

## **THE MAINTENANCE OF MILITARY GRAVES IN ACCORDANCE WITH THE GENEVA CONVENTIONS**

*The Central Tracing Agency in Geneva has always had, amongst many other tasks in time of war, that of tracing the graves of missing military personnel. If we are more especially considering the Second World War, we can see that this activity began for the Central Prisoners of War Agency (its official title at that time), when hundreds of thousands of regimental enquiries were opened for French prisoners of war in Germany, in order to discover the fate of French military personnel missing during the summer of 1940.*

*Moreover, in all theatres of war from 1940 to 1945, in Europe, Africa and Asia, the Central Agency undertook numerous individual enquiries for the purpose of determining the location where military personnel who had been reported missing were buried and concerning whom their own commanders lacked all information. The end of the Second World War did not mean that this activity ceased, and even now the various sections of the Central Agency trace missing persons, civilians as well as military, and are in many cases successful in finding out where they are buried and even, as for example in the case of the Italian section, in identifying them.*

*Several national sections of the Central Tracing Agency, in particular the German, Italian, French, Polish and Yugoslav sections, are continuing this activity and co-operating with various organizations in many countries engaged not only in tracing, but also in maintaining war graves. In the German Federal Republic there exists a very active commission in this field and we think it will interest our readers to learn of the task it is pursuing and which is in part in accordance with the provisions of the Geneva Conventions. We would however point out that delegates of the ICRC have sometimes also had occasion to carry out a similar activity in countries in which they have found themselves. Thus one delegate in France at the end of the Second World War visited municipal offices in order to try to*

*locate war graves and to discover the names of buried military personnel and civilians. (Editorial note).*

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Respect for the dead is one of the most ancient and human ideas. One would have thought, then, that belligerents would have concluded, very early on and under some binding form, agreements between themselves relative to the care of military graves in order to draw up conventions on a reciprocal basis, since it was obviously a question of ethics, of according respect due to the dead and to their graves. During the course of history attempts have certainly been made to "humanize" war, but it was not until the present century that conventions were signed dealing with the matter of military graves in a concrete manner and under a generally valid form.

It was only after several decades that the Red Cross, which had given itself the object of mitigating suffering in time of war, was accepted by the civilized elements of society of the period. The Geneva Convention of 1864 "for the amelioration of the condition of the wounded in armies in the field", originally due to Henry Dunant's initiative and the result of his personal experiences on the battlefield of Solferino, were only concluded after much debating. No place could yet be found for the question of the maintenance of military graves. But if this first Convention restricted itself to formulating rules relative to the wounded and military prisoners, it none the less started a series of initiatives which, after a relatively brief interval, were to lead to a humanitarian extension closely allied to it. This included, amongst others, aid to the shipwrecked and civilians, the prohibition of the use of certain projectiles in war time (St. Petersburg Conference, 1868), the Hague Conferences of 1899 and 1907, which drew up "regulations concerning the laws and customs of war". The IVth Hague Convention of October 18, 1907, is the first one which, in view of its application during the First World War, was to have general reverberations. In chapter II (Section I) of the Annex, article 14 stipulates that an enquiry office for prisoners of war be instituted on the commencement of hostilities, which should receive amongst other details,

information respecting deaths. Furthermore, article 19 lays down the rules to be observed regarding the drawing up of wills of prisoners of war and for the burial of the dead "due regard", as it states, "being paid to their grade and rank".

The additional Germano-Ukrainian Treaty of February 9, 1918, completing the Peace Treaty between Germany, Austro-Hungary, Bulgaria and Turkey of the one part and the People's Ukrainian Republic of the other part (art. VIII of the Peace Treaty), constitutes a new, logical and important step towards the "maintenance of war graves" on an inter-governmental basis. Article 17 in fact stipulates that each High Contracting Party undertakes to "respect and maintain the graves of the military of the armed forces of the other Party on its territory", this Party being entitled, in agreement with the country's authorities, to charge persons with the maintenance of graves and with the erection of suitable monuments on the said graves.

More or less identical terms can be found in the additional Treaty to the Peace Treaty of March 3, 1918 between Germany, Austro-Hungary, Bulgaria and Turkey of the one part and Russia of the other part.

The wording of the above-mentioned articles cannot fail to have influenced the drafting of articles 225 and 226 of the Peace Treaty of Versailles of June 28, 1919. By the terms of these articles the graves of the soldiers and sailors will be respected and properly maintained, and any Commission appointed by an Allied or Associated Government for the purpose of identifying, registering, and caring for the said graves will be recognized and given facilities for the discharge of its duties.

Furthermore, the graves of the nationals of the different belligerent States who have died in captivity shall be properly maintained. The Governments reciprocally undertake to furnish each other with a complete list of those who have died together with all information useful for identification, as well as all information as to the number and position of the graves of all those who have been buried without identification.

Provisions with a similar sense are included in the following peace treaties, which to all intents and purposes can be considered as being parallel treaties to the Treaty of Versailles :

Peace Treaty of June 4, 1920 (Trianon) between the Allied and Associated Powers and Hungary : art. 155, 156.

Peace Treaty of September 10, 1919 (St. Germain-en-Laye) between the Allied and Associated Powers and Austria : art. 171, 172.

Peace Treaty of November 29, 1919 (Neuilly-sur-Seine) between the Allied and Associated Powers and Bulgaria : art. 116, 117.

The experiences of the First World War had shown that a subsequent settlement of the question of war graves by a convention *post factum* was not sufficient. Owing to the great number of dead whose graves remained unknown and who had not been identified, the Geneva Convention of July 27, 1929 dealt for the first time in a detailed manner with the question of military personnel who had died in war. By virtue of article 4, belligerents are bound to communicate to each other reciprocally, as soon as possible, in addition to the names of the wounded and sick, those of the dead collected or discovered, together with any indications which may assist in their identification. They shall also transmit to each other certificates of death, articles of a personal nature, identity discs, and shall ensure that the dead are honourably buried or cremated, preceded by a careful, and if possible, medical examination with a view to confirming death and establishing identity. Graves shall be respected and marked so that they may always be found. To this end the belligerents shall officially organize a graves registration service to render eventual exhumations possible and to ensure the identification of bodies, whatever may be the subsequent site of the grave. After the cessation of hostilities they shall exchange a list of graves and of dead interred in their cemeteries and elsewhere.

These same provisions having been included in the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 12, 1949, in a fuller and more detailed form, we shall refrain from commenting on the 1929 Convention in order the better to examine that of 1949. It can be seen that the text is three times longer than that of the Convention of 1929. This is the general sense of the provisions :

*Art. 15.* After an engagement all possible measures will be taken, without delay, to search for the dead and prevent their being despoiled.

*Art. 16.* All particulars which may assist in the identification of the dead of the adverse Party will be recorded with the least possible delay. This information should be forwarded as rapidly as possible to the Information Bureau (described in article 122 of the Geneva Convention relative to the treatment of prisoners of war of August 12, 1949), which shall transmit it in its turn to the adverse Power through the intermediary of the Protective Power and of the Central Prisoners of War Agency.

Certificates of death and duly authenticated lists of the dead will be prepared and forwarded through the above-mentioned channel.

*Art. 17.* Burial or cremation of the dead, carried out individually as far as circumstances permit, must be preceded by a careful, and if possible medical examination with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies should not be cremated except for imperative reasons of hygiene or for religious motives, and the circumstances stated in detail on the death certificate and on the list of the dead.

The dead should be interred honourably and, if possible, according to the rites of the religion to which they belonged. Their graves should be respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, an official Graves Registration Service should be organized at the commencement of hostilities, to allow subsequent exhumations and to ensure the identification of bodies, as well as their possible transportation to the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Graves Services shall exchange, through the Information Bureau mentioned in article 16 of the First Geneva Convention, lists showing the exact location of the graves together with particulars of the dead interred therein.

In Germany, the Army Graves Service was administered during the First World War by the Quarter-Master General's branch, whose sections were however abolished at the end of hostilities.

Its work was taken over by the Graves Service of the German civilian administration, the Ministry of the Interior being responsible for graves within the country and the Ministry for Foreign Affairs for those located outside the national territory. Since the beginning of the war an office <sup>1</sup> had been created which was also responsible for applying the provisions of art. 225 and 226 of the Treaty of Versailles already mentioned above. The drawing up of the lists of graves in particular entailed arduous work for this service, as well as for the contracting Parties. It was therefore necessary to complete this work, as it was desirable in the interest of the families themselves whose wishes went far beyond the scope of the contractual stipulations.

Whilst the respect and maintenance of German military graves could be insisted upon on the basis of the provisions of the Peace Treaty, it still however remained necessary to stipulate this official activity by completing it through private initiative. Such considerations led to the founding in the autumn of 1919 of the German War Graves Commission <sup>2</sup>.

It was realized when this Commission was founded that the maintenance of military graves could not be undertaken by the public alone or by a commission alone acting as its representative, since such activity was, and is still, bound up too closely with political considerations, if only because they are based in law on international agreements. This therefore led to the issuing of a note by the Ministry of the Interior of May, 1921 <sup>3</sup> as follows: "The putting into effect of questions relative to military graves having been and will still have to be the subject of agreements between the Government of the Reich and foreign governments, will devolve on the Central Tracing Office. This official activity undertaken by the national and foreign authorities cannot by its very nature entirely fulfil the rôle which would satisfy the feelings of the country concerning its own dead. These considerations have therefore led to the forming of the German War Graves Commission, the only organization entitled by the authorities of the Reich and

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<sup>1</sup> Central Tracing Office for Missing Military Personnel and for War Graves (Zentralnachweise-Amt für Kriegerverluste und Kriegergräber).

<sup>2</sup> Volksbund Deutsche Kriegsgräberfürsorge.

<sup>3</sup> Translated by our Translation Section.

by the governments concerned to undertake the maintenance of military graves. It exercises a charitable function which is a valuable adjunct to action carried out by the official services”.

Thus, when the War Graves Commission started on its work it was made clear, and that is an all-important point, that its activity was to be additional to that of the official services and it was soon agreed with the authorities that such activity would begin once official intervention ceased or proved itself to be insufficient.

Official responsibility for war graves was determined in its principles by the German law of December 29, 1922, on the maintenance of military graves of the World War. In this it was stipulated that the graves of German military buried on the territory of the Reich should be protected in perpetuity. The same provision was applicable to the graves of soldiers and sailors of the former Allied Powers interred on German soil, as well as to those of former adversaries and to the graves of civilian internees of the former adverse Powers.

By reason of the very nature of its humanitarian tasks, the Graves Commission has always remained a purely private society, non-political and interdenominational, failing which, it could not have been able to pursue the three objectives it had set itself, which according to its first statutes of 1919 are :

to prepare, embellish and maintain, taking public feelings into account, German war graves abroad and German and other war graves on German territory ;

to assist the families of military personnel fallen or dead in the war in all matters relative to the maintenance of graves ;

to carry out international assistance in connection with war graves on a reciprocal basis.

It would take too long to set out in detail how the War Graves Commission accomplished these tasks and the difficulties which it encountered. We shall limit ourselves to pointing out in this connection that the Commission's activity, which extended over the whole of Europe, was mostly new soil in view of the losses of the First World War which, for Germany alone, amounted to nearly two million dead. Account also had to be taken of the very difficult position in Germany. Having lost the war, she had to pay heavy

reparations, most of her dead were buried outside the national frontiers in former enemy territory, and as a result of total inflation a disastrous situation existed in the country. Nevertheless, in addition to the assistance lent to families and to the maintenance of graves, the way was cleared for successful international co-operation.

Thus relations were established and continued for nearly twenty years with foreign official and semi-official bureaux, as well as with private associations which were engaged in the maintenance of war graves (Austrian Black Cross, Saxon War Graves Commission in Transylvania, National Association for mothers and widows of the fallen in Italy, Circle of Hope in England, to mention only a few). These contacts were fruitful, even after the Second World War, especially as the activity of the War Graves Commission was not limited to German victims of the First World War, but was also extended, without distinction, to those of every nationality who had been killed in the war. The German defeat, which put an end to the Second World War in 1945, placed the Commission in front of an infinitely harder task than in 1918. The German army had lost more than three million men, for whom certificates of death existed for only one half. No figures or precise names were available, and in many cases it was not known whether the soldier who was being traced was dead, missing or a prisoner. Government services responsible for maintaining war graves, and which had continued their task during the Second World War, were totally inadequate. The War Graves Commission, which is a private organization, and whose action is based on the voluntary co-operation of its members, had suffered greatly and had to be reformed.

It therefore found itself facing an enormous task alone. Since no official services were in existence to deal with the maintenance of war graves, it had to transform the "additional" activity which it had exercised between the two wars into one of "substitution". Its first important and most urgent task was to make a record of the dead and, for that purpose, it had to establish a central card-index of graves of the military who had fallen in the Second World War. Since the "Wehrmacht's" documents had been destroyed or had fallen into the hands of the victorious Powers, this task was one of the most difficult to be accomplished by the War Graves Com-



mission. All imaginable ways had to be followed in order to succeed, after endlessly arduous work, in discovering the number and the location of German war graves in more than fifty countries. Persons charged by the Graves Commission itself and by outside services, German prisoners of war, the International Committee of the Red Cross in Geneva, and also many private individuals both German and foreign, co-operated in this task. It could then be seen, and this was most encouraging, that feelings of humanity depend neither on places nor on peoples, and that compassion for bereaved families, the respect which the sacrifice of life inspires in us, even of the enemy, are everywhere to be found.

The central card-index of war graves has formed the very basis of every activity of the Commission. It has enabled information to be given to families as regards the location of graves and was the chief factor involved whenever exhumations were considered necessary, or for the maintenance of definitely established military cemeteries, in Germany as well as abroad.

On May 27, 1952, the German Federal Republic published a decree on the maintenance of war graves, the terms of which included in particular reference to graves of members of the armed forces of the foreign belligerent States fallen during the course of the Second World War or who had died as prisoners of war, as well as to graves of German and foreign civilians who had lost their lives as a result of hostile action during the Second World War. Mention is also made of graves recognized as such by virtue of the decree of December 2, 1922, relative to the maintenance of military graves of the First World War. The decree of 1952 entrusted the maintenance of war graves to the "Länder" of the German Federal Republic and ordered that the graves should be found, maintained, their location communicated and protected in perpetuity. The Government furthermore declared that it would assume the costs of the graves of the "victims of national socialism who had died in concentration camps in which they had been interned for political, racial or religious reasons, of interned civilians, foreign workers, of foreigners who had been given assistance by a refugee organization in assembly camps where they had died."

In 1952 the War Graves Commission had already established more than 400 war graves in the Federal Republic and the heads

of the " Länder ", recognizing its work, very much wished that its principles also applied in their own circumscriptions. The decree promulgated at that time therefore enabled the Commission to gather fresh strength and financial means to carry out its activity abroad, and this was gradually to become possible once more. During the course of preparations prior to the drawing up of bilateral agreements on war graves and by reason of the information which it possessed on the number and location of German graves, it was in a position to play the rôle of technical adviser to the Ministry of Foreign Affairs of the Federal Republic. These agreements stipulated that the War Graves Commission would carry out practical work incumbent on the German party as regards the maintenance of war graves and that it would deal with all special problems resulting therefrom with the appropriate authority of the foreign contracting party direct. By virtue of these agreements, the assembling of graves in military cemeteries designated by common agreement with the foreign Government, as well as the maintenance of war graves, devolved on the War Graves Commission, provided approval of the plans was accorded by the German and foreign Governments. The expenses incurred by the maintenance of the war graves are at the charge jointly of the Government and of the Graves Commission.

Up to now a series of conventions relative to war graves have been concluded with the following countries in chronological order : Luxemburg, Norway, Belgium, France, Italy, Egypt and Great Britain. Agreements with Greece and Denmark have been initialled, but not yet signed, and others are in the course of preparation, for example with Ireland, Sweden and Tunisia.

Of the War Graves Commission's activities, the assistance given to families has suffered the least structural changes, no doubt because it is one of the most " human ", the most personal of these. That which concerns it has remained unchanged in the statutes which have seen every sort of alteration during the past decades. Two factors were responsible for making closer contact with families : the transmission of information to them became easier with the development of the card-index and once graves were able to be regrouped, the Commission considered it to be its duty for its part to inform families of such transfers.

The War Graves Commission has organized journeys abroad to the site of burial for relatives of the dead. Furthermore, it has entrusted youth with a new and important task. In the international youth camps (the "Kolping-Werk", the YMCA, sporting and other youth organizations sent some of their members to these camps), the young of many countries have helped it to establish German military cemeteries and devoted their time, their holidays and their money to this task. As in all its work, this latter action has had as its deep purpose that of respecting the last wishes of millions of the dead of all nationalities, and of showing the power of reconciliation which can rise from their graves, from the sorrow of women and of mothers. In this field of pure humanity, in spite of divergences between their respective activities, the War Graves Commission finds the same idea and mission as that of the Red Cross.

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