



# 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

### *RECENT ACTIVITIES*

During August the attention of the ICRC was particularly directed to the following matters.

*Korea.* — The Central Prisoners of War Agency in Geneva received further nominal rolls of North Korean prisoners in American or South Korean hands. The information contained in these lists is regularly forwarded to the authorities at Pyongyang.

A first list of about fifty American prisoners of war in North Korean hands reached Geneva and was transmitted to Washington.

At the end of July the Delegate of the Committee in South Korea visited two camps for North Korean prisoners of war in South Korean and American custody respectively.

The Committee pursued its endeavours to obtain the North Korean Government's approval for the appointment of an ICRC Delegate in that area.

*Bengal.* — The hospitals, policlinics and milk centres opened by the Committee's Delegation for Bengal refugees are now in full working order.

*Pakistan.* — Two mobile radiographic and radiosopic units, valued at some 18,000 Swiss francs, have reached Karachi, and will be used for Kashmiri refugees.

*Indonesia.* — An ICRC Delegate sailed for the Southern Moluccas on August 31, on board a vessel chartered by the Indonesian Red Cross, for Ceram and Buru Islands. Arrangements are being made for him to visit Amboina on his return from this initial journey.

*Iraq.* — During the first fortnight in August the ICRC Delegate for the Arab States, M. de Cocatrix, was on a mission to Iraq. It will be recalled that President Ruegger and M. de Cocatrix visited Bagdad last Spring. The object of the Delegate's recent journey was to develop working contacts with the Iraqi Authorities and the Iraqi Red Crescent.

Round table discussions and informal talks were held and touched upon various problems, including the accession of Iraq to the 1949 Geneva Conventions, the financing of the ICRC and of its work in Palestine, and the setting up, through the Committee's intermediary, of an exchange of family messages between Jews in Iraq and their families who have emigrated to Israel, or intend to do so.

M. de Cocatrix was received by Premier Tewfik Pacha El Souedi and by the Secretary of the Iraqi Red Crescent, Ibrahim Bey Shabandar, acting as substitute for the Chairman who was in Istanbul.

The Delegate reported on the most courteous and cordial reception he received in Bagdad.

*Israel.* — The ICRC Delegation in Israel is further concerned with the exchange of family messages, particularly between the Arab minority in Israel (160,000 persons) and their relatives who have sought refuge in Jordan and other Arab States. The average number of messages handled by the Delegation is about 3,000 monthly. Following the recent decision of the Iraqi authorities to allow an exchange of messages between residents in Israel and the Jewish minority in Iraq, the above figure will increase.

*France.* — Pursuing its relief work for German prisoners of war detained in France, the Paris Delegation places funds at the disposal of prison visitors, for the purchase of toilet requisites and other articles of which the prisoners are in urgent need.

It was thought preferable to leave the responsibility of such purchases to the prison visitors themselves, as they are better informed of the men's requirements and can satisfy them immediately.

A sum of 8,470 Swiss francs has been handed to the Paris Delegate concerned with German ex-prisoners of war who are now civilian workers. These funds are for the relief of deserving cases (unemployed, cases of illness, etc.). Accommodation is found for them at Salvation Army Hostels ; applications are made in their name to the authorities ; doctors' fees, railway tickets, etc., are paid for, and the Delegate issues free relief parcels and is available for advice and consultation.

*Refugees.* — The replies received from various Governments to the Committee's appeal for Refugees and Stateless Persons, issued on May 1, 1950, have been published. Further replies will be published later.

*Visits to refugees camps.* — Two refugee camps in Italy, Farfa Sabina and Fraschette di Alatri, which are under the Italian authorities, have been visited by ICRC Delegates. These camps hold refugees of various nationalities who are interned for administrative reasons.

*Repatriation of German nationals.* — Following negotiations with the authorities responsible in Madrid and Berlin, the ICRC secured the necessary consent for the repatriation of some hundreds of German nationals from Spain. These Germans are now being sent home.

*German minorities ("Volksdeutsche") — Germans from Eastern Europe — Reuniting of Families.* — The reunion of families, many of them dispersed since transfers of populations first started after the war, continued during August. According to preliminary information received, between three and four thousand such persons have arrived in Eastern Germany, where their families reside. Other Germans from Poland passed in transit through Friedland Camp ; whilst those from Czechoslovakia passed through Furth i/ Walde Camp.

In these camps the German Red Cross has continued to issue clothing, toilet requisites, etc., bought with funds received from the ICRC. At Furth i/ Walde cash donations from the ICRC were also handed to the most necessitous.

LUCIE ODIER, R. N.

*Member of the International Committee of the Red Cross*

### SOME ADVICE TO NURSES

In time of war, a Nurse's first duty is to give her services to her country and to observe its regulations. If you do not know your legal obligations, find out what they are, as it is essential you should know.

Your country has signed certain international agreements known as the *Geneva Conventions*. As a member either of the Medical Personnel of the Armed Forces, or of a Red Cross Unit assisting them, these Conventions give you certain rights; they also impose on you the duty of respecting their clauses and seeing that they are applied.

The *emblem* which you bear, whether Red Cross, Red Crescent, or Red Lion and Sun, gives you the right in time of war to the respect and protection of civil and military authorities of all belligerents; but this protection implies certain obligations.

Whatever your rank and duties, no one has the right to make difficulties for you, for having spontaneously nursed the wounded and sick—whatever their nationality. All the wounded and sick, both friend and foe, must be looked after with the same care, and only reasons of medical urgency justify giving priority in any particular case.

The emblem you wear on your left arm—an armlet bearing the stamp of the military command—must be accompanied by an *identity card*. This card must be countersigned by the military authority under whose command you will be placed in time of war, even if you are enrolled in a Red Cross unit. Never leave for any destination without taking your identity card, with photograph, signature and all necessary visas; you must never be without it when you are in the fighting zone.

Should you be taken prisoner, this card will certify you as a member of the medical personnel, entitled to protection by the enemy command. In no circumstances whatever may a Red Cross nurse be deprived of her identity card, her badges and the right to wear her armband.

The Red Cross *emblem* of large size is used, in time of war only, to denote hospitals, personnel and equipment protected by the Conventions ; it may not be displayed on any premises without the permission of the military command.

If you work in a Red Cross hospital, remember that wounded and sick combatants must be *disarmed* on arrival, if this has not already been done. Able-bodied and armed combatants must not enter ; it is the Nurse's duty to refuse them entrance to an establishment under Red Cross protection, no matter to which side they belong.

Red Cross *hospitals*, which the enemy is bound to respect, may not be used for military purposes, nor serve as cover for acts harmful to the enemy— for instance, spying, observation of movements of troops, aircraft or shipping, for the information of the military command, cannot be tolerated.

No *arms* or *munitions* may be stored in hospitals, infirmaries, ships, trucks, motor-ambulances or premises which are under the protection of the Red Cross emblem.

Disregard of these regulations may compromise the security of the wounded and sick, as the enemy is then no longer obliged to respect such hospitals, vehicles or premises. The Geneva Convention does not, however, prohibit a Nurse carrying arms exclusively for her own defence and that of the wounded and sick in her charge.

Should the hospital or medical unit to which you belong be *captured* by the enemy, remember that a Nurse, like all Medical Personnel, must carry on until the enemy military command has taken steps to give the wounded and sick the care they require. You may possibly be kept back for a certain period for such work, should the number of prisoners of war and their state of health so require. If so, you must continue your nursing duties, but you may not be obliged to perform any non-professional work.

You will not be a "prisoner of war", although subject to camp or hospital discipline, but you will enjoy all the privileges granted to prisoners of war by the Geneva Conventions, with certain additional advantages and facilities. Further, when your professional services are no longer essential, you will be sent home as soon as a route is open and military consideration allow. You will then have the right to take all your belongings, valuables and personal property.

Serving the Red Cross, the Red Crescent, or the Red Lion and Sun, you must remain calm and dignified in all circumstances. You have a mission which is noble but which carries heavy responsibilities, requiring not only thorough professional knowledge, but also the strict execution of your duties and the full sum of your devotion. By giving to others you will find a richer meaning in your work.

\* \* \*

We have tried to give above, simply and concisely, the elements of what all Nurses, Voluntary Aids and Medical Personnel in the service of Armed Forces in war-time should know. We strongly advise, in addition, study of the Geneva Conventions of July 27, 1929, for the Relief of the Wounded and Sick in Armies in the Field (which is still in force) as well as the Geneva Conventions of August 12, 1949—the First Convention (Wounded and Sick on Land) in particular. The 1949 Conventions have been signed by sixty-one States and come into force for each State six months after it ratifies.

Reference may also be made to the "Analysis" of the Geneva Conventions of 1949, published by the International Committee of the Red Cross, Geneva, for the use of the Red Cross Societies.

*THE INTERNATIONAL COMMITTEE  
OF THE RED CROSS AND EVENTS IN KOREA*

*To the Central Committees  
of the National Societies of the Red Cross  
(Red Crescent, Red Lion and Sun)*

Dear Mr. Chairman,

We have felt it may interest the National Societies to know what measures the International Committee has taken in relation to the war in Korea.

I. NOTIFICATIONS

Following its usual practice, the International Committee addressed itself, as soon as news of the outbreak of hostilities arrived, to the two Governments at Pyongyang and Seoul. A first telegram on June 26, 1950, offered the Committee's services for humanitarian purposes, and in accordance with its Statutes, on strictly neutral and non-political lines<sup>1</sup>. Referring to the Geneva Conventions of 1929 and 1949, the Committee underlined that, in its view, the fact that Korea was neither party to, nor a signatory of these agreements, was no obstacle to the *de facto* application of their humanitarian principles for the benefit of the victims of war. The Committee declared its readiness to send a Delegate to each Government, who would examine the conditions under which the principles of the Convention could be given practical effect.

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<sup>1</sup> Noting that this offer had been interpreted as an attempt at mediation, the International Committee emphasized, in a telegram to the Secretary-General of the United Nations and in a Press communiqué, the nature of its intervention which, in accordance with the Geneva Conventions, was purely humanitarian in character.

The attention of the Ministers for External Affairs at Pyongyang and Seoul was drawn to the fact that the notifications to each were absolutely identical<sup>1</sup>.

Wishing to inform the Security Council of these first steps, the Committee cabled, on June 26, 1950, the full text of its message to the two Parties to the Secretary-General of the United Nations, asking him to be good enough to bring it to the attention of all members of the Council; this was done two days later.

During the next few days, the Committee addressed similar communications to the Governments of Australia, the United Kingdom, and the United States of America, and later, to Canada, the Netherlands and New Zealand—all of which had taken military decisions which called for such communications on our part.

The National Red Cross Societies in these countries also received copy of the text.

\* \* \*

The first reply to these notifications was communicated on July 3, 1950, by our Delegate in South Korea, M. Frederick Bieri, who had just been assured by the President, M. Rhee, that our proposals were accepted.

Replies from several States followed; that of the United Kingdom added, that as far as the humanitarian Conventions were declaratory of accepted principles of International Law, the British Government would consider them as applicable in the existing situation in Korea.

The Committee kept the North Korea Government informed. The latter, in a communication to the Secretary-General of the United Nations, announced its intention of conforming strictly to the Conventions relative to the treatment of prisoners of war.

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<sup>1</sup> As the postal authorities could not guarantee that its cables would reach North Korea directly, the Committee, as an additional precaution (North Korea having diplomatic representation in Moscow) asked the Soviet Ministry for Foreign Affairs to be kind enough to reforward copies of the communications, which we had addressed to it for the purpose.

The Committee advised the States concerned, in a new communication of July 7, 1950, that the Central Prisoners of War Information Agency (set up in 1939 at the beginning of the second World War and still continuing) was at their disposal. The Central Agency is provided for in Articles 77 and following (particularly Article 79) of the 1929 Geneva Convention relative to the Treatment of Prisoners of War.

## II. APPOINTMENT OF DELEGATES

As soon as fighting had started, the Committee nominated M. Frederick Bieri, who was then in Hong Kong, and instructed him to go at once to South Korea. He arrived there, via Tokyo, on July 3, 1950.

At the same time, as the most direct route to North Korea was by Soviet Russia, the Ministry for Foreign Affairs at Moscow was asked to accord the necessary transit visa as soon as a Delegate had been appointed.

M. Jacques de Reynier, formerly head of the Committee's Delegation in Palestine, was designated as Delegate to the Pyongyang Government. Soviet visas were requested from the Russian Legation at Berne, and Moscow was informed of the application. The Committee underlined the urgency of this second request in announcing the impending arrival of M. Bieri in South Korea.

The Committee also asked for the support of the Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., and gave it all necessary details about M. de Reynier's mission.

The North Korean Government was at the same time duly informed of the appointments of MM. Bieri and de Reynier. The Committee gave full information about their missions, indicating that M. de Reynier was ready to start for North Korea, awaiting only the necessary visas.

Meanwhile, M. Bieri, who had returned to Japan after a short stay in South Korea, came to an agreement with the military authorities about his work for prisoners in American hands. He made the necessary arrangements for his Delega-

tion, including those for camp visiting and the transmission of lists of prisoners, inquiries and messages.

On July 21, 1950, M. Bieri received confirmation of the agreement by the United States Government, and decided to leave for Korea on July 25, to open the Delegation there.

### III. SPECIAL REQUESTS

On July 11, 1950, the United States Government asked the Committee to obtain confirmation that a number of American prisoners had been captured by armed forces of the Pyongyang Government. The Committee immediately made contact with the latter, asking that the usual information about captured military personnel be transmitted to the Central Agency in Geneva. The United States Government was notified of this démarche.

The Minister of External Affairs of the People's Democratic Republic of Korea replied to the Central Agency by a telegram dated August 16 (received in Geneva on August 17) giving a first nominal roll of fifty American soldiers captured by the North Korean army. The Committee at once transmitted this list to the United States Government at Washington.

Meanwhile, the Central Agency had received from the American authorities 51 capture cards of North Korean military and civilian personnel; the essential information on these cards was cabled to the Pyongyang Government.

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By letter dated July 11, 1950, the Czechoslovak Red Cross asked the International Committee to protest immediately to the United States against the bombing of the civilian population of the People's Democratic Republic of North Korea.

The Committee, following the procedure it has always adopted in such cases (see *Report on Activities during the Second World War*, Vol. I, p. 173 et seq.) transmitted this Note to the American Red Cross. Replying to the Czechoslovak

Red Cross, the Committee pointed out that it had already addressed a telegram to the Minister for External Affairs at Pyongyang on July 7, informing him that the South Korea Government had given its agreement to the proposals concerning the protection of all victims of the fighting, submitted to both Governments on June 26, 1950. The Committee added that its Delegate appointed for North Korea would, as soon as he had received the necessary authorizations—which was not yet the case—leave for Pyongyang; there he would study, in agreement with the Authorities, what measures could be taken to protect the victims of the conflict, including the possible creation of a safety zone in which non-combatants—women, children and old people—could be withdrawn from bombing attacks.

#### IV. RELIEF

We draw attention to the fact that President Rhee had made requests for material relief to our Delegate, M. Bieri; the Korean Red Cross would be able to take charge of distribution.

On his return to Tokyo on July 4, 1950, M. Bieri considered the setting up of a neutral centre from which relief could be sent to all parts of Korean territory, for distribution under the Committee's control. The question was submitted for examination to the Foundation for the Organization of Red Cross Transport.

The Committee has since continued to work on this problem of relief, and asked the Delegate for detailed information about needs in South Korea. Several National Societies which had declared their readiness to participate in relief actions, were informed of what had been done and told that similar information about North Korea would be given as soon as it was available.

The Committee, in accordance with its traditional principle of impartiality, and in order to be able to afford help where it appeared most needed, had meanwhile requested the Pyong-

yang Government for its opinion about the necessity for relief in territory under its control. It likewise asked for details about the principal needs of the civilian population, and gave particulars of the requests received from South Korea. The Committee declared its willingness to try to collect the relief needed, which would be distributed where necessary throughout the territory of Korea, with the assistance of its Delegates.

The National Societies will be kept informed of developments and given any information on the subject likely to be of interest to them.

I am, dear Mr. Chairman,

Very truly yours,

*For the International Committee  
of the Red Cross:*

Paul RUEGGER

*President*

Geneva, August 25, 1950

*(Translation)*

*THE INTERNATIONAL COMMITTEE  
OF THE RED CROSS AND THE CONFLICT  
IN KOREA*

The United Nations Security Council recently took note of a message regarding the situation in Korea which was addressed on August 29, 1950, by the President of the International Committee to the Chairman of the Security Council. The International Committee therefore considers it should itself make public the essence of this message.

On several occasions the International Committee had requested the Government of the People's Democratic Republic of Korea to accept Delegates designated for North Korea, where they could carry out traditional Red Cross services for prisoners of war and study measures for the protection of non-combatants, women, children, and old people, under the terms of the Geneva Conventions.

Reference was made to the repeated applications addressed to the Minister for External Affairs at Pyong-Yang, and to a telegram sent by the President of the International Committee on August 5, 1950, to Mr. Kim Ir Sen, Prime Minister of the People's Democratic Republic of Korea. This telegram stressed the increasing urgency, six weeks after the outbreak of hostilities, of a full application in all respects of the Geneva Conventions, signed in 1949 by sixty-one nations ; it recalled that on July 13, 1950, the Government of Northern Korea had expressly stated its intention of observing the principles of the Conventions. This implied the issue by the said Government of the entry visas requested by the International Committee for its Delegates.

The President of the International Committee therefore appealed, personally and in the most urgent manner, to the Prime Minister of the People's Democratic Republic of Korea, to give instructions for the issue of the visas in question. On

arrival at Pyong-Yang, the Committee's Delegation would examine with the Government how best they could carry out their mission for prisoners of war and civil internees, and, further, discuss ways and means of bringing to Korea medical and material aid, to which the Red Cross organizations of the world, as neutral agents, would certainly contribute.

Although the International Committee has up to now received two first lists of prisoners of war from Pyong-Yang, the representations referred to have not yet had the desired result, and the Committee is unable to carry out in North Korea the humanitarian work it has been doing for several weeks in South Korea. In spite of this delay, the Committee is ready and no less anxious to operate on the entire territory of Korea, as soon as the necessary facilities are granted by the North Korean Government.

*Geneva, September 19, 1950.*

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FRÉDÉRIC SIORDET

*Counsellor to the International Committee of the Red Cross.*

THE GENEVA CONVENTIONS AND CIVIL WAR

*(Continued)*<sup>1</sup>

After the Preliminary Conference (1946), the ICRC again took up the work. It gathered accounts of their experiences from National Societies, and adding them to its own, sought the advice of Governments—since in the last analysis, it is on Governments that the adoption of the Conventions depends. An international conference of Government Experts' was therefore called and met in Geneva from April 14 to 26, 1947.

It was hardly to be expected that Government Experts would accept without question the text approved in the 1946 Recommendation: they would doubtless put forward all the objections which had so often caused Governments to refuse Red Cross intervention in civil war. Above all was it to be feared, that they would deny that Governments could, by international convention, bind parties, groups, or provisional Governments which did not as yet exist. It was, therefore, gratifying to see that the Experts also recognized the necessity of having provisions which would apply in civil war. The Conference adopted the following provisions, recommending their introduction, not only in the Convention for the Wounded and Sick, but also in the revised Prisoner of War Convention and in the new Civilian Convention.

“The present Convention is applicable between the Contracting Parties, from the outbreak of any armed conflict, whether the latter is or is not recognized as a state of war by the Parties concerned.

“*In case of civil war, in any part of the home or colonial territories of a Contracting Party, the principles of the Convention shall also be*

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<sup>1</sup> See *Supplement*, Vol. III, No. 7, August 1950, pp. 132-144.

*applied by the said Party, subject to the adverse Party also complying therewith.*

“The Convention is applicable likewise in the event of territorial occupation, without any state of war existing<sup>1</sup>.”

Thus there was no longer question of applying the Convention as a whole, but its principles only. The Experts had seen, as had the ICRC before 1946, that many provisions of the Conventions were peculiar to international war, and not materially applicable in civil war. Furthermore, the reciprocity clause has been reversed: the Contracting Party, i.e. the legal Government at the time civil war breaks out, is not bound unless the insurgents respect the principles of the Convention. Much weaker than the text recommended by the Red Cross in 1946, this was nevertheless a considerable improvement on the 1929 Convention. For the first time, Government representatives, who might later be called upon to discuss and sign the definitive Conventions, agreed that Governments might enter into international agreements applicable even to civil war.

One Delegation at the above Conference wanted it clearly understood that the humanitarian obligations of the Article under discussion did not imply any legal recognition of an authority claiming to be a Government, but not recognized as such by another Government. In other words, no Government would agree to apply the Convention in civil war, if the reciprocal application would lead to recognition of the rebel party as a legitimate authority. There was good reason for this reserve. It was taken into account in the later drafts, because the fear it expressed was stated repeatedly. It seems probable that Article 3 (quoted above, page 132) was accepted largely because of the insertion of the reserve in the final Conference draft.

In the light of experience and preliminary work, the suggestions of National Societies and the advice of Government Experts, the Committee finally drew up the definitive draft, presented in August 1948 to the Stockholm Red Cross Con-

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<sup>1</sup> See *Summary Report* of the Conference. ICRC, Geneva, June 1947. Pp. 6, 37 and 105-106.

ference. The draft did not reproduce the terms of the 1946 Recommendation, which went too far, nor take the exact wording proposed by the 1947 Conference. It read:

“In every case of armed conflict not international in character, and especially in the case of civil wars, colonial conflicts, or wars of religion which may break out on the territory of one or more of the High Contracting Parties, each of the adversaries shall be bound to apply the provisions of the present Convention. The application of the Convention in these circumstances shall not in any way depend on the legal status of the Parties to the conflict, and shall not have any effect on such status.”

The following therefore remains from 1946 and 1947.

(1) From 1946, the idea that all the provisions of the Convention shall be applicable and must be applied, not only by the Contracting Party, i.e. the legal Government, but by both sides. The text thus seeks to bind a rebel party, as such not signatory to the Convention. This may be legal heresy but, for the reasons given above, necessary heresy from the Red Cross point of view.

Moreover, to make the heresy less blatant and to show, firstly, that the principles preceded the Convention, and secondly, that Governments in undertaking to respect the Conventions, bind not only the State as such, but each individual citizen, the ICRC suggested the following wording for Article 1:

“The High Contracting Parties undertake, *in the name of their peoples*, to respect and to ensure respect for the present Convention in all circumstances.”

Thus, a party in rebellion against the legal Government and perhaps against laws promulgated by it, would nevertheless consider itself bound to respect provisions held to be superior to national legislation.

(2) From the Experts' proposal, the reserve referred to above has been retained. In expressing the reserve in the

Article itself, the ICRC thought to counter the fears of legal Governments. Moreover, as the Convention binds the insurgent as well as the legal Government, the reciprocity clause might, purely and simply, be suppressed.

Discussions at the Stockholm Conference—where Governments and National Societies were both represented—were, as expected, extremely long. We need not go into detail about the arguments, taken up again at the 1949 Conference. We may note that the ICRC draft emerged from the discussions practically unchanged, as far as the First and Second Conventions are concerned. The Conference simply deleted the words :

“... and especially in the case of civil wars, colonial conflicts, or wars of religion...”

With overmuch definition, there was the risk that, on the pretext that a given conflict did not come under one of the specified headings, the Convention would not have been applied.

The Stockholm Conference maintained the Committee's text in the Third and Fourth Conventions, but introduced the reciprocity clause as follows :

“ Each Party to the conflict shall be bound to apply the provisions of the present Convention, on condition that the adverse Party likewise applies them.”

Thus, the drafts slowly elaborated by the ICRC, and amended and definitively approved by the Stockholm Conference, were submitted as working document to the 1949 Geneva Conference. It will be interesting at this last stage, which involved not only the elaboration of texts but also their official adoption, to see how the plenipotentiaries of sixty-one different nations reacted to a proposal to include in an International Convention, a clause affecting the sovereignty of States vis-à-vis their own citizens.

## THE DISCUSSIONS AT THE DIPLOMATIC CONFERENCE

The texts submitted to the Diplomatic Conference were therefore the following, appearing as Article 2, Paragraph 4, of each of the four Draft Conventions approved at Stockholm<sup>1</sup>:

### *First and Second Conventions:*

“ In all cases of armed conflict not of an international character which may occur in the territory of one or more of the High Contracting Parties, each of the *adversaries* shall be bound to implement the provisions of the present Convention. The Convention shall be applicable in these circumstances, whatever the legal status of the Parties to the conflict and without prejudice thereto.”

### *Third and Fourth Conventions:*

“ In all cases of armed conflict not of an international character which may occur in the territory of one or more of the High Contracting Parties, each of the *Parties to the conflict* shall be bound to implement the provisions of the present Convention, *subject to the adverse party likewise acting in obedience thereto*. The Convention shall be applicable in these circumstances, whatever the legal status of the Parties to the conflict and without prejudice thereto.”

The differences between the two texts are italicised. The first is of slight importance. “Adversaries” and “the Parties to the conflict” both mean the opponents in a non-international conflict governed by the provision.

The second difference is vitally important. In the first two drafts, the adversaries are bound without qualification; in the second two, there is the condition of reciprocity. It may be asked why the Stockholm Conference did not harmonize all four texts. The reason is that Governments, as well as National Societies, were represented at Stockholm, and Governments in general are very adverse to unconditional engagements. It is already difficult enough for them to undertake such engagements towards a partner with whom they can discuss on a basis

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<sup>1</sup> See “Revised and New Draft Conventions... approved and amended by the XVIIth International Red Cross Conference”. ICRC, Geneva, 1948.

of equality ; there is all the more reason for refusing, if the adversary who will be a rebel to their authority is not yet known, and, in their view, has no right to any legal status. It was found possible to drop the reciprocity condition in respect of the wounded and sick—where the principle has been universally admitted since 1864—but it was re-introduced in the other two Conventions, where the problems of application are much more complicated.

Paragraph 4 of Article 2 was, as all the draft common Articles, discussed by the Joint Committee of the Diplomatic Conference. All Delegations, and consequently all points of view, were represented on this body, so that it at once gave an idea of the attitude of the entire Conference. The different points of view became more clearly marked during discussion, and a number of criticisms were put forward.

According to one body of opinion, the Stockholm text would cover all forms of anarchy, breaking up of the State, and even crime pure and simple. The drafters, becoming over-preoccupied with the protection of the individual, had forgotten the no less legitimate rights of the State. A balance could be found in a standard which would allow a distinction to be made between lawless banditry and real armed conflict. In support, examples were quoted where the full application of the Conventions would give rise to unforeseen situations : common law criminals, anxious to escape punishment, might side with revolutionaries, or take up arms against the Government and claim protection under the Conventions, and even the assistance of a Protecting Power. Captured rebels—even outlaws—would have to be released at the end of police operations, in virtue of the Article which provided for the immediate repatriation of prisoners of war at the close of hostilities. Finally, Delegates feared that, in general, insurgents would be given legal status and consequently excessive power, even if guilty of the worst crimes.

The supporters of the Stockholm drafts replied that their conception was the courageous one. The sufferings to which

non-international conflicts give rise are as bitter as those which led Henry Dunant to suggest the humanitarian regulation of war. Too often, they said, people who are patriots fighting for the independence and dignity of their country, are treated as if they were criminals. According to others, the reciprocity conditions in two of the drafts should allay all fears: if the rebels conformed to the Conventions, which make generous and humanitarian principles dominant, it seems unreal to speak of disorder, terrorism and anarchy. Parties in conflict would themselves show whether they were common law criminals, or else prepared to fight as soldiers, meriting to have the benefit of the Conventions. Other speakers defended the drafts on the grounds that they in no way hindered legal governments from repressing, in accordance with their legislation, acts judged dangerous to the order and security of the State.

The subject was too important and there were too many points of view, to make it reasonable to expect a satisfactory text from so large a body. The question was referred to a Special Committee, where the different points of view were represented, with instructions to draft a text that could usefully be discussed by the Joint Committee. A number of amendments had been proposed, ranging from one extreme to the other. The Canadian Delegation suggested the deletion of the Paragraph under discussion in each of the four Conventions; a Hungarian amendment wished to reinforce the Stockholm text by omitting the reciprocity clause.

Between the two extremes, there were several propositions to regulate conditions under which the Conventions should apply. The Australian Delegation put forward the criterium that the legal Government should have recognized the adverse party as a belligerent, or that the conflict should have been placed on the agenda of the United Nations Security Council, as constituting a menace to peace, a breach of the peace, or an act of aggression. The French Delegation required that the party opposed to the legal Government should have an organized military force, a responsible authority operating on a given

part of the national territory, and the means of ensuring respect for the Convention. The United States Delegation made a somewhat similar proposition, adding that the civilian authorities of the insurgent party should expressly recognize that they were bound by the Conventions.

The Italian Delegation suggested that in cases not covered by the French amendment, the Parties in conflict should be bound at least to respect the humanitarian principles of the Conventions, and referred in this connection to the draft Preamble adopted by the Stockholm Conference for the Civilian Convention.

It will be noticed that most of these propositions tended to limit the application of the Conventions to conflicts which, although domestic, have the characteristics of a real war; they reflected the fear of Governments that too liberal a text would hinder them in the suppression of rebellion, and even perhaps encourage common law criminals.

Taking into account both the many objections and the fact that several Delegations had unreservedly approved the Stockholm draft, the Special Committee decided to deal first with the question of principle: was it desirable to introduce provisions applicable to non-international conflicts?

By ten votes to one, and one abstention, the vote was affirmative. By the same majority, the Committee decided against the Stockholm draft, considered too wide.

A text had now to be found which would eliminate the objections and win approval. Would it be better to limit the cases in which the Conventions would apply, or the provisions which would be applicable?

A Working Party made the first draft, as follows:

(1) In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to implement the provisions of the present Convention, provided:

- (a) that the *de jure* government has recognised the status of belligerency of the adverse party, without restrictions, or for the sole purposes of the application of the present Convention, or
- (b) that the adverse party presents the characteristics of a State, in particular, that it possesses an organized military force, that it is under the direction of an organized civil authority which exercises *de facto* governmental functions over the population of a determinate portion of the national territory, and that it has the means of enforcing the Convention, and of complying with the laws and customs of war. Application of the Convention in these circumstances shall in no wise depend upon the legal status of the parties to the conflict.

(2) This obligation presupposes, furthermore, in all circumstances, that the adverse party declares itself bound by the present Convention, and, as is the *de jure* government, by the laws and customs of war (and that it complies with the above conditions in actual fact).

(3) The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the parties to the conflict. An impartial humanitarian body, such as the ICRC, may offer to the parties to the conflict, to undertake the duties conferred by the present Convention on the Protecting Powers.

(4) In the case of armed conflicts which do not fulfil the conditions as determined above, the parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, or, in all circumstances, to act in accordance with its underlying humanitarian principles.

(5) In all circumstances stipulated in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the parties to the conflict.

(To be continued.)

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