

The composition of the International Committee of the Red Cross

by François Bugnion

“I know of no part of jurisprudence or of the humanities to which the institution calling itself the Geneva Committee can be connected”, declared the renowned Russian jurist Fiodor Fiodorovitch de Martens, legal adviser to the Imperial Russian Government, at the Fourth International Conference of Red Cross Societies held in Karlsruhe in September 1887.¹

No wonder he was puzzled, for although the International Committee is an international institution by reason of its activities and duties, its composition is still that of a private association under Swiss law.

The International Committee is the continuation of the Committee of Five appointed by the Geneva Society for Public Welfare on 9 February 1863. This Committee founded the Red Cross and took the initiative of promoting the original Geneva Convention. Ever since, members who resign or die have been replaced by individuals chosen by the remaining members, so there has been no break in the International Committee's already long history.

The Committee has called in reinforcements when its workload made this necessary. The number of its members increased from five to seven during the Franco-Prussian war of 1870-71; there were sixteen at the end of the First World War and twenty at the end of the Second World War. Since 1945 they have numbered between fifteen and twenty-five.

¹ *Quatrième Conférence internationale des Sociétés de la Croix-Rouge tenue à Karlsruhe du 22 au 27 septembre 1887, Compte rendu*, p. 95.

The members of the Committee have always been chosen from among Swiss citizens. At first this was only a practice, perhaps an accident, but for many years now it has been a statutory prescription. Article 7, paragraph 1, of the ICRC Statutes reads:

“The ICRC shall co-opt its members from among Swiss citizens. It shall comprise fifteen to twenty-five members”.²

Article 5, paragraph 1, of the Statutes of the International Red Cross and Red Crescent Movement, adopted by the Twenty-fifth International Conference of the Red Cross (Geneva, October 1986), also provides that the ICRC “co-opts its members from among Swiss citizens”.³

On 1 January 1995, the International Committee had twenty-two members, all of whom were Swiss.⁴

*
* *

The practice of recruiting the International Committee by co-opting members from among Swiss citizens has guaranteed its neutrality, independence, and continuity of action. But, because of the international dimension of its attributions, many observers have found the practice anomalous and have put forward proposals to modify it.

² Article 7, para. 1, of the Statutes of the ICRC, adopted on 21 June 1973 and revised on 6 December 1973, 1 May 1974, 14 September 1977, 29 April 1982 and 20 January 1988. See *IRRC*, No. 263, March-April 1988, pp. 154-165, at p. 159. The rule that members of the ICRC shall be co-opted from among Swiss citizens did not appear in the Statutes adopted on 15 November 1915 (ICRC archives, files CR 92 and 011) or those adopted on 10 March 1921 (*RICR*, No. 28, April 1921, pp. 379-380). It was introduced for the first time in the Statutes adopted on 28 August 1930. See *Manuel de la Croix-Rouge internationale*, 6th ed., Geneva, ICRC, and Paris, League of Red Cross Societies, 1930, pp. 145-148, at p. 147 (Art. 7).

³ Statutes of the International Red Cross and Red Crescent Movement, adopted by the Twenty-fifth International Conference of the Red Cross, Geneva, October 1986, Article 5, para. 1, *IRRC*, No. 256, Jan.-Feb. 1987, pp. 25-59, at p. 32. The rule stating that members of the ICRC shall be co-opted from among Swiss citizens already appeared in the Statutes of the International Red Cross adopted by the Thirteenth International Conference of the Red Cross, The Hague, 23-27 October 1928, *Treizième Conférence internationale de la Croix-Rouge, Compte rendu*, pp. 182-186, at p. 184. Thus the rule was introduced into the Statutes of the International Red Cross before it appeared in those of the ICRC.

⁴ The members of the International Committee are listed inside the cover page of every issue of the *International Review of the Red Cross*.

The first such proposals came from the International Committee itself. In a communication to the First International Conference of Aid Societies for the Relief of War Wounded, meeting in Paris in 1867, the International Committee stressed the need to bring its precarious situation to an end and to adapt its organization to the needs of the times, while placing it on a permanent footing.

In accordance with the principle that all the nations that rallied to the common cause should be represented on the Committee and have a legitimate share in its decisions, and anxious to uphold the principle of equality, the International Committee proposed to stand down in favour of a *Conseil supérieur de l'oeuvre*, whose members would be elected by the various countries' Central Committees in the proportion of one member for each military power. This international representation would be grouped around the Geneva Committee, which would act as its Bureau.⁵

The Paris Conference merely touched upon this proposal, postponing consideration of it to a subsequent Conference.⁶ The Second International Conference (Berlin, 1869) confirmed the International Committee in its functions but deferred discussion of its composition to the next Conference, which was due to take place in Vienna in 1871.⁷

The Geneva Committee, for its part, stood by the plan for its own reform that it had submitted to the Paris Conference, and continued to believe that it would not be truly international until it included representatives of the various nations' Central Committees.⁸

Optimism was in the air. Nobody imagined that a trivial matter like war could disturb the sweet harmony which apparently reigned among the various countries' aid societies.

⁵ Reorganization of the International Committee, proposal put forward at the International Conference, Paris, 26 August 1867, *Actes du Comité international de Secours aux Militaires blessés*, Geneva, Imprimerie Soullier & Wirth, 1871, pp. 73-75.

⁶ *Conférences internationales des Sociétés de Secours aux Blessés militaires des Armées de Terre et de Mer, tenues à Paris en 1867*, 2nd ed., Paris, Imprimerie Baillière & fils, 1867, Part I, pp. 317-320, Part II, pp. 21-22, 151-155, 182-190, 242-247 and 250 *ter*.

⁷ *Compte rendu des Travaux de la Conférence internationale tenue à Berlin du 22 au 27 avril 1869 par les Délégués des Gouvernements signataires de la Convention de Genève et des Sociétés et Associations de Secours aux Militaires blessés et malades*, Berlin, Imprimerie J.-F. Starcke, 1869, pp. 18-19, 42-44, 221-228, 254-255 and 261-266.

⁸ Ninth circular to Central Committees, 21 September 1867, *Actes du Comité international de Secours aux Militaires blessés*, pp. 79-82; Eleventh circular to the Central Committees, 30 March 1868, *ibid.*, pp. 87-88; Note addressed to the Central Committees, 20 June 1868, *ibid.*, pp. 94-109.

The Geneva Committee wrote in July 1870:

“The essentially international feature of the societies under the aegis of the Red Cross is the spirit that moves them, the spirit of charity that causes them to come to the rescue wherever blood is shed on a battlefield, and to feel as much concern for wounded foreigners as for their own wounded countrymen. The societies constitute a living protest against the savage patriotism that stifles any feeling of pity for a suffering enemy. They are working to pull down barriers condemned by the conscience of our times, barriers that fanaticism and barbarity have raised and still too often strive to maintain among the members of the human family”.⁹

Disillusionment soon set in. A few days later the Franco-Prussian war broke out and the fledgling National Societies were at each other's throats. The Societies of the belligerent States engaged in spreading the most poisonous propaganda, moved by the “savage patriotism” that the International Committee had just denounced; and even some Societies of neutral countries did not hesitate to enter the fray. So violent were the recriminations and so deep the wounds that it took the International Committee thirteen years of patient effort to persuade the National Societies to meet again.

The verdict was conclusive: the National Societies were auxiliaries of their army medical services; they depended on the backing of their national authorities and the support of public opinion; to muster the resources they needed for their work, they were obliged to appeal just as much to patriotism as to humanitarian feelings. They were too much a part of national life to be reasonably expected to stand aloof when their countries were fighting for survival.

That being so, an International Committee composed of representatives of the various nations' Central Committees would certainly be paralysed just when it was most sorely needed.

This taught the Committee a lesson it had small chance of forgetting, for the same situation has arisen to a greater or lesser degree in every subsequent conflict up to the present day. Thus, when its composition was

⁹ “Du double caractère, national et international, des Sociétés de secours”, *Bulletin international des Sociétés de secours aux militaires blessés*, No. 4, July 1870, pp. 159-162, at p. 160.

again discussed, this time at the Third International Conference of Red Cross Societies (Geneva, September 1884), the International Committee resolutely opposed the suggestions it had itself put forward at the Paris and Berlin Conferences.

The Conference was considering a proposal for reform submitted by the Central Committee of the Russian Red Cross. The violations of the Geneva Convention that took place during the Russo-Turkish war of a few years earlier (1876-1878) had convinced the St Petersburg Central Committee that the only way to strengthen ties between the Societies was to set up a central body formally recognized by all powers signatory to the Geneva Convention.

This went far beyond the question of the composition of the International Committee, and the Conference, believing that the Russian proposals were too radical to be usefully debated until the Central Committees had studied them and formed an opinion, postponed its study of them to a subsequent Conference.¹⁰

The decisive debate therefore took place at the Fourth International Conference of Red Cross Societies (Karlsruhe, 1887). Meanwhile the Central Committee of the Russian Red Cross had spelled out its conclusions, proposing the establishment of an International Committee of the Red Cross composed of members appointed by the governing bodies of National Societies, one member for each National Society.¹¹ The Geneva Committee, for its part, advocated the maintenance of the *status quo*.¹²

The Russian proposals led to heated discussion. What was at stake was not only the composition of the International Committee, but also relations between Red Cross institutions, and more particularly the independence of the National Societies. The National Societies' autonomy was guaranteed by the fairly loose structure instituted by the Constituent Conference of October 1863 and upheld by the Paris and Berlin Conferences. The Geneva Committee was not elected by the various Central Committees, and could therefore not claim to be of higher rank than they. It existed

¹⁰ *Troisième Conférence internationale des Sociétés de la Croix-Rouge tenue à Genève du 1^{er} au 6 septembre 1884, Compte rendu*, pp. 61-70, 74-87 and 429.

¹¹ *Du rôle du Comité international de la Croix-Rouge et des relations des Comités centraux de la Croix-Rouge*, Report submitted by the International Committee to the International Conference of Red Cross Societies held in Karlsruhe in 1887, Geneva, ICRC, 1887, esp. pp. 9-14.

¹² *Ibid.*, pp. 22-24.

side by side with, and independently of, the National Societies which it represented. It could make recommendations to them and tell them what it would like them to do, but had no right to give them orders. But obviously an International Committee composed of representatives of all the Central Committees would *ipso facto* rank higher than the Central Committees and, once the Russian proposals were formally embodied in a diplomatic treaty as the St. Petersburg Committee wished, the National Societies' freedom of action would be a thing of the past.

The matter was referred to the Third Committee. It concluded that the Geneva Committee should stay as it was, "having more duties than privileges, not having the exclusive monopoly in any aspect of the work of the Red Cross, but continuing to be the highest expression of its international action".¹³

The Russian Red Cross delegates, Counsellor d'Oom and Professor de Martens, drew attention to the "singular position" of the Geneva Committee and to the fact that its authority rested only on the esteem in which its members were held, since there were no rules governing their appointment. It would, they said, have to be replaced by a truly international body, composed of representatives of the various Central Committees, whose authority would be formally recognized.

Gustave Ador, speaking for the Geneva Committee, simply pointed out that the Committee had never asked for wider powers, had not taken the initiative of asking for its rights to be more fully defined, and wanted the *status quo* to be maintained.

The Russian proposal was defeated by a large majority.¹⁴

Thus, after a debate that had occupied the attention of four International Conferences, the Geneva Committee found itself confirmed in its functions and composition. There seem to have been four reasons for this:

- (1) the illusory nature of attempts to impose rules on charitable activities;
- (2) the impossibility of converting to war conditions types of organization intended to function in peacetime;
- (3) the independence that the National Societies had always enjoyed and were determined to retain;

¹³ *Quatrième Conférence internationale des Sociétés de la Croix-Rouge tenue à Carlsruhe du 22 au 27 septembre 1887, Compte rendu*, p. 90.

¹⁴ *Ibid.*, pp. 19-25, 69-70, 88-102.

- (4) the facts were there: the organization set up by the Constituent Conference of October 1863 had prospered beyond all expectations; it would have been irresponsible to change it for another form of organization that no one could be sure would work.

The composition of the International Committee was again discussed at the Sixth International Conference of the Red Cross (Vienna, 1897). The Central Committee of the Russian Red Cross had submitted a report suggesting that a penal sanction be incorporated in the Geneva Convention. The report proposed two levels of supervision. On the national level, each State party to the Geneva Convention would be required to adopt a penal law enabling it to repress breaches. On the international level, the Geneva Committee would investigate alleged breaches and settle any differences that might arise between the belligerents in this regard. For that purpose, the composition of the Geneva Committee would be modified to make it truly representative of the various countries' Central Committees.

This proposal was fiercely opposed. One after another the delegates of the States party to the Geneva Convention took the floor, declaring that their governments would never agree to supervision by neutral delegates appointed to investigate alleged breaches. When the Russian proposal was put to the vote, it received no support at all.¹⁵

Nothing daunted, at the First Hague Peace Conference of 1899 the St Petersburg government proposed "the establishment of an 'International Red Cross Bureau', recognized by all the powers and founded on the principles of international law to settle all questions concerning voluntary assistance and medical aid in wartime..."¹⁶

The Conference rejected this proposal on the grounds that reorganization of the Red Cross was not on its agenda.¹⁷

*
* *

The founding of the League of Red Cross Societies just after the First World War was perhaps not a new attempt to modify the composition of

¹⁵ *Sixième Conférence internationale des Sociétés de la Croix-Rouge*, Vienna, 1897, pp. 99 and 218-226.

¹⁶ *Conférence internationale de la Paix, La Haye, 18 mai-29 juillet 1899*, new ed., The Hague, Ministry of Foreign Affairs, 1907, Part III, p. 2.

¹⁷ *Ibid.*, pp. 2-3.

the International Committee, but it was at least an attempt to transfer most of its tasks and powers to a multilateral institution.

Aware that converting the Red Cross to peacetime activities, and especially reconstruction work, made greater cooperation between National Societies necessary, the International Committee had itself considered broadening its composition.¹⁸ But when Henry Pomeroy Davison, President of the War Council of the American Red Cross, led the National Societies of the major allied and associated powers (the United States, France, Great Britain, Italy and Japan) in forming an "International Committee of Red Cross Societies", the Geneva Committee felt threatened. It became all the more uneasy when Davison called a Constituent Conference in Cannes without waiting for the International Conference of the Red Cross which the ICRC had announced it was about to convene.

The League and the International Committee were profuse in expressions of harmonious cooperation and fraternal understanding, but the differences between them were deep and very real.

The League was founded outside the framework of the International Conference of the Red Cross. Its first Statutes,¹⁹ adopted in Paris on 5 May 1919, gave the five founding Societies a dominant position and the power permanently to exclude the National Societies of the former Central Powers (Germany, Austria, Hungary, Bulgaria and Turkey) as well as the Russian Red Cross. This ran counter to two basic principles of the Red Cross, universality and the equal status of National Societies. The League's founders intended the new institution to become the real centre around which cooperation among National Societies would be organized. They lost no opportunity of expressing their profound respect for the International Committee but, just as certainly, they saw no obvious place for it in the new scheme of Red Cross international relations. Without saying so openly, they wanted the Geneva Committee to have a merely honorary status that would soon have reduced it to a "museum piece".²⁰

¹⁸ Interview of the Allied Red Cross Societies with the International Committee, Geneva, 12-14 February 1919, statement by Mr. Edouard Naville, Acting President of the International Committee, *RICR*, No. 3, March 1919, pp. 336-340, at p. 339.

¹⁹ Statuts et Règlement de la Ligue de Sociétés de Croix-Rouge (*sic*), *RICR*, No. 6, June 1919, pp. 691-698.

²⁰ On 25 February 1923 Sir Arthur Stanley, Chairman of the British Red Cross Society, wrote to Prince Charles of Sweden, President of the Swedish Red Cross, as follows: "Yet to me it would seem fair to reserve a place for the members of the ICRC so that the new organization might benefit from their experience, from an endeavour that has continued

There would be no more war, for the victors had decided as much and the newly founded League of Nations was there to prevent it. Therefore the role of neutral intermediary, until then the recognized attribute of the International Committee, was, like war itself, merely a legacy of the past and better forgotten.

For its part, the International Committee took the view that only an International Conference of the Red Cross attended by all duly recognized National Societies was entitled to adopt a new scheme of organization for Red Cross international relations. The Committee upheld the Fundamental Principles proclaimed at the very founding of the Red Cross. It had no intention of abandoning the special relationship it had fostered with the National Societies ever since and wanted to continue to play an active part in an institution which it had initiated. The experience of more than half a century had taught it that its universally recognized role of neutral intermediary was useful and, as the World War had just shown, important. It felt that the scourge of war could not be abolished by decree, and that the flaws in the Covenant of the League of Nations were too obvious not to give rise to misgiving.

The dissension between the International Committee and the League was thus fundamental, and had nothing to do with differences of temperament, to which it was somewhat glibly ascribed. So, when there were calls from all sides for the two bodies to merge, each of them felt that its existence was threatened.

Laborious negotiations followed. They lasted more than eight years and occupied the attention of four International Conferences of the Red Cross. All proposals put forward for the merger or organic union of the two bodies were discarded one after the other. The League's member Societies insisted that the new institution should be representative, to ensure that they would have a legitimate share in its decisions, while the International Committee was still convinced that its neutrality and independence - and therefore the fulfilment of its mission - depended on the system of co-opting its members.

without interruption for 60 years, and to offer this venerable institution the place of honour which it deserves", ICRC Archives, file CR 113; *Réorganisation de la Croix-Rouge internationale*, Report and documents concerning the discussions between the International Committee of the Red Cross and the League of Red Cross Societies, July 1922-July 1923, (Eleventh International Conference of the Red Cross, Geneva, August 1923, Document No. 37), pp. 79-82, at p. 81; André Durand, *History of the International Committee of the Red Cross: from Sarajevo to Hiroshima*, Geneva, Henry Dunant Institute, 1984, pp. 177 and 183-184.

This is no place for a detailed account of these difficult negotiations, during which both sides made serious blunders.²¹ Having explored all possibilities of merger in vain, they concluded that the ICRC and the League should continue to exist as mutually complementary organizations. No attempt should be made to amalgamate them into a single body; each of them should be assigned a well-defined field of activity and they should form part of a larger institution, the International Red Cross.

Such was the aim of the draft Statutes of the International Red Cross, drawn up by Colonel Draudt, Vice-President of the League, and Professor Max Huber, a member of the ICRC.²² The draft was adopted by the Thirteenth International Conference of the Red Cross (The Hague, October 1928).²³

Thus, after nearly ten years of argument, the International Committee was confirmed in its functions and composition.

The International Committee was the butt of ironic comment about the way it had defended its traditional position at the end of the First World War, instead of bowing to the gale of idealism unleashed by President Wilson which seemed to bear the League towards the enchanted shores of a future free from the threat of war. But history has vindicated the International Committee, not its detractors. Throughout the Second World War, owing to the nature of its membership, the League was unable to undertake relief work for civilians in occupied Europe on its own, since most of its senior officials belonged to countries that were at war with Germany, and the German government would not sanction any action by the League in territories occupied by the Axis.²⁴ It was only through the Joint Relief Commission of the International Red Cross that the League was able to help the civilian population.²⁵ Moreover, the international

²¹ For the history of these negotiations, see Durand, *op. cit.*, pp. 139-194, and Henry W. Dunning, *Elements for the history of the League of Red Cross Societies*, Geneva, League of Red Cross Societies, December 1969 (cyclostyled), pp. 13-48.

²² Colonel Draudt and Max Huber, "Rapport à la XIII^e Conférence internationale de la Croix-Rouge sur les Statuts de la Croix-Rouge internationale", *RICR*, No. 119, Nov. 1928, pp. 991-1010.

²³ *Treizième Conférence internationale de la Croix-Rouge tenue à La Haye du 23 au 27 octobre 1928, Compte rendu*, pp. 12-19, 48-75, 85, 101-114, 117-118 and 182-186.

²⁴ *Report of the International Committee of the Red Cross on its activities during the Second World War (September 1, 1939 - June 30, 1947)*, Vol. III, *Relief Activities*, Geneva, ICRC, May 1948, p. 364.

²⁵ The Joint Relief Commission of the International Red Cross was a joint ICRC-League body formed in July 1941 to carry out relief operations for civilians affected by the war. For the activities of this body, see the *Report of the Joint Relief Commission of the International Red Cross, 1941-1946*, Geneva, ICRC - League of Red Cross Societies, 1948.

organizations depending on the League of Nations were, like the League of Nations itself, unable to take any action whatsoever.

*
* *

In spite of the extraordinary range of its activities during the Second World War, at the end of the war the International Committee was in the dock. When the Nazi concentration camps were thrown open and the fate of Soviet prisoners of war was made known, all that the ICRC had done for other victims was forgotten. Some of its critics went so far as to demand that the International Committee be purely and simply abolished and its responsibilities transferred to the League, which was completely dominated by the victorious nations.

Others, while not calling for the ICRC to be dismantled, attacked its composition, working methods and mission, as did Count Folke Bernadotte, President of the Swedish Red Cross, in the proposal he submitted to the Preliminary Conference of Red Cross Societies, meeting in Geneva on the initiative of the ICRC from 26 July to 3 August 1946.

Count Bernadotte, after paying tribute to the International Committee's work during the war, said that he was sure "that the results arrived at (...) might have been, and could be, infinitely greater if the Committee possessed still greater authority, by the mere fact of its being the direct representative, in time of peace, of the Red Cross Societies of all the countries in the world and, in time of war, that of all the neutral countries". In his view, the members of the International Committee could belong to countries other than Switzerland and should be elected by the International Conference of the Red Cross. In the event of war, all members belonging to belligerent countries would be replaced by citizens of neutral countries. Since it was the business of the International Committee to monitor the application of the humanitarian rules, it had to be as strong and representative as possible.²⁶

²⁶ Speech by Count Folke Bernadotte, President of the Swedish Red Cross, Geneva, July 1946 (cyclostyled), ICRC Archives, file CR 109b; *Report on the Work of the Preliminary Conference of the National Red Cross Societies for the study of the Conventions and of various Problems relative to the Red Cross (Geneva, July 26-August 3, 1946)*, Geneva, ICRC, January 1947, p. 120.

Count Bernadotte's proposals were inspired by the conviction, already expressed during the Karlsruhe Conference sixty years previously by Counsellor d'Oom and Professor de Martens, that the International Committee's authority would be more highly respected if recruitment of its members were more broadly based. But by suggesting that in the event of war members of the International Committee belonging to the belligerent States would be replaced by nationals of neutral countries, he hoped to forestall the objection that had led to the rejection of the Russian Red Cross proposals, namely that the International Committee would be hamstrung by quarrels among members belonging to the warring parties.

These proposals were attractive. They relied implicitly on the great credit enjoyed by the Swedish Red Cross and its President owing to their humanitarian activities during the Second World War. On closer examination, however, they raised more difficulties than they could resolve, being based on a confusion between three completely different situations. The first of these is permanent neutrality, that is, the status of a country bound to perpetual neutrality by treaties that oblige other States to respect its territory as inviolable. The second is occasional neutrality, whereby a State chooses to stay neutral in a given conflict while reserving the right to act differently in another. The third is non-belligerence, whereby a State abstains, perhaps for only a short time, from taking part in active hostilities, but does not consider itself bound by the obligations imposed by the law of neutrality, and reserves the right to enter the fray when it pleases. However, it was clear from the example of Italy between September 1939 and June 1940, and of the United States until November 1941, that the presence of nationals of non-belligerent countries on the International Committee would paralyse its work and make it impossible for it to convince the outside world that it was neutral and impartial. Furthermore, the obligation at the beginning of and during each conflict to appoint nationals of neutral States to replace members belonging to nations drawn into the war meant that the composition of the International Committee would have to be modified at the very time when its action was most needed.²⁷ The

²⁷ "If we want to work effectively in wartime, it is quite a risk to propose an organization whose composition would have to be changed the moment war broke out" said Dr Gustave Adolphe Bohny, President of the Swiss Red Cross. *Conférence préliminaire des Sociétés nationales de la Croix-Rouge pour l'étude des Conventions et de divers problèmes ayant trait à la Croix-Rouge, Procès-verbaux* (cyclostyled), Vol. IV, meetings of Commission III, p. 83 (meeting of Tuesday 30 July 1946).

Canadian Red Cross delegate was hardly exaggerating when he conjured up the image of a “kaleidoscopic organization” whose composition was constantly changing.²⁸ In any event, an International Committee so composed would lack the primary requisite for effective action, namely stability.

It is hardly surprising then that Count Bernadotte withdrew his proposals soon afterwards.²⁹

*
* *

The composition of the International Committee was not called into question at the 1949 Diplomatic Conference or at the more recent Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law (1974-1977), but on both occasions it was proposed to transfer part of the Committee’s responsibilities to a multilateral institution.

The French delegation at the 1949 Diplomatic Conference expressed the fear that the protection the Conventions were designed to offer would be inoperative in any future world war because there would be no neutral States in a position to perform the tasks required of Protecting Powers. It therefore proposed the establishment of an “International High Committee for Humanitarian Protection”, made up of thirty eminent political, religious and scientific figures, leading members of the legal profession and holders of the Nobel Peace Prize, elected by an assembly of delegates of all the States signatory to the Geneva Conventions. In situations where no Protecting Power had been appointed, this High Committee would perform all the tasks normally assigned to Protecting Powers by the Geneva Conventions.³⁰

Although the French delegates took care to point out that the proposed High Committee would not duplicate the International Committee, their

²⁸ *Ibid.*, p. 79.

²⁹ “My proposal resulted in lengthy and lively discussions. A special committee was formed which met frequently. In the course of these meetings I greatly revised my original attitude toward the problem (...). In short, I have become convinced that the International Committee ought to continue in its present form and retain its present composition...”, Folke Bernadotte, *Instead of Arms*, London, Hodder and Stoughton, 1949, pp. 129-131 and 163-166, at p. 130; Ralph Hewins, *Count Folke Bernadotte, His Life and Work*, London, Hutchinson & Co., 1949, pp. 171-173 and 175-179.

³⁰ *Final Record of the Diplomatic Conference of Geneva of 1949*, Bern, Federal Political Department, 1949 (hereinafter: *Final Record 1949*), Vol. III, pp. 30-31.

proposal nevertheless transferred much of the ICRC's work to a multi-lateral organization.

The idea was greeted with extreme scepticism. Its critics pointed out the difficulty of forming a committee of members from different States, possessing all the necessary qualifications and able to work effectively.³¹ There was also the objection that this International High Committee - whose members would have to be recognized and accepted by all States - would be an artificial body, for its members would "therefore be in some way outside and superior to the existing world".³² In the end, when the French delegate said, in reply to the question as to where this august humanitarian assembly would meet if there were no more neutral States, that "it could meet on a piece of internationalized territory, or on several such territories in different parts of the world",³³ it became clear that this was mere word-play and that the whole business was a fantasy rather than a realistic weighing up of possibilities.

Finally the Conference adopted a resolution recommending that "consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of War Victims".³⁴ It was up to France to take steps to put this resolution into effect and the Quai d'Orsay began consultations in 1950. It received so few replies that it was clear that other countries were not interested,³⁵ and after a brief exchange of correspondence this resoundingly named but impractical project was dropped.

At the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law, several delegations proposed that the Protecting Powers' monitoring of compliance with humanitarian rules, which relies to a large extent on the consent of the belligerent parties,

³¹ *Final Record 1949*, Vol. II-B, p. 92 (the Bagge speech).

³² *Ibid.* (the Sokirkine speech).

³³ *Ibid.*, pp. 92-93 (the Cahen-Salvador speech).

³⁴ Resolution 2, *Final Record 1949*, Vol. I, p. 361.

³⁵ Paul de Geouffre de la Pradelle, "Le contrôle de l'application des Conventions humanitaires en cas de conflit armé", *Annuaire français de droit international*, Vol. II, 1956, pp. 343-352, at p. 351; L. Aureglia and P. de la Pradelle, "Organisation, fonctionnement et protection du contrôle de l'application des conventions humanitaires en cas de conflits armés", *Annales de Droit international médical*, Monaco, No. 2, Feb. 1958, pp. 47-69, esp. p. 55.

should be supplemented by an automatic procedure entirely independent of their consent. The proposal envisaged that the United Nations could either act as a substitute for defaulting Protecting Powers or appoint an organization of its choice to act in their stead.

That was the gist of a draft amendment, presented by Norway and the Arab States, which proposed to add the following provision to draft Article 5 of Protocol I relating to the appointment of Protecting Powers and their substitutes:

“If the discharge of all or part of the functions of the Protecting Powers, including the investigation and reporting of violations, has not been assumed according to the preceding paragraphs, the United Nations may designate a body to undertake these functions”.³⁶

Given the similarity between the duties of the Protecting Powers and those of the ICRC, had this proposal been accepted it would have transferred to a multilateral organization part of the tasks normally falling to the International Committee.

In support of the amendment it was argued that a supervisory body which would not depend on the consent of the parties was necessary to monitor compliance with humanitarian law, and that the United Nations should be assigned powers in this regard.

The opponents of the amendment objected that it imposed an unacceptable constraint and interfered with the existing system of Protecting Powers, which was based on the parties' consent. They felt that responsibility for monitoring the application of the humanitarian treaties could not be handed over to a political institution, and that this role was incompatible with the responsibilities for maintaining peace which are entrusted to the United Nations by its Charter.³⁷ The United Nations observer

³⁶ *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, 1974-1977), Bern, Federal Political Department, 1978 (hereinafter: *Official Records CDDH*), Vol. X, p. 69. (Doc. CDDH/I/235/Rev.1, Report to Committee I on the work of Working Group A). This draft amendment was the result of the merger of two draft articles (Amendment CDDH/I/75, proposed by the Arab States, and Amendment CDDH/I/83, proposed by Norway, *Official Records CDDH*, Vol. III, p. 31 and 35. It is not our intention to offer an opinion here as to whether it is any part of the Protecting Powers' mandate to investigate and report on breaches of the Geneva Conventions, as the authors of these amendments claimed, but there is room for doubt.

³⁷ Summary record of the twenty-seventh meeting of Committee I (Doc. CDDH/II/SR.27), *Official Records CDDH*, Vol. VIII, pp. 253-264.

informed the meeting of his organization's reservations in this regard, pointing out that the UN Charter, the sole source of the powers of the United Nations and its organs, did not give the organization any responsibility for monitoring the application of humanitarian law.³⁸

When put to the vote the draft amendment was rejected, with 27 votes in favour, 32 votes against and 16 abstentions.³⁹

*
* *

Thus ever since the International Committee was formed there have been proposals either to modify its composition or to transfer all or part of its duties and powers to a multilateral organization. These have been made repeatedly, indeed almost continually. They have been debated in depth and usually with some vigour. Yet every time the International Committee has been confirmed in its tasks and composition.

Not without good reason. Although the International Committee has been assigned definite tasks in promoting compliance with the Geneva Conventions and their Additional Protocols, and has had to set up quite a large administrative structure to cope with its expanding activities, it is still primarily a relief organization. Even when its action is based on international conventions, the nature of that action is not judicial but voluntary and charitable. Charity, however, cannot be regimented. It would be fatal to try to confine it in a strait-jacket of rigid regulations and complicated procedure. "The fewer rules there are for voluntary relief, the better it will work", as Paul des Gouttes said.⁴⁰

An International Committee composed of representatives of various countries, not all of them on good terms with each other, would inevitably have to have precise and detailed rules of procedure that would make any spontaneous charitable activities impossible.

³⁸ Summary of the statement by Mr. J. Kobialka, United Nations observer, to Working Group A of Committee I on 6 March 1975 (Doc. CDDH/I/GT/48, 10 March 1975, cyclostyled). As far as we are aware, this document is not reproduced in the Official Records of the Diplomatic Conference.

³⁹ *Official Records CDDH*, Vol. VIII, p. 264 (Doc. CDDH/I/SR.27).

⁴⁰ Paul des Gouttes, "Une thèse de doctorat en droit sur la Croix-Rouge", *RICR*, No. 45, Sept. 1922, pp. 747-758, at p. 753.

As it is composed at present, the International Committee is, so to speak, concurrent with and independent of the National Societies; it in no way emanates from them. Matters would be very different if it were made up of representatives of all the National Societies, for its very composition would then suffice to rank it above each individual National Society. The question of the composition of the International Committee is, then, largely inseparable from the question of the international Red Cross organization and, more particularly, the independence of the National Societies.⁴¹ In this connection, there is one decisive fact whose importance was clearly recognized by the Karlsruhe Conference of 1887, namely that the National Societies came into being before the international organization of the Red Cross. They were founded as the Belgian, French, Dutch or Prussian Red Cross Societies, and not as branches of a pre-existing international organization. Only later, once they were well established, did they feel the need to come together and adopt more detailed rules to supplement the few general principles contained in the resolutions passed, and the hopes expressed, at the Constituent Conference of October 1863. But by the time the Paris and Berlin Conferences were held in 1867 and 1869 respectively, the National Societies were enjoying a great deal of freedom and were not prepared to give it up. Changing the composition of the International Committee to include representatives of all the National Societies, as Counsellor d'Oom and Professor de Martens had proposed at the Karlsruhe Conference, would have meant sacrificing much of the independence that the National Societies had enjoyed ever since the Red Cross was founded. And who, having tasted freedom, would willingly give it up?

Recruitment of members of the International Committee by co-opting them from among Swiss citizens is a guarantee of cohesion and efficiency. Its members have attended the same schools, and often share the same background - the liberal professions, or higher education; they think along the same lines, and can identify themselves with the institution much more easily than would eminent figures from different parts of the globe. And since they do not represent any State or party, they are responsible only to the Red Cross and to their own conscience. They have no constituency

⁴¹ The only independence referred to here is that of the National Societies at the international level, in other words each National Society's independence vis-à-vis all other Red Cross and Red Crescent institutions. A National Society's independence of the government of its country is an entirely separate matter that has nothing to do with the composition of the International Committee.

to which they are answerable for their activities and for the opinions they express within the ICRC. In fact, despite the momentous nature of their decisions, the vast majority of them are taken not by vote but by consensus emerging from discussion. The International Committee has never reached a deadlock because its members failed to agree.

This method of recruiting members also offers an invaluable guarantee of the confidentiality of information, and therefore of the institution's acceptability. There can be no doubt that considerable pressure would be brought to bear on Committee members of different nationalities to inform their respective governments of the International Committee's activities and of the findings of its delegates. If its composition were to be modified, would the ICRC be in a position to give parties to conflict the assurances of confidentiality which are necessary for the major part of its activities, especially visits to places of detention? Probably not.

The composition of the International Committee is also the most effective guarantee of its independence, for States and National Societies take no part in recruiting its members, and the latter follow no instructions from any State or party in carrying out their duties. They represent nobody but themselves and their decisions are completely independent. Obviously, if they were appointed by the Central Committees of National Societies they would be answerable to their respective Societies and would have to do as they were told.

Recruitment of members of the International Committee by co-opting them from among Swiss citizens also ensures that the Committee is neutral and therefore acceptable. Switzerland obviously has no monopoly on neutrality, but Swiss neutrality is founded on tradition and on treaties which give it special status. Moreover, Switzerland has been spared war for almost two centuries, so has no real enemy. *A priori*, no belligerent party can reasonably fear that the International Committee will not treat it impartially; but what belligerent would trust the ICRC if one of its members were an enemy?

Those who advocate changing the composition of the International Committee have generally pointed to the example of the international organizations and their secretariats. This is a false analogy, for such organizations do most of their work in peacetime, and it is unrealistic to expect that peacetime methods of organization can be applied in times of armed conflict. Indeed, multilateral organizations do not run smoothly even at the best of times. It needs no great acumen to foresee that, if the International Committee included representatives of belligerent nations,

it would itself become a battlefield and its work would inevitably be brought to a halt by its members' quarrels. This is not mere supposition; all too many debates at the United Nations, and the dispute over the representation of the Republic of South Africa that arose at the Twenty-fifth International Conference of the Red Cross (Geneva, October 1986), have shown clearly enough that it is always difficult, and usually impossible, to get representatives of nations who are at each other's throats to come together around a conference table.

However logical it may seem that international missions should be carried out by a multinational organization, the facts are there. The International Committee has been in existence, and active on the international scene, for more than a hundred and twenty-five years. Its work has expanded beyond all possible expectations. It has had serious setbacks but has indisputably done its work with unparalleled efficiency. In its own domain, it has acquired experience unrivalled by that of any other institution. Its basic working principles have remained unchanged; this is the best gauge of its impartiality, the continuity of its action, and therefore its acceptability. It would, to say the least, be rash to try to replace it with a different system that nobody could be sure would work. Whether or not its position is anomalous, the International Committee's record and the services it has rendered have always been an argument for maintaining it as it is.

There remains the alternative proposed by Count Bernadotte, namely that the International Committee would be composed of representatives of the various nations, on the understanding that in the event of war its members from belligerent nations would be replaced by nationals of neutral countries. To start with, it is not clear nowadays what the term "belligerent" means. If belligerence depends on a declaration of war, the United States was not a belligerent in the Viet Nam war, and the Soviet Union was not a belligerent in the Afghan conflict. During the 1962 conflict between China and India, and the 1979 conflict between China and Viet Nam, diplomatic relations were not even broken off. It is easy to imagine the differences that would arise if some members of the Committee belonged to nations engaging in hostilities without a declaration of war. They would refuse to resign, on the pretext that their countries were not formally at war, but they would nevertheless be representatives of belligerent nations. Obviously, once the first shots had been fired and casualties were coming in, all sorts of pressure would be applied to influence the appointment of new members. The war would be over before the International Committee had even started work.

Thus, although purists may object that because of the Committee's international attributes it is illogical to recruit its members by co-opting them from among Swiss citizens, this is in the last analysis the best possible system imaginable in the present state of international relations. And it has one tremendous advantage: it works.

It is also the best possible guarantee of the International Committee's independence and neutrality, and of the continuity of its action.

François Bugnion, Arts graduate and Doctor of Political Science, entered the service of the ICRC in 1970. He served the institution in Israel and the occupied territories (1970-1972), in Bangladesh (1973-1974) and more briefly in Turkey and Cyprus (1974), Chad (1978), Viet Nam and Cambodia (1979). Since 1989, he has been Deputy Director of the ICRC Department for Principles, Law and Relations with the International Red Cross and Red Crescent Movement. He is the author of: *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre* (ICRC, Geneva, 1994).