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LEAGUE OF RED CROSS SOCIETIES

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LEGAL PROTECTION OF NATIONAL RED CROSS

SOCIETIES

(Item 7 on the Agenda of the Legal Commission)

Memorandum by the Secretariat of the League
of Red Cross Societies

LEGAL PROTECTION OF NATIONAL

RED CROSS SOCIETIES

The distressing experiences of certain Red Cross Societies during the last war has led these Societies to endeavour to obtain greater effective and legal protection than they have enjoyed in the past. With this end in view, the Red Cross Societies expressed the desire, after the war, that the federative character of the League should be strengthened and that it should be given wider powers justifying its intervention in case of necessity.

Article 3, paragraph 4 of the Articles of Association of the League, revised by the XIXth Meeting of the Board of Governors at Oxford in 1946, now stipulates that the League is the "guardian of the integrity of its members and the protector of their interests".

In order to strengthen this new mandate entrusted to the League, the revised Article 4 continues as follows:*

"If an occupying power suppresses a national Red Cross Society which has obtained formal recognition, the Executive Committee of the League shall meet forthwith to examine in what circumstances such suppression took place and shall take every action which is possible and appropriate, at the same time appealing to the conscience of the world.

The same procedure shall be followed if in consequence of the total or partial occupation of a country, the occupying power interferes in the administration of the Red Cross of the occupied country or in any way impedes the Society in the pursuit of its aims or replace it by a puppet Society."

"Any member Society trespassing, either on its own initiative or under pressure from its own Government, against the fundamental Red Cross principle of neutrality in respect to political or sectarian activity or acting in a manner subversive of the social institution existing outside its own country or using its connection with the League for any purposes contrary to the principles of the Red Cross, may be suspended for a fixed period, and for a second offence may be expelled from the League by Resolution of the Board of Governors voting by a two-thirds majority of the members present.

After hearing the facts, the Board of Governors shall be under no obligation to state the grounds of its decision, beyond recording that it has found facts within this provision."

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The text underlined represents the modifications made to the Articles of Association by the Board of Governors, at its XIXth Meeting.

The problem was still further studied when the Executive Committee of September 1947 discussed, under Item 9 on the Agenda, the procedure to be followed for application of Art.3, para.4 of the Articles of Association of the League, quoted above. The principle of the League, "guardian of the integrity of its members and the protector of their interests", had to be completed by provisions enabling the League to act according to definite rules. The protection of the independence of a national Society was considered from various points of view by the Peace and General Studies Commission in March 1948. The following conclusions were reached by this Commission and adopted by the League Executive Committee in March 1948.

(a) The integrity of a national Society menaced by its own action.

The principle of the League's intervention in this case, having been established by Article 4 of the Articles of Association, the Commission decided that the Executive Committee should adopt a resolution which would be communicated to the Society concerned. This procedure would, however, be applicable prior to the procedure laid down in Article 4 of the League's Articles of Association:

"In a case where the integrity of a National Society is menaced by its own action, the warning of the League should take the form of a Resolution by the Executive Committee, which would be communicated by the Secretariat to the Society concerned. This procedure would be applicable prior to the procedure laid down in Article 4 of the Articles of Association, which stipulates action by the Board of Governors."

(b) The integrity of a national Society menaced by restrictive action of its own Government.

This point immediately raises the problem of the independence of national Societies with regard to their Governments. This question has for a long time preoccupied the heads, national and international, of the Red Cross. Although this independence has always been considered as one of the principles of the Red Cross, it has not been laid down in an international Convention.

The international Conferences of the Red Cross have indirectly alluded to this independence and the Articles of Association of the League of Red Cross Societies contain the following phrase:

ARTICLE 3

The objects of the League are to encourage and facilitate at all times Red Cross action for the relief of suffering humanity. It shall for this purpose:

- (1) Encourage and promote in every country the establishment and development of a duly authorised voluntary national Red Cross Society working in accordance with the principles of the Geneva Convention and with the principles adopted by the League of Red Cross Societies.

The "Principles" of the League adopted at Oxford contain the following declaration:

"The Board of Governors agrees that the fundamental principles of the institution of the Red Cross and Red Crescent up to the present time have been the following: "The impartiality, the political, religious and economic independence, the universality of the Red Cross and the equality of the National Red Cross Societies ..."

Number 4 of the "Application of Principles" is drafted as follows:

4. A Red Cross Society should maintain its position as an independent voluntary organisation as recognised by the Government, local authorities and other voluntary organisations engaged in similar work, as the privileged status of the Red Cross in war may be jeopardised if the Society does not retain its independence and maintain the integrity of its aims in accordance with Red Cross principles.

It is clear from these texts that the Red Cross Societies consider their right to political independence as certain, (i.e. their right and their duty not to concern themselves with politics) and consider that this right cannot be withdrawn by a governmental decision. It follows also that they have the right to organise themselves and to work freely without their structure or their programme being imposed upon them by the Government.

In order that these rights may exist in practice, it is very evident that they must be recognised and respected by the Government. As we observed above, there is no international Convention giving legal value to the independence of Societies. The Board of Governors of the League, at its Oxford session, conscious of this void, drew the attention of the UNO to the relations which should exist between the Governments and the national Red Cross Societies. As a result of the recommendation of the Board of Governors, the General Assembly of the UNO, unanimously adopted on November 14th, 1946, the following resolution:

"The General Assembly draws the attention of the members of the United Nations to the fact that the following purposes are of special concern, namely :

1. that the said Members should encourage and promote the establishment and co-operation of duly authorised voluntary National Red Cross and Red Crescent Societies;
2. that at all times the independent voluntary nature of the national Red Cross and Red Crescent Societies be respected in all circumstances, provided they are recognised by their governments and carry on their work according to the principles of the Geneva and Hague Conventions and in the humanitarian spirit of the Red Cross and Red Crescent Societies;

3. that the necessary steps be taken to ensure that in all circumstances contact may be maintained between the National Red Cross and Red Crescent Societies of all countries, so as to enable them to carry out their humanitarian task".

This resolution was adopted by the Commission of the United Nations General Assembly dealing with social, humanitarian and cultural questions and by the General Assembly, at its plenary meeting, on 19th November.

The importance of this resolution is obvious, since it constitutes a moral engagement on the part of the Governments to respect the independence and the voluntary character of the Red Cross. But it should not be considered that this resolution finally solves the problem, which has another aspect.

Indeed, if autonomy and independence are indispensable to a Red Cross Society, it is none the less true that there are obligatory relations between a Red Cross Society and its Government which confer certain rights on the Government and certain duties on the Red Cross.

In order that it may legally exist, a Red Cross Society must be recognised by its Government. It is therefore evident that its composition, its Statutes and its programme must be approved by the Government in order that the latter may accord recognition. On the other hand, the right to accord recognition evidently gives the Government the right to withdraw such recognition, if it judges fit. A Red Cross Society may, indeed, cease to represent a body with which the Government, in its view, can co-operate. Co-operation between a Red Cross Society and its Government is a fundamental necessity, and, while preserving their autonomy, all Red Cross Societies must maintain this relationship.

It may also happen that a Government, while continuing a certain degree of co-operation with its Red Cross Society, may consider that the latter does not fulfil the conditions which should govern its composition, its structure, its programme. The Government may be of opinion, for example, that the Society is not organised on the democratic principles which form the basis of recruitment of the members and the heads of Red Cross Societies, as recalled in principle No 9 adopted at Oxford. In such cases, it is obvious that the Government must be able to exercise its influence to help to re-establish in the Red Cross Society the conditions which allowed its recognition at the time it was founded.

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The protection of the integrity of national Societies formed the subject of proposals by the British and Italian Red Cross delegates.

Both agreed on laying down the principle that the relations between a Government and a national Red Cross or Red Crescent Society should conform to the resolution adopted on November 19th, 1946, by the General Assembly of the United Nations Organisation, the second paragraph of which states; "at all times the independent and voluntary nature of national Red Cross and Red Crescent Societies must be respected in all circumstances, provided they are recognised by their Governments and carry on their work according to the principles of the Geneva and Hague Conventions and in the humanitarian spirit of the Red Cross".

The question raised by the two delegations was whether the League should itself take the initiative without a Society having laid the matter before it. Various viewpoints were expressed on this subject, in particular one emphasizing that in practice a national Society cannot complain of its Government to the League. Several delegations also stressed the danger for the League of acting in a manner which might be interpreted as interference in the policy of a Government.

The right for the League to intervene on its own initiative was however established and the Commission decided, in order to proceed with prudence, that the circumstances of such intervention by the League should be defined by the Board of Governors:

"In a case where integrity is menaced by restrictive action of a Society's own Government, the League shall have the right to take the initiative of addressing itself to Governments to secure information on measures compromising the integrity of Red Cross Societies. This right, however, shall only be exercised in circumstances to be defined by the Board of Governors and according to the procedure which shall be laid down by that Board".

(c) The integrity of a national Society menaced by the action of an Occupying Power.

This case had already formed the subject of observations by Red Cross delegates at the first League meetings after the war. The Swedish Red Cross delegate pointed out also that this question would be examined by the XVIIth International Conference at Stockholm in the form of a draft Convention for the Protection of Civilian Populations. Two facts were brought out immediately by this discussion, namely, that a national Society might have its integrity menaced by an occupying power, either in time of war, or in case of undeclared hostilities.

The drafting of Article 4 of the Articles of Association (see above paragraphs 3 and 4) being so satisfactory, the members of the Commission decided to keep to the procedure laid down by the League Articles of Association for this latter case. On the proposal of the British Red Cross for cases where the hypothetical situation contemplated might arise in time of war, the Commission adopted a recommendation,

for the Executive Committee to submit to the International Conference, stipulating the action to be taken by the Board of Governors:

"In a case where integrity is menaced by the action of an Occupying Power, a Resolution of the Board of Governors shall be conveyed by the Secretariat of the League to the Red Cross Society of the Occupying Power, through the intermediary of the International Red Cross Committee".
