

# Origin and Evolution of the Statutes of the International Red Cross

by André Durand

*As the question has recently arisen of a possible revision of the 1952 Statutes of the International Red Cross and of the 1969-1974 Agreement between the ICRC and the League, International Review considered that it would be both interesting and informative to ask Mr André Durand, former ICRC delegate and historian, author of the volume, "From Sarajevo to Hiroshima", of the History of the International Committee of the Red Cross, to write an article on the history of these Statutes and of this Agreement. The article traces the events, the various ideas and the experience of our predecessors which originated and marked the successive steps in the drafting and evolution of these texts.*

## 1. A brief history

The first Statutes of the International Red Cross date back to 1928. Until then, the International Red Cross had no constitution.

It should not be deduced from this that the subject had not been considered. The First International Conference of the Red Cross (Paris, 1867) and the Second (Berlin, 1869) studied the question of the international organization of the Red Cross. Deferring consideration of the topic to a later session, they confirmed the ICRC in the tasks assigned it by Article 10 of the Resolutions of the 1963 Conference:

*"The exchange of communications between the Committees of the various countries shall be made for the time being through the intermediary of the Geneva Committee."*

### **An instinctive predilection**

In 1876, Gustave Moynier was invited to give a talk at the International Congress on Hygiene, Rescue and Social Economy (*Congrès international d'Hygiène, de Sauvetage et d'Economie sociale*), held at Brussels, on "The federation of societies for the relief of military wounded" ("De la fédération des sociétés de secours aux militaires blessés"). The President of the ICRC took this opportunity of expanding on his ideas, in a more personal way perhaps than he would have done in a Red Cross congress.

*"This idea of a federation first struck me as I read the programme and I dwelled on the subject with an instinctive predilection. Here, I said to myself, is a way of looking at the relief societies that has hardly been thought of up to now; I have never experienced such an attraction to novelty elsewhere.—Then, I said to myself, if the spirit of association leads to great things, would not the association of associations be more fruitful still? And in this combination I caught a glimpse of the germ of considerable progress.*

*Reflexion has only confirmed this first impression and it is with the desire and the hope of sharing it with you that I broach the subject."*

Expanding upon this scheme, Gustave Moynier envisaged what the powers of this association ought to be, its members meeting in legislative assemblies, periodically or when circumstances required. Moynier knew that a constitution would not last forever and foresaw that the statutes of the future association would be revised from time to time:

*"Because the federation is not a temporary institution, its constitutive charter will, sooner or later, of necessity, require modification or improvement to keep abreast of new ideas and to incorporate the lessons of experience. A legislative body must therefore be established competent to revise the original agreement. This prerogative can only belong to international gatherings where all the societies are represented by envoys vested with appropriate powers."*

He also envisaged the future role of a central body, "permanent, distinct from the National Societies, and acting as the executive power of the federation". He enumerated its functions: to see that the members of the federation do not neglect their obligations, to decide on the admission of new societies, to publish the official bulletin, to organize, in the event of international war, an agency to facilitate relations between belligerent societies and with neutral countries, and to promote international law. Moynier does not comment on the composition of the executive body, merely saying:

*"The International Committee, which has its headquarters in Geneva, has up to now fulfilled similar tasks, in pursuance of resolutions passed in the 1863, 1867 and 1869 Conferences."*

In 1882, Gustave Moynier again considered the possibility of designating a central body. But he did not think it desirable to modify the structure of the International Committee, which, he said, had till then maintained the unity and harmony of the Red Cross. He concluded:

*"The way we see things, there is a strong case—although it was once considered—for not modifying the mechanism which has given satisfaction up to now, and it must be admitted has presented no appreciable inconvenience."*<sup>1</sup>

But the decision could only be taken by an International Conference, so the question was included in the agenda of the Third Conference (Geneva, 1884).

### **A family reunion**

The Geneva Conference introduced a major innovation into the structure of International Red Cross assemblies. The first two Conferences (Paris, 1867, and Berlin, 1869) had grouped together the delegates of the Central Committees and those of governments signatories of the Geneva Convention. The Third Conference followed this custom of including representatives of States in discussions which were of direct interest to them, notably questions relative to aid to the wounded, respect of the emblem and the drawing up of the law of war. Gustave Moynier, however, proposed, with an eye to strengthening the ties between the delegates of the Central Committees—who for fifteen years, from 1869 to 1884, had not met in a general assembly—that the representatives of the Central Committees should meet alone, within the framework of the International Conference, to discuss questions more specifically within their competence. This was how the *Commission of Delegates of the Central Committees*, made up of representatives of National Societies and of the ICRC, in which each body had one vote, was created.<sup>2</sup> Opening the first session, Gustave Moynier—who was to be President of the Commission—stated: *"To-day, for the first time, the Central*

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<sup>1</sup> Gustave Moynier, *La Croix-Rouge, son passé et son avenir* ("The Red Cross, its past and its future"), Paris, 1882, p. 254.

<sup>2</sup> See Pierre Boissier, *Histoire du Comité international de la Croix-Rouge*, volume I, *De Solferino à Tsoushima*, pp. 443 ff. (In French only.)

*Committees meet as a family (...)*". A tradition was born, which has continued until our own times, the *Commission of Delegates* becoming, in 1928, the *Council of Delegates*.

### **A legal and stable bond**

One of the topics before the Third Conference dealt with relations between the Central Committees. Should the structure of the ICRC be changed to give it the powers of a central body, or should the existing situation be maintained? Opening the discussion, the ICRC voiced its preference for the *status quo*. It proposed establishing, by a special resolution, "*the dual principle of the independence of the Central Committees regarding their internal organization and of international solidarity in time of war*", recognizing the usefulness "*of a neutral Committee to work to maintain and develop relations between the Central Committees, to set up in time of war an information agency, in a word, to look to the general interests of the Red Cross*". It did not take up the proposal for a federation of National Societies but it expressed the wish that while the Central Committees would maintain their own internal organization they would "*recognize themselves to be united by a close solidarity in time of war and accept the obligations following from it*".

Some delegations, however, suggested going further. The delegate of the Russian Red Cross, Councillor T. d'Oom, emphasized the necessity of strengthening the power of the central body "*in order to create a legal and stable bond between the Red Cross Societies*". De Martens, delegate of the Russian Government, suggested "*having the existence of the International Committee recognized by the governments signatories of the Geneva Convention*". Once again, the Conference referred the question to the next congress for consideration. In the meantime, an inquiry by the ICRC among National Societies showed that there was a clear majority in favour of the *status quo*.

### **The Karlsruhe Conference**

The Fourth Conference (Karlsruhe, 1887) in turn declared itself in favour of the established situation. This opinion was expressed by the restricted commission which undertook the preliminary study:

*"The formal recognition of certain rights necessarily implies making definitions, a meddling in the recruiting and functioning of the Committee, which would raise a mass of delicate questions and the very existence of the Committee would risk being compromised in their discussion."*<sup>1</sup>

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<sup>1</sup> The Marquis de Vogüé, President of the French Red Cross.

This point of view undoubtedly explains why the ICRC, while recognizing the advantages of a federation, did not want to see the constitution of a central body, statutorily defined. Any codification involves a limitation.

A certain number of delegations, however, suggested changing the composition of the Committee in order to increase its power:

*“If the International Committee were made up of delegates of the Central Committees which acceded to the Geneva Convention, and if its representatives were vested with certain powers, its field of activity would evidently be enlarged and the questions submitted to its consideration would have quite a different value.”*<sup>1</sup>

Once again, the debate was open between the advocates for complete autonomy of National Societies and the advocates for a strongly representative central authority. When the question went to a vote, the supporters of the *status quo* carried the day.<sup>2</sup>

### A community of principle

It seemed as if no progress had been made. However, the Conference adopted several important resolutions concerning the organization of the Red Cross.

One of these resolutions (Resolution III, paragraph 2) stressed that, while the National Societies remained independent in their own administration, they were bound by a “community of principle” or a “moral solidarity”<sup>3</sup>:

*“National Red Cross Societies, while remaining absolutely independent in their internal organization and administration, nevertheless recognize their common object; this community of effort establishes a community of principle, essential to their humanitarian work.”*

Another resolution deals with ICRC functions. The Conference decided (paragraph 4):

*“It is advisable, in the general interest of the Red Cross, that the International Committee whose headquarters are in Geneva, be maintained in the form in which it has existed since its inception.”*

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<sup>1</sup> Councillor d'Oom, delegate of the Russian Red Cross.

<sup>2</sup> See Pierre Boissier, *op. cit.*, pp. 450 ff.

<sup>3</sup> The text quoted by the *International Red Cross Handbook* since its first edition (1889) gives the words “moral solidarity” (p. 92). According to the summary records of the Karlsruhe Conference, “community of principle” was the term adopted in the meeting.

*It shall continue as before,*

- (a) *to endeavour to maintain and develop relations between the Central Committees,*
- (b) *to notify the constitution of new National Societies after having satisfied itself as to the basis on which they are founded,*
- (c) *to publish the "Bulletin International",*
- (d) *to set up in time of war one or more international Information Bureaux to which National Societies may have recourse in sending relief in cash or kind to the wounded of belligerent armies,*
- (e) *to lend its good offices or those of its Bureaux for the transmission of their correspondence by the National Societies of the belligerents, in time of war, if so required."*

Thus, although the Conference did not adopt the principle of a statutorily constituted central body, it at least provided the ICRC with terms of reference drawn up at the highest level and it defined its functions in a list which prefigures the statutes adopted in 1915.

Once again, the question was raised by the delegation of the Russian Red Cross before the Fourth Conference (Vienna, 1897). But the Conference sided with the opinion of its President, Gustave Ador, and stuck to its earlier decisions.

### **The house was not built**

The *status quo* remained until the end of the First World War. This does not mean that the Red Cross was not structured. The resolutions of the Geneva Conference of 1863, the statutes of the National Societies in their own countries, the resolutions of the International Conferences and the ICRC terms of reference made up a body of texts from which could be drawn, by juxtaposition and co-ordination, the elements of a constitution. But, at that time, war work was priority for National Societies. While recalling that many of them did include peace-time assistance activities in their programmes,<sup>1</sup> these were not their *raison d'être*, and the need for co-ordinated international action had not yet become apparent. Under these conditions, being, as they were, bound to the governments of their countries because of the official recognition that they needed from them, and in their capacity as auxiliary to the military medical services, the National Societies were not ready to place

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<sup>1</sup> Henry Dunant had already foreseen, in the second edition of *A Memory of Solferino* (1863), this peace-time role of relief societies.

themselves under the authority of a central body. This explains why they preferred to entrust international co-ordination and administration to a committee without the powers of a centralizing body and whose neutrality was recognized. As Gustave Moynier stated: "*The bricks and mortar were there, but the house was not built.*"

When the decision was taken to build, there was no shortage of architects.

## **2. The Red Cross splits into two**

It was precisely this peace-time role of the Red Cross which changed the situation after the First World War. The creation of the League of Red Cross Societies was, in the field of health, hygiene and disaster relief, seemingly the equivalent of the contribution made by the resolutions of the Geneva Conference of 1863 in the field of military medical services. Henceforward, the Red Cross had two specific fields of action, springing from the same conception but different in their execution.

### **The hope for everlasting peace**

The fact that the League was constituted independently of the ICRC changed the problem. The new organization certainly made contact with the founding body, but without any positive result. The founders of the League conceived of establishing an entirely new institution, with an international governing body at its head, in which the ICRC might perhaps be integrated, but which in any case would replace it. In spite of the intensive activity carried out by the ICRC during the conflict, regarding prisoners of war, civilian internees, relief distribution and the International Prisoner-of-War Agency, and in spite of the recognition that governments had come to accord it, in the eyes of the founders of the League, it did not appear to be just the entity to fulfil their purpose. The gigantic development of the National Societies in the belligerent countries and the hope for universal peace, to be ensured henceforward by the League of Nations, caused them to consign pre-war conceptions to history, to the past. To a new world, a new organization.

### **An agreement difficult to reach**

The representatives of the founding Red Cross Societies<sup>1</sup> and the ICRC met at Geneva but could only state their differences. The former

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<sup>1</sup> The Red Cross Societies of the United States of America, Great Britain, France, Italy and Japan.

only wished to interest the ICRC in their project, without changing its objectives. As the ICRC did not consider that its international task was ended, it remained reticent and in any case left it to the authority of the next regularly convened International Conference of the Red Cross.

Because of this, the representatives of the five Red Cross Societies retained their liberty of action and after several preliminary meetings gave legal expression to the Federation of the National Red Cross Societies by adopting, on 5 May 1919, its first statutes.

The ICRC, on the other hand, wishing to affirm its position in anticipation of the meeting of an International Conference, drafted new statutes in 1921, based essentially on its 1915 statutes.

It could be argued that each of these two bodies was free to draft its own statutes. In drawing up its constitution, the League made a point of paying homage to the past action of the ICRC and added:

*"It is contemplated that this League will work in complete accord and co-operation with the International Committee, that by supplementing the war-time activity of the International Committee, with an intelligent peace-time program it will prove a natural complement to the International Committee."*

But common areas were already apparent in the fields of activity claimed by each organization. The League gave itself as objects:

*"To encourage and promote in every country in the world the establishment and development of a duly authorized voluntary national Red Cross organization, having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world, and to secure the co-operation of such organizations for these purposes. (...) To furnish a medium for co-ordinating relief work in case of great national or international calamities."*

While the ICRC retained among its objectives:

*"To work to maintain and develop relations between the Central Committees; to serve as a central body and an intermediary between them; (...) to co-ordinate efforts to relieve the victims of war, illness and public calamities; in a word, all that concerns relations between Red Cross Societies, both in time of peace and of war, in the field of relief work for the sick and wounded, as well as in the field of action in favour of prisoners of war."*

### **The Joint Commission**

Obviously, this overlapping of competences could lead to a duplication of effort and a loss of efficiency at a time when the two institutions

were involved in vast post-war relief operations to fight epidemics and to assist the people in countries ravaged by misery and famine. To avoid such duplication, the ICRC and the League set up a co-ordinating commission, the *Joint Commission*, by a convention signed on 1 April 1921; it was the first joint body established by the two institutions. In order to determine the principles upon which the division of tasks would be based, the agreement distinguished three situations:

- (1) Wartime,
- (2) Peacetime, under ordinary conditions,
- (3) Calamities and exceptional distress in peacetime.

In the first case, the ICRC would retain responsibility for its assistance action in favour of the wounded, the sick, prisoners of war and civilian victims in the belligerent countries. In the event of calamities occurring in a belligerent country, it was left to the Joint Commission to decide whether the action should be undertaken by the ICRC or whether it should be carried out under its own responsibility.

In the second case, the two institutions were to act in conformity with the principles set out in their respective statutes.

In the third case, the Joint Commission had the competence to decide whether a joint appeal should be made to the National Societies. The relief action would then be carried out under its direction, the ICRC principally undertaking negotiations with the authorities and, if required, part of the direct action, whereas the League would be responsible for co-ordinating the efforts of members of the federation and for the major part of utilizing the relief in cash and in kind gathered directly in response to the appeal.

This was the initial embodiment of what was to become the co-ordinating body entrusted with determining the mutual competences and ways of collaborating in circumstances where the responsibilities of the two institutions appeared to be shared.

By specifying the rules for dividing up tasks and for co-operating in relief work, the creation of the Joint Commission made it possible for large-scale relief action to be undertaken, such as that in Russia in 1921. It also established a common entity which could be called on, as such, to represent the ICRC and the League and to collaborate with the League of Nations Nansen mission.

### **A working implement**

The Joint Commission was, however, not a constitutive body of the International Red Cross. It was, above all, a working implement.

In 1922, on the initiative of the League, the two institutions resumed negotiations, in which the National Societies were associated, with a view to putting an end to a situation which, in the long term, threatened to damage their effectiveness.

In fact, while the movement retained its fundamental unity, which rested on the ideological cohesion of the National Societies, it advanced in extended order, since two distinct assemblies (the International Conference and the General Council of the League)<sup>1</sup> dealt independently with questions concerning the same field.

The discussion, interrupted by breaks and punctuated by resolutions of the International Conferences and of the Board of Governors, dragged on for seven years.

### **A breeding-ground for organizational plans**

This is not the place to examine the innumerable schemes that were successively produced. Co-operation, collaboration, unification, union, fusion, all avenues were explored and were found to be dead ends. The reports of the working commissions revealed a breeding-ground for organizational plans, a blossoming of projects, each more ingenious than the rest, but which were entirely satisfactory to nobody. At one time, it was the League that saw its role, in a centralized body, reduced to that of an office for social work. At another time, it was the ICRC which only retained the functions of a legal office. Neither the League nor the ICRC were ready to give up their identity for a unification which appeared to them chimerical.

### **A reflection of the *Pax Helvetica***

The very composition of the ICRC was questioned. Differences even appeared within the study commissions set up at the request of the ICRC and the League. Dissenting from the conclusions of the Commission of which they were members, the representatives of the American Red Cross and the British Red Cross published a minority report in which they protested against the prerogatives, the "princely estate", that their colleagues proposed to reserve for the ICRC. "*For all time to come,*" they wrote, "*the millions of men who serve the Red Cross will have to walk in quietude in the pale reflection of the Pax Helvetica*".<sup>2</sup>

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<sup>1</sup> From 1919 to 1925, the upper body of the League was the General Council; from 1925, the Board of Governors.

<sup>2</sup> *Commission d'étude de l'organisation de la Croix-Rouge internationale, Second rapport de la minorité (Study Commission on the Organization of the International Red Cross, Second minority report)*, Paris, 1925, by Robert E. Olds and Sir Arthur Stanley, p. 14. (In French.)

However, the representative of the Soviet Red Cross, perhaps worried at seeing the major western powers taking a preponderant position in a unified body, voiced his preference for a free Association:

*“The international centre of the Red Cross should be made up of citizens of a small neutral country which does not play an important role in international politics. This composition is necessary, given that national antagonisms manifest themselves in time of peace just as they do in time of war, although the contest takes a different form.”*<sup>1</sup>

Addressing himself to the chairman of the Study Commission, he declared that he supported *“in any case, in view of various considerations, maintaining the International Committee of the Red Cross, in its present form, at the head of the association of the Red Cross”*.

### **Towards the end of the controversy**

To get out of the impasse, the ICRC left it to the findings of a Special Conference of the National Societies, held at Berne on 16 November 1926. The Conference had no power of decision and only included part—about half—of the National Societies and the governments parties to the Conventions. Among its suggestions was the particularly noteworthy one of establishing an elected Council, made up of five members of National Societies, two members of the ICRC and two members of the League, prefiguring the Standing Commission.

The following year, the Board of Governors examined the problem of the organization of the International Red Cross, and in particular the suggestions of the Special Conference of Berne, and reached conclusions which prepared the way for an agreement. According to its conclusions:

*“The General Assembly of the League would give way to an International Red Cross Conference to be held every four years, which would have within its purview questions affecting the peacetime programme of the League as well as those which concerned the work of the International Committee of the Red Cross. This Conference would have deliberative powers limited only by the fact that it would not be entitled to take action upon the statutes or organization either of the International Committee or of the*

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<sup>1</sup> Dr Serge Bagotzky, delegate of the Russian Red Cross Society with the ICRC, *La Réorganisation de la Croix-Rouge internationale (The Reorganization of the International Red Cross)*, Berne, published by the Russian Red Cross Society, 1924. (In French.)

*League, though the statutes of both organizations would be submitted to the Conference for examination and registration.”*<sup>1</sup>

Further, the Board of Governors of the League was to meet every two years, one meeting out of two to coincide with the International Conference. Finally, the Board of Governors again took up the idea of a joint co-ordinating Council of nine members, while confirming the independence and autonomy of the ICRC and the League.

Informing the President of the ICRC, Gustave Ador, of these proposals, Judge Payne, chairman of the Board of Governors, expressed his hopes for an effective collaboration:

*“The great majority of the Board (39 to 7) expressed the conviction that the ICRC and the League, having their separate fields of work, should be allowed free expression; that while union, as such, seemed impossible, the two should work together in complete harmony. With a united International Conference and a Council of Co-ordination the way seemed clear to end all controversy and for each to devote itself to its work unhindered by questions of organization.”*<sup>2</sup>

The Board of Governors in addition entrusted Colonel Draudt, member of the Central Committee of the German Red Cross and Vice-chairman of the Board of Governors, with conducting negotiations with the ICRC.

### **Statutes to order**

Colonel Draudt, who was given full powers by the League, and Judge Max Huber, who held a mandate from the ICRC, got on perfectly together. It only took them a few weeks to reach an agreement that up till then had been thought unrealizable.

Sweeping away all former schemes, the two negotiators got down to codifying what existed, to drafting statutes to order around what the Red Cross actually was.

They defined the *International Red Cross* as an entity made up of the National Societies, the ICRC and the League, thus amalgamating in a single concept bodies with very different structures and functions.

This diversification in unity was also to be seen in the existence of three distinct assemblies:

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<sup>1</sup> Henry W. Dunning, *Elements for the history of the League of Red Cross Societies*, published by the League of Red Cross Societies, Geneva, December 1969, p. 43.

<sup>2</sup> Judge Payne to Gustave Ador, 9 May 1927.

— the *International Conference*, the highest deliberative authority of the International Red Cross, composed of delegations of recognized National Societies, delegations of States Parties to the Geneva Conventions, and delegations of the ICRC and the League;

— the *Council of Delegates*, composed of delegates of recognized National Societies, the ICRC and the League. The Council of Delegates thus took over from the Commission of Delegates, established by the Third International Conference (Geneva, 1884), but till then composed only of National Societies and the ICRC;<sup>1</sup>

— the *Board of Governors*, governing body of the League, composed of representatives of National Societies members of the League. In conformity with the suggestions made by the tenth session of the Board of Governors (Paris, 1927), the General Assembly of the League (formerly the General Council) was abolished.<sup>2</sup>

Every session of the International Conference was to include meetings of the Council of Delegates and the Board of Governors. As a general rule, these three assemblies were to be chaired by three different persons.

The functions of the ICRC were summarized in Article VII of the 1928 Statutes of the International Red Cross:

*“The International Committee of the Red Cross remains an independent institution, governed by its own Statutes and recruited by co-optation from among Swiss citizens. It remains the guardian of the principles of the Red Cross and continues to carry out every humanitarian activity in conformity with international conventions, its current prerogatives and the mandates which now or in future are entrusted to it by the International Conference. It brings to the knowledge of National Red Cross Societies the regular constitution of every new National Society established in conformity with the principles of the Geneva Convention.*

*It remains a neutral intermediary whose work is recognized as particularly necessary in time of war, civil war or internal strife. In time of peace,*

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<sup>1</sup>“Reading Article IV, you will see that the Council of Delegates, while taking on the new tasks to be discussed later, will ensure the continuity of the work of the Commission of Delegates, which is an integral part of the Conference in its traditional form. Its composition only differs from that of the special Commission of Delegates in the addition of a delegate of the League. It follows that there is no question of depriving the Council of Delegates of any of the prerogatives up to now accorded to the special Commission of Delegates.” Colonel Draudt and Max Huber, *Report to the Thirteenth International Conference of the Red Cross on the Statutes of the International Red Cross*.

<sup>2</sup>The term “*General Assembly*” has since been revived to replace that of “*Board of Governors*” (1976 Constitution of the League).

*it continues to work to assuage the ills seen as consequences of war. It also remains entrusted with the development and preparation of the medical personnel and material necessary to ensure Red Cross activity in time of war, in collaboration with the National Red Cross Societies and the Military Medical Services of States Parties to the Geneva Conventions.*

*Any complaints regarding alleged infringements of the international Conventions and in general any questions requiring examination by a specifically neutral body will remain the exclusive preserve of the International Committee of the Red Cross."*

Regarding the League, Article VIII stated that:

*"The League of Red Cross Societies is an association of National Red Cross Societies united in the goal of practical co-operation in time of peace, mutual assistance and common activities such as are defined in its statutes in force on the day of adoption of the present statutes."*

To ensure co-ordination between the two bodies, the statutes envisaged that *"the International Committee of the Red Cross and the League of Red Cross Societies shall cooperate in matters touching upon the activities of both, and especially in regard to the endeavours of relief organizations in the event of national or international calamities"*. For this purpose, the ICRC and the League each designated a representative accredited to the other institution.

### **The Standing Commission**

From the moment that the National Societies, the League and the ICRC made the International Conference of the Red Cross the highest deliberative authority of the International Red Cross, there was an implied need for a joint organization, representing all the sectors of the Conference, to ensure a certain continuity between sessions of the Conference. This was the role of the Standing Commission.

The 1928 Statutes provided for the Standing Commission to be made up of nine members: five members nominated by the Conference who would remain in their positions until the following Conference, two representatives of the ICRC and two representatives of the League.

The Standing Commission had two main functions:

— to settle, with the reservation of a final decision by the Conference, if required, any differences that might arise regarding the interpretation and the application of the Statutes of the International Red Cross, as well as questions submitted to it by the ICRC and the League regarding any divergences that might occur between them;

— to prepare, in collaboration with the Red Cross of the host country to the Conference or—according to circumstances—with the ICRC or the League, and including the items already fixed by the preceding Conference, the agenda for the next International Conference.

The Statutes of the International Red Cross were approved by the ICRC and the Board of Governors and adopted, on 28 October 1928, at The Hague, by the Commission of Delegates, then registered by the Thirteenth Conference.

### **The dissipation away of prejudices**

In adopting the Statutes, the Conference passed a resolution under which Max Huber, Colonel Draudt and Judge Payne “*deserved well of the Red Cross*”.

In this year of the centenary of the birth of Henry Dunant, they had been able to complete his work and give a constitution to the International Red Cross.

It had required a lot of good sense and patience to reach an agreement. But the difficulties had not only been technical ones. This is what the President, Max Huber, said after he had signed and sealed the draft statutes: “*The settlement of the agreement was nothing, the dissipation of prejudices was all.*”<sup>1</sup>

## **3. Implementation**

The Statutes adopted by the Thirteenth Conference were to remain in force in their original wording for twenty-four years; their substance has endured unto the present day, which is proof of the realism with which they were drawn up.

This strength seems to lie in the fact that they only defined the functions of the ICRC and the League in a general way. Each institution retained the competence to modify its own statutes, under the condition of not taking any decision that was contrary to the Statutes of the International Red Cross, the resolutions of the International Conference, or agreements concluded between them and ratified by the Conference.

### **Peacetime and wartime**

In general, the division of tasks was based on a distinction between peacetime and wartime. ICRC responsibilities in time of war were soon

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<sup>1</sup> Max Huber to Paul Des Gouttes, 16 August 1928.

reinforced by the provisions of the Geneva Convention of 27 July 1929 relative to the treatment of prisoners of war, which placed in international humanitarian law the functions that the ICRC had up to then carried out in pursuance of resolutions of Conferences or following its own practice.

In addition to the tasks that were specifically reserved for it—the role of neutral intermediary, relief of the wounded, the sick and the prisoners of war, the establishment of an International Tracing Agency—the ICRC retained in its Statutes the mission of working for the maintenance and development of National Societies between themselves, of maintaining the fundamental principles of the institution of the Red Cross, of recognizing National Societies, of working for the development and preparation of medical personnel, all tasks that imply close collaboration with the National Societies, and, besides relief to victims of war and its consequences, maintained the task of providing relief in the event of public calamities.

For its part, the League set itself the object to “encourage and facilitate at all times humanitarian activities of the Red Cross” and “act as an intermediary to collaborate with National Societies to develop, stimulate and co-ordinate efforts to provide relief in the event of national or international calamities”. The classic distinction between peacetime and wartime was thus not evident. It was only to be expected that common fields of activity, later called “grey zones”, would appear and that it would become necessary to supplement the statutes with implementation agreements.

Nevertheless, this division of tasks remained satisfactory until the end of the Second World War—in part, no doubt, because the Chairman of the Board of Governors of the League, Judge Payne, and Judge Max Huber, appointed President of the ICRC after the death of Gustave Ador, who had both played an essential role in drafting the statutes of the Red Cross, applied them according to the spirit as much as the letter.

During the Civil War in Spain, there was no trouble about co-operation, the ICRC taking on assistance and protection operations in Spain, the League dealing with buying relief material and obtaining transport facilities to send the material to Spain.<sup>1</sup>

New modifications in the statutes, in 1938 for the League and in 1939 for the ICRC, did not make any major changes in the relations between the two institutions. It is worthy of note, however, that the League

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<sup>1</sup> Henry W. Dunning, *Elements for the history of the League of Red Cross Societies*, Geneva, December 1969, p. 54.

deleted the very general notion that appeared in the 1928 Statutes: "*The League shall pursue a reasoned and comprehensive peace programme.*" As for its relationship with the ICRC, the League maintained the formula: "*The League shall co-operate with the ICRC in matters touching upon the activities of both.*" The second part of the sentence: "*especially in regard to the endeavours of relief organizations in the event of national or international calamities*", which appeared in the Statutes of the International Red Cross, was omitted.

Put to the test of the Second World War, the co-operation between the two organizations proved satisfactory. The ICRC was ready to carry out its traditional activities in a long and widespread conflict. On 23 July 1941, the ICRC and the League founded a new joint co-ordinating body, the Joint Relief Commission of the International Red Cross, which allowed the two organizations to join in the most extensive relief actions that had been carried out up to that date.

#### **4. Towards a revision of the Statutes**

History does not repeat itself, but it imitates itself. After the Second World War, the ravaged world attempted to rebuild itself upon a stable and universal base, as it had hoped to do in 1919. The nations united to organize the world. The Red Cross also engaged in serious reflexions on itself and endeavoured to make a new start in a world which, having found peace, this time wanted to preserve it.

During the war, the National Societies had devoted themselves entirely to the tasks to be done in their own countries. In accordance with its vocation, the ICRC had played a preponderant role in the field of protection and assistance and, because of its permanent and recognized neutrality, often served as a relay between Red Cross Societies separated by war.

#### **Un-loved neutrality**

But some people considered that henceforward neutrality would be a myth, that the responsibilities inside of the International Red Cross should be redistributed, and that the statutes of its various bodies should be adapted to modern times. In this climate of opinion, the question was sometimes raised of whether the time had not come for the ICRC to abandon its traditional composition and widen the basis of its recruitment.

Count Bernadotte, President of the Swedish Red Cross—a Society which during the conflict had undertaken major relief work and repatriation activities—first was among those who considered that the ICRC would increase its effectiveness by associating international members. As early as 1945, he had presented a proposal to this effect. However, two years later, after a close examination of the circumstances, he abandoned this project. He gave the reasons for this in the book that he published in September 1948, a few days before his brutal end in the service of peace.<sup>1</sup> He was by then convinced that the organs of the Red Cross should, in all circumstances, refrain from getting involved in world politics and should remain free from any pressure of a political nature. Considering that this opinion was not shared by all the National Societies, he noted that the traditional structure of the ICRC was the best guarantee of its good functioning:

*“This was the reason why I revised my former attitude on the question of the composition of the International Committee of the Red Cross. It is absolutely indispensable that both in peace and in war, there should exist a completely neutral organization which stands above politics and which, by virtue of this, can contribute objectively to future Red Cross activities.”*<sup>2</sup>

At the same time, Count Bernadotte considered that there should be *“a co-ordinating organization which, both in peace and in war, can cooperate toward making the work in the International Red Cross more effective, and which can more easily clear up the complications which quite naturally arise within an organization of such enormous proportions.”*<sup>3</sup>

The Special Commission instituted by the Preliminary Conference of Red Cross Societies (Geneva, 1946) to study the means of reinforcing the effectiveness of ICRC action, reached similar conclusions and considered that there would be a great danger, from the point of view of neutrality, in making changes in the structure of the ICRC.<sup>4</sup>

Changes were thus not envisaged in this area of the organization of the International Red Cross, but rather in the division of responsibilities between the ICRC and the League. The Consultative Conferences of the Red Cross Societies, meeting in Geneva in 1945 and 1946, had already

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<sup>1</sup> Folke Bernadotte, *Instead of Arms*, London, Hodder & Stoughton, January 1949. Original Swedish edition, *I stället för vapen*, Stockholm, September 1948.

<sup>2</sup> *Op. cit.*, p. 166.

<sup>3</sup> *Op. cit.*, p. 130.

<sup>4</sup> *Report of the special commission charged with studying the means of reinforcing the effectiveness of ICRC action*, Seventeenth International Conference (Stockholm, 1948).

exhibited a tendency to enlarge the field of activity of the League and reinforce its authority within the federation. With this in view, the League modified its statutes at Meetings of the Board of Governors at Oxford in 1946 and at Monaco in 1950.<sup>1</sup>

### **The responsibility for assistance work**

At the first plenary meeting of the nineteenth session of the Board of Governors (Oxford, 1946), Mr Basil O'Connor, Chairman of the Board, thus defined the goals that the League set itself:

*"First, I believe we should revise the articles of association of the League of Red Cross Societies so that they will be consistent with present conditions. They must be made to fit the mutual needs of the national societies.*

*To accomplish this we must define the responsibilities of the League and of the International Red Cross Committee. We must decide which programs are a responsibility of the League in which the International Red Cross can aid, and which programs are a responsibility of the International Red Cross Committee in which the League in turn can aid. In considering this subject, we may feel that the time has now come for the League to decide whether it should become the Red Cross agency to take responsibility for all relief action—particularly in time of peace. Certainly, no such step should be contemplated without the collaboration of the International Red Cross Committee."*

This new orientation was reflected in the statutes adopted by the League, which henceforward set as its objects *"to encourage and facilitate at all times Red Cross action for the relief of suffering humanity"*.

The agenda of the Seventeenth International Conference (Stockholm, 1948) included a study of the means of reinforcing the effectiveness of the international bodies of the Red Cross. The Conference adopted an important resolution to this effect (Resolution XIII) in which it emphasized the role of the Standing Commission in the field of co-ordination and of unity of ICRC and League efforts, and recommended measures to improve the effectiveness of their action.

### **A last resort**

The Board of Governors, meeting at the same time, approved a resolution which would have markedly extended the field of activity of the League. It authorized the general Secretariat:

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<sup>1</sup> The statutes of the two institutions are only considered here in relation to the Statutes of the International Red Cross.

*“to take every initiative and to act, in time of war, to maintain contact between National Societies and to co-ordinate their relief work in favour of civilian populations, for as long as the action of a neutral intermediary is not required to do so.”*

In the eyes of the ICRC, this was a duplication of its own right of initiative and its competence in time of war. Taken literally, the resolution of the Board of Governors implied that the neutral intermediary—i.e., the ICRC—would only have the ability to co-ordinate the relief work of National Societies in favour of civilian populations in time of war, as a last resort, after the League had undertaken an assistance action and had found it necessary to call in the ICRC. The ICRC would then have to cope with a difficult, perhaps hopeless, situation and would be called upon only as a last chance. The ICRC, on the other hand, considered that a neutral intermediary was of itself indispensable in time of war and that only when its offices as intermediary were no longer required could it consider transferring its responsibilities to other bodies.

#### **To be ready in all circumstances**

In reality, the role of the ICRC was confirmed by the facts and reinforced by the law. At that time, it was engaged, on its own initiative, in a protection action in the Palestine conflict and it was soon to undertake, precisely in co-operation with the League, a relief action in aid of Palestinian refugees, one of the most extensive actions carried out by the Red Cross since the end of the war. The Geneva Conventions of 12 August 1949 entrusted it with new tasks, confirmed its traditional activities, opened up to it new areas in assistance to civilian populations in time of war, and reaffirmed its right of initiative. Resolution 11 of the 1949 Diplomatic Conference recognized that *“the Geneva Conventions require the International Committee of the Red Cross to be ready at all times and in all circumstances to fulfil the humanitarian tasks entrusted to it by those Conventions”*. It might have appeared unreasonable to discuss questions of principle when the two institutions had to rally all their resources to fulfil their obligations.

#### **The 1951 agreement**

To put an end to this situation, the ICRC and the League agreed to draft an agreement to define their respective competences in close or common fields, particularly in the field of relief. The agreements specified that the ICRC was alone competent to act in the event that a specifically

neutral body was necessary for the accomplishment of a relief action in aid of a civilian population. The League was called on to ensure the co-ordination of relief actions resulting from an appeal addressed by it to the National Societies in favour of one among them, or when several National Societies, carrying out an action in a country in aid of the civilian population, asked the League to co-ordinate their action. Finally, it was provided that when the action of the League had to be carried out in a country where there was war, occupation, civil war or internal strife, the League was to make contact with the ICRC to ascertain that its action would in no way prejudice the specifically neutral, primordial role that the ICRC had to carry out, notably in pursuance of the Geneva Conventions.

These provisions also governed, by analogy, the sending of medical missions to aid civilian populations and their activities.

The agreement also dealt with relief in the event of accident, actions in favour of refugees, legal assistance to refugees, the preparation of medical personnel and medical equipment, the protection of the civilian population against certain effects of war, studies relative to the Geneva Conventions, conditions for recognition of National Societies and their admission to the League, the protection of integrity of National Societies, meeting the administrative expenses of the Standing Commission, the procedure for modifying the statutes of the ICRC and the League—neither of the two institutions being able to change its statutes without giving the other an opportunity to comment on the modification—and on liaison between the governing bodies of the ICRC and the League.

The 1951 Agreement thus marked a certain progress in the field of co-ordination. Certainly, it still left a large margin for interpretation, but it had prepared the way for a revision of the Statutes of the International Red Cross.

## 5. The 1952 Statutes of the International Red Cross

In pursuance of Resolution XIII of the Seventeenth International Conference, the Standing Commission, meeting in October 1950 at Monaco, had decided to prepare a revision of the Statutes of the International Red Cross and had entrusted this task to a study sub-commission, composed of three members.<sup>1</sup> The revision of the Statutes of the

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<sup>1</sup> Mr François-Poncet, represented by Mr J. de Truchis de Varennes, Lord Woolton, represented first by Mr W. Phillips, then by Miss E. Bark, and Mr T. W. Sloper, the Chairman.

International Red Cross implied the co-operation of the ICRC and the League, and the full agreement of the two institutions. The sub-commission thus worked in close contact with them and set aside for their consideration the articles dealing with their respective competences, their collaboration and the functions of the Standing Commission (Articles VII to X of the 1928 Statutes).

The representatives of the ICRC and the League met time and again to draft the texts set aside for them. They also participated actively in the drafting of the other articles. Finally, the draft received the full approbation of the study sub-commission, the ICRC and the League, and of the Standing Commission at its meeting of 7 December 1951, and was adopted by the Eighteenth Conference of the Red Cross (Toronto, 1952).

### **Concern for continuity**

The new Statutes bore witness to a concern for continuity entertained by the various bodies of the International Red Cross. The composition of the International Red Cross, the fundamental element of the original agreements, remained strictly the same: recognized National Societies, ICRC, League. The new Statutes maintained the principle of the simultaneous meeting of the International Conference, the Council of Delegates and the Board of Governors, with some modification of details in the order and wording of the paragraphs defining their powers.

The principal amendments were to the respective competences of the ICRC and the League, and to the functions of the Standing Commission.

Article VI of the new Statutes, corresponding to Article VII of the 1928 Statutes, defined the nature of the ICRC and enumerated the functions that it was to assume as an organism of the International Red Cross. The ICRC based this text on the draft revision of its own statutes that it had worked out in August 1951 and which had been approved by the League. The two institutions had, in fact, considered it necessary to agree beforehand on the terms of the articles which set out their respective functions, in order not to put in question, in front of the Conference, the whole edifice of the new Statutes.

The ICRC remained defined as "*an independent institution, governed by its own Statutes and recruited by co-optation from among Swiss citizens*". It was charged with maintaining the fundamental principles of the Red Cross, which were enumerated. Most of the functions traditionally entrusted to it were maintained: recognition of National Societies, tasks assigned to it under the Geneva Conventions, improvement and dissemination of these Conventions, development of medical personnel

and medical equipment, mandates entrusted to it by the International Conferences. Its role of protection and assistance was confirmed, but relief in the event of public calamities was not mentioned in this new article. Section 5 of Article VI became:

*“As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war, or internal strife, it endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results. (. . .)”*

One of the areas in which the ICRC wanted to retain all its freedom of action was that of its relations with the National Societies. It considered that the 1950 version of the statutes of the League gave the League a kind of exclusivity in that field and could restrict the contacts that the ICRC had traditionally enjoyed with the Societies. This is the import of Article VI, paragraph 9, which preserves ICRC rights, while referring to the functions of the League as defined in Article VII:

*“Within the framework of the present Statutes and subject to the provisions of Article VII, it maintains close contact with National Red Cross Societies. It also maintains relations with Governmental authorities and any national or international institutions whose assistance it considers useful.”*

The League also used the phrasing of its own statutes, reducing the scope of certain provisions which gave such a general outline to its action that they seemed to the ICRC to encroach on its own activity. At the request of the ICRC, the League included a restrictive clause similar to that used by the ICRC in paragraph 9 of Article VI:

*“The object of the League is, within the framework of the present Statutes and subject to the provisions of Article VI, to encourage and facilitate at all times the humanitarian action of the National Societies and to assume the responsibilities incumbent upon it as the federation of those Societies”.*

According to Article VIII, co-ordination between the two organizations was to be ensured by the monthly meetings of their representatives.

### **Co-ordination and harmonization**

The main object of Resolution XIII of the Stockholm Conference was to reinforce the functions of the Standing Commission. The new Statutes of the International Red Cross took up several resolutions of the Conference. To the recognized functions of the Standing Commission (formerly Article X, paragraphs 8 and 9), they henceforward added

those of ensuring, between sessions of the Conference, the co-ordination and harmonization of efforts by the ICRC and the League (new Article X, paragraphs 3 and 4):

#### ARTICLE X

*1. The Standing Commission, in co-operation with the organization acting as host to the Conference, shall establish the provisional programme and agenda and make the arrangements for the next International Conference. It shall fix the date of the Conference or select its place of meeting should this not have been already decided by the preceding Conference or should exceptional circumstances so require.*

*2. During the interval between sessions of the Conference and subject to any final decision the Conference may take, the Standing Commission shall settle any difference of opinion which may arise as to the interpretation and application of the present Statutes as well as any questions which may be submitted to it by the International Committee or the League in connection with differences that may arise between them.*

*3. It shall also be the duty of the Standing Commission between sessions of the Conference to ensure the co-ordination and harmony of the efforts of the International Committee and of the League. With this object in view it shall examine, at its meetings, all questions which are of general interest to the Red Cross and concern the activities of both institutions.*

*4. In this connection and subject, where necessary, to final decision by the Conference, the Standing Commission shall take any measures which circumstances demand. The independence and initiative of the various bodies of the International Red Cross in their respective spheres shall, however, continue to be strictly safeguarded.*

This very complex and complete codification sought to define the structure and obligations of institutions whose independence and initiative, however, in their respective spheres, remained strictly safeguarded.

The Statutes of the International Red Cross could be revised by the Conference after it had taken the advice of the ICRC and the League. But the Conference could not change the statutes of either the ICRC or the League. Similarly, the ICRC and the League could not take any decision contrary to the Statutes of the International Red Cross, or the resolutions of the Conference, nor could they take any decision contrary to the agreements made between them and endorsed by the Conference.

## Revision of the 1951 Agreement

The Agreement signed in 1951 between the ICRC and the League, the 1952 Statutes of the International Red Cross and the revised statutes of the League and the ICRC constituted a body of texts that certainly ensured a better co-operation between the two institutions.

Indeed, the facts bore witness to this co-operation. At the top of the list was the Middle East, where the ICRC and the League divided up the task of distributing relief to the Palestinian refugees, the ICRC being responsible in Palestine territory and the League in the bordering countries<sup>1</sup>, in collaboration with a United Nations agency set up at the time, the United Nations Relief Agency for Palestine Refugees. The League and the ICRC also co-operated, in 1948, in supervising the repatriation of Greek children.

Following the events in Hungary, in October 1956, the ICRC and the League co-ordinated their relief activities. The ICRC took on the administration of relief in Hungary, while the League co-ordinated relief for Hungarian refugees in Austria, then in Yugoslavia.<sup>2</sup>

But, in other circumstances, the actions of the two organizations were carried out independently. It was thus necessary to define more clearly the responsibilities of the two bodies in the field of relief. To this end, the Council of Delegates, meeting at The Hague in 1967, requested the ICRC and the League to consider a revision of the 1951 Agreement *“in order to obtain a fully co-ordinated effect of the knowledge and capabilities of both organizations in the different situations where Red Cross action is required”*.

Such measures appeared all the more desirable since the civilian populations were particularly affected in the conflicts which broke out at that time, and every protection activity was accompanied by a major relief action.

## Personalized assistance

National Societies were more and more called on to take part in international assistance action. The devastation and the desperate needs arising from, say, the war in Indochina or, as from 1967, the Nigeria-Biafra civil war, prompted a spontaneous public movement to provide aid. The National Societies considered it necessary to provide a more personalized assistance than they had been able to do in the past.

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<sup>1</sup> The Quakers (American Society of Friends) took responsibility for relief in the Gaza strip.

<sup>2</sup> League-ICRC Agreement of 2 November 1956, amended on 27 November.

Rather than being satisfied with making a contribution to a common assistance fund, they felt the need to inform the citizens of their countries of their methods of action, to participate actively in relief operations, to render an account of the mandate that they had received from their members and thus to prepare, for the future, new moral and material resources. These legitimate feelings could not be ignored without the risk of discontent. This important consideration was largely taken into account in the conception of co-ordinated relief actions, on the basis of experience in this field in 1967 and 1968.

### **The 1968 Protocol**

Acting at the request of the Council of Delegates, the representatives of the two organizations held a series of consultations, starting in November 1967, with a view to drafting a revision of the 1951 Agreement. While waiting for the definitive text of the Agreement to be drawn up, the ICRC and the League concluded a provisional Protocol, dated 23 December 1968, designed to reinforce information, consultation and co-ordination procedures. The Protocol set out the measures to be taken to "*give the maximum effectiveness and unity to action by all the elements of the International Red Cross: the ICRC, the League and the National Societies*". It envisaged the setting up of a co-ordinating body with, in particular, the ability to decide either on a specific action by one of the two institutions, or on a joint action, with clearly fixed procedures. The fact that a National Society made a request to the ICRC or the League or spontaneously handed over relief materials to them in no way would change the division of tasks between the two institutions. The National Societies were to be regularly informed of decisions taken.

### **The 1969 Agreement**

It remained for a more comprehensive text to be agreed on, to reinforce and bring up to date the 1951 Agreement. After drawing up and exchanging a series of drafts, whose every term was meticulously weighed, the representatives finally achieved a common text, on 25 April 1969.

The 1969 Agreement took over, as a whole, the main lines of the 1951 Agreement. To the twelve sections of the earlier Agreement, it added four new sections reflecting the wider concerns of the world of the Red Cross:

- *The Red Cross as a factor in world peace* (section VII). In this essential field, following a resolution of the Tenth Conference (Geneva, 1921),

the ICRC and the League published, on 19 July 1921, their first joint appeal, the *Appeal for Peace*. Noting that this question was of interest to the whole Red Cross movement, the 1969 Agreement stipulated that the two institutions “*shall as in the past endeavour to adopt a common attitude and to co-ordinate their activities*”.

- *Structure and activities of National Societies* (section IX). This section supplemented section VIII, reproduced word for word from the 1951 Agreement, which set out the measures to be taken to harmonize decisions regarding the recognition of new National Societies by the ICRC and their admission by the League. According to section IX, the two institutions were to continue to study jointly the Statutes, structure and activities of National Societies and, if applicable, to make the recommendations required.
- *Relations with international institutions* (section XI). These relations were to reflect a common attitude “*so as to maintain the unity and independence of the Red Cross*”.
- *Interpretation of the Agreement and co-operation* (section XV). This section provided for consultations between the two institutions whenever there was “*a situation which falls equally within the province of both Institutions or a need to interpret the present Agreement*”. This was subsequently developed, as will be seen later, in the Agreement concluded between the League and the ICRC in 1974 to interpret the 1969 Agreement.

Legal assistance for foreigners was henceforward the competence of the ICRC, which also retained responsibility for studies and commentaries on the Geneva Conventions. Liaison between the governing bodies of the ICRC and the League (section XIV) was reinforced by provisions concerning reciprocal information.

The preamble, which stated the object of the Agreement, reproduced the 1951 text. The ICRC had considered adding a phrase to the effect that relief actions should be made in support of the often difficult steps that it took for the victims of conflicts, but the League objected to this addition.

Section I, entitled “Relief actions of National Societies for the civilian population” was the most re-worked. It dealt, in fact, with the most difficult problem to solve, the respective competences of the ICRC and the League in international relief actions conducted in the event of a conflict or in peacetime.

Competence in the event of a conflict was defined thus by the 1951 Agreement (Article I, section A, paragraph 3):

*“Should the League be called upon to co-ordinate relief work in a country where there is war occupation, civil war or internal strife, it shall get into touch with the International Committee of the Red Cross in order to make sure that its relief operation is in no way prejudicial to the primary, specifically neutral, role incumbent on the latter, notably by virtue of the Geneva Conventions.”*

The revision of this article gave rise to an exchange of proposals and counter-proposals on the part of the negotiators. The difficulty stemmed from the fact that the League, founding its argument on Article 3 of its statutes, wanted to reserve for itself the possibility *“of responding to a request for assistance that a member Society might send to it, in the event that such assistance were necessitated by a situation of war or of internal troubles”*.

After an exchange of notes on this point, a compromise solution was found:

*“In countries where there is an international war, civil war, blockade or military occupation the ICRC, by virtue of the functions of a neutral intermediary devolving on it under the Geneva Conventions and the Statutes of the International Red Cross, shall assume the general direction of the Red Cross international action.*

*If, in these countries, as a result of special circumstances or in the event of a natural disaster, the League is, at the request of a National Society, called upon to give assistance to the civilian population of its country, the ways and means of the intervention of the League as well as its co-operation with the ICRC and the National Societies concerned shall be defined from case to case in accordance with Articles 4 and 5 of the present Agreement.*

*When the intervention of a neutral intermediary is not or is no longer necessary, the ICRC shall reach agreement with the League with a view to associating it with the relief action or even handing over to it the entire responsibility.”*

Articles 4 and 5, cited in Article 2, were reproduced word for word from the Protocol of November 1968. They established a co-ordinating body and defined its functions. For it once again appeared that the abstract phraseology of the Statutes, referring to notions that were not always perfectly defined (time of conflict, peacetime, necessity for a neutral intermediary) did not necessarily coincide with concrete, unforeseeable and often intentionally obscure situations.

The difficulty also arose as each institution, because of its historical origins, had a different conception of its role and a different idea of the means to fulfil it.

The League based itself primarily on the fact that it was a federation of the National Societies, whose members were bound by the decisions of its governing bodies, the only entities with the ability to represent them at an international level. This made up a closed system which drew its authority from the adherence of its members. The definition of the competences of the League followed logically from this starting point. On the other hand, the ICRC was to co-ordinate those National Society activities that arose from the common competences of the ICRC and the Societies.

### **Absence of legal protection**

The ICRC considered that its responsibilities stemmed from the intrinsic vocation of the Red Cross, the reason for its own existence: the defence of the individual against forces which, in the absence of legal protection, tended to threaten or destroy his physical and moral integrity. This end determined the means.

In carrying out its traditional functions under the Conventions, the ICRC had always considered that the defence of the individual implied a combined protection and assistance action. ICRC action for prisoners of war was based on Resolution VI of the Ninth International Conference (Washington, 1912), which requested the ICRC to ensure the distribution of relief to prisoners. Assistance action opened the way for protection action, later sanctioned by the Conventions.

There was absolutely no intention of making one a condition of the other, but rather of stating that both issued from the same source and that they expressed in different ways the same objective. Historically, they have generally been confounded. Trying to separate them would mean running the risk of weakening them. Even when its intervention was accepted, the ICRC often had to face some opposition, to persuade reluctant governments or authorities to open all doors to it, while if they were faced with a division of responsibilities they could all too easily favour one institution to the detriment of the other. In view of this, the ICRC had always considered it essential to remain in charge of assistance actions in situations of war, civil war or internal troubles, or which were the direct consequence of these situations.

Evidently, in drafting agreements governing relations between the ICRC and the League, the articles relating to the division of operational functions between the two institutions were the most important. It was also evident that such agreements could not be concluded unless they left the two institutions a sufficient margin of freedom, and that their

practical application required the additional guidance of the interpretative agreements.

## 6. The Interpretative Agreement of 1974

The Council of Delegates, meeting in Mexico in October 1971, recommended "*the preparation of a joint relief operational plan between the ICRC and the League taking also into consideration the resources of the National Societies in personnel, material equipment and funds*" (Resolution 3).

This recommendation reflected the problems that had arisen in co-ordinating relief actions concerning the ICRC, the National Societies and the League, in regions where there had been outbreaks of civil war, principally in Nigeria (1967 to 1970), Jordan (1970) and Bangladesh (1971 to 1972). The scale of the devastation and of the needs, the misery of the refugees had prompted both an international mutual aid movement and the active co-operation of many National Societies and relief institutions. These experiences pointed to the necessity of further specifying the procedures for relief actions not only regarding competence, but also implementation and techniques.

A League-ICRC working group undertook an examination of the ways in which the Council of Delegates resolution could be applied. In the first place, the working group considered that it was not necessary to revise the 1969 Agreement, rather that the resolution implied an interpretation of the terms of the Agreement and a reinforcement of the co-ordinating body envisaged by Article 5 of the Agreement.

While work was underway, a new common assistance action was undertaken in Indochina. On the announcement of a forthcoming conclusion of a cease-fire in Vietnam, the ICRC, the League and various National Societies created a liaison group for Indochina (LGI). On 8 November 1972, the two institutions agreed to set up an integrated command, the Indochina Operations Group (IOG), with the responsibility for preparing and carrying out assistance plans. The leadership of this joint body was entrusted to Mr Olof Stroh, Secretary General of the Swedish Red Cross.

It remained to implement the resolution of the Council of Delegates. The joint document entitled "*International relief operations—Commitment of Red Cross resources*", or more briefly the *Interpretative Agreement*, was adopted by the Board of Governors in November 1973 and ratified by the ICRC Assembly in November 1974.

It was a long document, including, in addition to a two-page introduction, twenty-two paragraphs divided up into five sections: General remarks, Co-ordinating body, Practical measures for co-ordination, Training of personnel, General rules.

The section dealing with the co-ordinating body went over the provisions of the 1969 Agreement reinforcing the authority of the co-ordinating body and the rapidity of its decisions. The delegates of each institution and their deputies were henceforward to be high level officials, acting on the powers that they held in the two institutions, respectively.

In the preparatory phase, the co-ordinating body was to see that the ICRC and the League maintained or developed their activities in the field of information on available resources, the training of personnel for relief work, and pre-planning. In its active phase, it was to assign roles, responsibilities and checking, to decide whether ultimate responsibility for an international relief operation should be assigned (or transferred) to the ICRC or to the League, or whether, in a given situation, joint action by the ICRC, the League and National Societies, should be conducted. The criteria for determining the division of responsibilities remained the same as they had been traditionally: the ICRC in the event of war, civil war, blockade, military occupation or internal strife, the League in the event of a natural disaster or a situation analogous to such a calamity, in each case with the National Societies concerned.

The Interpretative Agreement also laid down procedures to be followed to ensure the harmonization of relief actions, notably by providing continuous information, staff training, including particularly basic Red Cross training, advanced training for relief specialists in the field and for heads of divisions, and advanced training in tracing activities.

### **A flexible system**

The document also emphasized that co-operation between Red Cross bodies in relief operations should be effected on the basis of a *flexible system*, taking into account the special conditions relating to each operation, ranging from the effective integration of the conduct of the operation and of the relief teams taking part in it to the simple co-ordination of tasks being carried out separately. It retained the ICRC competence in carrying out the mandates entrusted to it by the Geneva Conventions, notably in the field of visits to places of detention of prisoners of war, places where there were protected persons, in the services of the Central Tracing Agency, and also in the relief tasks entrusted to it by the Conventions, regarding prisoners of war, civilian internees and civilian populations, in co-operation with the National Societies concerned.

## 7. Towards new revisions

The ICRC and the League were not satisfied with defining more precisely, by the 1969 Agreements and the interpretative Agreement of 1974, their respective functions and the procedures for their co-operation. The two institutions also charged a research group, headed by Mr. D. D. Tansley, with conducting an extensive study on the role of the Red Cross in the world to-day and with re-evaluating the nature of its mission and its functions. The results of this inquiry, which was carried out, between February 1973 and June 1975, in the international institutions of the Red Cross, the National Societies, the governments signatories of the Geneva Conventions, the greater part of the United Nations agencies and the international non-governmental organizations, were published in July 1975, in a final report accompanied by six complementary descriptive documents.<sup>1</sup>

The ICRC and the League paid great attention to the comments and suggestions in this important document and gave themselves over to serious reflection regarding several areas of their respective or common activities. The results of this examination were published in a basic document entitled *The ICRC, the League and the Tansley Report*, which was distributed at the Twenty-third Conference of the Red Cross (Bucharest, 1977). In this work, the ICRC and the League expressed their views on the basic problems facing the Red Cross movement, either in separately drafted reports, or in comments drawn up in common.<sup>2</sup>

For its part, the League recognized the need for a general examination of its statutes and regulations and, in 1973, decided to set up a study commission with the task of suggesting a revision. The drafts prepared by that commission were finally adopted by the Board of Governors of the League at an extraordinary session held at Geneva in 1976, then during its thirty-fourth session (Bucharest, 1977).

The need for this revision, wrote Mr Henrik Beer, "*was not an isolated instance; it was part and parcel of the thorough re-appraisal of the role of the Red Cross and of the structures and activities of the institutions of the International Red Cross. As was said at the time, the re-appraisal was a genuine self-criticism, the better to face the future*".<sup>3</sup>

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<sup>1</sup> *Final report: An agenda for the Red Cross*, by Mr D. D. Tansley, director of the Study Group on the re-appraisal of the role of the Red Cross.

<sup>2</sup> See in the *International Review of the Red Cross*, from March-April 1978 to January-February 1979, a series of articles under the general title "The ICRC, the League and the Report on the re-appraisal of the role of the Red Cross".

<sup>3</sup> Henrik Beer, Secretary General of the League, *New Charter for the League of Red Cross Societies, International Review of the Red Cross*, July-August 1978, p. 187.

The new statutes made important changes in most of the fields of activity of the League, its functions, its objectives and its organization.<sup>1</sup> Regarding more especially the questions concerning the relations between the League and the ICRC and the co-ordination of their activities, the appearance of a list of functions devolving on the federation in the field of relief, which were not mentioned in its previous statutes, are to be noted:

- to bring relief by all available means to all disaster victims;
- to assist the National Societies in their disaster relief preparedness, in the organization of their relief actions and in the relief operations themselves;
- to organize, co-ordinate and direct international relief actions in accordance with the Principles and Rules adopted by the International Conference of the Red Cross;
- to bring help to victims of armed conflicts within the framework of the agreed functions of the League as a member of the International Red Cross, in accordance with the agreements concluded with the International Committee of the Red Cross (ICRC). (Article 5, paragraphs c, d, e and i).

As for co-operation with the ICRC, the new statutes reaffirmed and developed the provisions of Article VIII of the Statutes of the International Red Cross:

1. The League shall maintain close relations with the International Committee of the Red Cross in order to co-ordinate and to harmonize their respective activities as laid down in the Constitution or Statutes of their respective institutions, the Statutes of the International Red Cross, and the decisions adopted by the International Conference of the Red Cross.

2. The League shall conclude with the ICRC the agreements required to ensure a harmonious development of their respective activities.

3. The co-operation between the League and the ICRC shall be ensured *inter alia* by meetings at least once a month of representatives of the two organizations. (Article 32).

In the same area, the League has also the task *to assist the ICRC in the promotion and development of international humanitarian law and*

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<sup>1</sup>Jacques Meurant, *Apropos the new Constitution of the League of Red Cross Societies, International Review of the Red Cross*, July-August and September-October 1978.

collaborate with it in the dissemination of this law and of the Fundamental Principles of the Red Cross among the National Societies" (Art. 5, 1, j).

Finally, at its session of April 1982, the Executive Council of the League decided "*to undertake a thorough study of the Statutes of the International Red Cross and of the Agreement between the ICRC and the League leading to a specification of their respective competences*", with a view to their revision and to set up a working group for this purpose. The studies undertaken by this working group, in which the ICRC was invited to participate as an observer, are currently underway.

To follow the evolution of the Statutes of the International Red Cross from its origins up to the present, we have had to consider the problems of definition and terminology which faced the writers of the Statutes and the Agreements. These problems would certainly have been posed differently if there had not previously been a unified conception of the major choices open to the Red Cross movement, its objectives and the vocation of the institutions of which it is composed. Neither the necessity for a federation, to give structural unity and solidarity to National Societies belonging to very different countries, cultures and political systems, nor the role of a committee independent of any commitment other than to its own finality and to the mandates entrusted to it, nor the importance of legislative and co-ordinating bodies, was fundamentally called into question. But agreement on principles does not preclude an examination of operational procedures, and this is especially true for the world of the Red Cross, which in large part is called upon to act in exceptional circumstances, when the urgency and gravity of the problems prohibit any tergiversation.

These are the prerequisites that enabled the Red Cross to withstand external trials, as well as the internal erosion that lies in wait for all long-lasting institutions. With this in view, the bodies making up the International Red Cross have periodically sought to define, in texts drafted in common, their mutual relationship, in the same spirit that, throughout deep discussion, maintained a judicious balance among its elements.

**André Durand**

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