

Practical application and development of humanitarian law

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II. GENERAL ACTIVITIES

PRACTICAL APPLICATION AND DEVELOPMENT OF HUMANITARIAN LAW

The Geneva Conventions

Since the signature of the Geneva Conventions, on August 12, 1949, the ICRC has worked to obtain universal recognition of these Conventions, which constitute the basis of humanitarian law. In 1961, several new States ratified or acceded to them, and those which have not yet done so are few and far between.

The ratifications were those of Portugal, on March 14, 1961 ; Paraguay, on October 25 ; and Colombia, on November 8.

The ICRC took special steps in an effort to hasten the accession of African countries, since, in the difficult period which this continent is undergoing, it is particularly desirable that all the African States should be bound by these humanitarian treaties.

A problem is raised by countries previously under colonial administration. Is the State which has recently acceded to independence bound by the international acts of the Power which was previously exercising sovereignty over its territory ?

Certain treaties of a political nature, such as alliance, obviously lose their validity in the newly independent State, but other conventions of public or general interest can remain valid. In the ICRC's opinion, such is the position of the Geneva Conventions, to which Governments have acceded in the interest of all people placed under their sovereignty. The latter, on acceding to independence, would be at a disadvantage if the Geneva Conventions



were no longer applicable to them. These Conventions must therefore retain their validity.

Participation of newly independent States in the Geneva Conventions can therefore be admitted as implied by virtue of the signature of the former Colonial Power. It is considered advisable, however, that they officially confirm their participation in the Conventions by notifying the administering State, that is to say the Federal Council at Berne. This is a question neither of accession nor of ratification, but of confirmation of participation or of declaration of continuity.

At the end of 1961, four States had thus confirmed their participation in the Conventions: Congo (Léopoldville), Ivory Coast, Upper Volta, and Nigeria. With those which had previously ratified them or acceded to them, the number of African States explicitly bound by the Geneva Conventions was thus increased to thirteen.

In all, 85 States were parties to the Conventions, on December 31, 1961.

As in previous years, the ICRC worked to spread the knowledge of the Geneva Conventions as widely as possible, a condition of their effectiveness. To this effect, it sent a large quantity of documentation to numerous countries throughout the entire world. To take one example, it distributed copies of the illustrated booklet in nine languages, which gives a visual summary of the principal regulations of the Conventions.

In addition to this, the illustrated Handbook on the Geneva Conventions, published jointly by the ICRC and the League and intended particularly for young people, has been a great success with the National Red Cross Societies. As well as the French and English editions, the work has appeared in Finnish and in Japanese. The Japanese edition which has exactly the same format as the French and English was the idea of the Japanese Red Cross.

It should also be pointed out that at the information session held by the ICRC in Prague, on October 5, during the 26th session of the Board of Governors of the League, the ICRC representatives referred particularly to the value and significance of the Geneva Conventions and stressed the necessity of ensuring their increasingly widespread dissemination to enable them to be better applied.

The Geneva Conventions and the events in the Congo.—The events which occurred in the Congo from July 1960 and during the whole of 1961, frequently illustrated, sometimes dramatically, the necessity of having the humanitarian rules of the Red Cross and particularly the precepts of the Geneva Conventions better understood by the forces facing one another. This is why the ICRC constantly took steps to spread the knowledge of these Conventions, which are fundamental to humanitarian law, and particularly of article 3 common to the four Conventions and applicable “in the case of armed conflict not of an international character”. It distributed several thousand copies of the illustrated booklet in nine languages, one of which is Lingala, the language in use in the Congolese forces, and which explains in a very simple manner the principal humanitarian rules which should be respected.

However, the presence in the Congo of military contingents placed under the command of the United Nations, has raised a somewhat delicate problem, because UNO, as such, is not signatory to the Geneva Conventions. Following the events in Katanga, during which these contingents took a direct part in the hostilities, the President of the ICRC wrote to Mr. Sture Linner, Head of the UNO mission in the Congo, raising the question of the application of the Conventions by the UNO armed forces when engaged in military operations. In his letter, Mr. L. Boissier said “the recent events in Katanga have indeed shown this matter to be of the utmost urgency.”

The letter recalled that as far back as the Suez affair in November 1956, Mr. Dag Hammarskjöld, Secretary-General of UNO, had informed the ICRC that he had “included in the draft regulation applicable to the United Nations’ Emergency Force, a provision laying down that this Force must observe the spirit of the general international humanitarian Conventions relative to the conduct of military personnel”. The President of the ICRC also referred to a similar assurance given to the Committee’s delegation in Leopoldville, in September 1960, by the General Headquarters of the United Nations, and, in conclusion, he declared that “the International Committee of the Red Cross is willing to assume, in connection with this conflict, the duties laid down for it in the humanitarian Conventions”.

The Head of the UNO mission in the Congo gave a detailed reply to this letter, reiterating the assurance that the United Nations intended fully to respect the rules of the Geneva Conventions, and that their troops had been given instructions to this effect.

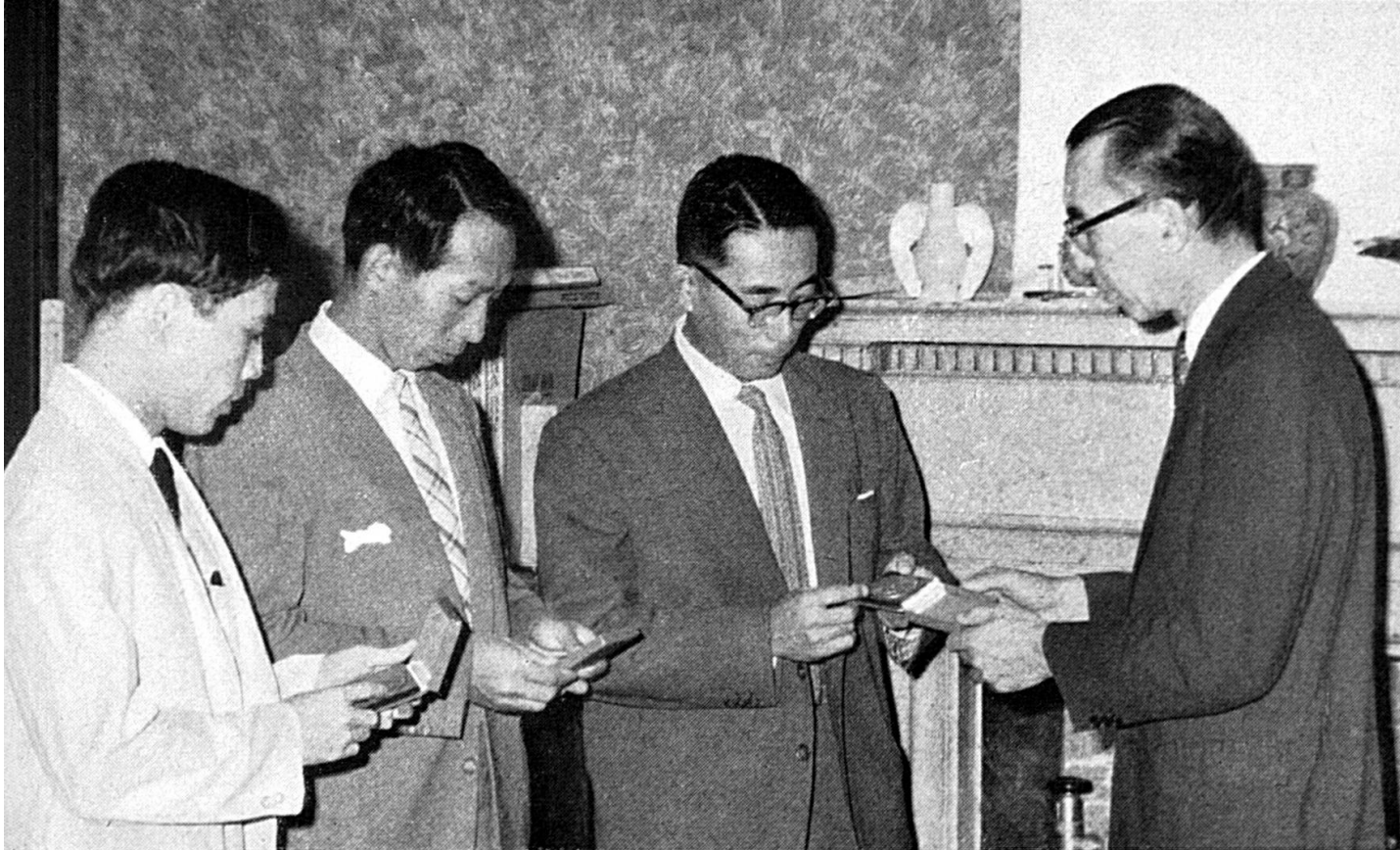
At the same time, the President of the ICRC had an important exchange of correspondence with the Acting Secretary-General of the United Nations, relative to the application of the Geneva Conventions. On November 8, Mr. Thant underlined once again UNO's resolve to "respect the principles and the spirit of the general international conventions relative to the conduct of military personnel". He declared himself ready to co-operate in the dissemination of the Conventions among UNO military personnel in the Congo, pointing out that "the operations carried out in the name and under the command of the organisation must be in perfect harmony with the spirit of the Conventions".

In addition to these steps which were taken directly with UNO in the Congo and in New York, the ICRC sent to the Governments of all the States parties to the Geneva Conventions and members of the United Nations, a memorandum, dated November 10, relative to the application of these Conventions by the contingents placed at the disposal of the United Nations. After having recalled the assurances already given by UNO on this subject, the memorandum added :

"However, in view of the overwhelming importance of the interests involved, the International Committee judges it to be necessary that the matter should be very seriously considered, not only by the United Nations organisation, but also by each of the States bound by the Geneva Conventions.

In fact, the United Nations Organisation is not, as such, party to the Geneva Conventions. Consequently, each State is personally responsible for the application of these Conventions when supplying a contingent to the United Nations.

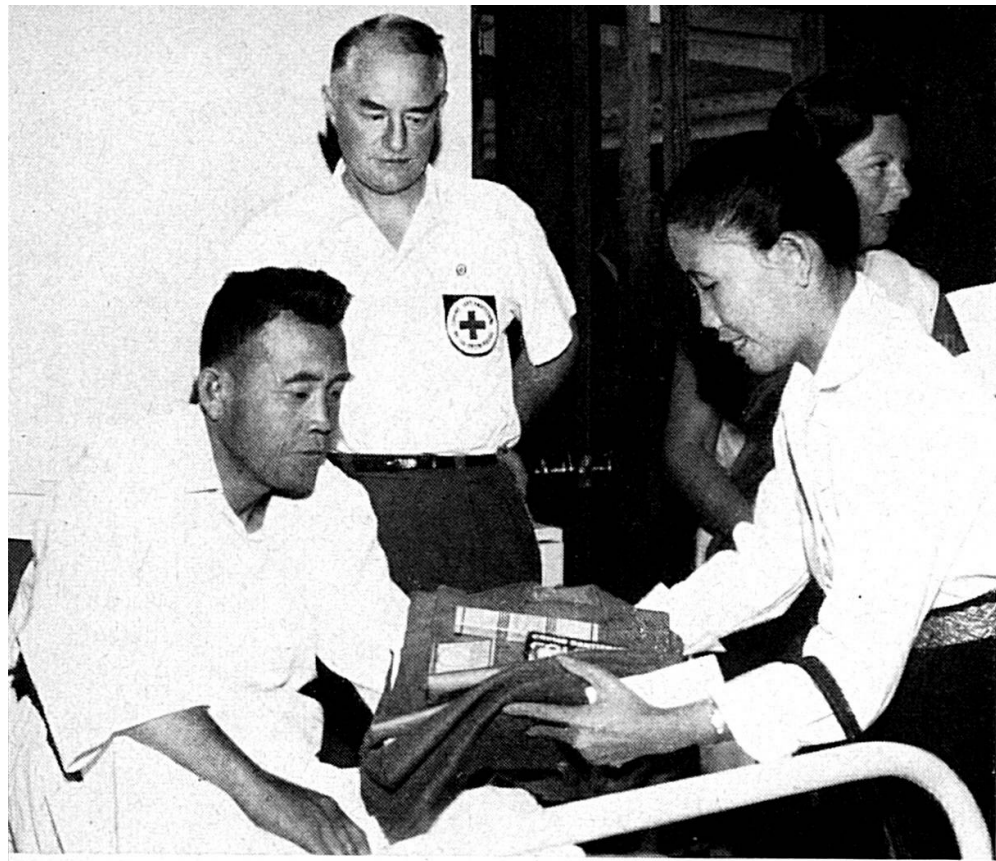
It would therefore be highly desirable that such contingents receive, before leaving their own countries, instructions to conform to the provisions of the Geneva Conventions in the event of their finding themselves having to use force. It seems to us no less



JAPAN *Members of the Japanese medical team receiving the ICRC commemorative medal. This medal bears a special inscription recalling the medical action in the Congo.*

PHILIPPINES *Mr. Bagatsing of the Philippine Red Cross presenting a cheque to the first prisoner of war to receive his share.*





Mrs. Noupbat Chuonramany, President of the Women's Committee of the Laotian Red Cross taking part in the distribution of relief at the Vientiane hospital.

LAOS

At Vientiane. — Distribution of ICRC relief to Meo refugees.



desirable that the troops receive, in their own countries, appropriate instruction so that they may acquire a sufficient knowledge of these Conventions. This instruction could quite easily be included within the framework of study which the States, by virtue of article 47/48/127/144 of the Geneva Conventions, have pledged themselves to incorporate in their programmes of military and, if possible, civilian instruction in such a manner that the principles are made known generally to their armed forces and to the civilian population.

Finally, the International Committee wishes to remind States, which might supply contingents to an Emergency Force of the United Nations, that under article 1 common to the four Geneva Conventions, the High Contracting Parties are bound not only to respect, but also "to have respected" the provisions of these Conventions. It therefore expresses the hope that they will, each one, in case of necessity, use their influence to ensure that the provisions of humanitarian law are applied by all contingents engaged, as well as by the United Nations Command."

Protection of the civilian population

The Legal Department of the ICRC offered its advice on various questions connected with the protection of the civilian population in time of war. This advice bore in particular on the guarantees by which the bodies providing relief to the population, and in particular the civil defence bodies, could benefit, by virtue of humanitarian law.

The first consultation concerned the problem of the possible arming of civil defence personnel. The ICRC gave its advice at the request of a country wishing to organize mobile civil defence columns and perhaps equip their members with certain weapons. Nevertheless, that country wished to preserve a non-military character for its civil defence and asked therefore if the bearing of arms was compatible with this character, according to international law. The directing staff of that country's civil defence raised this question with the ICRC through the intermediary of the National Red Cross Society.

The ICRC concluded in substance that if the arming of civil defence personnel was subject to very strict conditions and if it

was to be limited solely to personal defence in the police functions, it could be admitted that this would not necessarily deprive the personnel concerned of its civilian character. On the other hand, it advised against the employment of civil defence personnel against hostile even irregular enemy action and, consequently, the supplying of heavy weapons for that purpose.

Further advice was given by the ICRC to the International Technical Committee for the Prevention and Extinction of Fire (CTIF). This body, being of the opinion that firemen's activities are of a humanitarian character, expressed the wish that these would continue under all circumstances, especially in the case of conflict and that their activities should therefore benefit from the protection of strengthened humanitarian law.

After a series of discussions with a delegation of the Central Committee of the Swiss Society of Firemen, the ICRC submitted circumstantial advice on ways of according greater protection, in international law, to the activity of firemen in time of war providing this was not of a military character. This advice was submitted during a meeting at the headquarters of the ICRC to the directors of the CTIF and to the International Committee of Firemen. The meeting also enabled the ICRC definitely to explain its proposals for strengthening the legal protection of firemen in time of war and submitted to that international committee which would discuss this question at their next congress.

At the meeting of the Council of Delegates of the International Red Cross held in Prague in October (see p. 53), the ICRC drew up a joint report with the League on the National Societies' co-operation in civil defence. As a result of a request from the Irish Red Cross, this report, which was received with keen interest, described the various ways in which the National Societies could assist civil defence.

After discussing the report, the Council of Delegates passed a resolution confirming the co-operation of National Societies in civil defence, recommended that Red Cross personnel engaged in this sort of activity should always be recognized as such, and expressed the wish that the ICRC would actively continue its studies on strengthening the immunity accorded to non-military civil defence organizations.

In this connection we would recall that the ICRC undertook an enquiry in 1959¹ with some twenty National Societies on the legal status of civil defence personnel. In 1959 and 1960 it received numerous interesting replies, some in considerable detail. For that reason, in 1961 it considered that it would serve a useful purpose, in order to draw conclusions from that enquiry, to convene a working party, of a preliminary and private character, consisting of a certain number of specialists invited on a purely personal basis and selected with the help of some National Red Cross Societies.

This working party met from June 12 to 16, and was composed of the following :

Colonel Ernest Fischer, in charge of civil defence affairs at the Federal Department of Justice and Police, Berne ; Dr. Sten Florelius, head doctor of Norwegian Civil Defence, Oslo ; Dr. Bernhard Graefrath, Professor at Humboldt University (East Berlin) and a legal adviser of the German Red Cross in the Democratic Republic ; Dr. Hans Haug, Secretary-General of the Swiss Red Cross, Berne ; Mr. Pierre Lebrun, Director of Belgian Civil Defence, Brussels ; Mr. Ivar Muller, deputy head of Swedish Civil Defence, Stockholm ; Mr. Hermann Ritgen, in charge of matters connected with relief and protection in the event of disaster, German Red Cross in the Federal Republic, Bonn ; Mr. J.-H. Rombach, secretary of External Affairs, Netherlands Red Cross, The Hague. In addition, Dr. Z. Hantcheff, director of the Health and Social Service bureau of the League of Red Cross Societies was invited to join the working party in the rôle of observer.

Presided over by Mr. C. Pilloud, Deputy Director for General Affairs of the ICRC and assisted by Mr. F. Siordet and Mr. D. Schindler, members of the ICRC, the working party held eight meetings. It was thus able to make a through examination of all the fifteen points on the agenda. It first of all considered the conditions which a civil defence organization ought to fulfil to be regarded as being non-military in the sense of article 63 of the Fourth Geneva Convention (problems of arming for defensive purposes, of co-operation with military units and of activities in relation with military objectives).

¹ See *Annual Report* 1959, pp. 47-48.

The Working Party then examined the form and the extent of guarantees which the Fourth Convention confers on personnel as on the equipment of civil defence organizations. It also studied the legal protection of civil defence personnel in neutral countries, called upon to assist that of a country at war. Finally, the party devoted two meetings to the question of the special identification of civil defence personnel and eventually of its equipment.

Very positive conclusions were often reached on all these points. The experts were of the opinion that if a generally accepted interpretation of article 63 was advisable, it seemed to them necessary to draw up an ad hoc regulation going beyond the scope of that article in order to ensure for civil defence personnel, under all circumstances, the privileged status which was essential for its action to be effective. They strongly encouraged the Committee to continue its work in that direction.

The ICRC drew up a detailed report on the results of that meeting. It communicated it to all the National Red Cross Societies for their own information as well for that of the civil defence services of their countries.

It should once again be pointed out that the ICRC has on various occasions disseminated information concerning the organization methods of civil defence as well as the status of these services. It sent such information in particular to the Asiatic countries interested in these questions and who wished to complete their documentation on the subject.

Finally, the ICRC was represented by an observer at the Fourth International Civil Defence Conference held at Montreux in the first fortnight of October.

LEGAL ASSISTANCE

The International Centre for the Co-ordination of Legal Assistance, which has its headquarters in Geneva, and of which the ICRC is one of the founders, continued its work in close co-operation with the United Nations Office of the High Commissioner for Refugees. It dealt mainly with the position of stateless persons and with attempts to find them a country.

DECLARATION OF RED CROSS PRINCIPLES

The draft declaration drawn up by the Joint Commission of the ICRC and the League, which took into account advice tendered by National Societies and which was approved by the Standing Commission of the International Red Cross, was submitted to the Council of Delegates, meeting for this purpose in Prague on October 3 and 5, 1961.

The discussion was lively, but a true spirit of mutual understanding dominated the debate so that, in the final outcome, the vote for this vitally important text was unanimous.

It will now be for the XXth International Conference meeting in Geneva in 1963 on the occasion of the Red Cross Centenary, to give its final sanction to this declaration.

The declaration in its present form is as follows :

- Humanity* The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours—in its international and national capacity—to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.
- Impartiality* It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours only to relieve suffering, giving priority to the most urgent cases of distress.
- Neutrality* In order to continue to enjoy the confidence of all, the Red Cross may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.
- Independence* The Red Cross is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always

maintain their autonomy so that they may be able at all times to act in accordance with Red Cross principles.

Voluntary Service The Red Cross is a voluntary relief organisation not prompted in any manner by desire for gain.

Unity There can be only one Red Cross Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality The Red Cross is a world-wide institution in which all Societies have equal status and share equal responsibilities and duties in helping each other.

RELATIONS WITH THE RED CROSS INSTITUTIONS

The ICRC's relations with the National Red Cross, Red Crescent and Red Lion and Sun, Societies, as well as with their federation, the League of Red Cross Societies, were particularly close in 1961. There were numerous contacts to settle questions of mutual interest and particularly to prepare the ceremonies which will mark the Centenary of the Red Cross in 1963. The Directorate of the ICRC and the Secretariat of the League continued to hold joint weekly meetings, alternately at the headquarters of each institution, in order to discuss matters of interest to the Red Cross movement.

Official recognitions

In 1961, the ICRC officially recognized two National Red Cross Societies, that of Nigeria on May 4, and that of Togo on September 7. These two additions increased the number of recognized National Societies to 87.

International Red Cross meetings

At the end of September and beginning of October, several large international Red Cross meetings took place in Prague, first