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# Max Huber and the Red Cross

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## Abstract

*Max Huber's exceptional academic, diplomatic and judicial career prepared him well for his role as president of the ICRC. Huber assumed the presidency in 1928, thereby taking on the heavy burden of piloting the institution during one of the worst periods of history, culminating with the Second World War. In a time of great danger to the fundamental humanitarian values and the unity of the Red Cross, Max Huber played an outstanding role in better identifying and defending the Red Cross principles, keeping the International Red Cross united and promoting humanitarian law. In spite of its important humanitarian activities, the ICRC was powerless to put a halt to the atrocities committed during the War and was subsequently criticized for having been too timid in denouncing them. This article traces Huber's leadership of the ICRC and the important impact his ideas had on the direction of the organization. Max Huber will certainly remain as one of the greatest personalities in the entire history of the Red Cross.*

## 1 Introduction

If we were to judge by the number of years of his presidency, this article could easily have been entitled 'Max Huber as the Red Cross', so close were the ties between the man and the institution for so many years. Huber had an intellect to be reckoned with; he not only produced a number of basic texts on international law but also numerous works on all aspects of the Red Cross, while serving at the same time as president of the International Committee of the Red Cross (ICRC) for many years, and hence playing a key role in the organization. He also played a pivotal role in the International Red Cross Movement. It is difficult to distinguish clearly between the thinker and the man who, throughout his presidency, had to provide the basic momentum for the actions of the ICRC and, often, of the Movement as a whole.

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While not having had the good fortune to know Max Huber, he was, as just mentioned, a prolific writer.<sup>1</sup> In addition, much has been written about him,<sup>2</sup> and about the activities of the Red Cross<sup>3</sup> during the crucial years of his presidency of the ICRC; those books and articles obviously scrutinize his work as president as well. The ICRC's archives provide another valuable source of information. Lastly, I had the good fortune to rub elbows for many years with Jean Pictet, Huber's spiritual heir (although he was never president of the ICRC) who spent many years working with him.

And yet, more than any of these sources, it is thanks to my many years with the ICRC that I best know Max Huber, for the choices and dilemmas facing the organization, its possibilities and limitations which he identified so well, his awareness of the scope of the task at hand and the humility with which he approached his work, are as relevant today as ever: there is nothing outdated in Max Huber's thoughts about the Red Cross. This being said, it is with all due modesty and without any pretensions of producing a comprehensive biographical or historical work in these few pages that I shall endeavour to convey my basic understanding of the relationship between this outstanding man and the Red Cross.

Max Huber, along with the ICRC, lived through many years that were as difficult as they were trying, culminating in the Second World War, which was – and we sincerely hope will remain – the worst man-made disaster in the entire history of humanity. This calamity, which was preceded by the long rise to power of Nazism, constantly tested the Red Cross, confronting it with moral dilemmas and daunting operational challenges. The ICRC responded with operations that were unprecedented in scope, for which it was awarded the Nobel Peace Prize in 1944. Yet, it did not escape subsequent criticism for not having reacted and protested with sufficient vigour in the face of the utter horror of the Holocaust and the Nazi policies of extermination of the Jewish people, gypsies and anyone else deemed to be deviant or simply disturbing.

If the praise showered on the ICRC is indivisible from the person of Max Huber, so too is his responsibility in terms of the criticisms directed at the organization. I shall therefore consider this aspect as well.

<sup>1</sup> He produced many writings as a 'legal scholar, moralist, sociologist', as Henri Coursier said; most of what he had penned by 1948—obviously, he did not stop then—was collected in three volumes entitled *Vermischten Schrifte* (1947–1948).

<sup>2</sup> One biography of Huber was written while he was still alive (F. Wartenweiler, *Max Huber* (1953)), and another appeared after his death (P. Vogelsanger, *Max Huber* (1967)); the countless articles printed to mark various birthdays (the ICRC published a collection of articles entitled *Hommages à Max Huber* (1949) to mark the 75th anniversary of his birth) and on the occasion of his death also spring to mind.

<sup>3</sup> In particular such basic works as A. Durand, *History of the International Committee of the Red Cross: from Sarajevo to Hiroshima* (1984); J.C. Favez, *Une mission impossible? Le CICR et les Camps de Concentration Nazis* (1988) (in 1999 Cambridge University Press published an English version, *The Red Cross and the Holocaust*, minus the first three chapters; the footnotes below therefore refer in some cases to the French original, in others to the English translation); and F. Bugnion, *The International Committee of the Red Cross and the Protection of War Victims* (2003).

## 2 Max Huber's Life at the Red Cross

When speaking of a man of Max Huber's stature, a person whose extraordinary career and qualities are by no means the subject of doubt, one tends to focus on the old man acclaimed by all. But Max Huber was not always 80 years old, and it is important to remember the brilliant and precocious young man he once was. Was he too brilliant for such a little country? The question is a valid one, not because he felt stifled in Switzerland, as Le Corbusier did, but because the way in which his talents were snapped up would seem to indicate that he stood out, in any event, in the Switzerland of the time.

### *A Contact with International Humanitarian Law: A First Taste of the Red Cross*

At the age of 28, Max Huber was already a professor at the University of Zurich Law Faculty, and at 31 he was nominated as member of the Swiss delegation to the Hague International Peace Conference. The youngest of the delegates, he nevertheless played a very active role. This was his first experience of diplomacy, but also his first encounter with the Red Cross.

Initiated by Tsar Nicolas II, with the goal of establishing permanent world peace, the Hague Conferences – the 1907 conference was the continuation of the first one held in 1899 – had had to lower their sights. Given the improbability of achieving that goal, the Conferences refocused on the problems that the Red Cross had tackled – and would have to deal with again – namely the observance of humanitarian standards in order to mitigate the effects of war. The agenda of the 1907 Conference covered occupation, neutrality, prisoners of war, the prohibition of certain particularly barbarous means of warfare, such as poison – all topics that would remain core ICRC concerns, and particularly for Max Huber.

However, before taking up new and decisive contacts with the Red Cross, Max Huber engaged in many varied activities, in the service of Swiss diplomacy, in Zurich politics and, above all, internationally: he acquired international standing<sup>4</sup> as a member, from its inception, of the Permanent Court of International Justice, the world's highest court, most especially as the Court's president, from 1924 to 1927, as well as for his *dicta* in the two major cases of arbitration of which he was the sole arbiter.<sup>5</sup> I shall not dwell on this period of his life as it is covered by other articles in this symposium; it is, however, important to situate the brilliant man that Max Huber was when he first started to forge a close and passionate relationship with the Red Cross,

<sup>4</sup> E.g., at the reception given at the International Court of Justice for the president of the Swiss Confederation on 25 May 2004, the President of the Court, Judge Shi Jiuyong, spoke at length about Max Huber and, in connection with Professor Guggenheim, of 'the great tradition of international law for which Switzerland has distinguished itself for over two centuries' and of Guggenheim's place as 'the successor of Vattel, Bluntschli and Huber, . . . his illustrious predecessors'.

<sup>5</sup> *Case of British property in Spanish Morocco*, arbitral award of 1 May 1925, Reports of International Arbitral Awards by the United Nations, ii, 615, and *Case of Island of Las Palmas*, *ibid.*, at 829 ff. See the contribution by Khan, 'Max Huber as Arbitrator: The *Palmas (Miangas)* Case and Other Arbitrations', this issue, at 145–170.

an institution with which he became one and which would increasingly engross him, gradually relegating all his other activities to the background.

### **B Contact with Gustave Ador: Discovering the Roots of the Red Cross**

The ICRC, which was presided over by another great man, Gustave Ador,<sup>6</sup> from 1910 to 1928, could not remain indifferent to a man of Huber's stature. Ador and Huber first met in the context of Swiss diplomacy. Along with William Rappard, Huber had been closely involved in the negotiations to enable Switzerland to join the League of Nations without losing its neutrality, at least in military terms. Finding themselves unable to convince their counterparts, Huber and William Rappard suggested that Gustave Ador, the then president of the Swiss Confederation, travel to Paris.

Let us therefore take a brief look at Gustave Ador. He was elected to the Federal Council late in life – in 1917 at the age of 72 – and for a relatively short spell, but he had already had extensive international experience, especially thanks to his long career at the ICRC, of which he became president in 1910. According to Antoine Fleury, Gustave Ador made a decisive contribution to the country's destiny between 1917 and 1920, and during the year in which he was president, also his last year on the Federal Council, 1919. He ably deployed his skills as a statesman in his relations with the principal decision-makers of post-World War I politics.<sup>7</sup>

Having gauged Huber's qualities, Gustave Ador did not hesitate for long: the ICRC needed young, gifted men; it could not let someone of Huber's fibre, who would, as Ador put it, 'bring real strength' to the Committee, out of its grasp. But Ador had to overcome an obstacle that brings a smile to our lips today: he had to convince his colleagues on the Committee to break with the tradition of recruiting strictly Genevans (Giuseppe Motta, before his own appointment, had even spoken of a 'neighbourhood committee', given that most of the Committee members lived in the same Geneva neighbourhood<sup>8</sup>) and to co-opt a man who, for all his brilliance, had his roots in Zurich.<sup>9</sup> He was, however, able to convince several reluctant members without too much difficulty, thanks in large part to Huber's personality.

Huber could have had no better mentor than Gustave Ador, who had been with the ICRC almost since it was founded. Indeed, Ador himself had been recruited and trained very early on by Gustave Moynier himself. And Moynier, let us not forget, was not only one of the ICRC's founding members, but, following the brief term of General Dufour (from 1863 to 1864), its president for 46 years<sup>10</sup> (he is relatively unknown today, history having retained Henry Dunant, the initiator, as the sole incarnation of the Red Cross). During those 46 years, Moynier was the organization's cornerstone,

<sup>6</sup> On Gustave Ador see, *inter alia*: R. Durand (ed.), *Gustave Ador, 58 ans d'engagement politique et humanitaire*, Proceedings of the Gustave Ador Seminar (1996).

<sup>7</sup> Fleury, 'Le Négociateur et le délégué à la Société des Nations', in *ibid.*, at 296.

<sup>8</sup> See Durand, *supra* note 3, at 179.

<sup>9</sup> As Jacques Chenevières recalled in a speech he made to mark the 75th anniversary of Max Huber's birth: see ICRC Archives, A CL-01.002.02.

<sup>10</sup> On Gustave Moynier see, *inter alia*.: J. de Senarclens (ed.), *Gustave Moynier le bâtisseur* (2000).

its moral leader and its most distinguished ambassador. Gustave Moynier was also acknowledged to be one of the great international legal scholars of his time, and was one of the originators of the prestigious Institute of International Law.

Gustave Ador was Moynier's nephew – the ICRC was not just a Geneva affair, at times it was even a family affair. Ador was but 25 years old when his uncle, having discerned his qualities, entrusted him with his first ICRC mission, in 1870, before having him elected to the Committee in December of the same year.<sup>11</sup> Ador subsequently spent 40 years working with Gustave Moynier, only to succeed him officially on his death in 1910. He was a natural heir, having gradually stepped into Moynier's shoes during the final years of the latter's life. Indeed, Moynier's declining strength would have prompted him to resign had not the Committee, which could not bear to see its patriarch leave, persuaded him otherwise.

For the 18 years of his presidency, Ador proved to be a man of great calibre who made a strong mark on the institution. 'Moynier's exceptional stature as a lawyer and the strength of his commitment were matched in Ador by a more finely honed and versatile sense of the political constraints that humanitarian diplomacy, then in its infancy, had to enshrine in the heart of international relations.'<sup>12</sup>

In short, the time he spent with Gustave Ador allowed Max Huber – who probably also occasionally ran into Moynier, in particular at the 1907 Hague Conference – to immerse himself in the history, thinking and philosophy of the Red Cross since its inception. He proved to be a worthy successor to those who preceded him, his words and acts leaving their imprint on the Committee from the day he joined it until the end of his presidency in 1944 and beyond, while he was acting president from May 1945 to the end of 1946.<sup>13</sup>

### ***C The Continuity of the Red Cross Spirit: A Seamless Transition at Both Ends of His Career***

If Dunant provided the initial momentum for the Red Cross Movement and international humanitarian law, it was those three men – Moynier, Ador and Huber – who assured its continuity from the year of its founding in 1863 until 1947. Of course, they had the support of other eminent persons – among whom, besides the founding members, we shall mention Paul Des Gouttes, who was the main author of the 1906 and 1929 Geneva Conventions – but it was through those three that the Red Cross ideal was channelled and took shape. The chain was continued, not so much by the ICRC's presidents, men of undeniable quality who subsequently succeeded each other more rapidly – Ruegger, Boissier, Gonard, Naville, Martin – but in the person of Jean Pictet, spotted and recruited by Huber as a young man during the Second World War.

<sup>11</sup> On this subject see Helg, 'Le successeur de Gustave Moynier', in *ibid.*, at 321 ff.

<sup>12</sup> *Ibid.*, at 326 (author's translation from the French).

<sup>13</sup> Huber's successor, Carl Burckhardt, went on leave of absence after his appointment to take up the position of Swiss minister (today one would say ambassador) in Paris, a post of signal importance in the wake of the war, and Huber was therefore temporarily recalled by the Committee.

Pictet never succeeded Huber as president of the ICRC – he was its director general and vice-president – but he was Huber’s spiritual heir. It was Pictet who drew up the Movement’s Fundamental Principles, who prepared the basic supplements to humanitarian law (the 1949 Geneva Conventions and their 1977 Additional Protocols) and who was, until his retirement in the late 1970s and like Huber before him, the organization’s moral authority. Max Huber therefore took over from a man who had chosen him, Gustave Ador, and in turn passed his mantle on to a young man whose potential he had immediately grasped, Jean Pictet.

These men were so imbued with the idea of the Red Cross and they knew the ICRC so well, its origins, how it functioned, its strengths and its weaknesses, that they felt no need to commit its ‘doctrine’ to paper: they were its ‘doctrine’. So strong was their belief that the ICRC’s role went without saying – it existed because it was needed, because it fulfilled a useful function in the international community – that not even Gustave Moynier, great lawyer that he was, felt the need to crystallize the organization’s existence in statutes. Indeed, the first statutes were drawn up in 1915. And although Jean Pictet was careful to preserve the ICRC’s memory – by organizing its archives – and to write down the Movement’s Fundamental Principles and certain points of principle, the ICRC operated up until the 1970s on the knowledge and wisdom of its leaders rather than on written texts. A staff member in doubt about institutional policy had no need to hunt through the files, he simply asked Mr Pictet. It was only when Pictet left, towards the end of the 1970s, that his successor, Jacques Moreillon, realized how important it was for the ICRC to set its principles down in writing, to put on paper what hitherto had been transmitted orally, by osmosis between people, four of whom had put their stamp on the ICRC over more than 100 years.

In short, Max Huber looms large in the history of the Red Cross, not only because he headed the ICRC for more than 20 years (if we include his interim presidency) but also because he passed on the Movement’s initial knowledge and philosophy. He did even more, for, as we shall see, Huber played a key role in developing that knowledge and philosophy.

### **D *Max Huber’s Personality in the Service of the Red Cross***

Max Huber quickly took control, but with his characteristic discretion and modesty. As Jacques Chenevière pointed out, he was one of those men who effortlessly assert their authority by their mere presence, by asking a few questions, offering an opinion.<sup>14</sup> As noted, although his Swiss-German origins led to some initial gnashing of teeth (albeit not as much as the appointment of Motta, a Catholic in the ‘Protestant Rome’), his personality soon dispelled all opposition; and when Gustave Ador died, his appointment as president of the ICRC raised no doubts. Bernard Bouvier, a member of the Committee and one of Ador’s close friends, said: ‘If there is one man whose name, international position and character, whose personality in its essence and individuality were made to reassure us at the moment when we have lost our leader, it is

<sup>14</sup> Chenevière, *supra* note 9.

Mr Max Huber. In this, our hearts and our minds are at one.<sup>15</sup> In short, the Committee welcomed not only the public figure, but also the man.

And both the public figure and the man were especially well prepared to take on the job of ICRC president. The public figure had asserted itself mainly as a judge on the Permanent Court of International Justice and as a member of the Permanent Court of Arbitration. Another well-known lawyer, Paul Guggenheim, considered Max Huber to be 'one of [Switzerland's] most outstanding exponents of international law since Emer de Vattel', adding that his work at the Court had developed his aptitude

to get to the heart of documents, an intimate knowledge of legal problems, remarkable judgment and last but not least, the realization of the need, in spite of the hard matter-of-fact considerations, for contributing to the building up of a community devoted to peace without ever losing sight of humanitarian as well as of constructive objectives connected with public international law.<sup>16</sup>

Intelligence, a heightened sense of dedication, idealism and realism: the words paint an accurate picture of Max Huber, a man who wanted to believe that humanity could progress – '[a]rbitration and conciliation were in fact the two dominant themes in his thought, which refused to accept the idea that reason could not one day take the place of force'<sup>17</sup> – but who was nevertheless extremely lucid and realistic about the difficulties this entailed. That, in a nutshell, was the public figure the Committee took on as its leader.

The man, for his part, was guided by his devout Christian beliefs, which he spoke of in many of his writings, and characterized by his modesty, his abiding intellectual honesty and his strong sense of charity.

Max Huber himself linked the public figure to the man when he spoke of his work as a judge: 'The magistrate's office always carries with it something of priesthood, since the justice it represents is moral in character and therefore related to the divine and hence the absolute'. Since 'perfection does not exist in this world', 'it will always be necessary to take a personal decision which commits one's moral responsibility', especially in an 'international jurisdiction, where the magistrate is not supported by a wealth of national tradition'<sup>18</sup>.

Max Huber had another advantage: he had already had occasion to immerse himself in the two fields that would remain at the heart of his activities throughout his time as president of the ICRC, namely international humanitarian law and the Red Cross Movement. As a young man, he had had to familiarize himself with international humanitarian law as a member of the Swiss delegation to the 1907 Hague Conference. As soon as he joined the ICRC, however, and while still fully engaged with the Permanent Court of International Justice, he was brought face-to-face with the complex nature of the Red Cross Movement. He lost no time in demonstrating that he was a man of mettle, wisdom and finely honed negotiating skills.

<sup>15</sup> Durand, *supra* note 3, at 247.

<sup>16</sup> Guggenheim, 'Max Huber', *International Review of the Red Cross*, No. 4, July 1961, at 179 ff.

<sup>17</sup> Durand, *supra* note 3, at 247.

<sup>18</sup> *Ibid.*, at 248.



### 3 Six Aspects of Max Huber's Role as ICRC President

Now that we have a clear picture of Max Huber and how he joined the Movement, let us briefly examine six aspects of his role as president of the ICRC: his relationship with the Movement, his role in the development of international humanitarian law, the part he played in respect of ICRC doctrine and the organization's operational activities, his relationship with Switzerland and his role in the structure and functioning of the ICRC.

#### A *The Red Cross Movement*

The structure of the Red Cross Movement – or the International Red Cross and Red Crescent Movement,<sup>19</sup> as it is known today – has always been problematic. In 1867, Gustave Moynier had mooted the idea of a superior council of national societies; later, in 1892, that of an international federation. But he had always understood that such a federation could not replace the ICRC, for it would not be 'neutral enough for the accomplishment of its wartime duties not to risk placing it in a false position'.<sup>20</sup>

The end of the First World War and the hope that sprung from peace, combined with the vitality of American Henry Davison, whose reference was the establishment of the League of Nations, saw the re-emergence of the idea of an international federation that would coordinate what were to be the main tasks of the national societies in a world at peace: joint aid to the victims of natural disasters or large-scale epidemics. The ICRC was informed of the plan and did not oppose it, but this did not stop it from engaging in relief work on its own, either directly or in association with specialized organizations such as the *Bureau des épidémies* and *Secours aux enfants*. Along with the Save the Children Fund (founded by Eglantyne Jebb) and the *Comité suisse de secours aux enfants*, in December 1919 it helped establish the *Union internationale de Secours aux enfants*, with which it was closely associated; indeed, Georges Werner, an ICRC member, was the new organization's first executive director.

Obviously, once the League was created, problems of coordination and distribution of tasks arose, something that has plagued the Movement ever since. A *Commission mixte* was established by the 1921 International Conference of the Red Cross, which also confirmed the role of the ICRC. But the Conference

had not touched on the essential item in the debate: the inception of an international Red Cross organization which took account of world events since the war, of the existence of a Federation of Red Cross Societies anxious to extend its peacetime activities, and of an International Committee wishing to keep its traditional independence and assert its role as the central body of the National Societies.<sup>21</sup>

<sup>19</sup> The name that was adopted and introduced into the Movement's Statutes in 1986 by the 25th International Conference of the Red Cross.

<sup>20</sup> G. Moynier, *La Croix-Rouge, son passé et son avenir* (1882), at 252.

<sup>21</sup> Durand, *supra* note 3, at 171.



That problem would remain at the heart of tense negotiations in the following years. In the words of one delegate to the 1921 Conference, 'there's nothing people will more readily fight about than doing good'.<sup>22</sup>

The negotiations dragged on for six years and finally remained bogged down. Then, in January 1928, Max Huber entered the stage, while still a judge in The Hague: the ICRC asked him to resume negotiations. Huber's vision as something of an 'outsider', his negotiating skills, his international stature, and, it must be said, the rapport that developed between him and the negotiator designated by the League, one of its vice-presidents, Colonel Draudt of Germany, quickly led to an unexpected resolution. Huber and Draudt produced a set of draft statutes within a few months and signed them on 12 May 1928. The Assembly of Delegates approved the draft and the first statutes of the International Red Cross entered into force on 26 October 1928. In the words of the Assembly, Huber and Draudt had 'deserved well' of the Red Cross.<sup>23</sup> Indeed, Max Huber got off to a remarkably successful start not only in his presidency of the ICRC, but also in his work with the Red Cross Movement.

In fact, the adoption of those first Statutes heralded a turning point in the Movement's history. As Durand wrote, most progress was not made in the structure of the different bodies, 'but in the links between them';<sup>24</sup> Huber himself confirmed this when he submitted the Statutes to the Assembly: 'There could be no question of creating a completely new organization. It was a matter of keeping intact and consolidating the existing elements.'<sup>25</sup>

In reality, those Statutes are and remain the cornerstone on which the Movement has been built, and contain all the particularities that distinguish it from any other existing international structure. The National Societies, to start with, are independent and autonomous, but are nevertheless tied to their respective governments – which recognize them and which they serve as humanitarian auxiliaries – and to the Movement: they are bound to observe the Movement's principles and to demonstrate their solidarity by contributing to the development of the weakest National Societies and by taking part in international disaster relief operations. The ICRC, for its part, has specific operational tasks; a role in promoting respect for and development of international humanitarian law; and responsibility for coordinating humanitarian action in situations – armed conflicts, internal disturbances – in which its specific neutrality is indispensable. The League liaises between the National Societies, helps draw up certain joint policies, coordinates the development activities of the weakest Societies and also ensures coordination in disaster relief operations. Lastly, the International Conference is a unique institution that brings together the Movement's components and the states party to the Geneva Conventions. The first Statutes already termed it the 'supreme deliberative body' of the International Red Cross, thus acknowledging the special relationship that has existed between the Red Cross Movement and the states – at least

<sup>22</sup> Quoted in *ibid.*, at 175.

<sup>23</sup> *Ibid.*, at 191.

<sup>24</sup> *Ibid.*

<sup>25</sup> Max Huber's presentation of 26 Oct. 1928 to the Red Cross Assembly of Delegates: see *ibid.*

those that undertake to respect international humanitarian law – since the former’s inception. In addition, the Statutes created a new body, the Standing Commission, to ensure the continuity of the International Conferences between sessions<sup>26</sup>.

In fact, Huber had immediately grasped all the Movement’s subtleties and had kept within the limits of what was feasible in structuring the Movement as best as possible in view of each of its components’ inherent qualities and requirements and the not entirely unambiguous relationship between the National Societies – there is a narrow line between auxiliary and independence – and the states. Given that the structure they introduced has remained in place to this day, it may well be said that the Statutes have ‘stood the test of time’<sup>27</sup> and proven their viability (and hence the wisdom of those who conceived them).

We do not wish to go into all the aspects of Huber’s relations with the Movement, but shall nevertheless consider two essential questions below: cooperation with the League and the ICRC’s relationship with the National Societies in its role as guardian of the principles.

### 1 *The Relationship with the League*

In the relationship with the League of Red Cross Societies (today the International Federation of Red Cross and Red Crescent Societies), Max Huber always displayed a mix of realism and flexibility, demonstrating his capacity to comprehend the forces at play and, above all, his understanding that quarrels within the Movement were futile. This is a reality confronting all those who, at one time or another, have held positions of responsibility at the ICRC.

Max Huber was perfectly aware of the importance of allowing the ICRC to act in certain circumstances. According to him, it was ‘a fact – proven by experience – that the International Committee of the Red Cross often has decisive possibilities for access and negotiation among all the belligerents that the League does not’. However, ‘despite some disappointments in that cooperation, our general standard of conduct is and remains that of honest and friendly cooperation with the League. Any bad blood, and even the hint of competition and rivalry within the entire Red Cross, would undermine the institution’s prestige and place a useless drain on its energy’.<sup>28</sup> It was for this reason, for example, that in 1939, and in spite of the Swiss Government’s reluctance and a number of problems encountered at the time,<sup>29</sup> he backed the move of the League Secretariat from Paris to Geneva. Had it not moved, the League would have been unable to pursue its work to assist the National Societies.

Max Huber showed the same positive attitude in the relief work undertaken at the start of the Second World War. Acting on the basis of its right of initiative and on the invitation extended to it in a resolution of the 1930 International Conference of the Red Cross, held in Brussels, to make itself available to the belligerents for the provision of supplies of medicaments, medical material, food and clothing for certain categories of the

<sup>26</sup> 1928 Statutes, Art. X.

<sup>27</sup> Bugnion, *supra* note 3, at 367.

<sup>28</sup> ICRC Archives, Max Huber Archives, letter of 14 May 1941.

<sup>29</sup> See Durand, *supra* note 3, at 48.

civilian population (children, the elderly, the sick, etc.) in the event of an economic blockade,<sup>30</sup> the ICRC undertook various relief activities.<sup>31</sup> But the League was also authorized, under its Constitution, to perform relief work with the National Societies. Both institutions worked independently of each other during the first few weeks of hostilities, but as soon as the League was established in Geneva, they started to work together, first by launching appeals and taking joint action, then, in 1940, by establishing a 'Joint Relief Commission' which would play a significant role throughout the conflict.

We shall not describe those activities here, but they are clear evidence of Huber's awareness of the specific role the ICRC could play and which it was determined not to give up, on the one hand, and of the need for a pragmatic approach that catered for the concerns of both institutions in the interests of the victims, on the other.

## 2 *The Direct Relationship with the National Societies*

The ICRC's direct relationship with the National Societies was equally complex. Today, the ICRC's role is to 'recognize' new Societies, a task expressly conferred on it by the current Statutes of the International Red Cross and Red Crescent Movement and implicitly expressed in the 1928 Statutes, Article VII of which asked the ICRC to bring to the knowledge of Red Cross Societies the due constitution of any new National Society established in accordance with the principles of the Geneva Convention. That task had originally been conferred on the ICRC in 1887,<sup>32</sup> with the idea that transmitting such knowledge implies an assessment of the Society's conformity.

Under the present system, once a Society has been recognized by the ICRC it must be admitted by the Federation 'by a two-third majority of the member Societies present and voting'.<sup>33</sup> For the sake of coherency, the ICRC and the International Federation now have a joint body that examines the applications of new societies to gauge whether they meet the ten conditions for recognition that have been part of the Movement's Statutes since 1986.<sup>34</sup> Thanks to that joint examination and the ensuing report, it has in principle been possible to avoid a divergence of opinion between the ICRC and the Federation and to harmonize the procedure for recognition by the ICRC and admission by the Federation.

One question has not yet been clearly settled, however: What does the ICRC's authorization to recognize National Societies imply once recognition has been proclaimed? Does the ICRC have a duty of oversight? Does it have the capacity to withdraw recognition? The International Federation's Constitution provides that a National Society shall be suspended if it no longer fulfils all the conditions for admission or 'if the Society on its own initiative or under pressure from the government of its country

<sup>30</sup> See Resolution XXIV of the 14th International Conference of the Red Cross, Brussels, 1930.

<sup>31</sup> For a detailed description of those activities see ICRC, *Report of the International Committee of the Red Cross on its activities during the Second World War (1 September 1939—30 June 1947)* (1948), iii (Relief activities).

<sup>32</sup> See *Compte-rendu de la 4<sup>ème</sup> Conférence internationale des Sociétés de la Croix-Rouge, Carlsruhe 1887* (no date), at 90.

<sup>33</sup> See Art. 11(10) and (11) of the Constitution of the International Federation of Red Cross and Red Crescent Societies.

<sup>34</sup> See Art. 4 of the Statutes of the International Red Cross and Red Crescent Movement.

contravenes any of the Fundamental Principles'.<sup>35</sup> Neither the Movement's nor the ICRC's Statutes contain any provision to that effect.

In practice, the ICRC and the International Federation discuss any problems that arise, but they virtually never suspend a Society. The preferred means of resolving any difficulties is dialogue, the idea being that both organizations should underscore the Society's positive aspects – often the problems lie with certain leaders and do not affect the remarkable work done by volunteers – rather than charging in where things are going badly.

Max Huber himself was always very cautious about the permanent role of oversight that the ICRC could play in respect of a National Society, having been faced early on with the difficulties of relations with the National Societies and the place of those relations. The role of the Societies was laid open to doubt with the emergence of new regimes that, according to Jean-Claude Favez, aimed to submit to the will of the state (or the party-state) all public and private life, whereas the National Societies were conceived in and for a time of liberalism, in which the state did not seek to control civil society. They were therefore threatened by the rise in totalitarianism. The fragmentation of the Movement's cultural unity could eventually lead to its dislocation.<sup>36</sup>

Max Huber nevertheless sought to overcome that risk and did all in his power to maintain the 'bridge of mutual understanding' the Movement represented, even when 'in the tragic situations of international life, almost all other bridges are down'<sup>37</sup>: '[t]he concept of the Red Cross is disinterested assistance . . . that is why it wishes to work with all those willing to aid others, without asking what feeling of responsibility causes them to act'.<sup>38</sup> The ICRC maintained that position whenever a National Society was formed or disappeared, and when the state to which the Society was an auxiliary

was cast into doubt by part of the international community, . . . as would be the case for several states annexed or taken over by the Third Reich . . . the ICRC decided to have de facto ties with any new Society whose purpose was humanitarian and not to break its ties with previously recognized National Societies, insofar as the government of the territory on which these former Societies had found refuge accepted it.<sup>39</sup>

Max Huber was also deeply aware that the National Societies had very limited room for manoeuvre, that they could hardly provide that hoped-for haven of humanity in an environment rendered unfavourable by a totalitarian regime. He even went one step further, stating that the Red Cross had to stay close to the people: 'The Red Cross must in no way be a kind of foreign body within a nation or a State, it cannot be in opposition to national feeling or to the State or government by which it has to be recognized and authorized to fulfil its prime function.'<sup>40</sup>

<sup>35</sup> See Art. 6(3), of the International Federation's Constitution.

<sup>36</sup> Favez, *supra* note 3, at 38–39 of the French version.

<sup>37</sup> Message by Max Huber to the 1934 Tokyo International Conference, *Revue internationale de la Croix-Rouge*, No. 192, Dec. 1934, at 969 ff. (translation in Durand, *supra* note 3, at 281–282).

<sup>38</sup> *Ibid.*

<sup>39</sup> Favez, *supra* note 3, at 37 of the French version.

<sup>40</sup> Huber, *supra* note 37 (translation in Durand, *supra* note 3, at 282).

But where is the limit? How to reconcile the universal Red Cross principle of political, denominational and racial neutrality with the Committee's 'apolitical' impartiality in the face of changes in the National Societies of some countries that have turned their backs on liberal values, on human rights, on the humanitarian idea of the Red Cross? That was the dilemma which Max Huber, it is said today now that we know all the horrors committed by the Nazi regime, approached with an overabundance of caution. Although Huber was not directly at fault – he was not based in Geneva at the time or for most of his presidency – we cannot help but be shocked, for example, by the understanding shown in 1936 by the ICRC Secretary for the German National Society's decision to exclude Jews.<sup>41</sup>

Max Huber, for his part, was certainly deeply perturbed by the events that seemed so remote from his ideal of peace. As early as 1933 he spoke of the 'eclipse of human feeling' that smothered his era in an atmosphere that was not conducive to the idea of the Red Cross, several National Societies being closer to their governments than was to be desired.<sup>42</sup> As always, however, he tried to keep his head, to adopt a coherent and reasoned attitude. The price to pay to have a National Society in every, or almost every, country – the Movement's universality – was not to set the standard for those Societies too high. According to Huber, tendencies aiming to make distinctions between the victims the Red Cross should help should be given no leeway, as this was a crucial aspect of the Red Cross idea, but the strict application of the liberal principle of the admission of all would almost inevitably lead to a breakdown of the universal Red Cross.<sup>43</sup>

As soon as he knew of the existence of the concentration camps, in 1933, Huber emphasized the paramount role of the German Red Cross and advised that it be handled with 'the utmost caution and discretion' so as not to do it any harm and to give it a chance to act so long as it did not give evidence of 'unwillingness or inability' to do so.<sup>44</sup>

But for how long could that attitude be valid? For how long can one tolerate uneven compliance with the principles, for the sake of universality? This question will crop up again and again, for as long as the Movement exists in its present form. The events of the Second World War called the limit into question: Is tolerating apparently non-essential exceptions in order to preserve what is fundamental – namely the ability to help the victims – not tantamount to laying the groundwork for even more serious exceptions that end up shredding all concept of humanity? What the Nazis did tends to make us respond in the affirmative, but all those who work within the Movement on a daily basis know all too well that this is a present and future dilemma to which there will never be an easy answer.

<sup>41</sup> See Favez, *supra* note 3, at 41 of the French version.

<sup>42</sup> Minutes of the Committee meeting of 21 Sept. 1933, ICRC Archives (original French).

<sup>43</sup> Letter of 23 Aug. 1939 to Count B. de Rougé, League Secretary General, ICRC Archives, CR 226 (original French).

<sup>44</sup> See Durand, *supra* note 3, at 279.

## B *The Relationship with International Humanitarian Law*

Max Huber, as noted, had his first taste of international humanitarian law as a young man, as a Swiss delegate to the 1907 Hague Conference. He was placed on a closer footing with the law as soon as he became president of the ICRC, for the following year, in 1929, the Diplomatic Conference was convened that would adopt two new Conventions: one which was the third version of the original 1864 Convention on the protection of the wounded and sick, the other on the protection of prisoners of war.

The date of the Conference may seem paradoxical. The Kellogg-Briand Pact renouncing war as an instrument of national policy had been adopted the year before; ratified by 46 states, it entered into force three days before the Diplomatic Conference opened. The Pact, under which the states undertook to settle their differences by peaceful means, corresponded to Max Huber's aspirations. How strange, then, to find him working for the adoption of conventions applicable in wars which the Pact aimed to prohibit.

As always, Huber the idealist had a strong vein of realism. In his view, until the states laid down their arms, the Geneva Convention had a purpose, and the Red Cross reason to be prepared to bring aid to the victims of war. He saw no contradiction in this: 'This aspect of preparation for war is truly the last that should be abandoned, from the point of view of universal peace.'<sup>45</sup> The preparatory work on the 1929 Conventions had started much earlier, and Max Huber was not one of their chief architects, but his reputation and his experience probably played a major role in the success of the Diplomatic Conference which finally adopted them.

This remarkable outcome notwithstanding, the ICRC was not allowed to rest on its laurels. Apart from provisions on occupation, civilians did not benefit from adequate legal protection in armed conflicts, given the way in which conflicts were changing. Several International Conferences of the Red Cross had debated the matter: that of 1921 had formulated general principles relating to deported civilians, evacuees and refugees; that of 1925 had enumerated the minimum principles to be included in a convention to supplement the 1907 Hague Regulations; and that of 1928 had also formulated principles for the protection of civilians on enemy territory.<sup>46</sup> At the Diplomatic Conference that adopted the 1929 Conventions, the states had recommended that a 'comprehensive study be undertaken for the conclusion of an International Convention governing the position and the protection of civilians of enemy nationality who happen to be on the territory of a belligerent or a territory occupied by him'.<sup>47</sup>

The ICRC set to work to draft such a convention and indeed received a specific mandate at the 1930 International Conference of the Red Cross. By the end of 1931 it had a completed draft.

<sup>45</sup> Huber, 'La Croix-Rouge et l'évolution récente du droit international', *International Review of the Red Cross* No. 121, Jan. 1929 (in French only).

<sup>46</sup> On this subject see in particular Durand, *supra* note 3, at 288.

<sup>47</sup> *Ibid.*, at 289.

Its work was suspended in the following years, however, as attention shifted to the 1932 Disarmament Conference and the hopes it rekindled of prohibiting bombardments outside war zones.<sup>48</sup> Max Huber was delegated to the Conference by the Swiss Government; this may seem strange today,<sup>49</sup> but in fact reflected a constant in Huber's make-up: that of seeing in efforts to enhance international humanitarian law a natural and welcome complement to efforts to promote peace and disarmament.

The hopes stirred by the Disarmament Conference were disappointed, and the ICRC resumed its work on a convention to protect civilians, but to no avail: in 1937, the Swiss Government finally decided not to convene a diplomatic conference, given the unfavourable climate and the discouraging responses to its proposal to do so.

Max Huber's relationship to international humanitarian law was also part of his role as an international lawyer, and he continues to be held in high esteem by eminent international legal scholars, although he was not directly involved in the projects mentioned here. Certainly, however, he provided guidance in that respect. Moreover, he never allowed formal obstacles to stand in his way, always seeking to persuade others to apply non-binding rules, even in respect of protection of civilians, and never hesitating to innovate. We shall see him apply this trait to ICRC operations as well.

The 1938 International Conference of the Red Cross, held in London, was a last-ditch opportunity for the Movement to express its concerns and present concrete proposals for the protection of civilians. It considered civilians on enemy territory, and adopted resolutions on the establishment of safety zones to protect civilians from the hostilities, appealing to 'the competent authorities in all countries to prevent or so restrict bombing from the air so as to safeguard the lives of helpless women, children and aged civilians'.<sup>50</sup> The resolution was a desperate attempt by the Movement, foreshadowing the events to come, to make the states see reason. It was not adopted, as customary, in the name of the Conference, but in the name of the National Societies represented there.<sup>51</sup>

There then arose the question of jurisdiction. The Dutch Government submitted proposals aimed at separating issues relating to the conduct of hostilities – traditionally regulated by what is known as the 'law of The Hague' – from purely humanitarian matters covered by the 'law of Geneva' and handled by the Red Cross. Here again, Max Huber remained true to his concern to have the law fulfil its purpose in the service of humanity: there was no point in indulging in sterile controversy when the world was teetering on the edge of a major conflict. Huber knew very well that the line between the two bodies of law was blurred, but he did not want a postponement of a conference everyone still hoped to organize.

To get around the controversy, he suggested a dividing line that constitutes a remarkable description of the two aspects of contemporary international humanitarian law: on one side were the rules 'creating a special legal status for specific

<sup>48</sup> *Ibid.*

<sup>49</sup> See below, point 2.5.

<sup>50</sup> Resolution IX of the 16th International Conference of the Red Cross, London, 20–24 June 1938.

<sup>51</sup> See Durand, *supra* note 3, at 387–388, and Bugnion, *supra* note 3, at 281.



categories of persons in order to shield them from some of the rigours of war'; on the other, those that 'served humanitarian interests by . . . imposing restrictions on the conduct of war'.<sup>52</sup> But it was too late. War broke out. The ICRC immediately sent a circular to the National Societies in which Huber expressed the view that 'the question of protecting civilian populations must be treated as a whole, on the basis of the existing rules, whether founded on agreement or on custom, of international law, and taking these rules as our point of departure'.<sup>53</sup> He thus once again showed his determination to make of the law an instrument of humanity and not an obstacle to humanitarian activities that might overstep the formal rules.

The ICRC also wished to resolve the question of safety zones, even though the chances that a convention would be adopted were practically nil. As Huber explained to the Dutch Government, he considered it 'desirable to clear up as far as possible the problem of the protection of the civilian population and especially that of safety zones', because he had already turned his thoughts to the possibility 'to achieve *ad hoc* agreements between belligerents' and the draft agreements 'would be the more likely to succeed the better they have been studied'.<sup>54</sup>

We shall mention one more example of Huber's practical approach aimed at finding rapid solutions in urgent situations. During the war, the ICRC launched a huge operation to transport relief supplies by boat to victims of the blockade. Huber was very active domestically, helping to set up an *ad hoc* foundation authorized to acquire and charter ships, but also internationally, obtaining authorizations and the right for the ships to display the protective emblem of the Red Cross.<sup>55</sup> Once again, he showed that he would not get entangled in legalistic questions and that the law had to help solve, not create, problems. Throughout his career, he devoted all his talent and energy to proving that point.

This section would be incomplete were we not to mention Huber's appeal, launched on behalf of the ICRC in a memorandum of 5 September 1945, one month after the bombing of Hiroshima. His words betray a shattered and profoundly worried man: 'The relentless development of methods of combat and so of war itself is further accentuated by the discoveries of atomic physics, resulting in a weapon of war without precedent.'<sup>56</sup> Huber understood only too well that it was the very concept of humanitarian law that was threatened, for 'with the growth of air power and the greater effects of bombing, the distinction hitherto made for the benefit of persons who should enjoy special protection – in particular the civilian population as compared with the armed forces – becomes virtually impossible'. In addition,

total war has given rise to new techniques. Does this mean that we must admit that individuals can no longer be legally protected and will henceforth be considered merely as an element of a

<sup>52</sup> Letter from Max Huber to Giuseppe Motta, 31 Oct. 1938: see Durand, *supra* note 3, at 392.

<sup>53</sup> See ICRC Circular 365 to the National Red Cross Societies, 20 Apr. 1939.

<sup>54</sup> Letter of 29 June 1939 to the Dutch Ministry of Foreign Affairs, cited in Durand, *supra* note 3, at 396.

<sup>55</sup> See *ibid.*, at 474 ff.

<sup>56</sup> English version of the memorandum 'La fin des hostilités et les tâches futures de la Croix-Rouge', 5 Sept. 1945. See *Revue internationale de la Croix-Rouge*, no. 321, Sept. 1945, 657–662.

community at war? This would signify the collapse of the principles underlying international law whose purpose is the physical and spiritual protection of the human person.<sup>57</sup>

In the face of this development, Huber again reacted with great lucidity, contemplating nuclear deterrence – the future would prove him right – as a way to prevent the use of nuclear weapons:

It would be useless to attempt any prediction concerning the future of this new weapon and even to express the hope of seeing the Powers eschew its use completely. Surely they will wish at least to keep it in reserve, as it were, for a long time and in safety, as a final guarantee against war and a means of maintaining an equitable order.

He nevertheless felt bound, in spite of everything, to express his confidence in the Red Cross ideal, which ‘embodies the notions of human worth and dignity, far transcending the law of nations and the rules of war’.<sup>58</sup>

### C *The ICRC’s Principles*

Max Huber was undeniably one of the Movement’s great thinkers; in his many written texts, he sought to give meaning to the Movement’s actions, to explain its founding principles, to justify the choices it had to make, to explain the link between the Christian faith and the Red Cross pledge. The ICRC, however, was not overly concerned with the need to set down its internal principles, as it was closely guided by the Committee and its president, who based their decisions on experience and on the tradition transmitted orally by their predecessors with whom they had worked for many years.

Rather than examine all the points Huber covered in his writings, we shall review three that remain relevant today: the policy of discretion, the handling of complaints and inquiries into alleged violations of humanitarian law, and the Movement’s contribution to peace.

#### 1 *The Policy of Discretion*

If there is one thorny issue at the ICRC, one point that has been the subject of much debate and for which the organization has at times been roundly criticized, that issue is its policy of discretion.

Huber had to come to grips with the policy during the war of Abyssinia. Ethiopia had complained to the League of Nations about the use of chemical weapons, and the League of Nations had consequently asked the ICRC to send it whatever information it had on the subject. The ICRC refused for several reasons, first and foremost because it had itself been asked to launch an inquiry. In addition to that argument of circumstance, however, the ICRC provided the following explanation:

the neutrality which the International Committee of the Red Cross is obliged to observe imposes a very high degree of discretion. In particular, the International Committee of the Red Cross does not consider itself able to communicate information received from its own delegates or

<sup>57</sup> *Ibid.*

<sup>58</sup> The main part of this appeal is reproduced in Dunand, *supra* note 3, at 634 ff.

entrusted to it as an international body of the Red Cross, if the inquiry is other than that provided for in the Geneva Convention to investigate alleged violations.<sup>59</sup>

It added that any information supplied to the ICRC by the National Societies could be made available by the latter as they saw fit.

The Committee of Thirteen, a subsidiary body of the League Council, deplored that decision and openly expressed its disappointment,<sup>60</sup> prompting Huber to justify the ICRC's position and explain the policy of discretion in an article in the *International Review of the Red Cross*:<sup>61</sup>

In contrast to freely organized groups of private individuals, and to organizations which have entire liberty to vent, in resounding demonstrations, their emotion or indignation in respect to acts which they condemn, the Red Cross, and in particular the International Red Cross Committee, have to exercise great caution and self-command. This is not due to indifference or to lack of courage but is a result of the responsibilities devolving on an organization which must always be in a position to afford all parties the guarantee of as unbiased a judgement as possible and of action free from every suspicion of partiality, political or other.<sup>62</sup>

As we shall see below, it was this policy, which was considered in some quarters to have been carried too far during the Second World War, that earned the ICRC the most scathing criticism during the war.

The ICRC nevertheless continues to apply the same principle today. It endeavours to halt violations of humanitarian law essentially through dialogue with the parties to the conflict rather than through public denunciation. That is not to say that it never goes public, but it will do so only if its confidential representations are fruitless, and even then, not before having assessed whether public representations are in the interest of the victims and, if so, what form they should take. The ICRC's communication policy has become more open, in keeping with present-day trends, but its line of conduct in respect of public denunciations of violations of international humanitarian law has changed very little.

## 2 *Handling Complaints and Inquiries*

This point is not unrelated to the previous one, and also arose during the war in Abyssinia. As we saw, the ICRC refused to transmit the information and complaints it had received, for the reasons given in its letter and later explained by Max Huber in his article. But it also had to explain how it intended to handle the complaints. Max Huber provided that explanation in the same article. The ICRC 'receives complaints chiefly from the National Societies but it gives consideration also to any protest relating to humanitarian interests which seems to be justified. It has, moreover, the right of initiative and can itself take in hand certain cases about which no complaint has been made'. On the other hand, it 'has no intention whatsoever of sitting in judgement.

<sup>59</sup> Letter from the ICRC vice-president to the Secretary-General of the League of Nations, 9 Apr. 1936 : see Bugnion, *supra* note 3, at 152

<sup>60</sup> See in particular *ibid.*, at 151 ff.

<sup>61</sup> M. Huber, *Red Cross and Neutrality* (1936) (translation of an offprint from *International Review of the Red Cross* No. 209, May 1936, at 353–363 (in French)).

<sup>62</sup> *Ibid.*, at 6–7.

It is not a court of justice and, besides, it has not itself the means of ascertaining the facts, which alone would enable it to give a verdict.'<sup>63</sup>

This sums up the ICRC's approach to this day. Following certain negative experiences, the ICRC does not wish to carry out its own inquiries, which is why it was in favour of the establishment, under Additional Protocol I of 1977, of the International Fact-finding Commission.

### 3 *The Red Cross and Peace*

Max Huber was perfectly aware of the majesty, but also of the limits, of the role that the Red Cross could play. He was extremely prudent about any involvement in politics, deeming it essential that the ICRC scrupulously respect the principle of neutrality in order to maintain the trust of all the parties to any conflict and to be able to act on behalf of its victims. He nevertheless never wavered in his conviction that there existed a link between 'constructive peace' and help for the victims of war.<sup>64</sup>

No words better express the indirect but fundamental role of Red Cross action for peace than the following passage, taken from Huber's 1944 speech at the Nobel Peace Prize ceremony: the Red Cross, in bringing aid to the victims of war, he said, 'serves another purpose no less important, that of saving from the torment and darkness of war the idea of human solidarity and of respect for the dignity of every human person, particularly in an age when the alleged necessities of war cause moral values to be relegated to the background'.<sup>65</sup> The words 'darkness of war' betray Huber's bitterness: in 1944 he was only too aware that the Red Cross had failed in that ambition. He nevertheless continued to work towards that end.

He continued, with a thought that is more topical than ever and that should be heeded by all those who claim to work for peace in our world, a world in which so many human beings continue to live in misery: 'No organization intended to guarantee peace among nations can survive unless it is inspired by the idea of active solidarity among human beings.' And it is indeed in the link between peace and solidarity that he saw the role of the Red Cross, with solidarity an 'idea which the Red Cross wishes to safeguard even in humanity's darkest hours'.<sup>66</sup>

It was also because he saw the Red Cross as a 'bridge of mutual understanding' between peoples that Max Huber was such an ardent defender, as we saw earlier, of the Movement's universality. And it was in this sense that the International Conference of the Red Cross held in Tokyo in 1936 understood his message, reiterating the wish that the National Societies 'expand by every means at their disposal their activities to prevent war and encourage better understanding among nations'.<sup>67</sup>

The three points considered above show that Huber's vision of the Red Cross, encompassing its limits but also its deepest meaning, remains acutely pertinent today.

<sup>63</sup> *Ibid.*

<sup>64</sup> Durand, *supra* note 3, at 637.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> Huber's message and the relevant resolution of the Tokyo International Conference are mentioned in Durand, *supra* note 3, at 290.

### D *The ICRC's Operational Activities*

As we have seen, Max Huber did not engage in legal fencing: he always sought to adapt the law to the reality of the day and to find practical operational solutions even before a law had been formally adopted. Indeed, the ICRC's history is marked by its determination to forge ahead in situations in which it can help.

It is obviously impossible to summarize, even briefly, the operational activities undertaken during Max Huber's presidency. Suffice it to say that they were conducted during an especially troubled time – the rise of Nazism and communist totalitarianism against the backdrop of a worldwide economic crisis – followed by what is probably the darkest chapter in the history of mankind, as Nazi madness reached its peak with the 'Final Solution' and the most horrific war ever.

The first thing to note about those times is the ICRC's desire to act, to adapt to the new challenges of non-international conflicts and political detainees,<sup>68</sup> developments in weapons, totalitarianism, to push the limits of the Red Cross, to ensure its ideal endured despite everything. It put its faith in its delegates – outstanding men like Dr Marcel Junod, who took exemplary action in the Ethiopian conflict and the Spanish Civil War – and to whom the Committee, for want of means of communication, gave great freedom of action.<sup>69</sup> As Léopold Boissier said about Junod's work in Spain, 'thanks to his unceasing interventions in both camps, thanks to his appeal to what remained of humanity in a struggle without mercy, he managed to save thousands of lives',<sup>70</sup> and this in spite of the fact that the Geneva Conventions did not give the delegates the means of accomplishing their mission. Huber, fortunately, recognized the quality of these people and left them enough initiative to act in the very difficult situations in which they found themselves. This being said, it must also be acknowledged that the ICRC had few means and was relatively poorly organized worldwide<sup>71</sup> to confront challenges of such scope with the requisite energy.

There remains the entire period of the Second World War, during which Max Huber had to cope almost in spite of himself – he was 65 years old, and both he and his wife suffered serious health problems. He even wrote a will for the Committee in the early days of the war, fearful that he might pass away at any time. But the Committee needed his moral authority and he became even more involved than ever, moving to Geneva and gradually giving up all his other activities, in particular those he had as the head of the family business.

It is necessary to spell out very clearly here the ICRC's attitude towards the persecution of the Jews. In this respect, 'the problem facing the Committee was a new one, that of a group of citizens prosecuted by their own government, which refused them the rights enjoyed by its nationals but, paradoxically, would allow no foreign

<sup>68</sup> The reference work on this subject is J. Moreillon, *Le Comité international de la Croix-Rouge et la protection des détenus politique* (1973).

<sup>69</sup> Dr Junod wrote about his experiences in a remarkable book, *Warrior without Weapons* (1982).

<sup>70</sup> Eulogy at Dr Junod's funeral in 1961 (author's translation from French).

<sup>71</sup> See below, point 2.6.

intervention in their favour',<sup>72</sup> precisely because they were nationals. Representations had been made well before the start of hostilities to the German Red Cross; at that time there was still some hope that the German Society could intervene.<sup>73</sup> However, given that all its representations had come to no avail, the ICRC realized that 'specific attempts to help Jews were bound to fail and that if it was to come to their aid it was better not to mention the "racial question" as a criterion for protection'.<sup>74</sup> This explains the ICRC's subsequent attitude: it focused its representations on civilian internees in the hope that, in some countries at least, their nationality would serve to protect them, irrespective of the racial criterion.

The ICRC was very active during the war. It came up with innovative solutions to the problems it could actually help to solve, chartering a fleet of ships to transport relief supplies to ease the blockade<sup>75</sup> and considerably expanding the activities of the Central Tracing Agency. These activities have been documented elsewhere,<sup>76</sup> and we shall not endeavour to examine them in this short article. Suffice it to say that their critical evaluation has certainly changed.

Even before the end of the war, when the ICRC was awarded the Nobel Peace Prize in 1944, but also later, Huber's was showered with praise for the remarkable work performed by the Committee. As was said on Huber's 80th birthday: 'If the war was not stopped, it is not because Mr. Huber didn't try; on the other hand, if the possibilities for assisting the victims were obtained, improved and multiplied, it is thanks to 80 years of existence.'<sup>77</sup>

Since 1945, criticism, some of it virulent, has nevertheless been expressed in various quarters. The horrors of the Holocaust and the helplessness of the Red Cross have masked the undeniably positive and tangible aspects of the ICRC's humanitarian work during this period. In the face of such madness, did it do everything it could? Why did it not voice its indignation? These questions arose again during a period which looked on that time from a different angle, in particular as concerned the role of the Swiss Government and Swiss banks. In addition, the controversy over the ICRC's 'silence' during the Second World War was heightened, especially in France, by the approach taken by the new non-governmental organizations that moved into the humanitarian field, such as *Médecins sans frontières* and *Médecins du Monde*: the existence of an obligation to denounce.

Over time, the appropriateness of the ICRC's attitude regarding denunciations, based on Max Huber's thinking, has been demonstrated and humanitarian organizations working in armed conflicts have gained a better understanding of the limits that

<sup>72</sup> Durand, *supra* note 3, at 554.

<sup>73</sup> Max Huber wrote to the German Red Cross on 29 Nov. and 28 Dec. 1938, asking for its help for sick and abandoned Jews: see *ibid.*, at 553.

<sup>74</sup> *Ibid.*, at 554.

<sup>75</sup> See P. Eberlin, *Rapport de mer, Navires et marins au service de la Suisse et de la Croix-Rouge pendant la guerre de 1939–1945* (1970).

<sup>76</sup> See in particular Durant, Favez and Bugnion, all *supra* note 3.

<sup>77</sup> ICRC Archives, B.AG. 006.

a policy of systematic denunciation would impose on their activities and the dangers that would ensue for their field delegates. Current global media coverage means that few events go unreported, decreasing the number of instances in which these organizations are the sole witnesses of atrocities, thereby confronting them with an ethical dilemma. Indeed, the challenge now is to prick people's consciences in the face of the wholly inadequate humanitarian means available to cope with tragic situations.

But should such a policy be maintained in circumstances as exceptional as those that prevailed during the Second World War? Although the debate that arose on the issue was to some extent dictated by circumstances,<sup>78</sup> it raised a serious question, and the ICRC felt the need for a historian to study its role in relation to the Nazi deportations and concentration camps. It eventually entrusted the project to Professor Favez, whose study was published in 1988.<sup>79</sup>

The ICRC then stated its own position, admitting, with the benefit of hindsight, that it should have tried harder to jam the appalling machinery of Nazism. It should have done this, not directly on the territories of the Third Reich or in occupied Poland, where there was no hope of changing attitudes toward the persecuted, but among the Reich's allies and satellite states, in respect of which the ICRC probably could and should have conducted a more systematic analysis of possible political openings with a view to taking more rapid, urgent and resolute action.<sup>80</sup> The ICRC therefore probably was not always as supportive as it should have been of the delegates who, showing enormous merit and courage, took audacious initiatives to save lives in especially difficult circumstances.

There remains the resounding question whether the Committee should have made a public appeal, cried out its indignation. It held back for a number of reasons. Max Huber, as we know, was reluctant to make a public statement without the clear backing of all the National Societies, but that was probably not the main explanation. The main reason was most likely linked to the fact that the Committee felt that such public appeals would have no tangible impact, except to endanger the ICRC's ongoing activities and those it might be able to carry out at a later stage of the war.<sup>81</sup> That, in any case, is the argument put forward by the ICRC to justify its position: having noted 'on many occasions . . . that public protest, demanded by general opinion, has

<sup>78</sup> In this regard, it is interesting to mention the recent reflections of one of the former presidents of *Médecins sans frontières*, Rony Braumann: Noting that '*l'euphémisation diplomatique destinée à ménager les autorités finit par contaminer la pensée des responsables*', he nevertheless insists on the fact that '*reprocher au CICR son "silence coupable" est bien peu convaincant*'. According to him, the real question is the role of the Allies and '*non le silence du CICR, qui me semble en l'occurrence plus un bouc émissaire qu'un coupable*': see R. Braumann, *Penser dans l'urgence, Entretiens avec Catherine Portevin* (2006), at 155.

<sup>79</sup> See *supra* note 3.

<sup>80</sup> View expressed by Cornelio Sommaruga, president of the ICRC, in a letter giving the ICRC's position on Professor Favez' book and published as an annex to the French version: *ibid.*, at 376 ff. The letter is summarized at 9–10 of the English version (see *supra* note 3).

<sup>81</sup> It must not be forgotten that the ICRC was able to carry out some protection work when the Third Reich started to collapse, in the final stages of the war, and stationed delegates in the concentration camps from Apr. 1945 until the cessation of hostilities. It cannot be affirmed, however, that more aggressive ICRC public communications would have changed that situation.



unfortunately been unproductive and even likely to compromise the useful work which the Red Cross is capable of performing', it 'did not fail to seize every opportunity and profit from every possibility offered to obtain tangible results which, however slight in comparison with the evils to be remedied, it is perhaps the only body to have achieved', thus paving the way for 'negotiations which, in the last phase of hostilities, opened the gate of some concentration camps to ICRC delegates and their relief trucks'.<sup>82</sup> But Switzerland's situation at the heart of the conflict, its fear of German might and the pressure exerted by the Swiss Government on the ICRC<sup>83</sup> undoubtedly also played a role.

It is nevertheless extremely difficult to cast an objective light on events clearly perceived today, with the benefit of hindsight, but shrouded at the time in a fog made thicker by the fraught circumstances of constraint, fear and hope, a fog which only gradually dissipated.

The pragmatic arguments put forward by the ICRC during the war are understandable. But, as Durand says, it may also be supposed that 'protest arises from a genuine feeling of indignation and that if this is suppressed all feeling may eventually dry up'.<sup>84</sup> This is also the view of the ICRC today. When the most basic values are flouted, it becomes a duty to speak out, even if doing so appears to compromise action in the short term, for it is the very existence of those values that is threatened.

But who, in the end, came out of that terrible period unscathed, who did not feel some guilt when the overwhelming horror of the Holocaust was brought to light? The Red Cross certainly shared that feeling with the Allied Powers, the Churches, and many others. How is it that everyone failed to understand what was going to happen, how is it they did not react earlier and do all in their power to prevent it? Or, as Favez questioned, '*comment tout cela, ou au moins une grande partie de cette histoire, a pu paraître normal et acceptable?*'<sup>85</sup>

## E *Relations with Switzerland*

It seems strange today that Gustave Ador was elected to the Federal Council while remaining president of the ICRC. Other federal councillors – Motta, and Etter during the war – were also members of the Committee.

At the time, therefore, the ICRC was not as concerned as it is today to mark its independence from Switzerland. Swiss neutrality seemed solid enough to allow its representatives to represent the ICRC as well, without imperilling the organization's neutrality. In their minds, however, there was no confusion as to their respective roles. Jean Pictet used to tell the story of an important meeting between Gustave Ador and Clemenceau. Ador first broached Switzerland's entry into the League of Nations, with great conviction, of course, but with the modesty becoming the representative of a small state before a great power; he adopted a more vehement tone when the

<sup>82</sup> Durand, *supra* note 3, at 606–607. See also D. Arsenijevic, *Otages volontaires des SS* (1974).

<sup>83</sup> On this topic, see Favez, *supra* note 3, in particular at 156 ff of the English version.

<sup>84</sup> Durand, *supra*, note 3, at 606.

<sup>85</sup> Favez, *supra* note 3 (French version), at 16: 'How could this situation, or at least a large part of it, have appeared normal and acceptable?'

discussion turned to ICRC problems, aware of the moral authority he had by virtue of the organization's mission.

Max Huber had also been very involved in Swiss diplomacy, and was one of the main architects of Switzerland's entry into the League of Nations. In addition, as we have seen, Switzerland had delegated him as its representative to the 1932 Disarmament Conference, at a time when he was already president of the ICRC. He was therefore indeed someone who, if one considers the entire span of his career, 'for so many years was slated to and often called on to function as the guardian of two crosses, one red, the other white'.<sup>86</sup> He was able to juggle both roles, however, and did not allow one to interfere with the other. He also demonstrated his ability to balance conflicting interests as Chairman of the Board of the factory he inherited from his father.<sup>87</sup> He clearly expressed his view on the importance of the ICRC remaining completely independent, including from Switzerland, in a letter he wrote in 1944 in response to a delegate who had criticized the Committee: 'It is precisely its complete independence, the fact that as an institution it is accountable to no one (not even, as you seem to think, to the political authorities of one country) that allows it to play the role that many people and institutions expect it to'.<sup>88</sup>

During the Second World War Switzerland was genuinely afraid that it would be invaded, and the ICRC shared that fear. As we have seen, its cautious approach, in some cases and to an extent that is difficult to gauge, was probably related to that fear. But it is even more difficult to determine whether the ICRC engaged in a form of self-censorship or whether the pressure exerted by the federal Government played a pivotal role. In any event, the ambiguous nature of relations between the ICRC and Switzerland was exposed at the end of the war. Carl Burckhardt, Huber's successor, while acknowledging the importance of the ICRC for Switzerland – 'it is thanks to the ICRC that our little country has at times played the part of a great power' – nevertheless regretted that the Committee had 'sometimes slipped into a state of regrettable dependency on Berne'.

It subsequently became clear that the ICRC's independence could not be taken for granted and that Switzerland's neutrality was not the same as that of the ICRC. In the following years, other federal councillors – Max Petitpierre and Hans-Peter Tschudi – and

<sup>86</sup> See *Schweizer Illustrierte Zeitung*, 27 Dec. 1954.

<sup>87</sup> The factory was Aluminium Industrie AG. At one time Huber was at the centre of a controversy stirred by the humorist Jack Rolland, who had confused Huber's firm with the weapons manufacturer Oerlikon Bührle. Rolland subsequently apologized publicly, whereas Huber adopted an attitude of 'icy indifference', as he wrote in a letter to Jean Pictet on 23 Sept. 1953, knowing full well that 'neither condemnation nor correction could undo the harm that the slanderers may have caused'. Huber knew that the aluminium produced in the factories of the company he headed was important during wartime, and as soon as war broke out he gave up all claim to any income relating to his membership of the Board of Aluminium Industrie AG, donating it to social works, in particular the Red Cross. He resigned as Chairman of the Board in 1941, 'needing all his strength and health for his activities directing humanitarian endeavours', according to the company's annual report. See ICRC Archives, File B AG 004 037 (original French).

<sup>88</sup> Private letter from Max Huber to delegate Wyss-Dunant, 13 July 1944, ICRC Archives (original French).

senior federal officials were co-opted onto the Committee, but only once they had left office, and having maintained no direct links to it. The same applies to former Secretaries of State, one of whom was the previous ICRC president, Cornelio Sommaruga, another its current one, Jakob Kellenberger. Membership of the Federal Parliament is also incompatible with active membership of the Committee.

## F *The Structure and Functioning of the ICRC*

In order properly to understand the ICRC's history, we must also look at how its organization gradually evolved. That history cannot be judged in the light of the organization's current complex, professional structure. The members of the Committee did not always have the requisite availability or even talents, but they nevertheless had a considerable impact.<sup>89</sup> In addition, the first year of Huber's presidency was marked by serious financial difficulties, with the Committee struggling to obtain the necessary funds in the midst of a worldwide economic crisis.

Huber played a substantial role in the ICRC's evolving structure and functioning. He helped set up the sizeable structure it needed to perform its tasks during the Second World War, starting with an organization of 57 people at the outset of the war and reaching almost 2,500 in late 1944. What was wonderful about Huber and the ICRC was that they allowed no obstacles to undermine their determination to create an efficient organization, even if – perhaps inevitably – ‘the changes made both in management and in administration were marked by improvisation [and] amateurism.’<sup>90</sup>

When he agreed to become acting president following Burckhardt's appointment to Paris, Max Huber set conditions that foreshadowed the ICRC's current structure. He demanded that one or two vice-presidents be appointed to ensure continuity and that day-to-day administration be carried out exclusively by the General Secretariat, composed of permanent staff; shortly thereafter, in January 1946, he demanded that the Committee set up a managing body and ‘make a clear distinction between the role of the Committee, which should control and decide the main courses of action, and that of the managing body, which should perform the executive functions and administration of the day-to-day work’.<sup>91</sup>

Huber was also perfectly aware of the imperfect but nevertheless necessary nature of the ICRC's mononationality: ‘The ICRC does not seek to hide the disadvantages that may result from its structure and its peculiar character. However, when trying to imagine the new status it could be given, even more obstacles and disadvantages spring to mind.’<sup>92</sup>

<sup>89</sup> On this see in particular Jacques Chenevière, in Jacques Fremont (ed.), *Le Comité international de la Croix-Rouge* (1981), at 17.

<sup>90</sup> Favez, *supra* note 3, at 46 of the English version.

<sup>91</sup> Quoted and commented on by Durand, *supra* note 3, at 652.

<sup>92</sup> Letter mentioned *supra* note 88.

Lastly, Huber excelled at finding good men, people like Jean Pictet and Marcel Junod, and endowed them with his trust. He also backed them against certain members of the Committee: when Pictet was hired by the ICRC, one member of the Committee apparently said to him: ‘You now take your orders from 25 people, you will do as they tell you.’ Pictet replied that this was out of the question . . . and Max Huber agreed.

In short, the Committee’s mononationality as the ‘least bad’ system, a president backed by two vice-presidents, a clear distinction between the tasks of general management and the Committee’s role of oversight, the crucial importance of selecting the right men and women for the organization – on all these points, Huber showed that he was a man of vision.

## 4 Concluding Remarks

Jacques Chenevière, speaking on the occasion of Max Huber’s 75th birthday, praised his ‘deep generosity,’ affectionately adding: ‘You are not a simple man, no matter what you think.’ To describe a man of such stature in a few words was obviously no easy task. The words nevertheless leave us with the impression that Max Huber was a likeable man: he combined exceptional worldliness with great modesty, the desire to listen and understand, an unwavering commitment and unflinching honesty.

Was it wise to burden this visionary, this ardent defender of an ideal to which he devoted body and soul, with the additional task of setting the guidelines for and driving the ICRC’s operational activities throughout his presidency, one of the worst periods in history? Let us not forget that he was old and sick when he was forced to stand the terrible test of the Second World War.

But the question goes even further. Jean Pictet, with the passage of time, considered that Huber, the brilliant lawyer and man of thought, was not made for action. Being a man of great scruples, according to Pictet, he often could not sleep if he had an important decision to make. Huber himself wondered, towards the end of his life, about that aspect of his personality: ‘Was I made for action? In many ways, I feel close to Erasmus. Like him, I can see the light and the dark side of things. I am inclined to fear decisive action: unfathomable neutrality, which poses so many problems, is what directs my reactions.’<sup>93</sup>

No one, however, had a better understanding of the Red Cross, ‘that mix of grandeur and misery’,<sup>94</sup> of its ideal and the limits to its work, the importance of its universality, the complexities inherent in the Movement’s nevertheless relevant structure, its necessary and complex relations with the states, and lastly, the importance of consolidating the Movement with shared fundamental principles. His writings and his thinking have lost nothing of their pertinence and have undeniably provided the ICRC and the Movement of today with much of their momentum.

<sup>93</sup> Words quoted by Burckhardt, ‘Ceremonie à la mémoire de Max Huber’, *International Review of the Red Cross*, No. 495, Mar. 1960, at 119 (original French).

<sup>94</sup> *Ibid.*, at 118.

How then, should we react to the criticism brought against him, thus against the ICRC, that he was too passive in the face of the Holocaust? Far be it for us to judge. Yet, we can hazard a guess at his motives: Max Huber probably placed too much faith in the virtues of the Red Cross ideal and system, i.e., in the idea that preserving the Movement's universality at all costs was the best way to safeguard the core values on which both the Red Cross ideal and humanitarian law were built: humanity, impartiality, respect for human dignity, solidarity.

If, above and beyond all of Max Huber's fundamental reflections on the Red Cross, there is one lesson to be learnt from this painful episode in the organization's past, it is that even the Red Cross has its limits. To be able to carry out its activities, the Red Cross must operate in a context that respects a number of fundamental values on which it was constructed: if such is not the case, the fields in which it can act will rapidly diminish, to the point where they vanish. It must then recognize that fact and change its discourse and even its mode of action.

But the principles of respect for dignity, compassion and solidarity are just as necessary in building a truly peaceful world. Max Huber understood this and was remarkably adept at expressing it. And it is for this reason that we must do all in our power to uphold those principles today. Will we learn this even more basic lesson?