

IN THE RED CROSS WORLD

THE XXth CONFERENCE: RESULTS IN THE LEGAL FIELD

The importance of the XXth International Conference of the Red Cross is well known. The International Review has published the resolutions adopted by it in Vienna as well as various articles on sequels to the Conference. However, no over-all study has yet given our readers an account of the results of the Conference in the legal field. We are therefore pleased to reproduce below some extracts of an article on this subject written by one of the ICRC Directors-General, Mr. J. Pictet, which was published in the Journal of the International Commission of Jurists.¹

What is the International Conference of the Red Cross?

The Conference, according to the Statutes, is the "highest deliberative authority" of that vast world-wide association known as the International Red Cross. It is composed of delegates from all the recognised National Societies and from the two international bodies: the International Committee of the Red Cross (ICRC)—the founding body and intermediary in time of war—and the League of Red Cross Societies—the federation of the National Societies. In addition—and this is an important point to note—participation in the discussions is open to representatives of States which are parties to the Geneva Convention (i.e. practically all States). The Conference meets every four years, circumstances permitting—thus, it did not meet between 1938 and 1948. Each delegation has one vote.

¹ *Journal of the International Commission of Jurists*, Geneva, vol. VII, No. 1. Conference given by Mr. J. Pictet in Geneva to the *Cercle des juristes internationaux*.

What are the powers of the Conference? Its decisions are binding on the organs of the Red Cross only in respect of matters coming within its exclusive competence, that is: the interpretation and revision of the Statutes of the International Red Cross; disputes between members; and proposals relating to the Geneva Conventions. The Conference also ensures "unity of effort" by the Red Cross. It can give mandates to the ICRC and the League but it cannot amend their statutes. In all other matters its authority is purely moral—it can only voice its wishes. This is fully consonant with the spirit of the International Red Cross, the principal characteristic of which is the independence of its constituent elements.

Are the governments which participate in the Conference legally bound by its decisions? No—for such to be the case the Conference would need to be diplomatic in character or to be an official intergovernmental organisation. Conference resolutions, however, retain their full moral force.

In truth too much importance should not be attached to the presence of governments at the International Conference, where they sometimes adopt, by right or in fact, the attitude of observers—but they abandon this reserve when a matter having politically important implications comes before the Conference, such as was the case in 1957 when the ICRC submitted its draft rules for the protection of civilian populations against the dangers of indiscriminate warfare. The government delegates bring all their weight to bear in such cases in an endeavour to secure acceptance of their own views on the question.

Does this mean that the Red Cross should dispense with the participation of governments in its Conferences? Certainly not; the benefits of having them present do, in the end, outweigh the disadvantages, since Red Cross action is so closely linked with the public authorities.

The Geneva Conventions

This is a traditional item on the agenda of sessions of the International Red Cross Conferences.

From the very outset the ICRC has promoted these Conventions and has worked unceasingly to develop and propagate them.

Thus, it was mainly at the instigation of the ICRC that the Conventions were revised in 1949. This monumental legal work, containing over 400 articles, constitutes the most up-to-date and most thorough codification of the rules for the protection of the human person in case of armed conflict. The Geneva Conventions give concrete expression to the very ideals of the Red Cross and provide it with an instrument admirably adapted to the fulfilment of its task; the Conventions also help to spread the spirit of mutual assistance and peace among peoples.

Almost all the States in the world—109 to be precise, a degree of universality rarely achieved in the field of international law—have by now ratified these fundamental charters of humanity. The ICRC has also prepared a detailed commentary on these instruments; at present the main effort is directed towards disseminating knowledge of them, because these Conventions can save thousands upon thousands of lives—but only if they are widely known. This suffices to illustrate the primordial importance of the issues involved.

In signing these treaties, the States have undertaken to publicise their provisions; but it must be added that little has been done in this regard. The ICRC is therefore encouraging States to greater efforts, by providing assistance and, particularly, by issuing appropriate publications. The XXth Conference called upon States to intensify their efforts to implement the Conventions and to make them widely known.

There is one particular point I would like to emphasize in this connection: the need to ensure that military forces placed at the disposal of the United Nations apply the provisions of the Geneva Conventions. It appears quite likely that in the future the United Nations will be called upon to an increasing extent to maintain or restore peace and UN troops will consequently be engaged more frequently. But the United Nations Organisation, as such, is not a party to the Conventions.

As early as 1956, at the time of the Suez conflict, the ICRC had intimated its misgivings in this connection to Mr. Hammarskjöld and received satisfactory assurances. But in 1960, when the United Nations intervened in the Congo, it became clear that their forces had not been sufficiently briefed in this respect. The ICRC therefore took up the question once again and was informed that

the UN aimed at respecting the " principles " of the Geneva Conventions, that mention to this effect had been introduced into the service regulations and that the troops would henceforth receive adequate instruction on the point.

When the Congo dispute ended, the ICRC took up the whole question with Mr. Thant, Secretary-General of the United Nations. The intention in so doing was to ascertain what measures should be taken to ensure that the Conventions would be observed in full (thus going beyond mere observance of the principles alone) and also what measures were to be taken against breaches of their provisions. Could not the United Nations Organisation, as such, adhere to the Conventions, or could not its General Assembly at least make a solemn declaration to that effect ? To do so would not appear to give rise to any theoretical difficulty—it is acknowledged nowadays that the UN can become a party to any treaty whatsoever. United Nations jurists, however, raise difficulties of a procedural nature : the UN is not a state and has no army of its own ; moreover, it cannot substitute its own jurisdiction for that of the countries which have furnished contingents of troops.

For the moment, we have received an assurance that the Secretariat-General of the UN will include in all agreements made with countries placing troops at the disposal of the UN a provision to the effect that such troops shall respect the Geneva Conventions. This system has worked satisfactorily in the case of the UN contingents sent to Cyprus. The question has, therefore, been partly solved, at least on the practical level. At the same time the ICRC sent a memorandum directly to all the member States of the United Nations, drawing their attention to the fact that the States themselves continued to remain responsible for the application of the Conventions by the troops they furnish to the UN. Each one of them was, consequently, requested to take whatever measures it deemed appropriate to this end.

The whole question was submitted to the XXth International Conference of the Red Cross, which adopted the resolution entitled *Application of the Geneva Conventions by the United Nations Emergency Forces*.¹

¹ See *International Review*, Nov., 1965, for full text of resolution.

The Protection of Civilian Populations against the Dangers of Indiscriminate Warfare

This was undoubtedly the most important item before the Vienna Conference.

The 1949 Geneva Convention No. IV protects civilians only against abuses of power by the enemy authorities. It does not touch upon such matters as the rules of warfare or the use of certain weapons. The accumulated ravages of the Second World War were, however, such as to leave the world horror-stricken. Whereas the First World War totalled 10 million killed, including 500,000 civilians, the 1939-45 war killed 50 million people—26 million military personnel, and 24 million civilians. Of the civilian casualties, 1,500,000 deaths resulted from air attack.

A helpless world witnessed a prodigious acceleration in destruction, an irreversible evolution of the instruments of war towards an ever more "total" form, progressing from classic bombardment to the atomic bomb, by way of "carpet-bombing", V2s and napalm. And, when the fires of war were quenched, nuclear physics continued to yield frightening discoveries. Today, a single thermo-nuclear missile suffices to annihilate a large capital city—and the great powers possess enough missiles to end all life on the surface of the globe.

Even more disquieting is the fact that, whereas the ruined cities have been rebuilt, the States have done nothing to restore the Hague Rules, which vanished under the same ruins. Neither the Government of the Netherlands nor the United Nations have been willing to take up the torch—the horizon remains dark in so far as undertaking a revision of the rules of warfare is concerned. While the techniques of offensive action have taken giant strides forward, the only rules which can be invoked date from 1907. Such a situation is flagrant in its absurdity.

And what is more, the very repetition of destructive attacks, and the progress made in the technical field, have bred a terrible familiarity—the feeling of horror becomes numbed and indignation yields to resignation to what is regarded as the work of fate. New methods of warfare thus finally come to appear lawful. We must protest with all the force at our command against this attitude,

against this abdication of conscience in the face of the rampant neo-barbarism which dishonours the century we live in, and which is tantamount to claiming that man should allow himself to be dominated by his own creations instead of remaining master of them. While it is true that the rules of warfare, drawn up before bomber aircraft were known, are outmoded because they have not been brought up to date, the principles underlying these rules remain valid because they are the expression of an eternal truth. It can be affirmed that the mass bombing raids of the last war were unjustifiable from either the moral or the legal standpoint, and indeed even from the practical aspect.

In view of the paramount importance of the question, and since no other body was willing to tackle it, the ICRC stepped outside the framework of the Geneva Conventions, but in so doing it believes that it is being faithful to its duty. And, further, it limited itself to the question of air bombardment. In undertaking such a venture the ICRC based itself on the finding that the mass bombing of cities during the Second World War did not "pay" from the military viewpoint, this being the rather tragic admission the experts had to make after the event. And when the military planners wished, for tactical or political reasons, to spare particular buildings they were remarkably successful in doing so.

We had also present in our minds an idea which could, perhaps, provide the key to the problem. What is required is to attack, not any specific weapon, such as the atomic bomb, but rather certain methods of waging war. It may be taken for granted that States which possess nuclear armaments will not agree to deprive themselves of such weapons. Indeed, to do so would serve no purpose, for as soon as one weapon is banned an even more terrible one will be invented. The Hamburg and Dresden raids caused as many, if not more, deaths than the A-bomb attacks on Hiroshima and Nagasaki—and at Oradour the weapon employed was simply an ordinary box of matches. The principle to be established is, therefore, as follows: irrespective of the weapons employed in the course of a conflict, the civilian population must be respected, or at least not exposed to risks out of proportion to the military value of the objective aimed at.

The ICRC has drawn up, with the assistance of experts, " Draft Rules " designed to limit the risks incurred by the civilian population in time of war ; these Rules were the object of a rather hesitant approval in principle at the XIXth International Red Cross Conference (New Delhi, 1957). In accordance with the decision of that session of the Conference, the ICRC transmitted the draft text to governments ; their replies took the form of a crushing silence, with the exception of a few well-disposed countries. The great powers, in particular, remained silent, being apparently of the opinion that the draft text was incompatible with their present defence systems which they think offer them security, illusory though it may be.

What was to be done ? The Red Cross could not abandon the civilian populations to their sad fate. Consequently, having again consulted experts, the ICRC conceived the idea of persuading States to acknowledge some elementary humanitarian principles to be applied in all cases to the treatment of the civilian population in the conduct of military operations. The XXth Conference also adopted this course when it approved resolution XXVIII entitled Protection of Civilian Populations against the Dangers of Indiscriminate Warfare :

The XXth International Conference of the Red Cross,

states that indiscriminate warfare constitutes a danger to the civilian population and the future of civilisation,

solemnly declares that all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles :

- that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited ;
- that it is prohibited to launch attacks against the civilian populations as such ;
- that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible ;
- that the general principles of the Law of War apply to nuclear and similar weapons ;

In the present disjointed state of the rules of warfare, most of which are more than 50 years old, it is no exaggeration to consider the four rules mentioned in the resolution as being the general principles of customary law which now regulate the question. It is the only pronouncement of the kind made by an assembly in which governments are represented since the Second World War.

The first of these principles is taken from the 1907 Hague Rules ; the second, and part of the third, come from the declaration made by the League of Nations in 1938. Other elements could doubtless be added, such as a statement that bombardments should be limited to military targets and should not inflict on the enemy suffering out of proportion to the military importance of the objective aimed at, and that during attacks on military targets every precaution should be taken to avoid injury to populations.

The fourth principle, which is to be found in the British Manual of Military Law, appears for the first time in an international instrument. The implications of this principle are far-reaching because, if words are to have any meaning, it indicates that the indiscriminate use of nuclear energy is not lawful. The new weapons may be employed only under the conditions established by the general principles of law. The principles in question are precisely those which we have just mentioned—no attacks on civilian populations as such ; a distinction to be made between combatants and non-combatants ; and avoidance of disproportionate suffering.

On this basis, already well established, the ICRC will pursue its efforts and we can be sure that the results already achieved will be put to the best effect. Its hope is that the powers will formally confirm their undertakings on the basis of the principles formulated at Vienna.

One particular, immediate and practical aspect of the protection of civilian populations is the question of the status to be accorded to persons engaged in practical work in an endeavour to ensure the survival of inhabitants. Such persons, active in what is known as Civil Defence, deal with alerts, black-outs, shelters, fire-fighting, searching for casualties under ruins and caring for them, evacuation, etc. In short, what is required is the formulation of international rules securing immunity to members of Civil Defence services, similar to that provided for military medical personnel

under the Geneva Conventions. When, one hundred years ago, international protection was granted to military medical corps, these bodies developed and saved thousands of lives. Civil Defence services, granted immunity in their turn, could perhaps also develop and save equal numbers of lives. The problem is admittedly complex, since such services make a contribution to national defence, but it is not beyond solution.

In order to be protected, these services should remain non-combatant in character, even if they engage in rescue work in establishments regarded as military targets. They would be allowed to protect only such property as is not used mainly for military ends. In performing their duties the personnel of Civil Defence services would wear a distinctive uniform insignia (which would not be a red cross, except perhaps in the case of purely medical services). A resolution adopted at Vienna recognised the need to strengthen protection for Civil Defence personnel and requested the ICRC to continue its work, drawing upon the assistance of specialists. The ICRC proposes, therefore, to draft appropriate regulations.

Assistance to Victims of Internal Disturbances

The Geneva Conventions, despite the broadening of their scope in 1949, do not cover the whole range of human suffering. The ICRC will therefore continue to work, as it has done unceasingly for the past century, towards extending the ground won by humanitarian law. One of the main tasks in this field is to secure a minimum of protection for victims of internal disturbances.

Until quite recently, international law applied only to international wars. Insurrectionary movements were, with rare exceptions, bloodily repressed. This amounted to a gaping lacuna in humanitarian law and gave rise to an urgent need to secure in such cases the application of at least the basic principles of the Geneva Conventions, since civil wars cause proportionately greater suffering, by reason of the hatred and mercilessness they conjure forth, than do international wars. Why is this so? It is because the adversary is known to the combatant and personal considerations envenom the conflict.

For this reason the ICRC evolved the idea of introducing into the Geneva Conventions an audacious and paradoxical provision

which would aim at applying international law to a national phenomenon. After months of discussion the 1949 Diplomatic Conference adopted Article 3, common to all four Conventions, already widely known at that stage, and which in itself constitutes what one might term a "mini-Convention". This Article provides that in non-international conflicts all the parties involved should observe at least certain basic humanitarian principles : respect for persons not participating in the conflict ; prohibition of torture, of the taking of hostages and of irregular convictions and executions. This Article has already enabled the ICRC to intervene in several armed conflicts. Nevertheless, despite its value and the precedent it represents, Article 3 is still of limited scope and presupposes the existence of a state of armed conflict.

A characteristic of our times is, however, the thriving growth of political ideologies which aim at subordinating everything to their own ends ; a consequence of such a situation is the proliferation of subversive movements seeking to overthrow the established régime by the use of force. Against this background there have developed, between States, those extreme tensions sometimes referred to as the cold war and, within States, destructive opposition between competing factions. And it frequently happens that, in their own countries, citizens are the object of exceptional legislation, are deprived of their liberty merely because they voice certain opinions, are subject to arbitrary procedures and, in the final analysis, are less well treated than enemy soldiers captured bearing arms. During the course of history, law first developed within human communities ; efforts were then made to extend some elements of the law to international wars, and subsequently to civil wars. By a strange and surprising reversal of the situation, what is now required is that the Law of War should apply in time of peace and also be applicable to the internal affairs of countries.

In this way it is coming to be more and more widely held that the mission of international law is to secure a minimum of guarantees and humanitarian treatment to all mankind, be it in time of peace or in time of war, and irrespective of whether the conflict in which the individual may be engaged is with either a foreign nation or the society to which he belongs. Opinion will certainly continue to evolve along these lines but will probably not attain its

full development until the law is sanctioned by judicial instances and supervisory machinery, backed by an international force capable of securing compliance with the decisions pronounced. Such a system would probably imply a new world organisation. For the moment, there is scope here for exploring the possibilities for humanitarian action, since a "no man's land" should not be tolerated in the field of human suffering. The approach to the problem is particularly delicate; national sovereignty and State security are formidable obstacles to progress in this direction.

How has the ICRC tackled the question up to now? It has convened meetings of experts of world-wide reputation. These experts proclaimed the principles which should govern the treatment of victims and on which rescue action should be based. These declarations have already helped the ICRC to open certain doors. Bodies such as the International League for the Rights of Man or the International Commission of Jurists could doubtless complement Red Cross action by undertaking measures in areas outside Red Cross competence. For practical reasons, and in order to avoid compromising its very existence, the ICRC has limited itself to matters relating to war or to situations resembling a state of war. For the moment its efforts are restricted to persons detained as a result of violence, disturbances or extreme tensions. A resolution adopted by the XXth Conference urges the ICRC to pursue its activities in this field.

The Red Cross and Peace

Can the Red Cross contribute to the maintenance of peace and the peaceful solution of international conflicts? This is a question which has now been under discussion for a long time. While it was immediately granted that the Red Cross can help to spread the spirit of peace among peoples and that its whole approach, and its day-to-day work, are a condemnation of violence, it was also recognised that the non-political character of the Red Cross imposes limits on the action it can take to prevent war.

If it be true that peace is cherished by all peoples, it is also true that they often seem to be unable to agree on how peace is to be established or maintained or on the nature it should take. Now,

to pronounce on the questions raised by a reorganisation of the world is to move, willingly or not, into the political sphere. The desire to achieve something in this sphere implies descending into the arena with the nations and parties. It is quite certain that if the Red Cross were to engage thus in a struggle for which it is not intended, one of the first results would be its own destruction.

Nevertheless, a few years ago the ICRC was called upon to go beyond the traditional scope of its mission and undertake responsibilities in a completely new field. This happened in autumn 1962 during the Cuba incident. For a few days the political situation was so serious that it seemed as if thermo-nuclear war were imminent. The Secretary-General of the United Nations then turned to the ICRC as being the only body capable of still saving the peace: what was required was to verify that ships bound for Cuba were not carrying long-range atomic weapons for that country. The ICRC considered that it could not shirk such a task, but it made its acceptance subject to all the conditions imposed by prudence and the desire to maintain its neutrality. In particular, and with a view to getting the question out of the political sphere, it insisted on securing the express agreement of the countries concerned. Such agreement was forthcoming, but, finally, the situation eased before the Red Cross had actually to undertake inspections. An interesting precedent had, however, been established.

At Vienna more discussion than ever was devoted to peace. Ten different draft texts were submitted; these were finally consolidated in one text, namely Resolution X, entitled The Red Cross as a Factor in World Peace.

As can be seen, the 1965 Conference remained worthy of its predecessors. It showed that the International Red Cross is indeed a living institution, active everywhere and always faithful to its ideals. It has blazed the trail in many fields of international law, and we may hope that the final result of its efforts will benefit all mankind.