laid particular emphasis on the fundamental idea on which its studies are based namely, that the conversations initiated on a governmental level on disarmament and the prohibition of weapons for mass destruction should be accompanied by an effort on the humanitarian plane, by the Red Cross movement as a whole, to reaffirm, specify and induce Governments to admit the rules and limits essential for the safeguard of civilian populations, which belligerents should always respect, whatever type of weapon may be employed. The Red Cross cannot remain indifferent to a conception of warfare which is fundamentally opposed to the principles which inspire its action.

The delegates of the National Societies who took part in the session encouraged the International Committee to pursue its work according to the plan outlined, whereby the ICRC will submit draft regulations, conferring this essential protection, to the next International Red Cross Conference, which is to be held in New-Delhi in 1956.

A wish was also expressed that the public should be widely informed by the ICRC of the work that it is pursuing in this field, with the help of the National Red Cross Societies.

HENRI COURSIER

Legal Department of the ICRC

THE SLAVE QUESTION

IV.

DOES THE PROBLEM OF SLAVERY STILL EXIST TODAY?

The Covenant of the League of Nations only refers to slavery in connection with the institution of mandates in Africa and the islands of the Pacific. The mandates expressly provide for the suppression of the slave-trade and the prohibition of forced labour (for other than essential public purposes and against a fair wage). The African mandates also lay an obligation upon the mandatories to suppress domestic or other slavery as soon as possible, and in so far as social conditions allow.

It should be observed that the signatories to the Covenant of the League of Nations had in mind merely the servitude or forced labour of populations under the administration of Colonial Powers. At the time nobody visualized situations similar to those which, in Europe itself, accompanied the seizure of power by totalitarian States or the Second World War and its prolonged effects.

Nevertheless, in 1922 the League of Nations Assembly decided to place the question of slavery on its agenda and requested the Council of the League of Nations to submit a report on the information received on the subject. It was simply a matter of asking States "in the present territory and colonial possession of which slavery has been known to exist in the past to consider the possibility of communicating to the Council information...".

After the very successful issue of the anti-slavery campaign of the XIXth Century, and at a time when peace between

nations appeared to be definitely established in an atmosphere of general well-being, one might well ask whether slavery was not merely a relic of times past. It was soon realised, unfortunately, that this was not the case, and the noteworthy report submitted in 1925 by the Temporary Slavery Commission, the investigating body composed of experts assembled by the League of Nations Council, disclosed traffic, institutions and customs which proved that slavery and the slave-trade, in their traditional form, were not only still in existence, but that numerous and varied practices, involving important groups of persons all over the world, often perpetuated conditions similar to slavery. As an example of such right of constraint upon persons, the Commission cited the acquisition of girls by purchase disguised as payment of dowry, the enslaving of persons disguised as the adoption of children, and numerous examples of the pledging or enslavement of persons for debt or other causes.

As the same time as the Temporary Slave Commission submitted its report to the League of Nations Assembly, the British Government, which had never slackened in its abolitionist efforts, submitted a draft international Convention on slavery. The two documents served as a basis for the discussion of the Convention signed in Geneva, on September 25, 1926, by the representatives of 36 States.

We will now make a detailed survey of that important document which, even at the present time, is a codification of the international law existing on the subject.

Taking up the question as it stood on the revision of the General Act of the Brussels Conference of 1890 by the Convention of St. Germain-en-Laye in 1919, the signatories to the new agreement referred, in the Preamble, to the Powers' intention, according to former treaties, " of securing the complete suppression of slavery in all its forms and of the slave-trade by land and sea ". They also declared that it was " necessary to prevent forced labour from developing into conditions analogous to slavery ".

Starting from that dual principle, let us consider the provisions of the Convention of September 25, 1926, in detail :

Article 1 defines slavery and the slave-trade :

For the purpose of the present Convention, the following definitions are agreed upon :

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

2. The slave-trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery ; all acts involved in the acquisition of a slave with a view to selling or exchanging him ; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

The preparatory work on this text shows that the authors had in mind not only domestic slavery, but all the conditions mentioned by the Temporary Slavery Commission, i.e. debt slavery, slavery disguised as the adoption of children, the acquisition of girls by purchase disguised as payment of dowry, etc. " Even if these last practices do not come within the definition of slavery, as it is given in Article I " added the Rapporteur, " the Commission is unanimously of the opinion that they must be combated ".

Article 2 reads as follows :

The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps :

- (a) To prevent and suppress the slave-trade ;
- (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.

The formula may have appeared somewhat weak to enthusiastic abolitionists, but on close examination the Temporary Slavery Commission, who were provided with a vast amount of data on the subject, had seen (as Mgr. Lavigerie had in the past) that the question was not a simple one. The Chairman, M. Gohr, Director-General of the Belgian Colonial Office, stated, according to the records of the discussions : " Careful students of colonial affairs are coming more and more to realise that the customs of primitive peoples are, as it were, an echo of natural environment or of mentality and religious beliefs or of the

economic level attained—an echo, that is, of their stage of social development. Most of their social customs arise from actual needs. *These needs still exist.* Therefore it is only in regions in which the conditions of life can be transformed (and only to the extent to which such a transformation can take place) that new rules of life can supplant the old. Suddenly to substitute one system for another would be to take away the supports for the building and replace them by other supports having no foundation or unadapted to the form of construction. The house of course would fall.”

While declaring ruthless war on slave-traders, the Temporary Slavery Commission thus recognised that, in many cases, slavery should not be suppressed by a stroke of the pen. It stated in its Report that “The situation is such that sudden abolition would almost certainly result in social and economic disturbances which would be more prejudicial to the development and well-being of the peoples than the provisional continuation of the present state of affairs”.

That prudent opinion was endorsed by the signatories to the Convention.

According to Article 3 :

The High Contracting Parties undertake, to adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon all vessels flying their respective flags.

The High Contracting Parties undertake to negotiate as soon as possible a general convention with regard to the slave-trade which will give them rights and impose upon them duties of the same nature as those provided in the Convention of 17 June 1925, relative to the International Trade in Arms (Articles 12, 20, 21, 22, 23, 24 and paragraphs 3, 4, 5 of Section II of Annex II) with the necessary adaptations...

It is not surprising that in this connection the British draft had once more suggested the assimilation of the slave-trade to piracy, with a view to exercising the right of search. But, as the Rapporteur pointed out, a great many members of the Sixth Committee of the League of Nations Assembly thought that the suggestion of Great Britain would raise serious difficulties ; they therefore preferred to envisage, instead of the

right of search, the possibility of similar measures to those employed for the repression of the arms traffic, which only entailed the right to ascertain the ship's identity. As a matter of fact, the proposed new general Convention was never even negotiated.

Article 4 provides that :

The High Contracting Parties shall give to one another every assistance with the object of securing the abolition of slavery and the slave-trade.

In particular, this text opens the way for the conclusion of bilateral agreements for the pursuit of offenders across inland frontiers.

Article 5 reverts to forced labour :

The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

It is agreed that :

(1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes.

(2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence.

(3) In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned.

Article 6 deals with the repression of infractions by "severe penalties".

Article 7 provides for the communication to the Secretary-General of the League of Nations of any laws and regulations enacted for the purpose of the application of the Convention.

Article 8 refers to the Permanent Court of International Justice, or to a court of arbitration, the settlement of disputes arising between the Parties to the Convention, as to its interpretation.

The last Articles 9, 10, 11 and 12 concern the reservations in regard to the application of the Convention in certain territories, and the procedure for notification, denunciation, accession and ratification.

In a general appreciation of the Treaty, the Rapporteur of the Sixth Committee of the League of Nations General Assembly stated that he would like to emphasise the fact that "the Committee does not hold up this document as the ultimate aim to be achieved in the international effort to do away with such abuses as the slave-trade, slavery and conditions analogous thereto. It represents merely what the Committee considers to be the highest minimum standard which can be set forth in formal international arrangements at the present time".

In 1929, three years after the signature of the Convention, it had been ratified by 14 Powers only. The League of Nations Assembly, much concerned by the slow progress made in bringing the agreement into force in the majority of States, decided to entrust separate agencies with the task of following up the application of the principles of the Convention relating, first to forced labour, and, secondly, to the slave-trade, slavery and other practices akin thereto.

The International Labour Office, entrusted with the study of the forced labour question, caused a draft Convention to be adopted in June 1930 by the International Labour Conference. It was specified in the text of the draft that "Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only, and as an exceptional measure, subject to the conditions and guarantees hereinafter provided".

With regard to slavery in itself, the League of Nations

Assembly appointed a further Committee of Experts in 1931, to ascertain how far the 1926 Convention had been successful in suppressing it. The Committee also had the task of enquiring into the means by which States, which so desired, could be assisted in abolishing slavery on their territory.

Only one of the Governments concerned, namely Liberia, applied for such assistance. A Commission of Enquiry was sent to that country but, after three years' fruitless effort, the Council of the League of Nations, in 1934, decided to withdraw its offer of assistance.

The Committee of Experts was then succeeded by a small Advisory Committee of Experts which (according to its statutes) was appointed for an undefined term, the Council of the League of Nations merely retaining the right of renewing the membership of the Committee every six years. The vast amount of data collected by the Advisory Committee has been published, classified methodically, as a Memorandum by the Secretary-General to the United Nations on the work of the League of Nations for the suppression of slavery¹. The classification under geographical headings includes the Arabian Peninsula, the Persian Gulf, Ethiopia, the Sudan and Ethiopian Border, Eritrea and Somaliland, the Sahara Desert Area, West Africa, Central Africa, East, South and South West Africa, India, Burma Frontier Districts, the East Indies, China and America. The work of the Advisory Committee was interrupted by the Second World War.

The amount of information collected by the League of Nations was therefore considerable. As regards executory measures, its work is resumed in the Convention of September 25, 1926. At the time when the United Nations took over the succession of the League of Nations 45 States were bound by the Convention².

¹ Memorandum by the Secretary-General to the United Nations on the Work of the League of Nations for the Suppression of Slavery (E/AC.33/2) of January 23, 1950, Pages 32 and following.

² On July 9, 1944, the position in regard to signatures, ratifications and accessions was as follows (League of Nations Official Journal, Special Supplement No. 193).

It must be admitted that the events which led to the Second World War, and the circumstances of the latter, often revealed a moral relapse of humanity. Rights which had been considered as acquired by the individual, by virtue of civilisation, were questioned and one saw deportees, prisoners of war and political detainees subjected to forced labour, in spite of international conventions and usage. The victorious Powers therefore felt the need for restoring standards of civilisation when re-establishing Peace.

The aim of the United Nations Organization, by the terms of its Charter, was "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". This re-affirmation of the democratic ideal inspired the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in Paris, on December 10, 1948, which states in Article 4 that "No one shall be held in slavery or servitude; slavery and the slave-trade are to be prohibited in all their forms".

The declaration once more covers, in a concise form, the provision of the 1926 Convention in their entirety.

During the discussion of Article 4 by the Commission on Human Rights, the representatives of the United States, France and Australia thought a special mention should be made of forced labour; the representatives of the United Kingdom and China opposed the idea, preferring a brief and general formula. Agreement was reached on a compromise draft, specifying that it applied to slavery and the slave-trade "in

Ratifications or definite accessions: Afghanistan, United States of America, Belgium, Great Britain and Northern Ireland, Burma, Canada, Australia, New Zealand, Union of South Africa, Ireland, India, Bulgaria, China, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Estonia, Finland, France, Syria and Lebanon, Germany, Greece, Haiti, Hungary, Iraq, Italy, Latvia, Liberia, Mexico, Monaco, the Netherlands, Nicaragua, Norway, Poland, Portugal, Rumania, Spain, Sudan, Sweden, Switzerland, Turkey, Yugoslavia.

Signatures or accessions not yet perfected by ratifications: Albania, Colombia, Dominican Republic, Ethiopia, Iran, Lithuania, Panama, Uruguay.

Open to accession by: Saudi Arabia, Argentine Republic, Bolivia, Brazil, Chile, Costa Rica, Free City of Danzig, Guatemala, Honduras, Iceland, Japan, Liechtenstein, Luxembourg, Paraguay, Peru, Salvador, San Marino, Thailand, USSR, Venezuela.

all their forms", and it was stated in an additional note that, in the opinion of the Drafting Committee, the ideas implicitly conceived in that part of the sentence should be developed in the Covenant on Human Rights. The representative of the USSR suggested stating that "slavery is prohibited by law" but, in view of the general nature of the declaration, it was thought preferable not to raise the question of methods of application; it was therefore decided to maintain the text as given above, which proclaims the prohibition of slavery as a principle, without referring to specific cases which, moreover, had in a good many instances been already embodied in the international Conventions in force.

An interesting amendment (which was not however put to the vote) was proposed by the Venezuelan Delegation; it read as follows: "Unless already in existence, a legal system should be set up, designed to avoid working conditions which might in any way undermine the freedom and dignity of human beings. The idea, couched in such terms, could hardly find its place in the Universal Declaration of Human Rights; this is to be regretted for it would have had the advantage of placing the whole question in its true perspective in relation to human dignity.

In spite of the extensive data on slavery already collected by the League of Nations, the United Nations thought it necessary to have fuller and completely up-to-date information on the subject. It therefore set up an Ad Hoc Committee "to survey the problems of slavery and of institutions or customs akin thereto".

Four highly qualified experts were engaged in the survey for two years, and their report, submitted in 1951, revealed that on the territory of most of the States signatory to the 1926 Convention slavery had died out, or was practised rarely and in isolated cases only, which made it possible to apprehend delinquents. The Report stated that "In other territories the machinery for apprehending offenders and for protecting sections of the population especially exposed to the operations of slave dealers, or the revival of practices analogous to slavery, has greatly improved. And yet, the task of suppression has

not yet been fully met. War and famine, disruption of social bonds that have held individual greed in check, loss of authority on the part of classes or age-groups formerly empowered by custom and tradition to keep watch over the social welfare, economic changes that break up old culture patterns, new temptations brought to distant and isolated places by world trade, and many other causes still threaten in many places the right of individuals to dispose of their own persons." The experts gave detailed descriptions of various institutions which, although they did not generally meet with public disapproval in the places where they existed, nevertheless constituted forms of servitude which "existed to a considerable extent in many portions of the world". The principal examples of these practices were debt slavery, the *mui ts'ai* system, particularly prevalent in the Far East, serfdom, peonage and various forms of exploitation of Indian man-power in America, not to mention the forced labour of political detainees which the United Nations had thought fit to entrust to the survey of another Ad Hoc Committee.

In submitting its conclusions, the Ad Hoc Committee on Slavery recognised that the abolition of the various types of servitude raised a great many different problems, according to the regions of the world where they were practised. The Committee also agreed that such institutions and customs, which were to be deplored on moral and legal grounds, could not apparently be abolished until some means had been found of replacing them by a system which would guarantee advantages at least equivalent to those which were, in spite of everything, enjoyed by the persons concerned. It would be advisable, for instance, in the case of agricultural debt bondage, to solve this problem by "making land available to the agricultural workers (accompanied by the provision of financial services to enable them to cultivate it), and instruction in modern methods of cultivation and co-operative marketing of their produce; or where land is not available they should seek to make it available by

¹ This custom consists of the sale of the working capacity of a child, who is brought up in a family other than its own, marries within the said family and serves for the whole of its life.

reclamation of land, transfer of population or by establishing other industries into which agricultural workers could be absorbed". It is obvious that, considered from that angle, the suppression of such customs raises very great problems for governments, either those directly responsible for the welfare of the populations in question, or the whole international community, if it is agreed that the respect of liberty and human dignity in all regions of the world is the common responsibility of all nations.

For that reason the Secretary-General of the United Nations, having been asked for his personal suggestions following the survey, made a very clear distinction between the measures, of a somewhat limited nature, which could be taken immediately, and decisions concerning measures for the future which, he did not deny, would be fraught with difficulties and have far-reaching effects. He definitely agreed upon the expediency of the former measures, but showed far more reserve with regard to the others, and left the decision to the United Nations Assembly. His report, published in 1953, first of all recommended the accession of Powers which were not so far bound by the Convention of 1926 (certain provisions of which would be amended in view of the changes which had taken place in the international organisation)¹; on the other hand, however, he prudently suggested that additional information should be obtained to define the various forms of international assistance which any supplementary Convention for the abolition of practices akin to slavery should in justice involve.

The United Nations General Assembly has not as yet given its decision on the suggestions of the Secretary-General, but it is hard to see how it could reject them. The problem of slavery is therefore far from being solved.

How does the question stand at the present day?

In order to reply to this question, the idea of slavery must first be clearly defined. The members of the Ad Hoc Committee

¹ An additional Protocol to the Convention of 1926 attributes respectively to the Secretary-General of the United Nations and the International Court of Justice the functions previously performed by the Secretary-General to the League of Nations and the Permanent Court of International Justice.

themselves observed that the definition of slavery varied considerably from one region to another and from one enquirer to another. This is so true that, in addition to the general report, the four members of the Committee each made a special report ; the four documents were annexed to the general report, for information and under the authors' own responsibility. In reality the question of slavery resolves itself into a series of questions of varying importance. Some of them may be considered as settled, whereas others remain to be solved.

Slavery, in its true sense, as it was practised in ancient times, or in the United States before the adoption of the XIIIth Amendment to the Constitution, only subsists today in the form of domestic slavery, especially in certain Moslem countries. That is no doubt the cause of what would appear to be a survival of the slave-trade, principally in the direction of the Arabian Peninsula. The references made by the Secretary-General of the United Nations ¹ on the subject show, moreover, that it is almost entirely limited to children, and that the numbers involved are small. Like Saudi Arabia, Ethiopia has officially taken the necessary legislative measures to suppress the traffic. It must, moreover, be admitted that domestic slavery, in so far as it subsists in the former country, has lost much of its harmful nature since King Ibn Saud issued a decree in 1936 which gives slaves rights of protection as well as the right to buy their liberty.

There is in fact much to be said for domestic slavery. Strange as it may seem to those accustomed to the practice of democratic liberties, this form of servitude sometimes constitutes a privileged state for those who are subject to it.

We have seen that, in ancient times, slaves in Athens became rich, and in Rome the slaves lived with their masters' families and were often very well treated, whereas this was not the case in the *latifundia*—the large rural estates which were exploited on an industrial basis. In our times, in places where a certain patriarchal conception of life still existed, domestic slavery continued to be practised without glaring abuses. In

¹ Report of the Secretary-General to the United Nations, E/2548, February 26, 1954, Page 91.

1854 Henry Dunant, who was to become the promoter of the Red Cross, pointed out in his " Notice sur la Régence de Tunis " the great difference which then existed between the relatively humane treatment of slaves in Mosiem countries and the conditions for negro slaves in the United States. When one considers that, in our organised society, every free man depends to some extent upon his fellow-man, and that he must earn his living by his labour, one realises that the immoral aspect of domestic slavery is not its dependence, or the work it entails (even unpaid labour if it is accompanied by allowances in kind equivalent to wages), but the fact that the master has the right to sell his servant, in the same way as an animal or a piece of furniture. It is the exercising of this right of sale which is incompatible with the principle of respect for human dignity. Thus, in her famous book, Mrs. Beecher Stowe gives an idyllic picture of Uncle Tom's life until the day he was sold on account of his master's business difficulties. It was only then that Tom ceased to be part of the family in which he, and his own family, had known happiness in helping to make his owners happy. The Convention of 1926 rightly took as the criterion of slavery the condition of a person over whom the powers of ownership are exercised.

The *mui ts'ai* system, and other forms of servitude, should be judged in the light of the same extenuating circumstances ; this is proved by the United Nations records in which it is stated that the Social Welfare Departments were severely handicapped by the " almost complete unwillingness and lack of co-operation of the victims to help them in their work " ¹.

It is obvious that in over-populated countries, exposed to famine through the absence of an adequate economic system, the first organised elements, composed of families in possession of some reserve stocks, constitute the only effective protection against sickness and death. Hence the advantage for those who are unable to find the necessary means of subsistence in their own families, to be attached, in some capacity or another, to those who can provide such means. It is merely the practice

¹ Memorandum by the Secretary-General to the United Nations, E/AC.33/8, February 16, 1950, Page 6.

of this bondage for immoral purposes which renders its cessation desirable. But, in all fairness, the desired result cannot be attained unless some other means are found of providing for the needs of those concerned.

From ancient times until the present day the distress of mankind has been relieved by charity. Hierarchical societies had recourse to it to combat poverty. Taking as a principle "noblesse oblige", and on religious grounds, an equilibrium was sought by means of the patriarchial system. In the XIXth Century the progress of science and the universal development of industry precipitated a movement which had already been foreshadowed by the ideas of the French Revolution. The Christian philosophers, for their part, made a prolonged study of the question. Ozanam wrote that the greatest Christians were wrong in thinking that they had fulfilled their duties towards their fellowmen once they had ministered to the poor, as though there was not a huge community, neither destitute nor poor, which did not ask for charity but for institutions; and during the recent assembly of French bishops it was said that there were too many human beings, too many families and nations which had not yet benefited by the progress of civilisation. The keynote of Socialist thought is social justice rather than charity.

It is stated, in an article by Max Sørensen¹, that the difficulty lies in fixing the exact limits of State intervention. The right to work could be assured without great difficulty if slavery were to be reintroduced, and it is often pointed out in liberal circles that economic and social rights can only be assured at the expense of the right of freedom. In that connection forced labour, the subject of Article 5 of the 1926 Convention, raises special difficulties and the United Nations therefore placed the study of the question in the hands of a separate Committee from that on Slavery—the Ad Hoc Committee on Forced Labour. The conceptions of certain Governments at the present time have made the right to practise forced labour one of those State prerogatives, the mere discussion of which is considered by them to be contrary to sovereign independence.

¹ Bulletin de la Croix-Rouge danoise, October 1952, Page 171.

One is therefore brought to consider that, at the two extremes of the conception of the life of society, there still remains the possibility of abuses which perpetuate slavery in its inhuman forms and, even at the present day, hold moral ethics and humanitarian law at bay. When charity is missing from the traditionalist societies and when justice is scorned by the others, human dignity is also in danger.

This aspect of the question should not induce us to take a depreciatory view of the important results achieved by the abolitionist campaign of the XIXth Century, or of the value of the 1926 Convention, nor, above all, of the Universal Declaration of Human Rights. But between the proclamation of principles and their implementation, and even between the enactment of municipal legislation and its application, there often exists a gap which we should endeavour to fill.

This is the vocation of humanitarian thought, which is, above all, attached to human values and which, being inspired by justice and charity, holds good for all systems.

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