

**FROM SOLFERINO TO THE BIRTH OF CONTEMPORARY  
INTERNATIONAL HUMANITARIAN LAW**

By François Bugnion

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„Im Anfang war die Tat“.

Goethe, *Faust*.  
Verse 1237

## I. AFTERMATH OF A BATTLE

The early history of most institutions has been blurred by the passage of time. Even when their initial form can be clearly discerned, it often bears little resemblance to the institution as we know it today.

The Red Cross and Red Crescent Movement is a striking exception - it can be traced back to a precise date, and its origins are relatively well known. This first phase is worth considering in detail, because it casts light on the entire subsequent development of the Red Cross.<sup>1</sup>

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<sup>1</sup> In accordance with a practice that dates back over 100 years, the name "*International Red Cross*", as well as the simplified term "*Red Cross*", has been used in this article to designate the International Red Cross and Red Crescent Movement, particularly when referring to a time where those expressions were currently used.

On 24 June 1859 the armies of France and Sardinia engaged Austrian forces near the northern Italian village of Solferino. This decisive battle in the struggle for Italian unity was also the most horrific bloodbath Europe had known since Waterloo: in ten hours of fierce fighting, more than 6,000 soldiers were killed and more than 30,000 wounded.<sup>2</sup>

The medical services of the Franco-Sardinian armies were totally overwhelmed, exposing the negligence of the supply corps: the French army had more veterinary surgeons than doctors; transport was woefully inadequate; crates of field dressings were dumped far from the front line and sent back to Paris, unopened, at the end of the campaign. General de la Bollardière, French Quartermaster-General, reported that it took six days to bring in 10,212 wounded from the field.<sup>3</sup>

Helped by their comrades, leaning on makeshift crutches or on their rifles, the wounded soldiers staggered to nearby villages in search of food, water, first aid and shelter. More than 9,000 of them came to the small town of Castiglione delle Stiviere, where invalids soon outnumbered the able-bodied.<sup>4</sup> The wounded were everywhere - in houses, barns and churches, or filling up the squares and lanes.

On the evening of 24 June a young man from Geneva, Henry Dunant, arrived in Castiglione. A banker by profession, he was travelling on urgent private business and had no particular medical knowledge, but he was too compassionate to be able to disregard the pain and distress around him: for several days and nights he worked at the “*Chiesa Maggiore*”, a church sheltering more than 500 wounded. He gave them water to ease their thirst; he cleaned their wounds, changed dressings; he sent his coachman to the city of Brescia to buy cloth for dressings, pipes and tobacco, herbal infusions and fruit; he enlisted the aid of charitable local women to tend the injured and dying; he wrote to his friends at home to ask for supplies. In short, he set an example and tried to organize help so as to alleviate, as far as possible, the suffering which confronted him.

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<sup>2</sup> Dr. J.-C. CHENU, *Statistique médico-chirurgicale de la Campagne d'Italie en 1859 et 1860*, Librairie militaire de J. Dumaine, Paris, 1869, vol. II, pp. 851-853.

<sup>3</sup> Quoted by Pierre BOISSIER, *History of the International Committee of the Red Cross: From Solferino to Tsushima*, Henry Dunant Institute, Geneva, 1985, p. 22 (original French edition, Plon, Paris, 1963).

Dunant returned to Geneva on 11 July - the very day on which the Italian campaign ended. Not for the first time, he was dogged by financial difficulties arising from his business interests in Algeria.

Had that been the end of his involvement with the wounded of Solferino, his name would have been quickly forgotten, along with all those other people of good will who showed equal dedication at Castiglione, Brescia and Milan. Dunant, however, was haunted by what he had seen. In 1861 he decided to withdraw from the world and shut himself away in Geneva where, for a year, he studied accounts of the Italian campaign and wrote a book which was to prove a landmark: *A Memory of Solferino*.<sup>5</sup>

The book is in two parts: the first gives a description of the battle, an epic account in the greatest tradition of military historiography. But suddenly the tone changes and the hidden side of war is stripped bare in his grim portrayal of the "*Chiesa Maggiore*" where the wounded and dying lie crowded together; he tells of the squalor, the pools of blood, the nauseating smells, the swarms of flies settling on open wounds, the mouths of the wounded deformed in cries of agony, the pain and neglect, terror and death...

But Dunant was not content merely to describe the horrors of war: he ended the book by asking two questions, which were in effect appeals to the conscience:

*“But why have I told of all these scenes of pain and distress, and perhaps aroused painful emotions in my readers? Why have I lingered with seeming complacency over lamentable pictures, tracing their details with what may appear desperate fidelity ?*

*It is a natural question. Perhaps I might answer it by another:*

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<sup>4</sup> CHENU, *op. cit.*, vol. I, p. 378.

<sup>5</sup> J. Henry DUNANT, *Un Souvenir de Solferino*, Imprimerie Jules-Guillaume Fick, Geneva, 1862. English version by the American Red Cross, 1939 & 1959, reprinted by the ICRC in 1994.

*Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers ?”*<sup>6</sup>

This simple question was the inspiration for the founding of the Red Cross.

But there was more: for these volunteers to be able to carry out their relief activities near the front lines, they had to be recognized and respected. This led to the second appeal:

*“On certain special occasions, as, for example, when princes of the military art belonging to different nationalities meet at Cologne or Châlons, would it not be desirable that they should take advantage of this sort of congress to formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in the different European countries ?”*<sup>7</sup>

This question was to result in the adoption of the original Geneva Convention.

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*A Memory of Solferino* was published at the author's expense in Geneva, in October 1862; 1,600 copies were printed, and on the title page was written: “*Not to be sold*”. The book was an open letter to world leaders and opinion makers, and Dunant sent it to sovereigns and statesmen, renowned military commanders, doctors, writers and philanthropists.

The book had an immediate impact. Two further editions were printed in the months that followed and sold to the public, and translations appeared in English, Dutch, Italian, Swedish,

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<sup>6</sup> *Ibid.*, p. 115.

<sup>7</sup> *Ibid.*, p. 126.

Russian, Spanish and - in three separate editions - in German.<sup>8</sup> But what mattered, apart from the number of readers, was the level of the readership: messages of support reached Dunant in their hundreds from influential people throughout Europe.<sup>9</sup> Dunant had succeeded in creating a tidal wave of enthusiasm for his idea: like *Uncle Tom's Cabin*, published a decade earlier, *A Memory of Solferino* was one of those books which shook contemporary society and left their mark on history.

Enthusiasm, however, counts for nothing if it does not lead to action: simply proposing something, however useful it might be, will not in itself guarantee the desired effect.

At this point a fellow citizen of Dunant stepped in: Gustave Moynier, lawyer and chairman of a local charity, the Geneva Public Welfare Society. Moynier decided to have Dunant's book - and in particular its concluding questions - discussed at the Society's meeting on 9 February 1863.

If the minutes of this meeting are to be believed,<sup>10</sup> members were sceptical about Dunant's ideas. It is easy to imagine that this group of people, meeting in a small provincial city, were reluctant to get involved with proposals which aimed, in the final analysis, to alter military practice in war.<sup>11</sup> Nevertheless the Society decided, at Moynier's prompting, to submit a paper developing Dunant's ideas to an international welfare congress due to be held later that year in Berlin. Five members were appointed to the drafting committee: Moynier, Dunant, General Dufour and two doctors, Appia and Maunoir.

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<sup>8</sup> *Actes du Comité international de Secours aux Militaires blessés*, Imprimerie Soullier et Wirth, Geneva, 1871, p. 17.

<sup>9</sup> BOISSIER, *op. cit.*, pp. 40-43; Bernard GAGNEBIN, « Comment l'Europe accueillit le 'Souvenir de Solferino' », *Revue internationale de la Croix-Rouge*, No. 378, June 1950, pp. 419-429.

<sup>10</sup> Records of the *Société genevoise d'Utilité publique*, (Palais de l'Athénée, Geneva), minutes of the meeting of 9 February 1863, manuscript. The minutes are reproduced, with a number of stylistic corrections, in the *Bulletin international des Sociétés de la Croix-Rouge*, No. 126, April 1901, pp. 79-80; English translation in the *International Review of the Red Cross*, No. 24, March 1963, pp. 115-116; Roger DURAND, « Le 'non-événement' du 9 février 1863 », *Bulletin de la Société Henry Dunant*, No. 10, 1985-88, pp. 33-47.

<sup>11</sup> Moynier was to write later: “How could it be imagined that an association modestly committed to dealing with local affairs, in a small country and having no means of action outside its own sphere, could take up the cause of this vast endeavour about which it was being consulted?” Gustave MOYNIER, *La Croix-Rouge, Son Passé et son Avenir*, Sandoz et Thuillier, Paris, 1882, p. 13.

The International Committee of the Red Cross had come into being.<sup>12</sup>

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<sup>12</sup> It was during its meeting on 20 December 1875 that the Committee adopted the name “*International Committee of the Red Cross*”, which subsequently appeared on all ICRC documents beginning with the 31st Circular to Central Committees of the National Red Cross Societies dated 10 February 1876.

*“Lo que cambia el mundo  
es la fe y no la fuerza”.*

Jose Pijoan, *Historia del Mundo*,  
5th ed., Salvat Editores,  
Barcelona, 1960, vol. V, p. 309.

## II. THE FOUNDATION OF THE RED CROSS

The five-member committee formed by the Geneva Public Welfare Society held its first meeting on 17 February 1863.

Strictly speaking, its mandate was no more than to prepare a paper for presentation to the International Welfare Congress to be held later in the year; but its members were already looking further ahead:<sup>13</sup>

*“[M. Moynier] furthermore proposed, and M. Dunant seconded, that the Sub-committee should declare itself constituted a 'Permanent International Committee'.*

*The proposal was adopted unanimously. On a show of hands General Dufour was elected President of the said Committee, which would thus continue to exist as an International Committee for the Relief of Wounded in the event of War, after its mandate from the Geneva Public Welfare Society had expired”.*<sup>14</sup>

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<sup>13</sup> The notebook containing the minutes of the first seven meetings of the International Committee was found among Dunant's papers after his death, and published by Jean-S. Pictet under the title: « Documents inédits sur la fondation de la Croix-Rouge, Procès-verbaux du Comité des Cinq », *Revue internationale de la Croix-Rouge*, No. 360, December 1948, pp. 861-879 (the English translation: "The foundation of the Red Cross: Some important documents", appeared in the *International Review of the Red Cross*, No. 23, February 1963, pp. 60-75).

<sup>14</sup> *Ibid.*, p. 865 (*IRRC, loc. cit.* pp. 63-64). General Dufour was succeeded as President of the Committee by Gustave Moynier on 13 March 1864 and was given the title of Honorary President. Moynier presided over the Committee until his death on 21 August 1910. Dunant was the Committee's Secretary until he resigned on 25 August 1867.

This, the Committee's first decision, may appear surprising, as it went far beyond the mandate given by the Geneva Public Welfare Society. It can be explained, though, by the objectives which the Committee set itself and which are made remarkably clear from the very start.

To understand these objectives, the situation of wounded soldiers and of the military medical services in the mid-nineteenth century must be borne in mind. It was generally accepted that wounded or sick soldiers should be collected and cared for without distinction as to the side they were on. In practice, however, they were usually left to fend for themselves.

Despite the progress made in medicine, military medical services were falling apart; the French Revolution was largely to blame. Under the *Ancien Régime*, a first-class medical corps was seen as the best way of maintaining the royal armies' limited strength. Because they were made up of professional soldiers who had to be trained and paid, armies were expensive and had to be properly looked after.<sup>15</sup> The *Hôtel des Invalides* in Paris, built as a home for the sick and wounded, provides striking proof of the concern of Louis XIV for those members of his armed forces who had served him faithfully.

By introducing conscription, the French Revolution relegated the medical services to the bottom of the quartermaster-generals' list of concerns. Losses on the battlefield could be made up by new levies of troops - surgery thus became less vital as a means of conserving the army's strength. The medical services were neglected, even though the increased size of the armies resulted in a greater number of casualties.

For all their professional skills, Napoleon's field surgeons were unable to create a medical service to meet the needs of his *Grande Armée*. Furthermore, the service such as it existed was disbanded at the restoration of the monarchy in 1814; after Bonaparte's final defeat Europe was to enjoy a long period of peace, and military medical services were reorganized according to peacetime needs.<sup>16</sup>

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<sup>15</sup> Pierre BOISSIER, *History of the International Committee of the Red Cross: From Solferino to Tsushima*, Henry Dunant Institute, Geneva, 1985, pp. 125-131.

<sup>16</sup> BOISSIER, *op. cit.*, pp. 131-134. Roger MAYER, « Le Service de Santé des armées françaises dans la première moitié du XIXe siècle », in : *Aux Sources de l'idée Croix-Rouge*, Henry

Quite obviously, there is no similarity between the needs of an army in barracks and one in the field. But once war has broken out, it is too late to start training additional surgeons and nurses; disaster becomes inevitable.

The total inadequacy of the medical services was so evident that at the conference of October 1863 - to which the Committee of Five invited representatives of the European States - it was freely acknowledged by all the generals and military physicians assembled there. Only the British delegate could claim otherwise.<sup>17</sup> Doctor Loeffler, Chief Physician of Prussia's Fourth Army Corps, even declared that any attempt to remedy the situation would be incompatible with the proper management of national finances:

*“It would be at odds with sound national economic principles to devote on a continuous basis and in times of peace the degree of attention and development to medical services that the State demands in all war-related activities. Moreover, the history of all the major conflicts of our century has demonstrated that, the moment war breaks out, the authorities are unable to develop the assistance services sufficiently and quickly enough to respond to anticipated needs”.*<sup>18</sup>

This is tantamount to maintaining that medical services had to be neglected in peacetime, whatever the price which had to be paid in times of war.

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Dunant Society and International Red Cross Museum, Geneva, 1984, pp. 76-86. Médecin Général Albert FABRE, *Histoire de la médecine aux armées*, tome II, *De la Révolution française au conflit mondial de 1914*, Paris et Limoges, Éditions Charles Lavauzelle, 1984, 494 pages.

<sup>17</sup> *Compte rendu de la Conférence internationale réunie à Genève les 26, 27, 28 et 29 octobre 1863 pour étudier les moyens de pourvoir à l'insuffisance du service sanitaire dans les armées en campagne*, Imprimerie Fick, Geneva, 1863, pp. 31-76 (hereinafter: *Compte rendu ... 1863*). Britain was then the only country to have a military medical corps worthy of the name; the disasters of the Crimean War - and the example of Florence Nightingale - had had a salutary effect.

<sup>18</sup> *Ibid*, p. 33, quoted by BOISSIER (*op. cit.*, pp. 74-75) who further states: “It was precisely this gap between the peacetime complement of medical units and the needs in times of war that the Geneva Committee was seeking to fill”.

The results of this policy were clear: wound for wound, the chances of survival for soldiers serving under Napoleon III (1851-1870) were far smaller than for their counterparts in the army of Napoleon I (1799-1815) - and they in turn were in a worse position than the soldiers of Louis XV (1715-1774).<sup>19</sup>

But this was not all. Under the *Ancien Régime*, it was usual for armies to agree on the neutrality of the medical services: before joining battle, generals would inform each other of the location of their field ambulance units, which from then on would be regarded as immune from attack. This sensible precaution allowed medical services to be positioned in the immediate vicinity of the battlefield.<sup>20</sup>

This practice, of which the members of the Geneva Committee were unaware, was abandoned at the time of the French Revolution. The consequences are easy to imagine: to protect field hospitals from enemy fire, they were established well away from the battlefield, even though there were no proper means of transporting the wounded. At the battle of Solferino the advanced hospitals were at Brescia, more than twelve miles away, while the base hospitals were at Milan! The seriously wounded had no hope of getting there. Also, the ambulances were poorly marked, with each country using a flag of a different colour: white for Austria, red for France, yellow for Spain, and black for other countries.<sup>21</sup> Soldiers would at best know only the markings of their own ambulances, and therefore would be likely to destroy those of the enemy simply because they were unable to recognize them. At a distance it would be impossible to distinguish wagons of the medical corps from others in a convoy, and so they could be considered as legitimate targets. Nor were there any clearly visible markings on medical corps uniforms: a very close look at a surgeon's tunic was needed to make out the

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<sup>19</sup> BOISSIER, *op. cit.*, pp. 128-129; Ferdinando PALASCANO, *La neutralità dei feriti in tempo di guerra*, speech to the Accademia Pontaniana, Naples, 28 April 1861.

<sup>20</sup> BOISSIER, *op. cit.*, pp. 141-153. In his work *Zur Geschichte der internationalen und freiwilligen Krankenpflege im Kriege*, Verlag F. C. W. Vogel, Leipzig, 1873, Dr. GURLT revealed the existence of 291 treaties, cartels and conventions concerning the protection of the wounded and of medical personnel. Apart from a few agreements related to surrender, these accords were all concluded prior to 1800. The research which brought these forgotten precedents to light again was initiated as a result of the interest aroused by the Geneva Conference of October 1863.

<sup>21</sup> See the remarks made by Dr. Unger at the 1863 Conference, *Compte rendu ... 1863*, pp. 133-134.

*caduceus*, or snake-entwined staff - the distinctive emblem of the medical profession - on his gilt buttons. In those circumstances, going to collect the wounded before the fighting had stopped was out of the question.

Furthermore, there was no agreement on the status of medical personnel, and during the Italian campaign, captured Austrian doctors were held in the Citadel at Milan. They would have been more useful in the hospitals, where they could have assisted their French colleagues. It took a personal appeal by Baron Larrey, Surgeon-General of the French army, to secure their release from prison.<sup>22</sup>

The lack of agreement on this question could have dire consequences: during a retreat, military doctors had to choose between running away and being captured. If they chose the former, they left the wounded with faint hope of being found and looked after by the enemy's medical services before they died of thirst, hunger or lack of care.<sup>23</sup>

For the same reasons the civilian population hesitated to help the wounded. Apart from the fear of looting, people were afraid, in the event of an enemy counter-attack, of being accused of having looked after the “wrong” casualties. The wisest thing was to stay at home and to keep the door firmly shut.<sup>24</sup>

Such was the situation that Dunant had seen in Italy and had described in *A Memory of Solferino*; it had been the start of his crusade.

To put this scandalous state of affairs to rights, Dunant's idea was to form relief societies which would rely on private support. So as to be able to act in good time, the societies would be set up on a permanent basis. They would not wait for hostilities to start before establishing contacts with the military because the authorities would then be too busy fighting the war to discuss other matters; therefore, the governments had to be associated with efforts to help the

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<sup>22</sup> BOISSIER, *op. cit.*, p. 29.

<sup>23</sup> Boissier notes: "... it was better to abandon a small number of wounded with the prospect of looking after much larger numbers than to run the risk of being locked up with all the other prisoners of war", BOISSIER, *op. cit.*, p. 100.

<sup>24</sup> See Dr. Boudier's remarks at the 1863 Conference, *Compte rendu ... 1863*, pp. 135-136.

wounded from the outset. When war broke out, the societies would send "qualified volunteers" to follow the armies and place themselves at the disposal of the military commanders whenever they were needed; they would care for the wounded of all sides without distinction.<sup>25</sup>

To be able to work safely and effectively, the volunteers had to be recognizable as such. They therefore had to be given a distinctive sign:

*"... a badge, uniform or armband might usefully be adopted, so that the bearers of such distinctive and universally adopted insignia would be given due recognition".<sup>26</sup>*

But this was not enough; what point was there in sending volunteer nurses after the armies if medical personnel remained exposed to enemy fire, and if supplies could be seized and diverted? All these personnel had to be shielded from the hostilities:

*"Finally, M. Dunant particularly underlined the hope he expressed in his book A Memory of Solferino: that the civilized Powers would subscribe to an inviolable, international principle that would be guaranteed and consecrated in a kind of concordat between Governments, serving thus as a safeguard for all official or unofficial persons devoting themselves to the relief of victims of war".<sup>27</sup>*

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<sup>25</sup> Minutes of the meeting of 17 February 1863. English translation in *IRRC*, No. 23, February 1963, pp. 63-65.

<sup>26</sup> *Ibid*, p. 64.

<sup>27</sup> *Ibid*, p. 65. Later, Moynier was to stress the interdependence between the relief societies and neutral status for the medical services. He wrote of the 1863 Conference: "... it saw the abolition of outdated practices and the legal protection of medical services as conditions sine qua non for the success of the relief societies. It feared, with reason, that if all the personnel and material provided by private benevolence were incessantly liable to be appropriated by an enemy and diverted from its proper destination, the most enthusiastic philanthropy would become weary of bringing tribute to this bottomless pit". MOYNIER, *La Croix-Rouge, Son Passé et son Avenir*, Sandoz et Thuiller, Paris, 1882, p. 31. See also BOISSIER, *op. cit.*, p. 79.

The question of according neutral status to medical services and volunteer nursing staff is thus raised.

It seems that Dunant was then alone in regarding their neutral status as something that could be achieved.<sup>28</sup> However, he deftly succeeded in forcing the hand of his colleagues and his persistence led, ultimately, to the adoption of the Geneva Convention.<sup>29</sup>

So from that first meeting, the Committee's "grand design" was remarkably clear and coherent. In fact, all these objectives had been stated, as either embryonic or fully-fledged ideas, in the closing pages of *A Memory of Solferino*.

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But the question has to be asked: to what extent were these ideas really new?

The Committee's success clearly showed that it was on favourable ground. Marx was not mistaken when he wrote: "*It is not enough [...] that thought should try to realize itself; reality itself must strive towards the thought*".<sup>30</sup>

So the ideas formulated by the Committee were already in the air: during the Crimean war and the Italian campaign numerous committees had been formed to raise funds and send assistance to the victims; many volunteers, like Dunant, had set to work spontaneously to help the wounded.<sup>31</sup>

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<sup>28</sup> Had Dunant obtained the support of his colleagues on this crucial point, it can be assumed that - as he was writing the minutes - he would not have failed to note it. The records would lead us to believe that on this point he stood alone, a view borne out by what came later.

<sup>29</sup> Seen against the development of the organization as a whole, whatever disagreements there might have been between Dunant and his colleagues on the Committee over the neutrality of medical personnel and the wounded are immaterial. The main point was that Dunant was able to manoeuvre the Committee, like it or not, into supporting this cause. Historians and others interested in these differing points of view can refer to BOISSIER, *op. cit.*, pp. 61-68 & 78-80.

<sup>30</sup> "Critique of Hegel's Philosophy of Right", in: Karl MARX, *Early Writings*, introduced by Lucia Coletti, translated by Rodney Livingstone and Gregor Benton, Penguin Classics, 1992, p. 252.

<sup>31</sup> Particular mention should be made of the Order of St. John, whose example inspired the founders of the Red Cross.

The proposal that ambulances be declared neutral likewise already had eminent supporters - Dr. Palasciano, in Naples (April 1861), and Henri Arrault, in Paris (June 1861)<sup>32</sup> - whilst the adoption of a standardized distinctive sign for the medical services of all armies had in fact been advocated by Dr. Loeffler as early as 1859.<sup>33</sup> And it was around the same time that the American lawyer Francis Lieber drew up his “*Instructions for the Government of Armies of the United States in the Field*”, which resembled the International Committee's programme in more ways than one.<sup>34</sup> Many other examples of this concurrent thinking could be given.

That being said, the contribution of the Committee of Five was decisive, for three reasons:

- the Committee brought together in one coherent plan of action a number of different but interdependent proposals which, individually, would have had only a relatively small impact on the situation of the wounded. These included suggestions for voluntary nurses, a distinctive sign, the neutrality of ambulances, etc.;
- from the start, the Committee set its sights on achieving something lasting that went far beyond the charitable groups formed spontaneously after a battle in order to raise funds for relief (which, lacking proper organization, generally arrived too late). The new committees would be permanent and would prepare for their task in advance, in peacetime. In the same way, there could no longer be any question of those short-lived agreements on the neutrality of ambulances which were sometimes reached on the eve of a battle - only to lapse when the fighting was over. There had to be a cast-iron treaty, agreed upon in peacetime

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<sup>32</sup> C. LUEDER, *La Convention de Genève au point de vue historique, critique et dogmatique*, Edouard Besold, Erlangen, 1876, pp. 34-37. However, Lueder adds: “*But it is [...] openly acknowledged that Dunant, like his associates in the two successful Geneva meetings, were totally unaware of the works of Arrault and Palasciano*”, LUEDER, *op. cit.*, p. 36.

<sup>33</sup> *Compte rendu ... 1863*, p. 37.

<sup>34</sup> The “Instructions” were promulgated by President Lincoln as General Orders No. 100 on 24 April 1863 - see *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents*, edited by Dietrich SCHINDLER and Jiri TOMAN, third edition, Henry Dunant Institute, Geneva, and Martinus Nijhoff, Dordrecht, 1988, pp. 3-23.

and valid for all future conflicts. This was the only means of guaranteeing the safety of ambulances from the opening of hostilities until the end of the war;

- finally, the Committee was determined that its work should have an international basis: national committees would be united by an international bond of solidarity. An “*international principle, sanctioned by a Convention inviolate in character*”<sup>35</sup> must link as many States as possible. Only in this way would the wounded, to whatever nation they belonged, be assured of care.<sup>36</sup>

Furthermore the Committee proved its theories through action: just as Diogenes demonstrated movement by getting up and walking, the Committee took the necessary initiatives to transform its ideas into reality. In doing so it was ahead of its time - and this was - and remains - its first title to legitimacy.

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The least contested of the Committee's objectives was the creation of societies to help the wounded. So the obvious first move was to rally the widest possible backing for it.

The Geneva Committee had never sought to retain direct control over its project. On the contrary, it felt that the work had to be both international *and* decentralized: international, in that the relief societies would be established in as many countries as possible and would all adhere to a number of common principles needed to maintain solidarity; and decentralized, in that each society would, within the framework of those principles, be organized according to local customs and traditions.<sup>37</sup>

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<sup>35</sup> DUNANT, *A Memory of Solferino*, p. 126.

<sup>36</sup> At the 1863 Conference, Dr. Loeffler sharply focused on the correlation between the international aspect of the projected work and the impartial treatment of the wounded: “*If these preparations [...] had an international character, the colour of a man's trousers, if you will excuse the expression, would no longer influence his entitlement to aid; no one would worry if the trousers were red, grey or blue: simply being a wounded soldier would be an adequate passport to help*”. *Compte rendu ... 1863*, p. 102.

<sup>37</sup> In his introductory speech on behalf of the Committee to the 1863 Conference, Moynier said it would be wise to avoid the drawing up of too detailed regulations for the proposed institution:

The Committee was not setting out to build an empire but to call for adherents to a cause; it did not want to be the architect of an organization which it would direct, but sought to promote the formation of societies in every country which would be directed by national committees. Support therefore had to be enlisted in the capitals of the various countries; at the same time, though, general guidelines had to be established.

The Geneva Committee expected to launch the idea of volunteer nursing staff at the International Welfare Congress to be held in Berlin, but during the summer of 1863 it was learned that the meeting would not take place.

Without hesitation the Committee decided to convene an international conference in Geneva, under its own auspices, to discuss ways of remedying the inadequacies of the military medical services.<sup>38</sup> On 1 September it sent an invitation to every European government, as well as to a number of well-known military commanders, physicians and philanthropists. Attached was a “*draft concordat*” containing ten articles which set out the general principles of the organization that was to be created; the question of neutral status for medical personnel and the wounded, however, was not mentioned. The conference was scheduled for the following month.<sup>39</sup>

In the time available to him, Dunant decided to visit Germany. His purpose was twofold: to go to an International Statistical Congress that was taking place in Berlin and sound out the reaction to the circular of 1 September; and to encourage the main German States to send representatives to the October meeting in Geneva.

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*"To be recognized in all countries without offending susceptibilities, it would be well to leave to each State the business of regulating questions of secondary importance, while at the same time laying a useful, even necessary, foundation for this work".* *Compte rendu ... 1863*, p. 10; BOISSIER, *op. cit.*, p. 71.

<sup>38</sup> Meeting of 25 August 1863, *IRRC*, No. 23, February 1963, pp. 69-70;

<sup>39</sup> The circular dated 1 September 1863 and the draft convention ("*Projet de Concordat*") are reproduced in *Compte rendu ... 1863*, pp. 1-2 & 14-16, and in the *Actes du Comité international de Secours aux Militaires blessés*, ICRC, Geneva, 1871, pp. 1-4 (hereinafter: *Actes du Comité international, 1871*). The draft convention is also in BOISSIER, *op. cit.*, pp. 58-59.

With the support of Dr. Basting, a leading Dutch military surgeon, Dunant was able to address the congress and outline his proposals. These were warmly received, not only regarding the question of volunteer nursing staff, but even more so that of neutral status for ambulances.<sup>40</sup>

This prompted Dunant to send out a new circular from Berlin on 15 September, in the Geneva Committee's name; in it he proposed that military medical personnel and recognized voluntary helpers be regarded as neutral.<sup>41</sup> By doing so, Dunant had presented the Committee with a *fait accompli*.

Dunant returned to Geneva, making stopovers in Dresden, Vienna, Munich, Stuttgart, Darmstadt and Karlsruhe. He was everywhere welcomed as a prince. His book opened him all doors. He availed himself of these contacts to plead the cause of the wounded and make sure that the main German States would send delegates to the Geneva Conference.<sup>42</sup>

The conference was opened in Geneva on 26 October 1863 by General Dufour. Thirty-six people attended, including the five members of the Committee: 18 were sent by 14 governments, to listen and to report back to their capitals; six represented various organizations; seven were there in a private capacity.<sup>43</sup>

The hybrid composition of the group should not be seen as odd - in fact it was quite logical from the Committee's point of view: the objective was not to create a new branch of the civil service, but to form relief societies which would mobilize private support. But the societies could not send volunteer nursing staff to the front without the protection of their respective governments: as their support had to be requested in advance in peacetime, those governments had to be associated with the project from the start. This explains the mixture of public and

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<sup>40</sup> Henry DUNANT, *Mémoires*, edited and introduced by Bernard GAGNEBIN, Henry Dunant Institute, Geneva, and Éditions L'Age d'Homme, Lausanne, 1971, pp. 73-89. See also BOISSIER, *op. cit.*, pp. 61-63.

<sup>41</sup> The circular of 15 September is contained in *Actes du Comité international, 1871*, pp. 5-6. See also BOISSIER, *op. cit.*, pp. 63-64.

<sup>42</sup> Henry DUNANT, *Mémoires*, pp. 83-89. Lettres from Dunant to Moynier, 4, 12 and 18 Octobre 1863, ICRC Archives, file « Comité international 1863-1880 ».

<sup>43</sup> *Compte rendu ... 1863*, pp. 16-20; *Actes du Comité international, 1871*, p. 18. Names of the delegates are also given in BOISSIER, *op. cit.*, p. 70.

private participation at the 1863 Conference; indeed, all International Conferences of the Red Cross since 1863 have been attended by delegations from the National Red Cross and Red Crescent Societies as well as representatives of the States party to the Geneva Conventions.<sup>44</sup>

As the basis for its discussion, the Conference considered the draft convention drawn up by the Geneva Committee. Debate centred on the organization of the national committees and, in particular, on the feasibility of sending volunteer nurses to follow the armies.<sup>45</sup>

Three points emerged concerning the position of the International Committee:

- the Committee did not seek to obtain a dominant position within the new institution - it presented itself simply as the promoter of an idea. This position was made clear by Moynier himself, speaking for the Committee: “*We shall be content to have promoted an institution which will gradually expand, and whose charitable work will certainly elicit universal support*”;<sup>46</sup>
- the Geneva Committee was confirmed, without any discussion, as the central point for the exchange of correspondence between the national committees;<sup>47</sup>
- the Committee's provisional nature seems to have been generally accepted, the view being that when the national committees were formed, it would no longer have any *raison d'être*. One of the Netherlands' delegates, Captain Van de Velde, put it this way: “*The provisional position of the Geneva Committee will cease when the committees in other countries have been formed*”.<sup>48</sup>

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<sup>44</sup> Statutes of the International Red Cross and Red Crescent Movement, adopted by the Twenty-Fifth International Conference of the Red Cross, Geneva, October 1986, Article 9, *IRRC*, No. 256, January-February 1987, p. 25-59 *ad p.* 37; *Handbook of the International Red Cross and Red Crescent Movement*, thirteenth edition, International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, Geneva, 1994, p. 425. The ICRC and the International Federation of Red Cross and Red Crescent Societies also take part, of course.

<sup>45</sup> See *Compte rendu ... 1863*; details are also given by BOISSIER, *op. cit.*, pp. 70-83.

<sup>46</sup> *Compte rendu ... 1863*, p. 10.

<sup>47</sup> *Ibid*, pp. 95-96.

<sup>48</sup> *Ibid*, p. 131.

The conference ended on 29 October, after adopting ten resolutions which constituted the foundation of the Societies for Relief to Wounded Soldiers - the future Red Cross and Red Crescent Societies. The question of neutral status for ambulances was also discussed; deciding, quite correctly, that a matter of international law of this kind could be settled only by a diplomatic conference,<sup>49</sup> the delegates confined themselves to making certain recommendations to governments.

The adoption of these resolutions and recommendations was a milestone in the history of the law of armed conflict. As the Swiss historian Pierre Boissier aptly puts it:

*“[They] constitute the fundamental charter for the relief of persons wounded in war. They are among the few fundamental texts which have positively influenced the destiny of man. They have not eliminated war but they have diminished its hold over man and have deprived it of innumerable victims”.*<sup>50</sup>

In the annals of mankind they were, he wrote, counter-evidence in man's favour.

The text is as follows:

**RESOLUTIONS OF THE  
INTERNATIONAL CONFERENCE IN GENEVA**

*“The International Conference, desirous of coming to the aid of the wounded should the Military Medical Services prove inadequate, adopts the following Resolutions:*

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<sup>49</sup> A recommendation to this effect had been received in a letter from the Russian Minister of War, General Milutine: *“While expressing my personal sympathy for your proposals [...], I believe at the same time that it would be wise to avoid absolutely any discussion of matters touching on international law, and to leave this side of the question to the initiative of the competent government bodies”*. *Compte rendu ... 1863*, p. 30.

<sup>50</sup> BOISSIER, *op. cit.*, p. 80.

*Article 1: Each country shall have a Committee whose duty it shall be, in time of war and if the need arises, to assist the Army Medical Services by every means in its power.*

*The Committee shall organize itself in the manner which seems to it most useful and appropriate.*

*Article 2: Any number of Sections may be formed to assist the Committee, which shall be the central directing body.*

*Article 3: Each Committee shall get in touch with the Government of its country, so that its services may be accepted should the occasion arise.*

*Article 4: In peacetime, the Committees and Sections shall take steps to ensure their real usefulness in time of war, especially by preparing material relief of all sorts and by seeking to train and instruct voluntary medical personnel.*

*Article 5: In time of war, the Committees of belligerent nations shall supply relief to their respective armies as far as their means permit; in particular they shall organize voluntary personnel and place them on an active footing and, in agreement with the military authorities, shall have premises made available for the care of the wounded. They may call for assistance upon the Committees of neutral countries.*

*Article 6: On the request or with the consent of the military authorities, Committees may send voluntary medical personnel to the battlefield where they shall be placed under military command.*

*Article 7: Voluntary medical personnel attached to armies shall be supplied by the respective Committees with everything necessary for their upkeep.*

*Article 8: They shall wear in all countries, as a uniform distinctive sign, a white armlet with a red cross.*

*Article 9: The Committees and Sections of different countries may meet in international assemblies to communicate the results of their experience and to agree on measures to be taken in the interests of the work.*

*Article 10: The exchange of communications between the Committees of the various countries shall be made for the time being through the intermediary of the Geneva Committee.*

*Independently of the above Resolutions, the Conference makes the following Recommendations:*

*A. that Governments should extend their patronage to Relief Committees which may be formed, and facilitate as far as possible the accomplishment of their task;*

*B. that in time of war the belligerent nations should proclaim the neutrality of ambulances and military hospitals, and that neutrality should likewise be recognized, fully and absolutely, in respect of official medical personnel, voluntary medical personnel, inhabitants of the country who go to the relief of the wounded, and the wounded themselves;*

*C. that a uniform distinctive sign be recognized for the Medical Corps of all armies, or at least for all persons of the same army belonging to this Service; and that a uniform flag also be adopted in all countries for ambulances and hospitals”.*<sup>51</sup>

The resolutions of the 1863 Conference constituted, for more than 60 years, the basis of the National Red Cross and Red Crescent Societies, which exist today in 186 countries. They were the statutory framework of the Movement until the adoption, by the Thirteenth International Conference of the Red Cross which met in The Hague in 1928 of the Statutes of the International Red Cross.

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<sup>51</sup> *Compte rendu ... 1863*, pp. 147-149; *Handbook of the International Red Cross and Red Crescent Movement*, pp. 613-615; *The Laws of Armed Conflicts*, pp. 275-277.

### III. FROM THE FOUNDATION OF THE RED CROSS TO THE FIRST GENEVA CONVENTION

“Each country shall have a Committee ...” - easier said than done! The course was set, but there was still a long way to go in forming the committees, in approaching governments for support;

Similarly, the granting of neutral status to medical personnel and the wounded was no more, at that stage, than a wish expressed by an international conference without any legal authority. To transform it into reality there had to be a legal rule, as part of a treaty.

Reading between the lines of the 1863 text, we see that there was work still to be done. This was to fall quite naturally on the shoulders of the International Committee, that was more than willing to carry the task.<sup>52</sup>

Bolstered by the success of the October 1863 conference and the new authority it had been given, the Committee set about tackling these tasks.

In the following months, the first relief societies were founded: Württemberg, the Grand Duchy of Oldenburg, Belgium, Prussia.<sup>53</sup> From Geneva, the Committee spurred on the conference participants, encouraging them in their efforts to create national committees, asking for government support, sending out copies of the conference proceedings - in short, it

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<sup>52</sup> This was how the Committee understood it, anyway: “*The work of the Conference would have been incomplete and sterile if it had restricted itself to passing Resolutions and Recommendations, without concerning itself about what would have to be done after the delegates went home: action was needed to put the votes into effect. This is why the Conference charged the Geneva Committee to see that what had been deemed good and desirable in theory would be put into practice as quickly as possible*”, Communication by the International Committee dated 15 June 1864, reproduced in: *Actes du Comité international, 1871*, p. 18. See also LUEDER, *op. cit.*, p. 73.

<sup>53</sup> BOISSIER, *op. cit.*, pp. 87-88.

tried to sustain, in the various capital cities, the enthusiasm which had inspired the drafting and adoption of the conference Resolutions.<sup>54</sup>

At the same time, the Committee was discussing how to bring about a diplomatic conference which would transform the October Recommendations into treaty-based rules, binding on governments. Beginning on 15 November, it initiated consultations to this effect;<sup>55</sup> it also sought the support of a government which would agree to convene such a conference.

Clearly, the Committee saw two important fields of activity opening before it, of almost frightening proportions. However, a new impetus to its work was shortly to come from a quite different, and unexpected quarter.

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On 1 February 1864 Prussian and Austrian troops crossed the Eider river and invaded Denmark. Ostensibly, this was of no concern to the Geneva Committee, which had no authority to intervene on the battlefield; the Committee's mission had been to promote an idea, and the recently adopted Resolutions assigned responsibility for relief activities to the national committees.

Humanitarian action, however, like war itself, has its own momentum and once a commitment has been made it is hard to escape from it. The Committee very soon decided to send two delegates to the scene.

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<sup>54</sup> Circular dated 15 November 1863 and Communication dated 15 June 1864, *Actes du Comité international, 1871*, pp. 9-10 & 17-36.

<sup>55</sup> The Circular of 15 November 1863 is reproduced in the *Actes du Comité international, 1871*, pp. 9-10.

The purpose of their mission was twofold: to give whatever help they could to the wounded and to see how the Resolutions could be put into effect - in other words, assist, observe and report back.<sup>56</sup>

But there was a further undeclared aim in sending two delegates to the war front. The delegates' mission reports were published by the Committee in a book entitled *Secours aux Blessés (Aid for the Wounded)*;<sup>57</sup> this also included an historical introduction reproducing Dr. Brière's study on the *ad hoc* agreements reached in the eighteenth century to declare ambulances neutral. The reports were followed by an article, by Dr. Maunoir, on the work of the voluntary relief committees during the American Civil War, showing the enormous achievements of the Sanitary Commission.

This unusual step, of publishing four apparently unrelated documents under a very general heading - Aid for the Wounded - seems intended to reinforce the Committee's argument, to justify its proposals as not only sound in principle but also feasible in practice. To those who accused the Committee of daydreaming, Moynier and his colleagues replied by giving hard facts.

As in the case of Solferino, action preceded regulation.

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The Committee had a further reason for providing such evidence. A difficult challenge lay ahead: preparations for a diplomatic conference at which its proposals were to be considered not by a group of presumably well-meaning philanthropists, who needed little winning over, but by official envoys whose primary concerns were for their countries' national interests. The Committee's plan had to be presented in such a way as to preclude any objections.

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<sup>56</sup> The report on Dr. Appia's mission to the Prussian front in Schleswig appeared in *Secours aux Blessés: Communication du Comité international faisant suite au compte rendu de la Conférence internationale de Genève*, Imprimerie Fick, Geneva, 1864, p. 45.

<sup>57</sup> *Secours aux Blessés: Communication du Comité international faisant suite au compte rendu de la Conférence internationale de Genève*, Imprimerie Fick, Geneva, 1864; *Actes du Comité international, 1871*, p. 36.

As the Committee itself could not convene such a conference, it had to receive the support of a government. And while it hoped the meeting could take place in Geneva, it felt that it needed to be called by a major power. Writing in those terms, it first contacted Paris.<sup>58</sup>

The French government passed the ball to the authorities in Berne: in a letter dated 21 May 1864, it said:

*“As the meeting will take place within the Swiss Confederation, diplomatic usage dictates that the official invitations to the various governments should be addressed by the Federal Council ...”*<sup>59</sup>

Why did Paris step aside in favour of Berne? Was it really in order to respect diplomatic practice as M. Drouyn de Lhuys, the French Foreign Minister, indicated? Was it perhaps out of reluctance to get involved in a rather uncertain venture? Or did France believe it wiser for a small country, whose status of permanent neutrality prevented it from becoming involved in Europe's disputes, to take the initiative of organizing a conference whose aim was to enshrine the neutrality of medical personnel?<sup>60</sup>

The official records give no definite answer. However, that letter of 21 May marks the start of the close association between the Swiss government and international humanitarian law.

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<sup>58</sup> Letter to the Emperor Napoleon, 2 May 1864, *Actes du Comité international, 1871*, pp. 13-14.

<sup>59</sup> Letter from M. Drouyn de Lhuys, French Foreign Minister, to Dr. Kern, Swiss minister in Paris, 21 May 1864, authenticated copy, ICRC Archives, historical collection, file "Correspondance avec la France, 1863-1870", carton 6/1; BOISSIER, *op. cit.*, pp. 108-109.

<sup>60</sup> The latter interpretation seems to be the one upheld by General Dufour in his opening speech to the Diplomatic Conference of August 1864, *Compte rendu de la Conférence internationale pour la Neutralisation du Service de Santé militaire en Campagne, réunie à Genève du 8 au 22 août 1864* (hereinafter: *Compte rendu ... 1864*). A manuscript version of the proceedings is held by the ICRC library; it is reproduced in DE MARTENS, *Nouveau Recueil général de Traités*, vol. XX, pp. 375-399, and in the *Revue internationale de la Croix-Rouge*, No. 425, May 1954, pp. 416-423; No. 426, June 1954, pp. 483-498; No. 427, July 1954, pp. 573-586. See also BOISSIER, *op. cit.*, p. 115.

After being approached by the International Committee,<sup>61</sup> Berne sent an invitation, dated 6 June 1864, to all the governments of Europe (including the Ottoman Empire), as well as to the United States, Brazil and Mexico.<sup>62</sup>

The International Conference for the Neutralization of Medical Personnel in the Field took place from 8 to 22 August 1864, in the presence of delegates from sixteen nations.

Moynier and General Dufour took part as members of the Swiss delegation, with Dufour presiding over the meeting. The other members of the Geneva Committee were allowed to sit in on the discussions, as non-participating observers. Dr. Brière was appointed secretary.<sup>63</sup>

This was a Diplomatic Conference with a difference: its purpose was not to reach a post-conflict settlement, nor to mediate between opposing interests, but to lay down general rules for the future. This was clearly summarized in the Swiss delegation's report to Berne:

*“As is rarely the case in a diplomatic congress, there was no question of a confrontation over contradictory interests, nor was it necessary to reconcile opposing requests. Everyone was in agreement. The sole aim was to reach formal agreement on a humanitarian principle which would mark a step forward in the law of nations, namely the neutrality of wounded soldiers and of all those looking after them. This was certainly the wish expressed by the Conference of October 1863 and was the starting point for the 1864 discussions”.*<sup>64</sup>

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<sup>61</sup> Letter to the Swiss Federal Council, 26 May 1864, *Actes du Comité international, 1871*, pp. 15-16.

<sup>62</sup> *Message du Conseil fédéral à l'Assemblée fédérale touchant la Convention conclue à Genève pour l'amélioration du sort des militaires blessés dans les armées en campagne* (21 September 1864), Federal Chancery, Berne, 1864, pp. 3-4.

<sup>63</sup> *Compte rendu ... 1864*, pp. 1-10; see also BOISSIER, *op. cit.*, p. 114-119.

<sup>64</sup> *Le Congrès de Genève: Rapport adressé au Conseil fédéral par MM. Dufour, Moynier et Lehmann, Plénipotentiaires de la Suisse*, Imprimerie Fick, Geneva, 1864, p. 3 (the report is included in *Actes du Comité international, 1871*, pp. 44-49).

The International Committee had prepared a draft convention which was adopted as the basis for discussion.<sup>65</sup> The only point on which views diverged was that of neutral status for volunteer medical personnel; the French delegates, in particular, said they had no authority to sign a convention mentioning voluntary nurses, whereas other delegations wanted the volunteers to be duly protected. The conference finally agreed on a compromise: since voluntary nurses would be subject to military discipline, they would be considered part of the military medical services, thus ensuring their neutrality even though they were not specifically mentioned in the convention.<sup>66</sup>

Practically speaking, the result was the same; but from a legal point of view, the compromise meant that the convention gave relief committees and their volunteers no recognized, independent status. As for the International Committee, neither its position nor its role were discussed.<sup>67</sup>

The Geneva Convention was signed on 22 August 1864. No other legal text had ever brought such influence to bear on the relations between opposing parties in wartime. The text is as follows:

***CONVENTION FOR THE AMELIORATION OF THE CONDITION  
OF THE WOUNDED IN ARMIES IN THE FIELD***

*"Article 1. - Ambulances and military hospitals shall be recognized as neutral and, as such, protected and respected by the belligerents as long as they accommodate wounded and sick.*

*Neutrality shall end if the said ambulances or hospitals should be held by a military force.*

*Article 2. - Hospital and ambulance personnel, including the quartermaster's staff, the medical, administrative and transport services, and the chaplains, shall have the*

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<sup>65</sup> *Compte rendu ... 1864*, p. 9; *Le Congrès de Genève*, p. 3.

<sup>66</sup> *Compte rendu ... 1864*, pp. 10-12.

<sup>67</sup> At any rate, there is no record of any such discussion to be found in the conference proceedings.

*benefit of the same neutrality when on duty, and while there remain any wounded to be brought in or assisted.*

*Article 3. - The persons designated in the preceding Article may, even after enemy occupation, continue to discharge their functions in the hospital or ambulance with which they serve, or may withdraw to rejoin the units to which they belong.*

*When in these circumstances they cease their functions, such persons shall be delivered to the enemy outposts by the occupying forces.*

*Article 4. - The material of military hospitals being subject to the laws of war, the persons attached to such hospitals may take with them, on withdrawing, only the articles which are their own personal property.*

*Ambulances, on the contrary, under similar circumstances, shall retain their equipment.*

*Article 5. - Inhabitants of the country who bring help to the wounded shall be respected and shall remain free. Generals of the belligerent Powers shall make it their duty to notify the inhabitants of the appeal made to their humanity, and of the neutrality which humane conduct will confer.*

*The presence of any wounded combatant receiving shelter and care in a house shall ensure its protection. An inhabitant who has given shelter to the wounded shall be exempted from billeting and from a portion of such war contributions as may be levied.*

*Article 6. - Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for.*

*Commanders-in-Chief may hand over immediately to the enemy outposts enemy combatants wounded during an engagement, when circumstances allow and subject to the agreement of both parties.*

*Those who, after their recovery, are recognized as being unfit for further service, shall be repatriated.*

*The others may likewise be sent back, on condition that they shall not again, for the duration of hostilities, take up arms.*

*Evacuation parties, and the personnel conducting them, shall be considered as being absolutely neutral.*

*Article 7. - A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties. It should in all circumstances be accompanied by the national flag.*

*An armband may also be worn by personnel enjoying neutrality but its issue should be left to the military authorities.*

*Both flag and armband shall bear a red cross on a white ground.*

*Article 8. - The implementing of the present Convention shall be arranged by the Commanders-in-Chief of the belligerent armies following the instructions of their respective Governments and in accordance with the general principles set forth in this Convention.*

*Article 9. - The High Contracting Parties have agreed to communicate the present Convention with an invitation to accede thereto to Governments unable to appoint Plenipotentiaries to the International Conference at Geneva. The Protocol has accordingly been left open.*

*Article 10. - The present Convention shall be ratified and the ratifications exchanged at Berne, within the next four months, or sooner if possible.*

*In faith whereof, the respective Plenipotentiaries have signed the Convention and thereto affixed their seals.*

*Done at Geneva, this twenty-second day of August, in the year one thousand eight hundred and sixty-four”.*<sup>68</sup>

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<sup>68</sup> *Compte rendu de la Conférence internationale pour la Neutralisation du Service de Santé militaire en Campagne*, Annex B; *Handbook of the International Red Cross and Red Crescent Movement*, inset following p. 19; DE MARTENS, *Nouveau Recueil général de Traités*, first series, vol. XVIII, pp. 612-619; *The Laws of Armed Conflicts*, pp. 279-283.



As 1864 drew to a close, the members of the International Committee were able to take stock of their achievements since that first meeting on 17 February the previous year. They certainly had reason to feel satisfied.

The October 1863 Conference had laid the foundations for the relief societies; since then, several National Committees had been formed in numerous States - in Württemberg, Oldenburg, Belgium, Prussia, Denmark, France, Italy, Mecklenburg-Schwerin, Spain, Hamburg and Hesse.<sup>69</sup> And during the war over Schleswig-Holstein, the Prussian Society had actually provided assistance to wounded soldiers, showing that the 1863 Resolutions were far from unrealistic. The initial idea was becoming a reality.

The Geneva Convention had become part of the law of nations, and within four months it had been ratified by France, Switzerland, Belgium, the Netherlands, Italy, Spain, Sweden and Norway, Denmark and the Grand Duchy of Baden.<sup>70</sup>

So, barely five years after the battle of Solferino, the Committee's objectives were well on the way to being achieved. With splendid enthusiasm, the young relief societies had set to work and would soon have created a close network of national committees and local branches throughout Europe and would soon extend to other continents.<sup>71</sup> Governments, too, were eagerly ratifying the Geneva Convention, which before long would have attained an unprecedented level of universal acceptance.

The five members of the International Committee had clearly the feeling that they “invented” a new branch of the law with the adoption of the first Geneva Convention. A feeling widely shared by the people of their time. We know today that rules limiting violence in war can be traced in all civilisations, since the limitation of violence is in the very essence of civilisations.

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<sup>69</sup> MOYNIER, *La Croix-Rouge, Son Passé et son Avenir*, pp. 278-279.

<sup>70</sup> *Ibid*, pp. 276-277.

<sup>71</sup> In the 1880's, National Red Cross Societies were set up in Peru (1880), Argentina (1881), United States (1882) and Japan (1887).

These rules were not necessarily the same as the ones we know today because they reflected the needs and values of the civilizations in which they developed. For example, the ancient Greeks were hardly concerned about the fate of prisoners captured in battle, who were reduced to slavery if not slaughtered.<sup>72</sup> On the other hand, they attributed considerable importance to the fate of the dead. After every battle, the victor was duty bound to declare a truce and to allow the vanquished to collect their dead and give them their last rights.<sup>73</sup>

The ancient Hindu law of armed conflict, founded on the principle of humanity, had many rules limiting violence.<sup>74</sup> The *Upanishads* taught that all human beings are the work of one Creator and that all are His children.<sup>75</sup> The ancient Hindus recognized the distinction between military objects, which could be the targets of attack, and non-military objects, which could not.<sup>76</sup> Warfare, as a rule, was confined to combatants. Consequently, the targets of attack

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<sup>72</sup> Pierre DUCREY, *Le traitement des prisonniers de guerre dans la Grèce antique, Des origines à la conquête romaine*, Paris, Éditions É. de Boccard, 1968.

<sup>73</sup> Reference may be made to many examples quoted by Thucydides: *History of the Peloponnesian War*, Book I, Chapter I, para. 63; Book II, Chapter II, para. 79; Chapter III, para. 92, etc.

<sup>74</sup> For a general study of the Hindu law of armed conflict in ancient India, see Harbans S. BHATIA (ed.), *International Law and Practice in Ancient India*, 1977; Hiralal CHATTERJEE, *International Law and Inter-state Relations in Ancient India*, 1958; V. S. MANI, "International humanitarian law: An Indo-Asian perspective", *International Review of the Red Cross*, Vol. 83, No. 841, March 2001, pp. 59-76; Manoj Kumar SINHA, "Hinduism and international humanitarian law", *International Review of the Red Cross*, No. 858, June 2005, pp. 285-294; Nagendra SINGH, *India and International Law*, Vol. 1, 1973; Sekharipuram V. VISWANATHA, *International Law in Ancient India*, 1925. For an illustrated exposition on the law of war in ancient India, see "War in ancient India" in *A Tribute to Hinduism – [http://www.atributetohinduism.com/War\\_in\\_Ancient-India.htm](http://www.atributetohinduism.com/War_in_Ancient-India.htm)* [104 pages, 23 April 2004].

<sup>75</sup> Lakshmikanth R. PENNA, "Written and customary provisions relating to the conduct of hostilities and treatment of victims of armed conflicts in ancient India", *International Review of the Red Cross*, No. 271, July-August 1989, pp. 333-348. The *Upanishads*, one of the sources of Hindu Law, consist of 112 speculative and mystical scriptures of Hinduism. They are best known for their doctrine of *brahman*, the ultimate and universal reality of pure being and consciousness, and the identification of *brahman* with *atman* (the inner-self, or soul), by whose realization man transcends joy, sorrow, life and death, and is wholly freed from transmigration (PENNA, *loc. cit.*, p. 335).

<sup>76</sup> In the words of Megasthenes, the Greek ambassador of Seleucus Nicator at the Court of Emperor Chandragupta Maurya at Patalipuram, "Whereas among other nations it is usual, in the contests of war, to ravage the soil, and thus reduce it to an uncultivated waste, among the Indians, on the contrary, by whom husbandmen are regarded as a class that is sacred and inviolable, the tillers of the soil, even when the battle is raging in their neighbourhood, are undisturbed by any sense of danger, for the combatants of either side in waging the conflict

were the armed forces, wherever they existed. Neither cities nor towns were allowed to be ravaged during war, not even while the armed forces were marching through them.<sup>77</sup>

Similarly, the Muslim community had to deal with war from the early days of Islam; from then on it established rules to determine the methods and means of combat and to protect the wounded, prisoners and civilians, places of worship and monasteries.<sup>78</sup> Like the entire Islamic legal system, humanitarian law in Islam is based primarily on rules taken from *The Koran*.<sup>79</sup>

Similarly, in Mediaeval Europe, the Church endeavoured to establish rules limiting violence in war.<sup>80</sup>

However, those traditional rules, which were generally religious in inspiration or based on chivalric codes, were respected by peoples who spoke the same language, shared the same culture and worshipped the same god. By contrast, they were all too often ignored when war broke out between nations from different cultural areas or which did not worship the same

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make carnage of each other but allow those engaged in husbandry to remain quite unmolested. Besides, they neither ravage an enemy's land with fire, nor cut down its trees." Cited by PENNA, *loc. cit.* pp. 338-339, who refers to John W. MCCRINDLE, *Ancient India as described by Megasthenes*, Calcutta, 1926, p. 33.

<sup>77</sup> We are most grateful to Professor Lakshmikanth Rao Penna of the National University of Singapore, who kindly gave us valuable insights into the law applicable in ancient India.

<sup>78</sup> See, for example, Muhammad ibn al-Hasan al-SHAYBANI, *Kitab al-Siyar al-Saghir* (The Shorter Book on Muslim International Law), edited, translated and annotated by Mahmood Ahmad Ghazi, Islamic Research Institute, International Islamic University, Islamabad, 1998. There is an abundant supply of literature on Islam and international humanitarian law. Among recent publications, reference may be made to Said EL-DAKKAK, "International humanitarian law between the Islamic concept and positive law", *International Review of the Red Cross*, No. 275, March-April 1990, pp. 101-114; Zidane MERIBOUTE, *La fracture islamique : demain, le soufisme ?* Paris, Fayard, 2004, in particular pp. 153 ff (English translation: *Islam's Fateful Path: The Critical Choices Facing Modern Muslims*, London, I.B. Tauris & Co Ltd, publication pending); Ameer ZEMMALI, *Combattants et prisonniers de guerre en droit islamique et en droit international humanitaire*, Paris, Éditions A. Pedone, 1997; Sheikh Wahbeh AL-ZUHILI, "Islam and International Law", *International Review of the Red Cross*, No. 858, June 2005, pp. 269-283.

<sup>79</sup> See for instance Sutra 2 ("The Cow") and sutra 5 ("The Table").

<sup>80</sup> Henri COURSIER, "Études sur la formation du droit humanitaire", *RICR*, N° 389, mai 1951, pp. 370-389; N° 391, juillet 1951, pp. 558-578; N° 396, décembre 1951, pp. 937-971; N° 403, juillet 1952, pp. 550-578.

god. There is no need at this juncture to recall the atrocities perpetrated during the Crusades and the wars of religion.<sup>81</sup>

By basing international law on the consent and practice of sovereigns and States, Grotius and the other founding fathers of contemporary public international law<sup>82</sup> paved the way for that law to assume universal dimensions, applicable both in peacetime and wartime and able to transcend cultures and civilizations.

However, Henry Dunant and his colleagues took the codification of international humanitarian law a decisive step forward. By instigating the adoption of the original Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864, Dunant and the other founders of the International Committee of the Red Cross laid the cornerstone of treaty-based international humanitarian law established on agreement between States and freed of any link to the religious substratum, which thus enabled it to aspire to universality. They thus opened the way for contemporary international humanitarian law.

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<sup>81</sup> The Latin chroniclers recounted without flinching the massacres with which the Crusaders sullied their victory over Jerusalem. For instance, Matthew of Edesse recounts that Godefroy de Bouillon sacrificed 65,000 “infidels” in the Temple in Jerusalem. Paul ROUSSET, *Histoire des Croisades*, Paris, Éditions Payot, 1978, pp. 104-105; Zoé OLDENBOURG, *Les Croisades*, Paris, Gallimard, 1965, pp. 154-156; Steven RUNCIMAN, *A History of the Crusades*, vol. I, *The First Crusade*, Harmondsworth, Penguin Books, 1971, p. 287. As for the Muslim chroniclers, they were invariably extremely severe in their judgement of the Crusaders’ conduct.

<sup>82</sup> By this we do not mean that international law began with Grotius. Grotius had his predecessors in Europe, particularly in Spain, who, in turn, had been preceded by Muslim lawyers. Nonetheless, it is the positivist conception of Grotius and his successors, particularly Pufendorf and Vattel, which became predominant in Europe and throughout the world.

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