

Developments in international law

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III. — Developments in International Law

GENEVA CONVENTIONS OF AUGUST 12, 1949

August 12, 1949, was an important date in the history of humanitarian legislation. It was the day on which the Diplomatic Conference, after some four months of discussion at Geneva, came to an end after drawing up four International Conventions :

The First Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. (Revision of the Geneva Convention of August 22, 1864—already recast twice, in 1906 and in 1929.)

The Second Geneva Convention of August 12, 1949, for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea. (Amended version of the Tenth Hague Convention of October 18, 1907, for the Adaptation to Maritime Warfare of the Principles of the 1906 Geneva Convention.)

The Third Geneva Convention of August 12, 1949, relative to the Treatment of Prisoners of War. (Revision of the Prisoners of War Convention of July 27, 1929) ;

The Fourth Geneva Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War. (A new Convention which considerably extends the protection conferred by the Hague Regulations on the Laws and Customs of War, annexed to the Fourth Hague Convention of October 18, 1907.)

As on December 31, 1949, the four Conventions had been signed by the following States :

Afghanistan, Albania, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, Great Britain, Greece, Guatemala, the

Holy See, Hungary, India, Iran, Ireland, Israel, Italy, Lebanon, Liechtenstein, Luxemburg, Mexico, Monaco, Netherlands, Nicaragua, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Salvador, Soviet Socialist Republic of Bielorussia, Soviet Socialist Republic of Ukraine, Spain, Sweden, Switzerland, Syria, Turkey, Union of Soviet Socialist Republics, United States of America, Uruguay.

Australia, Jugoslavia, New Zealand, Portugal, Rumania and Venezuela had signed by February 12, 1950, the time limit for signatures.

Ceylon signed the first three Conventions but not the fourth.

Countries not represented at the Conference may adhere as soon as the Conventions come into force, that is, six months after the second ratification.

Subject to these future adhesions, it may be said that the Geneva Conventions of August 12, 1949, have met with universal approval. This diplomatic success is all the more remarkable because at the time, general agreement in other fields proved impossible.

The International Committee played an important part in establishing the texts ; it prepared the initial drafts of each after expert consultation which continued between the years 1945 and 1948 : October 1945, neutral members of Mixed Medical Commissions ; July 26 to August 3, 1946, Preliminary Conference of National Red Cross Societies ; March 1937, consultations with representatives of ecclesiastical and lay agencies which had given spiritual or intellectual relief during the War ; April 1947 and June 1947, Government Expert Conferences ; September 1947, Special Commission of National Societies. The drafts were suitably amended and then adopted by the XVIIth International Red Cross Conference (Stockholm, August 1948) and recommended by it to the attention of Governments. The Geneva Conference adopted the four Stockholm Drafts as its Working Documents.

Following later study and consultation, the ICRC sent all Governments its " Remarks and Proposals ", with additional

suggestions. Frequent reference was made to the "Remarks and Proposals" during the Conference.

The ICRC also loaned staff to the Conference (secretaries, translators, typists, document officers, etc.).

The Conference invited the ICRC to attend as Expert. Its delegation (Professor P. Carry, and MM. J. Pictet, C. Pilloud, F. Siordet and R. J. Wilhelm) took part in all the Committees. The Conference called on the experience the ICRC had gathered during 85 years of existence and two World Wars, and consulted the delegation repeatedly about the preliminary texts. The President of the ICRC spoke in plenary session on the traditional doctrine of the Committee in regard to the Red Cross emblem.

During the closing session the President of the Conference, and the Chairmen and Rapporteurs of the Commissions paid tribute to the co-operation of the ICRC.

NEW DUTIES OF THE ICRC UNDER THE CONVENTIONS

The ICRC must under its Statutes "... fulfil the duties appointed to it by the International Conventions...". The 1929 Prisoners of War Convention makes only two formal references to the Committee: Article 79 accorded it the right to propose the organization, in a neutral country, of a Central Prisoners of War Information Agency; Article 88 stated that the provisions of the Convention should not be interpreted as restricting the Committee's humanitarian work—thus fully recognizing its "right of initiative".

The ICRC, undertaking the revision of the Conventions in 1945, had wanted to have its principal activities—developed to an unprecedented extent during the War¹—placed on a firmer legal basis, while at the same time retaining its independence and right of initiative.

This legal recognition, essential to its work, is now embodied in the four Conventions. It forms a common Article (Art. 9

¹ 11,000 visits to camps for prisoners of war and internees; 25 million Civilian Messages dispatched; transmission of relief worth 3,400 million Swiss francs to prisoners of war.

in the First, Second and Third Conventions, Art. 10 in the Fourth. The Article allows the ICRC to operate, even in matters not coming within the scope of the Conventions.

Article 3, common to the four Conventions, makes the right of initiative valid also in civil war. This new and very important Article lays down principles which shall apply in a conflict "*not of an international character*", and provides that "*an impartial humanitarian body such as the International Committee of the Red Cross may offer its services to the Parties to the conflict*".

Article 10 (in the Fourth Convention, Art. 11), entirely new, deals with "Substitutes for Protecting Powers".

Supervision of the application of the Conventions depends largely on the Protecting Powers. Their role—exercised on a very extensive scale by Switzerland and Sweden during the War—has been enhanced in the 1949 Conventions.

During the War, however, there was sometimes no Protecting Power—when, for example, a belligerent did not accept the enemy as a State, or refused to recognize a state of war. Millions of prisoners were thus deprived of international protection—for example, Polish and French prisoners during the War, Italian prisoners of war in German hands after 1943, German prisoners after 1945, and so on. The Committee did what it could to meet such cases, and to a certain extent, replaced the Protecting Power; results depended largely on the attitude of the Detaining Power.

The Conference wished to provide substitutes for the Protecting Powers, and to give substitution legal sanction. Certain Delegations were for officially nominating the ICRC, but this, as the Committee itself pointed out, is not feasible. The ICRC is not suitably equipped, and can carry out only such duties as enter its own particular field.

The new Conventions therefore provide only, that in default of a Protecting Power, the Detaining Power shall request "*an organization which offers all guarantees of impartiality and efficacy*" to assume the duties of a Protecting Power under the Convention. The organization may be the ICRC (expressly mentioned), an existing international agency, or a new institution.

Under the Third (Prisoners of War) Convention, the ICRC continues to be responsible for setting up a *Central Prisoners of War Agency*, when it considers its organization necessary. The Fourth (Civilian) Convention makes similar provision for a *Central Information Agency for Civilians*; under Article 140 this may be the same as the Prisoners of War Agency. Should correspondence be held up, the ICRC shall, with the assistance of the National Societies, organize the exchange of family news.

During the two World Wars—the second in particular—ICRC Delegates visited *prisoner of war camps* on the same footing as representatives of the Protecting Powers. There was no formal obligation on the States, however. Now, the right of the ICRC to visit is expressly recognized. The Committee's Delegates are authorized to inspect all places where there may be prisoners of war, and interview both them and their camp leaders without witnesses. The frequency and duration of such visits may not be limited, and Delegates have full liberty to select the places they wish to go to.

The question is pursued still further. During the last War, access to *concentration camps*, where so many detained and deported civilians met atrocious deaths, was denied to the ICRC, as to the Protecting Powers. The Fourth Convention makes all places where persons protected under the Convention are interned, for whatever reason, henceforth open to inspection.

The right of the ICRC to convey *material relief* to prisoners of war and civil internees, and to the population of occupied territories, is expressly recognized. During the War, the Committee's relief was on an extensive scale and it had a fleet of fifteen ships in operation. The new Conventions devote special provisions to transport by sea, rail and road, as circumstances may require.

The right of the ICRC to use the distinctive *emblem of the Red Cross* is now allowed (First Convention, Art. 44, Par. 3). Previous Conventions did not recognize to the Committee the right of using the emblem, which it had itself devised. The right has never in fact been contested, but the anomaly is ended in the 1949 Conventions, by an express authorization

to the ICRC to use the emblem without restriction. The ICRC will therefore have the emblem's protection, whenever circumstances and the nature of its work so warrant.

Reference is also made to the ICRC in connection with

(a)—the creation of *hospital and safety zones* for the civil population ;

(b)—the settlement of *differences of opinion* between States as to the application of the Conventions ;

(c)—the formation of *Mixed Medical Commissions* ;¹

(d)—receiving *requests and complaints* from the representatives of prisoners of war, civilian internees, and protected civilian persons.

These are some of the duties, which may, according to circumstances, take on a very great importance.

MANDATES DESIGNATED BY RESOLUTIONS OF THE GENEVA CONFERENCE

In signing the Final Act which established the text of the four Conventions on August 12, 1949, the plenipotentiaries adopted eleven Resolutions, three of which specially concern the ICRC.

Resolution No. 3 deals with agreements between belligerents to relieve retained personnel—chaplains, doctors, nursing and associated staff (Art. 28 and 31 of the First Convention).

The Resolution ends :

“...the Conference requests the International Committee of the Red Cross to prepare a model agreement on the two questions referred to in the two Articles mentioned above and to submit it to the High Contracting Parties for their approval.”

Resolution No. 9 relates to Article 71 of the Third Convention (Prisoner of War Mail). To reduce the cost, often

¹ They decide when wounded and sick prisoners qualify for repatriation; the members of the Commissions are nominated by the ICRC, in agreement with the Protecting Power.

prohibitive, of telegrams, some method of grouping messages should be introduced, or a series of short standard messages, devised and coded for the prisoners' use, to give details of health, schooling, finance, etc.

The last Paragraph of the Resolution reads :

" The Conference, therefore, requests the International Committee of the Red Cross to prepare a series of specimen messages covering these requirements and to submit them to the High Contracting Parties for their approval."

Resolution No. 11 deals with the financing of the ICRC and refers to the obligation on the ICRC "*to be ready at all times and in all circumstances to fulfil the humanitarian tasks entrusted to it by these Conventions*".¹

DISSEMINATION OF THE CONVENTIONS

The ICRC reproduced the four 1949 Conventions in the *Revue internationale de la Croix-Rouge*, in French and English.²

The Committee also published the four Conventions in English and French, separately and in a single volume. An introductory note to the one-volume edition describes the preparatory work and very briefly analyses each Convention. Both editions have marginal notes, and a detailed contents table.

The Committee further prepared an Analysis containing more detailed observations on the provisions of especial interest to National Societies.³

As interpretation is, in practice, a matter for the responsible signatory States, the Committee obviously does not intend its

¹ See above p. 15 et seq.

² See *Revue*, English *Supplements*, Sept. 1949: First (Wounded and Sick), and Second (Maritime) Conventions; October, 1949: Third (Prisoners of War) Convention; August, 1949: Fourth (Civilian) Convention. The French versions appeared in the *Revue* itself: Nos. I and II, Sept. 1949; No. III, Oct. 1949; No. IV, August 1949.

³ This has appeared in 1950, in English and French. A full Commentary on the four Conventions will follow in due course.

Analysis to be considered as authoritative. On the other hand, long experience, and an active part in drawing up the texts, give a certain weight to its opinions. Independent study and discussion by others will, it may be hoped, make the significance of the Conventions more widely known and appreciated.
