



# National Red Cross and Red Crescent Societies as auxiliaries to the public authorities in the humanitarian field

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# EXECUTIVE SUMMARY

The concept of National Red Cross and Red Crescent Societies as auxiliaries to the public authorities dates back to the origin of the Movement. Over the years, the nature of needs to which National Societies respond has changed, and the application of the concept of auxiliary has evolved. But there has been no recent assessment of the understanding of “auxiliary” and no attempt to give guidance as to how the relationship between the State and a National Society could best be understood and developed.

Recognising this, both the 27<sup>th</sup> International Conference and the Strategy for International Red Cross and Red Crescent Movement invited the International Federation to carry out the present study with terms of reference as described in Section 1 of the report. Section 2 of the report then outlines some of the major elements in the environment in which services are provided and notes a number of trends in the respective roles of the State, National Societies and civil society and the consequential changes in the nature of the relationship between States and National Societies.

Section 3 traces the evolution in the concept of auxiliary status from the original concept of “auxiliary to the medical services of the armed forces” to the wider concept of “auxiliary in the humanitarian services of (their) governments”. It notes that whereas the concept is universal there is no common understanding of the concept and the expectations of different partners consequently vary considerably. It is however clear that the Movement Statutes and International Humanitarian Law reflect the specific character of the status of National Societies which is different from that of other national humanitarian organizations, and that this is seen in the nature and quality of the dialogue between the State and the National Society.

The tools currently available for assessing relations between the State and its National Society are examined in Section 4. These include the Fundamental Principles, the Conditions for Recognition of National Societies, the Guidance for National Society Statutes and the Characteristics of a Well-Functioning Society.

Section 5 examines the various types of interaction between a State and its National Society examining firstly those related to the *functioning* of the National Society including the process for establishing a National Society, the role of the State in National Society decision making, financial control, statutory amendments, selection of National Society leaders, tax status and use of the emblem. The Section then looks at interactions related to National Society *activities* including those related to financing, relief to sick and wounded soldiers on the battlefield, other activities related to conflicts, choice of programmes and services and activities abroad.

Finally, Section 6 proposes that while keeping in mind differences that may arise by the diversity of contexts in which National Societies act, and the need for evolution in the relationship between State and a National Society, it is useful to identify the “Characteristics of a balanced relationship between States and National Societies” as guidance for States and National Societies in developing their relations. The Characteristics proposed:

- underline the importance of partnership, dialogue and respect for each other and outline the scope of cooperation in the partnership;
- stress the importance of respect for the Fundamental Principles as the guide for the work of the National Societies in the partnership;
- highlight specific points related to the partnership in times of armed conflicts;
- suggest points to develop an enabling environment for the work of the National Society and provide guidance for action in case the integrity of the National Society is in jeopardy.

## 1 – BACKGROUND OF THE STUDY

This study on the auxiliary role of National Societies is in follow-up to the Plan of Action of the 27<sup>th</sup> International Conference of the Red Cross and Red Crescent (Geneva, 1999) and the Strategy for the Movement adopted by the Council of Delegates in 2001.

The Plan of Action (final goal 3.3, Action 15) called for:

“an in-depth study into the working relationship between States and National Societies, taking into account the changing needs in the humanitarian, health and social fields, the auxiliary role of National Societies and the evolving role of the State, the private sector and voluntary organizations in service provision”.

The Strategy for the Movement also mentions this study, as follows:

“The nature of the relationship between States and National Societies is unique and offers many benefits to both parties. The National Societies’ role as auxiliary to the public authorities is based on international humanitarian law (e.g. Geneva Convention I 1949, Article 26) and the Statutes of the Movement (e.g. Articles 3(1) and 4(3)). The auxiliary role gives National Societies a special status: they are, at the same time, private institutions and public service organizations.”

The Strategy for the Movement has also explicitly added another dimension, that is, adherence to the Fundamental Principles. This is evidenced by the title of Action 14 (“In-depth study of the role of National Societies as auxiliaries to the public authorities, in regard to their adherence to the Fundamental Principles”). The Strategy also indicates that:

“The Fundamental Principle of Independence stipulates that National Societies must always maintain sufficient autonomy so as to be able to act at all times in keeping with the Fundamental Principles. Moreover, the Movement’s Statutes indicate that National Societies, while retaining independence of action, should give priority to co-operation with other components of the Movement. Thus, there needs to be an appropriate balance between the need for close relations between a State and the National Society of its country on the one hand, and the need to maintain the independence of the National Society on the other. There is a need for clearer criteria for assessing whether this independence is fully observed.”

The objective of this study is to allow the components of the Movement and States to have a clearer and common understanding of the National Society auxiliary role, its advantages and restrictions, in the light of changing needs and of the evolving roles of other service providers.

The study has been carried out by Christophe Lanord on behalf of and in cooperation with the International Federation. It has involved an examination of existing legal provisions, and interviews and telephone conversations with leaders of National Societies, the Secretariat of the Federation (Geneva and delegations) and the International Committee of the Red Cross (ICRC).

## **2 – THE ENVIRONMENT IN WHICH STATES AND NATIONAL SOCIETIES PROVIDE SERVICES**

The needs to which National Societies respond have clearly evolved significantly in the period since the formation of the first National Societies in the 19<sup>th</sup> Century. However, from the very beginnings the vision of the role of National Societies included not only assistance to victims of conflicts. As early as 1862, Henry Dunant wrote “these Societies could also render great services, by their permanent existence, in times of epidemics, or of disasters such as floods, fires or other natural catastrophies”.

It is not possible or appropriate in the context of this study to fully trace the development of the role of National Societies over the years. This is treated elsewhere and a summary of that evolution is presented in the history of the International Federation “Beyond Conflict” which also captures some of the early work of the National Societies prior to the formation of the International Federation. Suffice it to say that over the years the role of National Societies in their respective countries has evolved taking into account the changing needs in the country, the policy directions that were given priority at different times by the leadership of the Federation and the Movement, and the role of government and other organisations in the country. In most cases, the National Society role has over the years included not only assisting in times of conflict but also disaster response and work with vulnerable groups in the country in the area of health and social services.

The following paragraphs summarise major elements in the current environment in which States and the Red Cross/Red Crescent Movement provide services:

- Conflicts have continued to ravage many parts of the world. Many conflicts are internal, based on ethnic tension. Others are conflicts between States or involving several States. The fight against terrorism has become a dominant issue in the international agenda.
- Natural and technological disasters have killed less people in recent years but have affected many more. Different types of disaster (eg.: drought and HIV/AIDS) in Southern Africa combine to produce new forms of “complex emergency”. The impact of disasters on development has become more evident and the need to integrate disaster reduction strategies into development planning more pressing.
- New and re-emerging diseases, as well as bioterrorism have become issues of greater concern and the relationship between health and development has come into clearer focus. New initiatives have been launched to respond to the spread of communicable diseases.
- Population movement whether it is in terms of refugees, internally displaced persons, or other forms of migration is a major public issue. The policy response to these issues is in flux, the need to respond to the human needs of people concerned is increasingly evident.
- Discrimination, including the stigmatisation of people living with HIV/AIDS or asylum seekers and migrant populations has grown to serious proportions in a number of countries.

Alongside these developments and changing needs, many States have introduced a number of new policy and operational responses with an impact on the role of Red Cross and Red Crescent Societies and other national humanitarian organisations.

- In the health and social sector, the trend has been to reduce the role of the State in direct service provision and encourage greater involvement by the private sector and non-governmental organisations.

- There has been a strengthening of civil society organisations in many countries, including those working in programming, volunteer recruitment and training, service delivery, research and private sector mobilisation. In some countries this has challenged the National Society to redefine its own role and place in cooperation with and/or in competition to, emerging civil society organisations.
- There has also been increased non-governmental activity to promote and defend human rights, with a special emphasis on economic, social and cultural rights in many countries.
- There has been a corresponding increase in public expectations that Red Cross and Red Crescent Societies will occupy a key place in this emerging civil society engagement, extending their traditional role well beyond that originally foreseen in the Geneva Conventions.
- Governments have accepted that the role of Red Cross and Red Crescent Societies, and of their International Federation, has adapted over the years to these changes, with the result that they are now generally seen as auxiliary to the public authorities in the broadest definition of humanitarian affairs.
- Some governments have increased the resource availability to support Red Cross/Red Crescent and some non-governmental organisations in service delivery both nationally and internationally.

International organisations have increasingly recognised the importance of cooperation with the auxiliary and non-governmental sectors to complement the role of government in service provision. New initiatives and new funds have been established at the international and national level, to combat communicable diseases and respond to disasters.

These developments have been matched by a growth of awareness of the role and influence of major multi-national corporations in the global economy and in individual countries. A growing number of corporations have accepted an obligation to define their place in the new structures of the world with a special emphasis on their social responsibilities. The international community has responded by joining with the private and non-governmental sectors in the search for new ways of benefiting from relationships between the corporate sector, governments and civil society.

The impetus for the development of new and productive partnerships between international organisations, governments, Red Cross/Red Crescent and civil society, has had a profound impact on all components of the Movement. It has led to the development of new bilateral and multilateral arrangements, and in many cases to the development of modernised management systems in the Red Cross and Red Crescent Societies themselves to help them more effectively to build and operate the partnerships. Against this general background, specific trends in the role of the Red Cross/Red Crescent have included:

- Growth in the scale and nature of ICRC operations and its humanitarian diplomacy combined with renewed reflection within the ICRC on the environment of its action including assessing aspects of the concept of State sovereignty, the growth and impact of globalisation, the upsurge of religious radicalism, the fight against terrorism, and the growing complexity of conflicts.
- Renewed focus by the International Federation on the strengthening of National Society capacity to respond to humanitarian needs. This has included a more focussed approach on disaster management, an expansion of support to National Society programmes in the health area as well as the development of new partnerships with international organisations and more assertive advocacy on humanitarian issues and in particular discrimination and respect for cultural diversity.

- A strengthened focus by National Societies on the need to improve governance and management and maintain a level of quality which assures their ability to provide both day-to-day services and to respond effectively to disaster and conflicts. These improvements are also part of programming with the objective of enabling the National Societies to be effective civil society leaders, and strong partners for international and national organisations and governments. In a growing number of countries National Societies are emerging as the bridge between the organisations, civil society and government.
- The Red Cross/Red Crescent Movement has also, through its Council of Delegates, undertaken initiatives to strengthen its own internal cooperation and effectiveness. This has included clearer definition of the roles of components of the Movement (Seville, 1977) and the adoption of the Strategy for the Movement (2001) which inter alia includes a strategic objective to improve the Movement's image and its relations with governments and external partners. The present study forms part of the implementation of the Strategy as well as the implementation of the Plan of Action of the 1999 International Conference.

This evolution has produced important consequential changes in the nature of the relationship between National Societies and the State. In some cases the change has been profound, and has linked National Societies more closely to government policies, especially in the health, disaster and international cooperation fields. This, while generally constructive, has historically and in some cases recently challenged the Movement's fundamental principle of independence.

It has also strengthened the importance of the maintenance of a dialogue between the government and the National Society which respects the independence of the National Society as an auxiliary partner on key policy and operational issues in humanitarian field.

Among the issues that have generated challenging dialogue between a National Society and the government are those linked to government financial support for National Society programmes. On the other hand, National Societies have sometimes found it necessary to challenge their governments on the quality of services provided or funded for the benefit of vulnerable people.

This dilemma at the national level has been matched at the international level, where the International Federation is now more and more often expected by its members to constructively dialogue with, and if necessary challenge, governments and international organisations on policies and programmes of concern.

This makes it desirable to maintain a close review of the nature of the auxiliary relationship of the National Society with the State. The International Federation will continue to monitor the way this unique relationship is managed at national and international levels, and will bring the issues involved to the attention of States and the international community.



## **3 – EVOLUTION OF THE CONCEPT OF AUXILIARY STATUS OF NATIONAL SOCIETIES**

### ***3.1 – The origins: Henry Dunant and the 1863 Geneva Conference***

The concept of auxiliary to the public authorities dates back to the origins of the Movement, more specifically to Henry Dunant's proposals to assign volunteers to help the medical services of the armed forces: the medical services would have the main responsibility of taking care of wounded and sick soldiers on the battlefield, while relief societies would be auxiliaries to these medical services.

This concept is also included in the resolutions of the founding Geneva Conference of 1863, which defined the mandate of relief societies: to help medical services of armed forces.

The corollary of this auxiliary status of public authorities was the subordination of relief societies to the medical services of the armed forces (and therefore to States) for every aspect related to that activity. The 1863 Conference thus stipulated that voluntary medical personnel on the battlefield should be placed under military command, while offers of services of relief societies had to be agreed by the government.

As time passed, that support role of National Societies to the medical services of the armed forces in the field of relief to sick and wounded soldiers was maintained; it was even codified by the successive versions of the Geneva Conventions.

### ***3.2 – Evolution in the relationship between National Societies and States, consequences and reactions***

In the first decades of the history of the Movement, the National Societies developed other activities, so that, on the long-run, the initial activities became marginal, at least because peacetime lasted longer than wartime for any National Society. National Society operational capacity increased, as well as State support to National Societies.

The Covenant of the League of Nations, adopted in 1919, symbolizes this support. According to the Covenant, States committed themselves to « encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world ». Immediately after the Second World War, the United Nations General Assembly also underlined the special nature of the link between a State and its National Society.

In parallel, the word “auxiliary” was gradually applied to all National Society activities, not just to relief to wounded and sick soldiers. In the process, the understanding of the concept of auxiliary lost its initial accuracy.

In addition, what was an asset in the very well delimited field of relief to soldiers on the battlefield at times hampered other activities of National Societies, by restricting their capacity to act. Indeed, in the worst (and exceptional cases) political considerations had an impact on the selection and management of programmes, thus infringing what we call today the Principle of Impartiality, as a result of excessive subordination to governments. Some Societies, out of deference to their Government, did not want to or could not encourage their government to flag humanitarian imperatives and non-discrimination. For these Societies, the initial subordination, limited to a narrow field of activity, was thus replaced by a broader subordination, related to their functioning and activities.

In some instances, the National Society even appears to have, whether intentionally or not, mobilized public opinion in favour of its State's war goals, thus violating what we call today the Principle of Neutrality. According to some authors (see, in particular, the work of J. Hutchinson, cited in the Annex), this occurred frequently during both world wars. As from the end of the Second World War, in reaction to this, the International Red Cross started to establish a body of doctrine to avoid this kind of situation. Thus, just after the Second World War the International Red Cross tackled reflection on its doctrine and action with renewed vigour: in 1946 with the "Oxford Principles" set forth by the Board of Governors (today the General Assembly of the Federation), and in 1965 with the adoption of the Fundamental Principles, inspired by the work of Jean Pictet, by the XXth International Conference.

Those Principles reaffirmed the formal universality of the concept of National Societies as auxiliary in the humanitarian services of their governments, but they did not modify the diversity of its content. Today, the concept of auxiliary still remains an essential element in the thinking of the Movement.

### ***3.3 – The formal universality of the concept of auxiliary to the public authorities and the diversity of its content***

Both the Oxford Principles and the Fundamental Principles – included in the Statutes of the Movement – refer to the status of auxiliary in the humanitarian services of their governments. The Statutes of the Movement furthermore provide that, in order to be recognized by the ICRC, a National Society has to be recognized by its State as an "auxiliary to the public authorities in the humanitarian field".

Formally, the concept of National Societies as auxiliary to the public authorities in the humanitarian field is thus universal, as the Statutes of the Movement, approved by all States Party to the Geneva Conventions, are also universal.

However, all countries, to say the least, do not interpret the concept of auxiliary the same way. Some States consider the influence on National Societies by governmental services and influence on the selection of activities and the way to conduct them as acceptable, while others do not. This also holds, *inter alia*, for the appointment of the President of the National Society by the Head of State, the control of National Society decisions by governmental services, the selection of activities and the way to conduct them.

More generally, some States perceive National Societies in their traditional function of assistance to the medical services of the armed forces; others focus on their charitable nature, keeping them as distinct as possible from the public authorities; and still others consider the National Society as almost integrated in the public services. Government leaders, therefore, do not give the same interpretation and weight to the concept of auxiliary in every State.

How the concept of auxiliary to the public authorities is perceived does not align with North/South or East/West. It rather reflects a policy established at national level according to the culture of the country, its political and legal system, the general status of humanitarian organizations in the country and the history of each National Society, including the personality of its past and current leaders. In some cases, committed National Society leaderships have striven to maintain the National Society autonomy despite efforts to control by Government.

Admittedly, it is important for National Societies to be adapted to local realities and to be more than a theoretical model imposed by international bodies. However, the lack of a common understanding of the concept of auxiliary gives rise to a problem with regard to the universality of the Movement, especially its international operational

aspects. Both the expectations of States, National Societies, and other partners and how these bodies operate change from place to place. In such situations, National Societies can thus not have a consistent image, and this affects all components of the Movement.

In most (if not almost all) States, National Societies, however, enjoy a legal status different from that of other national humanitarian organizations. There is, thus, a common legal basis for the definition of the status of auxiliary to the public authorities in the humanitarian field.

### ***3.4 – The specificity of the legal status of National Societies***

The provisions in the law of the Movement, in international humanitarian law and in international disaster response law reflect the specific character of the status enjoyed by National Societies. For instance, National Societies enjoy certain facilities in time of armed conflicts and have special tasks set out in international humanitarian law. Similarly, only National Societies (with the ICRC and the International Federation) have the right to use the red cross or red crescent emblem for indicative purposes and attend meetings on humanitarian issues on an equal footing with States.

The specific character of National Societies is also reflected in a resolution from the United Nations General Assembly dated from 1994 (A/RES/49/2). The granting of observer status to the International Federation was made in reference to “the special functions of the member societies of the International Federation of Red Cross and Red Crescent Societies which are recognized by their respective Governments as auxiliaries to the public authorities in the humanitarian field on the basis of the Geneva Conventions of 12 August 1949”.

In addition, when States adopted the Statutes of the Movement, they undertook, according to the text of the Statutes, to respect adherence by all components of the Movement to the Fundamental Principles at all times. This provision in itself indicates the specific nature of National Societies.

The Statutes also establish that “the States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement”. The obligation of National Societies to support humanitarian activities of States is also an evidence of this relationship (see below, 5.2.6).

Irrespective of these provisions, national law, however, very often provides either for facilities for National Societies which are broader than for other national humanitarian organizations, or for more constraints (for example, obligations in regard to the control exercised by the State over decisions taken by organs of the National Societies). These provisions relate to peacetime as well as wartime, to relief as well as to social activities, to disaster preparedness and to dissemination of international humanitarian law.

Most other non-governmental humanitarian organizations are thus freer to choose what they will do, can act outside their country without having to respect the functions of other organizations, or change their logo or name. Despite the fact that they may be part of a formal or informal network, they are not governed by rules adopted at the international level with the involvement of States. The National Societies are in a completely different situation in this regard.

Several attempts have been made in the past to survey these specific elements. The annexed bibliography indicates references. The conclusion to be drawn in this study is that National Societies enjoy a legal status different from that enjoyed by the other humanitarian organizations.

But the special character of National Societies goes beyond these legal aspects as a result of the special nature of the dialogue between the State and the National Society.

### ***3.5 – The dialogue between the State and the National Society***

In practice, most National Societies have a specific situation. In the ideal situation, their capacity to interact with all groups of the population, all parties and all social classes and their political and religious neutrality give them important assets to conduct humanitarian activities, expressed in one part the Fundamental Principle of Neutrality: “to continue to enjoy the confidence of all”.

National Societies are at the crossing of several axes: international, national and local dimension; links between the public authorities and civil society; links with other components of the Movement, especially the international institutions; at times, links between different States or belligerents, etc. The country’s political and administrative leaders often have close links with National Society leaders, facilitating National Society access to the State’s decision-making bodies.

This gives the National Society the possibility of raising certain humanitarian issues with the public authorities, for example issues that, in certain contexts, may be sensitive. A National Society may be able to argue the case for improved action or policy in favour of people with HIV/AIDS or migrants. Here, the Federation has an important role to play, if necessary supporting dialogue between the National Society and the State. The same holds for topics that the public authorities may want to address with the National Society with a degree of discretion. Dialogue between the State and the National Society is frequently conducted in private; for discussion between the two partners to take place in public is the exception rather than the rule. This private dialogue, based on and conducive to mutual trust, is more likely to lead to results in the humanitarian aspects of a situation.

How National Societies cooperate with other organizations or criteria for launching public campaigns are also subject to criteria internationally adopted by the Movement. For this reason, together with the National Society obligation to respect the Fundamental Principles (here, in particular, Neutrality and Impartiality), National Society reaction can more or less be predicted. States therefore have a certain guarantee that some issues can be discussed with the National Society constructively.

The National Society, however, can intervene only in areas defined in its objects (as defined in its own statutory texts or, in a more general manner, in the Statutes of the Movement) and not in other fields.

From a practical point of view, the key-words of the relationship between a State and its National Society are therefore those that are needed in any constructive partnership: trust, cooperation, sharing and exchange regarding humanitarian issues and concerns. Preparing for the International Conference of the Red Cross and Red Crescent is one, but far from the only, institutional form of this dialogue. National Societies also regularly discuss with the public authorities, at all levels.

Such a dialogue requires sufficient understanding of the interests of the other party, of their relevance as a partner, of their long-term commitment, of the recognition of the interdependence of the partners, of their willingness to dialogue and their capacity to accept justified criticism.

It could be said that these characteristics are not specific to cooperation between National Societies and States but that, on the contrary, they could describe relations of partnership with any non-governmental organization. What is specific to National Societies is their institutional basis. The existence of sister societies at the international level bound by the same internationally defined obligations, the special character of

the Statutes of the Movement, the existence of the Federation whose members all have the status of auxiliary, and the close link with humanitarian law and the ICRC are all elements that cause the partnership between National Societies and States to differ in nature from the partnership between a State and a conventional non-governmental organization.

The characteristics of this dialogue, even more than legal aspects, thus characterize the concept of auxiliary to the public authorities. This dialogue should be part of all activities carried out in cooperation between States and National Societies.

The Statutes of the Movement moreover stipulate that “the States Parties to the Geneva Conventions cooperate with the components of the Movement in accordance with [the Geneva Conventions], the present Statutes and the resolutions of the International Conference”. Cooperation and partnership with States are an integral part of the mission of the components of the Movement. For States, the partnership with National Societies better ensures the well-being of persons and thus helps States assume their primary responsibility in this field.

It is important to challenge any oversimplification in the Movement or in the humanitarian field as a whole where States are perceived *a priori* as being negative and dangerous. This being said, cases of unacceptable interference can no doubt be observed in the functioning of a National Society, on the pretext of cooperation; States sometimes use National Societies as moral guarantors. The independence and credibility of the National Societies have sometimes been put in danger in the name of good relations between States and National Societies. However it is by no means in the majority of cases that such unacceptable interference occurs.

In addition, in recent years, the focus has been on cooperation between States and National Societies rather than on their disagreements. Take for example the African Red Cross and Red Crescent Society Health Initiative (ARCHI 2010), launched in 1998, which has already begun to show the advantages for the National Societies, in terms of planning and image, of a common strategy between States and themselves in defining priorities and stepping up efforts in the area of health.

The International Conference of the Red Cross and Red Crescent has already adopted several resolutions requesting States (implicitly or explicitly) to take a given measure in favour of National Societies in light of their status of auxiliary to the public authorities. They help broach discussion, but no attempt has so far been made to define the status of auxiliary to the public authorities and its consequences in a really universal manner. The most likely reasons for this are the great diversity of situations, the risk of challenging acquired advantages of the National Society in a given State, as well as political difficulties with respect to specific situations.

It is therefore necessary to take into account the various types of interaction between States and National Societies and try to identify guidelines on what is acceptable and what is not; on what should take place and what should not. A contribution to the development of such guidelines is developed in the final section of this report which proposes some “Characteristics of a balanced relationship between States and National Societies as auxiliaries to the public authorities in the humanitarian field”.

#### **4 –TOOLS FOR ASSESSING RELATIONS BETWEEN A STATE AND ITS NATIONAL SOCIETY**

The Fundamental Principles are the main tool to assess whether or not how a State and its National Society interact matches the standards of the Movement. Indeed, these standards are enshrined in the Statutes of the Movement and are therefore binding on

States, and, as already mentioned, States have undertaken to respect at all times the adherence of the components of the Movement to the Fundamental Principles.

It is first of all the Fundamental Principle of Independence that is at the heart of the concept of auxiliary to the public authorities, with the inherent tension between autonomy and submission to national law – well expressed by the word “*pourtant*” in the French version of the text of the Fundamental Principle of Independence: “The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must nevertheless always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.”

It is not easy to assess the scope of the Principle of Independence as such, including with respect to the meaning the Movement wishes to give it. The benchmark against which the status of auxiliary to the public authorities should be evaluated is above all whether or not a National Society can act in conformity with the Principles of Humanity, of Impartiality (guided solely by needs and absence of discrimination) and the objective of the Principle of Neutrality (“to enjoy the confidence of all”).

The conditions for recognition of National Societies by the ICRC (which form the basis for the admission of a National Society by the Federation) is another useful tool in assessing the relationship between a State and its National Society. The conditions are included in the Statutes of the Movement and confirm a long-established practice, namely the role of the ICRC to “recognize any newly established or reconstituted National Society, which fulfils the conditions for recognition set out in Article 4 [of the Statutes of the Movement] and to notify other National Societies of such recognition”.

The “Guidance for National Society Statutes”, (Annex 3) adopted by National Societies in the context of the Federation and with the support of the ICRC, is also a valuable tool; it is currently used by the Movement in relation to statutory issues. Although these guidelines, finalized after the last International Conference of the Red Cross and Red Crescent, have not been adopted by States, they nevertheless usefully clarify certain aspects of the relationships between a State and its National Society.

The “Characteristics of a Well-functioning National Society” (Annex 4) can also be taken into consideration, as well as other policies and decisions adopted by the bodies of the Federation and of the Movement.

No matter how useful they may be, none of these tools defines all aspects of the interactions between a State and a National Society. It is therefore necessary to analyse in detail all the different types of interactions likely to occur, to assess which standards are applicable to each of them and, if need be, to identify the aspects which should be carefully looked at.

## **5 – THE VARIOUS TYPES OF INTERACTION BETWEEN A STATE AND ITS NATIONAL SOCIETY**

Interaction between a State and its National Society can be classified in two general categories: related to the functioning of the National Society and related to its activities.

## ***5.1 – Interaction between the State and its National Society related to the functioning of the National Society***

### **5.1.1 – Establishment of the National Society and recognition by the State**

The State decides which organization should be recognized as the National Red Cross or Red Crescent Society. Although, in theory, nothing prevents the State from recognizing more than one, such a decision would definitely prevent subsequent recognition of the National Society by the ICRC, and hence its admission to the Federation, on the basis of the Principle of Unity and the conditions for recognition of National Societies.

ICRC practice with regard to recognition of National Societies requires the National Society to be formally mentioned in the national act recognizing the National Society as an «auxiliary to the public authorities in the humanitarian field». This requirement should be maintained, subject to a more precise and more universal interpretation of the concept of auxiliary than today.

The few States that have not yet recognized a National Society should do so at national level, bearing in mind the international conditions for recognition, in order to facilitate the subsequent process of recognition by the ICRC. Thus, the unity of the National Society, in the sense of only one organization being recognized in each State, remains a major guarantee for the avoidance of disputes over the identity of the National Society – in addition to practical advantages of having a single National Society.

### **5.1.2 – Role of the State in the National Society decision-making process**

First, the National Society must be a legal entity, with its own legal personality, distinct from the State. If not, the public may well confuse the State and the National Society, and thus how it perceives the National Society's neutrality and independence.

Beyond this, the situation varies very much from one State to another. In certain cases, certain decisions from the Society's decision-making bodies, for instance in respect of its Statutes, are forwarded to the public authorities, either before the decision is made, or after. In many cases (in probably the majority of National Societies), the decisions of the National Society will only be transmitted to the courts, and not to the Government, if an appeal is lodged against them. The scope of control can vary according to the object of the decisions, and can encompass either the form or the substance of the decision.

It is important to distinguish between the internal decisions of National Society and decisions in which the public authorities have an important stake, such as compliance with standards of quality (e.g. in the medical field). Control by the State will be more acceptable in regard to the latter type of decisions than the former.

For instance, in some cases, decisions related to management of National Society hospitals undertaking public-interest tasks or blood-related activities are subject to the supervision of the public authorities in respect of standards set out by the public authorities. In others, all National Society decisions are subject to such a supervision. In still others, National Society decisions are supervised like those of similar organizations, if those exist in the country (for instance, associations). In yet others, there is no control at all.

Even with regard to decisions of an internal nature, in situations where a National Society is providing public services and the public authorities set a standard for quality, then monitoring of National Society compliance with the required standard is acceptable provided it does not force the National Society to select activities in a

manner incompatible with the Fundamental Principles of Humanity and Impartiality. The benchmark used to assess National Society independence is whether or not it can work in accordance with these Fundamental Principles.

Moreover, the supervision exercised by the authorities should not put the National Society in a situation where it cannot implement decisions or resolutions adopted at international level.

It may furthermore be awkward to apply to the National Society all procedures applying to public administrations. This is the case, in particular, for all National Society emergency activities.

### **5.1.3 – Financial control by the public authorities**

As recalled in the Fundamental Principle of Independence, National Societies are subject to the laws of their country. National Societies are, therefore, subject to all financial regulations applicable to the same kind of organizations, such as associations, etc. Some specific cases may exist (apart from cases where the National Society benefits from public funds, dealt with later on in this study):

- If the National Society is an organization with a status so specific that it cannot be compared to any other organization in the country;
- If organizations of the same type as the National Society are subject to a very strict financial control;

In such cases, the national law should establish other provisions, so that the financial provisions applicable to the National Society do not jeopardize its capacity to act and to select programmes and beneficiaries.

### **5.1.4 – Amendments to the National Society Statutes**

The Federation Constitution stipulates that the National Societies must inform the Secretary General of the Federation of proposed amendments to their own Statutes. In addition, States and National Societies have adopted resolutions at the International Conference conferring on the ICRC and the Federation the right to examine draft amendments to National Society Statutes and to ask Societies to take into account any recommendation from the ICRC and the Federation. Any draft amendment thus has to be reviewed by the Joint ICRC/Federation Commission on National Society Statutes before it can be adopted by the National Society.

The National Society's status of auxiliary must not have a bearing on its capacity to amend its Statutes and the public authorities must not oppose such amendments without due cause (including in cases where ratification of the National Society's Statutes by the State following amendment is required under national law). In the event of a discrepancy between the recommendations from the ICRC and the Federation and the national law, serious consideration should be given to enact derogations or amendments to the latter, for the benefit of the National Society.

Some States include the Statutes of the National Society in national legislation. This can be a problem for future amendment and should be avoided.

The review of the National Society legal basis is particularly important in the coming years, because one of the expected results of the Strategy for the Movement is that, "by 2010, all National Societies have examined their Statutes and related legal texts, and, where necessary, have adopted new constitutional texts".



### 5.1.5 – Selection of National Society leaders

Representatives of the public authorities are members of the governing bodies of many National Societies, based on the Societies' status of auxiliary to the public authorities.

This was taken into account when drafting « Guidance for National Society Statutes », adopted by the Federation Governing Board in May 2000 (1<sup>st</sup> session), with the authorisation of the Federation General Assembly. Three recommendations are important, taken as such from the “Guidance”:

- “It is important to have a quorum high enough to ensure that elected members of the National Society Governing Bodies always have the majority and cannot be outvoted or blocked by government or other external representatives. This could be done by setting a quorum of at least twice the number of external representatives, provided the quorum requirements are not such that they block the efficiency of the decision-making processes.
- Regardless of whether public officers are elected or appointed to office, whether they sit on the board as representatives of the government or in a personal capacity, or whether they become member of the board while being a public officer or become public officer during their term of office on the board, two elements could constitute a safeguard against abuse: a code of conduct for board members and the Society’s influence over, even control of, the selection of public officers. A Code of Conduct could require members of decision-making bodies to act solely in the interest of the Society and, in the case of a conflict of interest, to abstain from taking part in decision-making. Or they could require Board members to resolve conflicts of interest in conformity with the Code or to resign. To be effective, all members of the statutory body concerned should be required to sign their commitment to respect the Code.
- Consideration should be given as to whether persons holding high-ranking positions in the government or a political party may be appointed to key posts of the National Society, such as President or CEO. Such appointments may jeopardise the independence or the perception of independence of the National Society as such, and therefore compromise its integrity. A "conflict of interest" clause in the statutes could cover this issue. Here again, a Code of Conduct is probably the best instrument to ensure a natural and transparent selection of individuals for senior offices in the Society (President, Vice-Chairperson, Treasurer) that do not permit conflicts of interest because of their capacity as public officers. The Society’s influence over, or control of, the selection of public officers would be most useful in case a number of board seats is “reserved” for ministerial departments. Societies should be encouraged to influence as much as possible the choice of represented government institutions or the individuals concerned. Such influence is perhaps best achieved through the election (the most preferred is elected) of the individual public officers by the Society itself. However co-operation is organised, it is important for the National Society to ensure that it is in compliance with the Fundamental Principles.”

However, it would be useful to have this “Guidance” submitted to the consideration of States as an element of the follow up to this report, in order to establish a shared understanding by the Movement and States.

One specific case of appointment of National Society leaders by the public authorities is staff seconded by these authorities. This is not necessarily an issue with regard to National Society independence. The situation should be assessed on a case-by-case basis, according to the conditions for the secondment, the respective roles of the State and the National Society in the management of the staff, etc. It is also important that

the seconded staff fully supports this move and also has the right to leave the National Society. This could otherwise be prejudicial to the National Society.

Incorporating military in National Society staff is an even more touchy issue, even if this type of situation appears to be exceptional. It may raise a problem with regard to the Principle of Independence of the National Society. It is doubtful that the armed forces agree to let the National Society manage military staff as they wish. Moreover, in peacetime, it is not clear that such a secondment would solve more problems than it would create. More generally, the National Society's public image could also be affected.

#### **5.1.6 – Influence of the tax status**

Many States grant National Societies a special tax status, in conformity with resolutions of the International Conference of the Red Cross and Red Crescent. This also applies to customs duties, in normal times or in times of disaster.

The privileged situation enjoyed by the National Society is at times challenged on the basis of equality with other humanitarian organizations in the country or with commercial enterprises carrying out activities similar to certain National Society activities. This can be the result of the policy followed by the national authorities or actions by international organizations, in particular for regional economic integration.

There are indeed cases where the privileged status enjoyed by the National Society can lead to "unfair competition" because the National Society has activities that the private sector is also undertaking, such as ambulance services.

In such a case, it may at first sight seem legitimate to stop "unfair competition". However, other factors have to be taken into account, e.g. the National Society is a non-profit organization; it carries out its activities without discrimination over the whole territory of the State. These activities may be needed by the National Society in order to ensure that it has the capacity to act effectively in case of disaster or conflict and are therefore a form of disaster preparedness.

Generally speaking, the special nature of National Societies, amply highlighted in this study, warrants their having a different status which should be maintained, through the adoption of exceptional legislative measures. In the long term, it is in the interest of States and the international organizations concerned to maintain these exceptions for National Societies and to have them enjoy the broadest possible range of tax exemptions, such as those applying to reimbursements paid to volunteers.

#### **5.1.7 – Use of the emblem**

In theory, the National Society shares with other organizations the right to use the emblem of the red cross and red crescent for protective purposes, at the national level. In practice, however, few organizations meet the criteria required for such use.

Moreover, National Societies are the only national organizations entitled to use the emblem for indicative purposes. On an exceptional basis, they can also authorise third parties to use the emblem, under conditions strictly defined by the First Geneva Convention.

National legislation on the use of the emblem should take this aspect into account and implement the provisions of the Geneva Conventions relative to the emblem and to National Societies. This does not, of course, absolve the State from its obligations to implement provisions relating to the emblem, and to prevent and punish abuse.

## ***5.2 – Interactions between the State and the National Society in respect of National Society activities***

As already mentioned, the National Society must cooperate with the State as this is part of the National Society's mission, as indicated in Article 2 of the Statutes of the Movement. This can encompass a wide range of areas and be related to all National Society activities. In extreme cases, the total lack of contacts with the authorities could even be considered as a National Society integrity issue, though the justification is often fear of being politicised and taken advantage of.

This cooperation with the authorities should, however, not be done in just any manner. As idealistic as it may seem, a National Society must always hold high the Fundamental Principles in its dealings with the authorities.

Working relations between the State and the National Society can take various forms: through a law or a governmental act or by agreement between both parties.

The terms for cooperation can be established in a single document not limited in time or be of limited duration for a specific sector. These agreements may be general in scope or may refer to a specific area, such as relief, first aid, etc.

In any event, there must be provisions that the National Society can invoke at any time, in reference to the Fundamental Principles or other standards (for instance the Code of Conduct for the Movement and NGOs in disaster response or other decisions or resolutions adopted at international level) that would safeguard the National Society and prevent it from undertaking a given action. Concretely, authorities (civilian or military) must be prepared at all times to listen to the National Society and to revise the terms of their cooperation.

Moreover, the definition of the respective roles and responsibilities will be even more important for the activities public opinion considers sensitive or for those where the legal responsibility of the National Society might be at risk, e.g. programmes related to blood products, assistance to asylum seekers or refugees.

In many cases, however, the National Society performs a function that has been delegated by the State – in this case coming close to a public service mission – and cannot therefore be subject to the same logic. In this eventuality financial dependence on the State is not a problem in itself, provided it is in a particular programme and appropriate measures are taken to protect the National Society: the scope of its responsibilities should be clearly defined, either by a law or act of the State or by an agreement between the public authorities and the National Society.

### **5.2.1 – The role of the State in the financing or implementation of a National Society programme**

When a National Society programme or activity is financed by the State, the latter has at least the same rights and obligations as any other donor vis-à-vis the National Society. In particular, it can expect that funds put at the National Society's disposal are managed transparently and efficiently. The State should receive relevant information from the National Society to assess the impact of the programme and the good use of the funds provided to the National Society.

Similarly, the National Society must respect the same conditions with the State as with any other donor. The programmes have to be in conformity with the Fundamental Principles, the Regulations on the use of the emblem, not to mention all policies adopted at national or international level.

The National Society should thus have a key role in needs assessment and ensure that programmes are carried out without any negative discrimination.

However, in practice, the difference between the State and another donor is far from negligible, because the very existence of the National Society depends upon the State, which always officially recognized it and which often makes available a large part of the resources required for its functioning (and not only the resources required for a specific programme). The greater the part of the State in the National Society's funding, obviously, the higher the risks for the National Society. Too great financial dependence on the State should therefore be avoided, as for any other donor.

### **5.2.2 – Relief to sick and wounded soldiers on the battlefield**

This is the traditional function of National Societies as auxiliaries to the public authorities. It is however a euphemism to point out that the situation has considerably changed since 1864. Most armed forces have health services, and the number of organizations involved in relief has also changed a great deal.

Based on the First Geneva Convention of 1949, it specifies well-defined tasks for the National Society staff assigned to this function: search for and evacuate dead, wounded and sick soldiers, care for wounded and sick soldiers, disease prevention, and the functioning of medical units and ambulances, all exclusively medical functions.

The staff acting in this framework enjoys protection established by the First Geneva Convention; they should be respected, cannot be attacked and have a special status should they be captured. They are, in return, subject to military rules and regulations.

This function is a possibility for National Societies, but in practice not all National Societies still perform, or have performed, it. In States without armed forces, this issue is not relevant. But, even in other States, this function is often neither a priority nor systematic.

Furthermore, this function raises practical problems. Whatever the medical and humanitarian character of tasks undertaken by this personnel, it may be difficult to explain the independence of the National Society when it is so associated with the armed forces. This is the case in particular for internal conflicts where the Government party has formal relationship with the National Society and the opposition may have an informal relation or no relation at all with the National Society. But the problem is also related to the image, especially if the armed forces commit serious and repeated violations of international humanitarian law. The National Society medical staff working with the armed forces will run a high risk of being associated with the armed forces. The party or parties to the conflict opposed to the Government may perceive the wearing of a uniform negatively (even if the uniforms are clearly different).

The National Society must be subject to military neutrality: in other words, it must not take part in hostilities. Its activities must remain exclusively medical or paramedical. A more or less broad interpretation is possible, for instance for blood donor campaigns for wounded or sick soldiers or visits to entertain them. But, in practice, the National Society's image and how it is perceived to respect the Principles of Neutrality and Impartiality will always be sensitive issues.

The National Society, in any event, must not be (and must not be perceived to be) an organization contributing to the war effort, nor as an organization incorporated in the services of the armed forces. Other non-governmental organizations operating in the field, in particular, would have difficulty in perceiving the assimilation of some National Society staff in the medical services of armed forces as compatible with the Fundamental Principles.

The National Society's obligation to be neutral will not be less than it is for the ICRC or the Federation. However, what can differ is its *possibility*, in practice, to be neutral and act accordingly.

The challenge lies in successfully communicating that the provision of medical assistance to wounded combatants during an armed conflict is a neutral humanitarian act, regardless of whether it is carried out by the military medical services, National Society workers, or the ICRC. It would be defeatist and wrong, from a philosophical standpoint, for a National Society not to undertake this role from fear of being misunderstood. This would be falling into the trap of acquiescing in the face of misunderstanding. It would also be tacitly accepting a false interpretation of one of the basic tenets of international humanitarian law as established by the original Geneva Convention, namely that providing help to the wounded and sick is a neutral humanitarian act.

However, undertaking this function requires the National Society to be confident on its capacity to act in accordance with the Fundamental Principles. Despite the fact that National Societies can act in this context since it is provided for in the First Geneva Convention, the impact on the National Society's respect for the Fundamental Principles must be studied very carefully in each instance.

Furthermore, for the time being, opinions on this issue vary widely. More thought and research will no doubt be required following the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent, so as to specify the scope that States and National Societies wish to give it.

### **5.2.3 – Other activities related to conflicts**

In times of conflict, most peacetime activities can continue (for instance staff training, health and social services, tracing, activities in favour of a given group), possibly on another scale. Other activities, however, are specific to times of conflict, e.g. caring for soldiers evacuated from combat zones, assistance to prisoners of war or internees. Some take place in a very different context from peacetime, for a number of reasons, including State security; this is the case, for instance, of food relief operations.

Indeed, in times of conflict, the State will most likely exert greater control over national organizations. This may be a fact or a law (for instance with provisions on state of emergency, exceptional circumstances, etc.). In such a case, the National Society may have less freedom to operate. However if the National Society in a country in conflict is associated with the operations of the ICRC it can pursue basic humanitarian activities without depending on instructions, financial support or tasks mandated to the Society by governmental authorities.

In the event of occupation article 63 of the Fourth Geneva Convention protects National Society activities, but international humanitarian law does not provide any protection of the National Society against its own State. There are only general provisions of the Statutes of the Movement and resolutions of the International Conference of the Red Cross and Red Crescent.

As for the relief activities for wounded and sick soldiers, it is important for the National Society not to take part in the conflict and not to be perceived as such. At first sight, it is unlikely that a National Society performs acts in direct support to the armed forces (military acts, etc.) – although this is not necessarily to be excluded in situations where a National Society has lost its integrity. The risk is rather that the National Society by effectively undertaking its own action, contributes to the smooth operations of the armed forces. Similarly the National Society may because of the combination of its “humanitarian image” and its association with providing medical

services to the armed forces and other wounded may knowingly or unknowingly become an instrument of mobilising public opinion in favour of or in support of conflict.

In the case of a non-international armed conflict, the National Society may well be perceived as being pro-governmental and, in some cases, will have difficulty in carrying out its activities on the whole territory. In practice, results differ according to the context. There is also a risk that ethnic, political or religious tensions affect the National Society. Ensuring that National Society leaders, in both governance and management bodies, represent the diversity in peacetime will decrease this risk in a period of conflict or tension.

#### **5.2.4 – Choice of programmes and services**

The public authorities should not restrict the choice of National Society programmes and services or its operational partners. At the same time, the authorities can expect a clearly defined line of conduct from the National Society, namely, that it will cooperate with third organizations only within the limits set by the Fundamental Principles and the Statutes of the Movement (especially the article 7, related to cooperation) and carry out its activities in accordance with the Fundamental Principles, especially the Principles of Impartiality and Neutrality. The choice of beneficiaries, in particular, must be in conformity with the Principle of Impartiality: priority is to be given to the most urgent cases and assistance provided without discrimination.

As noted in section 2, the needs faced in different countries and the role of National Societies has evolved over the years. Recent years have seen an increase in the concept of complementarity between the role of the State and National Societies particularly in the disaster response and health sectors. In many cases there is growing expectation of National Societies in these fields. The strength of the Red Cross/Red Crescent is often seen as the combination of the national organisation/the National Society with a community based volunteer network, combined with the international organisation/the Federation able to provide assistance, create partnerships between National Societies and represent the action and positions of National Societies internationally. Partnerships developed between government and National Societies at the national level have been mirrored by partnership between the International Federation and International Organisations including particularly those with the UN system such as UNOCHA, the UNHCR, WFP, WHO, UNICEF and UNAIDS. This has led to an increase in National Society programmes focussed on global or regional health issues such as HIV/AIDS and malaria where the Red Cross/Red Crescent has been able to compliment the action of international organisations and government often filling the space between the end of the formal government service delivery chain and the household. This cooperation with government, through these initiatives has generally been positive and some National Societies have played a constructive role bridging, and facilitating relations to lessen the gap between the public authorities and civil society.

In some cases this has led to a greater involvement of National Societies in the policy development and programme processes of government in for example, the disaster preparedness and health fields. In others the opportunity for government and National Society to develop mutual benefit through strengthening their relationships by greater involvement in such fora is evident.

## 5.2.5 – Activities abroad

The activities of a National Society undertaken abroad can be related to relief or other activities. However, this study does not review all such activities, but only those where the National Society acts as auxiliary to its public authorities. Therefore, such cases, would be those where the National Society accompanies its State's armed forces in the context of operations conducted abroad – for instance restoration of peace or peace keeping. These cases are therefore those where the National Society's staff involved are subject to military laws and regulations.

In principle, National Societies do not have to comment on the reasons presented by the government or others for launching such operations, as it may provoke unnecessary political controversy. However, National Societies should be able to decide whether their involvement is necessary and justified and whether the conditions of this involvement are acceptable. It is essential that no National Society is perceived as having taken sides with one of the forces present, including peace-keeping forces, when their presence is objected to or not well accepted by one of the belligerents.

The Movement must remain focused on its objectives: protecting life, health and human dignity. Its role is not to settle armed conflicts or decide on political solutions to ethnic, territorial or religious problems. Similarly, its role is not to maintain or restore public order.

Medical or paramedical activities in favour of wounded and sick soldiers are to be differentiated from other activities.

Article 26 of the First Geneva Convention should be interpreted as to allow National Society medical staff covered by that article to follow the armed forces abroad. Although this possibility is not explicitly mentioned, it would be senseless to prohibit it, as it would require National Society staff to stop its activities at its country's borders. Should an army be moved from its own territory to another one, the practical problems would be obvious. However, the negative consequences on the National Society's capacity to act should also be taken into account.

Other National Society activities abroad based on the status of auxiliary to the public authorities, including assistance to refugees or displaced populations, do not come under the Conventions and Protocols (there seem to be no relevant practice in relation to Article 27 of the First Geneva Convention). Such activities should not lead the National Society to act in violation of the Fundamental Principles of Impartiality and Neutrality – this is the same situation as for activities on its own territory – but also the Principle of Unity. This is especially important when a National Society already exists in the country where the activities are being carried out. The National Society operating outside its border should obtain the agreement of the host National Society.

Furthermore, relief activities of the National Society acting abroad need to be carried out in conformity with the Statutes of the Movement, in particular article 3.3: assistance to victims of armed conflicts, natural disasters and other emergencies have to be carried out through the National Society of the country concerned, the ICRC or the International Federation.

The Seville Agreement also applies, in particular its provisions on the division of tasks between the components of the Movement. Agreement of the ICRC or the Federation – i.e. the institution that is lead agency in that situation – should thus be obtained, as well as the agreement of the National Society of the country where activities are being carried out. The agreement of the latter is necessary in all cases, *in particular* if it is the lead agency. That National Society, however, should decide on exclusively humanitarian grounds and should influence its government to ensure that humanitarian imperatives prevail.

In any event, the National Society acting outside its national border cannot be the lead agency, i.e. in charge of coordinating international relief from the Movement.

If a National Society acts abroad as auxiliary to its public authorities without having sufficient autonomy vis-à-vis its State, it is quite likely that the National Society will be, or will be perceived as, the “humanitarian arm” of its State abroad. Should several States with differing views of the situation be present, the risk is greater of the Movement acting inconsistently. The whole Movement may even be rejected, in particular the National Society of the country where the activity is taking place (the so-called “Operating National Society”).

This aspect is essential: the quality of the relations between the National Society and the State has direct operational consequences for the activities carried out by the ICRC, the Federation or another National Society in the State where the operations are taking place. The acts of all components have an impact on all the other components.

Similarly, a National Society should not have activities (apart from relief to wounded and sick soldiers) in a territory controlled or occupied by its country’s armed forces without taking great precaution, and only in exceptional circumstances and with the agreement of the components of the Movement involved. In principle, it should not do so, especially if there is a National Society related to the occupied State. That Society indeed benefits from article 63 of the Fourth Geneva Convention in respect of acts and decisions of the Occupying Power. It may, however, not be able to cover all humanitarian needs; the various actors should therefore agree on the best possible solution in respect of the circumstances.

#### **5.2.6 – National Society support to the humanitarian activities of the State**

According to the Statutes of the Movement, the components, “in accordance with their respective Statutes, support as far as possible the humanitarian activities of the States”.

This support, foreseen by the Statutes of the Movement, is clearly part of the specific character of the relationship between the State and its National Society. However, the National Society should be able to decide whether or not the activities in question are humanitarian – as confirmed in the words “according to their Statutes” and “as far as possible”.

State activities that are not humanitarian should, of course, not be supported. Otherwise, National Societies would perform acts outside their statutory object.



## **6 – CHARACTERISTICS OF A BALANCED RELATIONSHIP BETWEEN STATES AND NATIONAL SOCIETIES AS AUXILIARIES TO THE PUBLIC AUTHORITIES IN THE HUMANITARIAN FIELD**

The role of National Societies has evolved over the years responding to changing needs in the humanitarian environment. In recent years the role with regard to disaster preparedness and response as well as the role in relation to community based health services has become significantly more important. Cooperation between National Societies and between the International Federation and International Organisations has developed and new partnerships complementing the respective strengths of the different partners have been developed.

Among national humanitarian organizations, National Red Cross and Red Crescent Societies have a special place, different from that of any other organization.

The role of auxiliary to the public authorities in the humanitarian field is characterized by a specific legal status, based on international humanitarian law, the rules established by the Movement and the national legislation of each State.

However, beyond this specificity, the detailed consequences of the auxiliary role have never been systematically analysed and, more importantly, the Movement and the International Conference of the Red Cross and Red Crescent have never taken a decision addressing all those aspects.

While keeping in mind differences that can be justified by the diversity of contexts in which National Societies act, and the need for evolution in the nature of the relationship between the State and the National Society, the characteristics of a balanced relationship of auxiliary to the public authorities in the humanitarian field can be summarised as follows:

- The State and the National Society have a partnership aimed at preventing and alleviating human suffering, protecting life and health, ensuring respect for the human being and promoting mutual understanding, friendship, trust and lasting peace amongst all peoples;
- Despite the partners have different responsibilities and level of resources available, this partnership is based on dialogue, trust, cooperation, a willingness to listen, mutual understanding, respect for each other and acceptance of criticism from each partner, thus allowing to raise the most sensitive humanitarian questions in a private and constructive manner;
- This partnership includes:
  - Involvement of the National Society in the implementation of the obligations incumbent upon the State on the basis of international humanitarian law and the resolutions of the International Conference of the Red Cross and Red Crescent;
  - Utilization by the State of the medical personnel of the National Society put at the disposal of the medical services of armed forces, in strict accordance with the First Geneva Convention and, where applicable, the First Additional Protocol;
  - Cooperation in respect of other tasks related to international humanitarian law where both the State and the National Society are involved, such as tracing services;
  - Consultation of the National Society on major humanitarian issues;

- Participation of the National Society in the health and social sector and in actions of relief and disaster preparedness. This involves not only the National Society's own service delivery action but also its contribution on the basis of its experience, and the policy of the International Federation, to governmental policy making in these sectors;
  - Cooperation respecting the distinct role of the Red Cross/Red Crescent in international operations. Such operations include response to the needs of conflict and disaster victims, and building the capacity of National Societies in other countries to respond to needs in the health and social sectors.
  - Utilization of the capacity of the National Society in the fields in which it is competent, and of its ability to act as a link between the organizations of civil society and the State (including, where necessary, the armed forces);
  - Support from the National Society to the humanitarian activities of the State, including acceptance of appropriate mandates.
- At all levels, the representatives of the State and the National Society understand the importance of the Fundamental Principles and ensure that the work of the National Society is guided by the Fundamental Principles<sup>1</sup>. In particular:
    - The benchmark against which the status of auxiliary to the public authorities should be evaluated is above all whether or not a National Society can act in conformity with the Principle of Humanity, that of Impartiality (guided solely by needs and absence of discrimination) and the objective of the Principle of Neutrality (“to enjoy the confidence of all”);
    - The State and the National Society ensure the long-term interests of a National Society that is sufficiently independent and acts in conformity with the Fundamental Principles, in all circumstances, including in times of internal strife or non international armed conflicts;
    - The State and the National Society seek to maintain the best possible image of the National Society, by showing that its action is in conformity with the Fundamental Principles and is perceived as such;
    - The involvement of State representatives in the decision-making process of the National Society is designed in such a way that the autonomy of the National Society is maintained, taking into account the “Guidance for National Society Statutes”<sup>2</sup>;
    - The States does not interfere in the functioning of the National Society, the selection of its activities (including the selection of beneficiaries, the scope of programmes and services and the choice of operational partners), the appointment of its leaders and amendments to its legal texts;
    - In its relations with the National Society, the State should aim to preserve the capacity of the National Society to act in accordance with its mission. To ensure this the State should recognise that there may be cases where the controls applicable to profit and not for profit organisations may need to be adjusted or waived. The means the public authorities put at the disposal of the National Society (financing, seconding of staff or other resources) are managed in such a way as not to affect National Society adherence to these Principles; they are conceived in a manner which avoids the National Society being too dependent from the State;

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<sup>1</sup> Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross and Red Crescent, 1986, Preamble (<http://www.icrc.org/Web/eng/siteeng0.nsf/html/movement>).

<sup>2</sup> Adopted by the Governing Board (May 2000) on a mandate from the General Assembly (1999) ([www.ifrc.org](http://www.ifrc.org)).

- Where State priorities or legislation might lead the National Society to act in violation of the Fundamental Principles or other policies or decisions adopted by the Movement or the Federation, the State and the National Society seek a solution which complies with the humanitarian mission of the Movement in accordance with the Fundamental Principles;
- In times of armed conflicts, be they international or not, or internal strife:
  - The purely humanitarian contacts between the National Society and different actors involved in such situations are legitimate;
  - The National Society should not be perceived as contributing to the military efforts of the State or any other party to the conflict or as supporting views and policies not related to humanitarian considerations;
  - The utilisation by the medical services of the armed forces of medical staff seconded by the National Society is legitimate, provided that, on the one hand, the acts undertaken by these staff are of a strictly humanitarian nature and, on the other hand, that National Society has the capacity and is prepared to explain to the public at large that such acts are humanitarian, thus preserving the interests of all components of the Movement;
- The State and the National Society work in view of creating an enabling environment allowing the best possible action from the National Society. In particular:
  - The State facilitates the functioning of the National Society by adopting appropriate legislation (or derogation to existing legislation) in the fields of voluntary service, tax and customs status of the National Society, and use of the emblem by the National Society, in conformity with the Geneva Conventions;
  - The State facilitates National Society implementation of the decisions and resolutions adopted by Red Cross and Red Crescent bodies at the international level, including in the field of the Movement's international relief operations, and in particular the Agreement on the Organisation of the International Activities of the Components of the International Red Cross and Red Crescent Movement ("Seville Agreement")<sup>3</sup>, the "Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief"<sup>4</sup> and other relevant texts;
  - The State and the National Society use the "Characteristics of a Well-Functioning National Society"<sup>5</sup> and "Guidance for National Society Statutes" to facilitate changes in the legal status of the National Society, its structure and its rules of functioning. In this context, public authorities take into account the comments that the ICRC and the Federation may formulate in respect of National Society's statutes;
  - The inclusion of the Statutes of the National Society in the national legislation is avoided, in order to facilitate the modification of the Statutes, if necessary, at the Society's own initiative;

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<sup>3</sup> Adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement (Seville 1997) (<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/movement?OpenDocument>).

<sup>4</sup> Noted and welcomed by the 26th International Conference of the Red Cross and Red Crescent (1995) which "invited all States and National Societies to encourage NGOs to both abide by the principles and spirit of the Code and consider registering their support for the Code with the International Federation" (res.IV) (<http://www.ifrc.org/publicat/conduct/>)

<sup>5</sup> Welcomed by the General Assembly (1995), decision 30, as an important institutional development tool ([www.ifrc.org](http://www.ifrc.org))

- The State and the National Society cooperate in order to promote and guarantee the specific nature of the National Society, both in the context of international organizations as well as in the development and implementation of international law;
- Mechanisms for dialogue and safeguards are established for all forms of State – National Society cooperation. This includes National Society contribution to governmental policy making in the fields of disaster management, health and social services. The roles and responsibilities are established in general and for each operation or programme, preferably by agreement between both parties;

Should the integrity of the National Society be in jeopardy, the International Federation and the ICRC may provide advise or assistance to the National Society according to the Movement's Statutes, and the Federation's policies and procedures. The State should recognise and support this internal consultation and support process within the Movement. In cases where the State is concerned by an issue of National Society integrity it should first consult the National Society leaders and then as appropriate the Federation and/or ICRC. Any action by government in such cases should not adversely affect the National Society's ability to respect the Fundamental Principles.

## Annex 1 – Context of the Study

For the final objective 3.3 of its Plan of Action, “Increased National Society capacities, effective partnership with States and co-operation with relevant humanitarian and development organisations”, the 27<sup>th</sup> International Conference decided as follows:

13. States, recognising the auxiliary role of National Societies and the growing significance of their work in the provision of services and the fostering of respect for the human being, will:

- (a) where necessary, commit to further strengthening the capacity of the National Society of their own country, facilitating and supporting its role in response to new challenges in the national context;
- (b) recognise the growing importance of volunteers as providers of practical and emotional support to vulnerable people in the community, thus complementing the coverage of needs not met by the formal service delivery system. States consequently review, and where necessary, introduce or update legislation so as to facilitate the efficient work of relevant voluntary organisations;
- (c) increase their support for building a stronger, global National Society network, better able to respond to needs in the community and to disasters. In this they will give due recognition to the experience of the “Tripartite Process” launched by the International Federation in follow-up to the 26<sup>th</sup> International Conference;
- (d) as appropriate, increase their support for co-ordination between the National Society network and relevant humanitarian and development organisations.

14. National Societies, in order to ensure their capacity to respond more effectively to new challenges, will:

- (a) take new initiatives to ensure a well-balanced participation by people from all sectors of society in their organisation and programmes, and promote their integration into National Society decision-making processes and leadership positions;
- (b) review their legal base and statutes to determine whether they need to be updated. As part of this process they will consider the draft model law prepared by the International Federation and the ICRC, the guidelines for National Society statutes and other relevant decisions of Movement and International Federation statutory bodies;
- (c) commit themselves to increased co-ordination and co-operation with relevant humanitarian and development organisations.

15. The International Federation will:

- (a) continue its research, in co-operation with National Societies, on specific aspects of voluntarism, in order to develop updated policy and guidelines;
- (b) initiate, in co-operation with National Societies and the ICRC, an in-depth study into the working relationship between States and National Societies, taking into account the changing needs in the humanitarian, health and social fields, the auxiliary role of National Societies and the evolving role of the State, the private sector and voluntary organisations in service provision;
- (c) implement “Strategy 2010”, adopted by its General Assembly in October 1999, which seeks to build the individual and collective actions of National Societies, in co-operation with States, in order to improve the lives of vulnerable people.

## **Annex 2 – Extracts from texts referred to in the Study**

### 1.1 Extracts from the Statutes of the Movement

#### 1.1.1 – Preamble

##### Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

##### Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

##### Neutrality

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

##### Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

##### Voluntary Service

It is a voluntary relief movement not prompted in any manner by desire for gain.

##### Unity

There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

##### Universality

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

#### 1.1.2 – Article 1.2

The components of the Movement, while maintaining their independence within the limits of the present Statutes, act at all times in accordance with the Fundamental Principles and cooperate with each other in carrying out their respective tasks in pursuance of their common mission.

### 1.1.3 – Article 2.1 to 2.4

1. The States Parties to the Geneva Conventions cooperate with the components of the Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference.
2. Each State shall promote the establishment on its territory of a National Society and encourage its development.
3. The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement. The same components, in their turn and in accordance with their respective statutes, support as far as possible the humanitarian activities of the States.
4. The States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles.

### 1.1.4 – Article 3

1. The National Societies form the basic units and constitute a vital force of the Movement. They carry out their humanitarian activities in conformity with their own statutes and national legislation, in pursuance of the mission of the Movement, and in accordance with the Fundamental Principles. The National Societies support the public authorities in their humanitarian tasks, according to the needs of the people of their respective countries.

2. Within their own countries, National Societies are autonomous national organizations providing an indispensable framework for the activities of their voluntary members and their staff. They cooperate with the public authorities in the prevention of disease, the promotion of health and the mitigation of human suffering by their own programmes in such fields as education, health and social welfare, for the benefit of the community.

They organize, in liaison with the public authorities, emergency relief operations and other services to assist the victims of armed conflicts as provided in the Geneva Conventions, and the victims of natural disasters and other emergencies for whom help is needed.

They disseminate and assist their governments in disseminating international humanitarian law; they take initiatives in this respect. They disseminate the principles and ideals of the Movement and assist those governments which also disseminate them. They also cooperate with their governments to ensure respect for international humanitarian law and to protect the red cross and red crescent emblems.

3. Internationally, National Societies, each within the limits of its resources give assistance for victims of armed conflicts, as provided in the Geneva Conventions, and for victims of natural disasters and other emergencies. Such assistance, in the form of services and personnel, of material, financial and moral support, shall be given through the National Societies concerned, the International Committee or the International Federation.

They contribute, as far as they are able, to the development of other National Societies which require such assistance, in order to strengthen the Movement as a whole.

International assistance between the components of the Movement shall be coordinated as provided in Article 5 or Article 6. A National Society which is to receive such assistance may however undertake the coordination within its own country, subject to the concurrence of the International Committee or the International Federation, as the case may be.

4. In order to carry out these tasks, the National Societies recruit, train and assign such personnel as are necessary for the discharge of their responsibilities.

They encourage everyone, and in particular young people, to participate in the work of the Society.

5. National Societies have a duty to support the International Federation in terms of its Constitution. Whenever possible, they give their voluntary support to the International Committee in its humanitarian actions.

#### 1.1.5 – Article 4

In order to be recognized in terms of Article 5, paragraph 2 b) as a National Society, the Society shall meet the following conditions:

1. Be constituted on the territory of an independent State where the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field is in force.
2. Be the only National Red Cross or Red Crescent 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 components of the Movement.
3. Be duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field.
4. Have an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.
5. Use the name and emblem of the Red Cross or Red Crescent in conformity with the Geneva Conventions.
6. Be so organized as to be able to fulfil the tasks defined in its own statutes, including the preparation in peace time for its statutory tasks in case of armed conflict.
7. Extend its activities to the entire territory of the State.
8. Recruit its voluntary members and its staff without consideration of race, sex, class, religion or political opinions.
9. Adhere to the present Statutes, share in the fellowship which unites the components of the Movement and cooperate with them.
10. Respect the Fundamental Principles of the Movement and be guided in its work by the principles of international humanitarian law.

#### 1.2 – First Geneva Convention 1949

##### ARTICLE 24

Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.



## ARTICLE 26

The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces.

## ARTICLE 44

With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the red cross on a white ground and the words “Red Cross”, or “Geneva Cross” may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

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 building.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the red cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.

### 1.3 – Fourth Geneva Convention 1949

#### Article 63

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

- a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross Principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;
- b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

Protocol I of 1977, articles 81.2 and 81.3

2. The Parties to the conflict shall grant to their respective (Red Cross, Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and the Fundamental Principles of the Red Cross as formulated by the International Conferences of the Red Cross.

3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies extend to the victims of conflicts in accordance with the provisions of the Conventions and this Protocol and with the Fundamental Principles of the Red Cross as formulated by the International Conferences of the Red Cross.

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# The Fundamental Principles of the International Red Cross and Red Crescent Movement

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## **Humanity**

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

## **Impartiality**

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

## **Neutrality**

In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature.

## **Independence**

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

## **Voluntary Service**

It is a voluntary relief movement not prompted in any manner by desire for gain.

## **Unity**

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

## **Universality**

The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



The *International Federation of Red Cross and Red Crescent Societies* promotes the humanitarian activities of National Societies among vulnerable people.

By coordinating international disaster relief and encouraging development support it seeks to prevent and alleviate human suffering.

The International Federation, the National Societies and the International Committee of the Red Cross together constitute the International Red Cross and Red Crescent Movement.