

Four anniversaries

We have just been reading how important was the "International Conference for the neutralization of military medical services in the field". We thought our readers would be interested in seeing, by reference in particular to the *Bulletin international des Sociétés de la Croix-Rouge* and the *Revue internationale de la Croix-Rouge*¹, opinion on the "Geneva Convention of August 22, 1864 for the amelioration of the condition of the wounded and sick in armed forces in the field", twenty-five, fifty and seventy-five years after its signature.

Twenty-five years after the signature of the First Geneva Convention

In 1889, Gustave Moynier submitted to his colleagues on the International Committee of the Red Cross a paper on the accessions to the Convention². In this he pointed out that one of the Committee's important tasks had up to that time been to make known this Convention and to induce a larger number of States to sign it. Indeed, in 1869 the Berlin Conference had invited the ICRC "to take the most active steps to obtain successively the accession to the Geneva Convention of all the Powers which had not yet signed it". But, Moynier said: "We did not wait for the Berlin Conference recommendation to get to work. We began propagating the treaty as soon as it was signed and if, already by April 1869, the Convention of August 22, 1864, bears as many as 22 signatures, I claim that the International Committee contributed greatly to this result. At that time almost all Europe was subject to this

¹ The *Bulletin* was issued as early as 1869 and was replaced by the *Revue* in 1919. The original version of quotations translated here are French.

² See *Bulletin international*, April 1889.

new law ; the purpose of the decision taken must therefore have been especially to launch the International Committee on a new track. As the protocols show, it was a matter of inducing the civilized States of America, Asia and Africa to follow the example of the governments of Europe.

Today this goal has to a great extent been achieved. In Europe there is not one single power opposed to our principles, and accessions to the Convention have come from Asia, Africa and America. In the course of the last twenty years, the number of signatories has risen from twenty-two to thirty-six. Not all this success is the fruits of our efforts alone, but in the second period, as in the first, we have worked without respite along the lines indicated by the Berlin Conference and we have more than one achievement to our credit. I would add that we do not consider our task finished. Indeed, we are at present carrying on negotiations in various quarters and have high hopes. Nevertheless, our zeal is not blind. We make it our duty not to acquire accessions designed merely to please or for show and we do not approach nations which we consider are insufficiently advanced to enable them to share our aspirations or to fulfil the undertakings we invite States to assume."

After explaining, with actual examples, that there is a variety of ways of acceding to the Geneva Conventions, Moynier listed the reasons put forward by some of the governments as having motivated their decision :

" Naturally, all were induced to associate with previous signatories of the Convention because they shared the thinking and sentiments of the authors of the Convention and four of them categorically stated as much. The first of these was impelled by " the desire to contribute to the achievement of the charitable purpose of the Convention " (Mecklemburg). The second desired " to manifest sympathy for the humanitarian principles of which the Convention is the worthy and living manifestation " (Montenegro), the next two, Saxony and Greece, " applauded its philanthropic aim " and Greece added that as a consequence " it did not hesitate to join, being convinced that unanimous agreement on this subject could not fail to be a powerful contribution to the alleviation of the ills and suffering widely engendered by war ".

In an idea of another order, the Pope was concerned to underline one of the effects of the Convention which moved him particularly, since it directly affected his Apostolic Church. "His Holiness" stated the Roman press, "was prompted specially by the desire that assistance from religious orders be brought to the wounded in a more ready and regular manner".

Amongst the more recent adherents, there are three (Bulgaria, Luxemburg and the Congo), who agreed to motivate their declaration in identical terms as being a step forward to the creation of Red Cross Societies in their respective States. They do not state this very clearly, it must be agreed. But it is evidently in this way that the phrase used by these governments, "the desire to join the ranks of the International Red Cross Society", must be interpreted. This wording is inaccurate, seeing that on the one hand no "international Society" exists, but only National Societies of the Red Cross and, on the other hand, one can hardly imagine a government "joining the ranks of a private Society, especially when the objective of that Society is to remedy the inefficiency or negligence of a branch of public administration".

Certainly, the development of the work of the Red Cross favourably influenced the extension of the Geneva Convention to include many States. It is for this reason that in 1889 in Tokyo the President of the Japanese Red Cross in a speech which he delivered in the presence of the Empress on the occasion of the 25th anniversary of the foundation of the Red Cross, was able to say :

When the Conference convened in Geneva by the Public Welfare Society to examine ways and means of improving the condition of wounded soldiers, resolved to found relief societies and to advise governments to recognize the neutrality of ambulances and medical personnel, no one flattered themselves that they could achieve such magnificent results within 25 years.

But the Swiss and eleven other governments hastened to follow this advice and the following year they drew up the famous Geneva Convention. The number of governments parties thereto has continued to increase, relief societies have been founded, and thus the movement has reached its present stage of development. It can be said that this progress was more than could be hoped for.

Moreover, the Red Cross world which now includes several continents, was grateful to the founding Committee and several

active National Societies desired not to let the anniversary of August 22, 1864 pass without sending a message to the International Committee in Geneva. One of these, the "Central Committee of Austrian Red Cross Societies", sent the following letter to Geneva :

On the occasion of the 25th anniversary of the Geneva Convention, which will be celebrated in the second half of August 1889, the Central Austrian Committee feels it is its pleasant duty to express to the International Committee, on behalf of the Austrian Society, its esteem and gratitude for the humanitarian services of immense value rendered so far in the name of the Geneva Convention, promoting the development of voluntary assistance in war, and it assures the International Committee of its sincere sympathy and consideration.

Fifty years on

In 1914, a large part of the world was plunged into war by August 22. Hostilities had broken out on several fronts and it was hardly the time to celebrate anniversaries. Nevertheless, several National Societies did not wish this date to go by without a special message to the International Committee.

Consequently, the Grand-Duchess of Baden, among others, wrote to Geneva and her gesture was the more touching that she, like her mother the Empress Augusta, had been extremely enthusiastic to make the Convention effective and already in 1860 she had had a decisive influence in her country on the rapid extension of the work of relief to the wounded and sick and in peace-time preparation for this aim. The ICRC replied through its President, Gustave Ador : " This anniversary has been grievously saddened by the tragic events to which we are now witness. Never has the task of the Red Cross been so necessary as at present. We all feel the responsibility which falls upon us and our efforts will be concentrated on enabling the Red Cross to carry out its humanitarian mission in all countries on behalf of the wounded and prisoners of war . . ." He then added the expression of his gratitude " towards those who, in spite of the troubles of the time and the serious situation, did not wish to let the 22nd of August be forgotten, as a milestone on the road to fellowship and humaneness among men ".

In its *Bulletin international*, the ICRC did not omit to recall the importance of the revised Convention of July 6, 1906 " which is still present in the minds of us all and through which the offi-

cially recognized Red Cross Societies participate in the protection and more complete guarantees which the Convention provides ". It also wished to mark the 50th anniversary of the First Geneva Convention by publishing a list, in chronological order, of signatory States, to show how it had extended up to that time :

<i>France</i>	1864	<i>Bolivia</i>	1879
<i>Switzerland</i>	1864	<i>Chile</i>	1879
<i>Belgium</i>	1864	<i>Argentine Rep.</i>	1879
<i>Netherlands</i>	1864	<i>Peru</i>	1880
<i>Italy</i>	1864	<i>United States</i>	1882
<i>Spain</i>	1864	<i>Bulgaria</i>	1884
<i>Sweden and</i>		<i>Japan</i>	1886
<i>Norway</i>	1864	<i>Luxemburg</i>	1888
<i>Denmark</i>	1864	<i>Congo</i>	1888
<i>Baden</i>	1864	<i>Venezuela</i>	1894
<i>Greece</i>	1865	<i>Siam</i>	1895
<i>Great Britain</i>	1865	<i>South African Rep.</i>	1896
<i>Mecklemberg-Schwerin</i>	1865	<i>Orange Free State</i>	1897
<i>Prussia</i>	1865	<i>Honduras and</i>	
<i>Turkey</i>	1865	<i>Nicaragua</i>	1898
<i>Württemberg</i>	1866	<i>Uruguay</i>	1900
<i>Hesse</i>	1866	<i>Korea</i>	1903
<i>Bavaria</i>	1866	<i>Guatemala</i>	1903
<i>Austria</i>	1866	<i>China</i>	1904
<i>Portugal</i>	1866	<i>Mexico</i>	1905
<i>Saxony</i>	1866	<i>Brazil</i>	1906
<i>Russia</i>	1867	<i>Colombia</i>	1906
<i>Papal States</i>	1868	<i>Germany (Empire)</i>	1906
<i>Rumania</i>	1874	<i>Paraguay</i>	1907
<i>Persia</i>	1874	<i>Haiti</i>	1907
<i>Salvador</i>	1874	<i>Cuba</i>	1907
<i>Montenegro</i>	1875	<i>Dominican Rep.</i>	1907
<i>Serbia</i>	1876	<i>Panama</i>	1907
		<i>Ecuador</i>	1907

These were the fifty-five States having signed the 1864 Convention. Since then, forty had signed the 1906 Convention.

Seventy-five years later

Once again the anniversary was celebrated in an atmosphere of anxiety ; a week later the Second World War broke out and this was to call for enormous efforts from the whole Red Cross movement. A ceremony took place in the Palais Eynard in Geneva,



Signing of the Geneva Convention of August 22, 1864,
painting by Armand-Dumaresq.

Photo-Boissonnas, Geneva

with the co-operation of the cantonal and municipal authorities. Ceremonies were held in various countries, either on August 22 or on the occasion of the annual national congress. For instance the American National Red Cross officially commemorated the 75th anniversary of the Geneva Convention during its general meeting in April 1939.

The *Revue internationale* published an issue in which four members of the ICRC analysed the moral, legal and historic importance of the event of 1864. Max Huber, in particular, wrote a study clarifying the relationship between the Geneva Convention and the Red Cross ; we shall revert to this later.

Paul Des Gouttes reviewed " the first 75 years of the Geneva Convention ". He was associated with the work of the Red Cross from 1893 and was a colleague of Gustave Moynier ; he was undoubtedly one of the most qualified of jurists to appraise the virtues and defects of the 1864 Convention and to draw the lesson from an event which was of exceptional importance in the field of humanitarian law and international ethics. We therefore consider it worthwhile to reproduce below the first few pages of his article :

" When a man reaches the age of seventy-five, it is high time he retires. The Geneva Convention, twice rejuvenated by revision and judiciously adapted to meet the circumstances of the moment, has not aged. It remains a magnificent monument to humane action amidst arms, *caritas inter arma*.

" The three pillars on which it rests have remained constant. Set up at the outset, and still the steadfast support of the whole structure although with some changes in form, they are ;

care for the wounded and sick without distinction of nationality :
this is the aim ;

respect for and protection of medical personnel and equipment :
this is the means ;

the distinctive sign : this is the defence.

" Phraseology has become more precise : today, we no longer use the term " neutrality " ; it is inaccurate. He who is neutral remains outside the conflict, abstaining from taking any part in it. This is not the case either of the wounded or of medical personnel, who are directly involved ; the former as victims, the latter to remedy the

suffering. Neither loses his nationality nor citizenship : they retain their flag. But in the face of the care to be received or administered, nationality takes a place in the background. The care for the wounded and sick is not affected by considerations of nationality ; it must be the same for all victims, whether friend or foe. This is the principle of true Christian charity as exemplified in the parable of the Good Samaritan.

“ The field of application of the Convention has also remained the same, its limits are well defined. It has always been called : Convention for the Amelioration of the Condition of the Wounded and Sick *in Armed Forces in the Field*. Successive revisions whether ratified or merely in draft form did not bring it out of its own sphere. It only applies in time of conflict. This is indeed perfectly rational, since it is only in the case of conflict that these fundamental rules which form its foundation find their *raison d'être* and their application. The protection laid down in favour of the wounded and of medical personnel, and the question of identification are only necessary during combat.

“ The word “ military ” has been suppressed, protection also covering “ other persons officially attached to the armed forces ”. And the sick (already mentioned in 1864, art. 6) have, since 1906, been everywhere assimilated to the wounded. One had, however, always refused to allow the Convention to leave its original and historic framework, that of the military at war or, as it is now termed, in armed conflict ”.

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“ Based on its three fundamental principles, the Convention of 1864 constitutes a magnificent achievement in the humanization of war. It is not yet a question of the laws of war itself, of rules in methods of fighting. One must realize that the first Hague Convention did not take place until 35 years later ! It was a matter of attenuating its effects, in the name of humanity, by assuring the necessary care and protection to the victims. Thus the 1864 assembly was anxious to leave the greatest possible latitude to army commanders in order not to impede military operations. One wanted to take into account “ the repugnance of all Commanders-in-Chief against being bound by regulations ”. Did not General Dufour, who issued an order of the day on November 4, 1847 in

the war of the Sonderbund in the Swiss cantons, enjoining the care of the wounded without distinction and the return of prisoners, declare at the Conference that he considered it to be his duty, should such a given case arise, to make exceptions for which he would accept full responsibility, even if it meant subsequently giving an explanation for his conduct ". (Protocol p. 26).

" The general wording of article 8, open to wide as well as to restrictive interpretation, which left it to commanders to regulate details of the Convention's implementation, brought the desired alleviation with the guarantees appearing necessary at the time.

" One point should be noted. One can already see concern for civilian hospitals, in fact for these only accepting military wounded. This was quite simply resolved by the following affirmation, considered satisfactory by the assembly: " civilian hospitals assume military status once they give shelter to military wounded ". (Protocol, p. 13.)

" It might be a matter for surprise not to find definite mention of " voluntary aids " in the text. This was however causing considerable concern. At a meeting of February 9, 1863, of the Geneva Public Welfare Society, the question had been formulated in these terms: " Concerning the addition to the armed forces of a corps of voluntary aids ". France, however, formally opposed mention of this. It was all the same agreed that such aids offering their services voluntarily, should, once they had been accepted, be placed on the same footing as regular personnel of the Medical Service. (Protocol, p. 12).

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" In order to realize such a remarkable achievement, there were only 26 delegates, representing a mere sixteen States. One can imagine this small assembly meeting in two " newly decorated " rooms of the Hôtel de Ville in Geneva, presided over by General Dufour, an old man of 77, accomplishing such a work, which was indeed astonishing for those days, in seven sessions and in a matter of a fortnight, *Exegi monumentum!* Those men must have been almost divinely inspired and have had invincible faith in the rightness of their cause to have achieved such a remarkable result in so short a time...

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“ Such as it was, however admirable as a first attempt, that Convention had its faults and presented certain shortcomings. It went both too far and yet not far enough. It did not go far enough in limiting the protection for medical personnel and equipment, during the time there were wounded to be cared for. It was therefore sufficient for the wounded to be evacuated or healed for an ambulance and its personnel to be deprived of all immunity and become once more either war booty or enemy subjects to be captured like military personnel. This was in fact to paralyse all humanitarian action.

“ The Convention went, on the other hand, too far by not considering the wounded as prisoners of war. During the fighting they could be handed over to the outposts. If seriously wounded they should be returned to their own country. Once healed they could also be sent home provided they did not take up arms again. This was too generous and unacceptable in practice.

Inhabitants who voluntarily brought aid to the wounded also enjoyed far too great an immunity. They were declared neutral and free, and the presence of a single wounded man was a safeguard for the house, dispensing the inhabitants of all war contributions. This was merely to open the door to abuses and to defeatism.

Finally, the distinctive sign was not protected against misuse ”.

After a hundred years

We have just seen how the first Geneva Convention was at various moments judged. On the other hand, the message of the President of the International Committee of the Red Cross, as well as Mr. J. Pictet’s article, under whose general editorship a *Commentary* on each of the four Conventions was published¹, tell us what one should think today. They affirm its importance, of which due account is taken, by comparing that which existed before and after 1864 in the law of war as well as in acts.

Before the signing of the Geneva Convention, the law of war consisted essentially in use and custom, of which one finds expression in the works of lawyers. Now, the Convention differentiates

¹ *Commentary on the Geneva Conventions of August 12, 1949*, published by the ICRC, Geneva, from which the four volumes can be obtained. Each volume relates to one of the Conventions and can be had separately.

itself, by its very nature, from all those cartels and arrangements which were able to be drawn up "post factum" in the past. Since then, the rights of war are no longer customary, the Convention is, properly speaking, the key-stone of the conventional and written law of war.

The status of medical personnel which it established has most appreciably modified the position of the wounded. In fact, the practical application of the principles which inspired it had immediate consequences. If the war which took place between Prussia and Austria proved the usefulness of the Relief Societies in 1866, it also demonstrated that of the Geneva Conventions, to such an extent that, even before the cessation of hostilities, the Grand-Duchy of Hesse, Bavaria and Austria itself acceded to it.

As Mr. P. Boissier wrote in his book on the history of the ICRC "acts themselves pleaded the cause of the Geneva Convention better than any steps taken by the International Committee".¹

The 1864 Convention is the spark still extant which kindled the drawing up of the Geneva Convention of July 6, 1906, of July 22, 1929 and of August 12, 1949. The Convention of 1906 by comparison with that of 1864 represented real progress. The principal achievement was that Red Cross Societies, duly recognized and authorized by their governments, were accepted in the Convention and benefited from the stipulated immunities. As has been said, "they earned their distinction and deserved a due place of honour". One can see the timid commentary of 1864 on voluntary aids, whom one does not even dare to mention by name. Then in 1906, voluntary aid personnel make their triumphant entry on the scene, not only the National Societies, but also neutrals on the three-fold condition that their governments give their approval, that permission is given by the belligerent and that prior notice is given to the enemy States. This is indeed a step forward. There is also now an extension of the very conception of aid, namely to introduce a foreign element into the armed forces. A fine victory of humane action over arms."²

The revision which took place in 1929 in no way changed the structure itself of the 1906 Convention. Its general arrangement was preserved in spite of the ordeal of the Great War and its

¹ Histoire du Comité international de la Croix-Rouge, *De Solferino à Tsoushima*, Paris 1963, p. 244.

² P. Des Gouttes, *Revue internationale*, August 1939, p. 678.

principles were maintained and re-stated with several precise details and some additions. A separate Convention was drawn up relative to the treatment of prisoners of war.

As regards the Conventions the text of which the plenipotentiaries of nearly all countries in the world approved on August 12, 1949, one knows that henceforth they envisage the protection of civilians and mark a decisive step forward for the protection of war victims. The Powers signed these shortly afterwards, nearly all ratifying them. We also know that the national and international Red Cross institutions find in these texts more numerous and more solid foundations upon which to continue their humanitarian work ¹.

One may well ask what has happened to the first Geneva Convention after several revisions have taken place. There is only one State which remains bound by it, the Republic of Korea and it is to be hoped that it will soon sign the 1949 Conventions. Once this has been done, the Convention of 1864 will become obsolete and can then be considered as an archive document. It will, however, continue to exist in the Conventions which have followed it and which it inspired.

How many international treaties signed a century ago have long since fallen into abeyance !

“ The Geneva Convention, on the contrary, has steadily grown and developed. Revised and amplified three times, extended to cover in turn first armed forces at sea, then prisoners of war, and finally civilians, its modest provisions have developed into a veritable arsenal of shields and bucklers protecting us against certain effects of war. For the four Conventions of 1949, with their 430 Articles, are nothing else but a reaffirmation, and the rules of application, of the principle proclaimed in 1864—namely, respect for the human person.”

¹ See the article by Mr. J. Pictet on the four Geneva Conventions, *Revue internationale*, September 1949.