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INTERNATIONAL COMMITTEE OF THE RED CROSS

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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

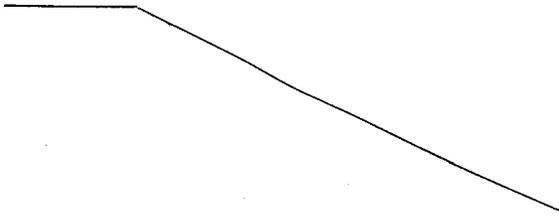
EXPENDITURE

	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.