

CHAPTER 1

GENERAL OUTLINE

1. THE HISTORICAL BACKGROUND

Ever since he first witnessed the horrors of armed warfare on the battlefield of Solferino in Italy in June 1859, the Swiss citizen Henry Dunant never ceased in his quest for ways and means of protecting the men and women who were the victims of such conflicts and the personnel responsible for their care. His plan was to create, in time of peace, private relief societies in every country, which would be able to help the wounded in time of war. Four citizens of Geneva joined him to carry out this ambitious idea: General Dufour; Gustave Moynier, a lawyer; Dr. Appia and Dr. Maunoir. In 1863 they founded the “International Committee for the Relief of the Wounded”, commonly known as the “Committee of Five”, which was later to become the International Committee of the Red Cross (ICRC).

Henry Dunant was thus the first to have thought up the idea of the Red Cross. Together with the Committee of Five, he worked to create the Red Cross movement, which now has more than 250 million members throughout the world, united in helping human beings in suffering and distress.

In response to the appeal by the International Committee of the Red Cross, representatives from



Henry Dunant

various countries met in Geneva in October of the same year and decided to establish relief societies to assist the wounded and associations of “voluntary relief workers”, which were later to be called the National Red Cross Societies.

The International Committee recognized the need to obtain neutral status for the wounded victims of hostilities who were no longer engaged in combat (and consequently should no longer be regarded as “adversaries”), and likewise for the personnel responsible for taking care of them, to enable them to perform their humanitarian task.

But to put a concept of such vast scope into practical effect, the co-operation of the various governments was indispensable. Accordingly, the five founders of the Red Cross persuaded the Swiss Government to lend them its support by convening a Diplomatic Conference to draft the text of an international treaty guided by this idea.

The Diplomatic Conference met in Geneva in August 1864. There, the representatives of 12 States signed a brief, international treaty containing ten articles only, entitled the “Geneva Convention of August 22, 1864, for the Amelioration of the Condition of the Wounded in Armies in the Field”.

The signing of this first “Geneva Convention” was a decisive step forward in the history of mankind, for it marked the inception of international humanitarian law destined to protect victims of armed conflict and the personnel responsible for their care.

There is therefore a close historical link between the Red Cross and humanitarian law. But whereas the States and their governments are responsible for international humanitarian law and its application, it must be borne in mind that the Red Cross is an organization which remains private and *independent*. The National Red Cross Societies, in the performance of their humanitarian activities, are auxiliaries of the public authorities in each of



their respective countries and are subject to its laws. Yet at the same time they remain independent of those public authorities, bound by the obligation to act at all times in accordance with the principles of the Red Cross.

The initial idea of the founders of the Red Cross—to promote the establishment of National Societies in the various countries of the world—soon spread. Within the first ten years after the institution was founded, 22 National Societies were formed. Today 128 countries in all four corners of the world have their own National Red Cross Society.

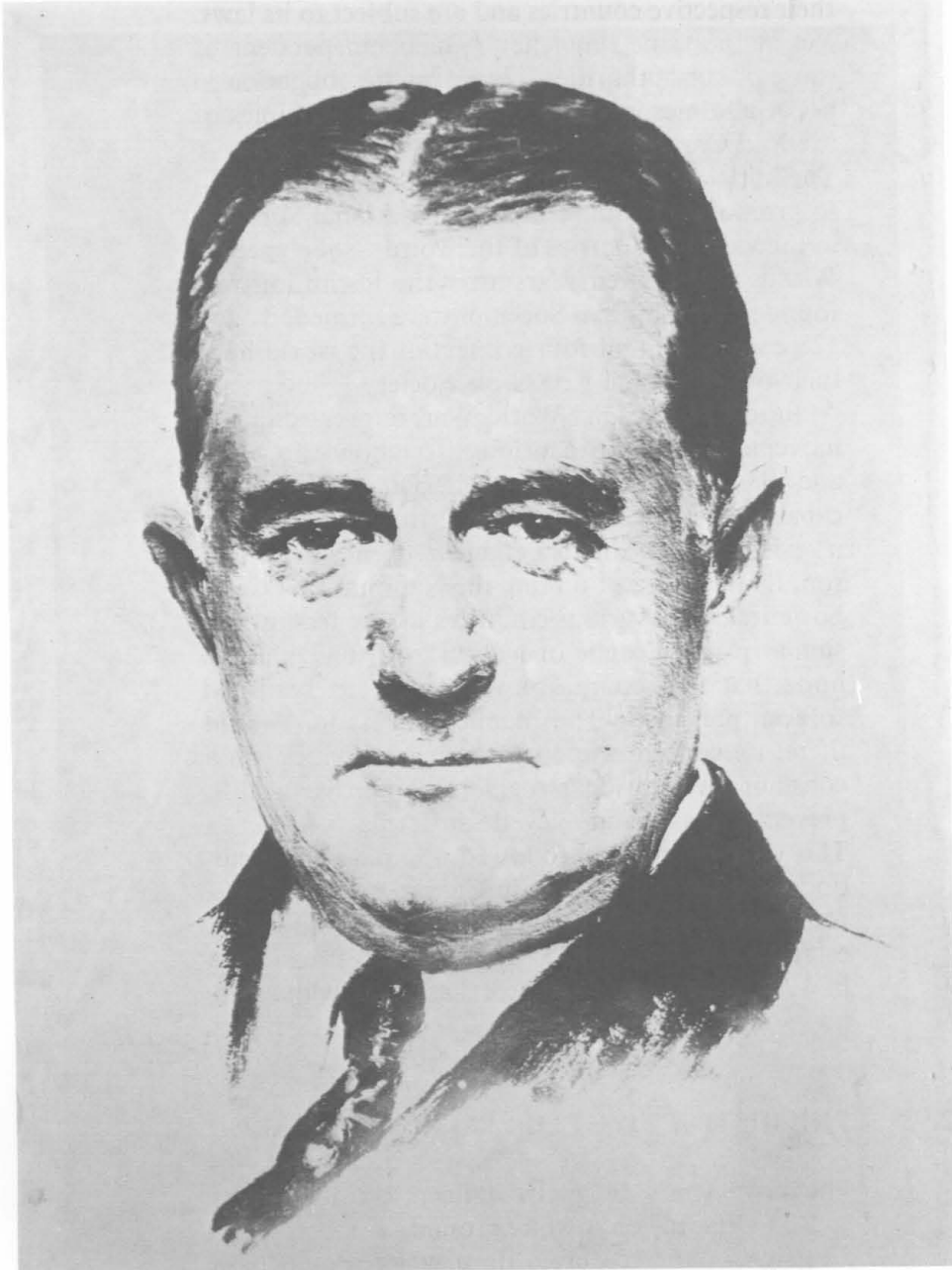
At the end of the First World War, impressed by the movement's rapid expansion throughout the world and the invaluable services it had proved itself capable of rendering during the first fifty years of its existence, an American banker, Henry P. Davidson, had the idea of uniting the National Red Cross Societies of the various countries in one federation, similar to the League of Nations. At that time the hope that the scourge of war had been banished forever prevailed. The planned federation would therefore concentrate on peacetime activities, on a constant, worldwide struggle to improve health, prevent sickness and alleviate suffering.

This idea was quickly followed up, and an international medical conference in Cannes resulted in the foundation of the League of Red Cross Societies, established in Paris on 5 May 1919 and transferred in 1939 to Geneva, where it has its headquarters now.

2. **THE DISTINCTIVE EMBLEM AND ITS VALUE**

The movement's distinctive emblem is a Red Cross or Red Crescent on a white ground.

The sign of the red cross on a white ground was chosen as a tribute to Switzerland by reversing the colours of the national flag, as the founders of the



Henry P. Davidson
Founder of the League of Red Cross Societies

movement were Swiss citizens. Later, the red crescent and the red lion and sun were also recognized as equally valid emblems, but only the first of these two emblems is currently in use.

In the event of armed conflict, use of the emblem is authorized for medical and religious personnel, both military and civilian, who are recognized as such by the Party to which they belong; the same applies for medical units and establishments and medical means of transport, equipment and material. In such cases it is a *protective sign*: the persons and objects displaying it must not be attacked, but on the contrary must be respected and protected. The National Red Cross Societies are allowed to use the emblem; they are entitled to display it both in peacetime and in time of war when engaged in their humanitarian activities, though always in accordance with the national laws, to designate persons and property belonging to them. In such circumstances the distinctive emblem does not confer the protection of the Geneva Conventions and Additional Protocols: its value is purely *indicatory*, showing that the persons and objects thus marked belong to the National Society. In wartime the indicatory sign must be comparatively small in size to avoid any confusion with the protective sign, and for the same reason it may not be placed on armlets or on the roofs of buildings.

The International Committee of the Red Cross, the League of Red Cross Societies and their duly authorized personnel are permitted to make use, at all times, of the distinctive emblem.

As an exceptional measure, and with the express permission of the National Society concerned, the distinctive emblem may be employed in time of peace to identify vehicles used as ambulances and to mark the position of first aid stations exclusively assigned to the purpose of giving free treatment to the wounded and sick.

3. **INTERNATIONAL HUMANITARIAN LAW**

As we have seen, the signing of the first Geneva Convention of August 22, 1864, marked the appearance of international humanitarian law as a new branch of international public law; international humanitarian law protects the victims of armed conflicts and the personnel responsible for taking care of them. This law has continued to develop ever since.

The initial idea which inspired it gave rise to a series of conferences convened in the light of additional experience of wars, of new theatres of operations (maritime warfare, the use of new offensive means, new weapons, etc.) and the need to provide better protection for the victims facing such changes and technological advances.

First of all, the protection ensured by the 1864 Geneva Convention for the Wounded and Sick of Armed Forces in the Field was improved (Conventions of 1906 and then of 1929). It was also adapted to the conditions of maritime warfare by a Convention signed at the Hague in 1899, which was replaced in 1907 by another Convention on the same issue. These Conventions were adopted in the course of Peace Conferences, which aspired to provide a universal settlement for all problems related to war.

The experience of the First World War, soon after, focussed attention on the need to improve the treatment of prisoners of war, and a Convention was concluded to this effect in Geneva in 1929. It extended and completed the provisions which had already been adopted in 1899 and 1907 at the aforesaid Peace Conferences.

Then, after the Second World War and the mass atrocities inflicted upon the civilian population, a fourth Geneva Convention appeared in 1949 to protect civilians in enemy or occupied territory.

The preceding Conventions were likewise reviewed at the 1949 Diplomatic Conference, with the result

that the four Geneva Conventions now in force all date from August 12, 1949, and are generally referred to as the “Geneva Conventions”.

These Conventions are as follows:

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention)

This Convention is the fourth version, extended and revised in the light of experience gained, of the Convention of 1864, the tangible embodiment of the principle which inspired the foundation of the Red Cross, namely that wounded and sick members of the armed forces shall be respected and cared for without distinction, particularly with regard to nationality; consequently military ambulances and hospitals and their medical personnel shall likewise be respected and protected, the visible sign of this immunity being the red cross or the red crescent on a white ground.

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention)

This Convention is an adaptation of the First Convention to conditions of maritime warfare. It has the same purpose, in different circumstances, as the first, and protects the same persons, whilst adding the shipwrecked as a specific category of victims of maritime warfare.

Geneva Convention Relative to the Treatment of Prisoners of War (Third Convention)

This Convention defines the rights and duties of members of the armed forces who are captured by the enemy and thus become prisoners of war.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Convention)

This Convention is essentially concerned with the protection of civilian persons in the power of a country at war. It may refer to persons who happen to be on the territory of the enemy State or to the entire population of an occupied territory.

The Geneva Conventions are now binding on 151 States, which virtually means on the entire international community. It is generally accepted that their fundamental provisions have the force of custom and are therefore binding on the whole of the international community. Besides the specific provisions proper to each one of them, the Geneva Conventions contain many provisions common to them all, relating, for instance, to their scope of application, the system of supervision and repression, their implementation, and the minimum provisions to be applied in the case of armed conflicts *not of an international character* (common article 3). Drawn up in the same spirit as that which inspired the first Convention in 1864, they all call for the respect and protection, in time of armed conflict, without discrimination, of all persons who do not or no longer take any active part in the hostilities.

Since the adoption of these Conventions in 1949, the number of armed conflicts has increased, more and more civilians have suffered the effects of ever deadlier weapons, and methods of guerrilla warfare have been widely employed. Moreover, most of these conflicts have not taken place between two or more States; they have flared up within the State itself, the result of clashes between rival factions, or between dissidents or liberation movements in opposition to the established government.

In view of such situations, two Additional Protocols to the Geneva Conventions of 1949 were first

drafted, then adopted by a Diplomatic Conference on June 8, 1977.

As these Protocols are “additional” to the Geneva Conventions, the latter retain their complete validity. The two Protocols are complementary to the four Conventions as a whole. The *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (Protocol I) is applied in the case of international conflicts, whilst the *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II) is complementary to article 3 common to all four Conventions and is applicable to the non-international armed conflicts.

The essential purpose of these Protocols is to ensure better protection for the entire civilian population during armed conflicts. When this Manual was published, they were formally binding only upon 20 States, but their principles are very widely accepted.

4. **ACTIVITIES OF MEDICAL PERSONNEL IN TIME OF ARMED CONFLICTS**

Conceived on a battlefield, the idea which inspired the creation of the Red Cross sprang from the desire to alleviate human suffering by helping and tending the wounded and the sick, which is the very purpose of the medical profession.

Ever since its emergence as an institution, the Red Cross has untiringly striven to find suitable ways and means of accomplishing this purpose, and the Geneva Conventions and Additional Protocols are the outcome of its endeavours. It has always fully realized the important part that medical personnel have to play, and from the very start it has ensured that such personnel, who are responsible for helping

the wounded and sick in the midst of battle should be respected and protected, in the same way as religious personnel. The latter's task is, indeed, complementary to that of the medical personnel, for they bring succour to the dying.

The provisions of international humanitarian law protect members of the medical personnel whose services are required during armed conflicts:

- if there is internal conflict within the territory of their own country, or
- if their country is engaged in armed conflict with another country, or
- if their country has been either wholly or partially occupied by another country, or, again,
- if their National Red Cross or Red Crescent Society, or their own country, which has remained neutral in relation to the conflict which has broken out, has decided to place medical personnel at the disposal of one of the belligerents or of the ICRC.

It must be borne in mind, however, that whereas the fundamental principles and general regulations of international humanitarian law apply to both international and non-international armed conflicts, the detailed regulations to which reference is made in this work are only explicitly applicable to international armed conflicts.

5. **DEFINITION OF MEDICAL PERSONNEL**

Protocol I of 1977 gives the following definition of medical personnel: Art. 8, P. I

“Medical personnel means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary.”

The medical purposes to which specific reference is made are “the search for, collection, transportation, diagnosis or treatment—including first-aid treatment—of the wounded, sick and shipwrecked, or for the prevention of disease”.

- 5.1. These definitions require the following explanations:

Medical personnel can be either military or civilian, but civilian personnel are not covered as such by international humanitarian law unless they have received an assignment from the Party to the conflict to which they belong. Thus a civilian doctor, who continues to practise during an armed conflict without having received a specific assignment from his country, is not included in the medical personnel referred to here. This restriction is justified by the fact that medical personnel enjoy certain privileges, and that since the country at war is responsible for any abuses which might occur, it must exercise a certain control over the persons to whom these privileges are granted.

- 5.2. The term “medical personnel” is not confined to the narrow meaning of the word. All personnel required to ensure the adequate treatment of the wounded and the sick are covered by the protection accorded to the medical personnel, so long as they form an integral part of the Medical Service. The term can consequently include, for instance, the hospital cook, the administrator or the mechanic in charge of the maintenance of medical vehicles. Many of the rights and duties ascribed to medical personnel are, however, primarily applicable to doctors and medical staff in the true sense of the word.

- 5.3. The assignment of medical personnel may be either permanent or temporary. In the latter case, the personnel in question will only be considered as medical personnel for the duration of their medical

assignment. But they must in any case be assigned *exclusively* to medical purposes in order to be entitled to the protection accorded to medical personnel, whether their assignment is for an indeterminate or limited period. They must on no account use such protection to engage in commercial activities, for example, and even much less to collaborate in military operations.

- 5.4. Besides the national medical personnel of the Parties to the conflict, foreign medical personnel can also provide their services in the event of armed conflict. Such personnel can be placed at the disposal of a Party to the conflict by a State which is not a Party to the conflict, or by a relief society (such as the National Red Cross and Red Crescent Societies) of such a State, or can be medical personnel working under the responsibility of the ICRC. The second category of personnel are the ones most frequently found in practice, placed at the ICRC's disposal by the National Red Cross or Red Crescent Societies.

6. **SOME IMPORTANT POINTS**

Medical personnel called into service when a conflict breaks out must bear the following points in mind:

- 6.1. It is the responsibility of the States, and also of all their citizens, whatever their occupation, to comply with the provisions laid down in the Conventions and Protocols, and to put them into practice. As citizens of a State bound by the Conventions (and by the Additional Protocols for some States), medical personnel are expected to comply with the provisions of these instruments, whether the provisions are included or not in their country's national legislation. Any contravention of these provisions is a breach of the law, which can make them liable to

penal sanctions, as we shall see below. It is therefore of capital importance for medical personnel to be fully acquainted with *their duties* and the *rights* to which they are entitled under international humanitarian law, knowing that they may find themselves confronted *quite unexpectedly, and at any moment* by situations in which these rights and duties must be put into effect.

- 6.2. These *rights* and *duties* have been defined to enable them to perform the humanitarian task entrusted to them, namely to help the victims of armed conflicts whenever such conflicts occur.
 - 6.2.1. The *duties* incumbent on them are directly linked, as we shall see, with *the rights of the protected persons placed in their care*. Thus the duty to give humane treatment to a wounded person is linked with the right of such a person to receive humane treatment; the duty which stipulates that no prisoner of war shall be subjected to any medical procedure contrary to his state of health, nor to any medical experiments, is linked with the prisoner's right to have his physical or mental integrity respected.
 - 6.2.2. The rights accorded to medical personnel by the Conventions and Protocols are given to enable them to perform their humanitarian task. Such personnel are, so to speak, an instrument needed for the protection of the wounded and sick, and the special rights to which they are entitled are granted for this reason. These rights are moreover directly connected with the *obligations incumbent on the State to which the medical personnel belong and upon the Parties to the conflict*. Thus the right of protection for medical personnel is, for example, linked with the duty, imposed upon the enemy, to respect such personnel; similarly their right of access to places where their services are required is linked with the

duty of the Parties to the conflict to allow them access to such places.

- 6.3. Among the *duties* incumbent upon medical personnel, a distinction can be made between those which involve an *action* and those which involve an *abstention*. There is an obligation, for example, to act when a sick or wounded person demands care, but there is also an obligation not to carry out certain acts, namely those which would be against patient's interests. On the other hand, not to net, e.g. not to provide a sick person with adequate care may constitute by itself a violation of medical personnel's duty.
- 6.4. Among the recognized *rights* of medical personnel, a distinction can likewise be made between those which imply *action* by the Parties to the conflict, such as providing medical personnel with all the help needed for them to accomplish their assistance mission as well as possible, and those which only imply a *duty to abstain* from taking action, such as not taking retaliatory measures against medical personnel.
- 6.5. In conclusion, it must be stressed once again that the Conventions and Protocols, in granting special rights to medical personnel called into service in the event of armed conflict, do so mainly to enable such personnel to perform their indispensable task of assisting the wounded and the sick.

Whenever, therefore, they claim an acknowledged right, medical personnel must always be aware of the duties it entails.