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## The Legal Status of the Red Cross

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## THE LEGAL STATUS OF THE RED CROSS

*Wesley A. Sturges\**

**R**ED CROSS is a term well known in the world at large; so is the heraldic emblem of the red cross on a white background. Many people in many lands use them to indicate and symbolize a variety of humanitarian purposes, principles and services.<sup>1</sup> When the term is used as a proper name, generally it identifies an organization which is lawfully authorized to carry out those purposes and services under that name. Organizations by that name have been accorded exclusive authority to carry out the given humanitarian programs, exclusive authority to use the words, whether as a proper name or otherwise, and exclusive authority to use the emblem consisting of the red cross on the white ground. These delegations of exclusive authority and attending obligations derive from national legislation in the several countries and from international conventions to which nearly all of the governments of the civilized world are parties.

Red Cross work embraces both war-time and peace-time charity. The two major divisions of services rendered by Red Cross include (1) a large variety of hospital, recreation and welfare services in time of war and in time of peace to members of the armed forces and their families, and to veterans and their families after

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<sup>1</sup>Generalizations in Red Cross circles upon the principles and purposes of Red Cross frequently are vague, with overtones of evangelism. Thus, in the "Statutes of the International Committee of the Red Cross," an enumeration of the aims and objects of that committee reads that the committee shall "maintain the fundamental and permanent principles of the Red Cross, namely: impartiality, action independent of any racial, political, religious or economic considerations, the universality of the Red Cross and the equality of the National Red Cross Societies." Art. 4(a), HANDBOOK OF THE INTERNATIONAL RED CROSS, 10th ed., 321 (1953) (hereinafter cited HANDBOOK, I.R.C.).

Designations of the agenda of humanitarian services to be carried on and of methods of procedure are more specific. See further, the "Fundamental Principles" of the League of Red Cross Societies "And Their Application," as declared by its Board of Governors. HANDBOOK, I.R.C. 395.

the war, and (2) peacetime relief and rehabilitation services to victims (in the United States and in foreign countries) of major disasters, such as earthquakes, floods and droughts. The program also involves the solicitation of donations to carry on these services.<sup>2</sup> Organization and planning of the work are on an international basis. The organization is not without its complexities.

In Red Cross circles there is the all-embracing "The International Red Cross."<sup>3</sup> It is composed of three Red Cross organizations as follows: (1) "National Societies," (2) the "League of Red Cross Societies," and (3) the "International Committee of the Red Cross."

"National societies" are national Red Cross societies lawfully organized and accredited as such by the governments of their respective countries and recognized by the International Committee of the Red Cross.<sup>4</sup> The national society for the United States is "The American National Red Cross" corporation. It is reviewed below.

The "League of Red Cross Societies" is declared by its constitution to be "the international federation of National Red Cross Societies"; also, as being "an independent, non-governmental, non-racial, non-political and non-sectarian organization." Its de-

<sup>2</sup> The variety of the Red Cross work is summarized in a brochure entitled "Charter and Bylaws of the American National Red Cross (Revision 1955)" as follows: "The American Red Cross conducts a wide variety of community, national and international service activities. Members of the armed forces, veterans, and their families are served through various welfare, recreation, and hospital programs. Disaster victims receive emergency and rehabilitation aid. Communities are served through such activities as health and safety education, a blood program, the Junior Red Cross in the schools, and the work of volunteers in civilian hospitals and institutions. Nearly 2,000,000 volunteers participate in Red Cross activities."

<sup>3</sup> "Statutes of the International Red Cross," HANDBOOK, I.R.C. 305. See also Ledermann, "International Organization of the Red Cross and The League of Red Cross Societies," 42 AM. J. INT. L. 635 (1948).

<sup>4</sup> Such societies have been organized in most of the civilized countries of the world. See listing, 19 ENCYC. BRIT., pp. 20-21. In order to qualify for recognition in International Red Cross a national society must comply with the following ten conditions. (They were last restated and approved at the XVIIth International Red Cross Conference, 1948):

"The Society shall:

"(1) Be constituted on the territory of an independent State where the Geneva Convention relative to the Relief of Sick and Wounded (1864, 1906, 1929, or 1949) is in force.

"(2) Be the only National Red Cross Society of the said State and be directed by a central body which shall alone be competent to represent it in its dealings with other members of the International Red Cross.

"(3) Be duly recognized by its legal Government as a Voluntary Aid Society, auxiliary to the public authorities, in particular in the sense of Article 10 to the Geneva Convention, or, in States which do not maintain armed forces, as a Voluntary Aid

clared "general objects" are "to encourage and facilitate at all times all forms of Red Cross action for the relief of suffering humanity." It is to serve "as the permanent organ of liaison, co-ordination and study between the National Red Cross Societies"; and it "cooperates with the Red Cross Societies in all aspects of their activities, particularly in the improvement of health, the prevention of disease and the mitigation of suffering."<sup>5</sup>

The "International Committee of the Red Cross" is a membership corporation under the Swiss Code. Its beginnings date back to 1863; it is the first of the Red Cross organizations. Its headquarters are at Geneva; its membership is limited to twenty-five Swiss citizens; members are elected for three year terms.

The most significant "aims and objects" of the committee, as set forth in its constitution, seem to be (1) "to recognize any newly established or reconstituted National Red Cross Society which fulfills the conditions for recognition in force, and to notify other National Societies of such recognition"; (2) "to take action in its

Society auxiliary to the public authorities and acting for the benefit of the civilian population.

"(4) Be an institution whose autonomous status allows it to operate in conformity with the fundamental principles of the Red Cross, as formulated by the International Red Cross Conference.

"(5) Use the title and emblem of the Red Cross (Red Crescent, Red Lion and Sun), in conformity with the Geneva Convention.

"(6) Be so organized as to enable it to deal effectively with the tasks incumbent upon it. Become prepared in time of peace for war-time activities.

"(7) Extend its activities to the entire country and its dependencies.

"(8) Not withhold membership from any of its nationals, whoever they may be, on grounds of race, sex, class, religion or political opinions.

"(9) Adhere to the Statutes of the International Red Cross, share in the fellowship which unites its members—the National Societies and the international bodies—and keep in close touch with them.

"(10) Honour the fundamental principles of the Red Cross as defined by the International Red Cross Conferences: impartiality; political, religious and economic independence; the universality of the Red Cross and the equality of all National Societies; and be guided in all its work by the spirit of the Geneva Convention and the Conventions which complete it." HANDBOOK, I.R.C. 319-320.

<sup>5</sup> "Constitution of the League of Red Cross Societies," Arts. 1, 2, 3, 4, 5. HANDBOOK, I.R.C. 325. The League was started in 1919 and is generally regarded as having been organized in response to United States promotion to extend the program of the humanitarian purposes and principles of Red Cross in time of war to times of peace. In the original Statutes of The International Red Cross the League is identified as "an association of National Red Cross Societies bound together for practical co-operation in peace-time, for mutual assistance, and the pursuit of common activities." Art. 8, HANDBOOK, I.R.C., 1951 ed., p. 308.

Concerning the League, see further, Ledermann, "International Organization of the Red Cross and The League of Red Cross Societies," 42 AM. J. INT. L. 635 (1948); 19 ENCYC. BRIT. 18.

capacity as a neutral institution, especially in case of war, civil war or internal strife; to endeavour to ensure at all times that the military and civilian victims of such conflicts and of their direct results receive protection and assistance, and to serve, in humanitarian matters, as an intermediary between the parties"; (3) "to undertake the tasks incumbent on it under the Geneva Conventions, to work for the faithful application of these Conventions and to take cognizance of any complaints regarding alleged breaches of the humanitarian Conventions."<sup>6</sup>

The "statutes" of "The International Red Cross" provide that its "supreme deliberative body" shall be the "International Conference." The Conference shall be made up of delegates of (1) the foregoing constituent members and (2) of "delegations of the States parties to the Geneva Conventions."<sup>7</sup> The Conference is, normally, to meet every four years.<sup>8</sup>

<sup>6</sup> "Statutes of the International Committee of the Red Cross," HANDBOOK, I.R.C. 321-322.

<sup>7</sup> HANDBOOK, I.R.C. 305.

<sup>8</sup> While the Conference is declared to be the "supreme deliberative body" of International Red Cross, the International Committee is expressly recognized as continuing as an independent organization as follows:

"1. The International Committee of the Red Cross is an independent institution, governed by its own Statutes and recruited by co-optation from among Swiss citizens.

"2. It maintains the fundamental and permanent principles of the Red Cross, namely: impartiality, action independent of any racial, political, religious or economic considerations, the universality of the Red Cross and the equality of the National Red Cross Societies.

"3. After having assembled all pertinent data, it announces the recognition of any newly established or reconstituted National Red Cross Society which fulfills the conditions for recognition in force.

"4. It undertakes the tasks incumbent on it under the Geneva Conventions, works for the faithful application of these Conventions and takes cognizance of complaints regarding alleged breaches of the humanitarian Conventions.

"5. As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war, or internal strife, it endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results. It contributes to the preparation and development of medical personnel and medical equipment, in cooperation with the Red Cross organizations, the medical services of the armed forces, and other competent authorities.

"6. It takes any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary and considers any question requiring examination by such an institution.

"7. It works for the continual improvement and diffusion of the Geneva Conventions.

"8. It accepts the mandates entrusted to it by the International Conference of the Red Cross.

"9. Within the framework of the present Statutes and subject to the provisions of Article VII, it maintains close contact with National Red Cross Societies. It also maintains relations with Governmental authorities and any national or international institutions whose assistance it considers useful." "Statutes of the International Red Cross" Art. VI, HANDBOOK, I.R.C. 307.

The red cross emblem was born to war service. It was first officially identified and assigned to duty by the Geneva Convention of August 22, 1864.<sup>9</sup>

That treaty was the first undertaking ever concluded among nations to provide for the amelioration of the lot of soldiers who become sick or wounded.<sup>10</sup> To this end it was agreed by the contracting states to neutralize ambulances and military hospitals used in the aid and care of sick and wounded soldiers and the personnel engaged in administering such aid and care.

In order to identify and mark these facilities and personnel to assure their protected status "a distinctive and uniform flag" was prescribed for these facilities and an arm-badge for the individuals. Both the flag and the arm-badge were required to bear "a red cross on a white ground."<sup>11</sup>

The source of inspiration for this make-up of the emblem appears to have been an open secret. While the matter was not mentioned in the foregoing Geneva Convention of 1864, it is reported in the subsequent Geneva Convention of July 6, 1906.<sup>12</sup> It is there disclosed that the emblem was conceived with intent to honor Switzerland and was made up by reversing the federal colors of Switzerland. Article XVIII of that Convention reads as follows: "Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary services of armies."<sup>13</sup>

<sup>9</sup> 22 Stat. 940 (1882), Treaty Series, No. 377. The United States was not one of the original contracting nations; its adherence thereto did not take place until March 1, 1882.

<sup>10</sup> Concerning the fate of the sick and wounded of the armies prior to this Convention see Love, Colonel, U.S. Army, Retired, "The Geneva Red Cross Movement, European and American Influence on Its Development," Number 62, *THE ARMY MEDICAL BULLETIN* 1-29 (1942).

<sup>11</sup> Article VII of the Convention, 22 Stat. 944 (1882), Treaty Series, No. 377.

<sup>12</sup> 35 Stat. 1885 (1907), Treaty Series, No. 464. This Convention was designed "to improve and supplement" the Geneva Convention of 1864 and thereby further its principles to assure aid and care for the sick and wounded of the armies. These principles were again reviewed and amplified in the Geneva Convention of July 27, 1929. The United States became a party in 1932. 47 Stat. 2074 (1932), Treaty Series, No. 847. See further report of Senate Committee on Foreign Relations, Executive Report, No. 9, 84th Cong., 1st sess., upon the Convention of 1949 (1955).

<sup>13</sup> 35 Stat. 1895 (1906). See also art. 19 of the Geneva Convention of July 27, 1929, 47 Stat. 2089, Treaty Series, No. 847.

Art. 19 of the 1929 Convention contained the first recognition of any permissible make-up for the emblem other than that set out in the original Geneva Convention of August 22, 1864, 22 Stat. 940 (1882). It is a copy of Art. 18 of the earlier Convention of July 6, 1906 (quoted above in the text), but with the following paragraph added: "However, for countries which already use, as a distinctive sign, in place of the red

While the contracting states of the Geneva Convention of 1864 agreed to neutralize hospital facilities and personnel employed in giving aid to the sick and wounded of the armies, they included no provisions as to the ways and means by which aid and care for the sick and wounded of the armies should be accomplished. Services to that end were outside and beyond then existing charts of military organization, and there were no Red Cross organizations in existence. The Convention did not mention any role for civilians, who might be organized in Red Cross fashion, or otherwise, to render aid and care to the sick and wounded of the armies.

It is clear that the agenda of the Convention was narrowed to the issue of neutralization (without consideration of ways and means of executing the Convention) in order to give greatest hope to the accomplishment of an agreement upon neutralization. It is clear, on the other hand, that questions as to ways and means of carrying out the treaty and as to the role of volunteer, civilian relief societies were well known to the contracting nations at the time of the making of the Convention. This is true because representatives of many of the contracting states had attended the Geneva Conference of the preceding year (1863) in which ten recommendations on such matters, including the use of civilian relief societies, had been agreed upon. While those initial recommendations were not covered into any formal treaty, clearly they served to influence, and indeed, to shape, the organization of the services for the aid and care of the sick and wounded of the armies which were formalized in the subsequent treaties.<sup>14</sup>

Express recognition of a lawful role for civilian relief societies

cross, the red crescent or the red lion and sun on a white field, these emblems shall likewise be recognized within the meaning of the present Convention."

<sup>14</sup> These recommendations were as follows:

"Article 1. There exist in each country a Committee whose object is to cooperate in time of war, if required, by all means in its power in the sanitary service of the armies. This committee is organized in the manner which appears to it the most useful and suitable.

"Article 2. Unlimited subcommittees may be formed, under its direction, to assist this committee.

"Article 3. Each Committee must be recognized by the government of its own country in order to be recognized and its offers of help accepted.

"Article 4. In time of peace the object of the Committee and sub-committees shall be the means of becoming truly efficient in time of war, especially in preparing materials of all kinds, and in instructing voluntary nurses.

"Article 5. In time of war the Committees of belligerent nations furnish help in the measure of their resources, to their respective armies; and in particular organize and put on an active basis the voluntary nurses, and arrange sites for the establishment

first appears in the Hague Convention of July 29, 1899.<sup>15</sup> That Convention extended the principles of the Geneva Convention of 1864 to maritime warfare. Neutralization was extended to certain classes of "hospital ships." They were to be marked with the maritime red cross emblem<sup>16</sup> and carry the white flag with the red cross. It was stipulated that among the ships that could qualify as "hospital ships" were those equipped wholly or in part by "officially recognized relief societies."

The Geneva Convention of July 6, 1906<sup>17</sup> carried more explicit and positive recognition of the role of "volunteer aid societies, duly recognized and authorized by their own government" as follows:

Article IX stipulated that "personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments . . . shall be respected and protected under all circumstances. . . ."

Article X followed to include "personnel of volunteer aid societies" within Article IX as follows:

"The personnel of voluntary aid societies, duly recognized

of hospitals, with the sanction of the military authority. They may solicit the assistance of Committees belonging to neutral nations.

"Article 6. On appeal, or with the sanction of military authority, the Committees may send voluntary nurses to the field of battle. These are put under the direction of military chiefs.

"Article 7. Voluntary nurses on active duty in time of war must be provided with everything necessary for their maintenance by their respective Committees.

"Article 8. They wear, in all countries, as a distinctive badge, a white brassard with a Red Cross.

"Article 9. The Committees and subcommittees may assemble in International Congresses, to interchange their experiences and to act in concert on measures to be taken in the interest of the work.

"Article 10. All communications between committees of diverse nations, for the time, are conducted through the Committee of Geneva." HANDBOOK, I.R.C. 3.

It is noticeable that the statement of purposes in the Act of Congress creating "The American National Red Cross" corporation as the national Red Cross society for the United States of America sets forth that the corporation is created, among other things, to furnish volunteer aid to the sick and wounded of the armies in time of war, "in accordance with the spirit and conditions of the conference of Geneva of October, 1863. . . ." Act of June 6, 1900, §3, 31 Stat. 277; Act of January 5, 1905, §3, 33 Stat. 599. These acts are reviewed below in the text.

<sup>15</sup> 32 Stat. 1827 (1901), Treaty Series, No. 396. See further, the Hague Convention of October 18, 1907, 36 Stat. 2371 (1910), Treaty Series, No. 543.

<sup>16</sup> "Hospital Ships," together with their boats and small craft used in hospital work, were to be painted white outside with a horizontal band of red about a meter and a half in breadth. Art. V.

<sup>17</sup> 35 Stat. 1885 (1907), Treaty Series, No. 464.



and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

"Each state shall make known to the other . . . the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary services of its armies."

It may be noted that while these international Conventions expressly recognized the role of "volunteer aid societies" as auxiliaries of the armed forces, they did not select or name any organizations to serve the role. While the words "Red Cross" appear from time to time in these treaties, it seems clear from the context that they were not used to select or name the "Red Cross" as a relief society.<sup>18</sup> The selection and designation of these societies were left to the governments of the several signatory states.

### THE AMERICAN NATIONAL RED CROSS

As indicated above, the National Red Cross Society of the United States of America is "The American National Red Cross" corporation. It is a membership corporation created and so named

<sup>18</sup> It is recited in the Hague Convention of December 21, 1904 (35 Stat. 1854, Treaty Series, No. 459) that the qualification of "hospital ships" to include those equipped by "officially recognized relief societies" as provided in The Hague Convention of July 29, 1899, "sanctioned the *principle of the intervention of the Red Cross in naval wars.*" (Italics supplied.) It is concluded that this activation of the "Red Cross" is metaphorical and not the recognition or naming of "Red Cross" as any relief organization.

In the Geneva Convention of July 6, 1906 (35 Stat. 1885, Treaty Series, No. 464) (quoted above in the text) the words "Red Cross" appear in a context either restraining the use of the words, or of only indefinite reference. Article XXIII of the treaty reads as follows:

"The emblem of the red cross with a white background and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and material protected by the convention." Italics supplied.

There also are general references in this Convention to "the flag of the *Red Cross*," to "the emblem or name of the *Red Cross* or *Geneva Cross*," and to "the flag and brassard of the *Red Cross*." Arts. XXI, XXVII, XXVIII. Italics supplied.

See further, Arts. 24, 28 Geneva Convention, July 27, 1929 (47 Stat. 2074, Treaty Series, No. 847). In Art. 24 of the Geneva Convention of July 27, 1929 there is, on the other hand, a precise delegation of authority to "one of the national Red Cross Societies" as follows:

"As an exceptional measure and *with the specific authorization of one of the*

by special act of the Congress.<sup>19</sup> In some respects this corporation conforms to the pattern of a variety of membership corporations created by special acts of Congress. These similarities are reviewed below.

On the other hand, the Red Cross corporation is different from all other government corporations in at least three important particulars, as follows:

(1) In the act creating the present Red Cross corporation, Congress declared its belief that "the importance of the work" to be done by the corporation required that it be put under "government supervision," and it did so by providing for government appointment of part of the governing body of the corporation and for annual audit of its accounts as set out below.

(2) The corporation was tailored to qualify as a National Society of the International Red Cross.<sup>20</sup> As more fully appears below, it has been so designated by the Government of the United States. It has been so recognized and accredited by the International Committee of the Red Cross.<sup>21</sup>

(3) As more fully appears below, also, the corporation was so planned and created by the United States of America to fulfill its undertakings as a contracting party of the Geneva treaties of 1864 and following relating to the amelioration of the sick and wounded of the armies.

A corporation with the foregoing name was first created by

*national Red Cross Societies* (Red Crescent, Red Lion and Sun), the use of the emblem of the Convention may be allowed in peace time to designate the location of relief stations reserved exclusively to giving free assistance to wounded or sick." Italics supplied. 47 Stat. 2092.

The Covenant of the League of Nations likewise appears to have intended to recognize "Red Cross organizations" and indorse their work. Art. 25 of the Covenant was worded as follows:

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

<sup>19</sup> 33 Stat. 599 (1905), as amended 36 U.S.C. (1952) §§1 to 17, sometimes referred to herein as the "Red Cross act" and "Red Cross." Since the charter is constituted by an Act of Congress, it seems clear that courts will take judicial notice of its terms and provisions. See *American National Red Cross v. Felzner Post*, 86 Ind. App. 709, 159 N.E. 771 (1928); *Ragan v. Dodge County Chapter American Red Cross*, 73 Ga. App. 432, 36 S.E. (2d) 831 (1946).

<sup>20</sup> See note 4 supra, listing the ten conditions for qualification.

<sup>21</sup> "Fiftieth circular, International Committee to the presidents and members of the central committees for aid to wounded soldiers," September 2, 1882. See also H. Rep. 3146, 58th Cong., 3d sess. (1904).

special Act of the Congress in 1900.<sup>22</sup> Prior to that enactment, "The American National Association of the Red Cross" had been incorporated in 1881 under the corporation laws of the District of Columbia as enacted by the Congress.<sup>23</sup>

The special Act of 1900 changed the name of the earlier corporation to its present name and declared a "reincorporation" of the earlier corporation.<sup>24</sup> The Act of 1900 set forth the general intent and purpose of the Congress in incorporating "The American National Red Cross" corporation, namely, that it should serve as a National Society in the International Red Cross. It also fixed the text of the principal purposes and duties of the corporation; and that text has survived in the subsequent acts revising the charter of the corporation.

The Act of 1900 was displaced by the subsequent special Act of Congress of January 5, 1905.<sup>25</sup> It seems to be a somewhat general practice to refer to this Act of 1905 as the statutory beginning of the present American National Red Cross corporation. To do so disregards, of course, the Act of 1900.<sup>26</sup>

The Act of 1905 expressly repealed the earlier statute. After declaring that the new corporation should succeed "to all the rights and property . . . and to all the duties which have heretofore been performed" by "The American National Red Cross" corporation of the 1900 act, it provided that the earlier namesake "is hereby dissolved." As the Act of 1905 vested in the new corporation the rights, property and duties of its namesake, so did it continue, without substantial change, the declared purposes and powers which were written in the earlier (1900) act.

There was one major change. The earlier act had no provision governing the organization or composition of the governing body

<sup>22</sup> Ch. 784, 31 Stat. 277. Approved June 6, 1900.

<sup>23</sup> The organization of this corporation, and its "reincorporation" in 1893, are recited in the Preamble of the 1900 act. See also the Preamble of the Act of January 5, 1905, cited more fully below.

In these preambles it is declared that the "American National Association of the Red Cross," as incorporated under the laws of the District of Columbia, and as "reincorporated" thereunder had been "in accordance with the requirements and customs" of the International Committee of Relief for the Wounded in War and for the purpose of carrying out the humane objects contemplated by the Geneva Convention of 1864.

<sup>24</sup> Said the Preamble of the Act of 1900: "Whereas it is believed that the importance of the work demands a reincorporation by the Congress of the United States: Now, therefore, Be it enacted . . .," etc.

<sup>25</sup> 33 Stat. 599, c. 23.

<sup>26</sup> In the Preamble of this Act of 1905, the Act of 1900 is referred to as the Act of Congress by which the earlier "The American National Association of the Red Cross" had been "reincorporated."

of the corporation. The 1905 act made specific provisions in these matters. As originally enacted, the 1905 statute provided that the initial governing body of the newly-created corporation should consist of a "Central Committee" of eighteen persons, that six should be appointed by the incorporators who were named in the act and twelve by the President of the United States, and that the President should designate one of his group as Chairman.

The Central Committee was expressly required to organize "State and Territorial Societies" without delay, and when six or more of such societies were formed, the Central Committee was further required to reorganize so that six of its members would be appointed by the incorporators, six more should be appointed by the President, and six should be elected at an annual meeting of the incorporators and societies.

These provisions of the 1905 act apparently served (1) to dilute the control of the incorporators named in the statute, (2) to recognize and avow the power of the United States Government to appoint a part of the governing board, and (3) to promote the organization of local chapters of Red Cross and accord them the principle of democratic representation on the governing body.

A House committee, favorably reporting on the bill,<sup>27</sup> expressed the views that it had become important "to place this organization under Government supervision"; that the 1900 charter had not done so;<sup>28</sup> that the power accorded to the President to appoint personnel to the governing body and the provision for annual reporting of proceedings and of audits of accounts to the government<sup>29</sup> would accomplish the desired results. It was thought that these instances of government supervision "will arouse and maintain public confidence and support"; and would bring the Red Cross Society of the United States more in line with the policy of government supervision exercised by foreign governments with respect to their national societies.<sup>30</sup>

<sup>27</sup> H. Rep. 3146, 58th Cong., 3d sess. (1904).

<sup>28</sup> The preamble of the 1905 act added a paragraph to the Preamble of the 1900 act declaring that "it is believed that the importance of the work demands a repeal of the present charter and a reincorporation of the society under Government supervision. . . ."

<sup>29</sup> Substantially the same requirements for reporting proceedings and audits of accounts to the government were contained in the 1900 act.

<sup>30</sup> A report by the Secretary of State upon the practice of foreign governments as to their supervision of their respective national societies showed, as of that time, considerable variation. Practices varied as to government appointment of personnel to the governing body, as to reports of proceedings and accounts to the government, and as

Subsequent amendments of the act—particularly those of May 18, 1947—have reorganized the governing body in substantial particulars. It has been re-named as the "Board of Governors," in which are lodged "all powers of government, direction, and management of the corporation." It is composed of fifty persons; some are appointed, some are elected.

Eight governors are appointed by the President of the United States, and one of them, as designated by the President, is to be the "principal officer" of the corporation.<sup>31</sup> Except for the one designated as principal officer, the President's appointees "shall be officials of departments and agencies of the Federal Government"; and at least one, but not more than three, of them shall be selected from the armed forces.

to "the extent and character of government supervision respecting the organization, finances and work of the society." "Government supervision" was direct and positive in some countries, but not in others. S. Doc. No. 178, 58th Cong., 2d sess., "Red Cross Society in Foreign Countries" (1904).

It should be noted that, if the society is to qualify in International Red Cross, "government supervision" must not go so far as to deny its autonomy "to operate in conformity with the fundamental principles of the Red Cross." Art. 4 of the conditions to qualify for recognition as a National Society, note 4 supra.

In the ANNUAL REPORT OF THE AMERICAN NATIONAL RED CROSS CORPORATION FOR 1946, Honorable Basil O'Connor, Chairman, commented (at p. 19) upon this matter as follows:

"The functions and scope of any national Red Cross society are defined fundamentally by the principles which govern the whole international fellowship of which it is a part. Those principles are based on a simple idea—the idea that human beings in distress should be given neighborly aid without distinction of any kind, whether of race or color, creed or political affiliation.

"This idea is easily understood by all people. It explains why, in a world shot through with suspicion and mistrust, the Red Cross is trusted everywhere. It explains why this, the first international non-military organization ever developed, has grown continuously in prestige and usefulness since 1864. It explains why, in spite of the war, no national society has ever felt it necessary to withdraw from this fellowship. . . .

"To preserve this vital principle intact, *the International Red Cross Committee has always maintained that the national societies, while cooperating closely and cordially with their own governments and with other agencies, should at the same time remain independent.*" Italics supplied.

<sup>31</sup>By the existing by-laws of the corporation, the President of the United States, upon his acceptance, becomes Honorary Chairman; similarly the Attorney General of the United States becomes Honorary Counselor, and the Secretary of the Treasury of the United States becomes Honorary Treasurer. §§5.01, 5.02, 5.03.

The "principal officer" of the Corporation is the Chairman of the Corporation and of the Board of Governors and presides over the Executive Committee. "He shall be the representative of the corporation in its relations with public and private agencies and the public at large. He shall be responsible for communicating to the President of the corporation the policies and programs adopted or approved by the Board of Governors and for reporting to the Board of Governors as to the conduct and management of the affairs of the entire organization." §6.01.

The Chairman also nominates the President of the Corporation who "shall be elected by the Board of Governors." The President is the "chief executive officer of the corporation." §6.03.

Thirty governors are to be elected by the chapters at a national convention. Twelve are to be elected by the Board of Governors as "members-at-large." These members shall be "representative of the national interests which it is the function of the Red Cross to serve, and with which it is desirable that the corporation shall have close association." In general the term of office of the governors is three years.

The Board of Governors is empowered to appoint from its own members an Executive Committee of not less than eleven persons, "who, when the Board of Governors is not in session, shall have and exercise all the powers of the Board of Governors."<sup>32</sup>

The amendatory act of 1947 also liquidated the status of the incorporators named in the original act of 1905, and their successors, and foreclosed their participation as such in making up the governing body. The Board of Governors was substituted for them "and neither the said incorporators nor any associates or successors shall have any powers or duties."<sup>33</sup>

As has been indicated above, the 1905 act (like its predecessor, the 1900 act) creating the Red Cross corporation fashioned it as a national society to carry out the volunteer aid services stipulated in the Geneva treaties of 1864 and following. It was expressly declared in that act (1905) that "the corporation hereby created is designated as the organization which is authorized to act in matters of relief under said treaties"; also that it is "to perform all the duties devolved upon a national society by each nation which has acceded to any of said treaties or conventions."<sup>34</sup>

President Taft, by Presidential Proclamation dated August 22, 1911<sup>35</sup> likewise identified the intent of the corporation, vouched for its official relationships to the United States Government, and for its duties under the Geneva Conventions as follows:

"Whereas, the American National Red Cross having been incorporated by an act of Congress January 5, 1905, 'To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of . . . the Treaty of Geneva of August 22, 1864'; and

"Whereas, it is desirable definitely to state the relations that

<sup>32</sup> 33 Stat. 599 (1905), as amended, 36 U.S.C. (1952) §5. These amendments were made effective by the Act of May 18, 1947, 61 Stat. 80, c. 50.

<sup>33</sup> 61 Stat. 80, §8.

<sup>34</sup> 36 U.S.C. (1952) §§2, 3.

<sup>35</sup> 37 Stat. 1716.

shall exist between the American National Red Cross and the military departments of the Government in the event of war:

"Now, therefore, I, William H. Taft, President of the United States, by virtue of the authority in me vested, do hereby declare and proclaim—

"1. That the American National Red Cross is the only volunteer society now authorized by this Government to render aid to its land and naval forces in time of war.

"2. That any other society desiring to render similar assistance can do so only through the American National Red Cross.

"3. That to comply with the requirements of Article 10 of the International Red Cross Convention of 1906 (revision of the Treaty of Geneva), that part of the American National Red Cross rendering aid to the land and naval forces will constitute a part of the sanitary services thereof.

"4. That should it be desirable in time of war, or when war is imminent, for the War Department or the Navy Department to make use of the services of the American National Red Cross, the Secretary of such Department is authorized to communicate with the President of the Society, specifying the character of the services required, and designating the place or places where the personnel and material will be assembled.

"5. That when any member of the American National Red Cross reports for duty with the land or naval forces of the United States, pursuant to a proper call, he will thereafter be subject to military laws and regulations as provided in Article 10 of the International Red Cross Convention of 1906, and will be provided with the necessary brassard and certificate of identity.

"6. That except in cases of great emergency, the personnel of the American National Red Cross will not be assigned to duty at the front, but will be confined to hospitals in the home country, at the base of operations, on hospital ships, and along lines of communication of the military and naval forces of the United States.

"In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed."

The obligations imposed upon the corporation to aid the Government of the United States in the fulfillment of its undertakings under the Geneva Treaties should, perhaps, be emphasized as the most telling indication of its stature as an instrumentality of the United States. In an opinion dated August 15, 1918, Honorable

John W. Davis, then Solicitor General of the United States, put the matter as follows:

“When any question arises as to the scope and activities of the American Red Cross, it must always be remembered that its charter is not only a grant of power but an imposition of duties. The American Red Cross is a quasi-governmental organization, operating under Congressional charter, officered in part, at least, by government appointment, disbursing its funds under the security of a government audit and designated by Presidential order for the fulfillment of certain treaty obligations into which the government has entered.”

By an opinion dated November 26, 1951, the Attorney General of Georgia concisely stated the matter as follows:

“The purposes for which this organization was created and incorporated by Congress was to enable the United States Government to meet its obligations under the conference of October 1863, and the treaties of the Red Cross of August 22, 1864, and July 27, 1929, which were the result of the conference and to which the United States Government is a party. It has additional governmental functions of assisting the military forces of the United States and other countries in voluntary relief activities in time of war, and in giving assistance to the mitigation of suffering caused by national calamities.”<sup>36</sup>

In proclaiming March 1955, as Red Cross month, President Eisenhower reaffirmed that “the Government of the United States has established the American National Red Cross as this Nation’s official volunteer agency to act in matters of relief under the treaties, and has prescribed other humanitarian duties to be performed by the Red Cross on behalf of the Government and people of the United States. . . .”<sup>37</sup>

The act creating Red Cross corporation further provided that the corporation should have “the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek red cross on a white ground,” it being the emblem created and prescribed in the foregoing treaties.<sup>38</sup> Exclusive use by the American National Red Cross corporation of the words “Red

<sup>36</sup> 1950-51 Op. Atty. Gen., Ga., p. 419.

<sup>37</sup> 69 Stat. pp. C21-C22.

<sup>38</sup> 36 U.S.C. (1952) §2.



Cross" and of the emblem also is protected by provisions in the Criminal Code.<sup>39</sup>

The charter also makes clear that the corporation is to exist and function upon a national basis as a single corporate unit in accord with the statutes of the International Red Cross. To this end it provides that the "chapters" of the corporation "shall be the local units of the corporation within the states and territories of the United States."<sup>40</sup> By-laws of the corporation further provide that "chapters shall not be constituted as separate legal entities"; also that "all funds and property received by or coming into the custody of any chapter or any local unit are property of the corporation to be expended or applied only for the purposes authorized by the charter and only in accordance with the policies and regulations prescribed by the Board of Governors."<sup>41</sup>

The 1905 act, as amended, further prescribes that membership in the corporation shall be open to all people of the United States in accordance with the democratic principles to which Red Cross is dedicated. It reads: "That membership in the American National Red Cross shall be open to all people of the United States, its Territories and dependencies, upon payment of the sums specified from time to time in the by-laws."<sup>42</sup>

The corporation, being so fashioned, its "purposes" are then listed in the act of its creation. The context of the listing indicates that it is a declaration of duty as well as of authorization. As stated above, it is clear that the purpose and plan of the Red Cross act were to aid the United States in acquitting itself of its undertakings in the Geneva Conventions to ameliorate the lot of the sick and wounded of the armies. It is noticeable, however, that peacetime disaster relief also is contemplated for the corporation in accord with the general intent of the International Red Cross.

By the text of the stated "purposes," the corporation is "To

<sup>39</sup> These provisions are reported below.

<sup>40</sup> 36 U.S.C. (1952) §4a.

<sup>41</sup> By-laws, §§9.01, 9.07. Broad powers are vested by the statute in the Board of Governors relating to "chapters" as follows: "The regulations with respect to the granting of charters to the chapters and the revocation of the same, the territorial jurisdiction of the chapters, the relationship of the chapters to the corporation and compliance by the chapters with the policies and rules of the corporation, shall be as determined from time to time by the Board of Governors." 36 U.S.C. (1952) §4a.

The exclusiveness of the ownership of property by the corporation over that of a "chapter" is recognized in *American National Red Cross v. Felzner Post*, 86 Ind. App. 709, 159 N.E. 771 (1928).

<sup>42</sup> 36 U.S.C. (1952) §4a. Section 8.02 of the by-laws fixes the membership dues of the corporation at one dollar per year.

furnish volunteer aid to the sick and wounded of the Armed Forces in time of war" in accord with "the spirit and conditions" of the Conference of Geneva of 1863 and the Geneva Treaties of 1864 and following.<sup>43</sup> Also, it is "To act in matters of voluntary relief and in accord with the military authorities as a medium of communication between the people of the United States of America and their Armed Forces, and to act in such matters between similar national societies of other governments through the 'Comite International de Secours,' and the government and the people and the Armed Forces of the United States of America."<sup>44</sup>

With respect to peace-time disaster relief services the corporation is declared duty-bound to "continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities, and to devise and carry on measures for preventing the same."<sup>45</sup>

The health and welfare services to be rendered by Red Cross to the armed forces in time of war are unique functions; they are not duplicated by the military establishment; they are not shared by any other government corporation. They put the Red Cross in the position of an auxiliary of the military establishment. Judicial opinion has recognized this auxiliary relationship. Interference with its operation would, it has been declared, offend the Espionage Act as would interference with the armed forces. The Court in *Granzow v. United States*<sup>46</sup> observed upon such a case as follows:

"While the Red Cross is not itself within the term 'military and naval forces' as used in the statute, (the Espionage Act, effective in World War I) yet to cripple the Red Cross as operated in this war is to interfere with such forces. . . .

"The Red Cross is a national corporation, and its services, volunteered, have been used during the war virtually as an auxiliary to the armed forces."

In 1953 the Senate Armed Services Committee summarized the charter services of the corporation to the armed forces as follows: "The American National Red Cross, pursuant to its charter by the Congress of the United States, provides numerous welfare,

<sup>43</sup> 36 U.S.C. (1952) §3, "First."

<sup>44</sup> *Id.*, "Fourth."

<sup>45</sup> *Id.*, "Fifth."

<sup>46</sup> (8th Cir. 1919) 261 F. 172 at 173.

communication, and recreational services to the Armed Forces of the United States which are not provided by the Armed Services themselves. These services are concerned directly with individual members of the Armed Forces, and include direct communication with civilian members of service families, emergency loans, and the investigation of health and economic factors pertaining to dependents. The many highly desirable services contributing to the morale and comfort of patients in military hospitals include counselling, recreational activities, an arts and skills service, and other supplementary services. The American National Red Cross is also the authorized agency for communication with prisoners of war held by unfriendly governments. In all instances, when the need arises, the services of the American National Red Cross contribute greatly to the peace of mind and general welfare of the individuals concerned."<sup>47</sup>

It should be observed that Red Cross services to the military are not restricted to time of war. They include not only training of personnel and accumulation of supplies in peace-time for war-time use, but also welfare and recreational services to active military forces in peace-time. And, as in the case of services in war-time, they may be rendered not only at home but also abroad.

Congress has made clear its purpose to facilitate these services to the armed forces in peace-time as in war-time. Reference is made in this connection to the 1953 amendments by which Congress gave official recognition to these peace-time services and vested authority in the military establishment not only to accept them but also to incur expenses for subsistence of Red Cross personnel and to provide for the transportation of Red Cross personnel and supplies in connection with such services.<sup>48</sup>

Prior to these amendments the President was authorized to accept Red Cross services to the armed forces "in time of war, or when war is imminent." These time limitations were removed by the amendments; the President can accept the services of the Red Cross to the armed forces in time of peace as well as of war.<sup>49</sup>

By letter to the President dated July 17, 1953, Red Cross tendered "its assistance to the Armed Forces of the United States" and pledged itself "within the limits of available resources, to continue

<sup>47</sup> S. Rep. 460, 83d Cong., 1st sess. (1953).

<sup>48</sup> 67 Stat. 178 (1953), now covered by 10 U.S.C. (Supp. IV, 1957) §2602.

<sup>49</sup> Now covered by 10 U.S.C. (Supp. IV, 1957) §2602. Red Cross personnel engaged in these services are to be transported, housed and fed under like conditions as civilian

its program of services to the Armed Forces at home and abroad." The President accepted by letter dated August 17, 1953.

It may be conceded that the disaster relief services allotted to the Red Cross for peace-time duty are not so unique in kind as are those to be rendered to military personnel in time of war or in time of peace. It should be observed, however, that the Red Cross treaties contemplate the conduct by National Red Cross Societies of disaster relief and other humanitarian programs as authorized by their governments.<sup>50</sup> It is to be further observed, however, that Red Cross is the only government corporation vested with the peace-time function of providing aid in cash and welfare services to civilians who are victims of major disasters. The use of the red cross name and emblem in the course of this work also is exclusive with the Red Cross organization. It also is noticeable that Congress has sought to facilitate this peace-time charity to civilian populations by the Red Cross. Thus, the military establishment has been authorized to license the Red Cross corporation to erect and maintain buildings on military reservations (or to use buildings already erected thereon by the United States) for the storage of supplies to be used by it "for the aid of the civilian population in case of serious national disaster."<sup>51</sup>

Reference in this connection also should be made to the Act of Congress of September 30, 1950, providing for the administration of federal assistance to states and local governments to relieve victims of "major disasters."<sup>52</sup> It authorized "federal agencies,"

employees. [See also 10 U.S.C. (Supp. IV, 1957) §§4625, 9625, authorizing sales of ordnance stores alike to civilian employees and Red Cross personnel.] Red Cross personnel, however, "may not be considered as employees of the United States." §2602(e).

That the Congress has authorized the military establishment, under certain conditions, to supply military personnel to the Red Cross to aid its services to the armed forces, see 10 U.S.C. (Supp. IV, 1957) §§3539, 5987; to sell medical supplies and equipment to Red Cross on favorable terms, *id.*, §4624; and to issue equipment to the Red Cross for training purposes, *id.*, §2542.

<sup>50</sup> Article 44 of the first Geneva Convention of 1949 (6 U.S.T. 3114), in restricting the use of the name and emblem of the Red Cross provides: "Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings." HANDBOOK, I.R.C. 117.

<sup>51</sup> 10 U.S.C. (Supp. IV, 1957) §2670.

<sup>52</sup> 64 Stat. 1110 (1950), 42 U.S.C. (1952) §1855, as amended 42 U.S.C. (Supp. IV, 1957) §1855b.

when directed by the President, to divert their equipment and personnel to the use of state and local governments of stricken areas; also to distribute, "through the American Red Cross, or otherwise," medicine, food and other consumable supplies. All federal agencies were to cooperate with each other, with the state and local governments involved, and with the American National Red Cross in carrying out this relief work. "But," it is further provided, "nothing contained in this Act shall be construed to limit or in any way affect the responsibilities of the American National Red Cross under the Act approved January 5, 1905 (33 Stat. 599), as amended." The act also expressly excepted the American National Red Cross from its definition of "Federal Agency" as used therein.<sup>53</sup> It seems clear by this Federal Assistance Act that Congress intended to facilitate cooperation of American National Red Cross with the federal agencies in carrying out the federal disaster assistance program, but with the precise reservation that its doing so should not prejudice its own program for such relief as contemplated in this charter. By excepting it from "federal agency," Red Cross escaped the compulsion of the program as applied to the federal agencies.

While the United States does not appropriate any funds to aid Red Cross in carrying on its charter powers and duties, it should be pointed out that Congress made available land and buildings in Washington, D.C., for its national headquarters—they to remain the property of the United States and to be maintained by Red Cross without expense to the United States.

On one occasion, moreover, the Congress accorded aid to Red Cross in connection with its fund-raising work. By an Act of July 8, 1952, Red Cross was specially and exclusively favored by an amendment of the federal income tax laws.<sup>54</sup> Under the tax provisions theretofore existing, gifts of the proceeds of sports programs to Red Cross and other charities were deductible from the taxpayer's gross income up to an amount equal to five percent of the taxpayer's net income. The taxpayer was, however, required to include the proceeds of such programs in his gross income. By the amendment, subject to certain limitations, a taxpayer primari-

<sup>53</sup> The term "Federal agency" was defined broadly in the act to mean "any department, independent establishment, *Government corporation*, or other agency of the executive branch of the Federal Government, *excepting, however*, the American National Red Cross." Italics supplied. 42 U.S.C. (1952) §1855a (f).

<sup>54</sup> 66 Stat. 442, as amended 68A Stat. 35, 26 U.S.C. (Supp. IV, 1957) §114.

ly engaged in furnishing sports programs who shall have conducted a sports program *exclusively for the benefit of Red Cross* is allowed to omit the proceeds so contributed to the Red Cross from gross income. In other words, this contribution to Red Cross does not count against the taxpayer's five percent allowance for charities.

In favorably reporting upon the bill and recommending its enactment, the House Committee on Ways and Means commented as follows:

"The committee believes that the treatment accorded by this bill should be limited to sports programs conducted for the benefit of the American National Red Cross, as the bill provides. The Red Cross has a unique status which clearly differentiates it from other charitable organizations. Congress has conferred on the Red Cross a quasi-governmental status under legislation which sets forth its principal functions and prescribes the organization and methods of operation. Specific duties, such as the furnishing of aid to the sick and wounded of armies in time of war, are imposed upon the Red Cross by statute."<sup>55</sup>

In the floor discussion it was pointed out that the Red Cross could not properly be classified with other charitable organizations created under state law or by federal legislation, and that the restriction of the benefits of the bill to the Red Cross was in accord with prior congressional action in according the Red Cross exemption from federal excise taxes.<sup>56</sup>

The declared purpose of the Congress to create the Red Cross corporation a facility to carry out the undertakings of the United States under the Geneva Conventions, the enactment by the Congress of its principal charter powers and duties as reviewed above, and the foregoing supplementary acts of the Congress relating to Red Cross, point up the unique, exclusive and favored position

<sup>55</sup> H. Rep. 1728, 82d Cong., 2d sess., pp. 1-2 (1952).

<sup>56</sup> 98 CONG. REC. 3909-3910 (1952). Prior to 1944 the statutes imposing taxes on transportation and communication services exempted services furnished "the United States" and the Treasury Department ruled that the American National Red Cross was included within the phrase "the United States." In 1944 the exemption in favor of "the United States" was removed. Congress, however, recognized that although, as respects government agencies financed by federally appropriated funds, the removal of the exemption would amount merely to a bookkeeping transaction, the Red Cross would be required to pay the taxes from its own funds unless expressly exempted. Congress, accordingly, specifically exempted the Red Cross by providing that services furnished to "any corporation created by act of Congress to act in matters of relief under the Treaty of Geneva of August 22, 1864" would not be subject to the tax. 26 U.S.C. (Supp. IV, 1957) §§4263 (d), 4272 (d), 4253 (c).

of the Red Cross corporation. Congress has made it so. The courts and administrative agencies (both federal and state) seem well informed as to these aspects of the corporation.

On the other hand, in various particulars, its corporate make-up is part of a common pattern which is shared by other membership corporations created by the Congress.

Since its original enactment the Red Cross act has been assigned to Title 36 of the United States Code which is entitled "Patriotic Societies and Observances." By this arrangement "The American National Red Cross" corporation has acquired as companions on the statute books a considerable variety of corporations created, each in turn, and from time to time, by a special act of Congress. Some were created before, some were created after Red Cross. Judging by the variation in the declared purposes and principal powers and duties of these different corporations, the conception of "Patriotic Societies" of Title 36, is both broad and vague.

Among the Code companions of Red Cross there are: Daughters of the American Revolution, Sons of Union Veterans of the Civil War, United Daughters of the Confederacy, Boy Scouts, Girl Scouts, of America, several veterans' organizations like the Grand Army of the Republic, Veterans of Foreign Wars of the United States and the American Legion, also others like the Board for Fundamental Education, the Foundation of the Federal Bar Association and the National Fund for Medical Education.

These "patriotic societies" are readily distinguished in a variety of particulars from another group of corporations enacted by the Congress to carry on sundry types of business, commerce and finance. The latter corporations are frequently referred to as government business corporations. They are fashioned more or less like corresponding private corporations with capital structures, capital stock issues and authorization to engage in designated lines of enterprise for profit (or at least break-even returns) to the corporation. Generally the United States is the sole or principal stockholder. Reference is made to such government business corporations as Reconstruction Finance Corporation, Home Owners Loan Corporation, the many corporations created to aid farmers, etc.<sup>57</sup>

<sup>57</sup> For further identification of these corporations see *Keifer & Keifer v. Reconstruction Finance Corporation*, 306 U.S. 381 at 390 (1939); *Watkins*, "Federal Ownership of Corporations," 26 *Geo. L.J.* 261 (1937); *Stoke*, "Some Aspects of the Legal Status of Federal Corporations," 27 *Geo. L.J.* 1 (1938); *Lilienthal and Marquis*, "The Conduct of Business Enterprise by the Federal Government," 54 *HARV. L. REV.* 545 (1940).

Unlike the business corporations enacted by the Congress, its "patriotic societies" are created as membership corporations. The acts creating these societies follow a common pattern. A group of persons is named therein and the statute declares that they, their associates and successors, "are created a body corporate and politic." The Red Cross act now on the books declares that the persons named therein, with five others to be named by the President of the United States, "are created a body corporate and politic in the District of Columbia."<sup>58</sup>

None of the acts creating these societies contemplates the carrying on of any commercial enterprise for profit to the incorporators or members; some of the enactments do, some do not, expressly disclaim such purpose. According to some of the acts, membership is limited to designated classes of persons; this is true, for example, of the veterans' organizations. Some, like the DAR, have no statement of membership qualifications or limitations. Red Cross, on the other hand, as set out above, is required to be open to "all the people of the United States" and of its territories and dependencies.

Like Red Cross, most of these patriotic societies are required to make and transmit annual reports of their activities to the Congress either directly or through a designated officer. Some, like the Red Cross, also are required to include complete audits of their accounts.<sup>59</sup> Red Cross is required to transmit an annual "report of its proceedings" and a "full, complete and itemized report of receipts and expenditures of whatever kind" to the Department of Defense.<sup>60</sup> This provision designating the Department of Defense to audit the Red Cross accounts and transmit the report to the Congress is peculiar to the Red Cross charter.<sup>61</sup>

A majority of the statutes creating these societies of Title 36, including the Red Cross act, declare, in varying terms, exclusive

<sup>58</sup> 33 Stat. 599 (1905), 36 U.S.C. (1952) §1.

<sup>59</sup> Thus, the Daughters "shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings, and said Secretary shall communicate such portion thereof as he may deem of national interest and importance." 29 Stat. 9 (1896), 36 U.S.C. (1952) §18b.

Charters for the Boy Scouts, Girl Scouts, American Legion, and others provide that the corporation "shall transmit to Congress" an annual report "of its proceedings," "including a full, complete, and itemized report of receipts and expenditures of whatever kind." E.g., 36 U.S.C. (1952) §§28, 37, 49.

<sup>60</sup> 36 U.S.C. (Supp. IV, 1957) §6.

<sup>61</sup> It also has been enacted that the American National Red Cross shall reimburse the Department of Defense for auditing its accounts. *Id.*, §7.



rights to the use of the corporate names, emblems and badges.<sup>62</sup> As cited above, the Red Cross act provides that the corporation shall "have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek red cross on a white ground, as the same has been described in the treaties. . . ."<sup>63</sup>

Protection also has been provided in the Criminal Code for the names and emblems "of any veterans' organization incorporated by enactment of Congress."<sup>64</sup> Use by the American National Red Cross corporation of the Red Cross name and the emblem also is protected under the criminal statutes. They proscribe the unauthorized display of the emblem by any person with "the fraudulent purpose of inducing the belief that he is a member of, or an agent for the American National Red Cross." They also provide that "whoever, whether a corporation, association or person, other than the American National Red Cross and its duly authorized employees and agents and the sanitary and hospital authorities of the armed forces of the United States, uses the emblem of the Greek red cross on a white ground, or any sign or insignia made or colored in imitation thereof or the words 'Red Cross' or 'Geneva Cross' or any combination of these words . . ." shall be subject to fine or imprisonment, or both.<sup>65</sup>

<sup>62</sup> The provision in the American Legion act is typical of some; it covers only the use of the name, as follows: "Said corporation and its State and local subdivisions shall have the sole and exclusive right to have and to use, in carrying out its purposes, the name 'The American Legion,' or 'American Legion.'" 36 U.S.C. (Supp. IV, 1957) §48.

Some, like the Boy Scouts act, cover name and emblems as follows: "The corporation shall have the sole and exclusive right to have and to use, in carrying out its purposes, all emblems and badges, descriptive or designating marks, and words or phrases now or heretofore used by the Boy Scouts of America in carrying out its program, it being distinctly and definitely understood, however, that nothing in this chapter shall interfere or conflict with established or vested rights." 36 U.S.C. (1952) §27.

A comparable coverage in the charter for AMVETS (American Veterans of World War II) reads as follows: "The corporation and its State, regional, and local subdivisions shall have the sole and exclusive right to have and use in carrying out its purposes the name AMVETS (American Veterans of World War II), and such seals, emblems, and badges as the corporation may lawfully adopt." 36 U.S.C. (1952) §67. Compare the provision in the charter for the Veterans of Foreign Wars of the United States. 36 U.S.C. (1952) §117.

<sup>63</sup> 36 U.S.C. (1952) §2.

<sup>64</sup> Thus, one who knowingly reproduces, sells or purchases for resale any emblem or other insignia, or any colorable imitation thereof, "of any veterans' organization incorporated by enactment of Congress," or knowingly prints or reproduces for publication, or circulates or distributes a reproduction of such emblem or insignia, shall, unless authorized under rules and regulations of the organization, be subject to fine or imprisonment, or both. 18 U.S.C. (1952) §705.

<sup>65</sup> *Id.*, §706. This section carries the reservation that it shall not make unlawful a use of the emblem, sign, insignia or words which was lawful at the date of enactment

The statutes creating these "patriotic societies" also contain declarations of a variety of general powers and liabilities. The enumeration is similar in these statutes. The more significant of them appear below.

Thus, the corporation shall have "perpetual succession," and "the power to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States."<sup>66</sup> This power-to-sue-liability-to-be-sued provision has been the subject of some judicial decisions.

As noted above, the Red Cross act declares that the corporation is thereby created "in the District of Columbia." Accordingly, it has been held, in an action brought by Florida citizens against "The American National Red Cross" corporation, that there was the necessary diversity of citizenship to sustain the defendant's removal of the action from the state court to the United States District Court for Florida; also that the national scope of Red Cross as prescribed by the act did not affect this issue.<sup>67</sup>

of the Red Cross act in 1905. See *FTC v. A.P.W. Paper Co.*, 328 U.S. 193 (1946), and *FTC v. A.P.W. Paper Co.*, (2d Cir. 1945) 149 F. (2d) 424. The Supreme Court concluded that the Federal Trade Commission act did not, by implication, repeal the reservation protecting pre-1905 users of the Red Cross name and emblem, but that the Federal Trade Commission may require the addition of language on the products of such pre-1905 users that would remove any misleading inference that such products were sponsored, approved, or in any manner associated with the American National Red Cross. The decree fashioned by the Federal Trade Commission is stated in the circuit court decision cited.

<sup>66</sup> The matters quoted are from the Red Cross Act, 33 Stat. 600 (1905), as amended 36 U.S.C. (1952) §2. While these corporations are to have "perpetual succession," the statute in each case reserves to the Congress the right to repeal, alter, or amend at any time.

<sup>67</sup> *Patterson v. American National Red Cross*, (S.D. Fla. 1951) 101 F. Supp. 655. Compare *Osborn v. Oklahoma Tax Commission*, 279 P. (2d) 1096 (1954). Bequest to the American National Red Cross which was to be spent in Oklahoma was held exempt by the Supreme Court of Oklahoma from estate transfer taxes. Exemption was accorded in the tax statute to "charitable, educational or religious institutions *incorporated or operating under the laws of this State.*" (Italics supplied.) Concededly Red Cross was not incorporated under the laws of Oklahoma, nor had it qualified to do business therein.

The court took the position that Red Cross qualified for exemption. It reasoned that Congress was not acting as a local legislature of the District of Columbia in creating Red Cross; that it was acting as the legislature of the United States and that it had created "a national corporation"; that, being a national corporation, it should be regarded as a "domestic corporation and not a foreign corporation in any state in which it may do business or have an office"; that accordingly, it was "as much 'incorporated under the laws of this State' as any Oklahoma corporation."

The designation of the corporation in the act creating it "as a body corporate and politic in the District of Columbia" was, according to the court, "merely [to] state the residence of the 'home office' of the corporation"; it was not intended to give the Red Cross "a local instead of a national status."

"As a national corporation, therefore, it has the privilege and immunities of a

The Supreme Court of the United States has reiterated, in cases involving government business corporations, that the declarations of liability-to-suit in the acts creating these corporations manifest the intent of Congress to curtail governmental immunity from suit and that they should be construed generously to that end. Thus, in *Keifer and Keifer v. Reconstruction Finance Corporation*,<sup>68</sup> the Court observed:

"In spawning these corporations during the past two decades, Congress has uniformly included amenability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to-sue-and-be-sued was included.<sup>69</sup> Such a firm practice is partly an indication of the present climate of opinion which has brought governmental immunity from suit into disfavor, partly it reveals a definite attitude on the part of Congress which should be given hospitable scope."

While this case involved a government business corporation, the opinion carries the avowed purpose of the Court to find congressional purpose to curtail the governmental immunity of the United States with respect to such corporations. It seems probable that the same waiver will be construed from the liability-to-suit provision in the charters of the "patriotic societies."<sup>70</sup>

A single American decision in 1946 seems to have followed the approach of the Supreme Court in the *Keifer* case with respect to

domestic corporation of Oklahoma and the bequest to it is exempt from estate transfer taxes."

It seems clear that the single ground that these corporations are created by Act of Congress, will not sustain federal jurisdiction of them. See *Anthony Wayne Post v. American Legion*, (E.D. Pa. 1933) 5 F. Supp. 395; *Patterson v. American National Red Cross*, (S.D. Fla. 1951) 101 F. Supp. 655.

<sup>68</sup> 306 U.S. 381 at 390-391 (1939).

<sup>69</sup> The Court's list of forty corporations included several "Protective Societies," e.g., the American Legion. It did not include the Red Cross corporation, probably because it had not been in the "spawning" of the past twenty years; it had been created previously.

<sup>70</sup> In *Federal Housing Administration v. Burr*, 309 U.S. 242 (1940), the Court seems to have been somewhat careful to restrict the scope of its opinion to "Federal instrumentalities of the type here involved," namely, a government business corporation. It is not indicated, however, that a different decision might be reached with respect to a "Patriotic Society." (Liability-to-suit in this case was extended to include garnishment for monies due an employee.)

The Supreme Court had ruled earlier that the liability-to-suit provision extends to the use of attachment and execution in the suit. The Court concluded its opinion with possible reservation for some different situation by adding: "In the present case it does not appear that the attachment would directly interfere with any function performed by petitioner as a federal instrumentality." *Federal Land Bank v. Priddy*, 295 U.S. 229 at 237 (1934).

Red Cross. It sustained garnishment against the American National Red Cross.<sup>71</sup> A lower court had dismissed a garnishment summons on the ground that "the American Red Cross, this Chapter being a branch thereof, is an arm of the United States Government, and is not subject to any such proceeding." The appellate court reversed relying upon two considerations, namely, that the act creating the Red Cross corporation declared it liable to suit, and, that no exemption from garnishment is provided in that or any other federal statute.

It remains to note further the precise ruling by the Supreme Court in the *Keifer* case. It held the Regional Agricultural Credit Corporation liable to suit for a tort claim based upon the defendant's alleged defaults as a bailee for hire.<sup>72</sup> Had the Congress waived immunity of the corporation from suits to establish tort claims as well as contract claims? The Court answered in the affirmative. It noted that "Congress knew well enough how to restrict its consent to suits only in contract," but that it did not do so; that "it ought not to be assumed that when Congress consented 'to suit' without qualifications, the effect is the same as though it had written 'in suits on contract, express or implied, in cases not sounding in tort' "; that such a limitation or exception upon liability to suit should be denied in deference to the "expanding conceptions of public morality regarding governmental responsibility."

While these views of the Supreme Court were advanced in connection with the charter and operations of a government business corporation, it seems probable that they will be applied to a "patriotic society" like Red Cross.<sup>73</sup>

It also seems probable, on the other hand, that the local law

<sup>71</sup> *Ragan v. Dodge County Chapter American Red Cross*, 73 Ga. App. 432, 36 S.E. (2d) 831 (1946).

<sup>72</sup> This was, of course, a decision prior to the enactment of the Federal Tort Claims Act of 1946, 28 U.S.C. (1952) §1346 (b).

<sup>73</sup> Two cases prior to the *Keifer* decision involving the National Home for Disabled Volunteer Soldiers are to the contrary with respect to tort liability. The National Home was a corporation created by Act of the Congress to care for and provide hospital services for disabled soldiers. In these two cases the courts refused to construe the provision for liability to suit as consent to be sued in tort; and, indeed, the Home being a charitable institution, hospital and welfare agency of the federal government, it should not be held liable in tort. *Overholser v. National Home for Disabled Volunteer Soldiers*, 68 Ohio St. 236, 67 N.E. 487 (1903); *Lyle v. National Home for Disabled Volunteer Soldiers*, (E.D. Tenn. 1909) 170 F. 842. Compare *National Home for Disabled Volunteer Soldiers v. Parrish*, 229 U.S. 494 (1913).

of the place of the alleged tort will determine whether or not such a charity is liable in tort; and if there is liability, the make-up and standards thereof.<sup>74</sup> In some states by local decision some charities are exempt from tort liability; and it seems probable that Red Cross might qualify in some instances for exemption under those decisions.<sup>75</sup>

It is the practice of Red Cross, however, to carry comprehensive public liability insurance covering all activities of the organization and its chapters. And the policies expressly provide that the insurer shall not defend any claim on the ground of the charitable nature of the insured.<sup>76</sup>

Further powers of the "patriotic societies" within the general category now under consideration include those to acquire and hold property and accept gifts. The acts creating some of the societies place a maximum amount (expressed in dollar value) which the corporation may acquire;<sup>77</sup> some permit acquisitions of property as may be necessary or convenient for corporate purposes, but "subject, however, to applicable provisions of the law of any State governing a corporation operating in that state."<sup>78</sup> The Red Cross act enables the corporation "to have and to hold such real and personal estate as shall be deemed advisable and to dispose of the same and to accept gifts, devises and bequests of real and personal estate for the purposes of this corporation."<sup>79</sup>

Further powers which are shared by the "patriotic societies" are those "to adopt a seal and the same to alter and destroy at pleasure"; "to ordain and establish by-laws and regulations not inconsistent with the laws of the United States of America or any State thereof"; and "to do all acts and things as may be necessary to carry into effect the provisions of this Act and promote the purposes of said organization."<sup>80</sup>

It seems clear that this group of powers (including the express

<sup>74</sup> See 28 U.S.C. (1952) §2674; and consult *D'Anna v. United States*, (4th Cir. 1950) 181 F. (2d) 335; *Young v. United States*, (D.C. Cir. 1950) 184 F. (2d) 587.

<sup>75</sup> See discussion in *Grigalauskas v. United States*, (D.C. Mass. 1951) 103 F. Supp. 543 at 550; *Overholser v. National Home for Disabled Volunteer Soldiers*, 68 Ohio St. 236, 67 N.E. 487 (1903).

<sup>76</sup> Letter to author from Harold W. Starr, Counselor, March 6, 1956.

<sup>77</sup> See, for example, *Daughters of the American Revolution*, 36 U.S.C. (1952) §18a.

<sup>78</sup> See, for example, *The National Fund For Medical Education*, 68 Stat. 892 (1954), 36 U.S.C. (Supp. IV, 1957) §604(7).

<sup>79</sup> 33 Stat. 600 (1905), as amended 36 U.S.C. (1952) §2.

<sup>80</sup> *Ibid.*

liability to be sued) which the "patriotic societies" share should carry relatively little weight in determining the stature of any society with respect to any constitutional or other legal issue. It seems equally clear that the sharing of these general powers by Red Cross should not detract from the significance of its exceptional charter powers and duties reviewed above. And it is concluded that Red Cross, in the performance of the latter charter powers and duties, will be adjudged to be a specialized, integral unit of the Government of the United States committed to the performance of functions of the government and to be reckoned with accordingly.

Clear it is that the Congress and important committees thereof have continued to recognize the Red Cross, in the exercise of its exceptional charter powers and duties as enacted by the Congress, as being a specialized, integral unit of the government of the United States.

In June 1956, the House of Representatives and the Senate joined in a concurrent Resolution extending greetings and felicitations to the American National Red Cross upon its 75th anniversary. In the Senate Committee Report (Committee on Foreign Relations, Mr. George, Chairman), recommending to the Senate approval of the Resolution, it is reiterated that: "Since 1905 the Red Cross has been incorporated as an official agency of the United States Government to carry out work under the Red Cross conventions."<sup>81</sup>

The Resolution (H. Con. Res. 232) also included the following significant paragraph among those setting forth the introductory inducements to the Resolution, namely:

"Whereas the obligations of this Government and its people under the Treaty of the Red Cross justified the establishment by the Congress of the American National Red Cross as the official agent of this Government to assist in the discharge of such obligations and to engage in other activities for the welfare and relief of the Armed Forces and the prevention and alleviation of human suffering resulting from disasters and emergencies at home and abroad. . . ."<sup>82</sup>

The Supreme Court of the United States has never passed

<sup>81</sup> S. Rep. 2139, 84th Cong., 2d sess. (1956).

<sup>82</sup> 102 CONG. REC., p. 6825 (May 7, 1956), p. 8679 (June 6, 1956).

upon the legal identity of Red Cross. It is clear that its identity—the legal relationship of Red Cross and its functions and the United States Government—is a federal question of which the Supreme Court is the exclusive and final judge.<sup>83</sup>

In the meantime, it can be pointed out that the courts, in the few cases in which Red Cross has been involved, congressional committees, federal tax authorities, and state tax and state regulatory authorities (with a single exception) have been in accord in identifying the corporation as an integral unit of the Government of the United States and engaged in performing functions thereof.<sup>84</sup> Exemptions from state taxes and regulations have been accorded in all but the single instance, Traditional categories for classification have been used by the authorities. Thus, "The American National Red Cross" corporation has been identified as having "a quasi-governmental status"; as being "a quasi-governmental organization"; "a quasi-government institution"; "a quasi-official agency of the federal Government"; "a quasi-public corporation"; "a governmental Agency"; "an agency or instrumentality of the Federal Government"; "a Federal instrumentality"; "an agency of the federal government to execute a federal power"; "an organization subject to federal supervision and control, created by an act of Congress for the declared purpose of effectuating an international treaty and international relief"; "an arm of the government, an arm of aid and comfort," etc.

It seems reasonable to conclude from the opinion and decision of the United States Supreme Court in *Standard Oil Co. v. Johnson*<sup>85</sup> that Red Cross would be held to be an integral unit of the Government of the United States and engaged in the performance of special functions of government. That case concerned post exchanges. The Court concluded from a review of what it deemed pertinent federal statutory and regulatory provisions that post exchanges "as now operated are arms of the Government deemed by it essential for the performance of governmental functions"; that they are "integral parts of the War Department, share in fulfilling

<sup>83</sup> See *Standard Oil Co. v. Johnson*, 316 U.S. 481 (1942).

<sup>84</sup> See cases cited notes 19, 41, 67, 71 *supra*. The administrative rulings, federal and state, tax and regulatory, are listed in a memorandum by Red Cross to the Attorney General of Florida under date of December 30, 1955. Copies are available at the National Headquarters of Red Cross in Washington, D.C.

<sup>85</sup> 316 U.S. 481 (1942).

the duties entrusted to it, and partake of whatever immunities it may have under the Constitution and federal statutes."

The case involved a California tax on motor vehicle fuel. It was assessed, on a gallonage basis, on the privilege to sell motor vehicle fuel. Section 10 of the tax statute made it inapplicable to "any motor vehicle fuel sold to the government of the United States or any department thereof for official use of said government." Sales were made by the oil company to post exchanges; the tax was levied; the company paid it under protest and sued to recover the amount paid. The company relied in part upon the foregoing section 10 of the tax statute. The California courts ruled against the company on the ground that post exchanges were not "the government of the United States or any department thereof."

In overruling the California court the Supreme Court relied upon several indices as pointing the way to its conclusion. Those indices were as follows: (1) That by authority of congressional enactments the Secretary of War had promulgated regulations establishing the post exchanges; that those regulations had been amended from time to time; that the exchanges had become a regular feature of Army posts. (2) Congressional recognition that "the activities of post exchanges are governmental has been frequent." Appropriations for the construction and maintenance of buildings for post exchanges and two other enactments affecting the operation of the exchanges were cited in this connection. (3) The establishment and operation of the exchanges are subject to the military commander of the post; a military officer is detailed to manage it under a supervisory council of military officers. (4) The military officers receive no extra pay for these services; and the "object of the exchange is to provide convenient and reliable sources where soldiers can obtain their ordinary needs at the lowest possible prices." (5) The government assumes no financial obligations of the exchange; profits, if any, do not go to individuals; instead they are used "to improve the soldiers' mess, to provide various types of recreation, and in general to add to the pleasure and comfort of the troops."

"From all of this," said Justice Black for the Court, "we conclude that post exchanges as now operated are arms of the Government deemed by it essential for the performance of Governmental functions."

If this set of indices as to the legal identity of the post exchanges remains constant, or approximately so, with the Court, it



seems clear that "The American National Red Cross" corporation is assured of the same identification,<sup>86</sup> and that, as an integral unit of the government, it may "partake of whatever immunities it [the government] may have under the Constitution and federal statutes."

<sup>86</sup>It is interesting to note, as is pointed out in the opinion of the Court, that Congress had previously consented to state taxation of gasoline sold by or through post exchanges "when the gasoline was not for the exclusive use of the United States." (49 Stat. 1519, 1521, 54 Stat. 1059, 1060-1061) Would sales to Red Cross qualify as being "for the exclusive use of the United States?" Judge Advocates General of the Army, Air Force, and Navy rendered opinions answering the question in the affirmative; that post exchanges "are authorized to sell gasoline and other motor fuel to the American National Red Cross, free of state tax, provided such fuel is used in motor vehicles owned by and registered in the name of the American National Red Cross, the vehicle is operated by official personnel of the Red Cross, and the vehicle is to be used solely in connection with the work of the Red Cross for the military services of the United States. Army and Air Forces Exchange Bulletin No. 24, June 6, 1951; Navshipsto Instruction 4123.7, October 22, 1956.