

# The International Committee of the Red Cross (II)

by André Durand

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### FROM THE FIRST TO THE SECOND WORLD WAR

In the years of transition and change between 1918 and 1939, the only constant was the contrast with the turmoil of the world wars which preceded and followed that period. In this passage from one world conflict to the next, three stages, not only in the evolution of the world but also in that of the ICRC, may be distinguished.

In the first period, immediately after the end of hostilities, the States sought to organize the world through the League of Nations. But the after-effects of the war remained and led to revolutions and civil wars. Epidemics, malnutrition, famine, movements of populations brought renewed hardships to those countries already ravaged by the war.

The ICRC threw itself into large-scale post-war programmes of protection and assistance from the Atlantic to the Pacific, repatriating prisoners of war, sending relief to the countries ruined by the conflict, helping refugees, organizing campaigns to help the fight against famine.<sup>1</sup> ICRC delegates visited civilian detainees in the countries wracked by revolution and internal strife, and prisoners of war in States at war.

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<sup>1</sup> The post-war aid programmes in Soviet Russia were carried out with the co-operation of Dr. Fridtjof Nansen, High Commissioner of the League of Nations.

The National Societies, conscious of the experience they had acquired from their wartime activities, and anxious to employ their resources and prestige in time of peace, formed their own organized federation, the League of Red Cross Societies.

In this manner, there were two distinct international bodies of the Red Cross: one, the ICRC, an independent institution with its own status, its members being recruited by co-optation from among Swiss nationals, and assigned more particularly to the task of helping war victims and developing humanitarian law; the other, the League of Red Cross Societies, the federative body of the Red Cross, Red Crescent and Red Lion and Sun Societies,<sup>1</sup> whose work was directed more to peacetime activities, in particular assistance to victims of natural disasters, the development of National Societies and the improvement of public health.

The role of the Red Cross was at the same time endorsed in article 25 of the League of Nations Covenant, which stated that its members undertook to encourage and promote the establishment and co-operation of the National Red Cross Societies "*having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.*"

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During the second period, from about 1925 to 1930, some hopes were raised by the statesmen seeking to prevent wars by submitting disputes to arbitration, or to restrict the effects of hostilities. In 1925, the Treaty of Locarno eliminated a possible cause of conflict by creating favourable conditions for a Franco-German *rapprochement*. That same year, under the aegis of the League of Nations, the Plenipotentiaries of a number of Governments signed the Geneva Protocol for the Prohib-

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<sup>1</sup> Three distinctive emblems of the medical services of the armed forces are recognized and protected by the Geneva Conventions. They are the red cross, the red crescent and the red lion and sun on a white ground, which are also the emblems of the National Societies.

The red crescent is the emblem used in a large number of Islamic countries. It is displayed together with the red cross in the emblem of the Alliance of Red Cross and Red Crescent Societies of the U.S.S.R.

The sign of the red lion and sun was used by Iran until July 1980, when it was discarded and the Islamic Republic of Iran notified its decision that it would use the sign of the red crescent as the distinctive emblem of its Army Medical Services and of its National Society.

ition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare. In 1928, the Briand-Kellogg Pact outlawed war, and a year later the French Minister for Foreign Affairs proposed the creation of a European federation.

Concurrently, the Red Cross consolidated its international structure and endeavoured to take a constructive part in encouraging harmony and understanding among nations.

In 1928, the ICRC and League, agreeing on a definition of the connection that bound them together and which until that time had been only vaguely formulated, drew up the Statutes of the *International Red Cross*, grouping the ICRC, the League and the National Societies into a single association.<sup>1</sup>

That same year, the ICRC established at Geneva two bodies that were to conduct research and collect documentation on matters relating to the protection of civilians and to the provision of better treatment for the wounded: one was the *Centre de documentation sur la guerre aérochimique*, (or “Documentation Centre on aerial and chemical warfare”) and the other the *Commission internationale de standardisation du matériel sanitaire* (or “International Commission for the standardization of medical equipment”).<sup>2</sup>

In 1929, a Diplomatic Conference met in Geneva and, after examining draft proposals prepared by the ICRC, adopted the revised text of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and the (new) text of the Geneva Convention relative to the Treatment of Prisoners of War (Prisoners of War Code). Thus, the protection of the Geneva Conventions was extended to:

— the wounded and sick in armed forces in the field;

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<sup>1</sup> The supreme deliberative body of the International Red Cross is the *International Red Cross Conference*. The International Conference is composed of delegations of duly recognized National Red Cross, Red Crescent and Red Lion and Sun Societies, delegations of States parties to the Geneva Conventions and delegations of the ICRC and of the League.

The International Red Cross Conference normally meets every four years. During the interval between sessions of the Conference, the *Standing Commission*, comprising five members elected by the International Conference, two representatives of the ICRC and two representatives of the League, ensures the co-ordination of the International Red Cross bodies and makes the arrangements for the next International Conference.

<sup>2</sup> The *Centre de documentation*, was dissolved in 1938, and the *Commission internationale de standardisation* ceased to exist after the Second World War.

- the wounded, sick and shipwrecked members of armed forces at sea;<sup>1</sup>
- the prisoners of war captured in conflicts between States.

In 1930, the Fourteenth International Red Cross Conference (Brussels) adopted an important resolution in which the role of the Red Cross for the maintenance of peace and the reconciliation of nations was defined.

The ICRC pursued its efforts to protect civilians, but the draft proposals it submitted to international conferences were not considered by the States before the outbreak of the Second World War.

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However, from 1930 on, the hopes placed in a world legal system founded on peaceful co-operation among nations gradually faded as the economic situation deteriorated and political ambitions swelled.

Disturbances broke out in a number of colonies and mandated territories. The ICRC was not yet ready to intervene in those situations, as the territories in question were considered by the European Powers to lie within their sole jurisdiction.<sup>2</sup>

In 1932, the Disarmament Conference ended in failure. With the rise of totalitarian governments to power, more conflicts broke out: the war between China and Japan, the war in Abyssinia and the Civil War in Spain — heralding the Second World War.

When the ICRC attempted to perform its activities in the countries involved in those conflicts, it met obstacles which it was not always able to overcome. As far back as 1932, it had sent a delegate to Shanghai. Again, in 1937, it wished to resume its aid in China; it appealed for and centralized relief consignments, but was unable to extend its protection activities in the manner it wanted.

In the Abyssinian War, the ICRC could only set up a delegation on the Ethiopian side, but was not allowed to operate in the zones

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<sup>1</sup> The Hague Convention of 18 October 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 6 July 1906 (Convention No. X).

<sup>2</sup> In certain isolated cases where a rebel movement had seized possession of a territory which was no longer under the control of a mandatory Power (for example, during the war in the Moroccan Rif or the Djebel-Druze rebellion) the ICRC had offered its services in 1925 and had tried to send a mission to the areas concerned.

occupied by Italian troops. Its mission was centred on medical assistance to hospitals, on the development of the Ethiopian Red Cross and on making diplomatic representations with a view to protecting against air attacks the ambulances sent by the National Societies of various countries to territory under Ethiopian control.

In the Spanish Civil War, however, which very quickly took on the aspect of an international conflict as foreign powers became involved, the ICRC obtained the consent of both parties to open delegations in the republican and nationalist zones. Its main tasks were to send relief, to visit military and civilian prisoners, to give protection to hostages, to provide assistance to refugees, to forward letters and to trace missing persons.

These conflicts brought out the weakness of the protection available to war victims as compared to the technical advances of weaponry and of methods of combat. The towns destroyed by air bombings, the long lines of refugees on the roads, the executions of hostages bore witness to the necessity to strengthen humanitarian law and devise practical protection measures. The ICRC, pursuing and encouraging studies on the protection of the civilian population against the dangers of aerial and chemical warfare, began to lay the foundations of five draft conventions: revision of the Prisoners of War Code; revision of the Hague Convention No. X (maritime warfare); a convention for the protection of civilian enemy nationals on the territory of a belligerent; a convention for the creation of hospital towns and hospital areas, and a convention relative to medical aircraft. But when war broke out in 1939, the Diplomatic Conference which should have deliberated on these projects had not yet been convened.

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### THE SECOND WORLD WAR

Ruthless political decisions, checked by no negotiated agreement of any kind, foreshadowed, as the weeks went by in 1938, the imminent outbreak of a conflict. The ICRC made its preparations. Although it could not foretell its extent or duration, it set up a Commission on

wartime activities and made plans to organize a Central Prisoners-of-War Agency on an even bigger scale than the one it had created during the First World War.

But the humanitarian Conventions, the foundation of its activity in wartime, did not constitute a complete protective barrier against the excesses of warfare. There were wide gaps in their provisions allowing savage and arbitrary acts, like armies pouring through the breaches of only partly built fortifications.

In 1939, the protection afforded by the Geneva Conventions extended only to the wounded and sick in armed forces on land, the wounded, sick and shipwrecked members of armed forces at sea, and prisoners of war; several belligerents, moreover, were not parties to the 1929 Geneva Convention relative to the treatment of prisoners.

Where that Convention was applied, the ICRC could exercise its protection over prisoners of war: it could visit them, have certain improvements made in the camps, send them relief, record their names, forward letters, arrange for their repatriation, and take steps to prevent acts of reprisal from degenerating into irreversible measures.

On the other hand, where the applicability of the Convention was challenged, the ICRC had no possibility of exercising its activity. This was the case on the East European front, and partly in the Far East.

In other spheres, the ICRC could only count upon the negotiations it conducted with governments and on limited agreements, in its attempts to mitigate the excesses committed against non-combatants and those no longer able to fight who were not protected by any convention. In the countries occupied or annexed by a belligerent, the civilians were defenceless; those combatants who continued to fight in occupied territories or after their government had surrendered to the enemy were, if captured, generally not treated as prisoners of war; ethnic and religious minorities could not escape from a grim fate; the extension of submarine warfare and blockade and counter-blockade measures destroyed a large proportion of the merchant fleets of the world, seriously reducing the effect of the Convention relative to maritime warfare and gravely affecting the supply of goods for the civilian populations; the bombing of densely populated cities and the use of incendiary bombs the effects of which impeded the efforts of rescuers brought all the weight of the war upon the civilians, whose losses in lives during the conflict were equal to those of the combatants.

The ICRC succeeded in obtaining for civilian internees protection comparable to that afforded to prisoners of war. Those people were a specifically defined category: civilians who were nationals of a belligerent State, residing on enemy territory when hostilities commenced and interned solely because of their nationality. For other civilians who were defenceless, for those who could not claim the protection either of the law or of a State, for those whom an implacable system of repression drove relentlessly to their deaths, no other possibility was open to the ICRC save persuasion and patience. Although nothing could be done against a power which was believed for long to be irresistible, the ICRC succeeded sometimes in alleviating the distress of some persecuted groups, or in preventing their annihilation in the places where they were held captive.

Action by groups of partisans was not a new development; examples could be found in past wars. But the States had always refused to grant legal protection to combatants who failed to qualify for the status defined in the Regulations annexed to the Hague Convention No. IV, or who continued their struggle as partisans owing allegiance to a government in exile. In such situations, where there was no room for reciprocal treatment, the ICRC nevertheless obtained that organized groups belonging to liberation movements attached to the command of one of the belligerents should be considered as combatants entitled, if captured, to prisoner-of-war status.

With food shortages and well-nigh famine in most European countries, the ICRC began to put into execution the vastest relief programmes it had ever made. To overcome the difficulties arising from the scarcity of goods, credit problems and lack of transportation, it set up in conjunction with the League of Red Societies a joint purchasing body and employed its own means of distribution, its own lorries and special trains throughout Europe. When it became apparent that bringing supplies by sea had become too dangerous an enterprise, because of the belligerents' policies of blockade and counter-blockade, the ICRC set up a special agency, the "*Foundation for Red Cross Transports*", which gave it the possibility to send goods in vessels sailing under the Swiss flag and flying the Red Cross protective sign.

The escalation of indiscriminate air bombing was on such a large scale that it confirmed the fears about a practice which had been started towards the end of the First World War and had been employed in

other conflicts in the intervening period. The Sixteenth International Red Cross Conference (London, 1938) had called upon governments to conclude agreements to ban or restrict air bombing, and the ICRC had prepared, at the same time as the draft convention for the protection of civilians, a draft agreement on the creation of hospital zones and localities. During the war, it sent a number of appeals to the belligerents to put an end to indiscriminate bombing. But the ICRC's appeals went unheeded, and indeed it was by the tremendously destructive power of the air weapon that the Second World War was brought to a close with the destruction of the cities of Hiroshima and Nagasaki.

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The ICRC had provided its aid and protection whenever the Conventions gave it grounds for action. By the end of the war, its delegates, stationed in eighty-one delegations throughout the world, had made 11,000 visits in the camps. The total amount of relief supplied by the ICRC to prisoners of war and civilian internees was 445,702 tons, the value of which was estimated at 3,400 million Swiss francs. The Central Prisoners-of-War Agency had forwarded 14 million prisoners' letters and cards and 24 million civilian messages, and had compiled 30 million index-cards.

On the other hand, in those fields which were not covered by any convention or agreement, the ICRC's efforts had been often restricted, at times deliberately obstructed. When hostilities were brought to an end, the ICRC therefore applied itself to bringing humanitarian law up to date, especially in matters for which flagrant inadequacy of provisions had been revealed: the protection of civilian internees and of civilians living in occupied territory, the extension of humanitarian law to non-international armed conflicts, the protection of inhabitants against indiscriminate warfare, the limitation of measures of blockade, that is to say, in general, an amplification of the Geneva Conventions. The Second World War had given eloquent proof of the fact that without treaty protection no assistance could be efficaciously provided.

## DEVELOPMENT OF THE ICRC'S TASKS AFTER THE WORLD WAR

The ICRC plays a fundamental role in the elaboration of the Geneva Conventions. It falls to the ICRC, in its statutory capacity as the promoter of international humanitarian law, to explore the new prospects open to the law of Geneva, to convene the preparatory conferences of National Society representatives, to consult government experts and, on the basis of those activities, to submit the drafts of a new convention to the International Red Cross Conference, and then to the representatives of States, convened to a Diplomatic Conference, who would not necessarily accept all the proposals of the International Red Cross Conference. Every article of the Geneva Conventions is submitted to the scrutiny of governments. Two aspects are considered: what action is an adversary required to take, and what demands does the article make on the government itself. Between those two requirements, the governments may settle on a compromise. The Red Cross proposes; the States dispose.

During the last years of the war, the ICRC had gathered a large number of data on the positive results and shortcomings of its work to protect war victims. On the basis of an analytical study of those activities, it was able to present, in July 1946, to a preliminary conference of Red Cross Societies, and again, in April 1947, to a conference of government experts, the first drafts for a revision and an extension of the Geneva Conventions. The drafts were submitted to the Seventeenth International Red Cross Conference (Stockholm, 1948) and served as the basis for the deliberations of the Diplomatic Conference, convened in April 1949 by the Swiss Federal Council, which concluded with the adoption by the representatives of the States of the four Geneva Conventions of 12 August 1949.

Historically, the 1949 Conventions stem directly from the conventions derived from the first Geneva Convention of 1864, the essential principles of which they developed by adapting them to the changes that had taken place in the concept and conduct of war, in the extension of the struggle to every category of persons, in the total aspect of war

and in the duration of captivity. The earlier conventions, which were adopted at different times and had different origins, were brought up to date and harmonized by the 1949 Conventions. The provisions were presented in a more balanced form, and all four categories of war victims were dealt with in the same fashion. The new Conventions were:

- The First Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; this was a revision of the First Geneva Convention of 1929;
- The Second Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, a revision of the Hague Convention No. X of 1907 (maritime warfare);
- The Third Convention relative to the Treatment of Prisoners of War, a revision of the Prisoners of War Code of 1929;
- The Fourth Convention relative to the Protection of Civilian Persons in Time of War, a new convention, derived from the draft which had been established, but not adopted, before the Second World War (Tokyo Draft).

Significant innovations were adopted on a number of points which had not been covered, or had been only partially covered by the law in force in the earlier conventions. Here are some of the most important of these provisions.

*Extension of the categories of protected persons.* Besides the categories of persons already protected by the terms of the three earlier Conventions, international humanitarian law now protects civilian persons: civilians in the territory of an enemy Power, and the civilian population of enemy-occupied territories. A convention on civilians had been eagerly awaited in the period between 1918 and 1939, but unfortunately war broke out first. It is recognized that the Fourth Geneva Convention of 1949 constituted an important advance in humanitarian law, in one of the most disputed fields of law and one of the most intractable to legislation.

Furthermore, the norms establishing the status of prisoner of war were enlarged to include members of volunteer corps and of organized resistance movements — i.e. partisans — and members of regular armed

forces who profess allegiance to a government or an authority not recognized by the detaining Power.

*Prohibitions allowing of no exception.* These rules ban every form of inhumane treatment, all unlawful acts, or omission of acts, leading to the death of protected persons or endangering their health; they forbid medical and scientific experiments on the person of such individuals, torture, acts of brutality and reprisals.

*Extension of the field of application of the Geneva Conventions and of their principles.* In *conflicts between States*, the Conventions apply to all cases of declared war or of any other armed conflict. The Conventions also apply to all cases of occupation of a territory even if the said occupation meets with no armed resistance. In addition, the Conventions refer for the first time to *armed conflicts not of an international character*. In such an event, and without prejudice to any special agreements, only article 3 common to all four Conventions is applicable—and not the whole set of provisions contained in the Conventions. Article 3 prohibits inhumane and arbitrary measures, provides for the respect of the wounded and sick, permits the ICRC to offer its services and invites the parties to a conflict to bring into force, by means of special agreements, all or part of the Conventions.

*Reinforcement of scrutiny measures.* The role of the Protecting Powers is reaffirmed and extended and the ICRC is granted the same rights; the function which the ICRC had assumed during the Second World War in visiting camps and distributing relief is thus explicitly confirmed.

*Sanctions.* The 1949 Conventions introduced for the first time the notion of *penal sanctions* in the event of grave breaches. They impose upon every State the obligation to enact legislation to provide effective penal sanctions to repress such acts, to search for the persons having committed the grave breaches, to bring such persons before its own courts or to hand them over to another High Contracting Party concerned. They lay down, too, that at the request of a party to the conflict an enquiry should be instituted into any alleged violation of the Conventions, according to a procedure to be decided upon between the interested parties.

*Protection against certain effects of war.* Without entering into the sphere of the laws and customs of war, the 1949 Conventions laid down the measures to be taken to ensure additional protection of military and civilian wounded and sick and of certain categories of civilian persons against the effects of war, in particular by the establishment of hospital and safety zones, so as to shelter such persons from land and air bombardments. But it should be noted that the provisions in the Conventions applied only to certain specific situations and did not provide for a general protection of the civilian population. It will be seen later that they were supplemented by the 1977 Additional Protocols, which laid down a number of rules to be applied and precautions to be taken with a view to protecting civilians, civilian property and the natural environment against the effects of hostilities.

Besides the mandates conferred upon the ICRC in the above-mentioned fields (visits to military and civilian prisoners, despatch of relief to prisoners of war, civilian internees and inhabitants of occupied territories, organization of transport by ships, railway trucks and lorries, establishment of hospital zones and localities), it was also given the task of creating the information agencies on prisoners of war and civilians, which have now become permanent institutions grouped under the name of *Central Tracing Agency*. The ICRC moreover received the confirmation of its right of initiative, already expressed in the Statutes of the International Red Cross and in its own Statutes. This right was not a mere stylistic formula; its special significance was that it allowed the ICRC to put itself to a certain extent at the forefront of positive law and to offer its humanitarian intervention when it deems it necessary in a situation of conflict, whether the conflict is covered by the Geneva Conventions or not.

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At the conclusion of their deliberations at the Diplomatic Conference of 1949, the representatives of the States had expressed the hope that, “*in the future, governments may never have to apply the Geneva Conventions for the Protection of War Victims*”, and that “*the Powers, great and small, may always reach a friendly settlement of their differences through co-operation and understanding between nations*”. The actual fact was that, at the very time that the Conference was expressing this

hope, both great and small Powers were already engaged in various conflicts, some of which—as in Indo-China, Indonesia, the Asian Sub-continent, Palestine—ushered in an era of disturbances and clashes, the consequences of which are still with us today. The period stretching from the Second World War until the present time is one of continuous wars and conflicts, demanding constant ICRC involvement. In those thirty-five years or so, the ICRC has had to intervene in more than fifty conflicts and troubles, many of them showing simultaneously the characteristics of international, internationalized and national conflicts.

Inevitably, numerous problems had to be tackled by the ICRC. In conflicts between States, the applicability of the Geneva Conventions was at times disputed. In armed conflicts not of an international character ICRC action depended on the acquiescence of the parties concerned. Neither internal disturbances, nor situations of internal tension or repression were mentioned in the humanitarian conventions. The definition of combatant, too, was ill adapted to the types of conflict in which every citizen was eventually, however reluctantly, engaged.

Moreover, new elements gradually transformed and enlarged the ICRC's field of action during the post-war years, in respect of the legal concepts as much as with regard to protection and assistance. Nations which had fought as allies during the war in order to achieve a common goal became opponents. The atomic weapon remained the monopoly of a single nation for only a short period. Decolonization and the awakening of the Third World countries to their position in the community have allowed peoples with little economic or financial means to get their opinions heard in international gatherings. Outbreaks of conflicts in impoverished regions or in areas with scarce resources have led to a considerable and often urgent extension of relief operations. Lastly, the rise, in many countries, of opposition movements contending against the government in power has led to the arrest and imprisonment of the regime's opponents, who are considered as political detainees by the ICRC but who do not generally have that status.

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Ever since the Second World War came to an end, not a year has gone by without a conflict breaking out, or hostilities being resumed

or expanded in some area or other of the world. Some of those conflicts still constitute a dangerous threat to world stability and if a list is drawn up of the conflicts that have taken place in the course of the thirty-five years from 1945 to 1980, one can see that belligerent activities have continually occurred and have tended to spread: wars of independence in Indonesia and in Viet Nam; civil war in Greece; war of partition between India and Pakistan; the Palestine conflict; the Bengal conflict; the war in Korea; the war in Algeria; the Suez conflict; troubles in Hungary; disturbances in Goa; insurrection in Cuba; troubles in Ceylon and in Lebanon; the Congo-Katanga affair; the Bizerta conflict; civil war in Laos; conflicts in Yemen; incidents in Irian-Barat; the border conflict between India and China; the conflict in Cyprus; the dispute between Malaysia and Indonesia; the Kashmir conflict; the second Indo-China war; internal strife in Indonesia; the Nigeria-Biafra conflict; the Six Days War in the Middle East; the conflict between Honduras and El Salvador; troubles in Jordan and in Bolivia; conflicts in Cambodia; the Bangladesh war; troubles in Sri Lanka, Northern Ireland, Burundi; the resumption of the Israel-Arab war; troubles in the Philippines; fighting in Lebanon; the coup d'Etat in Chile; a recurrence of the Cyprus conflict; civil war in Angola; the conflict in the Western Sahara; fighting in Timor; civil war in Lebanon; the conflicts in Ogaden, Rhodesia-Zimbabwe and Namibia/South West Africa; troubles in Chad, Zaire, Nicaragua and Uganda-Tanzania; the conflict between China and Viet Nam. In all those circumstances, the ICRC decided to lend its services; in some cases, it merely entered into negotiations with the authorities or sent delegates on relatively short missions, but in many others, it had to undertake lengthy operations, some of which have not yet been terminated: visits to prisoners, civilian internees and political detainees, various activities consisting in repatriating persons, tracing the missing and helping refugees or members of the civilian population.

In 1979 alone, the ICRC intervened more or less actively in situations of conflict, internal disturbances or internal tension in about forty countries. Its delegates, stationed in thirty delegations and twelve sub-delegations, visited over five hundred places of detention, containing 40,000 prisoners and detainees. During that year, too, it undertook several large-scale relief operations in aid of refugees, including the vast medical aid programme for Cambodian, Lao and Vietnamese

refugees in Thailand, in which five hundred medical and paramedical personnel took part under the auspices of the ICRC.

At the present time, therefore, where the ICRC is concerned, there is no distinguishing periods as “time of peace” and “time of war”. There is no day when some conflict is not taking place or some act of violence is not being perpetrated somewhere in the world, and not a single hour passes without an ICRC delegate’s being involved in a humanitarian action.

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In order to meet those challenges, necessitating a constant mobilization of its forces, the ICRC has strengthened its means of action, not by changing radically its structure, but by a rational adaptation of its methods to the circumstances demanding such changes.

The permanent climate of belligerency described above is one of the factors included in those circumstances, but another is the periodical outbreak of large-scale conflicts, causing extensive and prolonged upheavals in the regions where they occur. At times, the ICRC has been taken unawares by these explosions of violence, either because the means for action were lacking, or because its action was restricted by basic objections of principle, by the absence of any treaty provisions, or by obstacles to the forwarding of relief. The ICRC—and likewise the other members of the International Red Cross—was accordingly driven to reconsider its potential and its methods,<sup>1</sup> for while it may be true that the ICRC cannot be held responsible for the restrictions limiting its activity, it cannot be denied that a body claiming to conduct a protection action is morally obliged, if it does not wish to be content with merely symbolic acts, to obtain somehow or other the means to bring that action to a satisfactory conclusion.

The ICRC, while keeping to the fore its work in aid of prisoners captured during armed conflicts and of civilian populations, even where the applicability of the Geneva Conventions is questioned, endeavours

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<sup>1</sup> In 1972, the ICRC and the League, in co-operation with the National Societies, decided to entrust a group of specialists with a critical study of the activities, structures and methods of the national and international bodies which form the Red Cross, and to educe guidelines for them. The conclusions of that study were issued in a set of papers, published under the direction of Mr. Donald D. Tansley: *Re-appraisal of the Role of the Red Cross. An Agenda for Red Cross*. Henry Dunant Institute, Geneva, 1975.

to rationalize its work in aid of political detainees, that is to say, in the wording of a more general definition, in aid of *persons incarcerated in situations of internal disturbances or tensions*.

The ICRC clarified its position on this subject, in the report which it submitted jointly with the League to the Twenty-third International Red Cross Conference (Bucharest, 1977) entitled "The ICRC, the League and the Tansley Report"<sup>1</sup> in which the main considerations set out in the study on the *Re-appraisal of the Role of the Red Cross* are examined:

*"Internal disturbances and tensions have a general characteristic: the incarceration of certain categories of persons by the authorities. These persons have in common the fact that their actions, statements or writings are regarded by the authorities as constituting such opposition to the existing political system that they must be dealt with by depriving them of their freedom. The legal or material nature of the sanctions imposed may vary. It may be aimed at punishment, prevention, re-education or reintegration; it may be the result of a sentence imposed under the regular laws in force or by virtue of emergency laws and regulations; it may be the result of an administrative measure of limited or unlimited duration."*

The ICRC in this case has to deal with what may be termed an "extra-conventional" situation. Unlike the case of people protected by the Conventions, it does not have a recognized right of access to the places where persons are incarcerated; its activities are subjected to special agreements the applicability of which may be questioned at any time; the political detainees are, as a general rule, the nationals of the State holding them in detention; the measures taken against them are coercive and not just security measures.

It is true that the international human rights conventions and the general principles contained in the humanitarian conventions govern the situation of the detainees to a certain extent. But there are only limited possibilities of exercising control when international humanitarian law conflicts with municipal law, which in its more extreme forms is simply the law of the strongest. By its representations, its appeals for equity, the ICRC seeks to get visits to political detainees accepted

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<sup>1</sup> Published under the title: *The ICRC, the League and the Report on the Re-appraisal of the Role of the Red Cross*, Geneva 1979.

by the States as a practice based on custom, pending a legal foundation given by a diplomatic convention.

The ICRC's efforts on this matter have produced results; from the end of the Second World War until 1979, its delegates visited some 300,000 detainees in 72 countries, held under circumstances not covered by the Geneva Conventions. These figures are undoubtedly eloquent, but they certainly do not constitute more than a fraction of the total number of detainees, for it should be borne in mind that those kept in the worst conditions and whose lives are most imperilled are precisely the ones whom no one is allowed to see.

The protection activities which the ICRC imparts to the victims of armed conflicts and troubles involve more and more assistance activities for the civilian population, refugees and displaced persons. By their size and emergency character, such operations call for huge material resources, the establishment of logistical means proportional to the needs, and the engagement of specialized staff in matters of relief planning and distribution. The ICRC at present performs these activities in conjunction with other Red Cross bodies—the League and the National Societies—and, if necessary, with inter-governmental aid agencies. By sending or co-ordinating teams of surgeons and other medical personnel, setting up field hospitals and advanced surgical units and furnishing pharmaceutical supplies, the ICRC ensures that the wounded and sick among the civilian population and refugees will receive medical treatment, at a time when the medical services of the countries affected by an emergency situation are no longer able to cope with the crisis.

This increase in the ICRC's commitments entails a corresponding expansion of its services, material resources and means, in particular, the establishment of permanent delegations in the affected areas and the setting up of a radiocommunications network linking the main radio station at Geneva with its delegations, on special wavelengths allocated to the Red Cross. Similarly, the Central Tracing Agency opens, when necessary, local information offices in the areas where conflicts or mass movements of people are taking place; it adapts its methods and processes collected information by computer.

## PRESENT TRENDS AND OUTLOOK

Giving additional means of action to the ICRC, however, would not help it achieve its aim if it were not accompanied by a corresponding development in international humanitarian law. As has been observed in the course of this account of the ICRC's history, while the field of application of the Conventions is gradually enlarged, the might, methods and resources of belligerents also expand, with the result that violence, re-emerging under new forms, is never fully brought under the control of law.

Bringing international humanitarian law more into line with contemporary reality was one of the most urgent and also one of the most complex tasks fulfilled by the ICRC in the course of the last decade. The earlier conventions had been concluded in periods of relative calm, or what had appeared to be so, compared to the large-scale conflicts that had gone by, and they were founded generally on the lessons brought home by past events. That was not the case when the ICRC began the drafts of the new conventions. The conditions calling for a strengthening or a re-affirmation of the law were not based on considerations found in archives or reports; they were indeed part of the events of the day, and every project, influenced by the immediate circumstances, could not be entirely free of political overtones. It was therefore necessary—without making any alterations to the edifice of the Geneva Conventions—to construct conventional adjuncts which would be acceptable to the various cultures and different modes of thinking and, being adapted to all of them, would be adopted by each and every one.

No less than twelve years of research, study and consultations went by before that aim was attained.

The Twentieth International Red Cross Conference (Vienna, 1965) had formulated the principles to which all governments and other authorities responsible for action in armed conflicts had at least to conform (Resolution XXVIII):

- the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;

- it is prohibited to launch attacks against the civilian populations as such;
- distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;
- the general principles of the Law of War apply to nuclear and similar weapons.

In this same resolution the Vienna Conference urged the ICRC to pursue its efforts for the development of international humanitarian law, with particular reference to the need for protecting the civilian population against the sufferings caused by indiscriminate warfare.

On the grounds of its own activities, of the support it received from the International Conference on Human Rights (Teheran 1968), of the mandates given by successive International Red Cross Conferences, of the conclusions reached by representatives of National Societies and by conferences of governmental experts, the ICRC was finally able to submit the draft of two Protocols Additional to the Geneva Conventions to the scrutiny of the Diplomatic Conference convened on 20 February 1974 at Geneva by the Swiss Federal Council.

Nearly four years more elapsed before agreement was reached on the definitive wording of the Protocols. Between February 1974 and June 1977 the Diplomatic Conference held four sessions and numerous consultations also took place.

The delay in obtaining agreement among the participants is a measure of the obstacles that had to be surmounted and of the interest which the States showed in the elaboration of the new texts. Not only was the number of participants extraordinarily high but the delegates took an active part in the discussions.<sup>1</sup> The ICRC's role was not confined to the preparation of the draft projects. It participated in the work of the Conference in an expert capacity and was therefore able to state its opinion on fundamental humanitarian questions and to contribute towards seeking compromise solutions when the views of the States' representatives were at variance.

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<sup>1</sup> At each of the sessions, over a hundred States were represented. Furthermore, national liberation movements recognized by the regional inter-governmental organizations concerned were invited to participate in the deliberations of the Conferences, though without having the right to vote.

It was not intended that the Protocols adopted on 8 June 1977 should replace the Geneva Conventions. They strengthened the provisions in those fields where the Conventions had failed to provide fully efficacious measures and introduced new provisions in those other spheres which had remained untouched so far.

The writers who drafted the Protocols considered it was important to put a stop to the unbridled extension of methods of warfare, which appeared to escape gradually all rules and the effects of which restricted substantially the activities traditionally exercised by the Red Cross in the fields of protection and assistance. It had become only too obvious that the concepts of armed conflict and of combatants had to be enlarged and updated; that it was no longer possible to be content to send relief to the victims without passing legislation on the use of weapons; that the immunity of non-combatants and of the civilian population had to be enforced by hard and fast rules; and that relief organizations had to be safeguarded by additional guarantees in order to enable them to perform their activities.

In this context, Protocol I, applicable in international armed conflicts, introduced a number of significant ideas.

The provisions of the Geneva Conventions and of Protocol I are now applicable not only in the circumstances provided for in the 1949 Conventions, but also in "*armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racial regimes in the exercise of their right of self-determination*". The status of combatant—and consequently that of prisoner of war—was granted to all members of organized armed groups and units which are under a command responsible to a Party to the conflict, therefore including members of resistance and liberation movements, subject to conditions much less stringent than previous rules.

Protocol I, repeating certain provisions relative to the conduct of war that had formed part of the law of The Hague, reaffirmed the fundamental principle of that law, which stated that "*The right of the Parties to the conflict to choose methods or means of warfare is not unlimited*". It went on to prohibit weapons, projectiles, material, means and methods of warfare of a nature to cause unnecessary suffering or widespread, long-term and severe damage to the natural environment.

The rules in Protocol I providing general protection of the civilian population against the effects of hostilities are among the greatest

juridical advances obtained by the Diplomatic Conference. The Protocol bans attacks against the civilian population and individual civilians and indiscriminate attacks; imposes in the conduct of military operations all precautionary measures necessary to spare the civilian population and civilian property; defines non-defended localities and zones under special protection; and extends to civil defence organizations the protection of the Geneva Conventions.

Furthermore, Protocol I strengthens certain provisions of the Geneva Conventions in most of the situations which were only partly covered by the Conventions: protection of medical military units and of civilian medical missions, of medical transports, of relief operations in aid of the civilian population, treatment of persons in the power of a party to the conflict, special protection for women and children.

Provisions relative to the activities of the ICRC and of National Red Cross, Red Crescent and Red Lion and Sun Societies were strengthened, while the extension of the field of application of the Conventions brought with it a corresponding reinforcement of the provisions relating to the repression of breaches of humanitarian law.

Two important annexes were attached to Protocol I: Annex I, the regulations concerning the identification of medical personnel, the distinctive signals for the identification of land, sea and air transports, and the creation of special signs for civil defence personnel and for works and installations containing dangerous forces; and Annex II, the model of an international identity card for journalists on dangerous professional missions in time of war.

Protocol II, which is applicable to non-international armed conflicts, was drafted in the form of a simplified version of Protocol I, its provisions being adapted to the special conditions prevailing in an internal conflict. Here, States are considerably less inclined to make any concessions that would encroach upon their authority, since it is precisely that authority which is challenged. All the same, Protocol II is a no less remarkable advance in humanitarian law in a field where the legislators could not draw upon ancient custom, as had been the case for the rules which respect to assistance in international armed conflicts. It thus takes up and amplifies the substance of article 3 common to the four Geneva Conventions of 1949 and reaffirms the principles set forth in that article. Protocol II furthermore lays down the fundamental guarantees afforded to all persons who do not take part or have ceased

to take part in hostilities, it establishes how persons deprived of their liberty should be treated, and it extends the fundamental rules of humanitarian law to the wounded, sick and shipwrecked, to the medical and religious personnel and to the civilian population during non-international armed conflict.

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The fourth principle in Resolution XXVIII of the Vienna International Red Cross Conference, which stated that the general principles of the law of war applied to nuclear and similar weapons, reflected the concern with which the Red Cross world viewed the destructive effects of the use of atomic weapons. It was in the same spirit that the ICRC had submitted to the Nineteenth International Red Cross Conference (New Delhi, 1957) its *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War*, which according to its own commentary “would in practice rule out the use of nuclear weapons in the manner which all can remember”.

However, neither the resolutions adopted by International Red Cross Conferences to ban atomic weapons, nor the *Draft Rules* were backed by practical measures. Negotiations relative to the regulation and limitation of nuclear weapons have continued to be the exclusive province of the superpowers.

It should nevertheless be stressed that this particular proposition is a general axiom which the world of the Red Cross has not renounced. The applicability of the Geneva Conventions may depend upon the legal relationship between the parties to a conflict or between the combatant groups, but it should not be made subject to the nature of the weapons employed, otherwise its character of universality could be lost. It is not the law that should be adapted to weapons, but rather weapons to the law.

The adoption of the Protocols was a stage in a lengthy evolution by which the sphere covered by the Geneva Conventions and the field of the ICRC's conventional activity in time of armed conflicts were substantially extended, without, however, covering all situations of violence. Besides the situations provided for by humanitarian law, the ICRC can take advantage of its right of initiative and of the general principle expressed in the preamble to the 1899 Hague Convention No. II (the “Martens clause”) and repeated in the two 1977 Protocols, which

state that in cases not covered by the law in force, civilians and combatants remain “*under the protection and authority of the principles of humanity and from the dictates of public conscience*”.

Bearing in mind this evolution, we can summarize as follows the ICRC’s present field of and grounds for intervention:

- *in an international armed conflict*. The Geneva Conventions and, in certain cases, Protocol I are applicable.
- *in an internationalized non-international armed conflict*. The treaty obligations of the parties vary according to the juridical status attributed to them, but are not less than those specified in article 3 common to the four Conventions.
- *in a non-international armed conflict*. Article 3 common to the four Geneva Conventions and, in certain cases, Protocol II are applicable. The parties have obligations towards persons, but not explicitly towards the ICRC. In such situations, the ICRC’s right to offer its services is formally recognized.
- *in the case of internal troubles*. In such circumstances where there are no parties as understood in international humanitarian law the ICRC, basing itself upon its right of initiative and upon the Statutes of the International Red Cross, may offer its services if it judges that the grave nature of the events, or their duration, and the number of victims are such that protection activities are necessary.
- *in the case of internal tension* (without armed confrontation). The ICRC can only base itself on custom which it itself has established over the years, and on its right of initiative.

Each of the ICRC’s activities to provide protection to victims of those different types of conflicts and confrontations is accompanied by some form of assistance, for the benefit of many different categories of persons: prisoners of war, civilian internees, refugees, populations in troubled regions affected by famine, families of detainees and the detainees themselves.

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It is essential to develop humanitarian law just as it is necessary to watch over its application, but it is no less important to make it

known. The dissemination of knowledge of humanitarian law is a far-sighted form of protection.

Apart from those who have made a special study of the matter, there are few persons able to find their way about in the 559 articles contained today in the four Geneva Conventions and in the two Additional Protocols, and could say that the many signs of protection held no problems for them. It is not only members of the army general staff and commanding officers who should be conversant with the terms of the Conventions; in a period when hostilities often consist in a series of small desultory operations, every combatant should be familiar with their provisions so as to avoid committing infractions, and every non-combatant, too, so as not to misuse them.

Appointed by its own Statutes to work for the better understanding and dissemination of the Geneva Conventions, and invested with the mandates of the International Red Cross Conferences to that effect, the ICRC has put in the forefront of its standing activities the dissemination of knowledge of humanitarian law. Already before 1939 and to a much greater extent after the Second World War, it prepared legal studies, published the commentary on the Geneva Conventions, and organized courses given by members of its staff at institutes of higher education and faculties of law.

The programme for the dissemination and teaching of the humanitarian Conventions and of the principles and ideals of the Red Cross has expanded substantially. All the Red Cross bodies—the League, National Societies and ICRC—take part in the programme, in keeping with the characteristic trend of the Red Cross to adapt its activities to our times.

This particular evolution has been marked by seminars, courses and publications for primary and secondary school pupils and teachers, university students and teachers, and officers and other ranks for the armed forces. In addition, there have been seminars for people speaking the same language or from a particular geographical region, where National Societies have studied with the ICRC how to instil a better knowledge of humanitarian law and spread its principles among the armed forces, universities, schools and the public at large.

It will be noted that this work is more than just providing information on the application of the humanitarian Conventions in time of war. Today, the Red Cross does not wish to be considered only as a rescue

service in disaster (war, natural disasters, famine, epidemics); it seeks to play an educational role and to become intrinsic to the thinking of communities. To do so, it requires to build upon universally accepted principles and to work out its attitude to a universal problem: the prevention of war.

*(To be continued)*

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