

“The Great Humanitarian”: The Soviet Union, the International Committee of the Red Cross, and the Geneva Conventions of 1949

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The Geneva Conventions of 1949 are often seen by both scholars and practitioners as the product of liberal humanitarianism in general and particularly of the International Committee of the Red Cross’s (ICRC) attempts to protect victims of war more strongly. They are primarily viewed as a major response to the experiences of World War II, in order to prevent the repetition of its most horrific atrocities, against especially civilians.¹

1. For examples of this dominant trend in the historiography, see David M. Crowe, *War Crimes, Genocide, and Justice* (New York: Palgrave Macmillan, 2014); Barbara Ann-Rieffer-Flanagan, “Is Neutral Humanitarianism Dead? Red Cross Neutrality: Walking the Tightrope of Neutral Humanitarianism,” *Human Rights Quarterly* 31 (2009): 888–915, at 896; Theodor Meron, “The Humanization of Humanitarian Law,” *The American Journal of International Law* 94 (2000): 239–78; and Catherine Rey-Schyrr, *De Yalta à Dien Bien Phu. Histoire du Comité international de la Croix-Rouge 1945–1955* (Geneva: Georg-CICR, 2007).

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Unlike the Nuremberg Trials, or the human rights revolutions of the 1940s,² the Conventions are not usually regarded as an “Anglo-American tale of triumph.”³ Traditionally, they are viewed as a similar sort of product made possible by a cohort of predominantly Western European drafters, thereby limiting the important Soviet role to a relatively minor although uncomfortable episode in a larger story of humanist triumphalism.⁴ This classic account mostly fails to address, let alone acknowledge, the significant contributions of illiberal states, such as the Soviet Union and the socialist states of the Eastern Bloc, in developing humanitarian law. This liberal humanitarian narrative was more or less unchallenged by the Soviets and the ICRC in the years after 1949. Both felt little need during this period of continuing tensions to remind others about their brief but important strategic cooperation in 1949 to strengthen the Geneva Conventions.⁵

The history of the Conventions was, first and foremost, written by many of the former Western protagonists, particularly the ICRC, largely adopting and reifying their views. Since then, many influential scholars analyzing the historical evolution of the laws of war have, regardless of different turns in legal-historical historiographies, accepted these claims largely at face value. For example, the American political scientist David Forsythe, who wrote an authoritative and pioneering study of the ICRC’s history, argued that “the Soviets never cooperated with the ICRC in meaningful ways on humanitarian protection during the Cold War proper.”⁶ Surprisingly, the recent opening up of Soviet archives has failed to yield

2. Elizabeth Borgwardt, *A New Deal for the World: America’s Vision for Human Rights* (Cambridge, MA: Harvard University Press, 2005).

3. Francine Hirsch, “The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order,” *The American Historical Review* 113 (2008): 701–30, at 701. On how United States’ officials conceived of the Geneva Conventions: Olivier Barsalou, “Preparing for War: The USA and the Making of the 1949 Geneva Conventions on the Laws of War,” *Journal of Conflict & Security Law* 23 (2017): 1–25.

4. One example is William Hitchcock’s crucial account of the making of the Geneva Conventions. He similarly credits the ICRC and Western European “humanitarian states in the 1949 negotiations—France, Norway, Sweden, Denmark” for their ambitious scope. William Hitchcock, “Human Rights and the Laws of War: The Geneva Conventions of 1949,” in *The Human Rights Revolution. An International History*, ed. Akira Iriye, Petra Goedde, and William Hitchcock (New York: Oxford University Press, 2012), 93–112, at 101.

5. For an overview of the ICRC’s history, see François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre* (Geneva: CICR, 2000); and Rey-Schyr, *De Yalta à Dien Bien Phu*.

6. He gave two exceptions to this rule: the 1956 Hungarian crisis and the 1962 Cuban missile crisis. David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), 53.

a growing interest among Soviet experts in this specific matter.⁷ As a consequence of this, a liberal-historical amnesia has occurred, minimizing the remarkable role played by the Soviets before, and at Geneva, in revising humanitarian law.

Paradoxically echoing the Western orthodoxy on this matter, Francine Hirsch, an expert on Soviet international legal contributions after World War II, has also suggested that following Nuremberg, the Soviets “concluded that international legal institutions were of limited use to them, and refocused their efforts on shaping the postwar order through other means.”⁸ Others who have looked more in depth at the matter have stressed the importance of the Soviet Union’s wartime declarations rather than its postwar legal contributions,⁹ or have looked at only certain dimensions of the Soviet contributions,¹⁰ instead of using a more multilayered historical approach as this article seeks to do.

This article, based on a collection of different Western and Soviet archival materials,¹¹ certainly does not try to provide a comprehensive, let alone definitive, Soviet-focused account. Instead, it unpacks some of the existing misconceptions within the existing historiography regarding the Soviet impact on the ICRC’s efforts to promote the law’s revision, especially after World War II. Whereas most of the literature claims that Soviet contributions were either minimal or highly biased, this article reveals the Soviet delegation’s mixed but critical legacy in developing the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, including Common Article 3, in particular.

7. Most scholars in the field of Soviet legal history tend to focus on fields of international law other than humanitarian law. One example is: Anton Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention* (Madison: University of Wisconsin Press, 2017). The legal scholar Lauri Mälksoo has focused mostly on the Tsarist contributions to the Hague Conventions. Lauri Mälksoo, *Russian Approaches to International Law* (Oxford: Oxford University Press, 2015), 70–71.

8. Hirsch, “The Soviets at Nuremberg,” 726.

9. George Ginsburgs, “Laws of War and War Crimes on the Russian Front during World War II: The Soviet View,” *Soviet Studies* 11 (1960): 253–85, at 280.

10. See Paul Betts, “Universalism and its Discontents: Humanity as a Twentieth-Century Concept,” in *Humanity: A History of European Concepts in Practice from the Sixteenth Century to the Present*, ed. Fabian Klose and Mirjam Thulin (Göttingen: Vandenhoeck & Ruprecht, 2016), 51–70, at 65; Giovanni Mantilla, “Forum Isolation: Social Opprobrium and the Origins of the International Law of Internal Conflict,” *International Organization* 72 (2018): 317–49; and Helen Kinsella, *The Image Before the Weapon: A Critical History of the Distinction Between Combatant and Civilian* (Ithaca, NY: Cornell University Press, 2011), 118–19.

11. Report Soviet–Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60–76, Tsentral’nyi derzhavnyi arhiv vyschykh organiv vldy ta upravlinnia Ukrainy, Kiev, Ukraine (hereafter TSDAVO).

In general, the Soviet position was evolving in nature, less unitary, and far more sophisticated than what is commonly assumed. On the one hand, its delegation(s), acting in surprisingly close cooperation with the ICRC, was critical in introducing powerful proposals and in creating sufficient support for plans to end “inhumane” measures in war. On the other hand, the Soviet delegation tried and eventually succeeded in making some of these protections potentially vulnerable because of its enduring opposition to accepting stronger enforcement mechanisms, such as allowing Protecting Powers to visit its camps.

Focusing on the Western perceptions of the Soviet Union’s actions and its contributions to the law’s historical evolution, the article also unravels how the Western objective of obtaining Soviet participation was seen by many of the major drafting parties, particularly the French Foreign Ministry, as a critical precondition for making the law’s revision process a success. In pursuit of this goal, the parties seriously and extensively discussed the options of replacing or even eliminating the ICRC as a drafting party, with the aim of eventually obtaining Soviet participation. In so doing, the article raises the possibility of alternative paths, and that of contingency, of a variety of routes that need to be reinserted into a larger story about the law’s historical development. This element is either missing or downplayed in most existing accounts, as they tend to take the ICRC’s continued participation largely for granted.¹²

The argument is presented across two different sections focusing on Soviet–ICRC relations and the Soviet impact on the discussions leading to the acceptance of the Geneva Conventions in August 1949.¹³ The first section explores the interwar and wartime origins of the hostile relations between Switzerland and Moscow, which led to the latter’s rejection of participating in the early phases of the postwar drafting debates. The following section focuses on the attempts made by mainly French diplomats to obtain Soviet participation through questioning the ICRC’s leading drafting role. Filling certain gaps in the existing literature on the Soviet contributions to developing international law after World War II, the final section of this article addresses a few key elements regarding the Soviet impact on the last stage of these negotiations.

12. The only reference to this episode I found is a tiny section in Best’s pioneering account. Using mainly Anglophone sources and taking a partisan position in favor of the ICRC, he briefly describes how the French had tried to “sell the ICRC down the river. . . to lure the USSR to the conference table.” “Fortunately,” he adds, this plan failed. Geoffrey Best, *War and Law since 1945* (Oxford: Clarendon Press, 1994), 89.

13. The role of other socialist states such as Yugoslavia lies beyond the scope of this article.

1. Getting the Soviets on Board

In August 1948, with the gathering of the last preliminary drafting meeting in Stockholm, the negotiations on the Geneva Conventions were at the point of collapsing. As the delegates were about to travel to the Swedish capital, the Soviet satellites, who had originally planned to come, suddenly announced their decision not to join the gathering.¹⁴ The Soviets, including the Alliance of Red Cross and Red Crescent Societies, declined their invitation as well and sharply criticized the ICRC in their rejection letter. In this propagandistic document, they complained about the ICRC's invitation to "fascist" Spain and the organization's reluctance to denounce the Nazi wartime atrocities.¹⁵ The ICRC rejected those allegations, but it feared that without Soviet participation, the meeting in Stockholm, and, above all, the final diplomatic conference in Geneva, would undoubtedly result in a major failure. The future of the Geneva Conventions was now hanging by a thread.

The origins of the troubled ICRC–Soviet relations date back to the very start of the Bolshevik Revolution as well as to the Russian Civil War. Even though the two parties witnessed a remarkable degree of cooperation during these revolutionary years,¹⁶ their relationship came immediately under pressure because of hostile Swiss–Soviet relations. In 1918, with the arrival of the first Soviet mission in Switzerland, Bern—fearing Communist agitation and unrest at home—accused Soviet members of disseminating propaganda. Swiss authorities permanently expelled the Soviet mission and denied its regime any recognition, and these tensions further escalated in 1923, when the Soviets reacted furiously to a Swiss court's decision to

14. Telegram French Embassy Madrid, August 19, 1948, no. 159 – TER, Unions Internationales, 1944–1960 (Unions), Les Archives Diplomatiques, Paris, France (hereafter LAD).

15. Report of U.S. Delegation to the Stockholm Red Cross Conference, 1948, Provost Marshal General, no. 672, National Archives and Records Administration, College Park, MD, United States (hereafter NARA).

16. One reason for this early ICRC–Soviet partnership in the early 1920s was the increasingly competitive humanitarian environment emerging at the end of the "Greater War." Near this period, the ICRC witnessed the rise of several humanitarian competitors, from the League of Red Cross Societies to Herbert Hoover's American Relief Administration (ARA). Feeling pressured by this humanitarian arms race and considering the institutional benefits of intervening further internationally, the ICRC decided to become involved in Tsarist Russia. Jean-François Fayet, "Le CICR et la Russie: un peu plus que de l'humanitaire," 63–64. https://serval.unil.ch/resource/serval:BIB_42208FB6267C.P001/REF (accessed February 27, 2017); and Jean-François Fayet and Peter Huber, "La mission Wehrlin du CICR en Union Soviétique (1920–1938)," *Revue Internationale de la Croix-Rouge et Bulletin international des Sociétés de la Croix-Rouge* 85 (2003): 95–117, at 100.

acquit a White Russian assassin of a Soviet diplomat.¹⁷ As a result, for many years there existed very little diplomatic contact between the Swiss and Soviets.

Like those of its Swiss counterpart, the ICRC's relations with the Soviets were never warm and always built on shaky foundations, partly because of Stalin's increasing paranoia with regard to voluntary organizations like these. Moscow initially suspected the ICRC of maintaining close relations with the former Tsar's regime;¹⁸ for its part, the bourgeois-dominated organization condemned the Bolshevik confiscation and persecution of the exiled Russian Red Cross.¹⁹ From the mid-1920s on, as it received increasing recognition from its Western partners and became less dependent on humanitarian assistance in the wake of the country's devastating famine,²⁰ Moscow's relations with the ICRC started to decline in importance.²¹ In the late 1930s, with the arrival of Soviet representatives at the League of Nations in Geneva (despite Swiss opposition), the Soviet authorities almost completely lost interest in the ICRC and decided to withdraw their representatives from Geneva.²²

During the first aggressive military campaigns of the Soviets and Nazis in Poland and around the Baltic Sea, the ICRC sought to intervene on behalf of prisoners of war and civilian internees by sending a new delegate to Moscow. Not being a signatory to the 1929 Convention Relative to the Treatment of Prisoners of War and fearing international supervision over its camps, the Soviet government rejected the Swiss offer virtually outright. In essence, it feared having to allow the ICRC, or any Protecting Power, to visit its prisoners as laid down in the Convention. Moscow continued to deny the ICRC access to and any information about its foreign prisoners of war and civilian internees.²³ Nor did it acknowledge its role in the

17. Fayet and Huber, "La mission Wehrlin," 96.

18. Kimberly A. Lowe, "Humanitarianism and National Sovereignty: Red Cross Intervention on behalf of Political Prisoners in Soviet Russia, 1921–3," *Journal of Contemporary History* 49 (2014): 652–74, at 663–66.

19. Fayet, "Le CICR et la Russie," 57, 60–61; Bugnion, *Le Comité international de la Croix-Rouge*, 118–121; and Fayet and Huber, "La mission Wehrlin," 110–11.

20. Tehila Sasson, "From Empire to Humanity: The Russian Famine and the Imperial Origins of International Humanitarianism," *Journal of British Studies* 55 (2016): 519–37; and Brunco Cabanes, *The Great War and the Origins of Humanitarianism, 1918–1924* (New York: Cambridge University Press, 2014).

21. Fayet, "Le CICR et la Russie," 62; and Lowe, "Humanitarianism and National Sovereignty," 669–70.

22. Fayet, "Le CICR et la Russie," 65, 114.

23. *Ibid.*, 65–66.

mass executions at Katyn, another controversy that continued to affect relations between the two parties long after.²⁴

The ICRC's relations with the Soviets further declined in the wake of the German invasion in mid-1941.²⁵ Among other things, a critical reason underlying deteriorating Soviet–ICRC relations during this period was that the two groups had fundamentally different expectations with regard to the duties of the ICRC in wartime. Contrasting with Soviet expectations, the ICRC officially maintained its neutral position and it rejected demands to denounce the Nazis' violations of the laws of war. It also remained very reluctant throughout the entire war to publicly denounce the starvation and extermination of Soviet prisoners of war as well as Soviet-Jewish civilians.²⁶ The organization lost contact in 1942 with Moscow (unlike with Washington, London, Chongqing, Tokyo, Rome, or Berlin), despite of its attempts to restore a line of communication in the following months.²⁷ Some scholars have characterized this moment as the start of “a long [Soviet] boycott,” lasting basically until the 1990s, with the fall of the Soviet Empire.²⁸

It is true that the Soviet government effectively continued its boycott of the Swiss after the end of hostilities in Europe, in mid-1945.²⁹ Even though ICRC officials were able to work in Soviet-occupied territories in Germany, Soviet (and Yugoslav) officials continued to question the ICRC's role in the immediate postwar period.³⁰ At a meeting of the Board of Governors of the League of Red Cross Societies in Oxford, in 1946, they directly criticized its (Swiss and bourgeois) composition,

24. Delphine Debons, Antoine Fleury, and Jean-François Pitteloud, *Katyn et la Suisse: Experts et expertises médicales dans les crises humanitaires 1920–2007 – Katyn and Switzerland: Forensic Investigators and Investigations in Humanitarian Crises 1920–2007* (Geneva: Georg, 2009).

25. See George Ginsburgs, *Moscow's Road to Nuremberg: The Soviet Background to the Trial* (The Hague: Kluwer Law International, 1996), 27; and Bugnion, *Le Comité international de la Croix-Rouge*, 213–17.

26. Jean-Claude Favez, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis* (Lausanne: Éditions Payot, 1988).

27. Fayet, “Le CICR et la Russie,” 67–68.

28. *Ibid.*

29. Gerald Steinacher, *Humanitarians at War. The Red Cross in the Shadow of the Holocaust* (Oxford: Oxford University Press, 2017), 98–99.

30. Although the history of ICRC–Yugoslav relations lies beyond the scope of this article, it is important to note three important details regarding this matter. During the early drafting stages, Yugoslavia was one of the most aggressive of the socialist states in criticizing the ICRC's wartime record. In 1949, after the Tito–Stalin split, the Yugoslavs sent only two observers to the diplomatic conference in Geneva. After the diplomatic conference's closure, Belgrade signed the four Geneva Conventions with reservations on points related to, among other things, the role of humanitarian organizations such as the ICRC.

allegedly pro-fascist sympathies, and its “monopoly” over the revision process of the Geneva Conventions. The Soviet Alliance of Red Cross and Red Crescent Societies proposed to sideline the ICRC, an argument that resonated with existing Allied plans to internationalize its composition.³¹ A Soviet delegate later argued that after 1945, the ICRC had shifted its “pro-fascist position” to serving the “interests of the bourgeoisie class,”³² particularly those of the “Anglo-American bloc.”³³ Such critiques caused serious concern within the ICRC as a result.³⁴

In the end, the Soviets failed to show up at the first major drafting meeting of Allied government experts gathering in Geneva in April 1947. This decision caused major anxiety among French and Swiss authorities, whose goal was to restore diplomatic and economic relations with Moscow, and within the ICRC.³⁵ With the start of its revision process of the Geneva Conventions, the organization realized that it would have to first restore relations with its Soviet partners in order to make this effort a future success. Most Swiss and Western officials shared the ICRC’s view that without Soviet participation, this drafting process would lead to nothing but a legal mirage. The following section of this article analyses how Swiss and French diplomats tried to spark Moscow’s interest by means of various options, including that of undermining the ICRC’s leading drafting role.

1.1 *The Prague Conventions*

The French Foreign Ministry, in particular, began to discuss afterwards what had led to the Soviet abstention. Whereas some speculated on a Soviet reluctance to directly engage with the Anglophone powers, others

31. See Dominique-Debora Junod, *The Imperiled Red Cross and the Palestine-Eretz-Yisrael Conflict 1945–1952. The Influence of Institutional Concerns on a Humanitarian Operation* (New York: Kegan Paul International, 1996), 24; and James Crossland, *Britain and the International Committee of the Red Cross, 1939–1945* (New York: Palgrave Macmillan, 2014), 194–95.

32. While basing their views mostly on Swiss sources, Swiss historians have often tended to blame the boycott of the ICRC on “Soviet ignorance of the Red Cross world and the humanitarian conventions.” Junod, *The Imperiled Red Cross*, 248.

33. Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60–76, TSDAVO.

34. Junod, *The Imperiled Red Cross*, 243–44; and Procès-Verbaux Séance Plénière du CICR, December 6, 1946, no. A - PV - A - PL - 18, Archives of the International Commission of the Red Cross, Geneva, Switzerland (hereafter AICRC).

35. See Procès-Verbaux Séance Plénière du CICR, June 20, 1946, no. A PV A PL.18, AICRC; Procès-Verbaux Commission Juridique, May 29, 1946, no. A PV JUR.1, AICRC; Letter Soviet Ambassador in France, May 13, 1946, no. CR - 240 - 7, AICRC; and Report Conference Préliminaire en vue de la révision et de l’extension des Conventions de Genève, April 30, 1947, no. 160, Unions Internationales, LAD.

blamed its preparations for war while seeking to prevent stricter legal restraints. French diplomats believed that the central explanation for the Soviet absence was, however, its antipathy toward the ICRC, and this became their working hypothesis in the following months.³⁶ The fear of potential war without reciprocity, combined with the conviction that the Soviets might be a potential drafting partner because of their “similar wartime experiences” made the French Foreign Ministry keen to re-obtain Soviet participation by, among other things, undermining the ICRC’s leading position in this revision process.³⁷

Between April 1947 and early 1948, French diplomats, led by Albert Lamarle, and members of the Standing Commission preparing the next Red Cross Conference in Stockholm, began to discuss a range of options to make contact with the Soviet government in order to obtain its participation.³⁸ One of their strategies was to internationalize the ICRC’s exclusively Swiss composition, given that this was one of the causes of Soviet criticisms.³⁹ Another possibility that they discussed was to replace the ICRC as the law’s leading reviser by asking other bodies to take up this task. For example, the United Nations was suggested—initially by the Soviets⁴⁰—or the League of Red Cross Societies. Two other options that French officials considered during this period were, first, the establishing of an international body to enforce the law’s application partly as a means to appease Soviet criticisms of the ICRC’s non-denunciation policy; and, second, asking the Federal Council, following its re-establishing of diplomatic relations with Moscow, to replace the ICRC as the law’s guardian.⁴¹

36. See Report Conference Préliminaire en vue de la révision et de l’extension des Conventions de Genève, April 30, 1947, no. 160, Unions, LAD; Cable Lamarle on Soviet absence II, April 23, 1947, no. 160, Unions, LAD; and Cable Lamarle on Soviet absence I, April 21, 1947, no. 160, Unions, LAD.

37. Cable Lamarle on Future Program, April 26, 1947, no. 160 - BIS, Unions, LAD; and Report Direction des Unions Internationales Prochaines Conférences en vue de la révision des CDG, 24 May 1947, no. 159, Unions, LAD.

38. The Standing Commission was a cooperation between the ICRC and the League of Red Cross Societies. Its main task was to take care of any differences between them and of the agenda for the next Red Cross Conference. Folke Bernadotte was chosen as its president. Junod, *The Imperiled Red Cross*, 26–27.

39. Minutes Meeting between Lamarle and M.W. Michel of the ICRC in France, March 20, 1948, no. CR - 238 - 4, AICRC.

40. Procès-Verbaux Séance Plénière du CICR, June 20, 1946, no. A PV A PL.18, AICRC.

41. See Minutes Prisoners of War Committee, July 9, 1947, no. 672, Provost Marshal General, NARA; Cable Lamarle on Soviet absence II, April 23, 1947, no. 160, Unions, LAD; Cable Lamarle on Soviet absence I, April 21, 1947, no. 160, Unions, LAD; and Report Direction des Unions Internationales Prochaines Conférences en vue de la révision des CDG, May 24, 1947, no. 159, Unions, LAD.

Many of these alternatives were dropped in the end as they were considered unrealistic or doomed to fail. Neither the United Nations nor the League of Red Cross Societies were really interested in taking up the ICRC's task as the law's leading reviser, fearing it would alienate their Genevan partner. From June 1947 onwards, the French Foreign Ministry tried several ways of persuading the Soviets to participate, one of which was to reach out to Moscow directly. The failure of Lamarle's mission to make contact with Moscow in June 1947 created relief on the side of Swiss diplomats, who believed that it "destroyed" the myth that Soviet reservations were caused by its dislike of the ICRC or the Federal Council.⁴² Leading French officials then shifted their approach and began to discuss a more indirect approach with the League's President Basil O'Connor and a few others, including Folke Bernadotte, the President of the Standing Commission.⁴³ The Swedish diplomat was seen as personally responsible for the organization of the upcoming Red Cross Conference in Stockholm.⁴⁴

Eventually, they agreed to send Pierre Depage, as the Belgian-Communist member of the Standing Commission with supposedly closer Soviet connections, to Belgrade to meet with a Soviet Red Cross official attending the League's upcoming meeting. His mission failed, however; the Soviet official acted evasively, as he said that he was afraid of collaborating with certain (anti-Communist) Red Cross Societies.⁴⁵ At this stage, the Soviets essentially tried to delay the revision process, as the Czech and Polish representatives at the government expert conference were simultaneously opposing their Western partners' wish to quicken the process by holding a diplomatic conference before August 1948.

By late 1947, French diplomats shifted their attention again, this time suggesting not only subordinating the ICRC to a new international body,⁴⁶ but also a second government expert conference outside Geneva,

42. Note Edouard de Haller or Max Petitpierre on plan for government experts conference, August 6, 1947, no. E2001E#1967/113#16029, Swiss Federal Archives, Bern, Switzerland (hereafter SFA).

43. On the Swedish-ICRC rivalry: Steinacher, *Humanitarians at War*.

44. See Letter Direction des Unions Internationales to Cahen-Salvador, July 16, 1947, no. 159, Unions, LAD; Report Direction des Unions Internationales Prochaines Conférences en vue de la révision des CDG, May 24, 1947, no. 159, Unions, LAD; and Letter French Embassy in Washington, July 2, 1947, no. 674, Provost Marshal General, NARA.

45. Note Haller for Petitpierre on plan for government experts conference, August 6, 1947, no. E2001E#1967/113#16029, SFA; Letter French Ambassador in Belgium, November 6, 1947, no. 159, Unions, LAD; and Note Direction des Unions Internationales on Soviet participation, November 12, 1947, no. 159, Unions, LAD.

46. Junod, *The Imperiled Red Cross*, 29–30.

with the stated aim of encouraging Soviet participation.⁴⁷ As the initial option of meeting in Paris had failed to spark any Soviet interest—at which the Swiss breathed a sigh of relief—the French diplomat Raymond Bousquet suggested holding the second expert conference in Prague instead.⁴⁸ As this city fell within the Soviet sphere of influence and it would not involve the ICRC directly, he hoped that it would trigger Soviet participation.⁴⁹ Moreover, he, like Swiss diplomats hearing about this proposal, felt that it might prevent a further East–West split of the Red Cross movement and resolve the diplomatically sensitive issue of inviting former “enemies,” particularly Spain, as the Czechs could reject them with impunity whereas the Western Europeans could not.⁵⁰ Although generally uninterested in this plan because of the ongoing East–West tensions, the Foreign Office and the State Department finally approved of the Prague plan (on the United States’s condition of Soviet participation).⁵¹

Far from pleasing everyone, the new plan caused concern in Geneva and Bern. Considering the safeguarding of the ICRC’s future as one of their country’s most fundamental interests, Swiss diplomats continued to receive the French suggestions critically. They feared that it might empower the United Nations to replace them as the future organizers of the diplomatic conference, a concern shared by the ICRC. Considering their weak international position since 1945, the Swiss realized that it was impossible to reject the plan, and they therefore accepted it.⁵² At this stage, there existed a real opportunity that the upcoming meetings would be organized outside of Switzerland, or at least by a non-ICRC or non-Swiss-controlled body. The future treaties would then be alternatively called the “Paris Conventions,” or the “Prague Conventions,” for example.

The Swiss’s only request was to accept the ICRC as a legal expert,⁵³ but actually, they believed that this Prague plan would be rejected by the

47. Letter French Embassy in Washington, July 2, 1947, no. 674, Provost Marshal General, NARA.

48. Note Haller on Meeting with Pilloud, August 5, 1947, no. E2001E#1000/1571#3310/BD258, SFA.

49. Telegram Direction des Unions Internationales, December 20, 1947, no. 159, Unions, LAD.

50. Letter Haller for Carl Jacob Burckhardt, December 30, 1947, no. E2001E#1000/1571#3310/BD258, SFA.

51. See Telegram Direction des Unions Internationales to Embassy in Washington, January 21, 1948, no. 159, Unions, LAD; and Telegram Embassy Washington, February 11, 1948, no. 159, Unions, LAD.

52. Letter Haller for Burckhardt, December 30, 1947, no. E2001E#1000/1571#3310/BD258, SFA.

53. Letter Haller on Government Expert Conference, January 23, 1948, no. E2001E#1000/1571#3310/BD258, SFA.

Soviets in the long run.⁵⁴ Ultimately, the Swiss were right: the Prague plan was torpedoed before the Prague Coup had even started. In January 1948, the Czech Foreign Ministry had “mysteriously” rejected it, preferring to follow the “regular procedure” instead.⁵⁵ Continuing French–Swiss discussions about obtaining Soviet participation through holding the second government expert conference, or the diplomatic conference, in places such as Helsinki led to nothing also, and the ICRC’s telegram to Stalin himself received as little support.⁵⁶

By mid-1948, with the rising of tensions between the superpowers, it was becoming clear that such approaches were doomed to fail. Preparations for the Red Cross Conference in Stockholm were soon overshadowed by Eastern Bloc opposition to the invitation that was extended to Franco’s Spain. To prevent any further East–West tensions, Bernadotte’s secretary Paul del Bovier was urgently dispatched on a secret mission to Madrid to settle this very sensitive matter. In June 1948, he initially succeeded in persuading the Spanish government to agree not to appoint a full government representative to its delegation for the Red Cross Conference.⁵⁷ Reporting from Madrid, Western diplomats soon heard about complaints from Spanish hard-liners.⁵⁸

In the end, the Spanish foreign minister sent, as part of Spain’s legal right as a party to the Geneva Conventions to take part in their revision, an official representative to Stockholm, a decision that appeared to have triggered the furious Soviet rejection letter.⁵⁹ Nevertheless, the Soviet government allowed two unofficial representatives with academic backgrounds to observe the meeting in Stockholm in order to listen to some of its discussions. These Soviet delegates officially attended the League of Red

54. See Minutes of Meeting Haller and Zehnder, December 23, 1947, no. E2001E#1000/1571#3310/BD258, SFA; and Procès-Verbaux Séance Plénière du CICR, January 15, 1948, no. A PV A PL.19, AICRC.

55. Swiss attempts to persuade the Czech Foreign Minister Jan Masaryk to personally intervene led to nothing. Letter Swiss Legation on Czech response, January 5, 1948, no. E2001E#1000/1571#3310/BD258, SFA.

56. Junod, *The Imperiled Red Cross*, 236.

57. Letter Dutch Embassy in Madrid, June 21, 1948, no. 3049, Code-Archief Ministerie van Buitenlandse Zaken, National Archives of the Netherlands, The Hague, the Netherlands (hereafter NA).

58. See Letter Dutch Legation in Madrid, June 21, 1948, no. 3049, Code-Archief Ministerie van Buitenlandse Zaken, NA; Letter Dutch Legation in Madrid, August 3, 1948, no. 3049, Code-Archief Ministerie van Buitenlandse Zaken, NA.; and Minutes Meeting ICRC Delegation Stockholm Conference, August 3, 1948, no. CRI – 25 VIII – Dossier 8 Stockholm 1948, AICRC.

59. See Telegram French Delegation Stockholm, August 10, 1948, no. 159 – TER, Unions, LAD; and Telegram Hardion, August 21, 1948, no. 159 – TER, Unions, LAD.

Cross Societies' simultaneous meeting in the Swedish capital.⁶⁰ They talked privately with Western delegates, including Lamarle, who urged them to take part in the final diplomatic conference, and finally took the Stockholm texts home for further study.⁶¹

Despite this sign of greater Soviet interest in the law's revision process and their preparations for the Stockholm Conference, many Western observers focused primarily on their sharp rejection letter and drew the conclusion that the Soviets would probably not come to the final diplomatic conference. Even the Swiss diplomats now agreed that the Soviet boycott was largely caused by its hostility toward the ICRC, and for this reason they wished to avoid in their invitations any mentioning of their Genevan partners.⁶² Lamarle, in particular, expressed serious concern about the lack of alarm among his fellow partners regarding the risk of the possible lack of Soviet participation, and the likely failure of the upcoming diplomatic conference. In his view, the Soviet "absence" at Stockholm was a more serious "*hypothèque*" than that of 1947.⁶³

In early 1949, following a suggestion made by his fellow colleague Bousquet, Lamarle tried once again to gain the United States Department of State's support to start a new joint effort to approach Moscow directly. This proposal was rejected, however; a sign of a stronger Anglo-American reluctance during this stage of the Berlin Crisis to engage with their Soviet adversaries heads on.⁶⁴ While leaving the possibility of future Soviet participation open, officials at the State Department feared that it might lead to "the same propaganda efforts and efforts to emasculate the drafts by introducing noble sounding weasel words" as experienced at other international conferences in which the Soviets had participated.⁶⁵ The Foreign Office would later admit that it had hoped that the "Soviet Union and the majority of the satellites would [have] boycott[-ed] the conference."⁶⁶ Swiss diplomats even discussed with their minister Max

60. The Board of Governors of the League of Red Cross Societies held a simultaneous meeting.

61. Telegram French Delegation on Soviet absence, August 30, 1948, no. 159, Unions, LAD.

62. See Letter Petitpierre to Swiss Legation in Egypt, September 20, 1948, no. E2200.39-03#1971/34#818, SFA; and Junod, *The Imperiled Red Cross*, 253.

63. See Telegram Lamarle on Soviet absence, August 26 1948, no. 159 – TER, Unions, LAD; and Note on Stockholm Conference, September 3, 1948, no. 159 – TER, Unions, LAD.

64. Cable Washington on French initiative, January 28, 1949, no. 161, Unions, LAD.

65. Memo Clattenburg on Recommendations, September 15, 1948, no. 22, RG 43, 5536, NARA.

66. Correspondence Kembal on Civil War Provision, May 10, 1949, no. 4149, FO369 (Foreign Office), The National Archives, Kew, the United Kingdom (hereafter TNA).

Petitpierre, the later president of the diplomatic conference who had feared a Soviet rejection,⁶⁷ whether he should preside over its sessions, as the diplomatic conference would likely result in a “failure or half failure.”⁶⁸

As most Western diplomats had fairly low expectations of the diplomatic conference and were anticipating the Soviets not to come, they were very surprised when, in mid-April 1949, several Soviet satellites unexpectedly announced their intention to join the gathering in Geneva.⁶⁹ Moscow’s approval came soon after, and this extraordinary reversal, in turn, not only created embarrassment for some of Moscow’s allies as they had previously rejected the invitations from Bern, but also would have profound implications for the future of the law’s drafting process.⁷⁰ In the meantime, the Soviet delegate at the United Nations International Law Commission was demanding that the revision of the laws of war become part of its future drafting agenda. This request, which was rejected by the Commission’s majority, reveals not just the Soviets’ continuing ambiguous attitude toward the ICRC as the laws of war’s leading reviser, but also their intent to actively promote the revision of this field of international law.⁷¹

To sum up, although largely ignored in the different literatures, the diplomatic efforts made especially by French diplomats to enable the Soviets to participate in the law’s drafting process reveal three crucial elements. They show, first, how especially, European continentals (often in contrast to their Anglo-American allies) saw Soviet participation as, based upon the lessons they drew from their own wartime experiences, a critical precondition for making the future Geneva Conventions a success. In their view, it was imperative to obtain Moscow’s approval if the final diplomatic conference was to be successful. At the same time, their motives for doing so varied significantly: some wished to promote East–West cooperation or feared potential (Communist) criticism at home in the case of Soviet abstention, whereas others felt more concern about the threat of a Soviet occupation without any reciprocal legal protection. Second, the mostly Francophone

67. Junod, *The Imperiled Red Cross*, 253.

68. Note Petitpierre on Diplomatic Conference, February 3, 1949, E2001E#1967/113#16123/BD874, SFA.

69. See Telegram Swiss delegation Moscow on Soviet participation, April 15, 1949, E2001E#1967/113#16123/BD874, SFA. On April 15, 1949, at night, the Soviet Vice Minister of Foreign Affairs Valerian Zorin announced that the Central Committee of the Communist Party had decided that the Soviets, including the Ukrainian and Belorussian Soviet Republics, would participate. Accompanying Letter Report Soviet–Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 968, Ark. 76, 77, TSDAVO.

70. Letter ICRC Delegate in Czechoslovakia, April 25, 1949, no. CR – 221 – 4, AICRC.

71. *Yearbook of the International Law Commission 1949. Summary Records and Documents of the First Sessions Including the Report of the Commission to the General Assembly* (New York: United Nations, 1956), 51–52.

diplomatic efforts to obtain Soviet participation reveal how far the French were willing to go to achieve this objective; willing, in fact, to a much greater degree than is commonly assumed in the existing historiography on this issue. Among other things, French diplomats seriously discussed the option of replacing the ICRC as the leading reviser of the Conventions. Still, and this is the third point, it is questionable whether any of these efforts had any direct or serious effect on Moscow's final decision to come to Geneva, a question that can be answered only by Soviet historians.

2. The Soviets at Geneva

The Soviet delegation's arrival in Geneva in April 1949 and the position it defended at the diplomatic conference represent a major break in Soviet, and international legal, history in two key respects. Above all, it signifies the very first attempt by a Soviet government to take a direct and major part in an international negotiation discussing the laws of war at large. Moreover, by instructing its delegation to stick firmly to the relatively progressive Stockholm drafts that protected many victims of war more forcefully, it also broke with its past attitude in failing to endorse the interwar Red Cross resolutions applying international law to civil wars and, above all, the 1929 Convention Relative to the Treatment of Prisoners of War.⁷² In several ways, the Soviet government's approaches, as well as its legal understanding, had therefore changed radically by 1949, with dramatic consequences for both the law itself and the Soviet drafting role in the future.

As discussed, the Soviet government decided to send a delegation to Geneva despite the presence of the ICRC and Spain at the diplomatic conference. At Geneva, the Soviets, like the ICRC, tried hard to achieve the acceptance of the Stockholm drafts, and so began to work together ever more closely. Responding to these developments, many Western officials were very surprised: it was "certainly strange to see," wrote an amazed Canadian delegate, "[the Soviets] in the role of upholders of the Stockholm draft, with all its drastic limitations on the rights of sovereign Governments in time of war."⁷³ Western delegates similarly expressed surprise about the Soviet-ICRC strategic partnership and the ICRC's

72. Lowe, "Humanitarianism and National Sovereignty."

73. Memo High Commissioner to Secretary of State for External Affairs, May 23, 1949, no. 619-B-40-PART 5, RG-25-Vol. 3398, Library and Archives Canada, Ottawa, Canada (hereafter LAC).

condemning of the restrictive views as put forward by the Anglo-American delegations. Claude Pilloud, for example, admitted that, “we know that in the current political situation such a position often was difficult to understand.” In a similar way, the ICRC legal specialist noted that the Soviets, who were suspicious of such Western accommodation, had been “very useful” from his organization’s perspective.⁷⁴

The Soviet delegation was led by the General Nikolai Slavin and his deputy, the top Soviet legal expert Platon Morozov, who had previously worked in Tokyo for the International Military Tribunal for the Far East.⁷⁵ The remaining ten male and female Soviet representatives (apart from their supporting staff flown into Geneva) were from a very mixed background, including the military, civilian institutions, and the Soviet Alliance of Red Cross and Red Crescent Societies. Slavin and Morozov held regular meetings with Pilloud and talked informally to British and American delegates.⁷⁶

During the diplomatic conference, the Soviet delegation mainly received support for its suggestions from Eastern European states and “neutralized” Finland, as well as Israel, in exchange for Soviet support for its plan to recognize the Star of David as an official emblem of the Red Cross. At times, the Soviet delegation also received support particularly from the Scandinavian delegations, Mexico, and those representing the smaller Asian voting blocs. These delegations, however, played a relatively minimal role at this European-dominated conference.⁷⁷

It is essential to point out that the Soviet legal position defended at this diplomatic conference was evolving in style and nature and originated from a multitude of different ideological suppositions. It was usually far more sophisticated than what is commonly assumed. In essence, its views were both backward and forward looking and mixed in origin,⁷⁸ although remarkably often in line with the Western legal orthodoxy, and they were based on an occasionally quite distinct understanding of some of the

74. Conference Diplomatique. Rapport Spécial Etabli par Pilloud, September 16, 1949, no. CR-254-1, AICRC. For the Soviet suspicions, see Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60-76, TSDAVO.

75. Morozov had also acted as Soviet representative during the negotiations on the Genocide Convention. See Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention*.

76. See UK Report on Meetings with Slavin and Morozov, May 13, 1949, no. 4150, FO369, TNA.

77. See Final Record of the Diplomatic Conference of Geneva of 1949, 326, Vol. II, Sections A and B, Library of Congress, Washington, DC, United States (hereafter LOC).

78. Pieter Lagrou, “1945–1955: The Age of Total War,” in *Histories of the Aftermath: The Legacies of the Second World War in Europe*, ed. Frank Biess and Robert Moeller (New York: Berghahn Books, 2010), 287–96, at 290.

existing law's core principles. Take, for example, the Soviet proposal to treat captured soldiers who had allegedly perpetrated war crimes as criminals liable to punishment, instead of treating them as prisoners of war with all the relevant protection against inhumane treatment.⁷⁹ In principle, although this was in accordance with its relevant wartime doctrine, the Soviet proposal directly challenged the Western concept of "combatant immunity." In turn, this suggestion led to fear especially among American-British delegates. In their view, the Soviet plan might significantly undermine the safety of their bomber pilots, as it "might afford a pretext enabling a belligerent [e.g., the Soviet Union] to treat as war criminals members of the armed forces who...took part in bombing raids on cities."⁸⁰

In contrast with what some Soviet experts have argued previously,⁸¹ another distinctive Soviet contribution to the diplomatic debates was the constant demand to give a set of far more extensive protections to guerrillas and other types of irregulars fighting for a "just cause," including those involved in internal wars. In response to its country's wartime experiences and based on its distinctive notion of "just war" theory,⁸² the Soviet delegation wished, similarly to the ICRC, to soften the law's strict conditions for partisans. This proposal was largely in line with the Soviet wartime legal rationale in claiming the legality of its guerrilla fighting against Nazi rule.⁸³ On the basis of these principles, the Soviet government argued that the wartime summary executions of Soviet guerrillas had been a crime, instead of a lawful penalty for committing unlawful combatancy. By contrast, the Anglo-American delegations, which saw themselves as potential occupiers, wished to narrow the scope of the Conventions for such irregulars to a bare minimum.

Acting in line with its (wartime) policies to blur the distinction between international and colonial wars as well as between *jus ad bellum* and *jus in bello* principles, the Soviet delegation also supported a proposal to further enlarge the law's scope for those partisans who were fighting for a "just cause." This plan directly challenged the Western legal orthodoxy of "belligerent equality," which meant that the law's obligations apply equally to

79. Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60-76, TSDAVO.

80. Report of New Zealand Delegation to Diplomatic Conference of Geneva 1949, AAYS 8638 W2054 ADW2054/1220/3/3 (R18524114), Archives New Zealand, Wellington, New Zealand (hereafter ANZ).

81. Ginsburgs, "Laws of War and War Crime," 278.

82. Johannes Socher, "Lenin, (Just) Wars of National Liberation, and the Soviet Doctrine on the Use of Force," *Journal of the History of International Law* 19 (2017): 219-45.

83. Ginsburgs, *Moscow's Road to Nuremberg*, 60-63.

every belligerent regardless of whether its acts of war had been unlawful or not. In the proposer's view, this principle should be softened, especially for those armed civilians acting out of self-defense against acts of aggression or genocide, provided that they had not violated certain basic principles of humanity (e.g., the prohibition on poisoning). Supporting him, Slavin argued that "civilians who [take] up arms in defence of the liberty of their country should be entitled to the same protection as members of armed forces."⁸⁴

In a similar fashion, the Soviet delegation wished to protect partisans against measures of extrajudicial detention as proposed by the Anglo-Americans, as well as against torture and the death penalty. Many of the discussions surrounding these issues took place in the Committee that was discussing the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, particularly Article 59 of the Stockholm draft, and the security clause that excluded certain "suspicious persons" from this treaty.⁸⁵ The discussion about Article 59 essentially focused on the Stockholm draft's "the-law-of-the-occupied-clause," which prohibited the death penalty if these means had already been forbidden by the occupied country's constitution before the outbreak of the war.

Like the ICRC, the Soviet-aligned delegations strongly supported this clause, partly because of their personal recollections of Nazi occupation, but mainly because they felt it would help further isolate their Anglo-American adversaries. These delegations sought to remove it from the negotiating table out of fear that it might potentially undermine their security interests as potential occupiers. At the same time, the ICRC and the Soviets strongly opposed another, very restrictive Anglo-American proposal seeking to create a security clause that would deny access to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War for, especially, irregulars who had been excluded from the Convention Relative to the Treatment of Prisoners of War. Triggered by fears of the effects of decolonization and the Cold War tensions, the Anglo-American representatives were trying to exclude alleged Communist spies and anticolonial irregulars.

While expressing major anxiety, the Soviet representatives saw such proposals to "create all possible loopholes" in the Conventions as Anglo-American attempts to avoid the law's obligations, or, possibly, as intent to repeat Nazi crimes.⁸⁶ It is essential to realize that many had fought during the war as Red Army soldiers, or as partisans behind enemy lines; others had

84. Final Record of the Diplomatic Conference of Geneva of 1949, 426, Vol. IIA, LOC.

85. Revised and New Draft Convention for the Protection of War Victims, 1948, LOC.

86. Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60-76, TSDAVO.

lost family members during the Holocaust, or been held as slaves in Nazi concentration camps. Regardless of Moscow's directives, these personal experiences of Soviet—and other continental European—delegates profoundly shaped their attitudes, beliefs, judgments, emotions, rhetoric, metaphors, exchanges, aims, and actions on crucial matters such as the death penalty and irregulars' protection. United States' attempts to approve severe penalties for captured partisans, British conceptions of white supremacy, and their joint campaign to exclude Communist agents—all these Anglo-American efforts to undermine the law's applicability reminded Soviet representatives of alarming analogies to former Nazi ideology.⁸⁷

2.1 "The Great Humanitarian"

The greatest Soviet impact on the diplomatic conference as a whole was felt in four other domains, however. First, the Soviet delegation turned Geneva into a Cold War battleground through its support for potentially wide-ranging legal principles. In doing so, it assumed the role of a "great humanitarian" by trying to embarrass particularly those "who oppose[-d] working drafts on practical and legal grounds," wrote a number of frustrated United Kingdom and United States representatives.⁸⁸ By contrast, the Soviets felt the Anglo-American powers were using the Conventions as a means "to prepare for a new war." In their view—which echoed an old Stalinist bias against military surrender—they tried to "demoralize" Soviet soldiers by suggesting that being a prisoner of war "is very convenient."⁸⁹ The leading Soviet newspaper *Pravda*, which acted in liaison with its delegation in Geneva, played an important role in publicly framing Anglo-American actions as such. On various occasions, it would publish articles directly attacking the Anglo-Americans' alleged "war mongering" by focusing on their opposition to Soviet-supported proposals to restrict measures such as reprisals or nuclear warfare.⁹⁰

For Western observers, the Soviet actions were connected to a much broader strategy of a global Soviet "peace offensive,"⁹¹ which formed a

87. This point was first made brilliantly by Jessica Whyte. See Jessica Whyte, "Human Rights after October," *Overland* 228 (2017).

88. Cable US Delegation on Diplomatic Conference, May 2, 1949, no. 5, RG 43 – Entry 40, NARA.

89. Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60–76, TSDAVO.

90. For examples of this type of framing, see *Pravda*, May 13, 1949, July 22, 1949, July 24, 1949, and August 1, 1949.

91. Report of New Zealand Delegation to Diplomatic Conference of Geneva 1949, AAYS 8638 W2054 ADW2054/1220/3/3 (R18524114), ANZ.

central feature of its foreign policy rhetoric at this stage of the Cold War.⁹² A prominent example of such Soviet actions to publicly embarrass its Anglo-American adversaries, Western delegates feared, was a propagandistic Soviet proposal to introduce a number of penal clauses that would criminalize the “extermination of civilian populations,” an indirect reference to the use of atomic and carpet bombing.

After the defeat of this proposal, the Soviets (who would soon after the conference’s closure conduct their first nuclear test) shifted their focus to banning the use of the atomic bomb altogether. The Western Bloc’s eventually mostly united opposition to the proposal had been caused by major concern, especially among their military officials who feared losing a strategic military capability and their dominance in United Nations disarmament talks.⁹³ In addition to this, Western hegemonic opposition to various “humanitarian” Soviet proposals caused embarrassment in triggering parliamentary questions at home about the embracing by Western delegations of the “bomb[ing] civilian centers of populations if it suits them.”⁹⁴

The second element of the Soviet impact at the diplomatic conference was its creation of an early version of a postcolonial forum in which Western imperial powers and their double standards could be criticized. For some Western delegates, this approach was connected to the “unstated reason [of the Soviets] that such a clause [applying the Conventions to colonial and civil wars] could create enormous troubles for a government trying to put down a Communist-inspired rebellion.”⁹⁵ It is true that the Soviet delegation strongly opposed, together with its partners from the ICRC, those attempts to restrict the Stockholm draft’s scope.

In a speech, Morozov spoke of the “unspeakable cruelty and destruction” and “acts of barbarism” caused by recent civil and colonial wars in Indonesia (e.g., to embarrass the Dutch), Indochina (France), Malaya (the United Kingdom), and Greece (the United States).⁹⁶ The Soviet doctrinal line said that the “the aggressive goals of the Anglo-American bloc”

92. It is striking how the Soviets tried to overcome (or rather gloss over) the conceptual tension between the idea of promoting the rules for warfare and that of advocating a “struggle for peace.” Timothy Johnston, “Peace or Pacifism? The Soviet ‘Struggle for Peace in All the World,’ 1948–54,” *The Slavonic and East European Review* 86 (2008): 259–82, at 259.

93. See Minutes Meeting at State Department, July 7, 1949, no. 669, Provost Marshal General, NARA.

94. See Correspondence Foreign Office on Questions Emrys Hughes, July 6, 1949, no. 4156, FO369, TNA.

95. Report Wershof on Civilian Convention, no. 619-B-40-File Pocket, RG 25 – Vol. 5020, LAC.

96. Final Record of the Diplomatic Conference of Geneva of 1949, 326, Vol. II, Section B, LOC.

were now being directed at “national liberation movements of colonized nations.”⁹⁷ However, Morozov’s delegation, whose primary aim, apart from publicly shaming the Western powers, was to prevent any major restrictions on its designs to subjugate Eastern Europe,⁹⁸ remained silent on the often brutal suppression of anti-Soviet insurgencies in the Ukraine and the Baltics.⁹⁹ Although reluctant to publicly criticize these Soviet double standards out of fear of accentuating Britain’s own record of colonial injustice, the attorney-general noted privately that he found it “charming [that] the USSR [was] advocating the application of the Conventions to civil war [as] they have taken pretty good care...that civil war could never occur [there again].”¹⁰⁰

At the end of the debate, the Soviet delegation introduced its own amendment, the most far-reaching one presented up to that point by any state delegation during the entire drafting process.¹⁰¹ Its guiding principle was that virtually all the Conventions’ provisions would have to be applied to a range of internal armed conflicts. The draft included a number of rights and strict prohibitions against inhumane treatment. Breaking with its pre-war resistance to accepting such type of proposals, Soviet plans to (hypothetically) apply international law to civil and colonial wars created serious concern in other imperial metropolises.

The third and perhaps most significant Soviet contribution to the diplomatic conference in general was connected to its important, although now largely forgotten, role in turning the Geneva Convention Relative to the Protection of Civilian Persons in Time of War into a success. Unlike the

97. Report Soviet–Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60–76, TSDAVO.

98. Most parts of the literature regarding the history of Common Article 3 have devoted little attention to the brutal Soviet counterinsurgency campaigns from after 1944, and their possible impact on the article’s making. For an example of this trend describing the Soviet Union “as a stable autocracy keeping socialist societies under the tight Stalinist grip,” see Mantilla, “Forum Isolation: Social Opprobrium and the Origins of the International Law of Internal Conflict,” 340.

99. For a similar argument regarding the Soviet attitude toward the making of the Genocide Convention, see Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention*. For a well-researched history of Soviet counterinsurgency efforts against nationalist insurgencies in the Baltic states and Western Ukraine, see Alexander Statiev, *The Soviet Counterinsurgency in the Western Borderlands* (Cambridge: Cambridge University Press, 2010).

100. Record of Meeting with Attorney-General, May 16, 1949, no. 4150, FO360, TNA.

101. The most far-reaching proposal to apply the Geneva Conventions even to so-called “emergencies” and small-scale internal wars came from the World Jewish Congress (WJC). See Memorandum of the WJC on the Draft Convention for the Protection of Civilian Persons in Time of War submitted to the XVIIth International Red Cross Conference, 4–5, Series B69, no. 17, American Jewish Archives, Cincinnati, Ohio.

outcome that most delegates had expected, the Soviet delegation, working alongside ICRC officials, strongly supported efforts to limit the occupiers' disproportionate powers, as a response to Nazi occupation and the ill-treatment of communist irregulars. In particular, it wished to ban the use of torture, policies of mass murder, and the death penalty; after Stalin's order of May 1947.¹⁰² By supporting many of the ICRC's proposals on these crucial matters, the delegation frequently succeeded in defeating many of the Anglo-American proposals of a more restrictive nature.

The result was a fairly robust Convention, with its effective outlawing of hostage taking, following Stalin's wartime condemnation of this measure, racial discrimination,¹⁰³ policies of mass murder, inhumane treatment, and Common Article 3. This crucial provision, which had been accepted following a dramatic final voting process,¹⁰⁴ sets out certain basic human rights for

102. For the details of those Soviet proposals, see Final Record of the Diplomatic Conference of Geneva of 1949, Vol. III, LOC.

103. This principle signified a symbolic break with the legalizing of racial segregation under the 1929 Convention Relative to the Treatment of Prisoners of War. See Timothy L. Schroer, "The Emergence and Early Demise of Codified Racial Segregation of Prisoners of War under the Geneva Conventions of 1929 and 1949," *Journal of the History of International Law* 15 (2013): 53–76.

104. The exact voting record of the tumultuous final stages of the drafting of Common Article 3 is not clear, as a result of a secret ballot (a Burmese plan criticized by Soviet delegates but supported by their powerful United States and United Kingdom adversaries). It is likely that the Dutch (confirmed), Canadians (confirmed), New Zealanders, Australians, Spanish, Belgians, Portugese (who initially made a reservation for Common Article 3), one or several Asian delegations, and a few others voted in favor of the alternative Burmese motion to delete Common Article 3. The final voting record of the British, French, Soviet, and United States delegations is not obvious either. It is not unlikely that some of them voted secretly in favor of the Burmese motion, in light of (some of) their open support for the secret ballot proposal and their (private) statements against the French text. In his final report, Robert Craigie suggested that he had lobbied for the French text for Common Article 3, but said nothing specific about his delegation's final vote. The same holds for the final report of the United States delegation. The Australian delegate William Roy Hodgson, by contrast, claimed that his delegation, and that of the United States, voted against the text "during all Committee stages." It is unclear, however, whether he meant the plenary as well. Therefore, it remains under speculation whether any of the four major drafting parties, including the Soviet Union, were among the twelve rejection voters and the single abstention. However, considering their resistance vis-à-vis the secret-ballot-plan, the substantial number of (confirmed) rejection votes from (post-)colonial powers, as well as Morosov's congratulations for Lamarle's "success" following Common Article 3's acceptance, it is unsure although not unlikely that the Soviets had voted for Common Article 3. Report Dutch Delegation, no. 3045, Code-Archief Buitenlandse Zaken, NA; Report of Canadian Delegation to Geneva Conference, 1949, no. RG 19, Vol. 480-112-20, LAC; Report Joint Committee on Common Articles signed by Hodgson, Series: A1838; Control: 1481/1A Part 7, National Archives of Australia, Canberra; Final Report Craigie, November 1949, no. 4164, FO369, TNA; Cable Lamarle Civil War, July

persons not carrying arms in large-scale internal wars.¹⁰⁵ Like many French delegates who appreciated Soviet solidarity in support of their own proposals to strengthen civilian protection in war, Pilloud admitted privately that he “hardly dared to think what would have become of the Civilian Convention [the Geneva Convention Relative to the Protection of Civilian Persons in Time of War] without the presence of [the Soviet] delegation.”¹⁰⁶

Indeed, as its main significance, the Soviet Bloc deployed its considerable voting power at decisive moments in support of Francophone plans to protect civilians against ill treatment; it contributed intellectually to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War’s making; it made significant compromises through accepting major alterations to the original Stockholm drafts; it helped to universalize the Conventions by incorporating them into socialist laws; and it performed a crucial role in breaking the initially severe Anglo-American opposition to the ICRC’s proposals. Through “forum isolation,” the Soviets placed severe pressure on major Western powers to endorse—with reluctance—previously unacceptable plans,¹⁰⁷ from outlawing reprisals, regulating internal wars, to stigmatizing “mental torture” as a response to private United Kingdom discussions in favor of legalizing it.¹⁰⁸

In addition to these contributions to the law’s making, the Soviets also played a critical part in pushing other imperial powers to accept Common Article 3, even though they had fiercely opposed it from the very start of these negotiations.¹⁰⁹ It remains ironic that the Soviets, as one of the major violators of civil rights in the twentieth century, played such a

29, 1949, no. 161, Unions Internationales 1944–1960, LAD. The best publication so far dealing with Common Article 3’s drafting history does not provide any concrete thoughts as to which states had—or may have—voted against the final text for Common Article 3. Mantilla, “Forum Isolation: Social Opprobrium and the Origins of the International Law of Internal Conflict,” 340.

105. Ironically, after the Cold War, Common Article 3 was used to prosecute certain Communist crimes in times of non-international armed conflict. See Tamás Hoffmann, “Individual Criminal Responsibility for Crimes Committed in Non-International Armed Conflicts: The Hungarian Jurisprudence on the 1956 Volley Cases,” in *Criminal Law Between War and Peace: Justice and Cooperation in Criminal Matters in International Military Interventions*, ed. Stefano Manacordan and Adan Nieto (Cuenca: Ediciones de la Universidad de Castilla-La Mancha 2009): 735–53. On the unintended consequences in the development of humanitarian law: Tanisha M. Fazal, *Wars of Law. Unintended Consequences in the Regulation of Armed Conflict* (Ithaca, NY: Cornell University Press, 2018).

106. Rapport Spécial Etabli par Pilloud, September 16, 1949, no. CR-254-1, AICRC.

107. Mantilla, “Forum Isolation: Social Opprobrium and the Origins of the International Law of Internal Conflict,” 319.

108. See Letter Hill to Speake on Stockholm Drafts, November 9, 1948, no. 2185, HO213, TNA.

109. *Ibid.*, 319, 337.

prominent role in the effort to push for greater civilian protection and rights in times of armed conflict. How do we explain this exceptional moment and breakthrough in international legal history when the Soviets made a real difference in shaping global norms for warfare from a strictly legal-diplomatic—and mostly Western—perspective?

First and foremost, it can be attributed to the informal Soviet–ICRC strategic partnership and the initially fairly close cooperation between many of the Eastern and Western powers, creating major euphoria on the side of the ICRC.¹¹⁰ The American delegation occasionally voted for Soviet proposals, and vice versa. As formerly occupied nations, many Western European delegations wished to strictly limit the occupier’s powers, therefore often “uneasily support[ing] [the] Soviet bloc to outvote the Anglo-Saxon countries,” complained a Commonwealth delegate afterwards.¹¹¹

Indeed, the Western Europeans often voted against their own Anglo-American allies’ proposals: “this put [them] into a strange comradeship with the Soviet delegation,” reported the Canadian delegation afterwards.¹¹² A strange comradeship, as those Western Europeans who were trying to prevent the Soviets from walking out were in effect working closely together with their potential occupier, that is, the Soviet Union. The remarkably close although often uneasy bipartisan cooperation between the Soviet Union and its Western partners, including the ICRC, lies at the heart of the widespread support that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War finally received. Mostly unexpectedly for Western observers (and for victims of Soviet atrocities), the Soviets signed and ratified, with certain reservations, the Geneva Conventions after the Korean War.¹¹³

In many other cases, however, the Soviet delegation was far less successful in shaping the negotiations’ final outcome. On various occasions, the delegation had suffered major and embarrassing defeats: for example, its proposal for Common Article 3 to substantially widen its scope was defeated by 9 against 1.¹¹⁴ The Soviets faced more setbacks in the wake of the Geneva Convention Relative to the Protection of Civilian Persons

110. Rapport Spécial Etabli par Pilloud, September 16, 1949, no. CR-254-1, AICRC.

111. Report of New Zealand Delegation to Diplomatic Conference of Geneva 1949, AAYS 8638 W2054 ADW2054/1220/3/3 (R18524114), ANZ.

112. Report of Canadian Delegation to Geneva Conference, no. 112-20, RG 19 – Vol. 480, LAC.

113. It is hardly surprising that the Soviets had reservations about those parts of the four treaties relating to international supervision, Protecting Powers, and the ICRC’s assistance in case the respective government’s consent had not been given. Also, they objected to Article 85 of the Convention Relative to the Treatment of Prisoners of War, because it touched directly on the issue of suspected war criminals and the rights of prisoners’ of war.

114. Final Record of the Diplomatic Conference of Geneva of 1949, 100, Vol. II, Section B, LOC.

in Time of War's debates, such as the ones dealing with the protection of irregulars. As a New Zealand delegate would later put it, "[they] did not succeed in any of [their] principal aims."¹¹⁵ A few reasons for these (devastating) defeats included, among other things, Soviet "lack of souplesse," occasionally poor editing, and "ignorance," according to Pilloud.¹¹⁶ In addition to these factors, many Soviet delegates also lacked sufficient knowledge of the two working languages (French and English) and were forced to use interpreters constantly, leaving an unrefined impression.¹¹⁷ Moreover, they lacked extensive personal networks and had to almost constantly await new instructions from the Soviet metropole.¹¹⁸

Arguably, the most important reasons for the defeats suffered by the Soviet delegation were related to the intensifying Western Bloc cooperation and the former's loss of credibility over time, as its members came to be seen as increasingly intransigent and hypocritical by the other delegates. "As the conference proceeded," wrote a British delegate, "did the hollowness of...Soviet pretensions become apparent to some of the [Western European] 'humanitarians'—and then only as a result of much spadework by our own and the US delegation."¹¹⁹ By regaining control over their Western European allies through pointing them to their "common" interests, the Anglo-American powers removed crucial support for the Soviet-sponsored proposals, many of which were finally defeated.

The Soviet delegation lost some of its credibility by staunchly defending the sovereignty of governments—and this is the fourth key element of the Soviet impact at the diplomatic conference in Geneva. Accordingly, the delegation felt little for proposals to include its own political prisoners under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War's scope, to create a criminal court, or to give the ICRC a mandate to visit Soviet prisons with captured Baltic insurgents.¹²⁰ Similarly, it resisted in its own plan for implementing international law, in times of civil war, those paragraphs concerning the

115. Report of New Zealand Delegation to Diplomatic Conference of Geneva 1949, AAYS 8638 W2054 ADW2054/1220/3/3 (R18524114), ANZ.

116. Rapport Spécial Etabli par Pilloud, September 16, 1949, no. CR-254-1, AICRC.

117. This problem is specifically highlighted in a report from Swiss interpreters. Note sur l'activité du Service d'interprétation à la conférence diplomatique de Genève, 1949, no. E2001E#1967/113#16123:874, SFA.

118. For similar practical problems for the Soviets at Nuremberg, see Hirsch, "The Soviets at Nuremberg."

119. Ibid.

120. This criminal court-related point resonates with a similar argument made for the Soviet position regarding the Genocide Convention. See Mark Lewis, *The Birth of the New Justice. The Internationalization of Crime and Punishment* (Oxford: Oxford University Press, 2014).

conditions under which the relevant article would apply, and who would determine its application, and thereby prevent it from being automatically applied to Soviet territories. The deletion of the entire section making special mention of the ICRC's work was another sign of continuing Soviet suspicions toward Geneva, in spite of their strategic partnership. The Soviets understood, better than most other imperial powers, that they could accept virtually any text as long as it did not infringe upon their sovereign discretion to refuse outside supervision when waging war against anti-Soviet insurgents. This not only displays the chronic "war mentality" of Soviet elites in their struggle against imagined internal enemies, from peasants to Eastern European nationalists, it also illustrates the multiple dissociative legal imaginaries of the Soviets at Geneva: of defending socialism against foreign meddling, of feigning the role of "great humanitarians" and champions of the decolonizing world, of conceptualizing war as virtually never ending, and of aggressively liquidating suspected counter-revolutionary legal elements.

Conclusion

The Soviet contribution to the Geneva Conventions of 1949, and that of its legacy, is mixed in nature. On the one hand, it played an extraordinary role in supporting the ICRC and mostly continental European efforts to promote the Geneva Convention Relative to the Protection of Civilian Persons in Time of War and the plan to apply human rights principles to internal wars.¹²¹ Indeed, challenging the notion that the Soviets failed to actively participate in the debate about revising wartime legal norms, the article has shown in detail how the Soviet Bloc made a major contribution to the law's final product. This successful outcome was mainly the result of an important but short-lived strategic partnership bridging East–West divisions. As at the Nuremberg Trials previously, a group of diverse actors with different legal understandings and outlooks ultimately proved able to reach agreement on the law's final shape during this early stage of the Cold War.¹²²

This successful bipartisan cooperation is largely overlooked in the current literature, as it tends to describe the postwar relations between the ICRC and the Soviets as a "long boycott." The ICRC–Soviet partnership even briefly continued after 1949, with the ICRC president's

121. On the connections between human rights and the Geneva Conventions: Hitchcock, "Human Rights and the Laws of War: The Geneva Conventions of 1949."

122. Hirsch, "The Soviets at Nuremberg," 702–3.

groundbreaking visit to Moscow in 1950. However, with the rise of Soviet allegations against the ICRC during the Korean War,¹²³ and their clash at the Red Cross Conference in 1952,¹²⁴ the cooperation eventually collapsed. Despite this, the Soviet interest in humanitarian law continued, signaling a major break with its past reluctance to engage with this field of international law.

On the other hand, it is important to recognize that the Soviet Union attempted to undermine the enforceability of the Conventions, as it had done for other international treaties at the United Nations as well.¹²⁵ At various times, it strongly opposed any infringement of state sovereignty and those proposals seeking to improve the treaties' enforcement mechanisms. Believing that the Cold War allowed for no "truly neutral countries and organizations," the Soviets feared that accepting Protecting Powers and the ICRC would lead to counter-revolutionary "spying activities."¹²⁶ This helps to partly explain why the ICRC, and other international bodies, faced so many problems after 1949 when trying to apply the Conventions in the socialist world. Nevertheless, and this is a vital point to add, it would be unfair to blame these problems solely on the Soviets, because the French, Americans, and especially the British had all played an arguably equally important role in just this kind of endeavor. Like the Soviets, they too had tried in different ways to protect their respective interests, as they had done previously in San Francisco, London, New York, and in Paris, for the designing of new international legal documents.

123. Fayet, "Le CICR et la Russie," 69–70.

124. Junod, *The Imperiled Red Cross*, 278–79.

125. See Weiss-Wendt, *The Soviet Union and the Gutting of the UN Genocide Convention*.

126. Report Soviet-Ukrainian Delegation, no. F. 2, Op. 12cc, Spr. 969, Ark. 60-76, TSDAVO.