

# The International Conference of the Red Cross and Red Crescent: challenges, key issues and achievements

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## **Abstract**

*Since the constituent Conference in October 1863, which gave birth to the Red Cross,<sup>1</sup> the International Conference of the Red Cross and Red Crescent has met on thirty occasions. The first meeting took place in Paris in 1867 and the thirtieth in Geneva in November 2007. What contribution has the Conference made to the development of international humanitarian law and humanitarian action? What are the main challenges that the Conference has had to face? Where has it succeeded and where has it failed? These are the questions that this article seeks to answer.*

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\* This article is a personal contribution and does not necessarily reflect the views of the International Committee of the Red Cross. English translation by Mrs Glynis Thompson.

## The International Conference of the Red Cross and Red Crescent: an unparalleled forum

### The composition of the Conference

The matters submitted to the International Conference, the nature of its debates, and the bearing of its decisions are determined by its composition. Virtually unique among international bodies, the International Conference of the Red Cross and Red Crescent brings together institutions born out of private initiative – the components of the Red Cross and Red Crescent Movement – and the States parties to the Geneva Conventions.<sup>2</sup>

This hybrid composition, which brings together institutions established as a result of private initiative and states, derives from the organization's objectives. As Henry Dunant and the other founders of the Red Cross saw it, the intention was not to establish new public agencies but to set up voluntary relief societies that would be based on private initiative and would rely on private support.<sup>3</sup> However, in order to be able to provide relief for the wounded on the battlefield, the new societies had to establish a strong relationship with the civil and military authorities already in peacetime.<sup>4</sup>

- 1 Following a practice that is more than one hundred years old, I will use the expression 'International Red Cross' or, more simply, 'Red Cross' to designate the International Red Cross and Red Crescent Movement, particularly when referring to periods in which those expressions were the only ones in official use.
- 2 The only body with a similar composition is the International Labour Conference, which brings together the member states of the International Labour Organization and the trade union federations and employers' federations of those countries.
- 3 The history of the foundation of the Red Cross is well known and there is extensive literature on the subject. The following personal accounts and other works are of particular interest: J. Henry Dunant, *A Memory of Solferino*, English version provided by the American Red Cross, reprinted by the ICRC courtesy of the American Red Cross, ICRC, Geneva, 1986 (original French edition: *Un souvenir de Solferino*, Imprimerie Jules-Guillaume Fick, Geneva, 1862); Henry Dunant, *Mémoires*, text compiled and presented by Bernard Gagnebin, Henry Dunant Institute, Geneva, and Éditions L'Age d'Homme, Lausanne, 1971, in particular pp. 32–121; Alexis François, *Le berceau de la Croix-Rouge*, Librairie A. Jullien, Geneva, and Librairie Édouard Champion, Paris, 1918; Pierre Boissier, *History of the International Committee of the Red Cross: From Solferino to Tsushima*, Henry Dunant Institute, Geneva, 1985, pp. 7–121; François Bugnion, 'La fondation de la Croix-Rouge et la première Convention de Genève', in Roger Durand (ed., with the collaboration of Jean-Daniel Candaux), *De l'utopie à la réalité: Actes du Colloque Henry Dunant tenu à Genève au palais de l'Athénée et à la chapelle de l'Oratoire les 3, 4 et 5 mai 1985*, Henry Dunant Society, Geneva, 1988, pp. 191–223; François Bugnion, *The International Committee of the Red Cross and the Protection of War Victims*, ICRC, Geneva and Macmillan, Oxford, October 2003, pp. 1–28.
- 4 The plan of the founders of the Red Cross took practical shape in the Resolutions and Recommendations adopted by the constituent Conference of October 1863, which gave birth to the Red Cross. Those Resolutions formed the basis upon which the National Red Cross and Red Crescent Societies were established and the statutory framework of the Movement until the adoption by the Thirteenth International Conference of the Red Cross, held in The Hague in 1928, of the first Statutes of the International Red Cross. The Resolutions and Recommendations of the constituent Conference are reproduced in *Compte rendu de la Conférence internationale réunie à Genève les 26, 27, 28 et 29 octobre 1863 pour étudier les moyens de pourvoir à l'insuffisance du service sanitaire dans les armées en campagne* (excerpt from *Bulletin* No. 24 of the Geneva Public Welfare Society), Imprimerie Jules-Guillaume Fick, Geneva, 1863, pp. 147–149; *Handbook of the International Red Cross and Red Crescent Movement*,

That relationship was to be maintained at two levels. At the national level, each National Society was to ‘get in touch with the Government of its country, so that its services may be accepted’ in case of war.<sup>5</sup> At the international level, the relationship was upheld by virtue of the states participating in the International Conference of the Red Cross, beginning with the first conference, which was held in Paris in 1867.

According to the revised Statutes of the International Red Cross and Red Crescent Movement (‘the new Statutes’ of the ‘Movement’) adopted by the Twenty-fifth International Conference of the Red Cross, held in Geneva in October 1986,<sup>6</sup> the members of the International Conference are the delegations from: duly recognized National Red Cross and Red Crescent Societies;<sup>7</sup> the International Committee of the Red Cross (ICRC); the International Federation of Red Cross and Red Crescent Societies (‘the Federation’); and the states parties to the Geneva Conventions.<sup>8</sup> The delegations from the National Societies, the ICRC, the Federation, and the states have equal rights as members of the International Conference. They are all entitled to take part in the deliberations and in the ballots, during which each delegation has one vote.<sup>9</sup>

The International Conference meets in principle once every four years. However, the periods between two conferences have sometimes been longer, either because there was no desire to meet (1869–1884), or because the Conference was prevented from meeting by a widespread conflict (1912–1921, 1938–1948), or by political impediments connected with the representation of certain states or certain political entities. For instance, the International Conference was unable to meet between 1957 and 1965 because of differences of opinion about the representation of China. Similarly, the Conference that should have taken place in Budapest in 1991 had to be cancelled at the last minute because of differences of opinion about the participation of Palestine.

The attributions of the International Conference are derived from the procedures followed at the first conferences and, since 1928, from the Statutes. We will now turn to those attributions.

14th edition, ICRC and Federation, Geneva, 2008, pp. 515–516; Dietrich Schindler and Jiri Toman (eds.), *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*, 4th edition, M. Nijhoff Publishers, Leiden and Boston, 2004, pp. 361–363.

5 Article 3 of the Resolutions of the constituent Conference of October 1863, *Handbook*, above note 4, p. 515.

6 Statutes of the International Red Cross and Red Crescent Movement (‘Statutes’), adopted by the Twenty-fifth International Conference of the Red Cross, held in Geneva in October 1986, in *International Review of the Red Cross*, No. 256, January–February 1987, pp. 25–59; *Handbook*, above note 4, pp. 517–534.

7 The National Society of Israel uses the name Magen David Adom (Red Shield of David).

8 Statutes, Art. 9, para. 1.

9 *Ibid.*, Art. 9, para. 2.

## The attributions of the Conference

According to the Statutes, ‘The International Conference is the supreme deliberative body for the Movement’.<sup>10</sup> It has sole competence to amend the Statutes and the Rules of Procedure of the Movement, to take the final decision on any difference of opinion as to the interpretation and application of the Statutes and Rules, and to decide on any question that may be submitted to it by the ICRC or the Federation about their differences of opinion. It contributes to the unity of the Movement and to the achievement of the latter’s mission in full respect of the Fundamental Principles; it contributes to the respect for and development of international humanitarian law; it may assign mandates to the ICRC and to the Federation within the limits of their statutes and of the Statutes of the Movement; however, it may not modify either the Statutes of the ICRC or the Constitution of the Federation or take decisions contrary to such statutes.<sup>11</sup> Lastly, the Conference elects the members of the Standing Commission of the Red Cross and Red Crescent, which is the trustee of the International Conference between conferences and as limited by the attributions conferred on it by the Statutes of the Movement.<sup>12</sup>

According to the Statutes, ‘the International Conference shall adopt its decisions, recommendations or declarations in the form of resolutions’.<sup>13</sup> Although the Conference endeavours to adopt its resolutions by consensus, there is nothing to prevent it from proceeding by voting. The vote may be taken by secret ballot or by roll call. What influence do the resolutions of the Conference have? That question now needs to be examined before we turn to the main challenges facing the International Conference.

## The legal effects of the decisions of the International Conference

From the time of the Second International Conference (which met in Berlin in 1869) onwards, National Society delegates were asked to come with precise instructions and sufficient authority to be able to exercise their right to vote.<sup>14</sup>

10 *Ibid.*, Art. 8.

11 *Ibid.*, Art. 10.

12 Established by the Thirteenth International Conference of the Red Cross, held in The Hague in 1928, the Standing Commission comprises nine members – two representatives of the ICRC, two representatives of the Federation, and five members of National Societies, each elected in a personal capacity by the International Conference. On the origin and functions of the Standing Commission, see François Bugnion, ‘The Standing Commission of the Red Cross and Red Crescent: its origins, role and prospects for the future’, in Liesbeth Lijnzaad, Johanna van Sambeek, and Bahia Tahzib-Lie (eds.), *Making the Voice of Humanity Heard: Essays on Humanitarian Assistance and International Humanitarian Law in Honour of HRH Princess Margriet of the Netherlands*, Martinus Nijhoff Publishers, Leiden and Boston, December 2003, pp. 41–59.

13 Statutes, Art. 10, para. 5.

14 Circulars from the Prussian Central Committee, 23 November 1868 and 1 March 1869, *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*, Imprimerie J.-F. Starcke, Berlin, 1869, pp. 3–5 and 7–9. The proceedings of the first fifteen conferences were published only in French; as from the Sixteenth International

Likewise, it has always been acknowledged that government delegates do not act in a personal capacity but on behalf of the states whose official position they express through their statements and votes.<sup>15</sup>

While the International Red Cross and Red Crescent Movement is essentially a non-governmental international association, the participation of government representatives at the International Conference gives the meeting a hybrid status, both private and public. As Richard Perruchoud points out, the composition of the International Conference also determines the legal effects of the resolutions adopted:

The votes of government representatives transform what was originally a private matter into a semiprivate legal act, of a mixed nature: conference resolutions thus impinge on the sphere of public international law because of the status of those who drafted and approved them, and any obligations they may contain may be binding on states, to an extent to be determined later.<sup>16</sup>

Two types of resolution assume a particular status by virtue of their constitutional or fundamental nature: the Statutes of the Movement and the Fundamental Principles of the Red Cross and Red Crescent. The aim of the Statutes is to regulate relations between the components of the Movement. They constitute the legal basis for all deliberations of the Conference and its subsidiary bodies, and therefore assume a constitutional character that determines their legal effect with regard to the components of the Movement and to the states within the context of the Conference. Perruchoud writes, justifiably, that

The constitutive instrument states in a mandatory fashion the rights and obligations of the members and determines the powers of the statutory bodies; its obligatory nature necessarily stems from its constitutive status since, by the will of the parties, it creates an association.

...

The fact that the Statutes were not adopted as a treaty does not mean that states are not bound by them: governments are free to give their consent in any way they choose. Although the Statutes were not adopted in the form of an international treaty, they nevertheless constitute an international instrument which, by its nature, binds the States.<sup>17</sup>

We can therefore conclude, along with Perruchoud, that:

By their vote, the states recognized the existence of the International Red Cross ... Consequently, the Statutes apply to them in their entirety, both the

Conference (London, 1938), the proceedings were also published in English and, as from the Eighteenth Conference (Toronto, 1952), in Spanish.

15 Richard Perruchoud, *Les résolutions des Conférences internationales de la Croix-Rouge*, Henry Dunant Institute, Geneva, 1979, pp. 46–49 and 394–397.

16 *Ibid.*, p. 48.

17 *Ibid.*, pp. 106, 107–108. In a similar vein, see Auguste-Raynald Werner, *La Croix-Rouge et les Conventions de Genève*, Georg & Cie, Geneva, 1943, p. 79.

provisions defining the authority of the Movement's statutory bodies and those specifying the attributions of the ICRC or the League.<sup>18</sup>

Similarly, when the Fundamental Principles of the Red Cross were adopted, it was acknowledged that they represented standards of behaviour for the National Societies, the ICRC, and the Federation. When the new Statutes were adopted by the Twenty-fifth Conference, the Fundamental Principles were included in the Preamble to these Statutes, which clearly shows the constitutional and fundamental nature of those principles.

The Fundamental Principles are not of themselves binding on the states, which are, by definition, political institutions. However, they may nonetheless constitute an indirect source of obligations for the states. The Statutes stipulate that 'All participants in the International Conference shall respect the Fundamental Principles and all documents presented shall conform with these Principles'.<sup>19</sup> The Fundamental Principles are therefore a source of obligations for the states within the context of the Conference. Likewise, by virtue of the Statutes, the states have undertaken 'at all times [to] respect the adherence by all the components of the Movement to the Fundamental Principles'.<sup>20</sup> Hence, while the states are not directly obliged to respect the Fundamental Principles of the Movement outside the context of the International Conference, they must comply with them within its context and accept that the Red Cross and Red Crescent institutions must adhere to them at all times.<sup>21</sup>

Although most of the resolutions of the International Conference are exhortational in nature and are thus similar to resolutions of international organizations, some resolutions are meant to lay down rules that are binding upon the members of the Movement. That is, in particular, the case regarding the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, the Principles and Rules for Red Cross and Red Crescent Disaster Relief, the Principles and Rules for Red Cross and Red Crescent Development Cooperation, the regulations concerning funds and medals, and, of course, the Statutes and the Fundamental Principles.

Having thus reviewed the composition and attributions of the International Conference, we can now turn to the main challenges that the Conference has faced. A distinction may appropriately be made between the issues relating to the composition of the Conference on the one hand and those that concern humanitarian law and humanitarian action on the other.

18 R. Perruchoud, above note 15, p. 108. In 1991, the General Assembly of the League of Red Cross Societies decided to change the institution's name to the International Federation of Red Cross and Red Crescent Societies.

19 Statutes, Art. 11, para. 4.

20 *Ibid.*, Art. 2, para. 4.

21 I will return to the genesis and scope of the Statutes and the Fundamental Principles in discussing the organization of humanitarian action (see below).

## Issues relating to the composition of the International Conference

### Participation issues and the risk of the Conference falling apart

It would be distorting the truth to say that issues relating to the composition of the International Conference did not arise prior to World War II. Issues of that kind had already been raised in the nineteenth century but, until 1939, they did not prevent the Conference from meeting or from carrying out its work. For example, despite the civil war in Spain, the two rival Spanish Societies agreed to take part in the Sixteenth International Conference, which met in London in June 1938.<sup>22</sup>

Things were quite different in the second half of the twentieth century. Three issues seriously undermined the meetings of the International Conference: the question of the representation of China; the expulsion of the South African government delegation; and the question of the participation of Palestine.

### *The question of the representation of China*

World War II led to the division of Germany and of Korea, paved the way for the division of Vietnam, and triggered the resumption of the Chinese civil war, which resulted in the defeat of the Kuo Min Tang armies on the mainland and the withdrawal of the Chinese nationalists to the island of Taiwan (then Formosa).

However, while the ‘two Germanies’, the ‘two Koreas’, and the ‘two Vietnams’ reluctantly agreed to sit side by side at international conferences, the embattled Chinese brothers agreed on one point only – that there was only one China. In other words, the presence of one of the Chinese governments excluded the other. However, whereas the nationalist government no longer had any control over most of the territory or population of China, it had managed – thanks to the support of the United States and its allies – to continue to represent China in the United Nations and retained China’s seat as a permanent member of the Security Council.<sup>23</sup> This question was to blight the Eighteenth and Nineteenth International Conferences and to impede the Conference that was scheduled to meet in Geneva in 1963 to mark the centenary of the Red Cross.

In the face of the rival claims of the two Chinese governments, the Standing Commission of the International Red Cross, whose task is, in particular, to supervise the preparation of the International Conferences, thought it had found a fair and impartial solution by inviting the two Chinese governments – the government in Beijing as the government whose responsibility it was to implement the Geneva Conventions on the mainland and the government in Taipei as the

22 *Sixteenth International Conference of the Red Cross, London, 20–24 June 1938, Report*, The British Red Cross Society, London, 1938, p. 21.

23 On 25 October 1971, the United Nations General Assembly decided to recognize the People’s Republic of China as the sole legitimate representative of China in the United Nations and as a permanent member of the Security Council.

government whose duty it was to implement the Geneva Conventions on the island of Taiwan.<sup>24</sup>

At the Eighteenth International Conference, held in Toronto in July–August 1952, the solution adopted by the Standing Commission was violently attacked from all sides, giving rise to purely political debates that poisoned the atmosphere. In the end, the conference confirmed by 58 votes to 25 with 5 abstentions the line followed by the Standing Commission to send invitations to the National Societies and to the governments. Having failed to obtain the expulsion of the Beijing government, the delegation of the Republic of China decided to leave the conference.<sup>25</sup>

At the Nineteenth Conference, which met in New Delhi in October–November 1957, the government of the Republic of China refused to take part in the conference, although it sent delegates to the Indian capital, because it had been invited as the ‘Taiwan government’ and not as the ‘Republic of China’. The United States government submitted a draft resolution according to which ‘all governments invited to attend the conference [were to] be addressed according to their own official titles’ – that is, the name each of them gave itself.<sup>26</sup> This draft resolution was doubly unacceptable to the delegates of the People’s Republic of China and to the Chinese Red Cross since it envisaged a double representation of China and since, if the draft were accepted, the Taiwan government would take its seat at the Conference as the ‘Republic of China’, although it had ceased to exercise any authority on the mainland. The Beijing government sought to counter this move by submitting a draft resolution that set out to prohibit any form of invitation addressed to Taiwan.<sup>27</sup>

The predicament prompted endless discussions. To enable the conference to deal with the issues of substance for which it had been convened, it was decided to postpone any decision with regard to the draft resolution submitted by the United States and to the Chinese counter-draft until the final plenary session. When the matter was finally put to the vote, the US draft resolution was accepted by 62 votes to 44 with 16 abstentions.<sup>28</sup> Declaring that the Conference had violated its own statutes, the delegates from the People’s Republic of China and the Chinese Red Cross left the room as a formal sign of protest. They were followed by a third of the delegations, including that of the Indian Red Cross, the host Society.<sup>29</sup> As the

24 The Republic of China had taken part in the 1949 Diplomatic Conference and had signed the new Geneva Conventions of 12 August 1949. It was also bound by its ratification of the 1929 Conventions. The People’s Republic of China, which did not take part in the 1949 Diplomatic Conference, acceded to the Geneva Conventions of 12 August 1949 on 28 December 1956.

25 *Eighteenth International Conference of the Red Cross, Toronto, July–August 1952, Report*, Canadian Red Cross Society, Toronto, 1952, pp. 11–12, 47–49 and 53–69. Catherine Rey-Schyr, *De Yalta à Dien Bien Phu: Histoire du Comité international de la Croix-Rouge, vol. III, 1945–1955*, ICRC and Georg Éditeurs, Geneva, 2007, pp. 120–125.

26 *Nineteenth International Conference of the Red Cross, New Delhi, October–November 1957, Report*, Indian Red Cross, New Delhi, 1958, pp. 53–55.

27 *Ibid.*, pp. 60–68.

28 *Ibid.*, pp. 141 and 161, Resolution XXXVI.

29 *Ibid.*, pp. 141–146.



conference drew to a close, the delegates from Taiwan entered the half-empty room in triumphant mood.<sup>30</sup> The conference ended as a psychodrama.

Shortly before the dramatic vote, the New Delhi Conference had accepted an invitation from the ICRC, the League, and the Swiss Red Cross to hold the Twentieth International Conference in Geneva in October 1963, the conference being intended to be the culmination of the events organized to mark the centenary of the founding of the Red Cross.<sup>31</sup> However, between 1957 and 1963, no progress was made towards a solution on the issue of the representation of China. Given the risk of causing a new rift within the Movement and generating purely political discussions, which would have cast a dark shadow over the commemorative events, the Standing Commission grudgingly decided to postpone the Twentieth International Conference for two years.<sup>32</sup>

That Conference finally met in Vienna in October 1965. The Beijing government and the Chinese Red Cross refused to take part because invitations were sent to 'the Chiang Kai Shek clique'.<sup>33</sup> In the meantime, however, relations between Beijing and Moscow had cooled considerably, with the result that the USSR and her allies merely made relatively platonic protests, without withdrawing from the Conference, which was then able to deliberate in a peaceful atmosphere.<sup>34</sup> Similarly, only the Republic of China (Taiwan) took part in the Twenty-first International Conference, held in Istanbul in September 1969.<sup>35</sup>

In the end, the Taiwan government fell into its own trap. On 25 October 1971, the United Nations General Assembly decided to recognize the People's Republic of China as the sole legitimate representative of China and to expel the Taiwan government from all United Nations bodies.<sup>36</sup> Since the matter of the representation of China had been settled by the international community's main political body, the Movement could simply fall in line with that solution. Only the People's Republic of China and the Chinese Red Cross were invited to the Twenty-second International Conference, held in Tehran in November 1973.<sup>37</sup> The same procedure was adopted for subsequent conferences.

30 *Ibid.*, p. 145.

31 *Ibid.*, pp. 130–131 and 162, Resolution XL.

32 *Centenary Congress of the International Red Cross, Commemoration Day, Council of Delegates, Report*, ICRC, League, and Swiss Red Cross, Geneva, 1963, pp. 101–102.

33 ICRC Archives, record of the plenary meetings of the ICRC, letter from Mrs Li Te-chuan, President of the Chinese Red Cross, to Ambassador André François-Poncet, Chairman of the Standing Commission, 30 January 1965, annexed to President Samuel Gonard's letter to the members of the ICRC, 24 February 1965. *Twentieth International Conference of the Red Cross, Vienna, 2–9 October 1965, Report*, Austrian Red Cross, Vienna, 1965, pp. 39–40 (int. Lauda).

34 *Ibid.*, pp. 39–44.

35 *Twenty-first International Conference of the Red Cross, Istanbul, 6–13 September 1969, Report*, Turkish Red Crescent Society, Istanbul, 1969, p. 9.

36 Resolution 2758 (XXVI) 1971, adopted on 25 October 1971; *Resolutions Adopted by the General Assembly during its Twenty-sixth Session, 21 September–22 December 1971*, United Nations General Assembly, Official Records: Twenty-sixth Session, Supplement No. 29 (A/8429), p. 2.

37 *Twenty-second International Conference of the Red Cross, Tehran, 8–15 November 1973, Report*, Iranian Red Lion and Sun Society, Tehran, 1973, p. 12.

The issue that had dominated several international conferences thus disappeared from the Movement's agenda as soon as the United Nations General Assembly settled it in a way that was consonant with the factual situation. However, it was not long before other issues relating to the composition of the Conference arose.

### *The expulsion of the South African government delegation*

The Twenty-fifth International Conference had several important issues on its agenda, including the revision of the Statutes. However, as soon as the Conference began, these issues were overshadowed by a motion tabled on behalf of the African Group by the government of Kenya requesting the suspension of the South African government delegation because the Pretoria government's policy of apartheid was flouting the universally recognized humanitarian rules and principles, because that policy had been universally condemned, and because the South African government did not qualify to represent the majority of the South African people.<sup>38</sup> The motion was supported by most of the delegations from countries of the Developing World and by those from the Soviet bloc. It was opposed by the delegations from Western countries and by a number of National Societies on the grounds that it had no legal basis, that it involved the Conference in politics, that it violated the fundamental principle of universality, and that it was necessary to maintain a dialogue with the apartheid regime.

After three days of discussions, which had trained the spotlight on the Conference, the motion was adopted by 159 votes to 25 with 8 abstentions.<sup>39</sup> Considering that the question was political, the ICRC and forty-six National Societies refused to take part in the voting. When asked to leave the room, the Permanent Representative of South Africa threw down his badge with a dramatic gesture that was recorded for posterity by television companies the world over.

In the West, the expulsion of the South African government delegation provoked strong emotion. There were many who, while condemning apartheid, saw that decision as violating the Statutes and Fundamental Principles of the Movement. As was pointed out by the French delegate before voting took place, 'any association, organization or movement that does not respect its own Statutes is doomed'.<sup>40</sup> 'The Conference capsizes' was the headline in the *Journal de Genève* just a few hours before the fateful vote.<sup>41</sup>

38 Statement by Ambassador D. D. Afande, *Twenty-fifth International Conference of the Red Cross, Geneva, 23–31 October 1986, Report*, Swiss Red Cross, Berne, 1987, pp. 79–80.

39 *Twenty-fifth International Conference of the Red Cross, Geneva, 23–31 October 1986, Report*, pp. 97–98.

40 Statement by Minister Jean Mouton Brady, *ibid.*, p. 85.

41 'Croix-Rouge: la conférence chavire', in *Journal de Genève*, 25 October 1986, p. 16. See also Jacques Moreillon, 'Suspension of the government delegation of the Republic of South Africa at the Twenty-fifth International Conference of the Red Cross (Geneva, 1986): different perceptions of the same event', in *International Review of the Red Cross*, No. 257, March–April 1987, pp. 133–151; Yves Sandoz, 'Analyse juridique de la décision de suspendre la délégation gouvernementale sud-africaine de la XXV'

However, every cloud has a silver lining. The trauma caused by the expulsion of the South African delegation was so profound that no one wanted to take the risk of causing further divisions. The new Statutes, which were the most sensitive issue on the Conference agenda, were thus adopted by consensus in a matter of minutes and without debate.<sup>42</sup>

The Twenty-fifth Conference had decided that the following Conference would be held in 1990 in Cartagena (Colombia).<sup>43</sup> However, because of the difficulties associated with the question of the representation of Palestine, the next Conference did not meet until 1995 in Geneva. In the intervening period, the system of apartheid had been dismantled in South Africa so that the question of the representation of the South African government did not arise. During that time, however, the question of Palestinian representation had wrecked another conference.

### *The question of the participation of Palestine*

While the Twenty-fifth Conference was entangled in the debate about the suspension of the South African government delegation, the Permanent Observer of Palestine to the European Office of the United Nations passed to the Chairman of the Conference a letter in which he asked for Palestine to be allowed to take part in the conference. Switzerland, the country hosting the conference, offered the good offices of its diplomatic service to prevent the issue from further clouding an already stormy atmosphere.

At the end of discreet negotiations, Palestine abandoned its request for a debate on the question of its participation on condition that the Chairman of the Conference made a statement requesting that an appropriate solution to the question of Palestinian participation be found before the next conference. The Chairman made that statement just before the closing ceremony of the Twenty-fifth Conference,<sup>44</sup> thus avoiding a second debate on a question of participation but in a way that amounted to placing a time bomb beneath the floor of the next Conference.

In the interim, other circumstances raised the stakes. Following the Israeli offensive in Lebanon in the summer of 1982, the leadership of the Palestine Liberation Organization (PLO) had to withdraw to Tunis, from where it proclaimed a Palestinian state. On 21 June 1989, Switzerland received a message from the Permanent Observer of Palestine stating that the Executive Committee of the PLO had decided to accede to the four Geneva Conventions of 12 August 1949 and

Conférence internationale de la Croix-Rouge', in *Annuaire français de droit international*, Vol. 32, 1986, pp. 591–602.

42 *Twenty-fifth International Conference of the Red Cross*, above note 38, pp. 121–122. Paul-Émile Dentand, 'Croix-Rouge: derniers compromis', in *Journal de Genève*, 1 November 1986, p. 24.

43 Because of the insecure situation prevailing in Colombia, the Colombian Red Cross Society found itself obliged to give up organizing the Conference. The Standing Commission decided that the Conference would meet in Budapest in 1991.

44 *Twenty-fifth International Conference of the Red Cross*, above note 38, p. 145.

to the Protocols additional to those Conventions.<sup>45</sup> Considering that it was not its role as the depositary state to decide whether or not Palestine was entitled to accede to the Geneva Conventions, Switzerland passed the Palestinian note to the states parties to the Geneva Conventions without expressing an opinion. Some states parties welcomed the Palestinian communication as an act of accession, while other states refused to consider Palestine as a state party to the Geneva Conventions.

The Standing Commission, whose task it was to prepare the Twenty-sixth International Conference, was thus caught up in the imbroglio over the legal status of Palestine. While the Arab States asked for Palestine to be invited as a state party to the Geneva Conventions, and thus as a full member of the Conference, other states were no less firmly opposed to its participation. As the leadership of the PLO had supported Saddam Hussein during the Iraqi occupation of Kuwait and in the first Gulf War (1991), the United States, in particular, was opposed to Palestine having any part in the Twenty-sixth International Conference.

As an institution of the Movement, the Standing Commission, which was, in particular, in charge of preparing the list of Conference members, was unable to settle such an eminently political issue as the international status of Palestine. With the support of a group of accredited diplomats in Geneva, it tried to find a compromise solution. The Arab group finally agreed to Palestine being invited as an observer, but the United States rejected that solution. Negotiations continued until the eve of the Conference but no agreement was reached. At its meeting in Budapest, less than twenty-four hours before the start of the Conference, the Standing Commission realized that it was impossible to find common ground and that the Conference risked going ahead without the Arab group if Palestine were not invited as an observer, and without the United States and Israel if Palestine were invited, even as an observer. The Commission resolved, with heavy hearts, to postpone the Twenty-sixth Conference, although many delegations had already arrived in the Hungarian capital and others were on their way.

For the Movement, it was a bitter defeat.

## For whom the bell tolls: the death knell of the International Conference?

The day after the Budapest fiasco, a number of voices within the Movement were heard to proclaim loudly that the International Conference had died at Budapest and that it was neither possible – nor even desirable – to try to make it rise from its ashes. The stigma was even greater because it had not been possible to re-elect the Standing Commission, as it is the Conference itself that elects the members of the Standing Commission. How could a commission whose mandate was long over and that bore the scars of such a resounding defeat overcome the setback that it had just experienced?

45 D. Schindler and J. Toman, above note 4, p. 649.

The National Societies and the Federation did not seem unduly troubled by the demise of the International Conference because the Federation bodies constitute discussion forums that are more important to them. Things were different at the ICRC. Faced with the conflicts in the former Yugoslavia and the Caucasus, not to mention older conflicts, the ICRC was hard hit by the demise of a forum that gave it an opportunity to discuss humanitarian issues with the states parties to the Geneva Conventions. Once again, therefore, the ICRC took initiatives to revive the International Conference.<sup>46</sup> It managed to do so thanks to Swiss diplomatic support. As it happened, the ICRC persuaded Switzerland, acting in its capacity as the depositary state of the Geneva Conventions, to convene an ad hoc conference of the states parties to the Geneva Conventions, the ICRC, and the Federation. The National Societies would be represented by their Federation.<sup>47</sup> As the State hosting the Conference, Switzerland was in a position to decide whether an invitation should be sent to Palestine, on the assumption that no state would take the responsibility for causing the meeting to break down by questioning the decisions made by the host state.

The International Conference for the Protection of War Victims took place in Geneva from 30 August to 1 September 1993 and was a complete success. There was no debate on issues of participation. The important report that the ICRC had prepared<sup>48</sup> was well received and the conference adopted by consensus, virtually unchanged, the final declaration that the ICRC had drawn up with the help of a negotiating group.<sup>49</sup> Confidence was thus restored and, immediately after the conference, the ICRC and the Federation set to work preparing the Twenty-sixth International Conference, which was held in Geneva from 1 to 7 December

46 The ICRC had already twice saved the International Conference from death. Following the Franco-Prussian War in 1870–1871, the recriminations between the former belligerents were so violent that the Austrian Red Cross Society, which had invited the Third International Conference to meet in Vienna in 1871, preferred to postpone the Conference indefinitely. After ten years of trying in vain to get the Austrian Red Cross to honour its commitments, the ICRC resolved to convene the Third International Conference itself; the Conference was held in Geneva in September 1884. Similarly, after World War I, the French Red Cross declared that it would not take part in meetings with the German Red Cross unless the latter apologized for Germany's violations of the law of war. The German Red Cross replied that it did not have to apologize for crimes attributed to the imperial government and that violations had in any case been committed by both sides. Having spent more than two years trying to work out an agreement, the ICRC decided to convene the Tenth International Conference, which was held in Geneva from 30 March to 7 April 1921. The French Red Cross refused to take part.

47 The National Societies could not be invited because the composition of the conference would then have been identical to that of the International Conference. However, while the Swiss government, the depositary of the Geneva Conventions, may convene a meeting of the states parties to those Conventions, it has no authority to convene the International Conference unless it is mandated to do so by the Conference itself or by the Standing Commission.

48 'International Conference for the Protection of War Victims (Geneva, 30 August–1 September 1993): report on the protection of war victims, prepared by the International Committee of the Red Cross, Geneva, June 1993', in *International Review of the Red Cross*, No. 296, September–October 1993, pp. 391–445.

49 'International Conference for the Protection of War Victims (Geneva, 30 August–1 September 1993): final declaration of the Conference', in *International Review of the Red Cross*, No. 296, September–October 1993, pp. 377–381.

1995. Palestine was invited as an observer and that solution did not provoke any discussion at the conference<sup>50</sup> or at any subsequent conferences.

The issues relating to the composition of the Conference, which had taken centre stage during the cold war years, did not arise at the Twenty-sixth Conference. If there were still a few skirmishes at later conferences, they never threatened the holding of the Conference, nor prevented its work from being carried out smoothly. The Conference was thus able to address issues relating to humanitarian law and humanitarian action, issues to which we will now turn.

## **Issues relating to humanitarian law and humanitarian action**

It would, of course, be impossible to list in just a few pages all the issues relating to the different matters of substance tackled at the thirty International Conferences of the Red Cross and Red Crescent that have taken place since 1867. At this juncture, a selection is made of what might be considered to be the most important issues, although the choice is admittedly arbitrary and may be legitimately criticized.

For the purpose of clarity, these issues will be grouped around the following five main topics: the development of international humanitarian law; the mandate of the International Red Cross and Red Crescent Movement; the organization and principles of humanitarian action; the relations between the components of the Movement and the states; and the implementation of international humanitarian law.

### **The development of international humanitarian law**

If history were to record just one contribution that the International Conference of the Red Cross and Red Crescent has made to human progress, it is no doubt the impetus given to the development of international humanitarian law that must be singled out. Indeed, each of the stages in that development benefited from the stance adopted by the Conference.

It was, for instance, the three recommendations adopted by the constituent Conference of October 1863 for the benefit of governments that paved the way for the convening of a Diplomatic Conference and for the adoption of the initial Geneva Convention of 22 August 1864. Similarly, the Seventeenth International Conference, which was held in Stockholm in August 1948, did not merely examine each article of and approve the draft revised or new Geneva conventions drawn up by the ICRC with the assistance of government experts to take account of the lessons of World War II; it also declared that ‘these drafts, in particular the new convention on the protection of civilians, correspond to the fundamental aspirations of the peoples of the world’ and recommended ‘that all governments meet at

50 *Twenty-sixth International Conference of the Red Cross, Geneva, 1–7 December 1995, Report*, ICRC and Federation, Geneva, 1996, p. 40.

the earliest possible moment in Diplomatic Conference for the adoption and signature of the texts now approved'.<sup>51</sup> Likewise, the Twenty-second International Conference gave its support to the draft Protocols additional to the Geneva Conventions.<sup>52</sup>

Indeed, every stage in the development of international humanitarian law has been supported by the positions adopted by the Conference, which has always given its backing to the projects that the ICRC had submitted to it – with one important exception.

Following the widespread bombing of cities during World War II, culminating in the destruction of Hiroshima and Nagasaki, the ICRC initiated consultations regarding the protection of the civilian population against the effects of hostilities. With the help of highly qualified experts, the ICRC prepared draft rules to limit the dangers to which the civilian population was exposed in wartime. These were in fact a draft convention to restore the principle of the immunity of the civilian population from attack, define military objectives that are the only legitimate targets for attack, prescribe the precautions to be taken in attack, and prohibit target-area bombing and

weapons whose harmful effects – resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents – could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population.<sup>53</sup>

If accepted, this provision would have amounted to the prohibition of any use of nuclear weapons, at least in land warfare.

The *Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War* were submitted to the Nineteenth International Conference. The most controversial point was, of course, the prohibition of nuclear weapons. The delegates from the socialist countries complained that the ICRC draft was too vague and demanded that nuclear and thermonuclear weapons should be banned outright. The delegates of the Western countries condemned prohibition as unrealistic unless it were accompanied by general disarmament and an efficient system of inspection. The Conference finally requested the ICRC to transmit the Draft Rules to the governments for their consideration.<sup>54</sup> This was no more than window-dressing. In fact, the proposal was scuppered.

51 *Seventeenth International Conference of the Red Cross, Stockholm, 20–30 August 1948, Report*, Swedish Red Cross Society, Stockholm, 1948, p. 93, Resolution XIX.

52 *Twenty-second International Conference of the Red Cross, Tehran, 8–15 November 1973, Report*, p. 122, Resolution XIII.

53 *Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War*, 2nd edition, ICRC, Geneva, April 1958, p. 12; D. Schindler and J. Toman, above note 4, p. 342.

54 *Nineteenth International Conference of the Red Cross*, above note 26, pp. 153–154, Resolution XIII; Nineteenth International Conference of the Red Cross, New Delhi, October–November 1957, *Final Record Concerning the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War*, ICRC, Geneva, April 1958, cyclostyled.

In recent years, the International Conference has expressed support for the prohibition of antipersonnel landmines<sup>55</sup> and blinding laser weapons,<sup>56</sup> as well as for the Third Protocol additional to the Geneva Conventions on the emblem.<sup>57</sup>

## The mandate of the International Red Cross and Red Crescent Movement

The constituent Conference of October 1863, which gave birth to the Red Cross, only presented the duties and the attributions of the future National Societies in very general terms and hardly mentioned the duties and attributions of the ICRC, which was expected to be dissolved soon after. One of the first tasks of the International Conferences was therefore to define the mandate of the National Societies and that of the ICRC, and it was to become one of the main concerns of the first Conferences.

### *The role of the National Societies in peacetime*

The first issue raised was that of the role of the National Societies in peacetime. The National Societies had actually been set up in order to provide assistance for wounded soldiers. From that point of view, their main task in peacetime was envisaged as being to prepare to fulfil their responsibilities in wartime and, in particular, to recruit and train ‘zealous volunteers’, as Henry Dunant had called them. However, when preparing for the Second International Conference, the National Societies stressed the fact that they could not recruit, train, and, in particular, maintain the motivation of their volunteers solely with a view to being ready to act in case of a war that no one really wanted to take place. The National Societies therefore wanted to develop peacetime activities, especially in the area of training hospital staff, caring for the sick, and fighting epidemics and other disasters that may occur in peacetime.

As the founder of the organization, the Geneva Committee had set itself up as the defender of full respect for the aims for which the Red Cross had been established. It saw peacetime activities as endangering the initial objectives: absorbed by such activities, the National Societies would quickly forget their primary mission of providing assistance for wounded soldiers on the battlefield.

The disagreement led to an initial debate on the role of the National Societies, a debate which the Geneva Committee lost. The Second International Conference adopted a resolution through which it encouraged the National

55 *Twenty-sixth International Conference of the Red Cross*, above note 50, p. 126, Resolution II, G.

56 *Ibid.*, pp. 126–127, Resolution II, H.

57 *Twenty-eighth International Conference of the Red Cross and Red Crescent, Geneva, 2003, Report*, ICRC and Federation, Geneva, 2004, pp. 30–31, Resolution III. On the contribution of the International Conference to the development of international humanitarian law, see also Philippe Abplanalp, ‘The International Conferences of the Red Cross as a factor for the development of international humanitarian law and the cohesion of the International Red Cross and Red Crescent Movement’, in *International Review of the Red Cross*, No. 308, October 1995, pp. 520–549.



Societies to develop their peacetime activities, particularly efforts to combat epidemics and other disasters, by developing their local sections, recruiting volunteers, and training male and female nurses.<sup>58</sup>

### *The composition and tasks of the ICRC*

Although the Geneva Committee initially thought that its mission would come to an end with the adoption of a treaty protecting wounded soldiers and the medical services on the field of battle, it soon became evident that this Committee had to be preserved in order to look after the common interests of the Movement and facilitate the exchange of communications between the new National Societies.

It was therefore no less urgent to define the composition and role of the Geneva Committee, and several International Conferences debated that question. Whereas the Committee itself had for a number of years envisaged expanding to include a representative of each National Society, it completely reversed its position in that regard at the end of the Franco-Prussian War of 1870–1871. Whereas everyone imagined that, in the event of war, the National Societies would stay above the fray, the young National Societies were seen blowing the most vindictive propaganda trumpets and tearing each other apart. The ICRC was not going to forget that bitter lesson easily, particularly as it was to be repeated to a lesser or greater degree in subsequent conflicts. At the same time, the Franco-Prussian war had revealed the importance of the role of a neutral intermediary, played by the Geneva Committee, in case of war, in order to facilitate the exchange of communications not only between the National Societies of the warring countries but also between the governments themselves.<sup>59</sup>

The question of the composition and attributions of the ICRC was to occupy the first four International Conferences. The first two discussed this issue without reaching any conclusions as to the composition, but conferred on it a task that was to expand considerably with the outbreak of the Franco-Prussian war – that of establishing in wartime a correspondence and information bureau to facilitate the exchange of messages and the forwarding of relief.<sup>60</sup>

The Third and Fourth International Conferences, in Geneva in 1884 and in Karlsruhe in 1887, were faced with two resolutely opposed plans. On the one hand, the Central Committee of the Russian Red Cross had submitted a proposal for the reorganization of the Red Cross that set out to regulate the relationship

58 *Compte rendu des Travaux de la Conférence internationale tenue à Berlin*, above note 14, pp. 3–5, 7–9, 15–18, 27–36, 153–208, 211–215, 251–253; P. Boissier, above note 3, pp. 229–230, 233–234. The representatives of the ICRC did not take part in the debate on that issue at the Berlin Conference, probably considering that it needed to be settled by the National Societies themselves. However, in the preliminary correspondence, the ICRC had indicated its opposition to such an extension of the National Societies' field of activity.

59 On the development of the activities of the International Committee during the Franco-Prussian war of 1870–1871, see P. Boissier, above note 3, pp. 241–269; F. Bugnion, *International Committee of the Red Cross*, above note 3, pp. 32–37.

60 *Compte rendu des Travaux de la Conférence internationale tenue à Berlin*, above note 14, p. 254, Resolution IV/3.

between the Red Cross institutions on the basis of a treaty and to transform the Geneva Committee into a genuine international organization with a representative of each National Society. The Geneva Committee would thus have had authority over the National Societies. In wartime, its mission would have been to prevent violations of the Geneva Convention by sending neutral delegates to the scene of hostilities to monitor the way in which the belligerents were fulfilling their obligations.<sup>61</sup> On the other hand, the ICRC asked for its composition and attributions to be maintained as they had developed in response to practical experience.<sup>62</sup>

The discussions were particularly lively. What was at stake in the Russian draft was not merely the composition of the ICRC but also the independence that had been enjoyed by the National Societies since the work began. And that is what caused the proposal to fail. Ultimately, the Karlsruhe Conference adopted a resolution that confirmed the status quo:

In the general interests of the Red Cross, it is expedient to maintain the International Committee, which has its headquarters in Geneva, in the form it has had since the birth of the movement.

As it has done previously, it will continue to:

- a) work to maintain and develop relations between the Central Committees;
- b) notify the constitution of new National Societies, after ascertaining the basis on which they are founded;
- c) publish the *Bulletin international* ...;
- d) set up, in wartime, one or several international information agencies through whose good offices the National Societies can send relief, in money or in kind, for the benefit of the wounded of belligerent armies;
- e) offer, in wartime, if it is required, its mediation or that of its agencies to the National Societies of belligerent countries for the forwarding of their correspondence.<sup>63</sup>

Hence, more than twenty years after its establishment, the ICRC had finally been defined and its composition and attributions maintained.

### *The protection of prisoners of war*

The International Conference was to re-open the debate on the mandate of the Red Cross following the First International Peace Conference, which was held in

61 *Troisième Conférence internationale des Sociétés de la Croix-Rouge tenue à Genève du 1er au 6 septembre 1884, Compte rendu*, ICRC, Geneva, 1885, pp. 61–66, 69, 84–85, 86; *Du rôle du Comité international et des relations des Comités centraux de la Croix-Rouge*, Report submitted by the International Committee to the International Conference of Red Cross Societies in Karlsruhe in 1887, ICRC, Geneva, 1887, pp. 9–14; *Quatrième Conférence internationale des Sociétés de la Croix-Rouge tenue à Karlsruhe du 22 au 27 septembre 1887, Compte rendu*, Central Committee of the German Red Cross Associations, Berlin, 1887, pp. 92–93, 95–97, 101.

62 *Troisième Conférence internationale des Sociétés de la Croix-Rouge*, above note 61, pp. 74–83; *Du rôle du Comité international*, above note 61, pp. 22–24; *Quatrième Conférence internationale des Sociétés de la Croix-Rouge*, above note 61, pp. 19–20, 90, 93–94.

63 *Ibid.*, p. 90.

The Hague from 18 May to 29 July 1899. By a strange inconsistency, the Hague Conference had entrusted tasks to relief societies for prisoners of war, which did not exist.<sup>64</sup>

Were relief societies for prisoners of war to be set up in response to the decisions of The Hague Conference? That was bound to fail. The public would see them as symbolizing a defeatist attitude. Inactive during peacetime, those societies would lapse into lethargy. The tasks envisaged by The Hague Conference therefore had to be entrusted to societies that already existed and, of these, only the Red Cross was in a position to mobilize the resources that would be needed to provide assistance for prisoners of war in the event of prolonged fighting. However, was that not leading the Red Cross away from its objectives? Until then, the Red Cross had only dealt – officially at least – with the sick and wounded.

That debate was to carry on through three International Conferences.<sup>65</sup> Finally, the Ninth International Conference, held in Washington in May 1912, adopted a resolution according to which the Red Cross decided to provide assistance for prisoners of war as specified by The Hague Convention and which made the ICRC the linchpin of assistance for prisoners of war. Resolution VI of the Washington Conference made the following provision:

The Ninth International Red Cross Conference, considering that Red Cross Societies are naturally called upon to assist prisoners of war ..., recommends that these Societies should organize, in peacetime, 'Special Commissions' which, in wartime, would collect and forward to the International Committee of Geneva relief for distribution to servicemen in captivity.

The International Committee, through the intermediary of neutral delegates accredited to the Governments concerned, shall ensure the distribution of relief to individual prisoners and shall distribute other gifts between the different prisoner of war depots, taking into account the donors' wishes, the needs of the prisoners and directions of the military authorities.

...

The Special Prisoner of War Commissions shall get into touch with the International Committee of Geneva ...<sup>66</sup>

Two years later, the outbreak of World War I was to reveal the importance of that resolution.

64 Regulations respecting the Laws and Customs of War on Land annexed to The Hague Convention (II) of 20 July 1899, Art. 15. On the origin of that provision, see F. Bugnion, in *International Committee of the Red Cross*, above note 3, pp. 69–71; Roger Durand, 'Les prisonniers de guerre aux temps héroïques de la Croix-Rouge', in R. Durand, above note 3, pp. 225–297.

65 The Seventh, Eighth, and Ninth International Conferences, held in St Petersburg in 1902, in London in 1907, and in Washington in 1912.

66 Resolution VI, *Neuvième Conférence internationale de la Croix-Rouge tenue à Washington du 7 au 17 mai 1912, Compte rendu*, The American Red Cross, Washington, 1912, p. 318.

## *The Red Cross and civil war*

The law of war was born of confrontation on the battlefield between sovereigns with equal rights. When the Red Cross was founded, it was quite natural for minds to be focused on international armed conflicts. Similarly, the original Geneva Convention of 22 August 1864 was legally binding only on the contracting parties: that is, between states.

However, with the 1876 insurrection in Herzegovina, the Red Cross found itself faced with the question of its scope for action in case of civil war.<sup>67</sup> Yet it was not until the Ninth International Conference that the question of Red Cross action in case of civil war was submitted to the Conference.<sup>68</sup> The debate came to a sudden end. General Yermolov, the Russian government representative, vehemently opposed any discussion of that question, with the result that the Conference took no decision.<sup>69</sup>

The question was raised again at the Tenth International Conference, held in Geneva from 30 March to 7 April 1921. In the meantime, the ICRC and several National Societies had taken action during the civil war in Russia that followed the October Revolution (1918–1921).<sup>70</sup> In fact, the Red Cross had been called upon to take action in the event of civil war by the very parties who, in Washington, had been the most violently against it. Moreover, several National Societies had taken action in their own countries in the disturbances that followed World War I.<sup>71</sup> Therefore, although the matter featured on the agenda of the Tenth Conference, it was not in order to discuss the principle of Red Cross intervention in case of civil war – which had already been established – but to determine the form to be taken by that intervention. At the end of a lengthy debate, the Conference adopted an important resolution in which the Red Cross affirmed ‘its right and duty of affording relief in case of civil war and social and revolutionary disturbances’; it asked for the principles of the Geneva and Hague Conventions to be respected by analogy in case of civil war and made the ICRC the linchpin of Red Cross action in such situations.<sup>72</sup>

67 ‘L’insurrection dans l’Herzégovine’, in *Bulletin international des Sociétés de la Croix-Rouge*, No. 25, January 1876, pp. 1–4; ‘Une mission au Monténégro: rapport présenté au Comité international de la Croix-Rouge par ses délégués’, in *Bulletin international des Sociétés de la Croix-Rouge*, No. 26, April 1876, pp. 55–70.

68 This occurred on the initiative of the American Red Cross, which had submitted to the Conference a report on the question of Red Cross intervention in case of civil war. *Neuvième Conférence internationale de la Croix-Rouge tenue à Washington du 7 au 17 mai 1912, Compte rendu*, pp. 45–48, 200–203.

69 *Ibid.*, p. 45.

70 On the action taken by the ICRC during the Russian civil war, see F. Bugnion, in *International Committee of the Red Cross*, above note 3, pp. 250–258.

71 This was, in particular, the case of the German Red Cross, the Finnish Red Cross, the Polish Red Cross, the Portuguese Red Cross, the Ukrainian Red Cross, and the Turkish Red Crescent. Each of the National Societies had submitted to the Tenth International Conference a report on the role of the Red Cross in case of civil war.

72 *Dixième Conférence internationale de la Croix-Rouge tenue à Genève du 30 mars au 7 avril 1921, Compte rendu*, ICRC, Geneva, 1921, pp. 217–218, Resolution XIV.

The importance of Resolution XIV of the Tenth International Conference should not be underestimated. It was on that resolution that the ICRC was to base the considerable work that it managed to carry out throughout the Spanish civil war (1936–1939).<sup>73</sup> Moreover, that resolution paved the way for the adoption of Article 3 common to the four Geneva Conventions of 1949, a veritable ‘convention in miniature’<sup>74</sup> that establishes the minimum legal standards applicable to non-international armed conflicts and authorizes the ICRC to offer its services to the parties to such conflicts.

### *The Red Cross and peace*

The Red Cross is a humanitarian organization; it is not a pacifist organization. However, from the very beginning, the Red Cross was keen to make its rejection of war clear, so that its work to mitigate the suffering caused by war could not be perceived as legitimizing war.<sup>75</sup> For one hundred years, such stances hardly went further than platonic declarations. The Red Cross considered that it could not take any initiatives to prevent war or to put an end to a conflict since these were obviously political issues. Its view was that, if it ventured into that territory, it would betray its fundamental principles and jeopardize its opportunities for action if war were to break out despite its initiatives.

Matters took a rather different turn at the time of the Cuban missile crisis in October 1962, which took humanity to the brink of a nuclear war between the United States and the Soviet Union. When the tension between Washington and Moscow was at its peak, the President of the ICRC took advantage of the fact that the executive director of the ICRC was in New York to inform the United Nations that, should the need arise, the ICRC was willing to support the efforts of the Secretary-General, who was trying to find a peaceful way out of the crisis.<sup>76</sup>

That initiative was not long in getting under way. On the night of 29–30 October 1962, the United Nations Secretary-General asked the ICRC to provide support with regard to an inspection of the Soviet ships en route to Cuba to ascertain that they were not carrying nuclear weapons. That request left the ICRC facing an extremely difficult choice. On the one hand, it placed the ICRC at the heart of the confrontation between Moscow and Washington. On the other hand,

73 On the action of the ICRC during the Spanish civil war, see F. Bugnion, in *International Committee of the Red Cross*, above note 3, pp. 266–283; Pierre Marqués, *La Croix-Rouge pendant la Guerre d’Espagne (1936–1939): les missionnaires de l’humanitaire*, L’Harmattan, Paris and Montreal, 2000.

74 This expression was coined by the Soviet delegation at the 1949 Diplomatic Conference.

75 On this subject, see the introductory speech given by Gustave Moynier at the constituent Conference of October 1863, *Compte rendu de la Conférence internationale réunie à Genève*, above note 4, pp. 8–9.

76 ‘Interoffice memorandum’ from Martin Hill, Assistant Secretary-General, to C. V. Narasimhan, Chef de Cabinet of the Secretary-General, 26 October 1962, reproduced in Chadwyck-Healey Inc. and The National Security Archives (eds.), *Documents on the Cuban Missile Crisis 1962*, Microfiche Collection, Chadwyck-Healey, Alexandria, VA, 1990, document 1392, quoted by Thomas Fischer, ‘The ICRC and the 1962 Cuban missile crisis’, in *International Review of the Red Cross*, No. 842, June 2001, p. 294. It should be pointed out that the only record of the ICRC initiative is to be found in this document. Neither President Léopold Boissier nor Roger Gallopin, the Executive Director, reported on the ICRC’s contact with the United Nations.

however, everything obviously had to be done to prevent a nuclear war. Ultimately, the ICRC decided that it could not stand on the sidelines when world peace and the very future of humanity were at risk. It therefore decided to agree in principle to follow up the Secretary-General's request and to send its former President to New York to clarify the kind of action to be taken.<sup>77</sup>

That acceptance in principle was met with impassioned responses from the general public and, even more, within the National Societies – just as strong as the emotions released by the unprecedented crisis. The reactions ranged from hearty approval to downright condemnation. Long-time Red Cross volunteers returned their membership cards as a formal sign of protest. Once the crisis was over, the ICRC therefore deemed it necessary to submit the initiatives that it had taken to the Council of Delegates, meeting in Geneva in 1963,<sup>78</sup> and then to the Twentieth International Conference, held in Vienna in 1965.

As stated in its Resolution X, the Twentieth Conference encouraged

the International Committee of the Red Cross to undertake, in constant liaison with the United Nations and within the framework of its humanitarian mission, every effort likely to contribute to the prevention or settlement of possible armed conflicts, and to be associated, in agreement with the States concerned, with any appropriate measures to this end.<sup>79</sup>

With that resolution, the Conference gave its approval to the action of the ICRC during the Cuban missile crisis and encouraged it to take similar initiatives should world peace again be threatened. It was nonetheless understood that that resolution was not to lead to a fundamental redirection of the work of the ICRC or the Red Cross as a whole, whose priority was to remain humanitarian. Having been adopted in reference to exceptional circumstances, it was only to be enforced in exceptional circumstances.

In fact, as far as I am aware, the ICRC has only invoked Resolution X of the Twentieth Conference on two occasions – at the time of the Israeli invasion of Lebanon in the summer of 1982 and at the time of the occupation of Kuwait by Iraq in the summer of 1990.<sup>80</sup> As the President of the ICRC, Léopold Boissier, observed in

77 ICRC Archives, minutes of the plenary session held on 31 October and 1 November 1962; *Annual Report 1962*, pp. 31–35. See also T. Fischer, above note 76, pp. 287–309; Françoise Perret and François Bugnion, *De Budapest à Saïgon: histoire du Comité international de la Croix-Rouge, Vol. IV, 1956–1965*, Georg Editor and ICRC, Geneva, December 2009, pp. 473–502.

78 The Council of Delegates brings together the representatives of the Red Cross and Red Crescent National Societies, of the ICRC, and of the Federation. The Standing Commission had decided to hold the Council of Delegates in Geneva in 1963, instead of the International Conference that it had had to give up convening because of the divergences on the question of the representation of China. On the origins, the role, and the attributions of the Council of Delegates, see Elzbieta Mikos-Skuza, 'The Council of Delegates', in Lijnzaad, van Sambeek, and Tahzib-Lie, above note 12, pp. 123–136.

79 *Twentieth International Conference of the Red Cross*, above note 33, pp. 100–101, Resolution X.

80 ICRC Archives, Minutes of the Executive Council of the ICRC, 1 July 1982, 11 and 12 August 1982, 19 August 1982, 26 August 1982; Minutes of the ICRC Assembly, 19 August and 1 September 1982; *International Review of the Red Cross*, No. 230, September–October 1982, pp. 295–296; *Annual Report 1982*, p. 58; *Keesing's Contemporary Archives*, 1983, pp. 31914–31920; F. Bugnion, *International*

his report on the Council of Delegates, which met in Geneva in September 1963 on the occasion of the hundredth anniversary of the foundation of the Red Cross: 'Peace, which has always been the key issue, never fails at congresses that set out to strengthen it to unleash discussions which are both troublesome and hazardous'.<sup>81</sup>

In fact, the question of peace was one of the main bones of contention at the International Conferences that were held during the cold war. The Soviet Union and its allies wanted the Conference to denounce the aggression that, according to Marxist–Leninist doctrine, could only be caused by capitalist states, whereas the governments and the National Societies from Western countries were absolutely unwilling to go further than to condemn war in general terms, since to denounce the aggression and to name the aggressor were political issues that fell within the remit of the United Nations. Ultimately, it proved possible to avoid splitting the Movement – thanks, in particular, to the systematic application of the rule of consensus for every resolution relative to peace. Indeed, what would have been the credibility of a resolution on peace adopted following a vote that divided the Conference?

Of course, the International Conference adopted many other resolutions that were intended to extend the mandate of the Movement – for example, concerning assistance for refugees<sup>82</sup> and displaced persons.<sup>83</sup> As this article cannot analyse them all, I have chosen to focus on those discussions that entailed major changes of direction by the Movement.

Finally, it should be noted that, while the International Conference has adopted a good number of resolutions regarding the mandate of the National Societies or of the ICRC, it has made hardly any mention of the mandate of the Federation. This is both because the ICRC and the Federation occupy different positions on the chessboard of international relations and because the mandate of the Federation stems from the decisions taken by the Federation's bodies, rather than from the resolutions of the International Conferences.

## The organization and principles of humanitarian action

The matter of how humanitarian action is organized has been a feature of virtually every International Conference. As it would be impossible to summarize each of

*Committee of the Red Cross*, above note 3, pp. 490–491. ICRC Archives, file 232 (214–00), Note 241 from the Baghdad delegation and annexes, 12 September 1990; *Annual Report 1990*, pp. 78–79; Christophe Girod, *Tempête sur le désert: le Comité international de la Croix-Rouge et la guerre du Golfe, 1990–1991*, Établissements Émile Bruylant, Brussels, and L. G. D. J., Paris, 1995, pp. 64–65.

81 'La paix, qui est bien le problème crucial de tous les temps, déchaîne inmanquablement dans les congrès qui prétendent lui trouver quelque affermissement des débats aussi pénibles que dangereux.' Léopold Boissier, Statement on certain aspects of the centenary of the Red Cross, presented to the ICRC in its session on 3 October 1963, document D 841, appended to the minutes of the plenary session on 3 October 1963, p. 2.

82 Resolution XXI of the Twenty-fourth International Conference (Manila, 1981) and Resolution XVII of the Twenty-fifth International Conference.

83 Resolution IV, A, of the Twenty-sixth International Conference.

the discussions here, I have chosen to focus on the two most important issues for the Movement and the States: the Statutes of the International Red Cross and Red Crescent Movement; and the Fundamental Principles of the Red Cross and Red Crescent.

### *The Statutes of the International Red Cross and Red Crescent Movement*

For more than half a century, the Red Cross had a relatively loose structure shaped by the resolutions of the constituent Conference of October 1863, which gave birth to the Red Cross, and a few resolutions that were intended to define the tasks of the National Societies and those of the ICRC. Each International Conference adopted its own rules of procedure, which were based on those of the preceding conferences.

The creation of the League of Red Cross Societies at the end of World War I, outside the statutory framework of the International Conference, obliged the Movement to equip itself with statutes.<sup>84</sup> As pressure to merge was being put on the ICRC and the League from all sides, both institutions felt under threat. In those conditions, it is not surprising that the relations between the two rapidly became hostile.

A considerable share of the work of three International Conferences<sup>85</sup> and a special Conference held in Berne in 1926<sup>86</sup> were devoted to the issue of establishing statutes. It was all in vain. All plans to reorganize the international Red Cross submitted to the Tenth, Eleventh, and Twelfth International Conferences failed to find approval. The same happened at the Conference in Berne.

Whereas the National Societies that had founded the League were keen to preserve a federal body within which they were duly represented, the ICRC wished to maintain the independence that it considered vital to the continuation of its mission. Despite its admiration for the League of Nations, it remained convinced that war was not a scourge that could be eradicated with a stroke of the pen and that it should preserve its position as a neutral intermediary, the importance of which had been highlighted by World War I.

This is not the place to reflect on the arduous negotiations to re-establish Red Cross unity, which continued for more than eight years.<sup>87</sup> Having considered in vain a large number of merger plans, the final conclusion was that the

84 On the creation of the League of Red Cross Societies, see Daphne A. Reid and Patrick F. Gilbo, *Beyond Conflict: The International Federation of Red Cross and Red Crescent Societies, 1919–1994*, Federation, Geneva, 1997, pp. 26–41.

85 The Tenth, Eleventh, and Twelfth International Conferences, held in Geneva in 1921, 1923, and 1925.

86 *Conférence internationale spéciale de la Croix-Rouge tenue à Berne du 16 au 18 novembre 1926, Compte rendu*, Swiss Red Cross, Berne (s.d.).

87 For the history of those negotiations, reference could be made, in particular, to the following works: André Durand, *History of the International Committee of the Red Cross: From Sarajevo to Hiroshima*, Henry Dunant Institute, Geneva, 1978, pp. 139–194; D. A. Reid and P. F. Gilbo, above note 84, pp. 52–54 and 79–86.



complementary nature of the ICRC and the League should be maintained. To find a way out of the deadlock, the ICRC and the League appointed two negotiators who had taken no part in the previous discussions: Judge Max Huber, a recently elected member of the ICRC, and Colonel Paul Draudt, Vice-President of the League. In a few months, they succeeded in preparing a draft agreement that maintained both the ICRC and the League in terms of their composition and attributions, but incorporated them into a broader overall structure, the International Red Cross.<sup>88</sup> The Thirteenth International Conference, held in The Hague in October 1928, adopted unanimously with five abstentions the draft Statutes of the International Red Cross as prepared by Huber and Draudt.<sup>89</sup> For both the ICRC and for the League, these Statutes, finally adopted after eight years of fruitless negotiations and clashes, truly constituted a peace treaty.

Despite the tremendous operations that it conducted during World War II and despite the Nobel Peace Prize that was awarded to it for the second time in 1944, the ICRC found itself in the dock following the capitulation of Germany and Japan. It was held responsible for the fate of Soviet prisoners of war in German hands, nearly three million of whom had died in captivity; it was accused of having done nothing to protect the partisans and resistance fighters held by the Axis powers; and, finally, it was criticized for having remained silent about the concentration camps and the genocide.<sup>90</sup>

The Soviet Union and its allies led the charge and called for a revision of the Statutes, which would make it possible to do away with the ICRC and to transfer all its attributions to the League. Faced with that situation, the ICRC's strategy was to channel all its efforts into the process of revising the Geneva Conventions – for the ICRC, that revision was even more urgent because it was convinced that the world was heading rapidly for a third world war – and, in the meantime, to block any renegotiation of the Statutes.<sup>91</sup>

This strategy worked. Whereas the Seventeenth International Conference, held in Stockholm in August 1948, devoted most of its work to analysing the draft conventions prepared by the ICRC, it did not tackle the question of the revision of the Statutes. That question was submitted to the Eighteenth Conference, held in Toronto in 1952. In the meantime, the parameters had completely changed. First, the new Geneva Conventions had been adopted, confirming the position of the ICRC, to which reference is made in numerous provisions. Second, the ICRC had shown the usefulness of its role as a neutral intermediary in the field in several

88 Colonel Draudt and Max Huber, 'Rapport à la XIII<sup>e</sup> Conférence internationale de la Croix-Rouge sur les statuts de la Croix-Rouge internationale', in *Revue internationale de la Croix-Rouge*, No. 119, November 1928, pp. 991–1010.

89 *Treizième Conférence internationale de la Croix-Rouge tenue à La Haye du 23 au 27 octobre 1928, Compte rendu*, Imprimerie nationale, The Hague, 1929, pp. 12–19, 48–75, 85, 101–114, 117–118, 182–186.

90 C. Rey-Schyrer, above note 25, pp. 42–48.

91 *Ibid.*, pp. 51–134; Dominique-D. Junod, *The Imperiled Red Cross and the Palestine–Eretz-Yisrael Conflict 1945–1952: The Influence of Institutional Concerns on a Humanitarian Operation*, Kegan Paul International, London and New York, 1996, *passim*.

conflicts, particularly during the Arab–Israeli conflict of 1948–1949.<sup>92</sup> Lastly, the cold war fronts had hardened. The West no longer had any reason to sacrifice the ICRC on the altar of its relations with Moscow.

The draft new Statutes, prepared by a joint commission of the ICRC and the League under the auspices of the Standing Commission,<sup>93</sup> triggered stormy debates at the Toronto Conference, where the atmosphere was in any case clouded by the question of the representation of China. The USSR and its allies rejected all the provisions relating to the ‘so-called International Committee’. Ultimately, however, the new Statutes were adopted by 70 votes to 17.<sup>94</sup>

Things were quite different at the Twenty-fifth International Conference. As that Conference was emerging from three days of traumatic discussions leading to the expulsion of the South African government delegation, no one wanted to take the responsibility for causing a new split by criticizing the new draft statutes prepared by a joint commission of the ICRC and the League. It was therefore by consensus and virtually without debate that the Twenty-fifth Conference adopted the Statutes that are in force today.<sup>95</sup>

### *The Fundamental Principles of the Red Cross and Red Crescent*

From the very beginning, the Red Cross was aware of following a number of basic principles that were dictated by the institution’s aims and by the nature of the activities that it proposed to carry out. To a large extent, these principles were expressed in the Resolutions and Recommendations of the constituent Conference of October 1863 and in Article 6 of the Geneva Convention of 22 August 1864, which states that ‘Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for.’

From then on, there were countless references to the fundamental principles of the Red Cross; in 1869, the Berlin Conference asked the ICRC to ensure that the principles were upheld and disseminated.<sup>96</sup> In order to be accepted as members of the movement, new National Societies had to adhere to the fundamental principles,<sup>97</sup> demonstrating that the existence of these principles was accepted and their authority recognized.

92 On the action of the ICRC during the 1948–1949 Arab–Israeli conflict and on the way in which that action became part of the ICRC’s survival strategy, see, in particular, D.-D. Junod, above note 91.

93 *Statutes of the International Red Cross and Rules of Procedure of the International Conference of the Red Cross: Proposed Revision*, submitted by the Standing Commission of the International Conference of the Red Cross to the XVIIIth International Red Cross Conference (Document A 18), Geneva, 7 December 1951, cyclostyled.

94 *Eighteenth International Conference of the Red Cross*, above note 25, pp. 33–39, 96–101, 161–168.

95 Resolution XXXI, *Twenty-fifth International Conference of the Red Cross*, above note 38, pp. 121–122, 166.

96 *Compte rendu des Travaux de la Conférence internationale tenue à Berlin*, above note 14, pp. 80–84, 264.

97 *Organisation générale et programme de la Croix-Rouge (D’après les décisions prises dans les Conférences internationales par les Fondateurs et les Représentants de cette Institution)*, 2nd edition, ICRC, Geneva, 1898, pp. 25–26.

However, for almost a century little effort was made to establish a coherent and universally accepted definition of those principles. In 1874, Gustave Moynier, President of the ICRC, made a first attempt to formulate the principles of the Red Cross. Noting that the Red Cross Societies were linked by ‘the pledge that they had made to conduct themselves according to certain common rules’, Moynier distinguished four main principles – centralization, preparedness, mutuality, and solidarity.<sup>98</sup>

When revising its own statutes after World War I, the ICRC made reference to four ‘fundamental and uniform principles that are at the basis of the Red Cross institution, namely: impartiality, political, religious, and economic independence, the universality of the Red Cross and the equality of its members’.<sup>99</sup> That list could not, however, be considered exhaustive. So even though the existence and binding nature of the fundamental principles was universally accepted, they remained largely undefined. The Red Cross unceasingly claimed to adhere to fundamental norms but appeared unwilling – or unable – to specify their content. That shortcoming was to have disastrous consequences in the inter-war period and, even more so, during World War II. The most serious instances of disregard for those norms were observed at certain National Societies, in particular the German Red Cross, and the Movement was unwilling and unable to respond to them.<sup>100</sup>

The League’s Board of Governors<sup>101</sup> took up the question after World War II. To the four existing principles they added thirteen others, in which the aims of the Red Cross, its fundamental principles, and some rules of procedure were jumbled together.<sup>102</sup> The Toronto Conference endorsed this new list, while stressing that the four original principles remained the ‘cornerstones of the Red Cross’, a remark that only added to the confusion.<sup>103</sup>

Since the process of formulating the fundamental principles of the Red Cross had been started, universally acceptable wording needed to be found. The Standing Commission decided to set up a joint ICRC–League commission for the purpose. On the basis of the resolutions of past Conferences and particularly of the contribution made by Max Huber and Jean Pictet, who had advanced the issue

98 Gustave Moynier, ‘Ce que c’est que la Croix-Rouge’, in *Bulletin international des Sociétés de la Croix-Rouge*, No. 21, January 1875, pp. 1–8; André Durand, ‘Quelques remarques sur l’élaboration des principes de la Croix-Rouge chez Gustave Moynier’, in Christophe Swinarski (ed.), *Études et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l’honneur de Jean Pictet*, ICRC, Geneva, and Martinus Nijhoff, The Hague, 1984, pp. 861–873.

99 Statutes of the International Committee of the Red Cross, 10 March 1921, Art. 3, in *Revue internationale de la Croix-Rouge*, No. 28, April 1921, pp. 379–380.

100 On the situation of the German Red Cross during World War II, see Dieter Riesenberger, *Das Deutsche Rote Kreuz: Eine Geschichte 1864–1990*, Ferdinand Schöningh, Paderborn, 2002, esp. pp. 269–371; Birgitt Morgenbrod and Stephanie Merkenich, *Das Deutsche Rote Kreuz unter der NS-Diktatur, 1933–1945*, Ferdinand Schöningh, Paderborn, 2008.

101 Now the General Assembly of the International Federation of Red Cross and Red Crescent Societies.

102 Board of Governors, 19th session, Oxford, 1946, Resolution XII, amended by Resolution VII of the 20th session, Stockholm 1948, *Handbook*, above note 4, pp. 721–724.

103 *Eighteenth International Conference of the Red Cross*, above note 25, pp. 112–113 and 148, Resolution X.

considerably,<sup>104</sup> the joint commission prepared a draft of seven articles that was sent to all National Societies and approved unanimously by the Council of Delegates, meeting in Prague in 1961.<sup>105</sup> The draft was then submitted to the Twentieth International Conference, where it was adopted unanimously under the title ‘Proclamation of the Fundamental Principles of the Red Cross’.<sup>106</sup> Since then, the Fundamental Principles – which are solemnly read out at the opening ceremony of each International Conference – have been recognized as the Movement’s basic charter. Their authority has never been questioned.

When the Statutes of the International Red Cross were revised, the Proclamation of the Fundamental Principles – whose wording has remained unaltered, save for the replacement of ‘Red Cross’ by ‘International Red Cross and Red Crescent Movement’ – was incorporated into the Movement’s new Statutes.<sup>107</sup> Their position in the preamble underscores both the statutory nature of the Fundamental Principles and their pre-eminence in ‘Red Cross law’.

In its judgement of 27 June 1986 in the case of military and paramilitary activities in and against Nicaragua, the International Court of Justice acknowledged unambiguously that the Fundamental Principles of the Red Cross must be respected by states when they were involved in providing humanitarian assistance:

An essential feature of truly humanitarian aid is that it is given ‘without discrimination’ of any kind. In the view of the Court, if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’, and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need.<sup>108</sup>

The International Court of Justice thus clearly recognized the mandatory force of the Fundamental Principles of the Red Cross; they not only oblige states to allow Red Cross and Red Crescent bodies to abide by them, but they are also a source of obligations for states themselves, if the latter claim to be engaged in humanitarian activity.

104 Max Huber, *La pensée et l’action de la Croix-Rouge*, ICRC, Geneva, 1954; Jean S. Pictet, *Red Cross principles*, ICRC, Geneva, 1956.

105 *Council of Delegates of the International Red Cross, Verbatim Report, Prague, 1961*, p. 46. At the Council of Delegates, there was only one debate, started by a statement made by the President of the Alliance of Red Cross and Red Crescent Societies of the USSR. That debate concerned the role of the Red Cross with regard to the preservation of peace, which was mentioned in connection with the principle of humanity.

106 *Twentieth International Conference of the Red Cross*, above note 33, pp. 51–52 and 99–100, Resolution VIII. See also Hans Haug, with Hans-Peter Gasser, Françoise Perret, and Jean-Pierre Robert-Tissot, *Humanity for All: The International Red Cross and Red Crescent Movement*, Paul Haupt Publishers, Berne, Stuttgart, and Vienna, and Henry Dunant Institute, Geneva, 1993, pp. 443–490.

107 *International Review of the Red Cross*, No. 256, January–February 1987, pp. 27–28; *Handbook*, above note 4, pp. 519–520.

108 International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgement of 27 June 1986, *ICJ Reports 1986*, p. 125.

## Relations between the components of the Movement and the states

By virtue of its composition, the International Conference is a privileged forum for dialogue on the co-ordination of humanitarian action carried out by the components of the Movement and by the states. To different degrees, that question has been addressed at most Conferences. The Thirtieth International Conference adopted an important resolution on the 'Specific nature of the International Red Cross and Red Crescent Movement in action and partnerships and the role of National Societies as auxiliaries to the public authorities in the humanitarian field'.<sup>109</sup>

Similarly, the entire debate regarding the emblem questioned the relation between the components of the Movement and the states, since the same emblems are used to protect health services in wartime and to identify the personnel and property of the National Societies in wartime and in peacetime.<sup>110</sup>

## The implementation of humanitarian law

The International Conference has been too deeply involved in the development of international humanitarian law to take no interest in its implementation. In fact, the ICRC has not merely submitted a report on its activities to each International Conference. It has also taken advantage of this forum of dialogue between the components of the Movement and the states to review the situation regarding the implementation of international humanitarian law.<sup>111</sup> The statement by the President of the ICRC has always been one of the highlights of the International Conference.

That question has often given rise to Homeric debates at the Conference, particularly when specific situations have been under scrutiny. Indeed, some delegations have taken advantage of the ICRC's report to denounce violations of humanitarian rules that may be attributed to one state or another. The tensions dividing the international community have then erupted within the Conference, as was the case for the issues of participation. These debates are nonetheless necessary,

109 *Together for Humanity: Thirtieth International Conference of the Red Cross and Red Crescent, Geneva, 26–30 November 2007: Council of Delegates of the International Red Cross and Red Crescent Movement, Geneva, 23–27 November 2007: Resolutions*, ICRC – Federation, Geneva, 2008, pp. 78–80, Resolution 2.

110 On this issue, see François Bugnion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, 2007.

111 As an example, see two key reports that the ICRC submitted to the Twenty-eighth and to the Thirtieth International Conference: Twenty-eighth International Conference of the Red Cross and Red Crescent, Geneva, 2–6 December 2003, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, report prepared by the ICRC, October 2003 (document 03/IC/09); Thirtieth International Conference of the Red Cross and Red Crescent, Geneva, 26–30 November 2007, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, document prepared by the ICRC, October 2007 (document 30IC/07/8.4). Both reports are available at [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/section\\_ihl\\_reaffirmation\\_and\\_development?opendocument](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/section_ihl_reaffirmation_and_development?opendocument) (last visited 16 March 2010).

and experience has shown that many states prepare thoroughly in order to be able to face their peers at the forthcoming international conference.

The ICRC, for its part, attaches great importance to that opportunity to discuss the implementation of international humanitarian law with the states. Even if the resolutions adopted by the Conference in that respect are not as such binding on the parties to the conflict, they nonetheless constitute a position adopted by the international community that needs to be taken into account by the belligerents. An appeal by the International Conference to ensure respect for humanitarian law could leave no one indifferent, especially if it is adopted unanimously. Moreover, the resolutions adopted by the International Conference have sometimes made it possible to settle controversies about the interpretation of the Geneva Conventions.

Thus, after the Hungarian uprising and the Soviet intervention of 4 November 1956, which forced nearly 200,000 Hungarians into exile, a controversy arose between the government in Budapest and the governments of the countries accepting the Hungarian refugees. While the host countries asked for families to be reunified either in Hungary or in the host country, in accordance with the wishes of the people concerned, the Hungarian government decided to give priority to the return of refugees to Hungary and refused to take part in any discussion on the possibilities of emigration. The Nineteenth International Conference settled the matter by adopting a resolution in which it urged all National Societies and governments to ‘facilitate by every means the reunion of persons, both adults and children, with their families in accordance with the wishes of such persons, and in the case of minor children in accordance with the wishes of the recognized head of the family no matter where domiciled’.<sup>112</sup>

Likewise, during the Algerian War, the French authorities imposed a ‘medical blockade’ on the regions in the hands of the insurgent forces.<sup>113</sup> In its Resolution XVII, the New Delhi Conference made ‘an urgent appeal’ to all governments so that:

- a) the wounded may be cared for without discrimination and doctors in no way hindered when giving the care which they are called upon to provide in these circumstances,
- b) the inviolable principle of medical professional secrecy may be respected,
- c) there may be no restrictions, other than those provided by international legislation, on the sale and free circulation of medicines, it being understood that these will be used exclusively for therapeutic purposes.<sup>114</sup>

112 *Nineteenth International Conference of the Red Cross*, above note 26, p. 155, Resolution XX.

113 Any delivery of medicines to areas held by the insurgent forces was prohibited and the doctors were required to report suspicious injuries, which amounted in fact to preventing wounded insurgents from receiving treatment. Conversely, a number of French medical doctors were killed in ambushes or attacks.

114 Resolution XVII, *Nineteenth International Conference of the Red Cross, New Delhi, October–November 1957, Report*, pp. 103–104 and 154–155.

The Conference thus has the authority to interpret the rules of humanitarian law. However, only those resolutions adopted unanimously may be taken as an authentic interpretation, and only such unanimous resolutions may be considered as providing an interpretation that is binding on the states.

## Looking to the future

History has a value of its own, but a review of the past may also be a means of gaining a better understanding of the present and preparing for the future. Today's question is 'What are the main challenges facing the International Conference?'

No crystal ball can tell us today what the main problems regarding participation or matters of substance facing the International Conferences in the future will be. A study of the past nonetheless allows us to identify seven issues that deserve special consideration: the meeting place of the International Conference; the timing of the International Conference; participation by the states; the constitution of a body to manage political crises; organization of the work; the election of the Standing Commission; a changing environment.

### The venue for the International Conference: Geneva or ...

There is nothing in the Statutes of the Movement that obliges the Conference to be held in Geneva and in the past it has often taken place in other cities: for example, Paris (1867), Berlin (1869), Karlsruhe (1887), Rome (1892), Vienna (1897), St Petersburg (1902), London (1907), and Washington (1912). Holding the Conference in another city than Geneva is an effective way of making the Movement known in different parts of the world. Provided that the Conference achieves the objectives for which it is convened, the profile of the National Society hosting the Conference is also enhanced.

It must, however, be admitted that, in accepting the National Societies' invitations to host the next International Conference, the Movement has not always been dealt a good hand. For instance, the Fourteenth Conference accepted the invitation of the Japanese Red Cross to hold the next conference in Tokyo and it took place in the Japanese capital in 1934. Although it is not evident from the Conference *Proceedings*, many delegates must doubtless have felt uneasy about the idea of meeting in the capital of a country that had set out to take over another country.<sup>115</sup> In response to an invitation from the Spanish Red Cross, the Fifteenth Conference decided that the next conference would be held in 1938 in Madrid.

115 Between 1931 and 1933, Japan had invaded the Chinese provinces of Manchuria and Jehol and had combined these two provinces to create the puppet state of 'Manchukuo'. To force China to cease boycotting Japanese goods, Japan had also occupied the Shanghai region. On 31 May 1933, an armistice had put an end to the fighting, but everyone knew that this was only a truce and that the hostilities could resume at any moment.

However, it had to be held in London because of the civil war in Spain. Similarly, the Seventeenth International Conference accepted the invitation of the American Red Cross to hold the next conference in Washington in 1952. It was held in Toronto because the government of the United States refused to issue visas to the representatives of the People's Republic of China. Moreover, the Twenty-second Conference met in Tehran in 1973, the Twenty-third in Bucharest in 1977, and the Twenty-fourth in Manila in 1981. Those conferences were opened by the Shah of Iran, Nicolae Ceaușescu, and Ferdinand Marcos respectively, whose photos and speeches duly feature in the *Proceedings* of those Conferences.

There are therefore considerable advantages to holding the Conference in Geneva. First, it avoids having to make sensitive choices if several National Societies offer to invite the International Conference. It also avoids the risk of meeting in a country that has a sorry reputation with regard to human rights or that is involved in an armed conflict. The diplomatic corps in Geneva has experience of the practice of multilateral diplomacy and of humanitarian issues, which it handles all year round, and may therefore take part in preparing the International Conference.<sup>116</sup> And finally, holding the Conference in Geneva simplifies the preparatory work and reduces transport and travel expenses for the ICRC and the Federation, which provide most of the services of the Conference secretariat.

Indeed, the Twenty-fifth, Twenty-sixth, Twenty-seventh, Twenty-eight, Twenty-ninth, and Thirtieth Conferences met in Geneva. Should that practice be enshrined in the Statutes of the Movement? The ICRC and the Federation would be unwise to suggest it since this could be perceived as an expression of arrogance or as the desire to lay claim to a monopoly. In my opinion, practice merely needs to be allowed to consolidate a tradition that is being established.

## The timing of the International Conference: spring or autumn

All the Conferences convened since the Nineteenth International Conference have met in the autumn, when the attention of governments is already mobilized by the General Assembly of the United Nations. Would it not be advisable for the Movement to examine the possibility of holding the Conference in the spring, at dates that do not, of course, conflict with the annual session of the Human Rights Council?<sup>117</sup>

## Participation by the states

Some observers have seen participation of the states in the International Conference as threatening the independence of the Movement. There is indeed a contradiction between the provision in the Statutes that defines the International

<sup>116</sup> The arguments in favour of holding the International Conference in Geneva do not apply to the Council of Delegates since the states do not take part in it.

<sup>117</sup> I am grateful to Mrs Angela Gussing Sapina, Deputy Director of Operations at the ICRC, for suggesting this simple but valuable proposal.



Conference as ‘the supreme deliberative body for the Movement’<sup>118</sup> and the fact that half the members of the Conference are government representatives that are not members of the Movement. What parliament would agree to admit delegates who were not members of the parliament in question?

Moreover, although the Statutes stipulate that ‘All participants in the International Conference shall respect the Fundamental Principles’,<sup>119</sup> participation by the states has often led to politicization of the International Conference and to purely political debates, particularly on the representation of one state or another or of one political entity or another. Thus, the issues of the representation of China, South Africa, and Palestine undermined the debates at the Eighteenth, Nineteenth, and Twenty-fifth International Conferences respectively and forced the Standing Commission to postpone the Conferences scheduled to take place in 1963 and 1991.

Finally, during the cold war, some National Societies would never have dared depart from their governments’ positions. The representatives of those Societies often merely repeated their government’s declarations. In some cases, the same person headed the government delegation and the delegation from the National Society of the country in question.

However, participation by the states has also played an important role, particularly in the following matters:

- the development of international humanitarian law: there is no doubt that the Conference has contributed to every stage of the development of international humanitarian law, by virtue of the fact that it is a key place of dialogue between the Movement and the states;
- respect for international humanitarian law: each conference enables a dialogue to take place between the Red Cross and Red Crescent institutions and the states on the subject of respect for humanitarian law;
- the development of humanitarian action and the co-ordination of action carried out by the components of the Movement and that of the states.<sup>120</sup>

The Movement attaches considerable importance to the states taking part in the International Conference. It sees this as a vital aspect of its specific nature, of its own status, and of the efficacy of its action.

A number of humanitarian organizations outside the Red Cross and Red Crescent Movement take part as observers in the International Conference because of the presence of government delegations, and experience shows that many of them envy the Movement for having this unique forum.

In fact, in 140 years, the International Conference has never debated a proposal to change its composition. Distance between National Societies and the

118 Statutes, Art. 8.

119 *Ibid.*, Art. 11, para. 4.

120 On the role of governments within the framework of the International Conference, see Thomas Kupfer and Georg Stein, ‘The role of governments at International Conferences of the Red Cross and Red Crescent’, in Lijnzaad, van Sambeek, and Tahzib-Lie, above note 12, pp. 107–118.

governments of their countries was demonstrated at the Twenty-ninth International Conference, held in Geneva in June 2006, when several delegations from National Societies distanced themselves from their governments' positions, particularly during roll-call voting.

### Towards establishing a body to deal with political crises

The Standing Commission is required to 'make arrangements for the next International Conference'<sup>121</sup> and, to that end, to draw up the list of participants.<sup>122</sup> A political issue obviously crops up each time a dispute arises over the right of a state or a non-state organization to participate in the Conference as a member or as an observer. However, as a body of the International Red Cross and Red Crescent Movement, the Standing Commission is bound by the principle of neutrality, which prohibits it from taking part in any political controversy. The Commission is therefore not in a position to settle a dispute of that kind. Thus, the composition of the Commission does not match the responsibilities assigned to it. Yves Sandoz, who spent many years as a Director of the ICRC and was a member of the Standing Commission, highlighted this discrepancy with an expressive image: 'Like a tight-rope walker and illusionist, the Standing Commission is required to juggle with politics without burning its fingers, the aim being to spirit away political issues before the Conference begins'.<sup>123</sup>

However, it is not possible to 'spirit away political issues before the Conference begins', as was shown by the debates on the representation of China, the suspension of the South African government delegation, and the participation of Palestine. In fact, politics ended up spiriting the Conference away. Although difficulties of this kind have not disrupted the work of the last five international conferences, they are bound to resurface at some point in the future.

Therefore, if the Movement wishes to guard against such difficulties, it would do well to introduce a procedure or a mechanism that will enable controversies relating to issues of participation to be settled.<sup>124</sup> It is clearly the role of the states to settle such a matter. Two solutions may be envisaged. The first would be the creation of a 'diplomatic commission' formed by a limited number of government representatives. That commission would be elected by the International Conference and mandated to support the Standing Commission in

121 Statutes, Art. 18, para. 1.

122 By a strange inconsistency, the Statutes stipulate that the Standing Commission shall establish 'by consensus the list of observers' (Art. 18, para. 1(d)) but make no mention of establishing the list of participants (states and National Societies). Since that question is not dealt with in any specific attribution of competence, it obviously forms part of the Standing Commission's general competence to 'make arrangements for the next International Conference' (Art. 18, para. 1).

123 'Funambule et illusionniste, la Commission permanente doit jongler avec la politique sans s'y brûler, dans le but de l'escamoter à l'aube des Conférences', Y. Sandoz, above note 41, p. 602.

124 It is obviously far easier to establish a mechanism or a procedure enabling possible issues of participation to be settled when no issue of that kind arises than when one does. Indeed, from the moment such a controversy emerges, the various players define their position in relation to it, with no regard for the general interest.

the preparation of the next conference. The Standing Commission could refer to that commission any controversy associated with the sending of invitations. The other option would be the creation of a genuine credential committee comprising government delegates with the task of settling any controversy relating to the participation or the representation of a state or a non-state entity.

Article 10, paragraph 8, of the Statutes undoubtedly allows the Conference to create such a credentials committee.<sup>125</sup> However, the creation of a diplomatic commission would, in my opinion, require a revision of the Statutes. Article 10, paragraph 8, allows the Conference to establish subsidiary bodies for the duration of the Conference itself but the Statutes do not authorize the International Conference to establish a subsidiary body that continues to function until the next conference.

In order to prepare recent conferences, the Standing Commission set up a group of ambassadors whom it consulted on matters of procedure and of substance. This group provided an excellent service. However, it was not elected by the Conference but established by the Commission. It was set up to support the Commission and did not have the authority that would have allowed it, on behalf of the Conference, to settle any controversy on a question of participation.

## Organizing the work

Sixteen National Societies and nine governments took part in the First International Conference of the Red Cross.<sup>126</sup> A total of fifty-six National Societies and forty-five government delegations took part in the Thirteenth International Conference, when the Statutes were adopted.<sup>127</sup> At the Thirtieth International Conference, held in Geneva in November 2007, there were nearly 1,800 delegates representing 178 National Societies, 166 States and 65 observers.<sup>128</sup>

Those figures speak for themselves: the International Conference has been a victim of its own success or, at least, of the interest that it has aroused. To give each delegation the opportunity to speak at least once, speaking time has to be limited. Plenary debates have therefore given way to a succession of short statements that are prepared in advance and are frequently repetitive. The conference has ceased to be a place of debate and many delegates leave Geneva without even once having taken the floor.

Moreover, experience has shown that no agreement can be reached on the drafts submitted to the International Conference unless those drafts have been addressed in in-depth discussions, not to mention a veritable preliminary negotiation phase before the conference opens. Delegates who did not participate in that preliminary work then feel as if the real negotiations have taken place before the

125 Statutes, Art. 10, para. 8 stipulates that 'The International Conference may establish for the duration of the Conference subsidiary bodies in accordance with the Rules of Procedure'.

126 P. Boissier, above note 3, p. 208.

127 *Treizième Conférence internationale de la Croix-Rouge*, above note 89, pp. 21–27.

128 Personal communication from the Secretariat of the Standing Commission, 3 June 2009.

conference and that the dice are loaded. Only the Drafting Committee, whose task it is to put the finishing touches to the draft resolutions submitted to the conference, remains a genuine forum of negotiation. However, many National Societies are reluctant to take part in the work of the Drafting Committee, which is dominated by diplomats with extensive experience of multilateral negotiations.

What solution can be found? One idea was to extend the length of the Conference, but that leads to a rapid decline in the delegations' interest. Many delegates leave Geneva before the work is finished, while others come only for the final round of negotiations. Another idea was to divide the Conference up into commissions that would meet simultaneously to give more delegations an opportunity to express their views. However, that solution has been rejected by delegations from developing countries far from Geneva, which cannot send a number of delegates to Geneva and cannot therefore follow the work of all the groups, whereas other delegations can take part in all the parallel groups. This therefore undermines the principle of equality of the delegations.

It must be acknowledged that the Movement has not really succeeded in finding a formula that would allow all the delegations to express their views and that would make genuine debates possible again. The workshop formula used at the Twenty-seventh, Twenty-eighth, and Thirtieth International Conferences certainly allowed a large number of delegations to take part in the deliberations but, by definition, no decisions were taken at those workshops. They were conducted separately from the work of the Drafting Committee, which remained the real place of negotiation.

Another solution – which seems more promising – would be to strengthen the role of the Council of Delegates, genuinely making it the supreme deliberative body for the Movement, and to debate points of substantive interest to the Movement within that framework, particularly when the Council meets in the period between two international conferences. The Movement could then present its decisions to the Conference itself. The ICRC, the National Societies, and the Federation could use the two years between the Council of Delegates and the Conference to share with the states the decisions taken by the Council, which would then be discussed with the states at the following conference.<sup>129</sup>

Restoring the Conference's function as a place of dialogue, where the key policies for the Movement and for the international community are worked out, is probably the biggest challenge facing the organizers of the next conferences.

## The election of the Standing Commission

Pursuant to Article 10, paragraph 4, of the Statutes, the International Conference elects in a personal capacity five members of the Standing Commission, 'taking into account personal qualities and the principle of fair geographical

<sup>129</sup> I am grateful to Mrs Marion Harroff-Tavel, Diplomatic Advisor at the ICRC, for a careful reading of this article and for suggesting this proposal.

distribution'.<sup>130</sup> However, the manner in which the members of the Commission are actually elected in no way reflects this concern for the principle of fair geographical distribution, since there is only one constituency. In practice, respect for this principle largely depends on the regional groups' ability to agree on one candidate. Thus no African member was elected by the Twenty-seventh or by the Twenty-eighth International Conferences because the African Group could not agree on a single candidate for the whole continent.<sup>131</sup>

When the time comes for the next review of the Statutes and the Rules of Procedure, the Movement might consider changing this system, for instance by creating separate constituencies based on the regional groups of the Federation. On the other hand, the number of members of the Standing Commission should not be enlarged because this would ruin the efficiency of that body.<sup>132</sup>

### The same conference in another environment

In 140 years, the International Conference has weathered countless storms, including two world wars, without any change to the basic aspects of its composition or its competences other than to increase the number of its members. However, the environment in which it now works has undergone a profound change, particularly in recent years. The centre of gravity of the debate on respect for international humanitarian law is tending to shift towards the United Nations bodies and particularly towards the Human Rights Council.

While it is reassuring to see the states showing more concern than in the past for compliance with the humanitarian conventions that they have undertaken to respect and to ensure respect for, the greater interest for those issues within the context of the United Nations should not lead to a devaluation of the International Conference. To preserve this quadrennial meeting with the states remains a major challenge for the ICRC, the National Societies, and the Federation, for which the International Conference is still a priority instrument of humanitarian diplomacy and a vital aspect of their specific nature.

## Conclusions

Despite vicissitudes that cannot be ignored, the International Conference of the Red Cross and Red Crescent has come through 140 years of history, including two

<sup>130</sup> Statutes, Art. 10, para. 4.

<sup>131</sup> *Twenty-seventh International Conference of the Red Cross and Red Crescent, Geneva, 31 October–6 November 1999, Report*, ICRC and Federation, Geneva, 2000, pp. 137–138. *Twenty-eighth International Conference of the Red Cross and Red Crescent*, above note 57, p. 277.

<sup>132</sup> In recent years a number of persons, including members of the Standing Commission, have suggested enlarging the number of elected members of the Standing Commission in order to better represent the growing number of National Societies. However, representing the National Societies is the first and primary task of the Federation. There is no point in turning the Standing Commission into a second federation and then setting up a co-ordinating body between the two.

world wars and 40 years of cold war. This longevity – which is remarkable for an international institution – clearly testifies to the importance of the Conference. Moreover, through the impetus that it has given to the development of international humanitarian law and humanitarian action, the Conference has served humanity well: each stage in the development of international humanitarian law has been supported by a position adopted by the Conference.

As a forum of dialogue between the Red Cross and Red Crescent institutions and the states, the International Conference has made it possible to define the principles of humanitarian action and to clarify the co-ordination of humanitarian action by the components of the Movement and that carried out by the states. The Conference has also broadened the areas of activity of the Red Cross and Red Crescent institutions. It is sufficient to recall Resolution IV/3 of the Berlin Conference, relative to the creation of an information agency, Resolution VI of the Washington Conference, concerning the protection of prisoners of war, Resolution XIV of the Tenth Conference, concerning the work of the Red Cross in the event of civil war, and Resolution X of the Twentieth Conference, concerning the role of the Red Cross for the preservation of peace. Through its resolutions, the Conference has progressively extended the Movement's competences, but, above all, it has helped to give humanitarian action (which stems from civil society initiatives and the expectations of public opinion) its place among government priorities.

For the ICRC, the International Conference is a vital forum of dialogue with states, a forum for the development of humanitarian law and a preferred instrument of humanitarian diplomacy. The Conference has made it possible to enhance the importance given to humanitarian issues in the priorities of the states and constitutes a major vector of humanitarian mobilization.

In the future, the greatest challenge will perhaps be to find the means of assuming the consequences of that success and, in particular, of restoring the primary function of the International Conference as a place of debate between the states and the components of the Movement.