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DE LA CROIX-ROUGE

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INTERNATIONAL COMMITTEE OF THE RED CROSS

NEW YEAR'S MESSAGE FROM THE PRESIDENT OF THE ICRC

There is still unfortunately no stable and enduring peace in the world of today. Energy and devotion on the part of men of good will are therefore more necessary than ever. The International Committee of the Red Cross in Geneva must be ready to carry on its work on behalf of the victims of wars and conflicts of all sorts and of their consequences, in accordance with its traditional humanitarian principles.

Whatever the obstacles and difficulties with which it is faced may be, the International Committee will steadfastly continue its efforts to relieve human suffering with all available means. It remains at the post assigned to it by history, continuing to apply and to defend, without compromise of any kind, the principles of impartiality and universality upon which the Red Cross has been founded in Geneva nearly ninety years ago.

It is in this spirit that the Committee wishes all mankind harmony and peace throughout the coming year.

NEW MEMBERS OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

At its Plenary Session of October 23 last, the International Committee of the Red Cross enrolled a new member, Dr. Marcel Junod, who gave valuable service in the Ethiopian and Spanish conflicts and during the Second World War.

It was at Mulhouse in the early autumn of 1935 that Dr. Junod, who was then a resident medical student of the town hospitals, received a call from the International Committee entrusting him with a mission in Ethiopia, where war was in progress. From that moment Dr. Junod helped to organise the Ethiopian Red Cross services, and to look after national and foreign ambulance units.

In 1936 during the civil war in Spain Dr. Junod (in the capacity of General Delegate) established with the two parties in conflict the bases of the International Committee's action.

When the World War broke out in 1939, Dr. Junod once again gave his entire services to the International Committee by carrying out most important missions in numerous countries, such as Germany, Belgium, France, the United Kingdom, Greece, Japan, Norway, Sweden and Turkey.

In a notable book entitled "Warrior without Arms", which has been widely read, Dr. Junod describes some aspects of the work accomplished on fighting fronts, in spite of all obstacles, by Red Cross delegates.

The United Nations had recourse to Dr. Junod's competent services in 1947, when he served as a Liaison Officer at Lake Success, and in 1948 when he was at the head of a UNICEF mission to China. He was obliged to relinquish this latter post through illness.

With his practical knowledge of men and things and of all that concerns the difficult and sometimes distressing problems which come before the Geneva institution and engage its active

consideration, Dr. Junod will in pursuance of his high ideal of justice continue to work with the International Committee for the alleviation of human suffering.

At a meeting held on December 11, 1952, the International Committee of the Red Cross nominated a new Member, M. Ernest Nobs, a former Federal Councillor.

M. Nobs, who was born on July 14, 1886, is a citizen of Seedorf (Berne), Zürich and Grindelwald. After studying at the Berne-Hofwil Training College he followed the teaching profession for six years.

From 1912 to 1913 M. Nobs was engaged in editorial work in Lucerne, and from 1914 to 1915 in Saint-Gall. From 1915 to 1935 he was first on the staff and later Editor of the "Volksrecht", the daily organ of the Social-Democratic Party in Zürich.

After being appointed a Member of the Zürich State Council in 1935, M. Nobs was until 1942 in turn Head of the Department for Legal and Municipal Affairs and Head of the Department of Public Economy. From 1942 to 1943 he was Chairman of the Zürich Town Council.

M. Nobs was a National Councillor from 1919 to 1943; in the following year he was appointed to the Federal Council and was for eight years in charge of the Customs and Finance Department.

He resigned from his high office in 1952 and went to live in Meilen on the shores of Lake Zürich.

M. Nobs, who is a man of extensive culture, wide experience and high principles, will be in a position to make a most valuable contribution to the humanitarian work of the International Committee, in which he has long shown a keen interest.

PRINCIPAL ITEMS OF INTEREST

Greece. — During the last quarter of 1952 the Athens Delegate of the International Committee sent or personally distributed some 6,000 kgs of relief supplies in the following places of detention—Aghios Efstratios Camp, prisons in Amphissia, Averof, Chalkis, Corfu and Aegina, the Korydallos Reformatory in Athens, the Agricultural Centre at Kassavetia, prisons in Karditza, Kastoros, Larissa, Patras, Alpha, Eptapyrgion, Salonika, Trikkala and Vourla, and Trikkeri Camp.

Middle East. — In November and December 1952, M.P. Gaillard went on a mission to several Middle East countries. In Egypt he dealt with the closing down of the ICRC Delegation in Cairo, the Egyptian Red Crescent having agreed to take over the various tasks which had until then made it necessary to have a permanent office there.

It may be of interest to recall the part played by this Delegation, both by its work in Egypt and as a centre for the work which had to be undertaken by the ICRC in several neighbouring countries where it had no representatives. From the time the Delegation opened in 1939 its duty was, in the first place, to assist German and Italian prisoners of war and civilian internees in Egyptian territory. It also had to deal with the repatriation of civilians from these two countries who were in Ethiopia, Eritrea and Somaliland, and with the exchanges of prisoners, the seriously wounded and sick and medical personnel, which took place via Turkey and Spain. From Cairo several missions proceeded to Palestine and Iraq for the purpose of visiting Axis prisoners and internees, and to Eritrea and Kenya to see Jewish political detainees.

The relief action in Cairo was considerable. By purchasing numerous supplies locally and by organising the transit, in particular through the Suez Canal, of parcels from many

different sources, the Delegation made a major contribution to the relief of Allied prisoners of war in Europe and Axis prisoners in the Middle East, and subsequently to that of civilian populations in Europe (1944-1947), also Moslems in Europe and Indonesia. It also served as an important channel for the transmission of family news.

With the outbreak of the Palestine conflict in 1948 the Delegation assumed new duties. It established preliminary contacts with the Arab League, took over the task of assisting Israeli prisoners of war held in Egypt and arranged for their repatriation and that of the Egyptian prisoners in 1949. It undertook, alone or with the co-operation of the Egyptian Red Crescent, relief action in behalf of Palestine civilians and refugees (especially at Gaza) and collaborated in the work of the Commissariat set up by the ICRC for the administration of the relief allocated by the United Nations to Arab refugees (1948-1950).

Apart from representations made jointly with the Egyptian Red Crescent to enable this Society to carry out its humanitarian work in the Suez Canal Zone during the winter of 1951-1952, the current work of the Delegation has, during the past two years, been mainly concerned with the transmission of family news (Civilian Messages), the transmission of enquiries (exchanged between Egypt, including Gaza, and Israel) on missing persons and the issuing of ICRC Travel Documents to refugees and stateless persons for emigration purposes.

It was with a view to facilitating the taking over of these remaining duties by the Egyptian Red Crescent that M. Gaillard recently visited the country.

He took advantage of his stay in Cairo to consider, with several members of the Egyptian Red Crescent and the Arab League, the possibility of establishing, by publications and discussions, closer collaboration with Moslem circles within the actual Red Cross field.

M. Gaillard's mission also took him to Jerusalem where he met the heads of the Jordan Red Crescent, and to Damascus where he and M. Burnier (the International Committee's Delegate for Syria and the Lebanon) visited the Syrian Red Crescent (see under "War Disabled").

War Disabled. — During his mission to the Middle East M. Gaillard saw the authorities and various associations concerned with the war-disabled, in order to acquaint the ICRC with the position of this class of war victims in these different countries. His numerous discussions on the subject were conducted on the basis of a questionnaire made out in Geneva by the Disablement Section. These discussions raised great interest in the circles concerned, especially in Egypt where this particular problem of assistance is under examination at the present time. In Jordan the Delegate of the ICRC got into touch with the Union of Munadeleen Invalids ; he pursued his enquiries in Syria and the Lebanon and collected very full information in Israel on the subject of Government assistance to military and civilian disabled.

It may also be mentioned that the Disablement Section sent a gift of 50 Braille watches to the Algerian Blind Association and 30 to the Polish Red Cross. Five watches donated by a Swiss watchmaking firm were sent to Vienna and will be presented to amputated war-blind. The Section also sent off 50 Braille watches purchased by the Australian Red Cross.

Israel. — In connection with his mission to the authorities and the Magen David Adom the delegate of the International Committee saw several members of this Society's Central Committee. He visited various technical services and regional branches of the Magen David Adom and also a civilian prison where Arab civilians of Palestinian origin who have clandestinely entered Israel are under detention. These persons will be able in future to exchange letters with their families once monthly through the channel of the ICRC (see under War Disabled).

Vietnam. — During November 1952, M. A. Durand, Delegate of the ICRC, continued to visit camps containing prisoners in French hands. In particular he visited four localities in the Saigon area where permanent camps have been installed.

CHRONICLE

THE ORIGINS OF HUMANITARIAN LAW¹

III

THE LAW OF NATIONS

The Reformation in the sixteenth century broke up the unity of Christendom.

A new principle of regulating State relations, other than Pontifical Authority, had to be found ; and the principle adopted was the Law of Nations.

To the traditional claims of Sixtus V, who said : " We have a sovereign power over all Kings and Princes of the earth, and over all peoples, not by human but by divine right " ², Luther replied in his letter to the German nobility : " Let the Bishop of Rome renounce his pretended claim to the Kingdom of Naples and Sicily ! He has no more a right to it than I, Luther... Let the Pope say his prayers, and leave the Princes to govern their Kingdoms ".

Machiavelli's famous work " The Prince ", becoming known at a time when Protestantism was engendering a new enthusiasm in national aspirations ³, sets forth the theory of the complete independence of sovereignties, and gives new legal weight to the ideas proclaimed by the legists of the past. It was thus that that anarchy of sovereignties established itself

¹ See *Revue internationale de la Croix-Rouge*, May 1951, pages 370 ff. ; July 1951, pages 558 ff.

² Quoted by LAURENT, *Etudes sur l'Histoire de l'Humanité*. Vol. VI, page 109.

³ This book, begun in 1513, did not appear until 1532.

which, had it not been moderated by the institution of international law, would have signified the unrestricted reign of force.

But Protestantism, while weakening papal authority, at the same time gave rise to a new form of law. Grotius, and his successors Zouch, Puffendorf, Barbeyrac, Burlamaqui, Wolf and Vattel, all Protestants, "were to make the theory of the law of nations appear as a reformed science for nearly two centuries" ¹.

These jurists differed from the Canonists of the Middle Ages in that they no longer tried to connect the idea of law with that of divine justice, but presented it as a purely human rule of discipline. No doubt they thought it should be inspired by "natural law"—that is to say, by the corpus of moral ideas in conformity with the precepts of the Christian religion: but, according to Suarez, the law of nations is distinguished from natural law in that it is solely "positive human law" ². In accordance with the spirit of the Reformation it was the duty of mankind to lay down new rules and customs and make treaties by an action of their free will. International law from that time on proceeded from nations, which created it in the plenitude of their sovereignty.

That is how ideas progressed as a result of the Reformation. But Christian thought as the life-blood of natural law remained the arbiter of nations. In the abstract form of the law of nations the principle of order between peoples became less tangible than it had been in the concrete form of Pontifical Authority in the Middle Ages; but the essential elements of moral (i.e. Christian) progress were preserved, for according to Montesquieu's famous definition the law of nations is "the law which after victory leaves the conquered the great assets of life, freedom, laws, property and always religion".

These reflections on the law of nations apply to humanitarian law, which is moreover but one aspect of it. It also is drawn

¹ M. BOEGNER, *La Réforme et les Nations*, Lecture at the International Law Academy of The Hague, 6, 1925, I, page 301.

² See L. LE FUR, *op. cit.*, page 292.

from natural law, and becomes positive law in the form of custom and treaties.

It is intended in this third chapter to show the principal stages since the beginning of modern times up to the period when the idea of the Red Cross was conceived on the battlefield of Solferino in 1859.

We shall in this way follow the development of the humanization of war with respect (1) to the wounded and sick in armies in the field, (2) to prisoners of war, and finally (3) to the civilian population.

This era of four hundred years may be divided into two periods. The first concerns the Ancien Regime and lasts until the end of the eighteenth century. The second follows the events of the French Revolution, which so profoundly changed international life, and gave rise to new problems with regard to war victims.

I. — THE ANCIEN REGIME

The law of war.

Needless to say the Reformation had its effects on the law of war.

The scholastic theories of "just war" were adapted by jurists to the new conceptions. From that time, as Mr. Wehberg¹ notes, it was not the just cause which played the decisive rôle, but the ability to make war. The right to make war results from a State's duty to protect itself from threatening dangers. War is a political means of preserving a State. The question whether the cause of war is just becomes one of a moral and political—but not juridical—nature. An Italian professor at Oxford, Gentilis, a Protestant convert, addressed himself in writing at the time to the theologians: "*Silete theologi in munere alieno*" ("Be silent, Theologians, the problem does not concern you")². Such is the opinion of the classic

¹ HANS WEHBERG, *L'interdiction du recours à la force*, Lecture given at the International Law Academy of the Hague — 1951.

² ALBERICUS GENTILIS, *De jure belli ac pacis, libri tres*, 1612.

writers on international law. Ayala, Grotius, and later Moser, Vattel, Wheaton, Rivier and others all reaffirmed this theory, which held its ground in European public law until the founding of the League of Nations.

But, if war is permitted without any consideration of the justice of its cause, international law demands that it should be waged in accordance with certain rules; and these rules have their origin either in custom or in treaties. Their authors draw them up and advocate their adoptance by teaching, which in its turn leads to the development of custom and the conclusion of treaties.

Grotius declared that the law of war "must not ignore the generous principles of humanity". Gustavus Adolphus, King of Sweden, who was greatly influenced by the famous juriconsult, always tried to wage "good war", that is, to respect the maxims of the law of nations.

The wounded and sick in armies in the field.

The Medical Services of armies are a recent creation: In the Middle Ages and at the beginning of modern times, the wounded and sick in armies in the field were almost completely dependent on private charity. From the time of the Crusades certain Orders of Knighthood devoted themselves to assisting these unfortunate persons. The Order of the Hospitallers of St. John of Jerusalem¹ cared for the sick and wounded both in peace-time and in war-time without distinction of race or religion. These Knights, followed later by the Knights of Malta, were the first to organise medical treatment on the battlefield; and it has been said that, if their ideal had been accepted by the nations of the world, the condition of the unfortunates who suffer such pain, in peace as in war, would have been far less wretched².

¹ See *Revue internationale de la Croix-Rouge*, July 1951, page 570.

² Edgar Erskin HUME, *Medical Work of the Knights Hospitallers of St. John of Jerusalem*, Baltimore, 1940.

It is known that at the end of the twelfth century the Sultan Saladin allowed the Hospitallers of St. John of Jerusalem to come into his camp to look after the wounded Christians. This chivalrous gesture by a Moslem Prince is not the only one to the credit of Islam. In the conquest of the Portuguese forts in Morocco by the Moroccan Sultans, El Mahdi ordered medical attention to be given to both the Moors and the Christians wounded at the siege of Santa Cruz ¹.

The Europeans were not always so gentle. In one of his plays, "Le Maître de Santiago", H. de Montherlant recalls a tragic anecdote of the Spanish conquest of America, on the historical character of which he insists. "A holy war, do you call it? In a war of that kind the cause that is holy is that of the natives. What is chivalry but the defence of the persecuted? If I went to the Indies, it would be to protect the Indians, which according to you would be 'treachery'. You must surely know the story of the Spanish soldier, who was hanged as a traitor for having given help to a wounded Indian..."

We know from the writings of Ambroise Paré that in the sixteenth century the customs of war were still atrocious, especially in the matter of enemy wounded ².

In 1586 in the Basilica of St. Peter in Rome Camille de Lellis and some of his adepts dedicated themselves to God for the care of the sick. The Congregation of Camillians spread from Italy into Spain, where they were known as "Fathers of the Good Cross" from the distinctive sign of a red cross which they wore on their clothing ³. The Camillians accompanied the armies on numerous occasions. They undertook to collect the wounded from the battlefields and to give them treatment. An engraving of the Romantic period shows some of these

¹ See J. et J. THARAUD in *Revue de Paris*, Nov. 1948.

² M. BOGAIIEWSKI, *Les secours aux militaires malades ou blessés avant le XIX^e siècle*, in the "Revue de Droit international public" 1903, page 207, mentions an article published in this connection by the *Revue de Paris* of 1 September 1901. On being taken prisoner Ambroise Paré gave a false identity to avoid having to pay too high a ransom. He was set free as a reward for having successfully carried out an operation on an officer of the adverse army.

³ See Cecilia OLDMEADOW, *The first Red Cross (Camillus de Lellis, 1550-1640)*, London, 1923.

monks tending a wounded pilgrim. This would seem to be one of the first appearances of the Red Cross sign in modern iconography. In its Almanac for 1948 the Irish Red Cross very rightly recalls the eminent place occupied by the Camillians in the history of humanitarian law, and mentions the fact that several hundreds of them were on the battlefield of Solferino.

From the end of the sixteenth century a number of agreements were concluded between belligerents. "Cartels" for the exchange and ransom of prisoners of war, "capitulations" for the surrender of strongholds, and "armistices" laid down rules for the treatment of wounded and sick. These arrangements for particular occasions cannot be regarded as rules of law: but the continued recurrence of them is interesting as prelude to the formation of law.

The majority of them were collected by Doctor E. Gurlt, Professor of Surgery at Berlin University¹ and published in 1873. In general they stipulate that the wounded and sick are not to be considered prisoners of war, that they are to be looked after at the expense of the Power to whose army they belong, and sent back after recovery with the necessary safe-conduct. No distinction is made between those who can and those who cannot, take up arms again.

One might mention as an example the Capitulation concluded on 30 November 1581 between the town of Tournai and Alessandro Farnese, Prince of Parma, or those of Bois-le-Duc in 1629 and of Turin in 1640. All these three instruments are similar. The same provisions are to be found in the Capitulations of Breda in 1625 and 1637, and of Mainz in 1635. On the other hand, the Capitulation of Bouchain, concluded in 1711 between the Duke of Marlborough and the French garrison, provided for the same treatment of the wounded and sick as for the unwounded soldiers, both becoming prisoners of war.

The four most important agreements are the Cartels of Frankfurt in 1743, of Hadmersleben in 1757, of Sluys in 1759

¹ E. GURLT, *Zur Geschichte der internationalen und freiwilligen Krankenpflege im Kriege*, Leipzig, 1873.

and of Brandenburg in 1759. The English doctor Sir John Pringle has given us some interesting details on the negotiation of the first of these Agreements. A great advance, he says, was made in the late war in the improvement of hospital conditions. The practice up till then had been to move the sick for their greater security (on the approach of the enemy) to a considerable distance from the camp, with the result that many perished before they could receive medical attention. But my distinguished master the Earl of Stair, touched by their distress, made a proposal when the army was encamped at Aschaffenburg to the Duc de Noailles (with whose humanitarian sentiments he was well acquainted) that the hospitals on both sides should be treated as sanctuaries enjoying mutual protection. This proposal was at once accepted by the French General, who took the first opportunity to show his respect for his engagement. After the Battle of Dettingen our hospital was at Frekenheim, a village on the Main, at a certain distance from the camp. The Duc de Noailles had occasion to send a detachment to the opposite bank ; but, on hearing of the presence of the English hospital, he gave express orders to his troops not to interfere with it in any way. This arrangement was strictly observed by both sides during the campaign ; and, though it has since been neglected, it may still be hoped that in future it will be considered by opponents as a precedent ¹.

The humanity of the Duc de Noailles was shared by his sovereign, Louis XV, about whom a German author ² recalls a noble and historic saying at Fontenoy in 1745. He depicts for us the King walking over the battlefield on the evening of his victory. An aide-de-camp runs up to ask how the enemy wounded are to be treated : "Like our own", replied Louis XV. "Henceforward they are no longer our enemies."

The orders of Frederic II, King of Prussia, in 1748, are slightly less generous but nevertheless inspired by Christian

¹ Sir John PRINGLE BART, *Observations of the Diseases of the Army*, London, 1775, Preface page VII.

² Christoph GIRTANNER, *Schilderung des häuslichen Lebens, des Charakters und der Regierung Ludwigs des Sechszehnten*, Berlin, 1793, page 6.

charity: "Let each look after his own first of all", he said, "but not so as to be unmindful of humanity and compassion for the enemy" ¹.

The Capitulation of Montreal, concluded in 1760 between the English general Amherst and the French Governor Vandreuil, stipulated in Article VIII that: "The officers, soldiers, militia, sailors and also the Indians, retained by wounds or sickness in the hospital or in private houses, are to enjoy the privileges of the cartel and are to be treated accordingly." In the margin of this text the English General wrote: "The sick and wounded are to be treated in the same way as our own."

The medical personnel, doctors and nurses, nearly always formed the subject of explicit provisions exempting them from captivity. It was the same for chaplains. Gurlt traces this custom back to the exchange treaty of 1673 between France and the States General of the United Provinces, in which it was laid down that the Medical Corps were to be unconditionally set free. The Treaty signed by the same Powers on 21 May 1675 stipulated that "The chaplains, ministers, doctors, intendants of the sick, apothecaries, surgeons and other officers employed by the hospital, and also women in whatever condition they may happen to be, children of 12 years and servants, are to be sent back from both sides without ransom."

Such clauses appeared from this time onwards in the different Cartels and Capitulations. The Cartel of 1780 between France and Great Britain set forth for example that "all surgeons and assistant surgeons of the King's ships and vessels, and even all surgeons of merchant ships, corsairs and other vessels are to be set free without being kept as prisoners".

The immunity of hospitals (which was extended to include their property by certain agreements such as the Capitulation of Cassel of 1 November 1762 between the Maréchal de Diesbach, Commander of the French troops, and Prince Frederick-Augustus

¹ KNOOR, *Entwicklung und Gestaltung des Heeres-Sanitätswesen*, Hanover, 1883.

of Brunswick, in command of the army of Hanover), became an established international usage in the course of the eighteenth century. On 2 December 1799 the French General Clément, besieged in Coni, wrote to the Prince of Liechtenstein : " I have ordered black flags to be hoisted on the hospitals of the town, and I look to your humanity to respect them, as I once caused those of the town of Mantua to be respected ¹".

As early as the seventeenth century figures begin to appear which remind us of the founders of the Red Cross. In an article published by the *Presse médicale* ², M. Roger Vaultier recalls some of his precursors. " Pierre Bachelier de Gentes of Champagne ", he writes, " born at Rheims in 1611, whose odd life has been written by Jadart, busied himself in the fighting which took place near his native town in the middle of the seventeenth century in assisting the unfortunate victims of the combat, who lay crippled and uncared for and abandoned in the open country. With the aid of a few charitable souls he carried them on his back, begging bread for them along the way. On several occasions he scoured the battlefield on foot, distinterring soldiers crushed by dead bodies and relieving the poor wretches as well as he could."

In 1761 Claude Pierron de Chamousset ³ was appointed Intendant General of the fixed army hospitals of the King of France. With remarkable success he managed the war hospitals in Germany during the campaign of 1761-1762. Gurlt recalls that in his " Mémoire sur les hôpitaux militaires ", which was probably written at this time, Chamousset claims the respect of all nations for " these sacred places of refuge where the virtuous defender of his country seeks recovery ". He is unable to understand how " properly governed countries have not yet agreed to regard hospitals as temples of humanity which must be respected and protected by the conqueror ", and he

¹ See BOGAIIEWSKI, article quoted on page 207.

² Roger VAULTIER, *Les ancêtres de la Convention de Genève*, in the " Presse médicale ", 9 May 1951.

³ Martin GÉNOUVRIER, *Un philanthrope méconnu du XVIII^e siècle, Pierron de Chamousset*, 1905.

adds: "In a century, in which so much advance has been made in wit and enlightenment, should it not be demonstrated that this advance has not been accompanied by a loss of sentiment and feeling? Has not the time come to establish among the nations an innovation which humanity demands?"

The same ideas are expressed by Bernard Peyrilhe, Chemistry Professor in Paris, in his "Histoire de la Chirurgie", published in 1780, in which he recalls the Convention of 1743 between the Earl of Stair and the Duc de Noailles.

Gurlt mentions another ancestor of the Red Cross in the person of the Prussian army doctor Johann Lebrecht Schmucker, who wrote in his "Mélanges", which appeared in 1776, that he regarded as deplorable the impossibility of having the wounded near at hand for treatment directly after a battle, since a safe place had first to be found for a field hospital, and it might take four or six days or even longer for all the wounded to be conveyed there. He went on to say: "It is to be hoped belligerents will agree from the beginning of a war to protect hospitals, so that the wounded can be installed as near as possible to the battlefield without being disturbed in any way until they are completely recovered."

Prisoners of war.

The Lateran Council having in 1179 forbidden the enslavement and sale as slaves of prisoners taken in wars between Christians, the custom had arisen of freeing prisoners on payment of a ransom. This sometimes resulted in a trade which interfered with the actual operations of war; and there is a letter of Louis XI recording that he had ordered the prisoners to be taken from the soldiers, so that in the future these latter might kill all enemies and take no more prisoners¹.

Such severe measures however were not the general rule at the beginning of modern times. In 1544 the status of prisoners of war was codified by a statute of Henry VIII. It

¹ MAULDE-LA CLAVIÈRE, *La diplomatie au temps de Machiavel*, I, page 206.

stated that the King and his son, the Lieutenant General and the Grand Constable or Marshal of France belonged to the King of the victorious army, and not to the soldier who captured them, and it decreed the death penalty for anyone who set them free ¹. In 1555 Blaise de Montluc writes in his "Commentaires" of a rich merchant, who was taken prisoner in the hope of extracting from him a ransom of 80,000 écus, which he explains was the average of the prisoner's income for one year. Pasquier ² observes that in France ransoms exceeding 10,000 pounds had to be collected on behalf of the King, who returned 10,000 pounds to the captor ³.

Jurists declared at the time, with Ayala, that in every war between Christians ransom had replaced slavery, but that in wars with infidels slavery continued to be permitted. According to Bynkershoeck ⁴, in 1602 the Dutch still had the custom of selling as slaves to the Spaniards all prisoners they took in Algiers, Tunis or Tripoli. It is true that it was the time of the convict prisons of Algiers where the great Cervantes was held captive, and of which he gives us such a vivid description in "Don Quixote". The Holy War remained open between Islam and Christendom. Thousands of Christians carried off by Barbary pirates served as slaves on galley ships or in the gardens of their captors, until they were ransomed by religious Orders such as the Redemptorists and Fathers of Mercy, who specialised in this charitable work. At the beginning of the seventeenth century St. Vincent de Paul, once a slave himself in Tunis, founded the Order of the Lazarists for the moral and material relief of these captives.

Modern rules for the treatment of prisoners of war find their origin in the Treaty of Munster of 1648, which served as a basis in the formation of European public law.

Article 43 of this Treaty lays down that prisoners are to be set free without ransom on either side, and with no exception or reserve.

¹ Quoted by F. SCHEIDL, *Die Kriegsgefangenschaft*, Berlin, page 32.

² PASQUIER, *Les Recherches de la France*, L. IV, Ch. 12.

³ F. SCHEIDL, *op. cit.*, page 28.

⁴ BYNKERSHOECK, *Questiones juris publici*, L. I, Ch. III.

The political decision was in advance of the juridical ideas of the time: for Grotius, under the influence of Roman law and the Latin poets, still held that prisoners of war automatically became slaves both themselves and their descendants. It is true that he recommended humane treatment of such slaves, and was in favour of their ransom ¹.

Article 101 of the Treaty of the Pyrenees in 1659 seems to show that the custom of sending prisoners of war to the galleys was still in practice. The General commanding the army of William of Orange in Ireland about 1690, threatened to deport prisoners of war to America. To which the Duke of Berwick replied in the name of the King of France that, if this threat was carried out, he would send to the galleys the prisoners he held in France ². Puffendorf, following Grotius, was of the opinion that a conqueror might spare the life of a prisoner of war, if the latter undertook to become a slave ³.

A provision of the "Capitulation" of Namur in 1692 laid down that "the officers of H.M. may not force soldiers after convalescence to abandon the side of the Allies to join that of H.M." ⁴, which proves that such practices were still in use. Voltaire gives us an example in his "Histoire de Russie sous Pierre le Grand". "There was in the Saxon army", he writes, "a French regiment which, having been taken prisoner in its entirety at the famous battle of Hochstedt, was forced to serve with the Saxon troops. These men, struck by the glory of Charles XII and discontented with their service for Saxony, laid down their arms when they sighted the enemy and asked to be received by the Swedes... This was the start and signal of a complete rout." Voltaire also says that the practice of massacring prisoners still prevailed at the beginning of the eighteenth century. After having given an account of the

¹ See BONFILS, *Manuel de Droit international public*, page 792; H. GROTIUS, *De jure belli ac pacis*, L. III, Ch. VII, paragraphs 8-9 and Ch. XI, paragraphs 9-13.

² F. SCHEIDL, *op. cit.*, page 33.

³ PUFFENDORF, *Le Droit de la Nature et des Gens*, VI, 3, VIII, 6.

⁴ GURLT, *op. cit.*, No. 88, page 51.

battle of Fraustadt (12 February 1706), he writes: "They begged the Muscovites for their lives on bended knee, but were cruelly slaughtered more than six hours after the battle, as punishment for the outrages of their compatriots, and to rid the Russians of prisoners with whom they knew not what to do ¹."

Again in Brazil the French, who had gained a footing on the coast under the orders of Captain Duclerc, were all massacred by the Portuguese. A bitter vengeance was exacted by Dugay-Trouin when he took Rio in 1711.

But in the course of the century the prevailing practices were modified, and it was not long before the change was felt in the doctrine and the formation of law.

The various "cartels" and "capitulations" that have been mentioned in connection with the wounded also concerned prisoners of war. As a result, massacres ceased to take place; and the exchange of prisoners was generally effected without ransom. In 1758 Vattel writes in a completely different tone from Grotius ²: "From the moment your enemy is unarmed and has given himself up, you have no longer any right to take his life, unless of course he is deserving of death as punishment for a crime. It must be borne in mind that prisoners are human beings, and unfortunate at that." And he continues: "The voluntary law of nations prohibits the massacring of a surrendered enemy, from whom nothing is to be feared." Vattel goes further and pronounces against the use of poisoned weapons: "When once your enemy is placed *hors de combat*, is it necessary that he should inevitably die of his wounds?" These noble words mark an important evolution in ideas and customs.

At the same time in 1759 the introduction of a Report of the English Committee charged with the Administration of the Funds collected for the Relief of French Citizens at present Prisoners in British Territories wrote: ...What else is succour to one's enemy but bringing humanity to unite in brotherly

¹ VOLTAIRE, *Hist. de Charles XII*, Ch. III, page 90.

² See VATTEL, *Droit des Gens*, III, Ch. VIII, paragraph 153.

friendship, dispelling the ill-will that sets nation against nation, and preparing them to establish relations of friendship and peace? During this time, captivity will become more bearable, and some of the terrible results of war will be alleviated. But, even if alleviated, the fury of war will always fill the world with horror and distress. Let it not be left to spread unavailingly! Let hate and enmity cease, and from henceforth let no man be called enemy, unless he actually threaten us with his sword.

The treaties, which end the period of the last wars of the Ancien Régime all contain a clause—e.g. the Treaty of 1762 between Prussia and Sweden (Article 6), or the Treaty of 1762/3 between France, Great Britain, Spain and Portugal (Article 24)—to the effect that prisoners of war “are to be returned in good faith by both sides without ransom”.

(To be concluded)

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