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THE PROTECTION OF VICTIMS OF WAR

NOTE. The protection of victims of war is intimately bound up with the development of the law on the conduct of warfare. Over a period of almost a century, it has been the subject of a progressively developing body of international legislation.

Numerous bilateral agreements concluded during the seventeenth and eighteenth centuries contained provisions on the treatment of the wounded and sick in armies in the field and of prisoners of war; but the provisions were usually applicable only to particular campaigns or the surrender of particular units (C. Lueder, *La Convention de Genève*, pp. 9–33). Agreements containing more general provisions began to come into vogue toward the end of the eighteenth century. A high standard was adopted in Articles 23 and 24 of the United States—Prussia Treaty of Amity and Commerce of 10 September 1785 (2 Miller, *Treaties*, pp. 178–181; 2 *Treaties* (Malloy), pp. 1484–1485), and it was repeated in American treaties with Prussia in 1799 (2 Miller, *Treaties*, pp. 450–453; 2 *Treaties* (Malloy), pp. 1494–1495), and (in substance) with Mexico in 1848 (5 Miller, *Treaties*, pp. 231–235; 1 *Treaties* (Malloy), pp. 1117–1118).

The "Instructions for the Government of Armies of the United States in the Field," drafted by Francis Lieber and issued by the United States War Department on 24 April 1863 (Naval War College, *International Law Discussions*, *1903*, pp. 115–139), had an influence on the development of international law concerning prisoners of war and enemy civilians.

In 1862, Henry Dunant, a Swiss, published a book entitled "*Un Souvenir de Solferino*," in which he recounted his experiences in tending the wounded after the Battle of Solferino in Italy in 1859. The feeling aroused by his disclosures of the inadequacy of the care of the sick and wounded, and the unremitting efforts of Dunant and his collaborators, led to the meeting in Geneva in October 1863 of an international assembly composed partly of government representatives and partly of private persons. This assembly, which laid the foundations of the International Committee of the Red Cross, adopted a *voeu* (wish) urging the neutralization in time of war of aid stations, hospitals and sanitary personnel. At the request of the International Committee established by the assembly, the Swiss Federal Council convoked at Geneva in 1864 a diplomatic conference to realize the assembly's *voeu* in the form of a convention.

This conference promulgated the Geneva Convention for the Amelioration of the Condition of the Wounded in Time of War, of 22 August 1864 (22 Stat. 940; 2 *Treaties* (Malloy), p. 1903), which was brought into force in 1865; it was ratified or adhered to by fifty-four States. The United States adhered to the Convention in 1882.

Soon after the Geneva Convention of 1864 entered into force, an effort was begun for its revision. An International Conference of Societies of Assistance to the Military Wounded of Armies and Navies, meeting in Paris in August 1867, proposed various changes in the Convention, and drew up provisions for extending its application to naval warfare. These proposals were considered by a diplomatic conference held at Geneva in 1868, and a series of additional articles was embodied in a convention of 20 October 1868 (22 Stat. 946; 2 *Treaties* (Malloy), p. 1907). This convention was adhered to by the United States in 1882, but it never entered into force. Shortly after the convention was signed, France proposed an addition to Article 9, and France and Great Britain proposed an interpretation of Article 10. With these changes, the convention was adopted as a *modus vivendi* by France and the North German Confederation in the war of 1870 (*Archives Diplomatiques*, 1871–1872, I, p. 250; 60 *British and Foreign State Papers*, pp. 945–946) and by the United States and Spain in the war of 1898 (2 *Treaties* (Malloy), pp. 1912–1924).

An important attempt to codify the laws and customs of war was made by a diplomatic conference of thirteen States which met at Brussels in 1874. A draft international declaration concerning the laws and customs of war, adopted by the Conference on 27 August 1874 (*Actes de la Conférence de Bruxelles, 1874*, pp. 374–386), contained provisions concerning prisoners of war, military power with respect to private persons, and belligerents interned and wounded cared for in neutral countries. This draft declaration did not lead to the conclusion of a convention.

In August 1898 and January 1899, the Emperor of Russia proposed an international conference having among its objects the adaptation to naval war of the Geneva Convention of 1864 on the basis of the Additional Articles of 1868, and the revision of the Brussels Draft Declaration of 1874. The Peace Conference met at The Hague from 18 May to 29 July 1899. Three conventions were signed on the latter date: Hague Convention (II) with respect to the Laws and Customs of War on Land

(32 Stat. 1803; 2 *Treaties* (Malloy), p. 2042; Naval War College, *International Law Discussions*, *1903*, p. 141) contained regulations concerning prisoners of war, military authority over hostile territory, and the internment of belligerents and care of the wounded in neutral countries; and Hague Convention (III) provided for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864 (32 Stat. 1827; 2 *Treaties* (Malloy), p. 2035; Naval War College, *International Law Discussions*, *1903*, p. 159). Hague Convention II was eventually ratified or adhered to by forty-six States, and Hague Convention III by forty-five States; both conventions were ratified by the United States.

The Peace Conference of 1899 also expressed a *voeu* that a conference be held for the revision of the Geneva Convention of 1864. Such a conference met in Geneva on the invitation of the Swiss Federal Council in 1906. It led to the signature on 6 July 1906 of the Geneva Convention for the Amelioration of the Condition of the Wounded of the Armies in the Field (35 Stat. 1885; 2 *Treaties* (Malloy), p. 2183; Naval War College, *International Law Topics and Discussions*, *1906*, p. 127), which greatly expanded the provisions of the 1864 Convention. The Geneva Convention of 1906 was eventually ratified or adhered to by fifty-two States, including the United States.

A second Peace Conference, held at The Hague in 1907, promulgated on 18 October 1907 thirteen conventions; among them were Hague Convention (IV) respecting the Laws and Customs of War on Land (36 Stat. 2277; 2 *Treaties* (Malloy), p. 2269; Naval War College, *International Law Situations*, *1908*, p. 170), and Hague Convention (X) for the adaptation to Maritime Warfare of the Principles of the Geneva Convention (36 Stat. 2371; 2 *Treaties* (Malloy), p. 2326; Naval War College, *International Law Situations*, *1908*, p. 201). These conventions contained some amendments and amplifications of Hague Conventions II and III of 1899, respectively. Hague Convention IV of 1907 was eventually ratified or adhered to by thirty-one States, and Hague Convention X by thirty-two States; both were ratified by the United States.

During the War of 1914–1918, the Hague Conventions of 1899 and 1907 and the Geneva Convention of 1906 were generally regarded as not legally binding, because of provisions in each limiting their application to conflicts in which all belligerents were parties to the Convention (*U. S. Foreign Relations*, *1918*, Supplement II, pp. 7, 50); nevertheless their provisions

were complied with to a considerable extent. During the course of the war the belligerents also concluded a number of agreements concerning the treatment of prisoners of war and civilians; for example, the British-German Agreements of 2 July 1917 and 14 July 1918, the British-Turkish Agreement of 28 December 1917, and the French-German Agreements of 26 April 1918 (111 *British and Foreign State Papers*, pp. 257, 279, 557, 713, 721).

After the close of the War of 1914–1918, some efforts were launched toward a formal restatement of the laws of war. The Advisory Committee of Jurists set up in 1920 to draft a Statute of the Permanent Court of International Justice adopted a *voeu* calling for a formulation of the modifications or additions to the pre-existing law rendered necessary or advisable by the war. The Assembly of the League of Nations was reluctant, however, to move in this direction.

The Conference on the Limitation of Armament, held at Washington in 1921–1922, decided upon the appointment of a Commission representing the United States, the British Empire, France, Italy and Japan to consider the adequacy of existing rules of international law for covering new methods of attack or defense resulting from new agencies of warfare, and the changes in the existing rules which ought to be adopted. The Commission met at The Hague in 1922. Its report of 17 February 1923 contained a suggested code of rules of aerial warfare, but no formal action was later taken toward the adoption of this code. Article 17 of the code provided that the principles laid down in the Geneva Convention of 6 July 1906, and Hague Convention X of 18 October 1907 should apply to aerial warfare and to flying ambulances; Article 25 also provided for the protection of hospitals and hospital ships from aerial bombardment.

After the conclusion of the First World War, the International Committee of the Red Cross and successive International Red Cross Conferences initiated a movement for a revision of the Geneva Convention of 1906 and for the conclusion of a new convention concerning the treatment of prisoners of war. As a result of this movement, a diplomatic conference was held in Geneva in 1929, and on 27 July 1929 two conventions were opened for signature: a new Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field (47 Stat. 2074; *U. S. Treaty Series*, No. 847; 4 *Treaties* (Trenwith), p. 5209); and a Convention relative to the Treatment of Prisoners of War, with a model agreement annexed on

direct repatriation and hospitalization in a neutral country of prisoners of war for reasons of health (47 Stat. 2021; *U. S. Treaty Series*, No. 846; 4 *Treaties* (Trenwith), p. 5224). The former convention was eventually ratified or adhered to by fifty-four States, and the latter by forty-eight States; both conventions were ratified by the United States.

After the conclusion of the Geneva Conference of 1929, the International Committee of the Red Cross prepared a draft convention concerning the condition and protection of civilians of enemy nationality in the territory of a belligerent or in a territory occupied by a belligerent. This draft was approved by the XVth International Red Cross Conference, meeting in Tokyo in 1936. The International Committee likewise drafted proposed modifications in the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, and a proposed revision of the Hague Convention X of 1907 concerning maritime warfare. These drafts were approved by the XVIth International Red Cross Conference in London in 1938. In 1938 the International Committee convoked a Commission of Experts to prepare a draft convention on sanitary localities and zones to be respected by belligerents. The Swiss Federal Council contemplated the convocation of a diplomatic conference in Geneva in 1940 to consider these drafts, but the War of 1939 intervened.

During the War of 1939 most of the belligerents were obligated by the Geneva Conventions of 1929. Shortly after the war began, France, Great Britain and Germany declared to the International Committee of the Red Cross that they would apply the Geneva Prisoners of War Convention to interned civilians insofar as possible [22 *Revue internationale de la Croix-Rouge* (1940), p. 8]. The United States and Italy agreed to the same effect early in 1942. Japan, which was not a party to the Geneva Prisoners of War Convention, gave assurances in 1942 that it would "apply *mutatis mutandis* provisions of that Convention to American prisoners of war in its power." The model agreement annexed to that Convention was put into force between the United States and Germany by an agreement of 4/30 March 1942 (*U. S. Executive Agreement Series*, No. 255), and between the United States and Italy, with some modifications, by notes of 22 January and 1 June 1942.

The process of elaborating the Geneva Conventions of 1949 began with proposals made by the International Committee of the Red Cross early in 1945, that the Geneva Conventions of

1929 and Hague Convention X of 1907 should be revised, and that certain new conventions should be concluded. In October 1945, the International Committee convoked a consultative meeting of the neutral members of the Mixed Medical Commissions which had been established during the war under Article 69 of the 1929 Prisoners of War Convention. Drafts prepared by the International Committee were placed before a Preliminary Conference of National Red Cross Societies for the study of the Conventions and of various problems relative to the Red Cross, held at Geneva in July and August 1946. A Conference of Government Experts for the Study of Conventions for the Protection of War Victims, held in Geneva in April 1947, and attended by representatives of fifteen governments, prepared drafts of revised conventions and of a new convention for the protection of civilians in time of war. The International Committee later consulted several governments which had not been represented at the Conference, and the drafts were laid before a Special Commission of National Red Cross Societies, meeting in Geneva in September 1947. Thereafter the drafts were considerably modified. In May 1948, they were communicated to all governments and National Red Cross Societies, in preparation for the XVIIth International Red Cross Conference. This Conference, composed of representatives of fifty governments and fifty-two National Red Cross Societies and held at Stockholm in August 1948, approved the drafts with some amendments.

After these elaborate preparatory steps, the Swiss Federal Council issued invitations to a Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims. This Conference, to which fifty-nine States sent plenipotentiaries and four sent observers, met at Geneva from 21 April to 12 August 1949. On the latter date, four Conventions were opened to signature by the Conference:

(1) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;

(2) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;

(3) the Geneva Convention relative to the Treatment of Prisoners of War;

(4) the Geneva Convention relative to the protection of Civilian Persons in Time of War.

The following States are signatories to the four Conventions: Albania, Argentine Republic, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian S. S. R., Canada, Ceylon [only to Conventions (1), (2) and (3)], Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Greece, Guatemala, the Holy See, Hungary, India, Iran, Ireland, Israel, Italy, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syria, Turkey, Ukrainian S. S. R., U. S. S. R., United Kingdom, United States, Uruguay, Venezuela and Yugoslavia. Reservations made on signing are indicated in footnotes to the texts of the Conventions.

The four Conventions entered into force between Switzerland and Yugoslavia on 21 October 1950. On 1 January 1951, ratifications had also been deposited by Chile, Czechoslovakia (with reservations), India, Liechtenstein and Monaco.

Shortly after the outbreak of hostilities in Korea, the International Committee of the Red Cross proposed to the parties to the conflict that the provisions of the Geneva Conventions of 1929 and 1949 should be applied to the wounded, sick, and prisoners of war. The Republic of Korea indicated its adherence to the essential principles of those Conventions. The North Korean regime expressed its willingness to observe those principles, but did not admit representatives of the International Committee to its territory.