

Swiss neutrality, ICRC neutrality: are they indissociable?

AN INDEPENDENCE WORTH PROTECTING

As the Swiss people ponder over their European destiny and the future of Switzerland's status of permanent neutrality, some commentators have raised the question whether the ICRC will be able to maintain complete independence — whichever way Switzerland turns — in conducting its humanitarian operations based on the fundamental principles of the Red Cross.

No doubt this question is worthy of consideration, but first the proper distinctions should be clearly drawn between the neutrality of Switzerland and the neutrality of the ICRC, and between the ICRC's independence and the independence of the Confederation.

*At the International Red Cross and Red Crescent Museum on 21 January 1992, ICRC President **Cornelio Sommaruga** addressed these issues of concern not only to Swiss citizens, but also to the international community.*

The Review is pleased to publish the text of this presentation for its readers.

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I am delighted to be with you here today in the International Red Cross and Red Crescent Museum. This gives me the opportunity to meet all the "Friends of the Museum" again and to talk to them about a subject of current concern for the ICRC, for Switzerland and for the international community — but also to pay tribute to all those who have contributed and are contributing to the success of this magnificent institution: the Museum. At the same time, it is a great pleasure for me to give thanks to all those who devote their energies directly or indirectly, day after day, to promoting the Red Cross cause, its

ideals, its history and its activities, through their often voluntary work in this Museum.

Their commitment is particularly praiseworthy because, faced with the sad and persistent topicality of human suffering (whether caused by Nature or by man), this institution illustrates, in the most convincing way, the response of all those who pledge to serve under the banner of "HUMANITARIAN ACTION" and thus give hope for a better future. In addition, the Museum shows the real life of the Red Cross to all those who have the opportunity to come and visit. Max Huber, one of the ICRC's great presidents, described this reality in the following terms: "The essential and decisive principle of the Red Cross is the idea that each and every one of us is responsible for the suffering of his fellows, with all the sacrifices that this principle entails."

So, once again, sincere thanks to all the voluntary workers, officials and friends of the Museum. It is absolutely essential to continue this work together, in spite of the considerable problems involved in the Museum's financial management. The interest shown by the Swiss Confederation, by the Republic and City of Geneva, by the Federation of Red Cross and Red Crescent Societies, and in particular by the ICRC, is so great that the Museum will not be abandoned. Personally, I am also counting on the citizens of Geneva, individually and collectively, and especially on their private donations: for them, this institution should demonstrate that the "Spirit of Geneva" is as alive today as it was 129 years ago, when the ICRC — and thus the Red Cross Movement — was founded.

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The Director of the Museum has asked me to talk about neutrality — the neutrality of Switzerland and the neutrality of the ICRC — and above all to answer the question: are they linked or not? In this context, I would like to focus on the notion of independence, because therein lies the key to the success of the ICRC's humanitarian operations. Thus it is an independence worth protecting.

The question of *whether Swiss neutrality and the ICRC's neutrality are indissociable* is no doubt a legitimate question to ask today, when the institution of which I have the honour to be President is committed as never before in a humanitarian effort along three principal lines. To obtain satisfactory results in these three areas, independence and

neutrality are indispensable. I am thinking not only of the operational activities that bring protection and assistance to victims of armed conflict, internal disturbances and tension, but also of the ICRC's primordial role as custodian of international humanitarian law, ensuring that it is respected, universally applied, developed and disseminated. Thirdly, the ICRC is also responsible for safeguarding the fundamental principles of the Red Cross and hence, for example, for preventing the politicization of the International Red Cross and Red Crescent Movement.

In addition, I think it is vital to take the ICRC's special nature into account. The ICRC's neutrality and its independence from Switzerland are not always adequately perceived. This is particularly important at a moment when the entire Swiss Confederation (the federal and cantonal authorities and public opinion) is considering fundamental issues concerning the country's future external relations. I will *not* try to answer the question "*Quo vadis Helvetia?*", another perfectly legitimate question, which has occupied and preoccupied me in the past, when I was a member of the federal administration, and which continues to interest me as a private citizen. But I am here to talk to you as the President of the International Committee of the Red Cross. In this capacity, I can say at once that Switzerland must be able to decide on its future foreign policy without feeling limited by the ICRC! This includes Switzerland's policy of neutrality and/or its neutral status, a basic issue in working out the ways in which Switzerland and the European Community will be linked in the future.

Not to bother about the ICRC? How is that possible, you will ask! That is exactly what I shall try to show you.

The historical ties between the ICRC and the Confederation helped to create a situation whereby for a long time, it is true, the ICRC's neutrality was identified with Swiss neutrality, especially since the use of the same word suggested that the concepts were also the same. However, it is important to point out right from the start that there are two separate concepts, distinct in their legal basis, in their nature and in their goals.

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Let us first examine the legal basis. Switzerland's neutrality is a status conferred by international law. It derives from the law of neutrality applicable in time of war, defining the position of a State

that stays out of a conflict. Swiss neutrality is part of a legal system that can concern only States, whereas the neutrality of the ICRC, a humanitarian organization, was forged through operational practice and is founded upon the recognition of this practice by the international community. The ICRC's neutrality derives directly from the imperative need for action proclaimed by Henry Dunant as far back as 1863: the evacuation of wounded servicemen and the personnel supervising those evacuations had to be shielded by absolute neutrality for effective help to be given. This notion — the neutrality of the wounded and those who care for them — was firmly rooted in the original Convention of 1864 and was taken up again in the subsequent Geneva Conventions. It gradually came to be accepted as the fundamental principle of Red Cross neutrality, that is, respect for those who bring aid, as long as they take no part in the hostilities.

Secondly, we should note the differences between the neutrality of Switzerland and that of the ICRC, in terms of its basic nature and of the scope of the obligations it entails. The legal system of neutrality requires that a neutral State accept the following obligations: non-participation in hostilities, impartiality towards all the belligerents, and diligence in the observation of these obligations. In return, the belligerents must respect the inviolability of the neutral State's territory.

For Switzerland, the status of permanent neutrality, as recognized by the international community in 1815, includes a whole series of additional obligations, which should ensure that it is able to carry out its duties as a neutral country in time of conflict.

For the ICRC, on the other hand, neutrality is a constant obligation, a general principle guiding its activities, from which it cannot depart even temporarily without compromising its ability to act on behalf of victims. In fact, the fundamental principle of neutrality requires all components of the International Red Cross and Red Crescent Movement — not just the ICRC — to maintain a reserved attitude towards belligerents and towards all controversies without relevance to their humanitarian mission.

The third difference between the neutrality of a State and that of an institution like the ICRC resides in the ultimate goal. Whereas, I think we can agree, Switzerland's neutrality is a means of preserving its sovereignty and thus its independence and the integrity of its territory, the ICRC's neutrality is required behaviour if the institution is to fulfil its humanitarian mission, an essential condition governing its operations on behalf of victims. The goal seems clear to me: the ICRC

must refrain at all costs from taking sides so that the opposing parties it must step between will trust it and grant its delegates access to all the victims. To keep everyone's trust and to be able to work, the ICRC remains silent when raising its voice would simply stir up passions and fuel controversy, without serving the humanitarian cause. It is also for this reason that the ICRC does not set itself up as a board of inquiry in cases where international humanitarian law is violated: to assume such a role would be to risk seeing its neutrality called into question by at least one of the parties concerned!

At this point, I should mention a very specific aspect of the ICRC's neutrality. The Geneva Conventions of 1949 recognize the ICRC as an impartial and effective humanitarian organization which meets the necessary conditions to act as a substitute for the "protecting Power", as provided for in international humanitarian law. Among these conditions is the notion of neutrality. I consider this legal provision fundamental, as it sanctions in international law the ICRC's own, permanent neutrality.

Furthermore, the Geneva Conventions expressly entrust other tasks to the ICRC, for example the protection of prisoners of war, and this gives the institution a functional international personality. This private organization set up under Swiss law can thus conclude international treaties and maintain contacts of a diplomatic nature with States. Over forty headquarters agreements confer upon the ICRC immunities normally reserved for governmental international organizations. Recently, through provisions in the federal law governing the protection of information, Switzerland also granted the ICRC special status comparable with that of an international organization having concluded a headquarters agreement with the Confederation.

None of this is very surprising if we take into account the fact that in 1990 the international community once again recognized the ICRC's specific function as a neutral and independent institution: a memorable resolution, co-sponsored by over 130 States, granted the ICRC observer status at the General Assembly of the United Nations.

The neutrality of the ICRC must therefore be clearly dissociated from the neutrality of Switzerland. This does not mean that we should repudiate the fundamental role played by Switzerland's permanent neutrality at the time the ICRC was founded and in the ICRC's functions for decades, as guardian of the Red Cross principles, as custodian of international humanitarian law and, in particular, as a neutral humanitarian intermediary. The ICRC has its headquarters in Switzerland; it recruits its members among the citizens of the Confederation;

the Swiss Federal Council is the depositary of the Geneva Conventions: all these facts confirm the existence of a special bond between the institution and Switzerland. Obviously, common interests link these two separate entities, and it is not surprising that world public opinion associates the ICRC with Switzerland. However, this does not make the ICRC the humanitarian arm of Swiss foreign policy.

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Since World War II, the ICRC has made an effort to define its position more precisely than previously in relation to the Confederation, and to emphasize its independence from the federal authorities. For its part, the Federal Council understood perfectly that respect for the ICRC's independence constitutes a guarantee that the institution will be accepted internationally, in both moral and operational terms. Today — and I want to state this clearly and unequivocally — the cordial relations between the ICRC and the Swiss authorities no longer admit of any ambiguity: their mutual independence is recognized, not only by both partners, but also by the international community. As concerns bilateral relations between the ICRC and the Swiss Confederation, this *de facto* independence could and should be consolidated *de jure*, especially in view of the dynamic process gradually integrating Switzerland into its European environment.

May I repeat: the ICRC enjoys a freedom of action that no governmental influence can limit. It can be impartial (another fundamental Red Cross principle) only if it remains free of all ties. Its strength resides in precisely this absolute independence, which it must maintain despite all opposition in today's world, where everyone else is speaking of involvement and coordination. The ICRC maintains this independence thanks to its own structure, its mononational composition and the system used to designate its members.

Through the cooptation of Swiss citizens for a period of four years, by secret ballot and a two-thirds majority, the ICRC avoids external pressure of all kinds. Its members do not owe their position to anyone; they freely accept a voluntary and public commitment to serve those who are suffering. They are all of the same nationality, thus precluding any State influence on the Committee's decisions through different national allegiances. Moreover, they are all Swiss, but they all have an international outlook, as they have accepted their posts with full knowledge of what is involved, to carry out the ICRC's

specific mission, that is, to implement humanitarian policies valid for all the countries in the international community.

Finally, this special situation — their single nationality — obliges the members of the ICRC when acting as such to set aside as much as possible their own social and cultural context, to free themselves from local ways of thinking to act as citizens of the world in alleviating human suffering. François Peyrot, in his remarkable short work entitled “Switzerland has not said its last word!”, reminds us that Madame de Staël once said: “I have for all of Switzerland a magnificent loathing. These lofty mountains seem to me to be the gates of a convent cutting us off from the rest of the world. We live in a state of infernal peace. We pine, we die in this void!” It could be that two centuries later some Swiss citizens, like Friedrich Dürrenmatt, have shared and still share the opinion of the lady of the manor in Coppet. They are wrong, and this is clearly not the case for the members and staff of the ICRC who, working from Geneva, are engaged in battle on the universal humanitarian front. Nevertheless, I feel it would be advisable for the ICRC to pursue a policy of openness towards other nationalities, whether in the recruitment of headquarters and field staff, for specific projects carried out by National Societies under the auspices of the ICRC, or in seeking high-level international expertise.

All this is important because the different aspects of humanitarian action — logistic, financial, cultural, political and diplomatic — require intensive interaction with the world around us. It is essential to maintain a continuing dialogue with political authorities. During the Gulf war, for example, it was vital for the ICRC’s activities to keep in close liaison with the various parties concerned: the governments and armed forces of Iraq, Kuwait, the countries of the coalition and other countries in the region, opposition groups, and the United Nations (its Secretary-General, the Security Council and the Sanctions Committee). On the basis of its experiences in and around Iraq since 2 August 1990, as well as in other contexts, the ICRC also decided to support the moves towards “humanitarian coordination” within the United Nations, a process aimed at organizing worldwide response to major humanitarian emergencies.

At the ICRC we are convinced that increased coordination is useful and necessary both within the United Nations system and within the International Red Cross and Red Crescent Movement. There must be an open and constructive dialogue between these two bodies and with non-governmental organizations. While combating the tendency towards bureaucratization inherent in all large agencies, in this context

we must preserve the unique nature of the Red Cross Movement, which acts in accordance with its fundamental principles. In particular, we must see to it that the specific role and independence of the ICRC are respected, so that it may fulfil the mandate conferred upon it by the international community. But I would like to repeat that improved information, communication and operational cooperation among organizations, both governmental and non-governmental, is indispensable for all humanitarian aid projects. We owe it to the victims, who are entitled to be protected and helped rapidly and effectively, and we owe it to the donors, who trust the humanitarian organizations to show solidarity in this respect.

This word, “solidarity”, is used more and more often nowadays to designate that combination of ethical values and psychological drives that incite men and women to help the weak, the oppressed, the wounded, and the sick. Through its principles and binding provisions, humanitarian law takes up the defence of the weak against the strong and gives legal force to the “Good Samaritan” reflex and the ethic of human solidarity. It upholds the inalienable rights of people who find themselves in the most vulnerable position: people who are unarmed in situations of conflict. It affirms the right of the wounded to receive care, of prisoners of war to remain alive, of civilians to stay out of the fighting and of first-aid workers to reach the victims. In other words, this law affirms the right of the victim or potential victim of armed conflict to receive protection and assistance.

During the past few months, on the basis of the duty we all have to provide assistance to those in need, some people have tried to establish a “*droit d'ingérence humanitaire*”. This slogan sprang from the understandable feeling of frustration that arises when one sees humanitarian aid being obstructed by governments wrongly invoking their sovereignty, or by opposition movements just as anxious to prove that they are in control of territory or populations. Nevertheless, the slogan masks a very confused notion, for intervention is not a question of law, but of power. Anyone who intervenes in the affairs of others must want to and must, above all, have the means to do so. To affirm the rights of the powerful is dangerous, when the law has been built up especially to defend the weak. Abuse is inevitable: history has shown us many situations where humanitarian reasons were given to justify political and military intervention. In humanitarian law, assistance does not constitute interference as long as it is really humanitarian, impartial, non-discriminatory, and, above all, provided by a neutral body whose credibility is sanctioned by the international

community. If, in spite of this, States refuse to admit humanitarian activities, this refusal is a violation of the law and should be treated as such!

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In conclusion, I will say that the ICRC's neutrality is exemplified by its attitude towards governments and ideologies, while it demonstrates its independence through action. During the Gulf war, when Switzerland — autonomously — announced that it was to apply wide-ranging economic and financial sanctions against Iraq, the Iraqis no doubt questioned the ICRC's presence and the impartiality of its operations. They rediscovered the Committee's independence and neutrality (known to them in fact since the Iran-Iraq war, if not before) when, beginning in early February 1991, the ICRC played a role essential for its humanitarian operations: providing a liaison with the governments and armed forces of the parties to the conflict and of neutral countries, as well as with international organizations.

This also made it possible for the ICRC to convene six meetings between high-level Iraqi and coalition officers and diplomats after the cessation of hostilities in the Gulf conflict. Prisoners of war and civilian internees had to be located and repatriated and solutions found for other humanitarian problems connected with the conflict. A few days after the cease-fire, officers from the opposing armed forces, some of whom were transported into enemy territory aboard ICRC aircraft, sat down at the same table and rapidly agreed on repatriation procedures. As well as convening these meetings, the ICRC chaired them, explained the provisions of international law to the participants, advised them on how to proceed in practical terms, and supervised the repatriation operations. The ICRC's role in this case was that of a traditional intermediary, with the clear goal of facilitating the application of humanitarian law. The meetings allowed 75,000 Gulf war POWs and civilian internees to be repatriated in just four months.

In the same vein, we could mention the meetings in Geneva between belligerents in the Yugoslav conflict, allowing plenipotentiaries of the Federal, Croatian and Serbian governments and of the Federal Army to sit down at the same table, to confirm the application of humanitarian principles and to negotiate humanitarian agreements on matters such as the well-ordered release of prisoners, conferring neutral status on certain hospitals and tracing persons reported missing.

Are any more examples necessary to attest to the fact that *the world needs an ICRC exactly as it is: neutral, independent, mononational and Swiss?*

As a final remark, allow me to quote my predecessor, Max Huber, once again, and to say with him that “the ICRC can live on only if it inspires confidence; the effectiveness of its operations depends on the trust placed in it by States and National Red Cross Societies. It must earn and preserve this trust every day through the work done by its leaders” and, may I add, by its delegates. My thanks go to the Museum for helping to maintain this trust in the ICRC, in the interest of all victims of conflict.

Cornelio Sommaruga
President
International Committee
of the Red Cross

Note: The views expressed in this speech reflect the conclusions drawn by Mr. François Bugnion, Deputy Director, Department of Principles, Law and Relations with the Movement, in his work entitled *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, currently in press.