

M I S C E L L A N E O U S

THE APPLICATION OF THE GENEVA CONVENTIONS

The American Society of International Law has published an interesting study by Professor R. R. Baxter of the Harvard Law School.¹ It will be recalled that the International Review had the privilege of publishing an article of his in April and May 1963 on "Francis Lieber and General Orders No. 100". We therefore think it to be of interest to give extracts of some passages of Professor Baxter's article which has appeared under the title Forces for compliance with the Law of War and which reflects his personal ideas.

The requirement of the Geneva Conventions of 1949 that the armed forces of each signatory be schooled in the provisions of the Conventions has the worthy purpose of integrating training in the law of war into the regular military training of troops. Some countries, such as the Federal Republic of Germany and Yugoslavia, have particularly fine programs of instruction. There is reason to suppose that not enough is done to indoctrinate the members of the armed forces of the United States. If States undertook, as they do with respect to international labour conventions, annually to report their compliance with the training requirement of the four Conventions, there would be some stimulus to keeping the standards up. It would take no amendment of the Conventions for the International Committee of the Red Cross to secure pledges of yearly reporting from the present parties to the Conventions. A yet more daring step could be taken if the parties also allowed the Committee to examine troops chosen at random on their knowledge of the Conventions. To put it briefly, the man who is well schooled in the

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Conventions will find it harder to violate them, even though he is told to do so, than the man who has only a shaky knowledge of their contents.

The possibility of third-party protection and inspection in time of war offers some hope of being a further force making for compliance. These duties fall in the first instance to the Protecting Power, but the International Committee of the Red Cross also has a role to play, albeit one of only limited scope. The ICRC may undertake humanitarian activities with the consent of the belligerents and may assume the functions of a Protecting Power if the belligerents cannot agree upon a State or an organization to perform that task. Anyone familiar with the admirable impartiality and zeal of the International Committee in assisting the victims of innumerable recent conflicts—activity which passes very largely unnoticed by the public—might well ask why the Committee should not be entrusted with wider responsibilities in major international conflicts to which the Conventions would apply. It is unfortunate that States are unwilling to give full recognition to the special position of the ICRC as the guardian of the Conventions. The victims of war deserve their own spokesman and their own advocate.

Considering the problem of the application of the Geneva Conventions by the United Nations forces, the author writes :

I do not propose to enter into the problem, which was discussed several years ago at an annual meeting of this Society, whether the United Nations should conform to the Geneva Conventions at all, and I will proceed on the assumption that it is desirable that they should. During those conflicts in which the United Nations has participated, from the Korean War onward, the organization has shown its willingness to abide by the Geneva Conventions of 1949, which are essentially humanitarian in nature. With respect to these treaties at least, the dispute about the applicability of the law of war to such forces has become altogether academic.

Nevertheless, problems remain. Contingents may be drawn from various States having differing treaty obligations. The United Nations itself is not and cannot become a party to treaties open only to States. Even if it were to become a party, it could not,

under the present command structures for UN forces, exercise a disciplinary control over its troops commensurate with its responsibilities under international law. A partial solution which has been suggested, although one not fully responsive to this last difficulty, is that the United Nations should declare its willingness to assume legal obligations under the Conventions and demand similar compliance from the hostile forces which it might face.

In order to strengthen the application of the Geneva Conventions by the United Nations forces on the one hand, and in the case of internal conflict on the other hand, Professor Baxter proposes :

A declaration could be adopted by the General Assembly—it would be hoped by a unanimous vote—that certain principles of the law of war, notably of the Geneva Conventions of 1949, are of universal applicability without regard to the nature of the conflict or to the specific treaty obligations which the parties might have assumed. A declaration of this sort would resemble the declarations on human rights, on permanent sovereignty over natural resources, on colonialism, and on the legal principles governing the use of outer space which have already been adopted. It would go beyond the generality of declarations in recognizing that all persons under all circumstances have a legal obligation to comply with the basic humanitarian principles of the law, an obligation which in strict law would be in part affirmed.

Why, it may be asked, should such a declaration be confined to certain selected principles of the Geneva Conventions of 1949 and of the rest of the humanitarian law? Should not the Geneva Conventions of 1949 be made applicable in their entirety to United Nations forces and to government and rebel troops in a civil war? My purpose is not to suggest the dropping of the many desirable matters of detail in these agreements but rather to smooth the way to compliance. If the Conventions are to be made universal law, it would be unwise to attempt too much too soon, to make about 400 articles, many of them highly technical, into universal law by a simple vote of the General Assembly. At the same time it would be unwise to have the principles adopted degenerate into the ambiguous platitudes of the principles of “ peaceful coexistence ” or of “ friendly

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relations and cooperation among States". One of the present obstacles to observance of the treaties must surely be the difficulty of having the common soldier assimilate the contents of the Conventions, which in their totality are probably longer and perhaps more complex than any existing military code. The International Red Cross and various governments have done their best to provide simplified instruction in the law, but perhaps the time has come for a clear, concise, authoritative set of rules, freed from the rigidities of treaty law. I must emphasize that such a declaration would not replace the Conventions. Their terms would continue to bind, in all their detail and within the conditions imposed by their terms and by reservations, those nations which had become parties to them.

This necessarily brief consideration of some of the sanctions which are thought to make for compliance with the law of war and of some of the forces which do make for compliance does not exhaust the possibilities. Only a few years ago, informed persons would have laughed at the possibility that prisoners of war might be ransomed, as had happened centuries ago, but we have seen a revival of that practice in the ransoming of Cuban prisoners held by Cuba after the invasion of that country. Perhaps the possibility that prisoners of war can be the source of economic advantages may in other instances lead to a closer approximation of the standard required by the law. Those of us who are concerned with the law of war may not have done enough to relate the law to the ethical standards and local values of the vast diversity of cultures to which the law may have application. There can be little doubt that there may be other potential forces for compliance which should be cultivated and given space in which to grow.

We live in an era in which armed conflict occurs no less frequently than in the past, despite the peace-keeping activities of the United Nations. This is hardly the time to neglect the law of war or the means that are at our disposal for securing obedience to it.
