

**International Committee of the Red Cross
and Australian Red Cross
Sixtieth Anniversary of the Geneva Conventions**

Modest Questions – Great Answers

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12 August 2009 Canberra

In celebrating the Sixtieth Anniversary of the Geneva Conventions of 1949, we celebrate a history which is a powerful antidote to cynicism about the possibility of moral progress in the international sphere. The history began with two questions which were posed in 1862 about the problem of human suffering in wartime. They were posed by Henri Dunant, a Geneva businessman who had witnessed the Battle of Solferino. Their answers were the beginnings of humanitarian conventions governing war and armed conflict. They were also the genesis of the International Committee of the Red Cross which, for over 140 years, has made it its mission to improve upon, and give effect to, those answers. Ultimately, they led to the establishment of an array of national Red Cross and Red Crescent organisations, including the Australian Red Cross.

The first question posed without rhetorical flourish in Dunant's work, *A Memory of Solferino* published in 1862, was¹:

¹ Bugnion, *From Solferino to the Birth of Contemporary International Humanitarian Law*, (2009) pp 4-5.

Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers?

The second question was:

On certain special occasions, as, for example, when princes of the military art belonging to different nationalities meet ... would it not be desirable that they should take advantage of this sort of congress to formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in different European countries?

On 17 February 1863, under the aegis of the Geneva Public Welfare Society, Dunant and others initiated the establishment of a five member committee, the 'Comité International et Permanent de Secours aux Blessés Militaires', or for those without French, the 'International Committee for Aid to the Wounded'. The objects of the committee were to support the establishment of national aid societies and of a treaty which would allow them to carry out their work. It was that committee which became the International Committee of the Red Cross². The committee resolved to convene an international conference in Geneva to consider how military medical services could be improved. Every

² Kalshoven and Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, 4th ed (2001) p 27. See also Bugnion, *op cit*, p 8.

European government was invited, along with leading military, medical and philanthropic figures.

The conference commenced in Geneva on 26 October 1863. The conference adopted 10 resolutions which laid the foundations for the establishment of the First Geneva Convention and for the creation of Societies for Relief to Wounded Soldiers, ultimately to evolve into the Red Cross and Red Crescent Societies³.

It is important to understand the historical setting in which this initiative took place. There are many historical examples of efforts made by people back to the time of King Cyrus of Persia to limit some of the worst effects of war⁴. In Europe during the 16th and 17th centuries, there is evidence of the development of a practice between Commanders-in-Chief of warring nations to make agreements about the exchange of the wounded and sick. The treatment of prisoners of war also improved. It has been suggested that these developments could be attributed in part to the intellectual influences of the Enlightenment and the notion which was emerging of the 'dignity and the fundamental, inalienable rights of the human person'⁵. So Rousseau said in *The Social Contract*⁶:

³ Bugnion, op cit, p 20.

⁴ Herczegh, *Development of International Humanitarian Law*, (1984) ch 1 pp 13-15.

⁵ Herczegh, op cit, p 19.

⁶ Quoted in Herczegh, op cit, p 19.

The object of war being the destruction of the enemy State, a commander has a perfect right to kill its defenders so long as their arms are in their hands: but once they have laid them down and have submitted, they cease to be enemies, or instruments employed by an enemy, and revert to the condition of men, pure and simple, over whose lives no one can any longer exercise a rightful claim.

As a recent history of the development of international humanitarian law, published by the International Committee of the Red Cross, has said⁷:

Around the middle of the 19th century the circumstances of wounded soldiers on the battlefield left nearly everything to be desired. Care for the wounded was primitive and insufficient in all respects: there was a dearth of military, medical and auxiliary personnel; surgery and other treatment usually had to be carried out in very primitive conditions; insight into the need for sterile wound treatment was lacking; antibiotics and blood plasma had not been discovered yet; and so on and so forth. Nor was this all: perhaps the worst of all was that the Napoleonic wars of the beginning of the century had brought an end to the customary practice of sparing the enemy's field hospitals and leaving both the medical personnel and the wounded untouched.

At the Battle of Solferino, which was the subject of Dunant's book, 22,000 Austrians died and 17,000 French. Sixty per cent of those wounded died.

⁷ Kalshoven and Zegveld, *op cit*, p 26.

The 1863 Conference adopted a number of resolutions, using a procedure which anticipated that adopted over the next 140 years by the International Committee in the preparation of draft Conventions in relation to the victims of war⁸. The next step was the convening, in 1864, by the Swiss Federal Council of a Diplomatic Conference. That conference adopted the First Geneva Convention. It was entitled 'Convention for the Amelioration of the Condition of the Wounded in Armies in the Field'. It comprised ten Articles. It contained the following elements⁹:

1. The recognition in land war of ambulances and military hospitals as neutrals to be protected and respected by the warring parties while they accommodated the wounded and the sick.
2. Recognition of the neutrality of hospital and ambulance personnel when on duty.
3. The collection and care for wounded and sick combatants.
4. The use of a red cross on a white background to distinguish hospitals, ambulances and evacuation parties.

The origins of the red cross on the white background were described by Jean Pictet, a leading writer on the development and

⁸ Herczegh, op cit, p 21.

⁹ Kalshoven and Zegveld, op cit, p 27.

principles of international humanitarian law¹⁰. Dunant thought it was necessary to have some universally recognised emblem. A white armband was suggested at the 1863 Conference. However, this was too close to the symbol of truce or surrender. The addition of a red cross was proposed, apparently by a German delegate Loeffler in a private conversation with Dunant. It was later recited in Art 18 of the Revised Geneva Convention of 1906 that the use of the red cross on a white background was out of respect for Switzerland. While this may have been a convenient courtesy, it did not reflect the historical record from the 1863 and 1864 conferences¹¹.

The historic significance of the Convention of 1864 cannot be under-estimated. It has been called the 'Mother of Conventions'. Pictet wrote¹²:

For the first time in history, the states, in a formal and permanent document, accepted a limitation on their own power, for the sake of the individual and an altruistic ideal. For the first time, war had yielded to law.

By 1867 the Convention had been ratified by all the major powers, except the United States, which did so in 1882. It was first seriously applied in the Serbo-Bulgarian War of 1885. The mortality in that war amounted to no more than 2%.

¹⁰ Pictet, *Development and Principles of International Humanitarian Law*, (1985)

¹¹ Pictet, *op cit*, p 30.

¹² Pictet, *op cit*, p 30.

The Hague Peace Conference of 1899 adopted a number of instruments relating to international dispute and war, including a Convention for the Adaptation to Maritime War of the Principles of the Geneva Convention of 1864. This applied the principles of the 1864 Convention to the wounded and sick and shipwrecked at sea. The Hague Peace Conference also issued a declaration prohibiting the use of asphyxiating and poisonous gases and the use of expanding bullets.

In 1906 a new instrument, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field was signed. It had 33 Articles. It focussed not on the protection of ambulances and military hospitals, but on the protection of the sick and wounded soldiers. The 1864 Convention had provided that wounded combatants should be exchanged as soon as possible. However, Herczegh has observed the well-intentioned provisions of the 1864 Convention had not reckoned with the protraction of wars and the ensuing problems, and tended to lessen the responsibility of the victor, the party in control of the battlefield¹³. Personnel of voluntary aid societies were to be able to continue their activities under the supervision of any adverse party into whose hands they fell. The 1906 Convention also obliged the parties to instruct troops and protected personnel about the provisions of the Convention and to make them known to the people at large¹⁴.

¹³ Herczegh, op cit, p 31.

¹⁴ Geneva Convention 1906, Art 26.

The horrific experiences of World War I led to a reworking of the 1906 Geneva Convention and its replacement by the Geneva Convention of 1929 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. It had 39 Articles. The new Convention included provision for the maintenance of military graves, official recognition of the use of aircraft for medical transports and rules for investigations of violations of the Convention¹⁵. At the same time as the 1929 Convention was concluded, an agreement was reached on the Status and Treatment of Prisoners of War. That agreement was reflected in Regulations annexed to the Fourth Hague Convention of 1907. Its effect, in conjunction with the Geneva Convention of 1929, meant that that Convention covered prisoners of war¹⁶.

The four Geneva Conventions of 1949 were made following World War II. They were:

1. Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field – Geneva Convention I.
2. Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea – Geneva Convention II.
3. Convention Relative to the Treatment of Prisoners of War – Geneva Convention III.

¹⁵ Herczegh, op cit, p 36.

¹⁶ Herczegh, op cit, p 37.

4. Convention Relative to the Protection of Civilian Persons in Time of War – Geneva Convention IV.

The 1949 Conventions have been described as providing a uniform system for the protection of different categories of war victims¹⁷. Importantly, the Conventions went beyond declared war and extended to 'any other armed conflict'¹⁸. They were applied to organised resistance movements. Perhaps the most significant advance was the extension of Convention protection to civilians. These were divided into two categories: enemy civilians in the territory of a belligerent party and the inhabitants of occupied territory. Another important development was the inclusion of provisions under which the contracting States had to take necessary enforcement measures to deal with serious breaches of the Conventions.

It has been pointed out by Professor Dietrich Schindler, a former Chairman of the Legal Commission of the International Committee of the Red Cross, that the 1949 Conventions were adopted only a few months after the proclamation of the Universal Declaration of Human Rights. So it is that there can be seen in these Conventions reference to the 'rights' of protected persons in addition to provisions imposing obligations on the belligerents. Article 3, which is common to the four Conventions, regulates the relationship between governments and their own nationals when there is an internal armed conflict. This had

¹⁷ Herczegh, op cit, p 44.

¹⁸ Geneva Convention 1949, Art 2.

previously been covered by human rights provisions only¹⁹. It was shortly after their adoption that the International Committee of the Red Cross began to use the term 'international humanitarian law' as a substitute for such terms as 'law of war' and 'law of armed conflicts'²⁰. Initially it appears that the Conventions had little impact. They were not even taught in university courses and texts on international law. Attempts by the International Committee of the Red Cross to enhance the protection of the civilian population against indiscriminate warfare attracted very little support from governments.

However in the 1960s, following conflicts such as the war in Vietnam, the civil war in Nigeria and Biafra and wars between the Arab States and Israel, as well as wars of national liberation in Africa, the United Nations ('UN') became involved in the further development of international humanitarian law. An International Conference on Human Rights, conducted under the auspices of the UN in Teheran in 1968, adopted a resolution on human rights in armed conflicts. It asked the General Assembly to invite the Secretary-General to study steps 'to secure the better application of existing humanitarian international conventions and rules in all armed conflicts'²¹. An inquiry was also requested into the 'need for additional humanitarian international conventions or for possible revision of existing Conventions'²². On

¹⁹ Schindler, 'Significance of the Geneva Conventions for the Contemporary World' – *International Review of the Red Cross* No 836, pp 715-729.

²⁰ Schindler, op cit.

²¹ Kalshoven and Zegveld, op cit, p 30.

²² Kalshoven and Zegveld, op cit, p 30.

19 December 1968, the General Assembly invited the Secretary-General, in consultation with the International Committee of the Red Cross, to undertake the studies which had been requested by the Teheran conference²³.

Kalshoven and Zegveld have described the consequence of the United Nations resolution²⁴:

With the Resolution, the starting gun had been fired for an accelerated movement which brought the three currents, The Hague, Geneva and New York, together into one main stream. Governments, the UN and the ICRC participated in it, and the debate concerned the rules of combat in the sense of Hague law as well as the protection of the victims of war in the sense of Geneva law, as much as the promotion of the idea of international protection of human rights in armed conflicts. The development signified recognition of the close interaction between these main parts of the humanitarian law of armed conflict, especially in the circumstances of contemporary warfare.

Following a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1974 in Geneva, two conventions or treaties designated 'Protocols Additional to the Conventions of Geneva of 1949', were prepared. The first concerned the protection of victims of international armed conflicts and the second, the protection of victims of internal armed conflicts. Protocols were signed in December 1977 by a number

²³ Kalshoven and Zegveld, op cit, p 30.

²⁴ Kalshoven and Zegveld, op cit, p 33.

of States and have since been ratified by most. They entered into force on 7 December 1978²⁵.

Among the improvements developed by the Protocols, civilian medical personnel working under the control of the State were accorded protection similar to that enjoyed by military medical personnel since the 1864 Convention. Defence organisations assisting victims of aerial bombing were also protected²⁶. As Pictet said²⁷:

The latest version of this Convention, together with its additional Protocols, is fully worthy, as we can see, of its long tradition.

The Protocols of 1977 did not touch on classes of weapons of a cruel or indiscriminate nature. However, in October 1980, a UN conference adopted the 'Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects'. There were three Protocols annexed to the Convention relating to non-detectable fragments, mines, booby traps and other devices, and incendiary weapons. That Convention entered into force on 2 December 1983. A fourth protocol attached to the Convention in 1995 concerned blinding laser weapons. The Mines Protocol was amended in 1996. And in 1997, a new Convention was adopted prohibiting the possession and use

²⁵ Kalshoven and Zegveld, *op cit*, p 34.

²⁶ Pictet, *op cit*, p 33.

²⁷ Pictet, *op cit*, p 33.

of anti-personnel mines. This is known as the '1997 Ottawa Convention'²⁸.

The history of the Geneva Conventions and associated instruments defining international humanitarian law is inextricably tied up with the history of the International Committee of the Red Cross. The Australian Red Cross is a particular expression of that history. As can be seen, that history began with an idea whose time had come and the initiatives of an extraordinary individual and those who worked with him to give it life. Much of it can be recounted at the level of dealings between nation States, the UN and the International Committee of the Red Cross. Its real significance is to be found in its impact upon the lives of individual people. That is demonstrated in the *International Humanitarian Law Journal* published on this anniversary, and the photographs displayed here tonight. Those who have any awareness of this history, of the people behind it, and of the millions of people touched by it, cannot be indifferent to it. Indifference and cynicism about the Geneva Conventions and those who strive to implement and improve them can only be affected by those who know nothing of war or the suffering which it brings. It is to be hoped that this occasion will serve to remind all of us of the importance of our national commitment, and our commitment as a community, to the ongoing development of international humanitarian law.

²⁸ Kalshoven and Zegveld, op cit, p 34.