

## ARTICLES

### DEALING WITH ENEMY ALIENS IN WWI: SECURITY VERSUS CIVIL LIBERTIES AND PROPERTY RIGHTS

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*Abstract*

WWI is probably the first conflict in which governments and armies have dealt with the issue of civilian of enemy nationalities on a massive scale. Governments and parliaments discriminated between citizens and aliens and established an equation between nationality/ethnic origins and dangerousness, citizens of enemy nationality and citizens of enemy ethnic origin were lumped together and stripped of their liberties, rights and properties. This article tries to understand how the belligerent countries addressed the enemy aliens issue and explores the historical roots of a widespread twentieth-century practice.

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### 1. Introduction

In the aftermath of 9/11, many countries involved in the so-called *war on terror* were faced with the dilemma of choosing between the security of the nation and the safety of its population, on the one hand, and the maintenance of constitutional freedoms and respect of human rights on the other. The laws passed and the preventive campaign launched indicate that there was a risk that security concerns, presented with the rhetoric of emergency, might override civil liberties and human rights. Endangering principles long recognized, many governments and parliaments discriminated between citizens and aliens and established an equation between nationality/ethnic origins and dangerousness. As the mass preventive campaign launched in the US and the Guantanamo files show, ethnic origin has been often considered a sufficient feature for a person to be declared potentially dangerous.

The dilemma between the safety of the population and the system, on the one hand, and the safeguarding of principles, liberties and rights on the other, is not a novelty of the twenty-first century. The difference, however, consisted in the capacity of democratic societies and public opinions, especially since WWII and the signing of the 1949 Geneva Convention, to react against discrimination, violence, restriction of civil liberties, torture, and breaches of human rights and constitutional guarantees.

Whilst the defence of rights, and in particular the emergence of the language and practice of human rights, appears to be a relatively recent phenomenon<sup>1</sup>, discrimination between citizens and aliens, the ethnicization of citizenship, the use of emergency powers and bypassing the constitution in order to deal with the enemy, and the tendency to shift

<sup>1</sup> See in particular S. Moyn, *The last utopia: human rights in history* (2010). For a recent assessment of the historiographical literature on the history of human rights see S. Hoffmann, *Genealogies of Human Rights*, in S. Hoffmann (ed.) *Human Rights in the Twentieth Century. A Critical History* (2011) and M. Bradley, *Writing Human Rights History*, 2 *Mest. Stor.* 3 (2011).

guilt and responsibility from the individual to groups – religious, ethnic, or social – seem to be practices from a distant past. The “double standard” in treating potentially dangerous people stigmatized by David Cole in his book published in 2002, and in many articles written for scholarly journals and for the New York Review of Books, is something which has not been introduced by the so-called “war on terror”<sup>2</sup> but had at least two main manifestations during the twentieth century. In the two world wars, in almost all the belligerent countries, enemy nationality/origin and dangerousness became synonymous. Citizens of enemy nationality and citizens of enemy ethnic origin were lumped together and stripped of their liberties, rights and properties.

This short article deals with WWI and explores the historical roots of a widespread twentieth-century practice.

## 2. Enemy aliens in the First World War

WWI is probably the first conflict in which governments and armies have dealt with the issue of civilian of enemy nationalities on a massive scale, mixing together all the practices mentioned above. Understanding how the belligerent countries addressed this problem during the Great War can explain the roots of a pattern and a behaviour repeatedly apparent also during WWII (the most famous example being the internment of 110,000 Japanese and American-Japanese in the US during WWII), and re-enacted many times during the twentieth century, and most recently in the so-called *war on terror*.

In almost all the states which took part in WWI, governments issued decrees and implemented measures dealing with civilians of enemy nationality who at the outbreak of the war happened to be on their territory. The governments or the armies in charge of conduct of the war sought to neutralize all persons with ties to an enemy country, on the presumption that they would necessarily be more loyal to their origins and blood than to the country in which they worked and lived. German and Austro-Hungarian subjects domiciled in France, Britain or Russia, and later in all the countries which joined the Allies, and British, French and Russian citizens living in Germany or in the Habsburg Empire, and then in Turkey or Bulgaria, were recast as dangerous, sometimes

<sup>2</sup> D. Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism* (2003).

extremely dangerous, internal enemies. These foreign subjects were in some cases transient tourists, students, or seasonal workers; but in most cases they had been residents of the belligerent countries for many years. Some of them were even born in the country, some had married a national, others had acquired nationality papers, others were in the process of obtaining them; many owned houses, land, or firms and, of course, spoke the local language fluently. The outbreak of the war transformed them, regardless of their personal stories, feelings, ideas, and senses of belonging, into enemy aliens accused of posing a threat to the national security and the survival of each belligerent country.

All the participants in WWI dealt with the enemy aliens issue by using state of emergency provisions: governments (and sometimes armies) assumed full legislative powers and issued orders in council or decrees which limited personal freedom; restricted civil and political liberties; and eventually curbed the economic activities of the civilians of enemy nationality and jeopardized their property rights<sup>3</sup>.

Britain underwent a “revolutionary” transition from peace to war with “the most radical alterations in governmental organizations and, comparatively speaking, the most sweeping invasions of civil and economic liberties”<sup>4</sup>. On 8 August 1914, Britain adopted the Defence of the Realm Act (DORA), which has been considered closely akin to “a legislative declaration of martial law throughout England” and “established a virtual state of siege”<sup>5</sup>.

In France the state of siege was declared on 4 August 1914 and, for the next five months “the country was ruled by a cabinet and military dictatorship”. Then, as the war continued, Parliament reopened and the country resorted to a different method of government “characterized by several marked innovations [...]: permanence of sessions, acceleration of the legislative process, the development of new controls and the modification of the old ones, the express or tacit transfer to Cabinet of certain powers of legislation, the abandonment of *la lutte des partis*”<sup>6</sup>.

<sup>3</sup> The classic book on state of emergency is C. Rossiter, *Constitutional dictatorship: crisis government in the modern democracies* (1963). For a recent discussion of constitutional dictatorships see J. Ferejohn & P. Pasquino, *The law of the exception: A typology of emergency powers*, 2 Int. J. Const. L. 2 (2004).

<sup>4</sup> Rossiter, *Constitutional dictatorship*, cit. at 3, 151.

<sup>5</sup> *Ibidem* 153, 154.

<sup>6</sup> *Ibidem* 106.

In Cisleithania (the Austrian part of the Habsburg Empire) emergency rule had already been declared in March 1914, while in Hungary parliament “was anything but representative”<sup>7</sup>.

Germany resorted to the 1851 Law of Siege, which was introduced in each of the twenty-four army corps districts, turning the country “into a group of dictatorships, each of which conducted its own policy”<sup>8</sup>. The army occupied a central position also in the state of emergency provisions issued in the Russian Empire<sup>9</sup>. The Italian Parliament passed a one-article bill, which gave the executive full powers two days before Italy’s entry into the war against the Central Powers, while the army was empowered by art. 251 of the military penal code in war zones.

Besides assuming emergency powers, governments also strengthened their countries’ legislation on aliens. Under these measures foreigners had to register, abandon their homes, and live in designated areas; they could not own cars, bicycles, and other means of transport or communication like carrier pigeons or telegraphs; they were subject to curfew. Britain’s 1905 Aliens Act was made more stringent on 5 August 1914 when the government introduced the Aliens Restriction Act which allowed stricter control of all aliens and covered movements in and out of the country, compulsory registration, etc.<sup>10</sup>. In Italy, a decree issued on 2 May 1915, prevented foreigners from entering the country without a passport and a visa; required all aliens, both those in transit and those residing on Italian territory, to register; compelled employers to notify the hiring of foreigners; ordered landowners to communicate the sale of urban or rural estates to foreigners; and instructed hotels to declare the presence of aliens<sup>11</sup>.

The provisions aimed at controlling all foreigners were accompanied by various other measures targeted on enemy aliens and which culminated in internment in concentration camps. Each country adopted a combination of expulsion, repatriation, displacement, and above all

<sup>7</sup> M. Cornwall, *Austria-Hungary and Yugoslavia*, in J. Horne (ed.), *A Companion to World War I* (2010).

<sup>8</sup> G. Feldman, *Army, industry, and labor in Germany, 1914-1918* (1966).

<sup>9</sup> E. Lohr, *Nationalising the Russian Empire: The Campaign against Enemy Aliens during World War I* (2003).

<sup>10</sup> J. Bird, *The Control of Enemy Alien Civilians in Great Britain, 1914-1918* (1986).

<sup>11</sup> Decreto Luogotenenziale (DL) no. 634, 2 May 1915 in GU no. 123, 19 May 1915, then extended for the entire war with the DL no. 1824, 23 December 1915.

internment of enemy nationals (especially, but not exclusively, men aged between 17 and 50).

Enemy aliens could not participate in assemblies and demonstrations; they could not own newspapers and magazines, and could not meet in ethnic clubs and societies. As a consequence, in countries like Canada, New Zealand, Australia and the United States, the ethnic press was closed down, the teaching of foreign enemy languages in school was suspended, while many aliens sought to elude the severity of the procedures by changing their surnames and hiding their origins. Even music composed by nationals of enemy countries could no longer be played, and concert halls and opera houses had to change their repertoires. Living and dead German composers, in particular, suffered from the ban imposed by nationalist hysteria.

Almost all the countries at war issued a “trading with the enemy act” which prevented enemy aliens from continuing their business activities; these acts ordered the seizure, confiscation, and sometime even the liquidation of property, shops, firms, shares and assets, patents, and copyrights.

Concentration camps opened almost everywhere, in Europe, and then in the US, Brazil, the dominions of the British Empire, China and the colonies. From Morocco to India, from Egypt to Algeria, from Hong Kong to Cuba, civilians of enemy nationality, whether of arms-bearing age or not, experienced confinement, or the extreme hardship and boredom of a concentration camp, sometimes for the entire war. At least 450,000 enemy aliens were interned in Europe and approximately 50,000 to 100,000 in countries outside Europe<sup>12</sup>. Germany interned in concentration camps more than 100,000 enemy civilians and drew no distinction between “mobilisables” – those who could be drafted, i.e. men aged between 17 and 50 – and “non-mobilisables” – women, children, and elderly people. France did almost the same by interning 40,000. Britain detained approximately 40,000 men aged between 17 and 45, and repatriated women, children, and the elderly. In the Russian Empire, 50,000 enemy aliens were interned, and more than 250,000 were deported together with subjects of German origin and other members of

<sup>12</sup> R. Speed III, *Prisoners, Diplomats, and the Great War: A Study in the Diplomacy of Captivity* (1990) and M. Stibbe, *Civilian Internment and Civilian Internees in Europe, 1914-20*, 1-2 Imm. & Min. 49 (2008).

ethnic minorities<sup>13</sup>. Austria-Hungary confined some enemy aliens (Britons and French in particular) in designated villages and towns, interning in concentration camps those, subjects and non-subjects, whose origins made them less reliable (Italians and ethnic Italians, Ukrainians, etc.). Italy confined, mainly in Sardinia, enemy aliens together with Italian individuals considered dangerous, such as anarchists, socialists and the so-called ‘austriacanti’ (persons suspected of being in favour of Austria-Hungary). Also the US resorted to internment for a small group of approximately two thousand men out of 254,000 registered as enemy aliens<sup>14</sup>.

All these measures, and internment in particular, were presented as acts of retaliation and reprisal. No country was willing to assume the responsibility of being the first to discriminate against aliens and violate international law.

The equation between origins and dangerousness established by many governments provoked an ‘ethnic turn’ in the concept of citizenship. Passports and nationality papers proved to be insufficient and less powerful than origins in defining national identity. Denaturalization (and consequently disenfranchisement) became a common practice in France, Britain, Germany, and Canada, while a ban on new naturalizations was imposed almost everywhere, and in particular in the Russian Empire, the Ottoman Empire and Italy. Governments and public opinion exhibited great distrust in multiple identities and belongings. Whenever they had to choose between ethnicity and citizenship, they opted for the former.

As the war went on, the campaign and the measures against ‘enemy aliens’ expanded well beyond this category. On the one hand, they involved all aliens (even friendly and neutral ones). On the other, they targeted groups of citizens whose loyalty was questioned because of their ethnic origin, or their religious belief, or their former nationality. Among the persons affected were: 1. people who had recently acquired nationality papers (e.g. the Ruthenians of the Habsburg Empire migrated to Canada, or Germans in France who had very recently acquired citizenship); 2. women who had lost their original citizenship and acquired a new one by way of marriage; 3. minorities with national

<sup>13</sup> E. Lohr, *Nationalising the Russian Empire* cit. at 9, 123 ff.

<sup>14</sup> J. Nagler, *Nationale Minoritäten im Krieg: “Feindliche Ausländer” und die amerikanische Heimatfront während des Ersten Weltkriegs* (2000).

aspirations (the Armenians or the Greeks in the Ottoman Empire, the Poles, Czechs, Italians etc. in the Austro-Hungarian Empire); 4. minorities resistant to forced nationalization and long discriminated against (the Jews almost everywhere; the Muslims in the Russian Empire); 5. minorities living in the border regions, whose loyalty was considered difficult to ascertain (the Alsatians and Lorrainians in France, the Italians of Trentino, South Tyrol and Istria, etc.).

These measures were anticipated or echoed by popular reaction and the press. The popular reaction took many forms – complaints, informing, reporting, acts of vandalism against the property of enemy aliens (shop-window smashing, the looting and burning of shops and houses belonging to alleged enemy aliens), verbal violence, the hunting down and lynching of alleged spies and enemies, frequently only on the basis of rumours which frequently turned out to be false, or fits of public and collective hysteria<sup>15</sup>.

The press fuelled the anti-alienist feelings with articles, cartoons, pamphlets, and racist campaigns<sup>16</sup>. Almost everywhere, pacifist and liberal groups found it very difficult to state their positions in public.

Juridical measures, internment, violence and anti-alienist behaviour contributed to the destruction or dispersal of numerous ethnic groups, altering the ethnic, social, and linguistic composition of many European and non-European cities and regions.

The campaign against enemy aliens also promoted the large-scale nationalization of economies through seizing and expropriating property, expropriating or forcing out foreign capital and foreign presence, and

<sup>15</sup> Violence increased in particular after the sinking of the *Lusitania* in May 1915. See E. Lohr, *Patriotic violence and the state: the Moscow riots of May 1915*, 3 *Kritika* 4 (2003); P. Panayi, *Anti-German Riots in Britain during the First World War*, in P. Panayi (ed.), *Racial Violence in Britain, 1840-1950* (1993); N. Gullace, *Friends, Aliens, and Enemies: Fictive Communities and the Lusitania Riots of 1915*, 4 *J. of Soc. Hist.* 40 (2005). For violence in the United States see J. Nagler, *Nationale Minoritäten im Krieg* cit. at 14, 340 ff..

<sup>16</sup> On Britain see P. Panayi, *The Enemy in Our Midst. Germans in Britain during the First World War* (1991) and S. Terwey, *Moderner Antisemitismus in Grossbritannien, 1899-1919: über die Funktion von Vorurteilen sowie Einwanderung und nationale Identität* (2006); on Germany see M. Stibbe, *German Anglophobia and the Great War, 1914-1918* (2001); on Italy A. Ventrone, *La seduzione totalitaria. Guerra, modernità, violenza politica (1914-1918)* (2003) and D. Caglioti, *From Germanophilia to Germanophobia. Government Policies and Nationalist Campaigns against Enemy Aliens in Italy during WWI*, forthcoming.

increasing state control on the economy. The most extreme measures were taken by the Russian Empire, where the campaign against enemy aliens, ethnic Germans, Jews and Muslims “resulted [...] in the nationalization of a substantial portion of the imperial economy, and the transfer of extensive land holdings and rural properties from the targeted minorities to favoured groups”<sup>17</sup>. But nationalization of the economy was an important feature also in the US, where the office of the Alien Property Custodian worked intensively to eradicate German enterprises and promote “their thorough naturalization into an American character” of industry and intellectual property<sup>18</sup>.

### **3. International conventions, humanitarianism and international law**

When the First World War broke out, the status of enemy aliens or enemy civilians was not covered by any international convention. The two Geneva Conventions of 1864 and 1906 were exclusively concerned with prisoners of war, the wounded and sick on battlefields, and non-combatants – medical doctors, chaplains, personnel behind the lines – who, though not bearing arms, were directly involved in the war effort, digging trenches, transporting and delivering food and weapons, healing the wounded, burying dead soldiers, etc. Although the 1864 Geneva Convention provided a model for the subsequent ones, it was far from conceiving total war or war waged against civilians<sup>19</sup>. It was still based on the idea that wars were conflicts between states and their armies, not between nations.

Thirty-five years later, the 1899 Hague Convention went further, but not to the extent that it fully recognized the need to protect civilians. The war contemplated by the text of the agreement was still a conventional conflict which involved armies and was fought on battlegrounds distant from inhabited areas. Populations (the term “civilian” was almost entirely absent, except in article 25 on espionage) were covered by articles 42-56

<sup>17</sup> E. Lohr, *Nationalising the Russian Empire* cit. at 9, 1.

<sup>18</sup> *Alien Property Custodian Report. A detailed report by the Alien property custodian of all proceedings had by him under the trading with the enemy act during the calendar year 1918 and to the close of business on February 15, 1919* (1919).

<sup>19</sup> M. Finnemore, *Rules of War and Wars of Rules: The International Red Cross and the Restraint of State Violence*, in J. Boli & G. Thomas (ed.), *Constructing world culture: international nongovernmental organizations since 1875* (1999).

of the Convention, which regulated the behaviour of armies in occupied territory<sup>20</sup>. The Convention required the occupying army to respect the population, family honour, religious beliefs, and private property. It forbade pillage. It prohibited the occupying army from compelling the population to take part in the conflict. It stipulated that the occupants could not levy taxes, tolls, etc. The text of these articles was incorporated substantially unchanged into the 1907 Hague Convention, which contained only an ambiguous reference to the condition of enemy civilians. The short paragraph h of article 23 forbade “To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the *nationals of the hostile party*“. It also stated that “A belligerent is likewise forbidden to compel the *nationals of the hostile party* to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war.” Commenting on this article, James Garner, one of the first scholars to thoroughly research the enemy alien issue, remarked that a country at war “ought not to detain enemy subjects, confiscate their properties, or subject them to any disabilities, further than such as the protection of the national security and defense may require”<sup>21</sup>. Even though these principles were violated almost everywhere during the Great War, the approval of this article demonstrates and confirms that, at the time, private international law had developed more than public law.

For all matters not covered by the Convention, appeal could be made to the ‘Martens clause’, according to which “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience”<sup>22</sup>. In fact, all that remained to

<sup>20</sup> See *Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 29 July 1899 and *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907.

<sup>21</sup> J. Garner, *Treatment of Enemy Aliens*, 12 Am. J. Int. L. 27 (1918).

<sup>22</sup> Geneva Preamble 1899.

protect civilians and non-combatants was a petition of principles and a generic reference to natural law, above all to a practice that differed greatly from one war to another. As far as enemy aliens were concerned, and to provide only some examples, English civilians were confined in France during the Napoleonic wars; property was confiscated during the American civil war; Prussians and Germans were expelled from Paris during the Franco-Prussian war; Italians were expelled from the Ottoman Empire during the Turkish-Italian war of 1911-1912; Boers were interned in concentration camps during the Anglo-Boer war.

The development of international law after the second half of the nineteenth century had spread confidence in the idea that “civilized” countries could fight a humanized war adhering to rules discussed in international conferences and agreed upon in international conventions and multilateral treaties. This illusion faded away when WWI broke out: the measures adopted at the beginning of the war in almost all the countries stressed sovereignty, and they were in open contrast with the above-mentioned agreement and the opinion of international lawyers.

Governments condemned the measures adopted against their own subjects. But they were ready to implement them against their own enemy aliens, often resorting to retaliation and reprisal as arguments to justify them. Whilst economic measures did not raise objections, restrictions upon personal liberty, and internment in particular, mobilized the diplomacies of the neutral countries in charge of the interests of the belligerents and the international humanitarian organizations. One week after the war, it was already clear that a humanitarian emergency had arisen.

The American ambassadors and consuls, who had been entrusted with the task of representing the interests of both sides (they had to safeguard German and Austro-Hungarian interests in France and Britain, and French and British interests in Germany, Austria-Hungary and the Ottoman Empire), worked hard – especially in the first months – collecting information, negotiating repatriations, and ensuring the reception of food, correspondence, etc. Ambassadors like Walter H. Page, Henry Morgenthau Sr., James W. Gerard, and lawyers like Chandler Anderson, deployed all their skills in order to resolve the thorny issue of enemy aliens.

An important role was also played by humanitarian organizations like the Red Cross or the YMCA. But while the latter took steps to relieve

pain, suffering, hunger<sup>23</sup>, the former also engaged in diplomatic activity during and after the war. The aim of this activity was not to interfere with the development of the war, nor to advance human rights claims; rather, the motivation which drove the propositions and the activities of the Red Cross was humanitarianism.

The Red Cross did not initially know how to cope with the thousands of requests for information and help that it received from the families of displaced or interned civilians. In October 1914, only two months after the outbreak of the war, when thousands of civilians had already been stripped of their freedom and interned in concentration camps or confined in designated areas, the *Bulletin International des Sociétés de la Croix Rouge* acknowledged the problem: *Une catégorie de personnes qui sortait de la sphère d'action de l'Agence, n'étant pas visée par les accord internationaux, était les internés civils. Soit que l'espionnage, "le service de renseignements", comme l'appelle la diplomatie, se fût développé au point de rendre suspects un grand nombre d'individus libérés des obligations militaires, soit que chaque belligérant ait considéré comme de bonne prise les ressortissants de l'adversaire, se trouvant sur son territoire, un nombre important des civils français furent retenus en Allemagne, et un nombre plus grand encore des sujets allemands ou autrichiens, en France et en Grande-Bretagne, furent empêchés de regagner leur patrie et gardés dans des sortes de camps de concentration, ou simplement frappés de l'interdiction de partir. Il s'agissait de simples touristes en villégiature, de résidents domiciliés, d'employés attachés à des maisons de commerce, notamment à des hôtels ou pensions. Surpris par la brusque irruption de la guerre, ils se trouvèrent souvent pris au dépourvu et complètement dénués des ressources nécessaires pour un séjour se prolongeant jusqu'à l'entrée de l'hiver. Rien d'étonnant que leur sort ne fût pas réglé. D'après les principes généraux du droit des gens, la guerre est normalement limitée aux armées, la population civile reste en dehors. Elle ne devait pas être impliquée dans les hostilités*<sup>24</sup>.

Thanks to the expertise developed in previous wars, the International Committee of the Red Cross was prepared to deal with soldiers; but as far as civilians were concerned, it felt helpless. 'Nous nous sentions

<sup>23</sup> On the activity of the YMCA see K. Steuer, *Pursuit of an 'Unparalleled Opportunity'. The American YMCA and Prisoner of War Diplomacy among the Central Power Nations during World War I, 1914-1923* (2008).

<sup>24</sup> *Bulletin International des Sociétés de la Croix Rouge*, tome XLV, Octobre 1914, n. 180, pp. 261-262.

desarmés’, said the ICRC’s rapporteur in the first published account of the Agency for Prisoners of War<sup>25</sup>. After the first bewilderment, the International Committee of the Red Cross decided to open a civilian branch in the Agency for prisoners of war. The head of the civil section, the Swiss medical doctor Frédéric Ferrière, a leading figure of the ICRC since the Franco-Prussian war, worked strenuously during the war to reduce hardship and, after the war, with the aim of preparing a Convention on the treatment of enemy civilians on which different countries could agree.

After the 1864 Geneva Convention, all the international efforts had been directed not against the war but for its “humanization”. The First World War, by contrast, was a novelty because it involved civilians from its very beginning; and it proved to be a novelty difficult to deal with. The magnitude of the war and universal compulsory conscription had made matters completely different from the previous conflicts, when, with few exceptions, enemy aliens had been expelled and repatriated. The First World War, created two new categories besides combatants and non-combatants,. To use the language of the Red Cross, these categories consisted of “mobilisables” (would-be or could-be combatants) and “non mobilisables” (women, children and elderly people). The former group, males aged between 15 and 50, “whose impossibility to wear a uniform was only accidental”<sup>26</sup>, had to be prevented with all means from enlisting in their own national army. But because there were potential soldiers and had been deprived of their freedom by the war, they should receive, according to the president of the ICRC, Gustave Ador, the same treatment that the Geneva convention guaranteed to POWs<sup>27</sup>. The latter group, mainly composed of “innocent victims” (women, frequently pregnant, children, old women and men in their 70s and 80s, sick persons) should be repatriated, and many of the efforts of Frédéric Ferrière and the Agency for civilian internees were made in that direction.

The civil section of the Agency for Prisoners of War worked strenuously throughout the conflict to collect information on internees, internment camps, and living conditions in the camps; but above all it

<sup>25</sup> *Ibidem*, p. 262. This was the feeling conveyed by the ICRC in the first report on the activity of the International Prisoners of War Agency.

<sup>26</sup> *Ibid.*, p. 262.

<sup>27</sup> See *Egalité de traitement pour les prisonniers de guerre militaire et civils. (Cent soixante-troisième circulaire aux Comités centraux)*, in 181 BICR 5-8 (1915).

strove to negotiate the repatriation of all “non-mobilisables”. However, the efforts of the Red Cross, the Vatican, and other organizations were often ineffectual and fruitless. During a Conference of the Red Cross organizations of neutral countries, which took place in Geneva in 1917, Gustave Ador, the chief of the ICRC, vehemently condemned the situation and urged a rapid solution: *Civilian internment is a novel feature of this war; international treaties did not foresee this phenomenon. At the start of the war it seemed logical that enemy civilians might be retained as suspects; a few months should have been enough to separate the chaff from the wheat. [But now] we have to add to the number of civilian internees those deported into enemy territory as well as the inhabitants of territories occupied by the enemy. These civilians have been deprived of their liberty and their treatment hardly differs from that of prisoners. After three years and more of war, we demand that these different categories of civilian detainees should become the object of special consideration and that their situation, which in some respects is even more cruel than that of military prisoners, should be properly discussed before the fourth winter of the war*<sup>28</sup>.

During the same conference, the ICRC laid down a list of actions to be taken by the belligerent countries, including the repatriation of all civilian internees and the extension of the Geneva Convention to them. Only very few of these propositions were implemented, however. Only in the fifth year of the conflict did the governments of the warring countries start to sign bilateral agreements concerning prisoners of war and civilian internees. Germany and France agreed in March 1918 on the repatriation of sick internees. Germany and Belgium signed an agreement on the repatriation of “non-mobilisables” in April 1918. Germany and Britain exchanged civilians and POWs after an agreement signed in July 1918. However, when the war ended there were still thousands of civilians interned in concentration camps in either belligerent or neutral countries (mainly Switzerland and Netherlands).

Bilateral agreements momentarily eased the conditions of the enemy aliens, but they did not lay the basis for a new international law settlement dealing with the issue.

Notwithstanding the numerous violations of both the Geneva and Hague Conventions, advocates of humanitarianism, international lawyers, and representatives of international organizations like the Red Cross did

<sup>28</sup> I quote from the English translation cit. in M. Stibbe, *Civilian Internment and Civilian Internees in Europe, 1914-20*, cit. at 12.

not lose faith in the possibility of humanizing war. After peace treaties, and in the wake of demobilization, when Europe still teemed with displaced persons, refugees, stateless people, or prisoners waiting to be repatriated, different projects started to be conceived. The International Committee of the Red Cross, in particular, and the International Law Association were both engaged in drafting a Convention on enemy aliens and civilians in wartime.

Discussion for the Convention on enemy aliens began at the XXI Conference of the Red Cross in 1921 and continued for the next fourteen years. The ICRC was able to present a final draft at the Tokyo Conference in 1934. The draft, entitled *International Convention on the Condition and Protection of Civilians of enemy nationality who are on territory belonging to or occupied by a belligerent*, clearly defined what constituted an enemy alien and established in 33 articles the provisions for the humanitarian treatment of such subjects<sup>29</sup>.

The Convention was not a revolutionary document. It set basic humanitarian rules and was driven by a common-sense approach. Yet no country was willing to endorse and sign it. When WWII broke out, the ICRC made another attempt to have it signed and implemented, but again failed. The Convention was rejected and the enemy aliens issue remained unresolved. Belligerent countries thus dealt with civilians of enemy nationality and enemy origins as they had done in WWI, but on a new massive scale.

<sup>29</sup> The text is available at the following URL: <http://www.icrc.org/ihl.nsf/FULL/320?OpenDocument> [last access 4 December 2011].