

THE REUNITING OF FAMILIES IN EUROPE DURING AND AFTER THE SECOND WORLD WAR

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MORAL AND LEGAL BASES

It is necessary, first of all, to define what is understood here by the expression "reuniting of families".

In this article, the term is used in a narrow sense. It refers to the humanitarian protection given, on an international plane, for the reuniting of the members of one and the same family, who have been separated from each other against their will, as a result of external events—international wars, civil wars, internal disturbances, grave political tension—and who have ended up in different countries on either side of a frontier which they find impossible to cross. In most cases, the difficulties involved for such persons to obtain permits allowing them to leave a particular country and enter another are practically insurmountable. It is such persons who are referred to here and it is to them that the ICRC endeavours to bring its assistance.

On the other hand, those cases where the members of a family have of their own free will taken the decision to separate (for instance, married couples) are not dealt with here. The ICRC does not intervene in such more or less isolated cases, sad though they might be, and especially so when there are disputes concerning children. Other institutions, besides government bodies, exist to deal with these, such as various church organizations, the International Social Service, the International Union for Child Welfare.

Another problem involving the separation of families, although it too is not examined here, concerns migrant workers who leave their native land for a more or less lengthy period in another country, where

they can find employment or more favourable labour conditions and where they frequently acquire better skills. In this case, it is the economic factor which is the cause of the separation, but it is none the less serious. Countries taking in foreign workers are usually unwilling to allow members of their families to enter, although they may not raise objections to those relatives' making visits lasting three months. The family breadwinner may earn more abroad than if he had remained in his own country, but the children miss their father when he is away and quite often a separation is liable to end in the break-up of the family. A good number of governmental and non-governmental humanitarian organizations give their attention to this question, such as the Council of Europe, the Intergovernmental Committee for European Migration (ICEM), various church committees on migration, the Association for the Study of the World Refugee Problems (AWR). The problem has also attracted the interest of the International Institute of Humanitarian Law at San Remo. Governments are urged from various sides to take into consideration the humanitarian problems with which families are confronted. This particular aspect of the question is not, however, the aim of this present study.

HISTORICAL BACKGROUND

As far as one goes back in time, the respect of family unity, a sentiment as old as history, appears to be well established. Homer relates in the *Iliad*, that monument of classical literature which tells how a family's dispersal was the cause of the Trojan War, how much worth was attributed, already in ancient times, to family unity. The *Odyssey*, the sequel to the *Iliad*, describes the wanderings of Ulysses during ten years and may be considered as one of the oldest examples of the repeated attempts of a family to be reunited. Today, three thousand years later, the desperate efforts of the dispersed members of families seeking to be reunited are often described as an "odyssey".

At the time of the Greco-Roman civilization, the family was considered to be the nucleus on which life and society were based, so much so that the people of that period thought it quite natural that the gods themselves were united by family ties. It was held to be a punishment for a man or a woman to live a solitary life, all alone, with no family, and that was how Loki, the baleful god of fire, was depicted in Norse mythology.

For many centuries, slaves were deprived of all human rights, and yet the ancient Romans respected their family ties.

On the other hand, much closer to our time, the slave trade broke up innumerable families, deliberately ignoring fundamental human rights. At the beginning of the nineteenth century, public opinion was revolted at the idea of slavers who enriched themselves by tearing away thousands of Africans from their families. Harriet Beecher Stowe's book "Uncle Tom's Cabin", which gives a graphic description of the condition of slaves in America, was translated in thirty-seven languages. In addition to the profound social differences which opposed the Southern States to the Unionists, slavery was one of the causes of the War of Secession.

Respect for family unity may be found in all the great religions. The Bible, more specifically the Old Testament, a holy book for Christians and Jews alike, gives many instances. In the Book of Genesis, the story of Joseph's family and how they were all reunited is related with many details, and it bears a distinct resemblance to the efforts that have to be made, in our day too, to bring together members of families scattered in different countries by events.

Islam, too, stresses the importance of family unity and closely links it to service to one's neighbour, an action which pleases God.

The general sentiment that the family unit is the nucleus of society is confirmed in the writings of philosophers of all periods, and indeed it appears to be such a natural thing that it does not even need to be mentioned.

Max Huber wrote that the respect due to the unity of the family was a moral obligation of foremost importance, and he thought that, directly or indirectly, it was to be considered in relation to the dignity of man. This view was expressed, in particular, in his book on the sociological foundations of international law¹ and also in a paper read at St. Gall in 1952.² His concept of this important human problem seemed to him so obvious that, during the preparation for a congress on international law in Vienna, when asked for his views on the displacement of populations, he answered laconically: "The families must remain united".³ Alfred Verdross, whose writings on this subject are of lasting value,⁴ was another of the many authors who made similar conclusive statements.

¹ Rotschild, Berlin 1910-28.

² Published in his book *Das Völkerrecht und der Mensch*, Tschudy, St. Gall, 1952.

³ *Annuaire de l'institut de droit international*, 1952, II, p. 167.

⁴ A. Verdross, *Statisches und dynamisches Naturrecht*, Freiburg in Breisgau.

The upholding of family unity, considered as one of the fundamental human rights, found its expression in the attempts to elaborate a positive law in North America after 1776. The same concept was inserted in 1791 in the French Declaration of the Rights of Man.

The general sentiment that every man has the right to found a family and to provide for it led without too much difficulty to the adoption of article 16 of the Universal Declaration of Human Rights of 10 December 1948, the third paragraph of which stated: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

The Universal Declaration of Human Rights also contains provisions in its articles 12 and 13 proscribing dispersion of families and stating that everyone has the right to leave any country, including his own, and to return to his own country.

Conflicting views subsisted for a long time on whether the provisions of the Universal Declaration of Human Rights were only declaratory in character or whether they were obligatory. The uncertainty was removed in the European Convention on Human Rights of 1951, although it holds good only for the signatory States, and in the two International Covenants on various human rights of 1966, which entered into force in 1977 after the necessary number of ratifications had been obtained. In this way, it may be considered that all the provisions of the 1948 Universal Declaration of Human Rights are now a part of positive law, although they are not universally applied as yet. The same may be said about their introduction into the constitutions of a large number of States, this being a practical measure depending on each government's decisions. However, according to article 2 (7) of the United Nations Charter, the United Nations may not intervene in matters which are essentially within the domestic jurisdiction of member States.

The humanitarian postulate concerning family unity, whatever may be its situation, thus retains its validity, and it should be applied in positive law, all the more so because its roots are thrust deep in the human conscience everywhere. In connection with such fundamental rights, Max Huber said: "The concept one establishes of a natural right, irrespective of fortuitous historical events, is of the greatest importance for the idea at the basis of those rights".¹

Until the beginning of the twentieth century, the observance of this natural and fundamental human right was called in question by relatively few events.

¹ Max Huber, *Das Völkerrecht und der Mensch*, p. 27.

The pogroms in pre-revolutionary Russia provide examples of events other than armed conflict causing the tragic dispersal of families whose members could almost always come together again.

There were also cases of families being separated during the First World War. We have few objective accounts of the fate of the Armenian people who, at that period, were displaced by the authorities, and opportunities to arrange humanitarian aid for these people were restricted.

On the other hand, when the 1922-23 war between Greece and Turkey resulted in the expulsion of one and a half million Greeks from Asia Minor, it was necessary to make inquiries about members of families who had been dispersed without warning. The inquiries were carried out without difficulty. The ICRC, which was conducting visits to prisoners of war, took only a small part in these operations, which were mainly in the hands of the League of Nations, and were directed by its Commissioner, Friedjof Nansen. Nansen's assistant at the time was François Ehrenhold, who later joined the ICRC as a delegate and led the department for the reuniting of families with competence, together with the author of this study, then ICRC delegate for Europe.

During the rise of National Socialism in Germany, events took a much harsher turn. Family unity did not count in the Nazi racial laws. Nansen's work was taken up by specialized organizations, which endeavoured to bring together family members who had emigrated and had become separated from each other.

It was at that time that the German Government entered into agreements with several States whereby hundreds of thousands of people belonging to the "German-speaking minorities" and to the "Germans in the East" were uprooted. The separations that resulted became more numerous still when, with the German-Soviet occupation of Poland in 1939, a demarcation line was drawn between the two countries. As the way to east or west remained open only for a very short time, people who wanted to emigrate had to make very swift decisions.¹

In the brief period between the two world wars, the civilian population in Spain suffered terribly during the Spanish Civil War—which may be seen as the forerunner of the 1939 conflict—and many families became separated. As the country was divided into two zones, most families could not be reunited until after the end of hostilities. Here, there were many obstacles, in particular in those cases where families were divided against each other by opposing ideologies, or where some of the members had fled from Spain.

¹ H. G. Beckh, *Les minorités de langue allemande, dites Volksdeutsche, et les Allemands de l'Est*, Chemins du monde, Editions de Clermont, Paris, 1946, p. 240 ff.

The steps taken to reunite families during wartime¹ should be distinguished from those taken in circumstances not connected with an armed conflict.

As civilians suffered increasingly terrible hardships in successive armed conflicts, the conviction grew that it was necessary to adopt a convention to protect the civilian population, side by side with the 1929 Geneva Conventions.

At the 1934 International Red Cross Conference, held in Tokyo, representatives of National Red Cross Societies and of governments agreed in principle on the provisions of a convention which would become later the Fourth Geneva Convention, but when hostilities broke out in 1939 the diplomatic conference to adopt such a convention had not been convened.

It is estimated that as a result of special agreements concluded, through the ICRC's good offices, between belligerents during the Second World War, some 160,000 civilians were given the status of protected person. This protection entitled them, in principle, to the same rights as prisoners of war.²

Already at that period, endeavours were made by the ICRC to reunite dispersed families. One of the practical aid measures taken by the ICRC had been to set up a special service directed by Miss N. de Posnansky, who dealt with individual cases of families seeking to be reunited after the First World War. Even earlier still, during the war, Dr. Frédéric Ferrière, who was in charge of an office at the ICRC, had dealt with certain problems concerning civilians, some of whom were anxious to be reunited with other members of their families.

In 1937, during the Spanish Civil War, the ICRC took action for the first time to reunite families scattered between Madrid and the war zones.

The official founding of the "Prisoners of War Agency" by the ICRC took place in September 1939. In the course of the Second World War considerable changes affecting the Agency were made: cases concerning civilians, which until then had been dealt with by other sections, were referred to the Agency.

When hostilities ended there were in Europe two groups of States, each group having different views on the free movement of people from one country to another. With the Potsdam Agreements in July 1945, vast transfers of entire populations involving over 12 million persons took place. More than a million of these lost track of their families, when

¹ This subject will be discussed in a later issue of *International Review*.

² Jean Pictet, *Commentary to the Fourth Geneva Convention*, Geneva, 1958, p. 5.

they moved westwards as a consequence of events in the east. The separations were due to several causes: means of transports were too hastily organized; in many cases, some members of families were just simply overlooked; in other cases, some people refused to go with the convoys in the hope they would be allowed to stay in their native land and then realized that they could not stay all alone without any of their relatives, among people who were ethnically totally different from them. There were also instances of families being dispersed when a prisoner of war was repatriated to the country where his family had previously lived but had in the meantime moved to some other place.

The reuniting of families whose members were separated as a consequence of the Second World War was made possible on the basis of certain parts of the Fourth Geneva Convention, which was then being drafted, and was also facilitated by the conclusion of special agreements between the belligerents, through the good offices of the ICRC.

When the ICRC began its post-war activities for reuniting dispersed families, its position was clear and was founded on the following points:

1. The unity of the family being one of the loftiest and most generally accepted of mankind's fundamental rights, an international aid programme for the reuniting of many hundred thousand dispersed families was an imperative humanitarian obligation.
2. Many commentators at the ICRC, Jean Pictet in particular, and also others outside the ICRC, had agreed with the views expressed by Max Huber, when he was President of the ICRC, on the importance of laying Red Cross activities on foundations related to high moral precepts.

No one at the ICRC had the slightest doubt that action had to be taken by the ICRC itself, and this viewpoint was backed by the numerous appeals for help reaching Geneva. It was thus that ICRC President Max Huber entrusted Mr. H. G. Beckh, who was then ICRC delegate for Central Europe, with the task of providing humanitarian assistance for the victims of post-war circumstances.

The ICRC began by sending a telegram to the British, American, French and Soviet Governments, couched in the following terms: "The International Committee of the Red Cross has received a large number of pressing appeals concerning the situation of civilian populations whose removal from one region in Europe to another is being envisaged or has been already carried out. These appeals draw attention to the millions of people, a majority of whom are women and children, who would be destined to wander from place to place without shelter or means of

subsistence. Not knowing the measures which may have been taken or decided upon, the International Committee offers its co-operation, if it is deemed to be expedient, and that of its delegations at present in Germany and neighbouring countries, to assess needs and distribute any relief supplies that may immediately be made available or which it could obtain with the aid of other charitable institutions. The International Committee hopes it will receive all necessary facilities and support from the competent authorities for a relief operation on the spot".

Although the International Committee received no reply to this appeal, it did obtain the tacit consent of the Occupying Powers in Central Europe, and not only for its purely material aid activities. Later events were to reveal, as described in the chapter on the practical execution of the scheme, that the ICRC was in fact assured of their agreement to international intervention.

The ICRC could justify its intervention on the following juridical grounds.

Essentially, ICRC action rested on its right to take humanitarian initiative, specified in the first part of article 4 (d) and, especially, the last paragraph of article 4 of its Statutes, confirmed by the International Red Cross Conferences, in which the representatives of governments took part.¹ Moreover, the ICRC had considerable independence in its appreciation of possible ways of action in the field of international humanitarian law.² To this could be added the Resolutions adopted by International Red Cross Conferences on this particular matter,³ which defined the competence of the ICRC and National Red Cross Societies in the following terms:

The XXth International Conference of the Red Cross,
having, from the report of the International Committee of the Red Cross, taken cognizance of the humanitarian results which have been obtained on the basis of Resolution No. XX of the International Conferences of Toronto and New Delhi,
thanks Governments, the ICRC and National Societies for their active participation,
notes that some dispersed families envisaged in the above Resolutions have not yet been reunited,

¹ International Red Cross Conferences at The Hague in 1928 and Toronto in 1952.

² O. Kimminich, *Humanitäres Völkerrecht — humanitäre Aktionen*, 1972, p. 98.

³ Resolution XX, Toronto 1952; Resolution XX, New Delhi 1957, and Resolution XIX, Vienna 1965.

expresses the wish that all competent Red Cross bodies and all Governments continue and intensify their efforts in order to complete this humanitarian action, which serves the cause of understanding and peace, recommends that, until such reunions are achieved, human contacts between members of dispersed families be facilitated,

recommends, furthermore, that National Societies take action in this sphere as the natural intermediaries with their Governments to find a solution to this humanitarian problem and to proceed to have consultations with them, as well as with the ICRC.

Although the Fourth Geneva Convention had not come into force at that period (1945), the ICRC took its stand on the draft for that convention to protect civilians.

The obligations of belligerents, at the beginning of the Second World War, were laid down, in principle, in article 46 of the Regulations respecting the Laws and Customs of War on Land, annexed to The Hague Convention No. IV of 1907. Only the States signatories to this Convention were bound by it, but it was a positive law, applicable in specific circumstances. Where the reuniting of families was concerned, it laid down the fundamental obligation of the governments to refrain from separating families and to reunite them if such separation had actually occurred.

The operations to bring families together only began in Europe two years after the termination of hostilities. It had not been possible to start earlier because of the aftermath of the war and various other factors, such as questions relating to the national sovereignty of the countries involved. Notwithstanding certain difficulties caused by several legal aspects which had not been elucidated, these operations, conducted in co-operation with a number of National Red Cross Societies, in particular with the German Red Cross, resulted by the end of 1969 in the return of approximately 700,000 persons in Europe to the bosom of their families.

This excellent result owed a great deal to the fact that the imperative moral principles on which those operations were founded and the unconditional neutrality with which they were conducted were recognized. This position determined the activities which the ICRC was to carry out for the next twenty-five years. Without such recognition, this result—some 700,000 persons reunited with their families—would never have been obtained.

It may well be asked whether other organizations could claim similar political neutrality with regard to their aims. The impression is that this attitude is primarily specific to the ICRC. The National Red Cross Societies, which by definition have similar aims, have at times to take

into account, even if only slightly, views which may be dominant among the people in their country. The fact that an operation owes its origin and direction to the ICRC is sufficient to place the activities of National Societies, carried out in co-operation with the ICRC, on a proper footing and to strengthen their neutrality.

During those twenty-five years of intense activity, the ICRC intervened for the benefit of those who were in need, all the while restricting itself to doing what it judged to be essential. It had taken the initiative in respect of the reuniting of families and it had itself entered into negotiations with the appropriate authorities, with the assistance of the Red Cross Societies concerned. It had continued this activity in so far as it had judged it to be expedient. But its action was restricted to international assistance in this work of peace.

The Central Tracing Agency at the ICRC co-operated closely with the tracing services of the National Red Cross Societies, in particular the German Red Cross, and built up a card-index relating to cases involving the reuniting of families, based on an extremely careful search of the documents it received. It was often necessary for those services to do an enormous amount of work before a case could be successfully concluded. In this way, the fate of countless families dispersed during or after the war was elucidated in time and they were included in the procedure for reuniting families. Often, very great difficulties were met. For example, in Yugoslavia, where children belonging to "East German" minorities had been separated from their parents through the war—or from their relatives, if they had already lost their parents—it was necessary to discover the place where they were living, while quite often even the family name was not known. It was in such cases that Yugoslav Red Cross assistance proved to be extremely useful.

These examples serve to show the importance of the tracing services of the Red Cross, whose tasks could not have been performed by any other organization.

There are also those sad cases, such as the tale told in Tennyson's "Enoch Arden", of a husband who mysteriously and unwillingly disappears and returns year later to find his wife is married to another, having assumed—like the husband, too—that she was widowed.

PRELIMINARY WORK PRIOR TO THE DEFINITE REUNITING OF FAMILIES

In accordance with the ICRC's declarations of intent on its readiness to undertake, together with the National Red Cross Societies, measures

to reunite families, inquiries and preparations were started. Consultations took place with the "Preparatory Commission of the International Refugee Organization", and later with the United Nations High Commissioner for Refugees, who were provided with information, allowing them to define their attitude.

The first thing was to obtain an idea of the magnitude of the problem. The next was to find out what was the attitude of the countries issuing exit visas, have discussions with them and explain the theoretical grounds on which the action to be taken was based. The same thing had to be done with the countries of destination. Finally, the feasibility of the scheme had to be examined.

It was with this in view that the ICRC delegates conducted negotiations in Warsaw, Prague and Berlin, with the National Red Cross Societies, the occupation authorities and the local authorities. It was important that they should be in favour of the ICRC's views and that they should be convinced that the action envisaged was founded on purely humanitarian considerations and that political motives were wholly excluded.

It was equally important to explore the position of the countries which were to receive the persons due for repatriation, especially in Central Europe.

A fact-finding mission in occupied German territories led the ICRC's delegates, Mr. Ehrenhold and Mr. Beckh, to the three zones under military occupation, before the Federal Republic had yet been set up. They found that widely differing views were current on the possibility of receiving Germans from the eastern areas and German-speaking minorities, whom they called "Volksdeutsche". The fact was that these territories were still affected by the sequels of the war; many towns had been almost wiped out by the bombing and there was a general lack of houses and food.

The talks mainly took place at Hamburg-Altona with the tracing service representative in the British Occupation Zone, at Frankfurt and Stuttgart with the burgomasters of the two towns, and at Baden-Baden, where Mr. H. G. Beckh for the first time met Dr. Bargatzky, later State Secretary and President of the German Red Cross in the Federal Republic of Germany. Dr. Bargatzky did a great deal to smooth out the difficulties which kept arising, especially in the French Occupation Zone, concerning persons coming from eastern and south-eastern Europe. The authorities in these towns raised considerable obstacles, and it became very difficult later on to get exit and entry permits to coincide. Both permits were obtained only at the price of tremendous efforts.

In the British Occupation Zone, it was necessary to take into account the fact that residence permits granted by local authorities were not automatically accepted by the Occupation Power. For a long time an additional permit, issued, in the case of people coming from Poland, by a permit officer in Warsaw, was obligatory. It was difficult for Germans wishing to leave Poland to obtain this formality, either because they were unable to go to Warsaw, or because they did not have enough money to pay the permit fees.

The efforts of the ICRC, particularly in the person of its delegate Mr. Ehrenhold in Warsaw, led to a clarification of the situation in its broad outlines, at a conference held in December 1949, shortly before the creation of the Federal Republic. Negotiations were continued after that date to settle outstanding questions. For example, a conference was held in Hamburg from 9 to 14 April 1951, though in some countries the reuniting of families had already begun.¹

Those efforts showed, from the start, that steps taken to bring families together contributed to detente and could be considered as action in favour of peace, in its real sense.

An article in the *International Review of the Red Cross* of the time contained the following passage: "People are everywhere realizing ever more clearly that to work for the reuniting of families leads to a calming down of tension. All too often the members of those families had suffered enormous hardships during and after the war. But as soon as they were all reunited in their new homes, they forgot those difficult times and ceased to complain. They looked forward to the future. The ICRC warmly hopes that this humanitarian task, a genuine work for peace, will be actively pursued."²

Also in *International Review*, J.-G. Lossier wrote that the work of the Red Cross—the desire for peace—had borne fruit in all countries and that it was widely accepted throughout the world. The combination of solidarity and personal responsibility had produced the longed-for result.³

The realization that it was necessary to restore the unity of families dispersed because of the war and its consequences was demonstrated when the ICRC delegates, Mr. Beckh and Mr. Joubert, began their negotiations in Vienna, in July 1949, to persuade Austria to accept members of families from countries in eastern and south-eastern Europe.

¹ This subject will be found in a later issue of *International Review*.

² *Revue internationale de la Croix-Rouge*, Janvier 1952, p. 8-9 (in French only).

³ J. G. Lossier, *La Croix-Rouge et la Paix*, *Revue internationale de la Croix-Rouge*, Janvier, Mai, Juin 1951 (in French only).

At that time, Austria was split into four zones of occupation and had not yet recovered from the consequences of the war. Notwithstanding this, the Federal Chancellor, Mr. Figl, and the Minister for the Interior, Mr. Helmer, immediately stated that they would accept those persons in Austria. The proposal was likewise accepted by the Inter-Allied Control Commission. The Chancellor said that it was to the State's advantage to have sound families and that, where family unity had been disrupted, it should be immediately restored. The reuniting of families would be an act of peace. The Minister for the Interior drew attention to the difficulties under which the Austrian people were labouring, but stressed that the problem of family reuniting should have priority over all others and that his Ministry would support ICRC action in every possible way.

It was also necessary to obtain the authorization of the four Allied Powers which were then occupying Austria: the Soviet Union, United States, United Kingdom and France. The Soviet authorization was the most important, because the chairman of the Inter-Allied Commission at the time was the Soviet representative.

On 25 July 1949, the two delegates called on the Soviet Colonel in charge of those problems and were granted a lengthy interview. He listened carefully to what they had to say and asked questions which revealed that he was fully familiar with the matter. The delegates' persuasiveness and their strict neutrality were strong factors in favour of their proposals. After an interval, the Soviet Colonel announced his decision: if the International Committee of the Red Cross undertook to perform the task of reuniting the dispersed families, then the Soviet authorities of the zone occupied by Soviet military forces would give their consent. The representatives of the three Western Powers also agreed.

It was under these favourable auspices that the ICRC began its work for the reuniting of families, which it performed, as will be related in later issues of *International Review*, in co-operation with the National Red Cross Societies in the countries concerned.

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