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INTERNATIONAL REVIEW

OF THE RED CROSS



Published every two months by the
International Committee of the Red Cross
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The *International Committee of the Red Cross (ICRC)* and the *International Federation of Red Cross and Red Crescent Societies*, together with the *National Red Cross and Red Crescent Societies*, form the International Red Cross and Red Crescent Movement.

The *ICRC*, which gave rise to the Movement, is an independent humanitarian institution. As a neutral intermediary in the event of armed conflict or unrest it endeavours, on its own initiative or on the basis of the Geneva Conventions, to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension.

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A note from the Editor

The Review is pleased to present accounts of the action taken by the ICRC in response to two events that shook the world in 1956, exactly forty years ago, at the height of the Cold War - the uprising against the Communist regime in Hungary and the Suez conflict in which the United Kingdom, France and Israel were ranged against Colonel Nasser's Egypt. In launching its two operations in aid of the victims of those conflicts, which took place almost simultaneously, the ICRC faced an enormous challenge, for the resources then available to it to provide protection and assistance to people affected by events on such a scale were far smaller than they are today. The author of these two texts, ICRC research officer Françoise Perret, is currently compiling a history of the ICRC covering that period.

The contribution by Kenneth Ögren on the Articles of War decreed by King Gustavus II Adolphus of Sweden in 1621 relates to a text containing humanitarian directives issued over two hundred years before present-day international humanitarian law came into being. These Articles of War remind us once again that the idea of sparing the victims of armed conflicts does not merely date back to the nineteenth century.

On a completely different subject, the article by Vincent Bernard provides useful information for National Red Cross and Red Crescent Societies wishing to know more about any tax benefits to which they may be entitled.

As a continuation of its series of articles on various aspects of the implementation of international humanitarian law, the Review also has pleasure to publish in this issue the text of a model law on the use and protection of the red cross and red crescent emblem, with a commentary by Jean-Philippe Lavoyer. The importance of this contribution, which will be of interest to governments and National Societies alike, is self-evident.

The Review

Forty years ago: the Hungarian uprising and the Suez crisis

ICRC operations in Hungary and the Middle East in 1956

As ICRC research officer Françoise Perret points out in her article on the organization's operations in Hungary, 1956 was the year in which Khrushchev's famous report to the 20th Congress of the Soviet Communist Party triggered the process of destalinization — an event which changed the course of twentieth century history. The Budapest uprising in October of the same year followed as a direct result. In her study entitled "ICRC action in Hungary in 1956", Françoise Perret traces the organization's work during those days of such high drama for Hungary. Since then, history has changed course once more with the collapse of communism in 1989.

As shots rang out in Budapest, war broke out in the Middle East. In her second analysis, Françoise Perret describes the ICRC's activities within the context of the Suez crisis. Here again, the picture has altered radically since those days: in 1978 the Camp David agreement put an end to the long-standing conflict between Egypt and Israel and, almost 20 years on, the Oslo and Cairo accords have laid the foundations for a Palestinian State.

The second volume of ICRC history,¹ written by André Durand, closes with an examination of the immediate consequences of the Second World War, and the historical part of François Bugnion's work² is likewise confined to the period up to 1945. Thus, in publishing these two articles by Françoise Perret, The Review is helping to shed light on the ICRC's history during the second half of the twentieth century.

The Review

¹*History of the International Committee of the Red Cross: From Sarajevo to Hiroshima*, Henry Dunant Institute/ICRC, Geneva, 1984, 675 pp.

²*Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, ICRC, Geneva, 1994, 1438 pp.

ICRC action in Hungary in 1956

by Françoise Perret

A REVOLUTION CRUSHED

In Eastern Europe, 1956 was above all the year that marked the beginning of destalinization, following the submission to the 20th Congress of the Soviet Communist Party (17-24 February) of Nikita Khrushchev's famous report on Stalin's crimes.

Khrushchev's revelations were soon to have repercussions, notably in Poland where thousands of political prisoners were released as early as April of the same year. Among them was Wladyslaw Gomulka, former Secretary-General of the Polish Communist Party from 1943 to 1948, who had been dismissed in 1948 for "*right-wing and nationalist deviation*" and jailed in 1951.

Seven months later, on 20 October 1956, Gomulka was elected First Secretary of the Polish United Workers' Party. The news caused a sensation in Budapest and on 23 October tens of thousands of Hungarians demonstrated in front of the statue of General Bem, the Polish hero of the Hungarian revolution of 1848.

The demonstration then moved towards the home of Imre Nagy, a former partisan of Béla Kun, who had been living in exile in Moscow before returning to Hungary with the Soviet troops in 1944. From that time on he had served successively as Minister of Agriculture, Minister of the Interior, President of the National Assembly and President of the Council until his dismissal in January 1955.

Seeing the size of the demonstration in favour of Nagy, the Hungarian leadership immediately appointed him President of the Council. That was

not enough to pacify the crowd, however: shooting broke out and the next day, 24 October, a general strike was declared. At 9 a.m. Radio Budapest announced that the government had proclaimed a state of emergency whereby anyone causing a disturbance was liable to the death penalty. In a subsequent announcement, the radio warned that "*pursuant to the Warsaw Pact, the authorities have called for assistance from the Soviet troops stationed in Hungary. In response to the government's appeal, Soviet troops are helping to restore order*". Numbers of Hungarian soldiers and officers, led by General Pál Maléter, went over to the insurgents and by the end of the morning it was clear that the Soviet troops could no longer count on any support except that of the members of the AVH (the security police). János Kádár replaced Ernő Gerő as First Secretary of the Hungarian Workers' (Communist) Party.

Fighting intensified in the next few days, with virtually unarmed insurgents assailing Hungarian government forces and Soviet tanks with Molotov cocktails, while revolutionary councils seized power in provincial towns.

On 28 October, Imre Nagy ordered a cease-fire by the government forces. He announced that agreement had been reached with the Soviet authorities on the withdrawal of their troops stationed in Hungary; he also declared the abolition of the one-party system and ordered the release of political detainees, including Cardinal József Mindszenty. The revolution appeared to have succeeded.

Most provincial towns were in the hands of the insurgents. Győr, where a provisional national council had been set up under Attila Szigethy, a member of the National Peasants' Party and a parliamentary deputy, became the insurgents' rallying-point.

In Budapest, however, the withdrawal of Soviet troops dragged on; most of the insurgents refused to lay down their arms and the hunt for AVH members began.

The situation took a new turn on 31 October when Soviet troops occupied all Hungarian airports and encircled Budapest. In response to that manoeuvre, Imre Nagy, who had taken over the foreign affairs portfolio, proclaimed Hungary's neutrality and withdrawal from the Warsaw Pact. János Kádár disappeared. The Soviet military authorities agreed on 3 November to discuss matters with representatives of the Hungarian armed forces, including General Maléter, the hero of the insurrection, but the Hungarian negotiators were arrested during the talks. The following day, Imre Nagy announced on the radio that Soviet troops were attacking Budapest. That was to be his last public statement; he took refuge in the Yugoslav Embassy while Kádár and three former ministers

issued an “open letter” announcing that they had formed a “*revolutionary workers’ and peasants’ government*”, which had appealed to the Soviet forces for help.

On 4 November the United Nations Security Council met in an emergency session, but the USSR vetoed the adoption of a draft resolution supported by nine Council members and calling upon Moscow to withdraw its forces immediately. That veto was to paralyse any UN attempt to intervene in Hungary.

Bitter fighting broke out between the insurgents, on the one hand, and the Hungarian police and Soviet army on the other. In a matter of hours Soviet forces held the key strategic points in Budapest and, in the days that followed, they occupied the rest of the country. Documents published by the Hungarian authorities at the time reported 2,700 dead and 20,000 injured; in Budapest itself, 8,000 dwellings were totally destroyed and 35,000 badly damaged, mostly by artillery fire.

On 22 November Imre Nagy left the Yugoslav Embassy; he was arrested, condemned to death and executed in June 1958.

The crushing of the Hungarian uprising was followed by a wave of arrests, deportations and executions, as well as a mass exodus of Hungarians to Austria and Yugoslavia.

ICRC ACTION

Dispatching delegates and relief supplies

On Saturday 27 October 1956, as street-fighting raged in Budapest, the ICRC received an appeal from the Hungarian Red Cross, requesting blood plasma, transfusion equipment and dressings.

With the help of the Swiss Red Cross it immediately put together an emergency relief consignment, and the following afternoon an ICRC-chartered aircraft loaded with supplies was already on its way to Budapest with two delegates, Herbert Beckh and René Bovey, on board.¹

The plane flew straight on to Vienna to pick up the goods that were pouring into the Austrian capital. It was to make six shuttle flights between

¹Minutes of the ICRC Assembly’s plenary meeting of 1 November 1956 — ICRC Archives. English-language supplement to the *Revue internationale de la Croix-Rouge* (hereinafter *Supplement*), Vol. IX, No. 12, December 1956, p. 205.

Vienna and Budapest before Soviet troops closed the airport on 31 October.²

Upon their arrival in Budapest, the ICRC delegates contacted the Hungarian Red Cross and handed over their cargo; they decided that René Bovey would take charge of the ICRC operation in Budapest while Herbert Beckh tried to get to Győr to hold discussions with Atila Szigethy, one of the main insurgent leaders.³

Public concern over the Hungarian uprising was such that relief supplies continued to flood into Vienna; indeed, humanitarian aid was the only practical demonstration of Western support for the insurgents. The ICRC therefore decided to send out specialized delegates to coordinate the forwarding of the aid to Hungary with the Austrian Red Cross and the League of Red Cross Societies (now the International Federation of Red Cross and Red Crescent Societies).⁴

Appeal to all combatants

When Hungary's airports were closed by Soviet troops on 31 October, the ICRC immediately backed the efforts of its delegates in Hungary by regularly broadcasting the following appeal over the Swiss short-wave service on its own wavelength:

At a time when the International Committee of the Red Cross, in conjunction with the principal National Red Cross Societies, is endeavouring to give Hungary, so sorely tried, the charitable aid the country requires, it wishes to recall several fundamental principles contained in the Geneva Conventions by which all peoples are bound.

(1) All those who take no part in the fighting must be respected. The taking of hostages, in particular, is forbidden.

(2) It is prohibited to kill or wound an enemy who gives himself up. Prisoners must be treated humanely. In no case can any sentence be passed on them without previous judgement pronounced by a regularly constituted court.

²ICRC report on the relief action in Hungary, Geneva, ICRC, 1957, p. 6.

³Report by Herbert Beckh, dated 15 November 1956 — ICRC Archives, file No. 200 (65).

⁴Minutes of the ICRC Assembly's plenary meeting of 1 November 1956 - ICRC Archives.

(3) The wounded and sick shall be collected and cared for without discrimination. The ICRC appeals to all concerned for the principles of these Conventions, which Hungary ratified in 1954, to be strictly respected.

The ICRC also sent a memorandum to the Hungarian and Soviet authorities, asking them in particular to grant its delegates in Hungary every facility in their humanitarian work. In taking these steps, the ICRC expressed no opinion as to the status of the conflict in legal terms, its main concern being to protect and assist the victims insofar as it could and was allowed to do so.⁵

Visit to prisoners held by the insurgents

Herbert Beckh made contact with the insurgents on 1 November, and when he got to Győr a group of doctors handed him a list of the region's needs. He then spoke for over an hour with Attila Szigethy, who formally undertook to order his troops to afford humane treatment to any adversaries who fell into their hands, in accordance with the principles of the Geneva Conventions. As a result, the insurgents were persuaded not to execute about 300 prisoners they were holding. Back in Vienna the next day, however, Beckh learned that some insurgents had carried out executions in Budapest. He therefore returned to Győr, where the insurgent leaders suggested that he speak in person on "Radio Liberation"; this he did, calling upon all combatants to treat wounded or captured enemies humanely. His appeal was also broadcast by insurgent-held Radio Budapest. Before returning to Vienna, Beckh went to the border town of Sopron where, with Soviet troops only 12 km away, he visited 29 prisoners still being held by the insurgents, the remainder having been released.⁶

The fall of Budapest

On 4 November Soviet troops took over Budapest and the Hungarian Red Cross made a last telephone call to the ICRC, requesting it to intervene in order to ensure the protection of victims of the fighting, in accordance with the rules of the Fourth Geneva Convention on the

⁵ *ICRC report on the relief action in Hungary*, p. 7. Internal note by Jean-Pierre Maunoir, dated 19 September 1956 — ICRC Archives, file No. 200 (65).

⁶ *Supplement*, Vol. IX, No. 12, December 1956, pp. 205-206. Report by Herbert Beckh, dated 15 November 1956 — ICRC Archives, file No. 200 (65).

protection of civilians.⁷ All communications with Hungary were then cut. Two ICRC delegates, René Bovey and Jean de Preux, who had just joined him, were trapped in Budapest; they were unable to make contact with the Soviet military authorities until 9 November, when they were given the assurance that Red Cross convoys would be allowed to enter Hungary.⁸

For its part, the ICRC in Geneva again called upon the Hungarian and Soviet authorities to ensure the application of the provisions of all four Geneva Conventions.⁹ In addition, various radio stations in Central and Eastern Europe were asked to broadcast the following appeal in both Hungarian and Russian:

*The International Committee of the Red Cross makes a solemn appeal to commanders and combatants in Hungary: The International Committee of the Red Cross is informed that combats are still raging in Budapest, and that numerous wounded have not yet been collected and cared for. It makes an urgent appeal to commanders and combatants to call a truce by mutual agreement in order that the wounded may be collected and evacuated. The present appeal is made by the ICRC in accordance with the provisions of Article 15 of the Fourth Geneva Convention.*¹⁰

On 8 November the ICRC telexed Professor Mitereff, President of the Alliance of Red Cross and Red Crescent Societies of the USSR, and urged him to intervene personally with a view to obtaining details on the current situation in Budapest and to inform the ICRC accordingly.

The operation continues from Vienna

From the very outset of the Hungarian uprising, relief had been flowing into the Austrian capital and the number of refugees was increasing daily,¹¹ so a clear distribution of tasks between the various Red Cross

⁷ *ICRC Annual Report, 1956*, p. 14. Minutes of the ICRC Presidential Council's meeting of 4 November 1956 — ICRC Archives.

⁸ *ICRC report on the relief action in Hungary*, Geneva, 1957, p. 8. Telegram from the ICRC delegation in Vienna, dated 7 November 1956 — ICRC Archives, file No. 200 (65). Mission report by Jean de Preux, dated 12 December 1956 - ICRC Archives, file No. 225 (65). Discussion of 25 August 1988 between Jean de Preux and Françoise Perret.

⁹ *ICRC Annual Report, 1956*, p. 14.

¹⁰ *ICRC report on the relief action in Hungary*, *op cit.* (see footnote 8), p. 8.

¹¹ *Supplement*, Vol. IX, No. 11, November 1956, pp. 193-194.

organizations working in Vienna — the ICRC, the League of Red Cross Societies and the Austrian Red Cross — was essential. On 2 November the League and the ICRC reached an agreement whereby the League was to receive and coordinate in Vienna all consignments from National Societies, while the ICRC was to forward them to Hungary and distribute them together with the Hungarian Red Cross. In addition, the agreement provided that the Austrian Red Cross would be responsible for assisting refugees.¹²

Since Soviet troops had been occupying the airports since 31 October, however, the ICRC plane shuttling between Vienna and Budapest could no longer land there and the delegates had to find an alternative overland solution.

An initial convoy of 65 vehicles, carrying relief supplies and including a medical unit, left Vienna on 9 November with delegates, doctors, nurses, interpreters, drivers and mechanics on board. The ICRC had notified the Hungarian and Soviet authorities of the departure of the convoy, requesting them to facilitate its crossing of the border. After a day's delay at the Sopron border post the column was allowed to continue its journey on to Budapest, where it arrived on 12 November. There Jean de Preux and René Bovey, the two ICRC delegates who had remained in the Hungarian capital, took charge. After that, ICRC trucks regularly carried consignments of food and medicines from Vienna to Budapest, and the delegates organized other relief transports by rail and by barge on the Danube.¹³

Agreement with the Hungarian Red Cross

On 16 November, a delegation made up of the new Hungarian Red Cross leadership — a spontaneously-formed body of professors — travelled to Vienna and signed the following agreement with the ICRC:

(1) The International Committee of the Red Cross assumes the control of the distribution in Hungary of relief supplies for the Hungarian population which have been or which will be entrusted to it by national Red Cross Societies, either directly or through the intermediary of the League of Red Cross Societies.

¹²ICRC report on the relief action in Hungary, p. 9.

¹³ICRC Annual Report, 1956, pp. 15-17. *Supplement*, Vol. X, No. 3, March 1957, pp. 42-48; Vol. X, No. 4, April 1957, pp. 67-73; Vol. X, No. 5, May 1957, pp. 95-99; Vol. X, No. 11, November 1957, pp. 205-221.

(2) *The International Committee of the Red Cross will also assume the control of the distribution of donations made on behalf of the Hungarian population which have been or which will be entrusted to it either directly or through the intermediary of the Secretary-General of the United Nations organization acting in agreement with the Hungarian Government.*

(3) *The distribution of these supplies through the neutral intermediary of the International Committee of the Red Cross shall be carried out in accord with the fundamental principles governing its action, that is to say, strict impartiality and without any discrimination whatsoever other than that of the needs of the persons to be assisted.*

(4) *Towards this end the International Committee of the Red Cross shall, in agreement with the Hungarian Red Cross, draw up various programs for assistance which shall be carried out progressively according to the urgency of the needs to be met and function of the available supplies. As an example, it has already been foreseen that assistance should in the first place be given to the sick, the wounded of all kinds, infants, expectant mothers, the aged and the infirm.*

(5) *All facilities shall be given to the International Committee of the Red Cross in order to enable it to set up a delegation in Hungary immediately, which shall include the following personnel required in order to:*

(a) draw up, in agreement with the Hungarian Red Cross, the programs for assistance mentioned above,

(b) assure the protection and the management of the warehouses which the International Committee of the Red Cross will set up in the principal distribution centres,

(c) assure the transportation of supplies to or from these warehouses,

(d) assist in the actual distribution of supplies and in reporting back to the International Committee of the Red Cross in Geneva on these distributions for the information of donors.

This personnel, mainly consisting of Swiss citizens, shall be placed under the orders of a Delegate-in-Chief, with Headquarters in Budapest, who will be acting in close liaison with the representatives designated by the Hungarian Red Cross for this purpose.

(6) *In order to allow the efficient execution of the strictly humanitarian action of the International Committee of the Red Cross, the Hungarian Red Cross and the Hungarian Government shall see that in the exercise of its functions, the Delegation of the International Committee of the Red Cross in Hungary receives all aid and protection from all authorities civil or military.*

(7) *The general dispositions of the present agreement shall be completed by a technical plan of operations drawn up in agreement between the representatives of the Hungarian Red Cross and the Delegate-in-Chief of the International Committee of the Red Cross in Budapest.*

(8) *The sole object of the present agreement being the distribution of relief supplies to the Hungarian population it cannot be interpreted as restricting the other humanitarian activities which the International Committee of the Red Cross may be called upon to exercise in Hungary in conformity with the statutes of the International Red Cross or the provisions of the Geneva Conventions.¹⁴*

The Hungarian Minister in Vienna ratified the document the very same day, by authority of the Hungarian government.

Following the signing of the agreement, the ICRC dispatched another delegate to Budapest, who was specifically entrusted with the task of drawing up plans for the most urgently needed assistance, in cooperation with the Hungarian Red Cross; he was also asked to prepare a list of requirements in Budapest and the provinces. In June 1957, however, the body of professors heading the Hungarian Red Cross was dissolved and replaced by government appointees. The ICRC sent additional delegates to back up its staff in Vienna, where relief supplies were arriving without any prior coordination, thus causing considerable confusion.¹⁵

On 4 December the President of the ICRC concluded a further agreement with the United Nations Secretary-General whereby the ICRC assumed responsibility for the distribution in Hungary of relief supplies provided by the United Nations.¹⁶ Since the UN General Assembly had

¹⁴ Agreement of 16 November 1956 between the ICRC and the Hungarian Red Cross — ICRC Archives, file No. 200 (65). Zoltan Csillag, *Data about the activity of the International Committee of the Red Cross and the Hungarian Red Cross in 1956-1957*, Hungarian Red Cross, 1992.

¹⁵ Minutes of the ICRC Presidential Council's meeting of 22 November 1956 — ICRC Archives.

¹⁶ *Supplement*, Vol. IX, No. 12, December 1956, pp. 217-219.

condemned the Soviet intervention, the Organization was forbidden access to the country and the ICRC, in its neutral capacity, was the only body authorized by the Soviet authorities to take action on Hungarian soil. The agreement read as follows:

(1) The Committee, at the request of the Secretary-General, agrees to use any funds as may be transferred to it by the United Nations for the exclusive purpose of providing immediate aid to the population of Hungary, in particular by furnishing medical supplies, foodstuffs and clothing. The responsibility assumed by the Committee in this respect will commence upon receipt of any such funds and will terminate after the distribution of relief supplies to the Hungarian population or, in the event of cessation of the programme, upon return to the United Nations of any unused portion of such funds or of supplies purchased with such funds.

(2) The Committee will undertake responsibility for the distribution of such supplies as may be furnished by the United Nations. The Committee may indicate to the United Nations the types of relief goods regarded as most appropriate for the purpose of the programme.

(3) In accordance with the principles of the Red Cross and in the spirit of the Geneva Conventions, the Committee will distribute relief under this programme without discrimination and on the basis of need alone.

(4) While making every effort to carry out this programme as rapidly as possible, the Committee will retain responsibility for the schedule (French "cadence") of distribution of relief supplies. In the event of difficulties or obstacles arising in the execution of the programme, the Committee will, if necessary, report to the United Nations but it will be solely responsible for taking appropriate measures.

(5) The Committee will supply all organizational, supervisory and technical personnel, services and equipment required for the operation of the programme.

(6) The United Nations will defray such administrative and operational costs of the Committee attributable to the performance of the United Nations relief programme as may be agreed between the United Nations and the Committee.

(7) The Committee will be the sole agency to carry out the relief programme on behalf of the United Nations with the contributions

made pursuant to resolution 399 adopted by the General Assembly at the Second Emergency Special Session on 9 November 1956. This shall not be construed to limit the right of other United Nations agencies to carry out assistance programmes in accordance with their terms of reference and in agreement with the Hungarian authorities.

(8) The United Nations recognizes the Committee as an independent and autonomous organization which undertakes to perform the services envisaged in this agreement. The performance of such services will not in any way place the Committee in a subordinate position towards the United Nations, and the Committee will not be required to carry out any other task than those set forth in this agreement.

(9) The Committee will submit to the Secretary-General monthly operational reports and financial reports of costs incurred in the performance of its responsibilities under this agreement.

(10) The United Nations and the Committee will act in close collaboration in regard to the planning and the implementation of the programme. In particular, the Committee will extend full co-operation to any representative who may be sent to Hungary by the Secretary-General in connection with the programme.

(11) Nothing contained in this agreement will affect any of the other activities which the Committee already is carrying out or may carry out in Hungary in the performance of its traditional role.

(12) This Agreement may be terminated by either party on one week's notice subject, if possible, to prior consultation. The termination of this Agreement will not affect the responsibilities of either party under the Agreement with respect to the completion of the distribution of supplies still outstanding at the date of termination.

Together, the two agreements enabled the ICRC to conduct a large-scale relief operation for the Hungarian population up until October 1957, when it closed its delegation in the country. In its *Annual Report* for 1957, the ICRC estimated the total value of relief supplies sent to Hungary under its operation at over 80 million Swiss francs, covering mostly food, clothing, medicines and hospital equipment.¹⁷

¹⁷ *ICRC Annual Report, 1957, p. 15. Supplement, Vol. IX, No. 12, December 1956, pp. 217-219.*

Activities on behalf of detained or deported insurgents

At a meeting in Vienna with the new leaders of the Hungarian Red Cross, the ICRC delegates asked what had become of insurgents who had been imprisoned or deported. They were told that the arrests had been carried out by the Russians and that the Hungarian authorities had practically no information on the subject. The ICRC took the view that a direct approach to the Soviet authorities would have little chance of success and might even jeopardize the relief operation itself; it therefore instructed René Bovey, its delegate in Budapest, to take matters up with the Hungarian authorities when he felt the time was right. During a mission to Budapest in January 1957, however, Roger Gallopin, Executive Director of the ICRC, found that the representations made by René Bovey had all proved in vain; the Hungarian Red Cross leaders begged him to refrain from taking any action regarding the issue of detainees for fear of placing the entire relief operation at risk.¹⁸

Assistance to refugees in Austria

Following the intervention of Soviet troops in Hungary, the exodus of refugees rapidly assumed such proportions that an amendment had to be made to the agreement concluded between the ICRC and the League of Red Cross Societies on 2 November, under which the Austrian Red Cross was in principle responsible for receiving refugees; the National Society was soon overwhelmed, however, so on 27 November the ICRC and the League signed a new agreement whereby the ICRC undertook not only to transport relief supplies and distribute them in Hungary but also to handle, in Vienna, all material aid for the operation. In addition, part of the relief arriving in the Austrian capital would go to Hungarian refugees, and the League would continue, in liaison with the Austrian Red Cross and government authorities, to direct all activities on their behalf.¹⁹

The exodus of some 200,000 Hungarians tore numerous families apart, as people fled to different countries and most separated relatives had no means of coming together again. To help them reestablish contact and where possible reunite, the ICRC started by establishing their

¹⁸ Minutes of the ICRC Presidential Council's meetings of 22 and 29 November 1956 and 17 January 1957 — ICRC Archives.

¹⁹ *ICRC report on the relief action in Hungary, op. cit.* (see footnote 8), p. 9. Minutes of the ICRC Presidential Council's meeting of 22 November 1956 — ICRC Archives. *Supplement*, Vol. IX, No. 12, December 1956, pp. 208-210.

identities and then arranged for them to exchange messages with each other. On 13 November it started broadcasting over the Swiss short-wave service and on its own wavelength the names of refugees seeking news of their relatives.

At the same time the ICRC drew up a register of Hungarian refugees; from early 1957 this enabled it to respond to the many tracing enquiries it received from dispersed family members.

The problem of family reunification obviously did not affect only Hungarians scattered in different countries but also — and more acutely — those with relatives who had remained in Hungary. This was the case of numerous children who had crossed the Yugoslav or Austrian borders by themselves, and of parents whose children had been left behind. The Hungarian government therefore requested the ICRC to draw up a plan for bringing these families together again and, in April 1957, the institution submitted a draft agreement providing for separated relatives to be reunited at the place of residence designated by the head of the family, and for reunification to be organized on an individual and voluntary basis. The ICRC was to help both with repatriation to Hungary and exit from the country; exit visas for persons to be reunited with close relatives were to be granted by the authorities concerned under an accelerated procedure different from that generally applied for emigration purposes. All reunification operations were to be placed under the supervision of the ICRC.

The plan proved unacceptable to the Hungarian government, however, as it would not agree to its nationals leaving the country to join family members who had fled to the West. In November 1957 the controversy was brought before the 19th International Conference of the Red Cross in New Delhi. The Conference endorsed the ICRC's position in its Resolution XX, which called upon all National Societies and all governments to "*facilitate by every means the reunion of persons, both adults and children, with their families in accordance with the wishes of [...] the recognized head of the family no matter where domiciled*". Yet the Hungarian government continued to hamper emigration of its nationals and the ICRC had to process the cases referred to it on an individual basis.²⁰

²⁰ Minutes of the ICRC Presidential Council's meeting of 18 April 1957 — ICRC Archives. Meeting of 2 May 1989 between Nicolas Vecsey, former Deputy Head of the ICRC Central Tracing Agency, and Françoise Perret. François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, ICRC, Geneva, 1994, pp. 903-908.

CONCLUSION

The ICRC's relief operation for the Hungarian population was carried through in spite of the obstacles that arose in its path, thanks to the organization's swift response in sending delegates to the country and to the initial consignments of relief supplies dispatched in the few days during which the borders stayed open. The delegates remained in Hungary throughout the Soviet intervention and managed to obtain the necessary authorization for the passage of humanitarian aid convoys. A large-scale assistance programme was launched to help the population of Budapest through a particularly harsh winter in the partially destroyed Hungarian capital, and provided them with food, clothing, medicines and other medical supplies, building materials, window panes, coal and other essential items. The operation came to an end in October 1957, when the situation in the country no longer called for emergency action.

An ICRC delegate managed to visit detainees in the hands of insurgents in the Győr region. On the other hand, the delegates based in Budapest were never allowed to visit imprisoned or deported insurgents, nor did the ICRC succeed in its efforts to set up a programme to assist families split up by the events, since the Hungarian government refused to allow its nationals to join relatives who had fled to the West.²¹

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²¹ Minutes of the ICRC Presidential Council's meetings of 17 January and 18 July 1957 — ICRC Archives. Minutes of the ICRC Assembly's plenary meeting of 3 December 1957 — ICRC Archives.

ICRC action during the Suez crisis in 1956

by Françoise Perret

WAR OVER THE CANAL

With tension mounting between Israel and its Arab neighbours, the British troops stationed in the Suez Canal zone pulled out of Egypt on 18 June 1956, in accordance with an agreement signed between that country and the United Kingdom in October 1954.

One month later, on 19 July 1956, the United States informed Egypt that contrary to expectations it was withholding a loan of over 50 million US dollars for building the Aswan high dam; the very next day, the United Kingdom and the World Bank also refused Egypt a loan.

On 26 July Colonel Nasser, the Egyptian Head of State, nationalized the Suez Canal and assumed leadership of the Arab nationalist movement.

In late October 1956 the events in Hungary were the focus of world attention. That situation changed abruptly on 29 October, however, when, by agreement with the United Kingdom and France, Israel attacked Egypt and its troops entered the Gaza Strip and the Sinai peninsula; the governments in London and Paris issued an ultimatum on 30 October threatening to occupy the canal zone.

With the Israeli army continuing its advance and pursuing Egyptian troops in the Sinai, the French and British air forces started bombing Egyptian airports.

On 5 November the Israelis occupied the Gaza Strip and the Sinai as far as Sharm el Sheikh. Meanwhile, French and British troops landed at Port Fuad and Port Said and were advancing along the canal.

In waging that war against Egypt, Israel hoped to put an end to attacks by Palestinian groups whose main operational bases were in the Gaza Strip and the Sinai. For the French, the main aim was to deprive the Algerian uprising of Egyptian support, while the British were seeking to stem the mounting tide of Arab nationalism and wrest back control of the canal.

On 2 November, however, the United Nations General Assembly adopted a resolution calling for an immediate cease-fire and, on 5 November, voted for the creation of an emergency force to impose and supervise a cessation of hostilities. Under pressure from the United States and the Soviet Union, the belligerents agreed on 7 November to a cease-fire providing for the replacement of French and British troops by a United Nations emergency force; the handover was completed on 24 December, but Israel hung on to its position in the Gaza Strip and the Gulf of Aqaba until March 1957, when its troops withdrew and were replaced by a UN contingent.

During the fighting the Israelis took more than 5,000 Egyptian prisoners of war; Egypt, which held four Israeli military personnel, expelled thousands of Jews and many foreigners — mostly British nationals — residing in the country. The civilian population of the territories occupied by Israel also suffered from the consequences of the war.

ICRC ACTION

ICRC delegates in the Near East

Because of constant strife in the Near East since the end of the Second World War, the ICRC had an honorary delegate in Cairo by the name of Edmond Müller.

When tension rose throughout the region in October 1956, the ICRC decided to set up a permanent regional delegation in Beirut covering, *inter alia*, Israel. David de Traz was appointed to run the delegation and travelled to Israel as soon as hostilities broke out.¹

Appeal to the belligerents

Egypt, France and Israel were bound by the 1949 Geneva Conventions when the fighting started, but the fact that the United Kingdom had not yet ratified them meant that they did not apply in Egyptian-British

¹ *ICRC Annual Report*, 1956, pp. 23-24.

relations. To try and remedy the problem, the ICRC cabled the British government on 31 October with a request that it ratify the Conventions by means of an accelerated procedure. It based its representation on the third paragraph of Article 2 common to all four Conventions, which reads as follows: "*Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.*" British Prime Minister Anthony Eden informed the ICRC the following day that his government could not comply with the organization's request but that it intended to apply the provisions of the Conventions, should the occasion arise.²

On 2 November the ICRC appealed to the governments of the four countries involved in the hostilities - Israel, Egypt, France and the United Kingdom - to take all necessary measures to ensure the application of the four Geneva Conventions of 1949. It also stated its readiness to assume the duties entrusted to it under the Conventions, particularly by sending delegates to visit prisoners of war and arrested or interned civilians and by providing aid to these people if need be. The ICRC further drew the four governments' attention to the existence in Geneva of the Central Prisoners-of-War Agency, which collected the names of captured members of the armed forces and arrested or interned civilians, transmitted such information to the governments of belligerent countries, and arranged for the exchange of correspondence between prisoners and their families. It therefore called on the four governments to provide it with the full particulars of military personnel captured by their own forces and of arrested or interned enemy civilians.³

Within the next two days, France and Israel informed the ICRC that they were prepared to apply the 1949 Geneva Conventions. The ICRC dispatched two representatives, Professor Paul Carry and Melchior Borsinger, to London to liaise with the British authorities and the British Red Cross. William Michel, the ICRC's resident delegate in France, was entrusted with a similar mission to the French government and the French Red Cross.

²Telegram of 31 October 1956 from the ICRC to the British government and telegram of 1 November 1956 from the British government to the ICRC — ICRC Archives, files Nos. 041 and 201 (152). English-language supplement to the *Revue internationale de la Croix-Rouge* (hereinafter *Supplement*), Vol. IX, No. 11, November 1956, p. 195.

³ICRC offer of services of 2 November 1956 — ICRC Archives, files Nos. 200 (43) and 201 (152).

The ICRC also broadcast over Egyptian radio the following message in several languages, to inform all combatants of the core principles of the Geneva Conventions for the protection of war victims:

The International Committee of the Red Cross in Geneva wishes to recall that the four Geneva Conventions of 1949 for the protection of war victims are applicable to the armed conflict which is now taking place on Egyptian soil. These Conventions impose on all combatants duties which may be summarized as follows:

1. The wounded and the sick, whether members of the armed forces or civilians, friends or enemies, shall be collected and protected and shall receive without delay the treatment their condition demands.

2. The following may never, under any circumstances, be attacked, but should always be respected and protected by the combatants: fixed or mobile medical establishments, namely hospitals, ambulances, vehicles used for carrying the wounded and the sick (i.e. hospital trains, hospital ships, medical aircraft) and the members and the equipment of Army and Red Cross or Red Crescent Medical Services responsible for treating the wounded and the sick.

3. To permit the enemy to recognize their medical status, such establishments, vehicles and personnel are authorized to clearly display the red cross or the red crescent emblem on a white background; this emblem must always, and under all circumstances, be respected and never be employed for any other object whatsoever.

4. Every enemy soldier, non-commissioned officer or officer surrendering, or otherwise captured, must be treated as a prisoner of war, and may not, therefore, be killed, or molested in any way; he must be treated as regards food, lodging, clothing, etc., in the same way as the military personnel of the detaining Power. As soon as possible he must be evacuated to the rear, where the appropriate authorities will become responsible for him.

5. Non-combatants, especially women and children, must never be attacked by the armed forces, but should, on the contrary, always be respected and humanely treated.

6. Torture, cruel or degrading treatment, and the taking of hostages are and remain forbidden at all times and in all places and in respect of all persons.⁴

⁴Supplement, Vol. X, No. 2, February 1957, pp. 20-21.

The ICRC appealed to all those engaged in the fighting in Egypt or exercising authority in the country to ensure that the above principles were respected.

Contacts with the Israeli and Egyptian authorities

Upon arriving in Israel in the days that followed the outbreak of the conflict, David de Traz received confirmation from the Israeli authorities that they intended to apply the Geneva Conventions. They also agreed to the ICRC sending a medical delegate out to Tel Aviv to visit wounded Egyptians being held there; Dr Louis Gaillard accordingly reached Tel Aviv on 8 November.

De Traz then joined Edmond Müller in Cairo, where enquiries for news were flooding in from the families of captured soldiers. Together they set up a tracing service with the help of locally recruited staff, while the Central Prisoner-of-War Agency in Geneva compiled lists of prisoners and forwarded family messages.

De Traz also obtained an assurance from the Egyptian authorities that ICRC delegates would have access to Israelis in Egyptian hands.⁵

Relief supplies dispatched to Egypt

The Egyptian Red Crescent informed the ICRC on 7 November that it accepted the offer of assistance extended by the organization on 2 November, and made an urgent request for large quantities of medicines and other medical supplies. The ICRC at once appealed to some 50 National Societies, about 30 of which immediately responded with contributions to the relief fund it had opened. An aircraft loaded with four tonnes of essentially medical supplies left Geneva for Cairo on 11 November.

The consignment was escorted by an ICRC medical delegate, Dr R. Grosclaude, who on arriving in Cairo decided to send some of the medicines on to Port Said, which was completely cut off from the rest of the country. With the help of the Egyptian Red Crescent he persuaded the Egyptian authorities to send a special train to Port Said under ICRC protection; however, shooting was rife in the town, which was occupied by British and French troops who let practically nobody enter or leave.

⁵ICRC *Annual Report*, 1956, p. 24, and 1957, pp. 22-23.

Nonetheless, Maurice Thudichum, another ICRC delegate, managed to reach Port Said on 12 November in a French military aircraft and there was assured by British and French officers that they would let the ICRC convoy through. The medicines thus reached their destination on 16 November.

During his mission to Port Said and then to Port Fuad, Thudichum visited Egyptian prisoners of war in French and British hands, organized the distribution of relief supplies to the civilian population and set up a service to forward family messages.⁶

On 20 November a second aircraft, lent to the ICRC by the Danish Red Cross, left Geneva for Cairo with three tonnes of medicines and dressings for the population of Port Said.

Visits to prisoners of war in Israel and civilians in the occupied territories

Dr Gaillard regularly visited over 5,000 Egyptian prisoners of war held in camps or being treated in hospitals in Israel. During his visits he was free to interview the men without witnesses, in accordance with standard ICRC practice, and he secured the release of several hundred civilians detained without due cause. He also travelled to the Gaza Strip and the Sinai several times to check whether civilians there were being treated in accordance with the provisions of the Fourth Geneva Convention of 1949. In Gaza he made several visits to Egyptian nationals interned in a district of the city and awaiting repatriation. He also organized the distribution of relief supplies to the needy in El Arish and Rafah.⁷

Repatriation of seriously wounded Egyptians

Dr Gaillard informed the ICRC on 18 November that the Israeli authorities were planning to repatriate an initial group of seriously wounded Egyptians. The ICRC delegates negotiated the terms of their repatriation with Cairo and Tel Aviv and, on 5 December, two medical aircraft made available to the ICRC by the Italian authorities flew 26 seriously wounded Egyptians back to Cairo. A few days later both aircraft returned to Israel with a cargo of individual and collective relief supplies

⁶ *Supplement*, Vol. IX, No. 12, December 1956, pp. 220-222. Reports by Maurice Thudichum, dated 14 and 17 December 1956 — ICRC Archives, file No. 200 (43). Minutes of the ICRC Presidential Council's meeting of 9 April 1957 — ICRC Archives.

⁷ *ICRC Annual Report*, 1957, p. 24.

for Egyptian prisoners of war, before returning to Cairo with a second group of 22 serious cases.

Those medical flights between Israel and Egypt were the first direct air link between the two countries since the war in Palestine in 1948.⁸

Development of operations in Egypt

By the end of November the ICRC delegates in Egypt had succeeded in organizing regular relief convoys to Port Said. On the return journey the convoys were used to evacuate sick or wounded Egyptian military personnel requiring special treatment in Cairo hospitals.⁹

The ICRC encountered serious difficulties in obtaining information about the Israeli prisoners of war held by the Egyptians, but eventually it did manage to secure their names on 14 December: the group consisted of one officer and three soldiers. Initially an ICRC delegate was allowed to visit the officer, who was detained separately, but not the soldiers. Later, however, he succeeded in gaining access to all four prisoners, who were freed on 26 January 1957.

The ICRC delegates also visited and negotiated the release of the Egyptian prisoners of war held by the British and the French in Port Said. On 21 December 1956 a group of Egyptian prisoners detained by the British there was freed and the Egyptian authorities responded by releasing some Britons being held in Cairo. For their part the French military authorities told de Traz that they would take their Egyptian prisoners with them to prevent any incidents which might arise if they were released locally. The ICRC delegation in Paris was instructed to intervene on the prisoners' behalf, but the ICRC Archives contain no trace of any such representation, or of any request by the Egyptian government concerning the captives, which probably means that they were speedily released.¹⁰

Repatriation of all prisoners of war

In January 1957 the ICRC negotiated with the Israeli and Egyptian authorities over the repatriation of all prisoners of war. A first group of

⁸ *ICRC Annual Report*, 1956, p. 30.

⁹ Report by David de Traz, dated 7 December 1956 — ICRC Archives, file No. 200 (43).

¹⁰ *ICRC Annual Reports*, 1956, p. 26-29; 1958, p. 16; 1959, p. 15. *Supplement*, Vol. X, No. 1, January 1957, pp. 7-9. Report by Edmond Müller to the ICRC Presidential Council, dated 18 December 1956 — ICRC Archives, file No. 200 (43).

500 Egyptian prisoners was handed over on 21 January to officers of the United Nations Emergency Force (UNEF) between Rafah and El Arish, in the presence of Dr Gaillard and Maurice Thudichum.

From then on, groups of Egyptian prisoners of war were repatriated at regular intervals. The operation was completed on 5 February, by which time the Egyptian authorities had released the Israelis they were holding.¹¹

Doctor Gaillard then left Israel, but the ICRC kept on Doctor Bernath, who had already worked for the organization during the Arab-Israeli conflict of 1948-1949, as its local correspondent.

Relief for the population of Port Said

One ICRC delegate, two senior staff of the Egyptian Red Crescent and a representative of the League of Red Cross Societies (today the International Federation of Red Cross and Red Crescent Societies) travelled to Port Said in February 1957 to organize a relief operation in aid of some 15,000 civilians whose homes had been destroyed during the attack by French and British troops and who were living in camps set up by the Egyptian authorities.¹²

Relief for Jews living in Egypt

When the Suez conflict broke out, the Egyptian government accused the 55,000 or so Jews living in Egypt of colluding with Israel and threatened them with immediate expulsion. Without ordering such an extreme measure, however, the authorities took a number of steps (nationalization of Jewish-owned businesses, confiscation of Jewish property, dismissals and arrests, etc.) aimed at provoking their departure. Those measures hit foreign, stateless and Egyptian Jews alike. The ICRC came to the conclusion that it could not concern itself with the fate of foreign Jews, whose interests should be defended by their own governments, but that stateless Jews, and by analogy Egyptian Jews, came under the category of individuals whom it had a duty to protect and assist.

On 27 November 1956, therefore, the ICRC cabled the Egyptian government requesting a suspension of all measures of immediate

¹¹ *Supplement*, Vol. X, No. 2, February 1957, p. 25, and No. 3, March 1957, pp. 54-57. Note dated 21 December 1956 from Pierre Gaillard to David de Traz — ICRC Archives, file No. 200 (43).

¹² *Supplement*, Vol. X, No. 3, March 1957, p. 58.

expulsion and proposing that sufficient time be allowed to ensure respect for the provisions of the Fourth Geneva Convention.¹³

From then on the delegates in Egypt actively concerned themselves with stateless Jews and those stripped of their Egyptian nationality who wished to emigrate, and the ICRC organized a shipping schedule from Alexandria to Greece and Italy. Between 2 January and 14 September 1957, the delegation chartered 14 vessels, which shipped 7,190 stateless Jews to Piraeus or Naples. Upon arrival they were assisted by the Greek and Italian Red Cross Societies and by the local branches of international Jewish organizations, which sought to find a country of permanent asylum for them (Israel in most cases).

At the end of 1957 the Egyptian government reversed its policy towards Jews living on its territory and started slowing their departure so that they would not go to swell Israel's demographic potential. There were no more collective departures, therefore, although emigrants wishing to leave Egypt individually still sought help from the ICRC. The delegation advised them and assisted them with the many administrative formalities they had to complete, but the number of departures dropped considerably and the delegation was reduced to a single delegate as from 1 January 1961. However, the Egyptian authorities saw no more call for an ICRC presence and, in the spring of 1962, ordered the closing of the Cairo delegation, which was done on 31 December of the same year.¹⁴

Continuing operations in Israel

Until the early 1960s, ICRC activity in Israel was almost wholly determined by the aftermath of the Suez conflict. Thus the ICRC continued to receive requests from Egyptian families concerning persons reported missing during the Sinai campaign; these it transmitted to the Israeli authorities, though the latter systematically answered that they no longer held any prisoners of war.

¹³Telegram dated 27 November 1956 from the ICRC to the Egyptian government - ICRC Archives, file No. 233 (43).

¹⁴*ICRC Annual Reports*, 1956, p. 29; 1957, pp. 25-27; 1958, pp. 16-17; 1959, pp. 14-15; 1960, p. 18; 1961, p. 22. François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, ICRC, Geneva, 1994, pp. 1042-1043. Note dated 8 December 1961 from Edmond Müller to Roger Gallopin, Executive Director of the ICRC — ICRC Archives, file No. 252 (43).

Israel was still holding a number of detainees of Palestinian origin (*fedayeen*), however, and ICRC delegates were regularly allowed to visit and hand family messages to some of them.¹⁵

CONCLUSION

During the Suez conflict, all the parties involved — with the exception of the United Kingdom — were bound by the four Geneva Conventions of 12 August 1949. In securing a commitment from London to respect the Conventions, the ICRC managed for the first time to have the new Geneva law applied in an international conflict.

The 1949 Conventions entrust the ICRC with the mandate to come to the aid of civilians and prisoners of war alike. Indeed, it was on the basis of the Fourth Geneva Convention for the protection of civilians that the ICRC was able to protect and assist the civilian population in the Israeli-occupied Gaza Strip and Sinai and that its delegates were allowed by the French and British military authorities to distribute relief supplies to the populations of Port Said and Port Fuad.

Thus, in a conflict limited in time but complex in humanitarian terms because of the diversity of situations on the ground, the ICRC succeeded in helping various categories of war victims: prisoners of war, civilian internees, the inhabitants of occupied territories and stateless persons.

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¹⁵*ICRC Annual Reports*, 1958, pp. 15-16; 1959, pp. 15-16; 1960, p. 19; 1961, p. 22; 1962, pp. 30-31.

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Françoise Perret holds a law degree, and started working for the ICRC in 1970. She conducted various missions for the Operations Department and also carried out assignments to promote awareness of international humanitarian law. She was appointed to the position of research officer in 1991, and is now in the process of writing a history of the ICRC spanning the years 1956 to 1965.

Humanitarian law in the *Articles of War* decreed in 1621 by King Gustavus II Adolphus of Sweden

by Kenneth Ögren

In July 1621 several regiments of the Swedish army were assembled at Årsta Meadow south of Stockholm awaiting transport by ship to the Baltic, where they were to fight the Russian forces which had invaded the provinces in early summer.¹ It was on this occasion that they heard for the first time the new *Articles of War* read to them by chancellor Axel Oxenstierna. The text had been drafted by King Gustavus himself and revised by Oxenstierna the preceding spring, and the final decree had been signed by the King at camp on 15 July.²

The *Articles* were indeed new in certain respects, but they were also based on familiar continental models and earlier Swedish texts. They borrowed something from the code of Ferdinand of Hungary (1526), something from the famous code of Maximilian II (1570) and something from the code of Maurice of Nassau (1590). The presence of numerous transcripts of continental codes in the Stockholm archives makes it clear that great care was taken to consult the systems used abroad. Yet the *Articles* differed in certain important respects from other codes of military law of that age. Earlier codes were closer in nature to an agreement between contracting parties, whereas King Gustavus' text comprised a set of orders. The *Articles* also differed from similar codes in that they

¹ F. Berner, *Gustav Adolf: Der Löwe aus Mitternacht*, Stuttgart, 1982, and M. Roberts, *Gustavus Adolphus: a history of Sweden 1611-1632*, London (vol. 1, 1953, and vol. 2, 1958).

² See text in *Annex*, and O. Brusiin, "Gustav Adolf Krigsartiklar: Några synpunkter", *Tidskrift — utgiven av Juridiska föreningen i Finland*, vol. 79, 1943.

established a hierarchy of military jurisdiction: inferior court martial, presided over by a colonel; superior court martial, presided over by a marshal; and final appeal to the King. This system was supplemented with special military prosecutors and a general auditor in charge of supervising the application of the rules, thereby strengthening the entire system of military justice. In other respects, the *Articles* did not differ much from existing codes: punishments were severe, at times draconian, and the death penalty was imposed for more than forty offences.

After the Swedish army entered the Thirty Years' War, the soldiers of King Gustavus maintained, for some time, a good reputation. However, despite abundant evidence that the officers did their best to maintain high standards of behaviour, discipline broke down in the early 1630s as a direct result of the King's inability to pay his troops. In April 1631, Frankfurt an der Oder — an allied Protestant town — was savagely sacked and the following year Göttingen was also plundered. King Gustavus vacillated a little in this state of affairs. To a complaint made in 1632 the King answered that "war is war and soldiers are not novices". But on the whole he continued to struggle for more humanity in warfare, and when asked by George William of Brandenburg what to do with some Swedish officers who had committed outrages, he replied: "Has my brother-in-law no gallows in his country, or is he short of timber?". At Mainz, in 1632, the King had the *Articles* published in German, with additions and changes, as a means of enforcing stronger discipline.

The *Articles of War* decreed by King Gustavus comprise 150 articles, only seven of which can be said to contain humanitarian rules. Article 88 stipulates: "He that forces any Woman to abuse her; and the matter be proved, he shall dye for it". This short and clear rule of law prescribes the same punishment as was found for that offence in most civil penal codes of the time. Article 90, which prohibits soldiers from setting fire to a town or village in a friendly country, clearly constitutes another fundamental humanitarian rule. Article 91 lays down the same rule for enemy territory, although it provides for one exception: a captain may order a town or village burned with the consent of the King or his marshal. The thinking behind this article is clear since the punishment for disregarding the prohibition is not penal but compensatory: a captain who wrongly ordered his troops to start a fire had to pay compensation for the loss of booty caused by the flames.

Articles 99 and 100 contain the most clearly defined humanitarian rules: Article 99 stipulates that no churches or hospitals may be pillaged even if a city is taken by force and general plundering allowed. An

exception to this rule is made for buildings used in defending the city. Article 100 prohibits the setting on fire of churches, hospitals and schools, and it forbids ill-treatment of clergymen, the elderly, women and children, provided they do not put up armed resistance.

Although the humanitarian rules contained in the *Articles of War* are of a very rudimentary nature, they nevertheless point to the ever-present need for a measure of humanity in the midst of warfare. They also give us an idea of what existed in the way of humanitarian law before the publication of Grotius' *De Jure Belli ac Pacis* in 1625 and appear to have been inspired by Gentili's 1612 *De Jure Belli*.

Gustavus' *Articles of War* were, as previously said, at least in part an innovation. Compared with the code of Maximilian II — which contained humanitarian rules only in Articles 8 and 9 — they gave broader and better protection to civilians against some of the horrors of war. Enforcement was as much a problem then as today, and in this respect the *Articles* constituted a major improvement. With the establishment of specific rules and a hierarchy of court martials, the behaviour of combatants became a matter of law and there is evidence that the rules were applied for all categories of both officers and enlisted men.

The impact of Gustavus' *Articles* should not, however, be overestimated. In much of Germany and Bohemia, the Swede, the Turk and the devil had much the same reputation. "Sveda" passed into the Czech language as a word for a criminal or ragged fellow. In Germany, a saying still goes *Bet Kind, bet Kind, morgen kommt der Schwede*.³ Nevertheless, the *Articles of War* had a considerable influence and served as a model for the later development of the law of war in Europe. Swedish commanders who served under Gustavus carried the *Articles of War* with them when they went abroad and thus spread the law and its fundamental rules on humanity and protection wherever they travelled.

³ "Pray child, pray child, the Swede is coming tomorrow"

Annex

*Articles of War
decreed in 1621 by King Gustavus II Adolphus
of Sweden⁴*

Article 88

He that forces any Woman to abuse her; and the matter be proved, he shall dye for it.

Article 89

No Whore shall be suffered in the Leaguer: but if any will have his owne wife with him, he may. If any unmarried woman be found, he that keepes her may have leave lawfully to marry her; or els be forced to put her away.

Article 90

No man shall presume to set fire on any Towne or Village in our land: If any does, he shall be punished according to the importancy of the matter, so as the Judges shall sentence him.

Article 91

No Soldiour shall set fire upon any Towne or Village in the enemies land; without he be commanded by his Captaine. Neither shall any Captaine give any such command, unlesse hee hath first received it from Us, or our Generall: who so does the contrary, he shall answer it in the Generals counsaile of Warre, according to the importance of the matter. And if it be proved to be prejudiciall unto us, and advantageous for the enemy; he shall suffer death for it.

⁴ Extracts — Spelling modernized in places to facilitate understanding.

From the only known publication of the *Articles of War* in English: *The Swedish Discipline*, London, 1632. German translations of the 1621 and the 1632 versions of the *Articles of War* were published in *Entwicklungsgeschichte des Deutschen Heerwesens*, Dritter Band, I. Teil, Beilagen XXIV und XV, München, 1938.

Article 99

No man shall presume to pillage any Church or Hospitall, although the strength be taken by assault, except hee bee first commanded; or that the soldiers and Burgers be fled thereinto and doe harme from thence. Who does the contrary, shall be punished as aforesaid.

Article 100

No man shall set fire upon any Church, Hospitall, Schoole, or Mill, or spoyle them any way, except hee bee commanded. Neyther shall any tyrannize over any Churchman, or aged people, Men or Women, Maydes or Children, unlesse they first take Armes against them, under paine of punishment at the discretion of the Judges.

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Cooperation agreement with the Organization of American States

Promoting the implementation, dissemination and observance of international humanitarian law has assumed a more crucial place than ever among measures aimed at preventing grave threats to the life and dignity of the individual in armed conflicts. Regional governmental organizations have a vital role to play in this respect. Indeed, emergency humanitarian action and other humanitarian issues, such as the problem of displaced people, anti-personnel landmines and the security of humanitarian workers, figure on their agenda and are often discussed during their meetings.

The ICRC has therefore always attached great importance to its contacts with regional governmental organizations. With a view to developing working relations, the Committee has already concluded several cooperation agreements with such organizations, in particular the Organization of African Unity, the European Union, the Organization of American States and the Organization of the Islamic Conference. For the ICRC, these agreements are tangible expressions of support for its activities aimed at strengthening compliance with international humanitarian law.

By way of an example, the Review is publishing the text of the most recent such cooperation agreement, signed on 10 May 1996 by the Secretary General of the Organization of American States (OAS) and the President of the ICRC.

Cooperation Agreement between the General Secretariat of the Organization of American States and the International Committee of the Red Cross

THE PARTIES TO THIS AGREEMENT: the General Secretariat of the Organization of American States (hereinafter referred to as GS/OAS), represented by its Secretary General, Mr César Gaviria, and the International Committee of the Red Cross (hereinafter referred to as ICRC), represented by its President, Mr Cornelio Sommaruga,

Bearing in mind that the Organization of American States (OAS) proclaims the fundamental rights of the individual and encourages the promotion of those rights;

Considering that the ICRC is the promoter and guardian of international humanitarian law;

Recalling that the General Assembly, supreme organ of the OAS, adopted at its twenty-fourth regular session, held in Belém do Pará, Brazil, in 1994, a resolution entitled “Respect for International Humanitarian Law”, which, *inter alia*, recommends that the OAS Secretary General continue to cooperate with the ICRC in disseminating international humanitarian law and the work of the ICRC among member states of the OAS;

Noting that the General Assembly, at its twenty-fifth regular session, held in Montrouis, Haiti, in 1995, adopted another resolution entitled “Respect for International Humanitarian Law”, whereby it recalled the activities carried out by the ICRC, especially in its capacity as a specifically neutral and independent organization and intermediary;

Considering that one of the functions of the GS/OAS is to establish cooperative relations, in accordance with decisions reached by the General Assembly or the Councils, with the Specialized Organizations and other national and international organizations,

HAVE AGREED AS FOLLOWS:

ARTICLE I

Cooperation

The GS/OAS and the ICRC will cooperate in matters of common interest to the Americas. Cooperation shall take place especially in the following areas:

- i. promotion and dissemination of international humanitarian law;
- ii. measures to improve respect for international humanitarian law;
- iii. measures for the application of international humanitarian law;
- iv. measures in support of ICRC's humanitarian action; and
- v. joint sponsorship of conferences, seminars, and other meetings on topics of common interest.

For the purposes of such cooperation, the Parties will carry out joint projects, for which they shall conclude supplementary agreements or memoranda of understanding in accordance with the guidelines established in this Agreement.

Any financial obligations incurred by the Parties as a result of this Cooperation Agreement or supplementary agreements or memoranda of understanding that may be signed shall be subject to the decisions of their governing bodies, to the availability of funds, and to the standards, rules and regulations relating to budgetary and financial matters.

ARTICLE II

Reciprocal Consultations

The Parties will consult with each other on a regular basis concerning their plans of action and other matters that may be of mutual interest in order to accomplish their objectives and coordinate their respective activities.

ARTICLE III

Exchange of Information and Documents

The Parties will exchange, on a regular basis, information and documents on matters of common interest.

The Parties shall not be obligated to provide each other with any information which, in their view, jeopardizes the trust of any of their members or of any entity or person from which or from whom that information may have been received. In that regard, they recognize that certain restrictions will need to be applied in order to maintain the confidentiality of the information.

ARTICLE IV

Reciprocal Invitations

Both Parties may invite each other to participate in conferences or meetings held by the various organs of the other, in accordance with their existing rules and when such meetings address matters of common interest.

ARTICLE V

Settlement of Disputes

Any dispute that arises with regard to the interpretation or implementation of this Agreement shall be settled through direct negotiation between the Parties. Should the Parties fail to reach a settlement that is satisfactory to both, they shall submit their differences to a mutually agreed arbitration procedure.

This shall not signify a waiver by the GS/OAS and the ICRC of their privileges and immunities under any agreements that are pertinent.

ARTICLE VI

Amendments

Amendments to this Agreement may only be made by mutual consent in writing. The instruments recording the amendments shall be appended to this Agreement and become part of it.

ARTICLE VII

Entry into Force and Denunciation

This Agreement shall enter into force upon signature by both Parties. However, the Parties may denounce it by written notice to the contrary at least three (3) months prior to the date on which they wish to terminate it.

IN WITNESS WHEREOF the duly accredited representatives of the Parties sign this Cooperation Agreement in two originals in English, both versions being equally authentic, in the city of Washington, D.C., on May 10, 1996.

For the International Committee
of the Red Cross
Cornelio Sommaruga
President

For the General Secretariat of
the OAS
César Gaviria
Secretary General

HABITAT II: Statement by the ICRC

The United Nations Conference on Human Settlements (HABITAT II) was held in Istanbul from 3 to 14 June 1996. On behalf of the ICRC, Mr Jacques Forster, member of the Committee, gave an address entitled "Survival of the civilian population in wartime". The Review is publishing part of his statement.

In time of peace, cities already suffer from overpopulation, social problems and a decaying environment, with run-down housing, infrastructure and services. In time of war, however, they are affected by even more dramatic problems resulting from the destruction of elements vital for the survival of the civilian population, such as housing and sources of food and water. Since the ICRC has been entrusted by the international community with a mandate to take action in situations of armed conflict, it is on this specific topic that I should like to speak today. (...)

Development of new forms of assistance for war victims

In order to respond to all this suffering, the ICRC, like other organizations, has had to develop new forms of assistance. However, the structures which have recently been set up are intended not simply to cope with the pressing problems of the moment but also to seek a solution from within, to ensure that the situation does not persist and that displaced populations are able either to rebuild their lives in new surroundings or to return home and pick up the threads again in an environment which has been devastated to greater or lesser degree by man-made disasters.

As it was no longer possible to cope with emergencies such as these by traditional means, specialized units had to be established with skills in the areas of water supply and sanitation, agricultural engineering, veterinary science and the like. Moreover, traditional aid programmes were extremely expensive in the long term and could provide only partial responses. What was needed was a vision of aid in terms of sustainability,

so as to avoid creating permanent dependency and offer these millions of victims the hope of embarking on a new life.

The serious problem of water

An example which graphically illustrates this approach is the programme to supply drinking water which the ICRC has been conducting together with UNICEF in Iraq. Under this programme, as many as 90 water pumping or treatment stations were put back into operation in 1995. This year, a budget of around five million Swiss francs has been allocated to cover a further 62 stations — 11 in the three northern governorates, nine in Baghdad itself and 42 in another 13 governorates.

Elsewhere we are facing problems of similar magnitude. In Rwanda, for example, ICRC programmes conducted with National Red Cross Societies are bringing drinking water to millions of people in 35 communes of eight prefectures. At the same time, public awareness-raising programmes are making Rwandans conscious of the importance of this resource.

I could cite other examples in places such as Bosnia, Somalia (particularly Mogadishu) and the Russian Federation (Chechen Republic), where programmes like these are not only supplying drinking water to populations living in difficult circumstances but also restoring and maintaining water-supply installations so that conflict victims can gradually return to something approaching a normal existence.

The transition from emergency to rehabilitation and development

Water, however, is just one of the elements necessary for maintaining health, the fundamental prerequisite without which no development is possible. Health — or more precisely public health — is becoming an increasingly important factor in every ICRC operation undertaken, whether in response to an emergency or with a view to the long term.

Thus there is an overall aid strategy in which emergency assistance is accompanied by programmes in other fields just as vital as water supply and sanitation or the distribution of food and other relief. When one considers the ICRC veterinary programmes in southern Sudan and Somalia, which provided vaccinations and treatment for millions of cattle and camels — the sole resource of semi-nomadic populations, and the agricultural aid programmes in Burundi, southern Sudan, Afghanistan and the former Yugoslavia, the importance the ICRC attaches to these

programmes is immediately apparent. They extend far beyond the immediate emergency situation, helping to ensure a smoother transition from war to peace and giving the affected populations new hope for a better life in the future. Accordingly, the ICRC finds itself increasingly involved in programmes with a development aspect or, more precisely, a strong focus on the long term. (...)

How government fiscal concessions can strengthen Red Cross and Red Crescent Societies

by Vincent Bernard¹

Introduction

A government, through the laws it enacts, can play an essential role in enabling its National Red Cross or Red Crescent Society to serve the most vulnerable people within and beyond the country's borders.

There are a number of steps a government can take to assist its National Society in its role as an auxiliary in humanitarian matters. One very tangible way in which public authorities can support their National Society is through granting certain fiscal concessions.

Of course a government can allocate money directly to its Red Cross or Red Crescent Society, but it can also establish a legislative framework that eases a National Society's search for other funds to support its work. Such positive legislation can actually stimulate private and institutional giving to the National Society and advance the Society's capacity-building process towards more effective, better funded programmes and services.

Red Cross and Red Crescent Societies are national organizations subject to the laws of their respective countries. The body of statutes and regulations that constitutes a country's tax law affects all of a National

¹ Study commissioned by the Secretariat of the International Federation of Red Cross and Red Crescent Societies. The text reflects the views of the author and not necessarily those of the Federation or its Secretariat.

Society's sources of income and supply of goods, such as gifts from individuals or companies, benefits from events or lotteries, or medical supplies offered by foreign donors. National tax law affects expenses as well — such as telephone calls, purchase of an ambulance or staff salaries. All operations performed routinely by a National Society are subject to the relevant fiscal regulations of the country. It is important to be aware of these regulations and how they affect the National Society's operations and financial situation. It is also important to know where there are possibilities for exemptions from or exceptions to these regulations.

For example, some countries allow for non-payment of taxes and similar levies, usually for social or economic reasons, but only to certain categories of taxpayer. These privileges are known variously as tax exemptions, tax concessions or tax relief. Such fiscal privileges, while often "invisible", can be an important source of savings.

Many governments make these privileges available to the Red Cross and Red Crescent in the belief that it is in their best interest, and the interest of the general public, to employ this means of strengthening the programmes and funding capacities of the National Society.

Most Red Cross and Red Crescent Societies enjoy some type of fiscal privilege and exemption. Some, on the other hand, have only partial exemption while others are actually taxed on revenue, which can be a burden on the budget of a National Society and hinder its ability to carry out its mission. Certain National Societies face fiscal reforms that jeopardize existing benefits. Some public authorities are unaware of the exemptions that other countries allow. And even when a government has the political will to grant exemptions, a National Society may pay unnecessary taxes if it is unaware of fiscal legislation.

Many Red Cross and Red Crescent Societies have difficulty finding enough money to finance all the activities they wish to carry out. The expansion and diversification of National Society activities result in an increase in costs that cannot always be covered by additional grants from traditional donors. New approaches to raising funds and saving money are required, including taking best advantage of the special relationship that a National Society has with its government.

A clear understanding of the rules concerning tax exemptions in its country is essential for any National Society. It is important to check whether full advantage is being taken of the range of tax relief and other fiscal benefits available. This is not tax evasion, but fully legitimate use of the rights to which the Red Cross and Red Crescent are entitled. In

some cases it may well be easier to look for additional income from this source than from grants.

It is best if a National Society's tax exemption is explicitly stated in a legal document. An Act of Parliament is probably the ideal arrangement, though in many countries, especially in Africa, fiscal authorities issue letters that grant specific tax exemption and have to be presented each time the National Society seeks an exemption or refund.

This study is based on an analysis of fiscal regulations in a variety of legal systems and geographical regions. It was carried out with the cooperation of many National Societies and Regional Delegations of the Federation.² This report describes the legal measures that affect a National Society's finances, i.e. those measures that relate to the four traditional sources of financing (charity donations, membership fees, state revenues, income from Red Cross enterprises and institutions) and to expenses and costs. Only legal instruments such as statutes, decrees and other regulations applying to National Societies have been taken into account. Special or short-term grants, or practice that is based on tradition rather than on law, have not been included in the study.

Part 1 of this study is an analysis of how tax relief can benefit National Societies. Part 2 identifies the various fiscal advantages and privileges that different National Societies enjoy, and describes common, special and even innovative arrangements with governments. It is not an exhaustive listing, but it is hoped that it gives an insight into the kind of benefits that are being obtained by National Societies and that it will guide National Societies that do not have these benefits to see what kinds of opportunities there may be for enhancing their income, and thus their services, through this means.

Part I: National Societies and tax relief

International law requires that governments contribute to the development of Red Cross and Red Crescent Societies. Granting tax relief is

² National Societies which replied to the questionnaire, or about which information was received from Federation delegations: Australia, Belgium, Bolivia, Bulgaria, Burkina Faso, Chile, Côte d'Ivoire, Denmark, France, Germany, Georgia, Hungary, Ireland, Japan, Kazakstan, Luxembourg, Malta, Mexico, Paraguay, Portugal, Russian Federation, South Africa, Senegal, Spain, Swaziland, Sweden, Switzerland, United Kingdom, United States of America, Uruguay, and Zimbabwe.

a way for governments to carry out this international duty. The National Societies, as well as their donors, benefit from the various forms of national tax relief that different legal systems allow.

The grounds for tax exemption

Nationally, Red Cross and Red Crescent Societies enjoy a unique position:

Article 2 of the Statutes of the Movement³ stipulates that “each State shall promote the establishment on its territory of a National Society and encourage its development” and, further, that “the States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles”;

Article 3 describes the nature and functions of Red Cross and Red Crescent Societies. It says *inter alia* that National Societies are required to support public authorities in carrying out humanitarian tasks, according to the needs of the people;

Article 4 says that, to be recognized by the International Committee of the Red Cross (ICRC) — and implicitly admitted into the Federation, the applicant National Society must be officially recognized by the government of its country.

Each National Society must be established by an Act of Parliament or similar legislative measure before it can fulfil its role, as defined in the 1949 Geneva Conventions and the Statutes of the Movement. Each government recognizes, therefore, that the Red Cross or Red Crescent Society constituted on its soil serves as an auxiliary to the public authorities with respect to certain humanitarian functions. In this context, Red Cross and Red Crescent Societies differ from other non-profit organizations. In particular, although they are governed by national laws, they have a special responsibility with respect to international humanitarian law. Many articles in the Geneva Conventions explicitly refer to the National Societies and their tasks. These tasks are, in particular to:

— act as auxiliaries to their governments during armed conflicts and in peacetime;

³ Adopted by the 25th International Conference of the Red Cross, Geneva, October 1986.

- contribute to international relief in the event of disaster;
- provide medical and social assistance to the most vulnerable groups of the population.

States that have ratified the Geneva Conventions and Additional Protocols recognize explicit legislation directed towards National Societies.⁴ This includes the recognition of the red cross and red crescent emblems in peacetime. Thus, certain rights of the National Societies are directly derived from international law.⁵

Apart from certain unique features, National Societies provide services that are beneficial to the community, as do other NGOs. When groups band together for a charitable purpose, governments usually support the activity. In recognition of the fact that the work is in the public interest, laws grant fiscal privileges to encourage donations to charity. While it is essential that National Societies should be exempt from taxation, tax relief incentives for individual or corporate donors are also important for income generation.

First, tax concessions are indirect contributions to the National Society budget. They are as important as direct grants, fees for services and charitable donations.⁶ The less a National Society pays in taxes, the more it is able to allocate to work that is in the public interest. Tax exemption is particularly appropriate in the case of government grants⁷ (whether annual grants or special grants, such as those for a specific disaster relief operation) and of “cost recovery” arrangements whereby the government

⁴ See, for example, Article 1, para.1, of the Austrian Red Cross Protection Law: “The Austrian Red Cross is the recognized National Red Cross Society on the territory of the Austrian Republic; in this capacity it has in time of peace and war to carry out the tasks devolving on National Red Cross Societies from the Geneva Conventions for the protection of war victims of 12 August 1949, *Federal Law Gazette* No. 155/1953, and from the decisions of the International Conference of the Red Cross.”

⁵ See, for instance, Act No. VI of the Malta House of Representatives at Sitting No. 25 of 10 June 1992, “to make provision for the recognition of the Malta Red Cross Society and for matters connected therewith”, section 4(1), which states: “The Society shall have the right *in conformity with the conventions* listed in the second schedule to this Act (Geneva Conventions and Additional Protocols) to use the emblem of the Red Cross on a white ground formed by reversing the colours of the Swiss Confederation” (emphasis added).

⁶ “Raising money from government”, *Directory of Social Change Publication*, Michael Norton (ed.), London, 1980, p. viii.

⁷ For instance, the Malta government pays an annual grant to the Malta Red Cross. The salaries of a full-time typist and messenger together with a part-time administrator are also paid by the government (source: Malta Red Cross).

pays the costs of public services (such as collecting blood) performed by the National Society. To allocate money to the National Society on the one hand and to charge taxes on the other would make little sense.⁸

Second, taxes are levied to fund public services that are considered a traditional State duty (such as health, defence, law enforcement and education). Taking care of the most vulnerable is also a public service.⁹ National Societies are therefore exempted from taxation partially or totally because of the role they play in assisting the government. If a State's activities overlap with those of a National Society, and the latter is not tax exempt, then the National Society is helping finance public efforts on behalf of the most vulnerable. There would be little point in taxing a National Society in order to fund public services that the National Society, thanks to voluntary contributions, is able to provide at a lower cost than the government.

Third, in some countries taxes on personal fortunes, corporations and individuals, along with progressive income tax (i.e. a system in which the rate of tax increases with income) are designed to redistribute wealth. National Societies are usually exempt from progressive taxes, however, since they work to alleviate human suffering and the consequences of poverty rather than to make a profit. Since National Societies are non-profit organizations, they should not be subject to the same level of taxation as profit-making businesses.

Therefore governments grant exemptions and benefits to Red Cross and Red Crescent Societies because they are non-profit-making and because they are recognized as auxiliary to the public authorities in the area of humanitarian assistance.¹⁰

⁸ See, for instance, Article 3 of the Swiss *Arrêté fédéral "concernant la Croix-Rouge suisse"* of 13 June 1951, which grants both financial support and fiscal exemptions to the Red Cross Society. The *Arrêté fédéral* takes into account the unique position of the National Society within the country: "*La Confédération tient compte de la situation particulière de la Croix-Rouge en lui garantissant un appui financier ainsi que des facilités spéciales. La Confédération accorde chaque année à la Croix-Rouge suisse: a) une subvention pour l'accomplissement des tâches mentionnées à l'article 2; b) une subvention spéciale pour former et tenir à disposition un personnel infirmier professionnel en vue de l'aide sanitaire volontaire. Le montant de ces subventions sera fixé dans le budget. Les facilités qui peuvent être accordées à la Croix-Rouge suisse concernent en particulier l'exemption partielle ou complète de taxes, émoluments et impôts, en tant que les dispositions légales le permettent.*"

⁹ See, Article 20 of the German Constitution (*Grundgesetz*), which states the social welfare principle. Pursuant to this principle, the government has to support all non-governmental organizations, such as the German Red Cross, that conduct welfare activities. Accordingly, the German Red Cross receives an annual grant from the government.

¹⁰ A similar reasoning has been upheld by the United States Supreme Court in *Department of Employment v. United States* (see below, p. 465).

The international legal basis for tax relief and other fiscal benefits

It can be demonstrated that there exist, first, an obligation for States to grant tax exemption to National Societies as a means of encouraging their development and, second, an international obligation for States to grant tax exemption to National Societies for specific operations and emergency relief.

States' obligation to encourage the development of National Societies

States have committed themselves to supporting the existence and activities of Red Cross and Red Crescent Societies in various international instruments that are not international conventions but resolutions of International Conferences. What is the legal value of these various texts? The resolutions of the International Conference of the Red Cross and Red Crescent are not binding as such. Their content can be considered binding, however, because States have acted in conformity therewith, feeling bound to do so, and have thus contributed to creating an international practice.

International practice can become an international custom — i.e. a source of international law that is binding for States, like treaties and conventions. How does this happen? The sources of international law, as defined by Article 38 of the Statute of the International Court of Justice, include “international custom, as evidence of a general practice accepted as law”. The usual view is that the creation of a customary rule requires both the existence of a general practice of States and a second constitutive element which is the *opinio juris*, or the acceptance by States of the practice as law. It is possible to demonstrate that such a conjunction of factors exists concerning the obligation of States to encourage the development of National Societies.

Since the 1860s, the number of National Societies has steadily increased. Today 169 National Societies¹¹ have been recognized by the International Committee of the Red Cross and are members of the International Federation of Red Cross and Red Crescent Societies.

An obligation to support the development of National Societies exists on the basis of practice and consensus among States and can be regarded as law. Indeed, at the beginning of the Movement's history, the Geneva International Conference of 1863 recommended: “that Governments

¹¹ In May 1996.

should extend their patronage to Relief Committees which may be formed, and facilitate as far as possible the accomplishment of their task.”¹²

That governments would support the work and development of National Societies was recognized later by international organizations and by International Red Cross and Red Crescent Conferences. States have recommended that domestic legislation be passed to aid National Societies in times of peace. Paragraph V of the Final Act of the Diplomatic Conference, Geneva, 27 July 1929, states:

“The Conference, recognizing the importance of the mission entrusted to the National Societies of the Red Cross and the voluntary aid societies in their work of solidarity among nations, considers that it is highly desirable that all facilities and immunities for the exercise of their functions in time of peace should be accorded in the widest measure permissible under the national legislation, particularly as regards their establishment, the circulation of their personnel and material, and their nursing activities.”

The duty to promote the development of National Societies was enshrined in the Covenant of the League of Nations of 1919 (later the United Nations Organization). Article 25 of this Covenant states:

“The Members of the League agree to encourage and promote the establishment and cooperation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.”

In 1949, following a resolution of the Economic and Social Council,¹³ the United Nations General Assembly made a similar recommendation to Member States, drawing their attention to the fact that the mentioned “purposes” were of “special concern”:

“That the said Members should encourage and promote the establishment and cooperation of duly authorized voluntary National Red Cross and Red Crescent Societies”.¹⁴

¹² At that time the red cross was not yet the official symbol, and what were to become Red Cross or Red Crescent Societies were called “Relief Committees”.

¹³ Resolution of 21 September 1946 (document E/232).

¹⁴ United Nations General Assembly, Forty-ninth Plenary Meeting, resolution 55 (I), 19 November 1949.

This duty was reaffirmed and completed by the Statutes of the Movement, adopted by the 25th International Conference of the Red Cross, Geneva, in October 1986. According to Article 2, para. 2, of the Statutes:

“Each State shall promote the establishment on its territory of a National Society and encourage its development.”

According to Article 2, para. 3, of the Statutes:

“The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement.”

The Statutes of the Movement are adopted at the International Conference of the Red Cross and Red Crescent, by States, the ICRC, the Federation and National Societies. The ICRC and 186 States party to the Geneva Conventions contributed directly to the legal framework which establishes National Societies. The Statutes of the Movement are binding on the basis of good faith. As stated by R. Perruchoud:

“L’Etat doit tenir compte de bonne foi des résolutions (de la Conférence internationale) et ne pas agir sciemment de façon contraire à leur contenu ... L’Etat ne doit pas faire obstacle aux efforts du CICR et de la Ligue; il est tenu de faire son possible pour favoriser la réalisation des tâches qui leur sont attribuées par les résolutions auxquelles il a lui-même souscrit. Au niveau national, le même devoir lui incombe à l’égard des Sociétés Nationales.”¹⁵

The words “encourage” in Article 2, para. 2, and “support” in para. 3 mean that States should take action to help National Societies develop, and not only “allow” them to operate. Can tax relief and other exemptions be considered as support and so contribute to the development and activities of National Societies? Such privileges relieve the fiscal burden of National Societies and allow for investments which produce additional funding to fulfil humanitarian missions, aiding victims as well as vulnerable people. Resolution 5, “Strengthening national capacity to provide humanitarian and development assistance and protection to the most vulnerable”, adopted by the 26th International Conference of the Red Cross and Red Crescent, can be seen as explanatory:

¹⁵ R. Perruchoud, *Les résolutions des Conférences internationales de la Croix-Rouge*, Henry Dunant Institute, Geneva, 1979, p. 360.

“The 26th International Conference of the Red Cross and Red Crescent calls upon States:

1. (e) *to help* create a beneficial environment for the overall development of National Societies in their own countries, by providing, for example, financial and fiscal benefits or other arrangements that recognize the not-for-profit nature of the National Societies and their role as auxiliaries to the public services.”¹⁶

Fulfilling the obligation to grant tax exemption for specific operations and emergency relief

Apart from their duty to encourage the development of National Societies, governments have been specifically requested to grant fiscal privileges. Resolution IV of the 9th International Conference, Washington, 1912, states:

“States signatory to the Geneva Convention are asked to be good enough to make legal provision for according privileges and rights to Red Cross Societies, such as exemption from taxes and fiscal charges, postal and telegraphic charges, customs duty and others.”

This text deals with National Societies’ long-term development and work. Exemptions and privileges are even more necessary in time of crisis when administrative delays and costs may impede humanitarian relief. The 17th International Conference made recommendations about the allowances to be accorded by governments to National Societies and international organizations of the Red Cross, in relation to relief. Stating that:

“the carrying out of this humanitarian work would be greatly facilitated, especially during epidemics and natural disasters, if Governments would accord to the National Societies and, by analogy, to the International Red Cross organizations the facilities provided for by the humanitarian Conventions in case of armed conflicts, in particular,

(a) special travel facilities and rapid visas for Red Cross personnel when engaged in official duties;

(b) special facilities for the transmission of Red Cross correspondence;

¹⁶ *IRRC*, No. 310, January-February 1996, pp. 75-77.

(c) special facilities for the rapid transfer from one country to another of funds for Red Cross work;

(d) special facilities for the rapid movement of Red Cross medical and other relief supplies for stricken and distressed peoples;

(e) special facilities for exemption from customs duties on Red Cross relief supplies;

all of the above in complete agreement with the National Society of the country concerned, [the Conference resolved] to request Governments to give sympathetic consideration to demands from their respective national Societies as well as from the international Red Cross organizations for the facilities mentioned above."¹⁷

Many of those facilities might imply fiscal arrangements. In the same way, the 12th International Conference addressed the question of customs exemption on gifts intended for refugees and requested the National Societies to approach their Governments with a view to obtaining such exemption.¹⁸

An analysis of State practice and *opinio juris* shows an international rule of praxis that States should grant such facilities in time of emergency. The resolutions cited above indicate a clear *opinio juris* in favour of such solutions. The majority of National Societies are exempted from paying customs duties on goods for relief efforts.

Part II: A review of fiscal concessions granted to National Societies

Legislation varies from country to country and National Societies are obliged to comply with the legislation of their particular States. The following is a comprehensive account of the various statuses, presenting both the common and the specific features. There is no attempt to make a comparative assessment.

First, domestic justifications for exempting a National Society from paying taxes or granting it other privileges are analysed. Secondly,

¹⁷ 17th International Conference, Stockholm, 1948, Res. XL.

¹⁸ 12th International Conference, Geneva, 1925, Res. IV, Ch. 2.

selected exemptions and privileges enjoyed by National Societies are described and legal texts examined to reveal general trends.

Domestic legal justifications for exemptions and privileges

Every National Society has a twofold status. First, all National Societies have “international status within the Red Cross, with common legal and moral obligations to solidarity”.¹⁹ Second, all must comply with State legislation, as auxiliaries to their governments. Because of the nature of their missions, Red Cross and Red Crescent Societies have “an essentially national status, giving them a preferential position among voluntary agencies.”²⁰ Consequently it is rare for other non-profit organizations to have the same status as National Societies. Nevertheless, it is possible to compare National Societies’ financial structures with those of other non-profit bodies.

Most governments distinguish between tax-exempt charitable associations and those that are purely commercial and not tax-exempt. Red Cross or Red Crescent Societies usually qualify for tax exemption, enjoying the same advantages as other charities.

Some countries have no provisions for tax exemption of bodies such as foundations, trusts or associations. In such a case a National Society’s budget will be regulated by legal articles that refer specifically to the Society. The National Society’s fiscal status is then defined in the legislation recognizing the Society, or perhaps in other specific legal instruments such as letters from the taxation authorities.

National Societies may also qualify for additional allowances through special tax legislation, along with other non-profit groups. In this case, the National Society’s role as an auxiliary to its government may increase the degree of allowances to which it is entitled.

For the purposes of this paper we can distinguish three categories of National Society:

- non-profit organizations with tax-exempt status;
- those which have a *sui generis* status because legislative authorities have not enacted regulations on the fiscal regime of a category of

¹⁹ R. Perruchoud, *International responsibilities of National Red Cross and Red Crescent Societies*, Henry Dunant Institute, Geneva, 1982, p. 10.

²⁰ *Ibid.*

organizations for which the National Society would qualify (few National Societies are in this category);

- those which have a *sui generis* status, combining common and specific features (most National Societies are in this category).

It is important to be aware of these three categories, even though the differences are slight.

Non-profit organizations

In most jurisdictions, non-profit organizations are exempted from taxes if they fulfil certain criteria. Regulatory frameworks define the exemptions and allowances granted to social welfare organizations, and the granting of these benefits is usually automatic. The methods and criteria vary, but the rationale is the same — the promotion of activities that benefit the whole community. Governments normally regulate these exemptions carefully to avoid tax evasion and the exemptions are usually valid for non-profit activities only.

Tax exemption for non-profit activities has a long history in Western countries, where governments have always relied on private initiative to carry out missions of public interest.²¹ Today, the countries of Central and Eastern Europe are also beginning to encourage the development of charities.

If tax-exempt status exists in a country, National Societies usually qualify, although the criteria for qualification, the regulations and the length of exemption may vary.

In Sweden, all commercial enterprises pay taxes, declaring their finances annually. However, four conditions exempt organizations from Value Added Tax (VAT) and other taxes.

The four conditions are:

- having a purpose of public welfare (i.e. charitable or social activities);
- applying this purpose in practical work and activities;
- having open membership;
- using at least 80% of income for public welfare activities.

²¹ See, for instance, the British Charitable Uses Act of 1601 (43 Eliz. I, Ch. 4), also known as the statute of Elizabeth I. The preamble of the Act contained a list of charities.

This fourth condition is most difficult, especially for local branches of the National Society. For example, if a local branch's staff salaries exceed 20% of the budget then the last condition is not considered fulfilled. Exemptions are reviewed periodically.

In jurisdictions where common law is the norm, the concept of "charity" prevails. Section I of the Australian Charitable Collections Act defines charity as follows:

"Charity means any organization or association established for or which has as one of its objects a charitable purpose..."

A "charitable purpose" is defined as including any "benevolent or philanthropic or patriotic purpose". Exemptions and allowances are granted to charities under the provisions of various acts that regulate specific taxes and duties. For instance, Section 23(e) of the Income Tax Assessment Act states that the income of a "religious, scientific, charitable or public educational institution" is exempt from income tax. Accordingly, although the Australian Red Cross is not referred to specifically in this Act, it enjoys tax exemption because of its status as a charity.²²

Many countries, especially in Africa, have adopted the French system known as "*Association reconnue d'utilité publique*"²³ (Recognized Public Welfare Association), which is designed to foster charitable donation.²⁴ Indeed, if an association qualifies for this category, individual or corporate donors may deduct from their taxable income their gifts to the association up to a legal limit. In France, in order to qualify for such a fiscal category, an association must meet various formal criteria (such as adopting standard statutes) but there is no fixed requirement regarding the purposes pursued by the association. Accordingly, the decision to grant this status is discretionary.

Sui generis status

Only a few jurisdictions do not have specific fiscal categories such as those mentioned above. In these cases, the National Society can enjoy

²² To be exempted from paying stamp duties (Stamp Duties Act, 1920, NSW, Second Schedule, General exemption 24 (b)), or to enjoy Tax Deductibility of Donations (Section 78 (1)(a) of the Tax Act) the Red Cross will be considered as "an institution of a charitable or benevolent nature". The Australian legal system recognizes different categories of tax-exempt organization. The same organization may qualify for different fiscal categories for the purposes of tax exemption.

²³ *Loi du 1^{er} juillet 1901 relative au contrat d'association.*

²⁴ See *Associations et fondations en Europe: Régime juridique et fiscal*, Juris Service, Lyon, 1994, p. 153.

tax concessions and privileges but on the basis of specific legal texts that refer to the Society explicitly (such as letters from fiscal authorities, the “Red Cross law” recognizing the National Society in the country, etc.). This situation is quite rare nowadays, as most countries recognize the value of private initiative in the humanitarian field and wish to encourage it.

Mixed fiscal status

National Societies can have both the advantage of being considered a charity or “non-profit” organization and in addition the benefits conferred by specific legal documents.²⁵ This situation results from the relationship National Societies have as auxiliaries to their national governments. Government exemptions and allowances reflect the National Societies’ mission agenda. Legal texts that apply to National Societies constitute the “Law of the Red Cross or Red Crescent” within a nation.

The law which recognized the Luxembourg Red Cross also declared the National Society to be a charity with a humanitarian aim and so exempted it from certain taxes. Article I of Luxembourg’s 1923 Act “*conférant la personnalité civile à la Société de la Croix-Rouge luxembourgeoise*” states: “*La Société de la Croix-Rouge luxembourgeoise est reconnue d’utilité publique et aura comme telle la personnalité civile*”. The National Society in Luxembourg is therefore recognized as a member of a fiscal category (“*Association reconnue d’utilité publique*”), but its fiscal advantages are specifically recognized by Article III. 2 of the same statute and not only by the law that regulates such bodies in general.

The Luxembourg Red Cross has the following exemptions:

“L’exemption de l’impôt sur le chiffre d’affaires, des droits de timbre, d’enregistrement et de succession pour tous actes passés en son nom ou en sa faveur : seront délivrés gratuitement et exempts de tous droits, tous certificats, actes de notoriété, d’autorisation ou de révocation et autres, dont la production devra être faite dans l’intérêt de l’association.”

²⁵ These texts should not be confused with the decrees, letters, or even statutes which simply recognize that the National Society is part of a fiscal category.

L'exemption des impositions directes et des centimes additionnels de tous revenus et avantages mobiliers, ainsi que les immeubles affectés à son service."²⁶

The American Red Cross is an example of a National Society with mixed fiscal status. It is exempt from taxation because of its status as a "federal instrumentality", as declared by the Supreme Court of the United States in 1966 (see Box). Having federal instrumentality status entitles the

SUPREME COURT OF THE UNITED STATES

Department of Employment v. United States

1966, 385 US 355

"On the merits, we hold that the Red Cross is an instrumentality of the United States for purposes of immunity from State taxation levied on its operation, and that this immunity has not been waived by congressional enactment. Although there is no simple test for ascertaining whether an institution is so closely related to governmental activity as to become a tax-immune instrumentality, the Red Cross is clearly such an instrumentality. Congress chartered the present Red Cross in 1905, subjecting it to governmental supervision and to a regular financial audit by the Defence, then War, Department. Its principal officer is appointed by the President, who also appoints seven (all government officers) of the remaining 49 Governors. By statute and Executive Orders there devolved upon the Red Cross the right and the obligation to meet this Nation's commitments under various Geneva Conventions, to perform a wide variety of functions indispensable to the working of our Armed Forces around the globe, and to assist the Federal Government in providing disaster assistance to the States in time of need. Although these operations are financed primarily from voluntary private contributions, the Red Cross does receive substantial material assistance from the Federal Government. And time and time again, both the President and the Congress have acted in reliance upon the Red Cross' status virtually as an arm of the Government. In those respects in which the Red Cross differs from the usual government agency — e.g., in that its employees are not employees of the United States, and that government officials do not direct its everyday affairs — the Red Cross is like, e.g., national banks, whose status as tax-immune instrumentalities of the United States is beyond dispute..."

²⁶ *Loi du 16 août 1923 conférant la personnalité civile à la Société de la Croix-Rouge luxembourgeoise, Mémorial du Grand-Duché de Luxembourg, mardi 28 août 1923, No. 41, p. 463.* Similarly, the Portuguese Red Cross is exempted from taxes as are other "*colectivas de utilidade pública*" in the very law which recognizes its legal nature. Article 7, para. 2 (exemptions), says that the Portuguese Red Cross enjoys as well, to carry out its purposes, "all the benefits and exemptions that are recognized for moral entities of public utility and other organizations of social solidarity".

American Red Cross to tax immunities similar to those of the US government, while maintaining its independence.

The American Red Cross is considered a non-profit, charitable organization, as established by the ruling of the US Internal Revenue Service of 12 December 1938. This ruling states that the American Red Cross and its units are exempt from the payment of federal income tax and are entitled to receive tax-deductible donations.

The scope of exemptions and privileges: some examples

Government fiscal concessions to Red Cross and Red Crescent Societies vary around the world.

In countries with local government as well as central or federal authorities, each province, county or city may have the power to levy taxes. "Taxes levied at lower levels of government are commonly referred to as local taxes, and most commonly include taxes (rates) on property, registration and licensing dues, but may also include sales taxes and, occasionally, income taxes."²⁷ The taxes described here are generally levied at national or federal levels. However, local taxation may affect local branches of a National Society. Generally, exemptions are granted when local authorities provide facilities such as buildings and transportation as part of grants to National Society branches.

The Russian Federation has two levels of taxation — local and federal. About one-third of the local Red Cross committees receive some form of tax relief, either partial or total, at local level.²⁸

In Australia, the Charitable Collections Act²⁹ under which the Australian Red Cross is registered does not prevent a charity from trading so long as its main activities are charitable.

The Hungarian Red Cross has established its own limited company,³⁰ liable for taxes, while Hungarian Red Cross shops have charity status.

²⁷ International Bureau of Fiscal Documentation, *International Tax Glossary*, Amsterdam, 1988, p. 166.

²⁸ Source: Russian Red Cross Society.

²⁹ Source: Australian Red Cross.

³⁰ This paper deals with National Society tax exemptions on traditional sources of income. It does not include fiscal relief to private companies set up by National Societies to increase funding or promote activities. The analysis of the fiscal status of commercial activities of Red Cross or Red Crescent Societies merits a separate study.

Fiscal incentives for individual and corporate donors

In the USA, the Internal Revenue Code has long provided exemption from federal income tax to non-profit organizations with “charitable, religious, or educational purposes”.³¹ The code also allows taxpayers to deduct contributions to such organizations from their gross income.

The public interest (*utilité publique*) nature of the French Red Cross was recognized by a statute in December 1940. This category of organization is allowed to receive tax-exempt gifts as an incentive to donors. Individual donors may deduct 40% of their donation, up to an amount of 5% of their income; company gifts are deductible up to 3% of turnover.³² The French Red Cross is distinct from the other “*associations reconnues d'utilité publique*”, however, because it receives additional exemptions and allowances.

*Taxes on individual or corporate contributions*Tax levied on gifts *inter vivos*

A gift *inter vivos* is a transfer of property from one living person to another, as opposed to a transfer upon a person’s death (*mortis causa*). In many countries, the gratuitous transfer of property is subject to a gift tax. This is usually levied at the same progressive rate as inheritance tax and may be very high.

Many countries exempt *inter vivos* gifts to National Societies from taxes. The Burkinabé Red Cross Society, for instance, is exempt from taxation on all gifts.

³¹ Organizations that are exempt from federal income tax are described in Section 501(c)(3) of the Internal Revenue Code of 1954 as amended.

³² See “*Dons, donations et legs*” in “*L’association: Le mensuel du monde associatif*”, No. 6, May 1995, p. 44-45. The Senegalese Red Cross Society has the same status of “*association reconnue d'utilité publique*” with some differences: *Article 8-3e de la loi 92.40 du 9 juillet 1992, portant modification du Code général des impôts du Sénégal; JO No. 5476 du 11 juillet 1992: “Les personnes morales ou sociétés qui effectuent des dons et legs à la Croix Rouge sénégalaise, sont autorisées à déduire de leur assiette de l’impôt sur les sociétés, le montant desdits dons ou legs dans la limite de deux pour mille (2%) de leur chiffre d’affaires.” Article 36-5e du Code précité: “Le même avantage est accordé aux personnes physiques qui peuvent déduire de leurs revenus à imposer, les versements effectués au profit de la Croix-Rouge Sénégalaise, dans la limite de 0,5% desdits revenus”*. In Chile, taxpayers can deduct their gifts from adjusted gross income when computing income tax liability, up to a limit of 10%.

The Hungarian Red Cross is exempt from tax and stamp duty under the 1993 Red Cross Act passed by the Hungarian parliament. Although the parliament originally did not guarantee general tax and stamp duty exemption, intense lobbying by the National Society resulted in a modification favourable to the Red Cross.

Regarding gifts, the Hungarian Red Cross Act states:

“Any monetary instruments and, furthermore, any personal or real assets of monetary value offered to and accepted by the Red Cross for the carrying out of its basic tasks — without the necessity for any approval of the authorities — is deemed to be an undertaking of an obligation in the public interest.”³³

Inheritance taxes/death duties

The French Red Cross enjoys an exemption from stamp duties on both gifts and legacies. This is in addition to the benefits it receives as an “*association reconnue d'intérêt public*”. The *Code général des impôts* states:

*“Jusqu'à une date qui sera fixée ultérieurement par décret, les dons et legs de toute nature consentis au bénéfice de l'association La Croix-Rouge française, reconnue d'utilité publique par la loi du 7 août 1940, sont exonérés de tous droits d'enregistrement et de timbre, sous réserve de leur acceptation régulière par le comité de direction.”*³⁴

In many countries with a common law tradition, charities are exempt from paying inheritance taxes.

Customs duties

Most National Societies are exempted from payment of customs duties. When a Red Cross or Red Crescent Society receives gifts such as medical supplies from foreign hospitals, food for disaster victims, or even

³³ Act No. 40 of 1993, Article 4.3.

³⁴ *Loi du 1er décembre 1940, art. 1^{er}; No. 69-1168 du 26 décembre 1969, art. 4.* Article 1071 ends with “*Jusqu'à la même date l'acquisition et la location par la Croix-Rouge française des immeubles nécessaires à son fonctionnement sont également exonérées de tous droits de timbres et, sous réserve des dispositions de l'article 1020, de tous droits d'enregistrement*”.

an ambulance, it would be unreasonable to levy import taxes at the border since the items will contribute to the well-being of the most vulnerable. If aid supplies are sent by other members of the International Red Cross and Red Crescent Movement, the charging of taxes upon entry into the territory would not be in accordance with the spirit of Article 2, para. 3, of the Statutes of the Movement, which makes clear that:

“The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement. The same components, in their turn and in accordance with their respective statutes, support as far as possible the humanitarian activities of the States.”

There are a number of examples of this. For instance, the Bulgarian Red Cross is exempted from customs duties and VAT on goods received from abroad, although it must pay VAT when purchasing goods locally. In Belgium, booklets used for information campaigns (promotion) are not subject to customs duties.

Both the Zimbabwe Red Cross Society and the Chilean Red Cross are exempt from paying import duties on gifts in kind from abroad provided the items are to be used for charitable purposes.

The Senegalese Red Cross Society is exempted from paying various customs duties because it is “*reconnue d'utilité publique*”.³⁵ The Society's tax exemptions are as follows:

- “*droits et taxes d'entrées sur les envois destinés à la Croix-Rouge sénégalaise et aux autres œuvres de solidarité à caractère national ou international*”;³⁶
- *suspension de l'application de timbre douanier*;
- *exonération des taxes portuaires*”³⁷.

In some countries this kind of exemption is not automatic and the National Society has to follow a specific procedure each time it wishes to receive exemption. The situation in Swaziland is as follows:

³⁵ *Décrets* 63.055 of 29 January 1963 and 63.597 of 11 September 1963.

³⁶ *Décret* 83.504 of 17 May 1983 “*fixant les conditions d'application de l'article 108 du Code des douanes*” and *loi* 74.78 of 18 July 1974 as modified by *loi* 87.47 of 28 December 1987 “*portant modification du Code des douanes*”.

³⁷ Letter No. 02139/MEFP/CT of 7 April 1994.

“In order to import tax-free imported goods, the Customs officials will need a notice of importation; a written declaration that all goods have been donated; that the donation was unsolicited; that the goods are for official purposes or are intended for free distribution in furtherance of your charitable activities.”³⁹⁸

Value Added Tax (VAT)

VAT is added to the price of goods and services but is not paid directly by the consumer to the government. It is imposed at various stages of production and distribution. “VAT utilises a system of tax credits to place the ultimate and real burden of the tax on the final consumers and to relieve the intermediaries of any final tax cost.”³⁹⁹ As consumers of goods and services, National Societies would normally pay VAT. However, many national authorities refund VAT paid by the National Society.

In Senegal, for instance, VAT is returned when a written request and the invoice are presented to the appropriate authorities.

In many countries VAT is refunded according to the nature or destination of the gift or service.

In Sweden, the National Society does not pay VAT on items and services generated within Sweden. The National Society is refunded the VAT on relief goods it purchases within Sweden for consumption elsewhere.

The Spanish Red Cross has no specific VAT exemption but it benefits from exemptions granted for specific activities, services and items⁴⁰ (e.g. hospital services, whether catering or medical, other medical assistance, welfare work, transport services, lotteries and sea rescue).

In the European Union (EU), various regulations affect the National Societies and other voluntary organizations. EU legislation (Directive 77/388, the sixth Directive) exempts the greater part of the voluntary sector from VAT, sometimes directly but mainly by exempting activities in which voluntary organizations tend to be involved. Article 13 of the

³⁸ Letter No. F.480/128 of 16 October 1985, from Secretary for Customs & Excise.

³⁹ *International Tax Glossary*, *supra* note 27, p. 285.

⁴⁰ *Ley 37/1992, de 28 diciembre, del impuesto sobre el valor añadido (LIVA); Real Decreto 1624/1992, de 29 diciembre, por el que se aprueba el reglamento del impuesto sobre el valor añadido.*

directive deals with the exemptions that the Member States of the EU must provide in favour of certain activities of general public interest. In the first place, an exemption is provided to cover:

“the provision to members of services and the delivery of directly related goods in return for a fixed contribution in line with its statutes, by non-profit organizations which have political, trade union, religious, patriotic, philosophic, *philanthropic* or civil aims.” (emphasis added)

Furthermore, the EU specifically exempts a number of services from VAT. Among these are hospital services, health care, protection of children and young people, and so on. In addition, activities and events aimed exclusively at providing support for these specified activities are also exempt. The EU exemption from VAT does not apply, however, if it results in an unfair competitive situation for organizations liable to tax. Member States of the EU can limit the number of organized events or place a ceiling on the amount of revenue eligible for exemption. States are free to apply a reduced rate to numerous other activities that are of interest to the voluntary sector and which do not qualify for exemption under the above conditions.

Income tax (and taxes on income-generating activities)

Income tax

National Societies are generally exempted automatically from income tax.⁴¹ They can also be exempted from paying taxes on specific sources of income.

In Australia the income of “a religious, scientific, charitable or public educational institution” is exempt from income tax.⁴² The Australian Red Cross and its divisions are considered charitable institutions and their income is therefore exempt from income tax.

As a registered charity, the Irish Red Cross Society is entitled to exemption from income tax on the following sources of income:⁴³

⁴¹ “Most countries impose a tax on the income of individuals and legal entities. (...) Two major income tax systems may be distinguished: comprehensive (synthetic) and schedular (analytical) income tax systems. Under the first category, tax is levied on the taxpayer’s total income and under the second category a number of different taxes are levied on various categories of income, mostly at different rates.” *International Tax Glossary*, p. 145.

⁴² Income Tax Assessment Act, Section 23(e).

⁴³ S.333/334 ITA 1967.

- rents in respect of any property to the extent that such rents are applied to charitable purposes only;
- interest, annuity or dividend income which is applied for charitable purposes only;
- profits arising from any trade carried on by the National Society where the profits are applied solely for the charitable purposes of the Society and either the trade is exercised in the course of carrying out the primary purposes of the Society or the work in connection with the trade is mainly carried out by the beneficiaries of the charity.

A charity is also entitled to exemption from deposit interest retention tax deducted at source from deposit interest earned.⁴⁴

Lottery tax

Many National Societies organize lotteries in order to fund their charitable activities. Governments usually levy tax either on the sale of lots or on the receipt of prizes. These lottery taxes take various forms. They may be levied on the sale of lots (in the nature of a turnover tax), on the organizer of the lottery, and/or on the receipt of prizes by participants in the lottery (in the nature of an income tax). In some countries, lotteries are subject to VAT. In those cases, the National Society enjoys tax concessions under specific VAT regulations. Governments recognize the charitable purposes of the lotteries organized by Red Cross and Red Crescent Societies (Albania), or in some cases confer on National Societies a percentage of the income of government-run lotteries (Chile).

The Spanish Red Cross is exempt from taxes on lotteries and similar activities.⁴⁵

Transfer of property and stamp duties

Stamp duties are duties paid on the issue of official documents such as contracts for the transfer of ownership. Usually stamp duties are levied by way of a stamp being attached to the document in question.

⁴⁴ S.31(1)(g)(i) F.A. 1986.

⁴⁵ Article 39 (*Exención*) of *Decreto 3059/1966* states: "*Quedan exentos del pago de estas tasas: (...) 5. La celebración de sorteos, tómbolas y rifas que organice la Cruz Roja Española, en las condiciones que reglamentariamente se determinen*".

The National Societies in France and Luxembourg are exempt from stamp duty on contracts for the transfer of properties. In the United Kingdom, stamp duty is not normally payable in respect of gifts to, and purchase of property by, charities (including both lands and shares).⁴⁶ The Chilean Red Cross is exempt from all existing stamp duties in the country.⁴⁷

Advantages in kind and excise duties

Many National Societies enjoy advantages in kind, granted by local or national authorities. These advantages are a way to subsidize a National Society by placing at its disposal public properties or services free of charge or at a low price. These advantages are not always of a fiscal nature but are included in this study because some are granted on a permanent basis. Many Red Cross or Red Crescent Societies are also exempted from paying excise taxes or duties.⁴⁸

Advantages in kind

In Belgium, the government places public properties (former primary schools or “*maisons communales*”) at the disposal of the Belgian Red Cross for a symbolic rent of one franc for 99 years. The Minister of Public Health places ambulances at the disposal of the National Society for emergency medical help. BELGACOM (the Belgian public agency for telecommunications) grants a reduction of 50% on charges for telephone calls to the Red Cross Society (there is a single phone number for telephone calls to the Red Cross — whether to reserve an ambulance or to get information about the Society — from anywhere in Belgium).

The Portuguese Red Cross enjoys a reduction on the cost of lawsuits, postage stamps, telephone and telegraph charges and opportunities for publicity in public service media.

Other National Societies enjoy such benefits as, for example, free parking for motor vehicles (Zimbabwe Red Cross Society), or a certain

⁴⁶ Charity Commissioners for England and Wales: *Fiscal Benefits for Charities*, January 1990, p. 1.

⁴⁷ *Decreto Ley No. 37475* of 1980, (*Ley de Timbres, Estampillas y Papel Sellado*).

⁴⁸ Excise duties are internal taxes imposed either as “user” charges from government services, as “regulatory” charges on activities such as gambling or air transportation, or more importantly as taxes on the consumption of a commodity, upon its retail sale or sale by the manufacturer or producer, or upon its importation. Excise duties are classically charged on products such as liquor, tobacco, and motor fuels.

amount of gasoline per month from the State gasoline company (Uruguayan Red Cross). Many National Societies have free use of public buildings or plots of land (as in Bulgaria, Burkina Faso and Bolivia), especially at local levels.

Exemption from excise duties: the example of the American Red Cross

The American Red Cross has obtained exemption from payment of federal excise taxes. As with all the Society's tax exemptions, the federal excise tax exemption does not apply to services or goods that are not purchased for its exclusive use. The exemption is not available when goods or services are purchased for personal use.

The American Red Cross is also exempt from federal excise tax on telephone, telegraph, radio and cable communications.⁴⁹

Second, as a public charity, the American Red Cross applied for and was granted a validated certificate of registration (Form 637) from the Internal Revenue Service. This certificate entitles the National Society and all its chapters and branches to exemption from excise taxes on certain manufactured products, including petroleum products (gasoline, special motor fuel, lubricating oil), motor vehicles, vehicle parts, tyres and inner tubes, and vehicle accessories.⁵⁰ The Society receives no exemption from federal excise tax on items that it does not use and resells in new condition.

Third, a federal motor vehicle highway use tax is applied in the USA to vehicles that exceed a specified size and weight. Although American Red Cross bloodmobiles, mobile laboratories and self-contained collection units fall into this category, the Society has been granted exemption from this tax.⁵¹

The American Red Cross is subject to very few taxes. One that it is obliged to pay, however, is the air cargo transport tax. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) placed a 5% tax on air transportation for all forms of domestic cargo, including freight, mail, small packages and express items. This act specifically states that there

⁴⁹ Internal Revenue Code of 1954, Section 26 U.S.C. Sec. 4253(c).

⁵⁰ Certificate No. 52-71-0206-N of 3 December 1976.

⁵¹ Letter ruling from the Internal Revenue Service, 4 March 1974, published as Rev. Rul. 76-510.

are no exceptions to the application of the tax to all shipments that originate and terminate within the United States (the tax does not apply to international shipments). Therefore, this tax applies not only to shipments by the Red Cross Society but also to those of all other charitable organizations and of the federal government itself.

Taxes levied for the profit of Red Cross or Red Crescent Societies

Tax exemptions are only one way of giving fiscal support to the development of a Red Cross or Red Crescent Society. In some countries, taxation authorities levy taxes directly for the National Society's benefit. This is a way to ensure regular financial support to the Society and to make taxpayers aware of their contribution. There may often be a link between a traditional activity of the Red Cross and the service, transaction or item that is taxed.

In Belgium, for instance, a percentage (0.25%) of all insurance premiums for civil liability car insurance is granted annually to the National Society. As the levy is compulsory, this amounts to a very important contribution to the National Society's budget. Furthermore, the tax is associated with a traditional activity of the National Society — car accident prevention and assistance.

Article 1 of Belgium's "*Loi accordant des ressources complémentaires à la Croix-Rouge de Belgique*" of 7 August 1974 states:

"§1^{er}. En vue d'assurer un financement régulier des activités que la Croix-Rouge de Belgique déploie conformément à sa loi organique et à ses statuts en tant qu'auxiliaire des pouvoirs publics en temps de paix, cette institution bénéficiera annuellement d'une recette provenant d'un supplément de (0.15%)⁵² du montant des primes mises à charge de tout preneur d'assurance assujetti à la loi du 1^{er} juillet 1956 relative à l'assurance obligatoire de la responsabilité civile en matière de véhicules automoteurs.

§2. Les sociétés d'assurances perçoivent ces montants dans les mêmes conditions et dans les mêmes délais que les primes d'assurances elles-mêmes auxquelles ces montants sont ajoutés.

⁵² 0.25% since 21 January 1976. *Arrêté royal relatif aux ressources complémentaires accordées à la Croix-Rouge de Belgique.*

§3. *Les sommes qui sont ainsi destinées à la Croix-Rouge sont versées par les compagnies d'assurances à un compte spécial de la Section particulière du budget du Ministère de la Santé publique et de la famille.*"

In Georgia, the Presidential Decree recognizing the Red Cross Society of Georgia confers many financial privileges on the Society. These go much further than tax exemption. For instance:

- unauthorized use of the red cross emblem on any kind of property is subject to a penalty of 40% of the cost of the object on which the emblem is placed;
- funds collected from these penalties will be transferred to the National Society;
- all state or private organizations producing, importing or exporting alcoholic and soft drinks, tea and tobacco pay 0.1% of the annual profit to the Red Cross Society, in either national or foreign currency. This sum will be deducted from the income tax of these organizations.
- 10% of the profit from all kinds of cultural entertainment and sports activities during the week of May 1-8, and 5% of the transport income during this period, is transferred to the Red Cross Society.

This law provides good examples of measures designed to provide regular financial support to a Red Cross or Red Crescent Society.

There are other examples of grants from government. The so-called welfare stamps (*Wohlfahrtsmarken*) in Germany provide a certain amount of profit to the German Red Cross. The same scheme is applied in France annually with "Red Cross stamps" issued by the French postal service.⁵³

Given a choice, it would appear more advisable to associate the Red Cross with positive events such as Red Cross Day than to collect penalties or fines for the benefit of a National Society. However, this may be perceived as reasonable in some cases. For instance, in Germany courts may sentence offenders to pay fines to the German Red Cross. In Costa Rica, 15% of traffic fines is allocated to the National Society because violating highway laws may cause accidents and the Red Cross is a major provider of ambulance services.

⁵³ *Décret* of 25 June 1952.

Conclusion

Tax exemptions and other fiscal advantages can benefit Red Cross and Red Crescent Societies by cutting costs and hence increasing the amount of funds available for National Society activities. Such exemptions and advantages are, moreover, legitimate entitlements that are both granted by national laws and requested by international conventions. National Societies are not only justified in seeking such benefits but are encouraged by international agreements to do so.

Exemption from taxes and other official charges should not, of course, be an end in itself. It is of paramount importance that National Societies should always seek to preserve their autonomy and independence even if this means foregoing benefits that would otherwise be due to them. The granting of tax exemptions and other fiscal concessions by governments must therefore be unconditional, allowed for the sake of a National Society and those it assists and not for the sake of private advantage or political gain.

It is important that National Societies should be appropriately informed of fiscal legislation that affects them and remain alert to national laws and local regulations that may influence their financial situation.

This summary is not intended to be an exhaustive account of the benefits National Societies receive from governments. Rather, it is an attempt to point to some common (and some not so common) features, illustrated by examples from around the world. The area of government fiscal concessions is well known to a number of Red Cross and Red Crescent Societies but it may not be so to others. In view of the advantages that may be derived from being familiar with national legislation on this issue, it is certainly worthwhile looking into the matter.

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The French Fund Maurice de Madre

The French Fund Maurice de Madre (hereinafter the Fund) was established thanks to the generosity of Comte Maurice de Madre, who died in 1970. In his will he bequeathed part of his property to the International Committee of the Red Cross, on condition that it be used for certain purposes.

The Fund is used to provide assistance for staff members of the components of the Movement and their families who meet the criteria set out in the Regulations. National Societies with knowledge of cases in which the Fund might be used must prepare a brief file in support of each application. These files are usually drawn up by ICRC or Federation delegates in the field, by agreement with the National Society. Assistance from the Fund goes mostly but not exclusively to staff of Red Cross and Red Crescent Societies in countries where insurance coverage is minimal, if it exists at all. ICRC and Federation delegates on mission are adequately insured against risks, but there are always exceptions, and the Fund may then be the only possible resort. In 1995, the total benefits paid out by the Fund amounted to 180,000 Swiss francs, a sum which for the first time exceeded the annual income from the capital of three million Swiss francs.

At its meeting on 13 December 1995, the ICRC Assembly slightly amended the Regulations for the Fund. Certain provisions, which dated back to 1974, no longer corresponded to the current situation, since some of the original members of the Board (replaced by the Assembly at their own request) were still mentioned by name. The Assembly also gave effect to the proposals of the Board, made by agreement with the representative of the Comte de Madre's family serving on it, to extend the scope of the Fund, albeit cautiously in view of the relatively limited resources available. The Regulations henceforth provide for such forms of aid as professional training and reintegration, and for more generous assistance

to families, in certain cases which do not correspond precisely to the criteria of the Regulations.

The amended Regulations appear below.

Jean-Louis Cayla
Principles and Relations with the Movement
ICRC

Regulations for the French Fund Maurice de Madre

*(Adopted by the ICRC Assembly on 9 September 1974
and amended on 9 April 1981 and 13 December 1995)*

ARTICLE 1

The French Fund Maurice de Madre consists of the property bequeathed to the International Committee of the Red Cross under the will made by Comte Maurice de Madre, who died on 25 December 1970.

ARTICLE 2

1. In accordance with the deceased's last wishes, the income of the Fund and, depending on the circumstances, the capital shall be used to provide assistance for persons of the permanent or temporary staff of the components of the International Red Cross and Red Crescent Movement, such as first-aid workers, delegates or nurses who, in the course of their work or during war operations or natural disasters, have suffered injury and have thereby found themselves in straitened circumstances or in reduced health.

2. If persons specified under paragraph 1 above should lose their lives in the course of their humanitarian mission, a financial subsidy may be paid to their families should the latter find themselves in consequence in such straitened circumstances that aid would be necessary.

3. The Board may, exceptionally, provide assistance for the training and professional reintegration of:

— staff members seriously reduced in health;

and may come to the aid of:

— close relatives of staff members;

— members of families of deceased staff members, even if their death was due to illness, accident or other causes not directly linked to their work within the Movement.

4. The beneficiaries shall be selected by the Board of the Fund, which shall establish the amount to be paid and the manner of payment.

ARTICLE 3

1. The Fund shall be administered by a Board composed of five members appointed by the ICRC Assembly, possibly on the Board's recommendation. The Board may propose any person it wishes to take part in its work — in particular a staff member of the ICRC or the Federation, subject to the agreement of the respective organization — or a member of the Comte de Madre's family. The Assembly shall appoint the Chairman of the Board. The Board shall consist of two members, either Committee or staff members, of the ICRC; one staff member of the International Federation of Red Cross and Red Crescent Societies; one member of the Comte de Madre's family, if it wishes to be represented; and a fifth person whose services the Board desires.

2. The members of the Board, except for the representative of the Comte de Madre's family, shall be subject to re-election every four years and may not remain in office for more than three consecutive terms.

3. The ICRC shall be responsible for the secretariat, administration and accounts of the Fund.

ARTICLE 4

The Fund shall be administered separately from other ICRC property and its accounts shall be separate. They shall be audited each year by an independent firm of auditors. The yearly accounts of the Fund shall be submitted to the ICRC.

The Board may sell assets forming part of the Fund and may freely reinvest the proceeds of such sales in such a way as to carry out the testator's wishes in the best possible manner.

ARTICLE 5

Should it become apparent that the testator's wishes can no longer be fulfilled or can be carried out to a small extent only, the Board may recommend the ICRC to appropriate the existing property for other humanitarian and benevolent uses. Such recommendations would be examined in a plenary session of the ICRC, which would reach a decision after further discussions at a subsequent session.

ARTICLE 6

The present Regulations may be amended under the same conditions as provided for in the ICRC's Rules of Procedure, but the purpose of the Fund, as expressed in the Comte de Madre's general intentions, may not be changed.

National legislation on the use and protection of the emblem of the red cross or red crescent

The emblem of the red cross or red crescent occupies a very important place in international humanitarian law. In time of war, the emblem is the visible sign of the protection conferred by the Geneva Conventions of 1949 and their Additional Protocols of 1977 on medical personnel and medical units and transports.

For this protection to be effective in time of war, the relevant rules of international law must be strictly respected in peacetime. This is why it is necessary for States to take practical measures to that end and to adopt national legislation governing the use and protection of the emblem. State authorities should further take all requisite steps to ensure that these rules are applied throughout their national territory. They must thus establish a system for strict control of the use of the emblem and must make their armed forces and the general public aware of the pertinent rules. This is the only way to ensure that, in the event of armed conflict, the wounded and sick will be respected and protected from hostilities and that the care to which they are entitled will be effectively administered to them.

By virtue of Article 54 of the First Geneva Convention of 1949, States are under the obligation to take the measures required to prevent and repress at all times any misuse of the emblem. This provision is worded as follows : *“The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53”*.

Insofar as the Geneva Conventions and their Additional Protocols protect, in addition to the emblem, the name of the Red Cross or the Red Crescent, the distinctive identification signals and the white cross on a red ground, these must also be protected by national legislation.

Under the Geneva Conventions and their Additional Protocols, the circle of users of the emblem is strictly limited. The use of the emblem as a protective device, which aims to confer the protection stipulated by international humanitarian law in situations of armed conflict, is reserved primarily for the medical services of armed forces and, with the express agreement of the State authorities, for hospitals and other civilian medical units. As regards the use of the emblem as an indicative device, its principal purpose is to demonstrate a link with National Red Cross or Red Crescent Societies.

This means that third parties, such as individuals, charity associations and organizations or commercial firms are not entitled to use the emblem, even for medical or paramedical activities (doctors, private clinics, pharmacies, non-governmental organizations, factories manufacturing medicines or health-related objects, etc.).

As part of their fund-raising activities, however, National Red Cross or Red Crescent Societies may, within strict limits and in a controlled manner, give their consent for third parties to use the emblem, provided that such use does not contravene national legislation. National Societies must also actively support the efforts of the State authorities to implement national legislation.

Applicable rules

The principal rules covering the emblem of the red cross or red crescent, the designation “Red Cross” or “Red Crescent” and the signals to be used for the identification of medical units and transports are set out in the following international treaties:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 (First Convention): Articles 38 to 44, 53 and 54;
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949 (Second Convention): Articles 41 to 45;
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Convention): Articles 18 to 22;
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977 (Protocol I): Articles 8, 18, 38 and 85, para. 3,

subpara. f), and Annex 1: Regulations concerning the identification of medical units and transports;

- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977 (Protocol II): Article 12.

For further explanations, it may be useful to refer to the Commentaries on the Geneva Conventions (edited by Jean Pictet, published by the ICRC, Geneva, 1952-1960) and the Additional Protocols (edited by Y. Sandoz, Ch. Swinarski, B. Zimmermann, published by the ICRC, Geneva, 1987).

The *Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies* should also be mentioned. These regulations were adopted by the 20th International Conference of the Red Cross in 1965 and revised in 1991 (published in the *International Review of the Red Cross (IRRC)*, No. 289, July-August 1992, pp. 339-362).

A model law for the protection of the emblem

In order to facilitate and support the work of States in drafting national legislation, the ICRC has drawn up a model law concerning the use and protection of the emblem of the red cross or red crescent.

The model law is based on the Geneva Conventions of 1949 and their Additional Protocols of 1977. The ICRC is aware that some States are not yet party to the 1977 Additional Protocols. As regards the use of the emblem, it should be noted that the Protocols reinforce the rules contained in the Geneva Conventions and extend protection of the emblem in time of armed conflict to all medical personnel and medical units taking care of the wounded and sick, whether military or civilian; Annex I to Additional Protocol I further provides for new means of identifying medical units and transports, the use of which is recommended. Therefore, even if a State is not bound by the 1977 Additional Protocols, it is advised to pass a law taking account of these developments.

Even if most of the rules governing the use of the emblem are formally applicable only during periods of international armed conflict, it is recommended that no distinction be made between international armed conflicts and internal conflicts, since in both cases there is an obligation to respect and protect the wounded and sick.

Legal systems, and legislative drafting techniques, differ widely from country to country. In some States, the protection of the emblem may be covered in legislation which also implements other provisions of the

Geneva Conventions and their Additional Protocols. The model law is intended to provide States with a working instrument which is readily comprehensible and illustrates the range of subjects which need to be covered. It should of course be adapted, modified or supplemented as appropriate to suit the legal system and requirements of each particular State. In order to make the law easier to read, comments and legal references appear as footnotes. Some of this information might be incorporated in the actual text of the law.

To facilitate the adoption of national measures for implementing international humanitarian law and the coordination thereof, each State is advised to set up a National Committee bringing together the Ministries directly involved. Such a Committee could, in particular, be responsible for drafting a law on the use and protection of the red cross or red crescent emblem.

The ICRC is proposing this model law to States in pursuance of the Final Declaration of the International Conference for the Protection of War Victims (Geneva, 30 August to 1 September 1993) and of the Recommendations of the Intergovernmental Group of Experts (Geneva, 23 to 27 January 1995). The 26th International Conference of the Red Cross and Red Crescent (Geneva, 3 to 7 December 1995), in its Resolution 1, endorsed this Final Declaration and these Recommendations and strongly urged States to implement the Recommendations addressed to them, especially by adopting appropriate measures at the national and international level and supporting international organizations working in this field (see the *IRRC*, No. 310, January-February 1996, pp. 58, 79 and 83).

Jean-Philippe Lavoyer
ICRC Legal Division

The ICRC remains at the disposal of the States should they require more detailed information concerning the adoption of national legislation aimed at ensuring respect for international humanitarian law and to give advice in particular on preparing legislation relative to the use of the emblem.

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Model law
concerning
the use and protection of the emblem of the
red cross or red crescent

I. GENERAL RULES

ARTICLE 1

Scope of protection

Having regard to:

- the Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977,¹ including Annex I to Additional Protocol I as regards the rules on identification of medical units and transports;²
- the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, as adopted by the 20th International Conference of the Red Cross and Red Crescent, and subsequent amendments;³
- the law (decree, or other instrument) of ... (date) recognizing the Red Cross (Red Crescent) of⁴

¹ To make it easier to find these treaties, it is advisable to indicate their precise location in the official compendium of laws and treaties. Their text is also reproduced in the *Treaty Series of the United Nations*: Vol. 75 (1950), pp. 31-417, and Vol. 1125 (1979), pp. 3-699.

² This Annex was revised on 30 November 1993 and its amended version came into force on 1 March 1994. It was reproduced in the *IRRC*, No. 298, January-February 1994, pp. 29-41.

³ The current Regulations were adopted by the 20th International Conference of the Red Cross in 1965 and revised by the Council of Delegates in 1991, then submitted to the States party to the Geneva Conventions before coming into force on 31 July 1992. The Regulations are reproduced in the *IRRC*, No. 289, July-August 1992, pp. 339-362.

⁴ As a voluntary relief society, auxiliary to the public authorities in the humanitarian sphere. Wherever the present law refers to the "Red Cross (Red Crescent) of ...", "Red Cross of ..." or "Red Crescent of ..." should be specified. The official name as it appears in the law or instrument of recognition should be used.

the following are protected by the present law:

- the emblem of the red cross or red crescent on a white ground;⁵
- the designation “Red Cross” or “Red Crescent”;⁶
- the distinctive signals for identifying medical units and transports.

ARTICLE 2

Protective use and indicative use

In time of armed conflict, the emblem used as a protective device is the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on medical personnel and medical units and transports. The dimensions of the emblem shall therefore be as large as possible.

The emblem used as an indicative device shows that a person or an object is linked to a Red Cross or Red Crescent institution. The emblem shall be of a small size.

II. RULES ON THE USE OF THE EMBLEM

A. Protective use of the emblem⁷

ARTICLE 3

Use by the Medical Service of the armed forces

Under the control of the Ministry of Defence, the Medical Service of the armed forces of ... (name of the State) shall, both in peacetime and in time of armed conflict, use the emblem of the red cross (red crescent)⁸

⁵ It is important that national legislation in all cases protect both the emblem of the red cross and that of the red crescent, as well as the names “Red Cross” and “Red Crescent”.

⁶ When reference is made to the emblem, the term “red cross” or “red crescent” is generally in lower case while the designation “Red Cross” or “Red Crescent” with initial capitals is reserved for Red Cross or Red Crescent institutions. This rule helps to avoid confusion.

⁷ In order to confer optimum protection, the dimensions of the emblem used to mark medical units and transports shall be as large as possible. The distinctive signals provided for in Annex I to Protocol I shall also be used.

⁸ The emblem to be used should be indicated here.

to mark its medical personnel, medical units and transports on the ground, at sea and in the air.

Medical personnel shall wear armbands and carry identity cards displaying the emblem. These armbands and identity cards shall be issued by ... (Ministry of Defence).⁹

Religious personnel attached to the armed forces shall be afforded the same protection as medical personnel and shall be identified in the same way.

ARTICLE 4

Use by hospitals and other civilian medical units

With the express authorization of the Ministry of Health¹⁰ and under its control, civilian medical personnel, hospitals and other civilian medical units, as well as civilian medical transports, assigned in particular to the transport and treatment of the wounded, sick and shipwrecked, shall be marked by the emblem, used as a protective device, in time of armed conflict.¹¹

Civilian medical personnel shall wear armbands and carry identity cards displaying the emblem. These armbands and identity cards shall be issued by ... (Ministry of Health).¹²

⁹ Pursuant to Article 40 of the First Geneva Convention, armbands are to be worn on the left arm and shall be water-resistant; the identity card shall bear the holder's photograph. States can model the identity card on the example attached to this Convention. The authority within the Ministry of Defence which is to issue armbands and identity cards must be clearly specified.

¹⁰ It is very important to indicate clearly the authority which is competent to grant such authorization and monitor the use of the emblem. This authority shall work together with the Ministry of Defence, which may, if necessary, give advice and assistance.

¹¹ See Articles 18 to 22 of the Fourth Geneva Convention, and Articles 8 and 18 of Protocol I. Article 8 in particular defines the expressions "medical personnel", "medical units" and "medical transports". Hospitals and other civilian medical units should be marked by the emblem only during times of armed conflict. Marking them in peacetime risks causing confusion with property belonging to the National Society.

¹² As regards armbands and identity cards for civilian medical personnel, Article 20 of the Fourth Geneva Convention and Article 18, para. 3, of Protocol I provide for their use in occupied territory and in areas where fighting is taking place or is likely to take place. It is, however, recommended that armbands and identity cards be widely distributed during times of armed conflict. A model of an identity card for civilian medical and religious personnel is given in Annex I to Protocol I. The authority which is to issue the armbands and identity cards should be specified (for example a Department of the Ministry of Health).

Civilian religious personnel attached to hospitals and other medical units shall be identified in the same way.

ARTICLE 5

*Use by the Red Cross (Red Crescent) of ...*¹³

The Red Cross (Red Crescent) of ... is authorized to place medical personnel and medical units and transports at the disposal of the Medical Service of the armed forces. Such personnel, units and transports shall be subject to military laws and regulations and may be authorized by the Ministry of Defence to display the emblem of the red cross (red crescent)¹⁴ as a protective device.

Such personnel shall wear armlets and carry identity cards, in accordance with Article 3, para. 2, of the present law.

The National Society may be authorized to use the emblem as a protective device for its medical personnel and medical units in accordance with Article 4 of the present law.

¹³ Pursuant to Article 27 of the First Geneva Convention, a National Society of a neutral country may also place its medical personnel and medical units and transports at the disposal of the Medical Service of the armed forces of a State which is party to an armed conflict.

Articles 26 and 27 of the First Geneva Convention also provide for the possibility that other *voluntary aid societies* recognized by the authorities may be permitted, in time of war, to place medical personnel and medical units and transports at the disposal of the Medical Service of the armed forces of their country or of a State which is party to an armed conflict. Like the personnel of National Societies, such personnel shall then be *subject to military laws and regulations* and shall be *assigned exclusively to medical tasks*. These aid societies may be authorized to display the emblem. Such cases are rare, however. If such an authorization has been granted, or is to be granted, it might be useful to mention this in the present law.

Furthermore, Article 9, para. 2, subpara. c), of Protocol I provides for the possibility of an *impartial international humanitarian organization* placing medical personnel and medical units and transports at the disposal of a State which is party to an international armed conflict. Such personnel shall then be placed under the control of this Party to the conflict and subject to the same conditions as National Societies and other voluntary aid societies. They shall in particular be subject to military laws and regulations.

¹⁴ I.e., always the same emblem as that used by the Medical Service of the armed forces (see Article 26 of the First Geneva Convention). With the consent of the competent authority, the National Society may, in time of peace, use the emblem to mark units and transports whose assignment to medical purposes in the event of armed conflict has already been decided (Article 13 of the Regulations on the Use of the Emblem).

B. Indicative use of the emblem¹⁵

ARTICLE 6

Use by the Red Cross (Red Crescent) of ...

The Red Cross (Red Crescent) of ... is authorized to use the emblem as an indicative device in order to show that a person or an object is linked to the National Society. The dimensions of the emblem shall be small, so as to avoid any confusion with the emblem employed as a protective device.¹⁶

The Red Cross (Red Crescent) of ... shall apply the "Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies".¹⁷

National Red Cross or Red Crescent Societies of other countries, present on the territory of ... (name of the State) with the consent of the Red Cross (Red Crescent) of ..., shall use the emblem under the same conditions.

¹⁵ Pursuant to Article 44, para. 4, of the First Geneva Convention, the emblem may be used, *as an exceptional measure* and in peacetime only, as an indicative device for marking vehicles, used as ambulances by third parties (not forming part of the International Red Cross and Red Crescent Movement), and aid stations exclusively assigned to the purpose of giving treatment free of charge to the wounded or sick. Express consent for displaying the emblem must, however, be given by the National Society, which shall control the use thereof. Such use is not recommended, however, because it increases the risk of confusion and might lead to misuse. The term "aid station" by analogy also covers boxes and kits containing first-aid supplies and used, for example, in shops or factories.

The *United Nations Convention of 8 November 1968 on road signs and signals* provides for road signs displaying the emblem to mark hospitals and first-aid stations. As these signs are not in conformity with the rules on the use of the emblem, it is advised to employ alternative signs, for example the letter "H" on a blue ground to indicate hospitals.

¹⁶ The emblem may not, for example, be placed on an armband or the roof of a building. In peacetime, and as an exceptional measure, the emblem may be of large dimensions, in particular during events where it is important for the National Society's first-aid workers to be identified quickly.

¹⁷ These Regulations enable the National Society to give consent, in a highly restrictive manner, for third parties to use the name of the Red Cross or the Red Crescent and the emblem within the context of its fund-raising activities (Article 23, "sponsorship").

C. International Red Cross and Red Crescent organizations

ARTICLE 7

Use by the international organizations of the International Red Cross and Red Crescent Movement

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies may make use of the emblem at any time and for all their activities.¹⁸

III. CONTROL AND PENALTIES

ARTICLE 8

Control measures

The authorities of ... (name of the State) shall at all times ensure strict compliance with the rules governing the use of the emblem of the red cross or red crescent, the name "Red Cross" or "Red Crescent" and the distinctive signals. They shall exercise strict control over the persons authorized to use the said emblem, name and signals.¹⁹

They shall take every appropriate step to prevent misuse, in particular by disseminating the rules in question as widely as possible among the armed forces²⁰, the police forces, the authorities and the civilian population.²¹

¹⁸ Article 44, para. 3, of the First Geneva Convention.

¹⁹ It is recommended that responsibilities be clearly set down, either in the present law or in an implementing regulation or decree.

²⁰ Within the context of the dissemination of international humanitarian law.

²¹ In particular among members of the medical and paramedical professions, and among non-governmental organizations, which must be encouraged to use other distinctive signs.

ARTICLE 9

Role of the Red Cross (Red Crescent) of ...

The Red Cross (Red Crescent) of ... shall cooperate with the authorities in their efforts to prevent and repress any misuse.²² It shall be entitled to inform ... (competent authority) of such misuse and to participate in the relevant criminal, civil or administrative proceedings.

ARTICLE 10

*Misuse of the emblem*²³

Anyone who, wilfully and without entitlement, has made use of the emblem of the red cross or red crescent, the words “Red Cross” or “Red Crescent”, a distinctive signal or any other sign, designation or signal which constitutes an imitation thereof or which might lead to confusion, irrespective of the aim of such use;

anyone who, in particular, has displayed the said emblem or words on signs, posters, announcements, leaflets or commercial documents, or has affixed them to goods or packaging, or has sold, offered for sale or placed in circulation goods thus marked;

shall be punished by imprisonment for a period of ... (days or months) and/or by payment of a fine of ... (amount in local currency).²⁴

²² The National Societies have a very important role to play in this regard. The Statutes of the International Red Cross and Red Crescent Movement stipulate expressly that the National Societies shall “*also cooperate with their governments to ensure respect for international humanitarian law and to protect the red cross and red crescent emblems*” (Article 3, para. 2).

²³ This type of misuse should be repressed both in peacetime and in time of armed conflict. Even though violations of the emblem used as an indicative device are less serious than those described in Article 11 below, they must be taken seriously and rigorously repressed. Indeed, the emblem will be better respected during an armed conflict if it has been protected effectively in peacetime. Such effectiveness derives in particular from the severity of any penalties imposed. Consequently, it is recommended that the punishment imposed should be imprisonment and/or a heavy fine, likely to serve as a deterrent.

²⁴ In order to maintain the deterrent effect of the fine, it is essential to review the amounts periodically so as to take account of the depreciation of the local currency. This remark also applies to Articles 11 and 12. It could therefore be considered whether it might not be appropriate to set the amounts of the fines by means other than the present law, for example in an implementing regulation. A National Committee for the implementation of international humanitarian law could then review the amounts as required.

If the offence is committed in the management of a corporate body (commercial firm, association, etc.), the punishment shall apply to the persons who committed the offence or ordered the offence to be committed.

ARTICLE 11

*Misuse of the emblem used as protective device in wartime*²⁵

Anyone who has wilfully committed, or has given the order to commit, acts resulting in the death of, or causing serious injury to the body or health of an adversary by making perfidious use of the red cross or red crescent emblem or a distinctive signal, has committed a war crime and shall be punished by imprisonment for a period of ... years.²⁶

Perfidious use means appealing to the good faith of the adversary, with the intention to deceive him and make him believe that he was entitled to receive or was obliged to confer the protection provided for by the rules of international humanitarian law.

Anyone who, wilfully and without entitlement, has used the red cross or red crescent emblem or a distinctive signal, or any other sign or signal which constitutes an imitation thereof or which might lead to confusion, shall be punished by imprisonment for a period of ... (months or years).

ARTICLE 12

Misuse of the white cross on a red ground

Owing to the confusion which may arise between the arms of Switzerland and the emblem of the red cross, the use of the white cross on a red ground or of any other sign constituting an imitation thereof, whether

²⁵ This is the most serious type of misuse, for in this case the emblem is of large dimensions and is employed for its primary purpose, which is to protect persons and objects in time of war. This Article should be brought into line with penal legislation (for example the Military Penal Code), which generally provides for the prosecution of violations of international humanitarian law, and in particular the Geneva Conventions and their Additional Protocols.

²⁶ By virtue of Article 85, para. 3, subparagraph f), of Protocol I, perfidious use of the emblem is a grave breach of this Protocol and is regarded as a *war crime* (Article 85, para. 5). Such misuse is therefore particularly serious and must be subject to very severe penalties.

as a trademark or commercial mark or as a component of such marks, or for a purpose contrary to fair trade, or in circumstances likely to wound Swiss national sentiment, is likewise prohibited at all times; offenders shall be punished by payment of a fine of ... (amount in local currency).

ARTICLE 13

Interim measures

The authorities of ... (name of the State)²⁷ shall take the necessary interim measures. They may in particular order the seizure of objects and material marked in violation of the present law, demand the removal of the emblem of the red cross or red crescent and of the words “Red Cross” or “Red Crescent” at the cost of the instigator of the offence, and order the destruction of the instruments used for their reproduction.

ARTICLE 14

Registration of associations, trade names and trademarks

The registration of associations and trade names, and the filing of trademarks, commercial marks and industrial models and designs making use of the emblem of the red cross or red crescent or the designation “Red Cross” or “Red Crescent” in violation of the present law shall be refused.

IV. APPLICATION AND ENTRY INTO FORCE

ARTICLE 15

Application of the present law

The ... (Ministry of Defence, Ministry of Health) is responsible for the application of the present law.²⁸

²⁷ Indicate the competent authority (courts, administrative authorities, etc.).

²⁸ It is particularly important to specify precisely which authority has ultimate responsibility for applying this law. Close cooperation between the Ministries directly concerned, generally the Ministries of Defence and Health, would be advisable. A National Committee for the implementation of international humanitarian law could play a useful role in this respect.

ARTICLE 16

Entry into force

The present law shall enter into force on ... (date of promulgation, etc.).

Prosecution of suspected war criminals in Switzerland

Legal bases

By ratifying the Geneva Conventions of 1949, Switzerland undertook to supplement its national legislation accordingly. Its subsequent revision of the Swiss military penal code¹ in 1950, though certainly prompt, was half-hearted. It was not until 1 March 1968, when a broader revision came into force, that national legislation was fully adapted to meet the requirements laid down in those Conventions:

- the scope of application of Swiss criminal law was extended to cover all armed conflicts within the meaning of international conventions;
- civilians who commit offences against international law in the event of armed conflict were explicitly made liable to military jurisdiction; it is thereby clearly established that Switzerland, or more specifically the military justice authorities, must prosecute violations of international humanitarian law even if the offence is committed outside Switzerland by nationals (civilians or members of the armed forces) of another country.

Although surrender to an international tribunal or extradition to another State takes precedence over prosecution at the national level, extradition is not admissible or possible in all cases. Moreover, in certain circumstances a State interested in prosecution may, for political reasons or because it does not have a functioning legal system, decide not to present an extradition request.

Procedure

The preliminary investigation and criminal proceedings are governed by the procedural provisions of military penal law. We thus have a modern judicial procedure that corresponds to the requirements of a constitutional State and is uniform throughout Switzerland.

Original: German

¹ See appended extracts.

The elucidation of presumed war crimes is entrusted to specially trained and documented examining magistrates; if necessary, teams consisting of several such magistrates are set up.

For the preliminary investigation two courses may be taken: the *provisional gathering of evidence* and the *preliminary hearing*. The provisional gathering of evidence serves to establish the facts discreetly and without the knowledge of the person concerned, and is warranted, for instance, when the evidence is as yet inconclusive or the suspicion itself is largely unsubstantiated. The preliminary hearing is ordered when the suspicion is or has become firm enough for the suspect to be confronted outright with the evidence against him.

In all cases of presumed war crimes it must be assumed that the suspect will attempt to flee. Every effort is therefore made to carry out the preliminary investigation without publicity so as to avoid making arrests which might subsequently prove unjustified. If, however, a suspicion becomes common knowledge prematurely, the arrest must be made even if the evidence is still inadequate, so that the investigating authority cannot be reproached for having simply let a presumed war criminal go free.

Particular problems in practice

Criminal prosecutions as we know them in Switzerland normally begin with the recording of facts by the police. Clues are secured, photographs taken, diagrams drawn, witnesses heard and all other appropriate measures adopted. The crime is known, and the hunt for the person who committed it begins.

In the prosecution of presumed war crimes the starting point is completely different: in a nutshell, the perpetrator is known or believed to be known, and the attempt is made to prove that he did commit a crime.

In such cases, most of the usual methods of investigation are not available. Instead the presentation of evidence must be confined almost entirely to the *examination of witnesses*. Even in normal circumstances testimony by witnesses is a problematic means of evidence. With regard to presumed war crimes dating back several years or more, it is all the more problematic, particularly since wartime events will have widely dispersed, or led to the death of, possible witnesses.

The investigation of presumed war crimes is thus extremely difficult and time-consuming.

For such investigations *international cooperation* is indispensable. Fortunately, it generally works smoothly. To avoid indirectly endangering

relatives of witnesses or suspects, however, special care must be taken when requesting assistance in legal matters from warring States.

Past experience has shown that the protection of witnesses is particularly important. Witnesses of war crimes are understandably afraid of exposing themselves or members of their families to reprisals if their willingness to testify becomes known. Legislation for the protection of witnesses is therefore being prepared, but for the time being recourse must be had to the means developed by the Swiss Federal Court of Justice and the European Court of Human Rights to protect police officers engaged in covert criminal investigations.

Cooperation with the UN tribunals

The legal basis for close cooperation by the Swiss justice authorities with the UN Tribunals for the former Yugoslavia and Rwanda was created in December 1995 by an urgent federal decree on cooperation with international courts of law to prosecute serious violations of international humanitarian law.² In particular, information and evidence can spontaneously be passed on to them. The tribunals, furthermore, now have the possibility of demanding that proceedings pending in Switzerland for violations of international humanitarian law be transferred to their jurisdiction.

No difficulties whatsoever have arisen to date in the course of cooperation between the Swiss criminal prosecution authorities and the two UN tribunals.

*Jürg van Wijnkoop*³
Head of Military Justice
of the Swiss Armed Forces

² Arrêté fédéral relatif à la coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire, du 21 décembre 1995, Recueil officiel des lois fédérales, n° 1, 9 janvier 1996, p. 2.

³ Brigadier General Jürg van Wijnkoop, LL.D., is Head of Military Justice of the Swiss Armed Forces.

Annex

Swiss Military Penal Code (of 13 June 1927)

Article 2

Those subject to military law are:

...

9. Civilians who, in the event of armed conflict, commit violations of international law (Articles 108-114).⁴

Section six:

Violations of international law in the event of armed conflict

Article 108 — Scope of application

¹ The provisions in this section shall be applied in the event of declared wars and other armed conflicts between two or more States; violations of neutrality and resistance to them by force are equated with such events.

² The violation of international agreements is furthermore punishable if provision is made in those agreements for a broader scope of application.

Article 109 — Violation of the laws of war

¹ Whosoever acts contrary to the provisions of international agreements on the conduct of hostilities and the protection of persons and property,

whosoever violates other recognized laws and customs of war, shall, unless more severe penalties apply, be punished by imprisonment and, in serious cases, by imprisonment with hard labour.

² Petty offences shall incur disciplinary penalties.⁵

⁴ "Civilians" must be understood as meaning all persons who are not members of the Swiss armed forces, thus also members of foreign armed forces.

⁵ Translation by the *Review*.

International humanitarian law and nuclear weapons

On 8 July 1996, the International Court of Justice gave its advisory opinion in response to two enquiries as to the legality of the threat or use of nuclear weapons.¹ Whilst the Court did not examine in detail the request put forward by the World Health Organization, it did give very close attention to the question presented by the General Assembly:

“Is the threat or use of nuclear weapons in any circumstance permitted under international law?”

The Court’s opinion is interesting, especially in that the judges in The Hague considered whether the threat and/or use of nuclear weapons is compatible with international humanitarian law. A detailed account of their deliberations and findings will not be given at this point, but two observations should be made: on the one hand, the Court did not find any international rule specifically prohibiting, in all circumstances, the threat or use of nuclear weapons during an armed conflict. On the other hand - and this is the key point - the Court decided unanimously that any use of nuclear weapons would be subject to the rules and requirements of international humanitarian law. The International Court of Justice has thus confirmed that such weapons are not above the law.

The Review will return to this important decision at a later date.

For the time being, we shall simply reproduce the earliest ICRC text on nuclear weapons. It was written by Max Huber, who was then Acting President of the ICRC. The following brief extract is from a circular letter to the National Red Cross and Red Crescent Societies, dated 5 September 1945 and entitled “The end of hostilities and the future tasks of the Red Cross”.² It will be noted that this first position paper on nuclear weapons

¹ International Court of Justice, Advisory opinion of 8 July 1996: *Legality of the threat or use of nuclear weapons (Request for advisory opinion by the General Assembly of the United Nations)*. Press release No. 96/23 of 8 July 1996 and text (as yet unpublished) of the Court’s opinion.

² See *International Review of the Red Cross*, No. 321, September 1945, p. 657 ff., and *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, General Activities, Geneva, May 1948, pp. 689-690.

was published less than one month after the atom bomb destroyed Hiroshima and Nagasaki.

“It is indeed questionable whether the latest developments of the technique of warfare leave any possibility for international law to cover a firm and sound order of society. Already the First World War, and still more the long disaster of the past six years, demonstrate that the conditions which prompted the framing of international law in its model form in the Geneva and Hague Conventions, have undergone far-reaching change. It is clear that developments in aviation and the increasingly destructive effects of bombing have made practically inapplicable the distinctions hitherto drawn, whereby certain classes of people had by right a special protection (for instance, the civil population in contrast to the armed forces). The inevitable development of weapons, and so of warfare as a whole, has a greater significance by reason of the exploitation of the discoveries in nuclear physics, which permit the producing of arms of a potency hitherto unknown.

“It would be useless to attempt a forecast for this new weapon, or even to express an opinion on the prospect that the Powers would relinquish it altogether. The question arises whether they would, perhaps, keep it in lasting and unflinching reserve as a supreme safeguard against war and as a means of preserving a just order. This hope is not, perhaps, entirely vain as, during this six years struggle, there has been no recourse to the chemical or bacteriological means of warfare as outlawed by the Powers in 1925. It is as well to remember this fact at a time when there have been so many infringements of law and so many reprisals have been taken.

“In former times war was, essentially, an armed contest between combatant forces. To-day, it supposes the total mobilization of all living forces of the nation against the enemy country and it involves the whole population. Warfare has now altered fundamentally owing to recent discoveries and to technical application of them. Mankind is thus faced with a problem of supreme gravity which calls for decisions on the moral plane.

“The Geneva Convention gives guarantees to the wounded and sick of the armed forces - just as to their adversaries - that their lives will be protected and they will have the right to proper care; the Convention on the treatment of prisoners of war watches over the physical and moral situation of those in captivity. The terms of these instruments declare the absolute inviolability of an enemy who is no

longer fit for combat and give recognition to the dignity of the human personality. Protection of the civil population must rest on these same principles. The same applies to the endeavours made by the Red Cross to bring relief supplies of all kinds - foodstuffs, clothing and indispensable medicaments - to women, children and old people in occupied territories. Safeguarding of children is the last line which the Red Cross must defend, if war is not to mean utter destruction of mankind.

“From totalitarian war have sprung new techniques. Must it then follow that the individual person will no longer enjoy the protection of the law and that he will thus be considered as a mere pawn in the mass struggle? That would mean the collapse of the principles that are the foundation of international law, which affords physical and moral protection to the human person. Even in time of war, a system of law which is purely expedient, based on self-interest and which serves only the exigence of the moment, could never offer an enduring security. Unless respect for the significance and dignity of man is sustained, war will inevitably lead to boundless destruction, since the human mind which harnesses the forces of the universe seems, by the mechanisms it contrives, to hasten the onrush of destruction.”

The Review

Accession to the Geneva Conventions and the Additional Protocols by the Republic of Palau

The Republic of Palau acceded on 25 June 1996, without making any declaration or reservations, to the Geneva Conventions of 12 August 1949 and their Additional Protocols relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Conventions and Protocols will come into force for the Republic of Palau on 25 December 1996.

This accession brings to **187** the number of States party to the Geneva Conventions, to **145** those party to Protocol I and to **137** those party to Protocol II.

Accession to the Additional Protocols by the Democratic Republic of Sao Tome and Principe

The Democratic Republic of Sao Tome and Principe acceded on 5 July 1996, without making any declaration or reservations, to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Democratic Republic of Sao Tome and Principe on 5 January 1997.

This accession brings to **146** the number of States party to Protocol I and to **138** those party to Protocol II.

Books and Reviews

Patricia Buirette, *Le droit international humanitaire*, Éditions La Découverte, Paris, 1996, 124 pages (Collection Repères)

This 124-page book on international humanitarian law was written by Patricia Buirette, a professor of public international law at the University of Evry-Val d'Essonne in France. At first sight, given its slender format and rather general title, it just seems another book introducing international humanitarian law. Yet with each new chapter one realizes that the scope covered is much broader, for besides the fundamental principles of that law and of the Red Cross and Red Crescent institutions, the author also deals with a variety of other subjects. They range from the paradoxical aspects of international humanitarian law to neutrality, the development of human rights philosophy, the evolution of the international community, intervention and humanitarian aid, the rightful place and limits of the latter and the role of the United Nations in this area.

Although the book is somewhat theoretical in parts, especially those relating to international humanitarian law, the author goes beyond merely giving an exhaustive account of the rules, and has generally made her text come to life. It is understandable, even to those who may know little about humanitarian law and human rights. Nor does she confine herself solely to stating the principles; she explains them and provides the background.

Probably out of a desire to simplify occasionally complex ideas, some statements are also rather lacking in precision. By deciding to write a short, concise book, Patricia Buirette has limited her account to the main points and has left out certain details or exceptions which are often important — for instance the setting up of ad hoc tribunals for Rwanda and the former Yugoslavia, and their impact on the repression of violations of international humanitarian law and the possible creation of a permanent international tribunal.

In the book as a whole, only the introduction leaves the reader somewhat perplexed by the immediate confrontation with some paradoxes of international humanitarian law: on the one hand, the enthusiasm in recent years for humanitarian operations and, on the other, the widespread criti-

cism made of them. It is not until the last paragraph of this chapter that the author gives the reader a clear indication of her intention: "This book seeks to describe the complex relationships between the importance and usefulness of international humanitarian law and the problems arising from humanitarian operations. It tries to encompass the developments and changes undergone by a law which stemmed from a determination not to accept the unacceptable".

The first part, entitled "Red Cross international humanitarian law", devotes considerable space to the work of Henry Dunant and the origin of the Red Cross. This historical section is quite detailed and very interesting. The ICRC's philosophy is also explained, especially one of its key principles — neutrality — which is frequently misunderstood and criticized. The author stresses that "the neutrality of the ICRC is necessary for it to carry out its humanitarian mission and a *sine qua non* for its work in aid of victims. So as to maintain the trust of the parties between which it places itself and thus be able to reach out to all the victims, it must at all costs avoid taking sides." There then follows a description of the components of the International Red Cross and Red Crescent Movement, including the International Conference.

The contents of international humanitarian law and its links with public international law and human rights are outlined, as well as the latest developments in these areas. It is regrettable, however, that non-international armed conflicts are mentioned only briefly, since they are today the most frequent type of conflict.

The second part of the book deals with the United Nations bodies responsible for humanitarian aid and their institutional and operational cooperation with the Red Cross. The third and last part is entitled "Aid, intervention and the law". It summarizes concepts which have caused a lot of ink to flow, especially at the beginning of the 1990s, such as the development of the idea of intervention on humanitarian grounds and the role of non-governmental organizations, the interdependence of States and the emergence of individual liability under international law.

From a general point of view, Patricia Buiette's book on international humanitarian law is interesting and easy to read. Its few shortcomings, undoubtedly due to the brevity of the work, can be easily overlooked.

Marie-Claude Roberge
ICRC Legal Division

International Committee of the Red Cross

HANDBOOK ON WAR AND PUBLIC HEALTH

Geneva 1996

This handbook is intended for staff members and medical personnel responsible for humanitarian activities in situations of armed conflict. It deals with the serious health problems affecting displaced people and shows, step by step, how a health-care system meeting the essential needs of war victims can be set up. The public health tools most frequently used in situations of armed conflict for evaluation, establishment of priorities, analysis of possible activities and their follow-up are assessed in the light of the constraints encountered in the field.

The problem of protection for war victims is also discussed in connection with certain aspects of international humanitarian law, particularly those directly relating to health. Finally, the handbook offers professional health workers a guide to the ethical problems that arise at each stage of humanitarian action.

The handbook was prepared by *Dr Pierre Perrin* (ICRC) and is available in English and French.

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