



**Canadian Red Cross / Croix-Rouge canadienne**

**Toward A Renewed Canadian Red Cross:  
Forging Stronger Partnerships In Support Of A  
Humanitarian Agenda**

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<b>Additional Protocol</b>	<b>AP</b>
<b>Canadian Border Services Agency</b>	<b>CBSA</b>
<b>Canadian International Development Agency</b>	<b>CIDA</b>
<b>Canadian National Committee on Humanitarian Law</b>	<b>CNCHL</b>
<b>Citizenship and Immigration Canada</b>	<b>CIC</b>
<b>Department of National Defence</b>	<b>DND</b>
<b>Emergency Operations Support Centre</b>	<b>EOSC</b>
<b>Federation of Red Cross and Red Crescent Societies</b>	<b>the Federation</b>
<b>Foreign Affairs and International Trade</b>	<b>DFAIT</b>
<b>International Committee of the Red Cross</b>	<b>ICRC</b>
<b>International Humanitarian Law</b>	<b>IHL</b>
<b>International Red Cross and Red Crescent Movement</b>	<b>the Movement</b>
<b>Judge Advocate General</b>	<b>JAG</b>
<b>Non-governmental Organization</b>	<b>NGO</b>
<b>Peace Support Training Centre</b>	<b>PSTC</b>
<b>Public Health Agency of Canada</b>	<b>PHAC</b>
<b>Public Safety Canada</b>	<b>PS</b>



# Part I Red Cross Background and Auxiliary Role

## Introduction

The purpose of this paper is to stimulate a wide-ranging public discussion both inside and outside The Canadian Red Cross Society on the roles and activities of the organization. The frame of reference for this dialogue is the status of the Red Cross as “auxiliary to public authorities”<sup>1</sup> under the *Geneva Conventions* and the *Statutes of the International Red Cross and Red Crescent Movement*. Domestically, the Canadian Red Cross is governed by two legal instruments relevant to this discourse: *The Canadian Red Cross Society Act, 1909*<sup>2</sup> and the *Letters Patent, 1970*.<sup>3</sup> As a State Party to the *Geneva Conventions*, the Canadian government has certain rights and obligations under international law in relation to both the International Red Cross and Red Crescent Movement (the Movement) and the Canadian Red Cross. Like other National Societies, the Canadian Red Cross has a unique and special *de jure* and *de facto* relationship with its national government. In addition, like many other National Societies and States, this special relationship needs to be better understood inside and outside government.

In preparation for the International Red Cross and Red Crescent Conference in 2007, the Movement is encouraging National Societies such as the Canadian Red Cross Society to initiate an exchange of ideas with their respective governments on their status as “auxiliary to government.” The Movement is also calling upon States to review the laws governing their National Societies to ensure they have a legal basis relevant to today’s problems and challenges. The specific aims of this paper are to foster a discussion on the auxiliary role of the Red Cross (especially as it relates to emergency management) and to conduct a broad examination of the legislative issues related to revising and updating *The Canadian Red Cross Society Act, 1909*. Since the Act was passed almost a century ago, the organization has evolved significantly and within the last decade has experienced some very critical institutional challenges and changes. Consequently, any objective

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<sup>1</sup> The terms “auxiliary to public authorities” and “auxiliary to government” are interchangeable.

<sup>2</sup> See Appendix I for the full text of *The Canadian Red Cross Society Act, 1909*.

<sup>3</sup> See Appendix II for the full text of *The Letters Patent, 1970*.

assessment of the current legal foundations of the Society would conclude that the time has come for a comprehensive review.

While the organizational objectives contained within the *Letters Patent, 1970* remain valid, today's Canadian Red Cross Society, like many other National Societies, continues to develop and evolve. From a functional standpoint, the Canadian Red Cross no longer serves in a meaningful capacity as auxiliary to the medical services of the Canadian Forces. It is also no longer involved in blood services, which was a very important principal point of contact for the Canadian public as blood donors for over fifty years. The Canadian Red Cross has also found that its strategic focus on emergency management (i.e., preparedness, mitigation, response and recovery) is not well known among Canadians, many of whom still associate the Canadian Red Cross with blood services.<sup>4</sup>



On a number of levels, it is very important to communicate to the public precisely what the Red Cross does. First, we want Canadians to be aware of our mandate and the full range of services and programs we offer. This is especially important in times of dire need, such as a personal tragedy involving a house fire. But it is also important in larger scale disasters and emergencies – floods, forest fires, severe weather, major power outages, terrorist attacks or pandemics. Second, we want to ensure Canadians know there are a wide variety of volunteer opportunities available to them if they want to be part of our mission to assist the most vulnerable. Third, we want to ensure that potential donors have a firm grasp of the scope of activities they can support through their contributions.

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<sup>4</sup> A survey conducted for Public Safety Canada by EKOS Research in October, 2006 found that 17 percent of Canadians still think that the Canadian Red Cross is responsible for blood services.

This discussion paper is intended to assist the “auxiliary to government” consultation process and public discussion, and it will result in the production of an interim report to be used in support of Canadian Red Cross representations at the International Conference in November 2007. The process will culminate with a final report summarizing and analyzing the results of the public consultation as well as the deliberations at the International Conference. It will also contain suggested legislation for a new Canadian Red Cross Society Act. Ultimately, it is also hoped this process will lead to a new “foundational” statute for the Canadian Red Cross, perhaps in time for the Society’s hundredth anniversary in 2009. This statute should reflect today’s realities and equip the organization to properly discharge its humanitarian role. The Canadian Red Cross believes that statutory change, whenever it comes, should address (1) the evolving role of the Red Cross as “auxiliary to government;” (2) provisions relating to the recently approved additional emblem (the red crystal); (3) the need for greater protection for the red cross emblem in Canada; and (4) other provisions which would modernize *The Canadian Red Cross Society Act, 1909* to improve transparency and accountability and provide for greater uniformity and consistency between the Canadian statute and other National Society statutes within the Movement.<sup>5</sup> Indeed, these discussions might also identify other important humanitarian activities the Canadian Red Cross could undertake to support the governments (federal, provincial, territorial and municipal) and people of Canada.

The Canadian Red Cross supports the view that public consultation around these issues should involve a broad collaborative effort with the participation of a wide range of interested parties. Indeed, the consultation process would be incomplete if it did not also foster a significant component of public dialogue and citizen involvement across Canada. Historically, the Canadian Red Cross has been a vehicle for millions of Canadians to volunteer their time and efforts to help the vulnerable and provide assistance to those affected by conflict and disaster. In this respect, the Red Cross has had an important role to play in both nation building and in contributing to the promotion of good citizenship.<sup>6</sup>

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<sup>5</sup> See Appendix III for the full text of the Red Cross National Society model law.

<sup>6</sup> See Appendix IV for an abbreviated history of The Canadian Red Cross Society.

The Canadian Red Cross is not just the Red Cross in Canada; it is also Canada's Red Cross. As such, each Canadian has a stake in its future. Broad public engagement is to be encouraged if the result is going to stand the test of time and enjoy the widest public support.

The work of the Red Cross directly affects all levels of public authorities in Canada – federal, provincial, territorial and municipal. At the national, zone, regional and branch levels of the Canadian Red Cross, extensive working relationships exist with the corresponding level of government involving a myriad of individual departments. Just as it is expected that this exercise will touch all levels of government, it is also expected to touch all levels of the Red Cross. It is worth emphasizing that the lion's share of field operations within the Society is conducted at the provincial/territorial and municipal levels. It is hard to overstate the importance of these relationships. For example, the Society has signed agreements on emergency management with seven out of ten provinces and has over 700 similar agreements with municipalities across Canada.

However, for the purposes of reporting on this national public consultation, the federal government remains the primary point of contact for the Canadian Red Cross as a National Society. In fact, within the federal government alone, the work of the Red Cross involves many departments and spheres of activities. Some of these include Public Safety Canada (PS), the Department of Foreign Affairs and International Trade (DFAIT), the Department of National Defence (DND), Justice Canada, the Canadian International Development Agency (CIDA), Health Canada, the Public Health Agency of Canada (PHAC), Industry Canada, Canadian Heritage (CH), Human Resources and Social Development, Transport Canada, and the Privy Council Office. Following the public consultation and the release of the final public report, it is expected that the Canadian Red Cross will engage the Government of Canada based on the results of this consultation to discuss next steps in terms of policy and possible legislative change.

Over the years, the Canadian Red Cross and the Canadian government have worked closely in addressing humanitarian needs at home and abroad. Both the Society and the

government have been progressive and constructive forces for change within the International Red Cross and Red Crescent Movement. After almost a century, however, the Red Cross believes the time is right to re-examine the basis of the relationship and lay the foundation for future cooperation in dealing with the humanitarian needs of the twenty-first century. For the Red Cross, this constitutes what can best be described as a “transformative agenda.” The Red Cross also believes this process has the potential to place this country in a leadership position within the International Movement and re-vitalize the Canadian Red Cross’s humanitarian role both inside and outside of Canada.

### **The Canadian Red Cross Society – Origins and Profile**

It is widely believed that Dr. George Sterling Ryerson, a surgeon with the Royal Grenadiers, flew one of the first Red Cross flags in Canada at the Battle of Batoche during the 1885 Riel Rebellion. In 1896, Ryerson spearheaded an effort to establish the Canadian Red Cross as a branch of the British Red Cross. Thirteen years later, the Canadian Parliament passed *The Canadian Red Cross Society Act, 1909* legally establishing the Canadian Red Cross as the corporate body responsible for providing

***What are the benefits to public authorities of having a National Society in an auxiliary role?***

volunteer aid through “relief societies” in Canada in accordance with the First Geneva Conference of 1863. In 1970, *Letters Patent* were issued to modernize the Society’s legal basis even though the 1909 *Canadian Red Cross Society Act* still had force and effect. Today, the Canadian Red Cross is a non-profit humanitarian

organization and is part of the International Red Cross and Red Crescent Movement. The Movement includes the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (Federation) and the 185 National Red Cross, Red Crescent and Red Crystal societies. The Canadian Red Cross mission statement commits the organization “To improve the lives of vulnerable people by mobilizing the power of humanity in Canada and around the world.”

Today, the Canadian Red Cross provides a wide range of assistance to millions of Canadians every year. The organization administers national programs on emergency management, health and injury prevention such as first aid and water safety. It also has abuse and violence prevention programs, promotes humanitarian values and international humanitarian law, and sponsors community, homecare and health equipment loan services. Canadian Red Cross international programs help the world's most vulnerable populations – victims of armed conflicts and communities destroyed by devastating disasters or facing major public health issues.



**Batoche Flag and bust of Dr. George Sterling Ryerson, Canadian Red Cross founder, National Office, Ottawa**

The Canadian Red Cross's programs and services are available to communities in all provinces and territories in Canada, with operations in small towns and large cities. The Red Cross has a National Office based in Ottawa, four zone offices and 370 regional and branch offices. It also has 6300 employees, 5200 volunteers specifically trained in

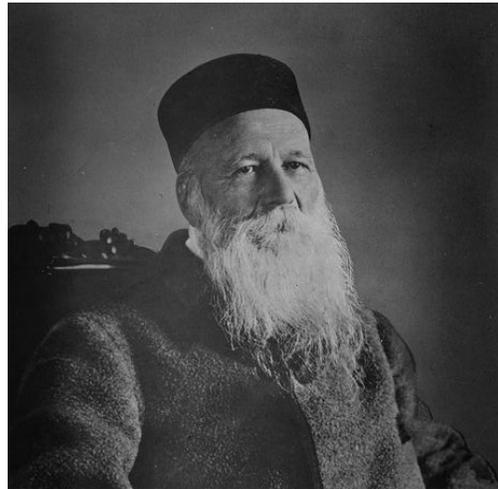
***What are the benefits to a National Society in having auxiliary status with its government(s)?***

Emergency Management and thousands of other volunteers, members and supporters across Canada. The Canadian Red Cross operates worldwide providing support to more than forty countries and directly managing projects in more than fifteen countries. In the event of a major disaster in Canada, the pipeline of assistance will flow into this country. The Canadian Red Cross has access to the support of the Movement with almost 100 million volunteers and approximately 300 000 professional staff worldwide.

## Historical Background on the International Red Cross and Red Crescent Movement

On June 24, 1859, during the Second Italian War of Independence, the Austrian and French armies clashed at Solferino, a town in northern Italy. After a full day of fighting, the battlefield was strewn with over 30 000 dead and wounded. A Swiss citizen, Henry Dunant, witnessed the battle and was shocked by the carnage. Reports of wounded and dying soldiers being shot or bayoneted on both sides added to the horror. The situation was made worse by inadequate medical services in both armies. Thousands of wounded soldiers were left to suffer untended, abandoned to their fate. Assisted by civilians from neighbouring villages, Dunant immediately organized care without regard to nationality. Returning home, Henry Dunant was unable to forget the horrendous scenes he had witnessed.

In 1862, he wrote and published at his own expense *A Memory of Solferino*, which was circulated to friends, philanthropists, military officers, politicians and prominent families. The book advanced two important proposals: (1) to set up in peacetime and in every country volunteer groups (national “relief societies”) to care for casualties in wartime; and (2) to get



**Henry Dunant**

countries to agree by treaty to legally protect first aid volunteers and the wounded on the battlefield. Dunant sent a copy of *A Memory of Solferino* to Gustave Moynier, president of the Geneva Society for Public Welfare, who subsequently invited Dunant to a special meeting of the organization on February 9, 1863. A “Committee of Five” was formed consisting of Guillaume Dufour as president. Dunant, Thomas Maunoir, Gustave Moynier and Louis Appia agreed to serve as board members. It gave itself the name of International Relief Committee for Injured Combatants. (In 1875, it adopted the name International Committee of the Red Cross.)

The Committee of Five convened an International Conference in Geneva on October 26, 1863, at which sixteen states and four philanthropic institutions were represented. The

Conference adopted Dunant's and the Committee's proposals (ten resolutions and three recommendations) for the creation of national committees and decided a red cross on a white ground should be the distinctive sign to identify and protect medical personnel assisting the wounded. In addition to the Resolutions, the Conference also recommended governments extend their patronage to relief societies and to the medical corps, ambulances and military hospitals.



Jean-Louis-Ernest Meissonier

### **Napoleon III at the Battle of Solferino, 1859**

After the successful termination of the Geneva Conference of 1863, the Swiss Federal Council, on the initiative of the Geneva Committee, invited the governments of all European and several American states to a diplomatic conference to adopt a convention for the amelioration of the condition of the wounded in war. The conference, at which sixteen states were represented, lasted from August 8 to 22, 1864. The draft convention submitted to the Conference, which was prepared by the Geneva Committee, was adopted without major alterations. The main principles laid down in the Convention and maintained by the later *Geneva Conventions* are relief to the wounded without any

distinction as to nationality, the legally recognized neutrality and protection of medical personnel, medical establishments and units, and the distinctive sign of the red cross on a white ground.



Armand Dumaesq © ICRC

### **Signing of the *First Geneva Convention*, August 1864**

#### **Evolution of the Concept of “Auxiliary to Government”**

Under Henry Dunant’s original proposals to form relief societies, the medical services of armed forces had the primary responsibility to care for the sick and wounded on the battlefield. The founding resolutions of the First Geneva Conference of 1863 defined the mandate of these new relief societies as that of “auxiliaries” to the medical services of armed forces. The corollary of auxiliary status to public authorities was the subordination of relief societies to the medical services of armed forces and therefore to States for every aspect related to that activity. Importantly, the 1863 Conference stipulated that the voluntary medical personnel on the battlefield should be placed under military command. While governments were under no obligation to accept the offer of services from these relief societies, over time their support function to armed forces medical services was not only maintained but enhanced. Successive *Geneva Conventions* also further codified their status.

By the late nineteenth century and early twentieth century, National Societies began to move beyond their wartime role and develop other activities that in turn increased their operational capacity. Some National Societies also received State support. Following the First World War, international recognition of the expanding role of National Societies came with the *Covenant of the League of Nations* in 1919. Under Article 25 of the Covenant, States committed themselves to

*Encourage and promote the establishment and cooperation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world.*

This statement marked the beginning of official State recognition of a more expansive role for the Red Cross beyond the care of the sick and wounded on the battlefield. A similar statement alluding to the special links between States and National societies was also adopted by the United Nations General Assembly after the Second World War. As the work of the Red Cross expanded, the use of the word “auxiliary” was applied to a broader range of National Society activities.



**Canadian Red Cross  
Transport Officer  
Second World War**

In 1921, the revised Statutes of the ICRC were modified and incorporated four Fundamental Principles – **Impartiality**, political, religious and economic **Independence**, the **Universality** of the Movement, and the **Equality** of its members. These principles provided a critical “philosophical direction” for the Movement. They also established a framework for the Movement’s relations with governments. These relations were severely tested during the Second World War when many National Societies overtly supported and mobilized public opinion in support of war goals. This was a clear violation of the principle of neutrality (as

we know it today) and left many in the Movement uneasy with the almost symbiotic relationship between some States and their National Societies. A reflective post-war meeting of the Movement in Oxford, England, in 1946 resulted in The Oxford Principles,

which re-affirmed the 1921 principles and supplemented them with an additional thirteen principles and six rules of application. Red Cross writer and thinker Jean Pictet analyzed these principles in a more systematic manner in his 1955 book entitled *The Red Cross Principles*.

Based on this in-depth study, the Movement's seven Fundamental Principles<sup>7</sup> were unanimously adopted in 1965 by the 20th International Conference of the Red Cross and Red Crescent. The principle of Independence alluded directly to the "auxiliary role." It states that

*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.*

In 1986, the 25th International Conference of the Red Cross and Red Crescent re-affirmed the importance of the Principles by including them in the Preamble to the Movement's Statutes. Importantly, Article 4 (3) of the Statutes provides that to be recognized by the ICRC, a National Society

*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.*

Article 3 (1) of the Movement's Statutes states that

*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.*

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<sup>7</sup> The XXth International Conference of the Red Cross proclaimed the following fundamental principles upon which Red Cross activities are based: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality. See Appendix V for the full text of the *Proclamation of the Fundamental Principles*.

It is worthwhile to distinguish between the “auxiliary status” and the “auxiliary role” of a National Society. The auxiliary status is a prerequisite of official recognition as a National Society by the Movement. Once recognized, auxiliary status is enjoyed by a National Society. On the other hand, the auxiliary role is the concrete manifestation in actual practice of specific roles undertaken by a National Society as opposed to other roles it may be performing in a “private” capacity outside of the auxiliary function.

National Societies worldwide have developed their auxiliary role in different ways in relation to their national governments, with some being more autonomous and independent than others. Achieving the proper balance in the relationship is critical. In certain countries, the government influences the affairs of the National Society to a considerable degree through the types of programs offered and the amount of control exercised by the State over the National Society’s affairs. Indeed, in several cases, the National Society is virtually integrated into the public services of a country. Some other States take a more conventional view and see the National Society solely in its traditional function of providing assistance to the medical services of the armed forces.

***What are the characteristics of a ‘balanced relationship’ between a National Society and public authorities?***

The concept of “auxiliary to government” and how it is applied varies greatly from country to country and defies any easy categorization based on East/West, North/South or

***Do governments and National Societies have a joint responsibility to explain and better define the auxiliary to government role?***

developed/developing world. It is largely a reflection of a country’s culture, legal and political system, and the status of humanitarian organizations within the State. It is noteworthy that in some countries there have been tensions in the relationship as some National Societies have resisted attempts by governments to assert more control over their activities. Generally, one can say

the auxiliary concept has evolved in particular national situations in response to unique

national circumstances. On a larger scale, the entire Movement has also grappled with the auxiliary concept in response to the tumultuous events of the twentieth century and the early years of the twenty-first century.

## **A New Operating Environment**

The last fifteen years have seen some profound changes in the geo-political landscape, prompted largely by the demise of the former Soviet Union, the fall of the Berlin Wall, the end of the Cold War and the beginning of the “war on terror” after the September 11, 2001, attacks. These tectonic shifts had violent repercussions such as the disintegration of the former Yugoslavia, ethnic, tribal and resource-based wars in sub-Saharan Africa, the First Gulf War, and the current conflicts in Iraq and Afghanistan.



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**Larnaka harbour, Cyprus – first load for an ICRC ship used to transport relief items from Cyprus to Lebanon, July 2006**

Long-standing areas of friction and tension such as the Middle East, North/South Korea, Kashmir, Sri Lanka and Taiwan are also of concern. The events of the summer of 2006

involving Lebanon and Israel are yet another reminder that areas of tension can flare up at any time resulting in intense fighting with significant humanitarian repercussions extending well beyond the specific zone of conflict.

In addition to security issues, phenomena such as freer trade, globalization, the internet and communications revolution, the rise of civil society organizations, third party humanitarian interventions, and climate change have brought the world together in what Marshall McLuhan once described as a “global village.” Climate change has certainly raised awareness among people concerning the planet’s fragility and has prompted some to forecast more severe weather and the possibility of more natural disasters. In recent years, events such as the 2004 Southeast Asia tsunami, Hurricane Katrina and the South Asia earthquake of 2005 are vivid reminders of the power of nature and its impact on



D. Pratt - CRC

**Damage caused by the 2004 tsunami – north eastern Sri Lanka**

human settlements. These recent phenomena have challenged governments and institutions in ways unimaginable fifteen or twenty years ago.

As a global institution, the Movement has also had to evolve and adapt. New phrases such as “complex emergency” have entered our vocabulary to describe humanitarian crises that can combine conflict with natural disasters and refugee flows, state and non-state actors, professional armies and undisciplined militias. The upsurge in religious radicalism, the status of human rights in the war on terror, the questioning of the concept of state sovereignty, new ideas such as the “responsibility to protect” – all of these issues pose new challenges. Particularly troubling for the Movement is the seemingly steady erosion of respect for international humanitarian law (IHL) and the *Geneva Conventions* in conflict zones around the world – in some cases by non-state actors, in others by signatories to the Conventions. While the number of “wars” has generally declined in recent years, the complexity and scale of some armed conflicts (such as those in Iraq, Afghanistan, Sudan and the Middle East) have increased. In response to these crises, ICRC operations have expanded.

While the ICRC has been on the front lines of conflict, the International Federation has also been tested in the areas of disaster response and emergency management, disease prevention (AIDS, malaria, tuberculosis) and pandemic disease response (avian flu).

Challenges that require a more comprehensive response from within a country have resulted in new partnerships between National Societies and States. Because disaster and disease do not recognize national boundaries, new arrangements between the Federation and international organizations such as the

***The International Movement has its own legal basis and rules. How can the Canadian Red Cross avoid creating the perception its auxiliary status makes it part of government or subject to government direction or control?***

United Nations have become necessary. In 1994, a Resolution was adopted by the General Assembly granting observer status to the Federation.<sup>8</sup> This recognition was followed by cooperation agreements negotiated by the Federation with several UN agencies such as the World Health Organization, the World Food Programme and United

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<sup>8</sup> See Appendix VI for the full text of the UNGA Resolution.

Nations Volunteers. Within the Movement itself, there has been a renewed emphasis on the structures that facilitate intra-Movement cooperation and effectiveness, such as the *Seville Agreement*<sup>9</sup> of 1997 and its Supplementary Measures of 2005. Governance issues have also been high on the agenda.

This new operating environment has produced dramatic changes within many National Societies and has linked them much more closely to government policies, programs and strategies in areas such as disaster response and emergency management, health, and international development programs. Relations between States and National Societies become more complex when a State provides its National Society with significant

***How can the Canadian Red Cross correct the misperception among many that we receive most of our financial support from Government when in reality we operate primarily on public donations?***

financial support for Red Cross programs, or when the State encourages the National Society to embark upon a program that is a government priority but not necessarily a priority for the National Society. While in many cases this funding assistance has been

constructive and positive from the standpoint of helping the most vulnerable and building the capacities of National Societies, certain types of government funding have the potential to skew Red Cross priorities and jeopardize the principle of Independence. The situation becomes even thornier in instances where National Societies have found it necessary to challenge governments on the quality of service to vulnerable people.

An organization such as the Red Cross, whose credibility as a prominent international institution is largely dependent on its adherence to fundamental principles, must be very vigilant about the possibility of compromising these principles. While the Red Cross's principle of Independence is very much at issue, other principles such as Impartiality and Neutrality also come into play. In 1999, because the nature and complexity of the "auxiliary to government" issue was raising new and unprecedented challenges, the

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<sup>9</sup> See Appendix VII for the full text of the *Seville Agreement*.

Movement decided to initiate a wide-ranging study to review and better understand the relationships between National Societies and States.

## **Better Defining the Auxiliary Role**

The Plan of Action adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999 called on the Federation, working with the ICRC and National Societies, to conduct a comprehensive study of the working relationship between States and National Societies. The expected result of the study was to ensure that

*Components of the Movement and States have a clearer and more common understanding of the National Society auxiliary role, its advantages and restrictions, in light of changing needs and of the evolving role of other service providers.*

It is important to emphasize this was not just an “intra-Movement dialogue” regarding the auxiliary role. States are an integral part of the decision-making processes at International Conferences and consequently have a very direct stake in the formulation of new policies and their results. The *Strategy for the Movement* document of 2001 observed that

*The nature of the relationship between States and NS (National Societies) is unique and offers many benefits to both parties. The NS role as auxiliary to the public authorities is based on IHL (First Geneva Convention, 1949 Article 26) and the Statutes of the Movement (Article 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 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.... 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. [emphasis added]*

The study initiated by the Plan of Action in 1999 and completed in 2003 was entitled *National Red Cross and Red Crescent Societies as Auxiliaries to the Public Authorities in the Humanitarian Field*. It surveyed the external environment and the evolution of the

concept of “auxiliary to government” and reviewed various aspects of the relationship between States and National Societies. It also reviewed a number of key policies and procedures that had been adopted in recent years and sought to better define the concept of “auxiliary to the public authorities.” Importantly, the study provided practical guidance to National Societies and States describing “*the characteristics of a balanced relationship – one which is mutually beneficial, but which respects the*

*Fundamental Principles.*” A supplement to the study done by the ICRC also included considerations on specific aspects of the auxiliary role related to situations of armed conflict. The

***One of the Fundamental Principles of the Red Cross is ‘Independence’. In its auxiliary role, how ‘independent’ can the Canadian Red Cross be in relation to preferences and instructions coming from any level of government?***

2003 study was a milestone in framing the discussion on the “auxiliary to government” issue. The response of the Movement was contained in Resolution 6 at the 2003 Council of Delegates.<sup>10</sup> Put simply, that response encouraged National Societies to engage in discussions with States to strengthen “*government understanding of the value of the auxiliary character of National Societies and the importance of a balanced relationship.*”

Notwithstanding the time and effort expended on this subject at international conferences, there is a consensus that the auxiliary role is still not clearly understood either inside or outside the Movement. Indeed, the same applies to the elements that constitute a “balanced relationship” between States and National Societies; that is, the role of the National Society as auxiliary balanced against the requirement it remain independent. The absence of a clear legal foundation that recognizes and seeks to clarify the “auxiliary to government” role can and has created misunderstanding and confusion between States and National Societies.

Where a government sees a National Society as an adjunct to its own operations and programs, situations may arise where a government gets deeply involved in the

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<sup>10</sup> See Appendix VIII for the relevant sections of Resolution 6.

management and governance of a National Society. For instance, some governments have taken it upon themselves to alter the composition of the National Society governing body by decree. Others have also felt it appropriate to amend a National Society's statute without consultation. National Societies may also be obliged to conduct operations and activities at home and abroad that are inconsistent with the Fundamental Principles and ignore the Movement's internal rules and procedures. Confusion over the auxiliary role occurs within both the developed and developing world and within both States and National Societies.

On an operational level, a good example of this confusion can be seen in the European Union's concept of "civil protection capacity." The application of this concept means that, within the EU, National Society assets are supposed to be registered with a central EU civil protection office. The critical assumption is that these assets can be deployed when required by government and that the auxiliary role means they are subject to the "command" of State authorities. Conversely, some National Societies have used the "auxiliary to government" concept to justify unilateral activities in the international realm outside of Movement policies or coordination mechanisms. This occurred during the Southeast Asia tsunami and the Iraq crisis, when respect for Movement coordination rules lapsed, and some National Societies undertook activities to evacuate their own nationals or assist the relatives of missing persons.

While there are examples of confusion and misunderstanding on the concept of "auxiliary to government," there are many positive instances where a "balanced relationship" between States and National Societies is made possible largely by regular communication and consultation. This "balanced relationship" is also fostered by the existence of a clear legal foundation setting out appropriate definitions of the auxiliary role and respecting the need for National Societies to adhere to the Fundamental Principles. Where these conditions are met, there is tremendous scope for National Societies and States to work together with creativity and cooperation for their mutual benefit and, most importantly, for the benefit of the most vulnerable.

A “balanced relationship” allows National Societies to negotiate and conclude individual Memoranda of Understanding (MOUs) in areas such as emergency management, public health initiatives, community-based social programs, the promotion of humanitarian

***The Canadian Red Cross is currently focussing on Emergency Management, Health and Injury Prevention, and Humanitarian Issues. How can the Society better define and possibly expand its auxiliary role in these areas?***

values, anti-discrimination projects, injury prevention, and first aid. Clearly, there are both negative and positive examples of relations between States and National Societies on the “auxiliary to government” issue. There are also situations of benign neglect in which no debate or discussion around these issues has occurred and both States and National Societies are operating

based on antiquated notions of the auxiliary role. In these instances, both parties are missing important opportunities to work together to serve their respective constituencies.

The discussion around the concept of “auxiliary to government” has evolved and developed in recent years. From the 2001 *Strategy for the Movement* document to the 2003 *National Red Cross and Red Crescent Societies as Auxiliaries to the Public Authorities in the Humanitarian Field* report, the issue continues to be central to the discussions around the future of the Movement. In fact, the *Strategy of the Movement Update 2005* maps out three broad “strategic objectives:” (1) strengthening the components of the Movement, (2) improving the Movement’s effectiveness and efficiency through increased cooperation and coherence, and (3) improving the Movement’s image and the components’ visibility and relations with governments and external partners. A key action item related to this third strategic objective is the need to “analyse the National Societies’ role as auxiliary to their government and the Movement’s relations with political and military players.”

This latter point is particularly salient because of recent trends in conflict zones where governments attempt to integrate humanitarian efforts into a broader political and military framework. “Hearts and minds” campaigns with the military involved directly in

humanitarian action have created tensions with relief and development organizations. There is well-founded resistance to the idea that emergency aid and relief should be supplied by organizations with an underlying security or political agenda. The position of the Movement, which is based on IHL, is simply that humanitarian and relief assistance must be provided based on no criteria other than human need. As the 2005 Strategy Update notes,

*It is essential for the Movement to retain its identity as an independent, neutral and impartial humanitarian force. In situations where there is an international military mission, the components of the Movement need to clearly delineate their humanitarian activities from those carried out by the military and to explain their modus operandi to the latter.*

The Movement has also made progress on a definition of the concept of “auxiliary to government.” At a meeting in Geneva on February 23, 2007, in preparation for the International Conference to take place in November 2007, the following working definition was agreed upon by the ICRC, the Federation, sixteen National Societies and eleven governments (via their respective permanent missions):

*A privileged/unique partnership, entailing mutual responsibilities and benefits, based on international and national laws, in which the national public authorities and the National Society agree on the areas in which the National Society supplements or substitutes public humanitarian services. The National Society must be able to deliver its humanitarian services at all times in conformity with the Fundamental Principles and with its other obligations under the Statutes of the International Red Cross and Red Crescent Movement as agreed by States in the International Conference of the Red Cross and Red Crescent.*

It is important to note that the discussion concerning the “auxiliary to government” issue is not intended to be a never-ending debate. The International Conference scheduled for Geneva in November 2007 will receive a report from the Federation Secretariat working with the ICRC in consultation with States and National Societies on the characteristics of a well-balanced relationship. It is expected that an agreed on definition of the auxiliary role will be adopted. The ICRC, working with the Federation, will also produce a

document based on consultations with States and National Societies on the auxiliary role in situations of armed conflict and internal strife. In the meantime, discussions continue between the ICRC, the Federation, international organizations and National Societies on this important subject.

## **Statutory Basis for the Auxiliary Role in Canada**

What are the implications surrounding the concept of a “balanced relationship” and being “auxiliary to government” for the Canadian Red Cross, the Government of Canada and provincial, territorial and municipal governments? In examining this issue, it is important to begin by reviewing the domestic legal status of the auxiliary role. Because *The Canadian Red Cross Society Act, 1909* was passed at the beginning of the last century, the entire concept of being “auxiliary to government” was not well developed. The preamble to the Act briefly alludes to the role, as it was understood at the time, which revolved around being auxiliary to the armed forces. Among other things, the preamble states that

*whereas the International Conference of Geneva of 1863 recommended: “That there should exist in every country a Committee whose mission consists in co-operating in times of war with the hospital service of the armies by all means in its power.”*

The Act itself is more specific and lists the purposes of the Society as

*(1) To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the conference of Geneva of October, 1863, and also of the treaty of the Red Cross or the treaty of Geneva of August twenty-second, 1864, to which Great Britain has given its adhesion. (2) To perform all the duties devolved upon a national society by each nation which has acceded to said treaty, but in affiliation with the British Red Cross Society.*

One must look to the *Letters Patent, 1970* for a more modern interpretation of the “auxiliary to government” role. Within the *Letters Patent*, there is a clear statement on the status of the Canadian Red Cross as “auxiliary to government.” It states that

*The Canadian Red Cross Society is officially recognized by the government as a voluntary relief society, auxiliary to the public authorities, and particularly to the medical services of the Armed Forces, in accordance with the provisions of the First Geneva Convention, and as the only National Red Cross Society which may carry out activities in Canadian territory.*

The *Letters Patent* also state that the aims of the Canadian Red Cross are

*(a) to provide protection and assistance to victims of armed conflicts and disasters; (b) to prevent and alleviate human suffering; and (c) to work for the improvement of health and prevention of disease anywhere in the world, in accordance with the fundamental principles of the International Red Cross and Red Crescent Movement, the Geneva Conventions and Additional Protocols.*

The Fundamental Principles of the Movement figure prominently in the *Letters Patent*.

The document states that “*The constitution of the Society is based on the Geneva Conventions and all protocols to which Canada is a party and on the fundamental principles of the International Red Cross and Red Crescent Movement.*” In addition, the Fundamental Principles and the full text of the proclamation are included within the *Letters Patent*. As a matter of law and as a matter of practice, the Government of Canada has both recognized and respected the Fundamental Principles of the Red Cross Movement and especially the principle of Independence.

It would be incorrect to leave the impression that there have not been any changes to either *The Canadian Red Cross Society Act, 1909* or the *Letters Patent, 1970*. In fact, there have been minor alterations and updates to both instruments – amendments to *The Canadian Red Cross Society Act* and *Supplementary Letters Patent*. Nevertheless, it would also be accurate to characterize the 1909 statute and the *Letters Patent, 1970* as the rudimentary foundations for the Canadian Red Cross which have not kept pace with the challenges and changes that have emerged in the intervening years. This is especially true in regard to the concept of being auxiliary to government in relation to the range of programs and services offered by the Canadian Red Cross. Canada is certainly not alone in discussing the auxiliary role and the possibilities of reviewing and updating the

statutory basis for its National Society. The recognition instruments for the majority (sixty-seven percent) of the 185 National Societies have not been revised for more than ten years. In fact, fifty percent of National Societies report the last revision was over twenty years ago. Only thirty-three percent indicated a revision had taken place within the last ten years.

## **Part II Canadian Red Cross Programs and Auxiliary Role**

### **Auxiliary Role – The Canadian Experience**

Within Canada, the “auxiliary to government” function really began to evolve and develop during the First World War. In seeking a defining moment for the Canadian Red Cross in the evolution of the auxiliary role, one need look no further than the Halifax Explosion of 1917. Hours after this terrible disaster, the Red Cross mobilized a national relief effort to provide assistance to the injured and homeless. As the Halifax Explosion demonstrated, the responsibilities of the Red Cross very quickly grew from the narrowly defined battlefield medical role under the *Geneva Conventions* to a much-expanded range of activities. Soon after the Halifax tragedy, the Canadian Red Cross also mobilized nationally to assist public authorities with the 1918–19 influenza pandemic. The types of programs sponsored by the Red Cross continued to grow through the years between the wars and especially during the Second World War and in the post-war period. Like other



**Panorama of the Halifax Explosion – December 6, 1917**

National Societies, the tasks undertaken by the Canadian Red Cross – particularly in areas related to health – were largely a response to developing needs and circumstances based on domestic and international events.

The 2003 Report by the Federation on the auxiliary role stated that the relationship between the National Society and the government should utilize the capacity of the National Society in the fields where it is competent. Hence, it is of utmost importance for the National Society to define its core areas of competence. In Canada, the period following the blood tragedy of the 1980s and 1990s required the Canadian Red Cross to formulate and then focus on a new strategic direction to further develop its competence in

certain core areas. The Canadian Red Cross's Strategic Plan provides clarity to government(s) in this regard and defines its four core areas as Emergency Management, Health and Injury Prevention, Humanitarian Issues and Organizational Capacity, which simply means taking action to improve our effectiveness in executing our mission.

Pursuing the objectives within the Strategic Plan has allowed the Red Cross to cooperate with governments on specific files and to formulate a menu of possible future areas of collaboration in fulfillment of the auxiliary role. Open lines of communication with the federal, provincial, territorial and municipal governments have facilitated this. The

*Within a federal system such as Canada's, are there peculiarities in the "auxiliary to public authorities" relationship with the three levels of government that need to be better reflected in the definition of the auxiliary role?*

programs in our four core areas have worked hard to cultivate good relations with our government partners and other stakeholders. If there is an area in need of improvement, it may be in the extent to which we avoid "silos" within the four core areas of the Canadian Red Cross. There is a temptation within National Office and in the zones to see these program activities as separate and

discrete. If we are going to take these programs to "the next level" it may be that a more integrated approach is required – one that develops the synergies that exist between emergency management and the various other Red Cross programs such as First Aid, Water Safety and Injury Prevention, International Programs, Restoring Family Links, Violence & Abuse Prevention, and Promotion of Humanitarian Values and International Humanitarian Law.

## **Emergency Management**

As mentioned above, the emergency management role of the Canadian Red Cross has a long history dating back to the Halifax Explosion. Of course, the statutory basis for these activities can be found in Section 3 of the *Letters Patent, 1970*. In recent decades, the Canadian Red Cross has responded to many disasters both at home and abroad.

Consequently, it has been necessary to develop improved relationships and cooperation on emergency management with governments at all levels – federal, provincial/territorial and municipal.

At the federal level, significant progress has been made on collaboration and cooperation with Public Safety (PS) Canada. In May 2006, an MOU was signed by Public Safety Minister Stockwell Day and the Secretary General of the Canadian Red Cross, Dr. Pierre Duplessis. The purpose of the MOU was to describe in general terms “the principles that will govern the future relationship between the two participants for their collaboration in matters of emergency management.” Importantly, from the perspective of the Canadian Red Cross, direct reference is made in the MOU’s introduction to the status of the Society as “auxiliary to the public authorities.” The objectives of this MOU are

- To identify how the Canadian Red Cross may assist the Government of Canada to support its response during an emergency;
- To promote emergency preparedness and public awareness of matters related to emergency management;
- To participate in exercises and provide education and training related to emergency management; and
- To promote a common approach to emergency management including the adoption of standards and best practices.

The MOU also involves the formulation of an annual joint work plan, the exchange of information and communications, national exercises, volunteers and training, employee exchanges, and Canadian Red Cross coordination with other components of the Movement. Initiatives with PS are not limited to emergency management. Still, the Canadian Red Cross is looking to extend its cooperation with PS to build further professional and volunteer capacity in emergency management within the voluntary sector.

***Can the Canadian Red Cross play a role in building relationships and bridging gaps in Canada between public authorities and the voluntary sector?***

## **Mitigation and Prevention**

For most of the twentieth century, the Red Cross has been leveraging its national and international experiences to mitigate the impact of future disasters. In recent years, the Canadian Red Cross has worked with federal, provincial, territorial and local governments to evaluate and share operational experiences to help shape the development of public policies and best practices in emergency management. The Canadian Red Cross has also worked closely with PS on the development of a long-term national mitigation strategy.

Other Red Cross programs are complementary and can also support and reinforce government's emergency mitigation and prevention activities such as RespectED: Violence & Abuse Prevention and the Promotion of Humanitarian Values and Law programs. These activities are directed toward educating youth and adults in ways to promote safe, respectful, non-discriminatory and supportive behaviours and relationships in individuals and communities. Working with governments, the Red Cross is committed to fostering a culture of humanitarianism through public education and advocacy. In thousands of communities across Canada and around the world, this is integral to the Red Cross mandate.

## **Emergency Preparedness**

The Canadian Red Cross has been educating Canadians for decades on disaster/emergency preparedness and training staff and volunteers to be better prepared to respond and react in times of crisis. Hence, the Society was PS's first partner in developing a national series of personal preparedness pamphlets and in participating in their annual public education preparedness campaign. There is also an ongoing dialogue and collaboration on



**Emergency preparedness campaign**

Canada's preparedness for a pandemic with the PHAC. Moreover, the Canadian Red Cross engages corporate partners such as the Weather Network, Hudson's Bay Company, Air Canada, Home Depot and Wal-Mart to support these personal preparedness campaigns, thereby opening new channels to distribute emergency preparedness messages to Canadians.

The evaluation of the 1996 Saguenay flood response resulted in a collaboration between the Government of Quebec and the Red Cross to develop an emergency preparedness program for school-age children, "Expect the Unexpected." Subsequently, the Canadian Red Cross worked with PS and provincial governments to develop this initiative into a national program. Another program for children and youth, "Facing Fear," was developed by the American Red Cross following the September 11, 2001, attacks. It was intended to help them prepare for and be more resilient in times of tragedy. The program was "Canadianized" and is now offered successfully across the country. An impact analysis has shown that families in which children have been taught emergency preparedness are more likely to have an emergency plan and kit. In addition to the two national emergency preparedness programs in the schools reaching an estimated 1.6 million children annually, the Canadian Red Cross works with all levels of government to raise the awareness of Canadians about their personal responsibility to prepare for and protect themselves, their families and their communities from disasters.

Finally, the Canadian Red Cross reaches millions of Canadians annually through disaster management and first aid training programs geared toward helping individuals and communities become better prepared, more resilient and more capable of responding appropriately if an emergency occurs. These programs complement and support the efforts of governments to ensure Canadians are prepared for emergencies in their homes, workplaces and communities. The Canadian Red Cross also monitors emerging social and interpersonal tensions and informs the public on conflict-related issues within Canada and abroad, assisting and supporting the government efforts in promoting and encouraging good citizenship and respect for humanitarian values and law.

## Emergency Response

**Canada** – As noted above, the Canadian Red Cross has a long history of responding to disasters across Canada. Every year, it responds to over 5100 personal disasters (most often house fires), providing essential emergency social services to 48 000 vulnerable Canadians. The Red Cross has also played a pivotal role in response to larger disasters in Canada. In the last ten



**Aid to Alberta flood victims, 1998**

years, the Red Cross has responded to major floods such as the Saguenay flood in 1996 and the Red River flood in Manitoba in 1997. In 1998, the organization assisted during the Eastern Canada ice storm and the Swiss Air 111 crash, and a year later during the Kosovar refugee crisis. The Canadian Red Cross responded to the Badger flood, the SARS crisis, the Eastern Canada blackout, Hurricane Juan and the Western Canada forest fires in 2003, and during the Newfoundland floods of 2005. When disasters have struck, the Red Cross has been there to mobilize its volunteers, donors, corporate Canada and civil society to support the efforts of governments to provide for essential needs such as family reunification, information and volunteer management, emergency shelter, food and clothing assistance, and emotional support for those affected by these crises.

Governments at every level can also benefit from Canadian Red Cross expertise and resources in first aid, lifeguarding, and violence and abuse prevention. Based on recent research, the level of interpersonal violence increases significantly in times of disasters and crises. The Canadian Red Cross maintains a nationwide infrastructure with its national network of authorized providers, trainers, community support workers, first aiders/rescuers and volunteers. With more than one million trainees in its Injury Prevention Clients Database, including 5000 authorized providers with registered training sites and 50 000 current certified trainers, the Canadian Red Cross possesses both a critical mass and a “potential reserve” to draw on should a large scale humanitarian operation be put in place within Canada or abroad. Through the training of thousands of

people in Red Cross prevention education programs and campaigns, the Society ensures a better and more rapid initial response to emergencies with better skilled and informed people and communities. This can minimize significantly the impact of a life-threatening situation/event.

**International** – As part of the world’s largest humanitarian network, the Canadian Red Cross works in partnership with other members of the International Movement in disaster zones to bring relief supplies to victims, reunite families and help communities get back on their feet. Another major contribution of the Canadian Red Cross is provided in the form of Canadian personnel who have the required specific skills and expertise and are dispatched to work on Red Cross relief operations in the Americas and overseas. For instance, since 1989, the Canadian Red Cross has mobilized over 5000 of its volunteers to support the American Red Cross relief efforts in the United States.

In addition, the Canadian Red Cross Society, often with the generous support of the Canadian public and in partnership with CIDA, makes financial contributions to support the relief efforts. In 2003, CIDA (Multilateral Programs) contributed approximately \$43 million in grant funding to the ICRC and Federation as part of the Canadian government’s humanitarian assistance response to emergency appeals.<sup>11</sup>

Through Movement resolutions adopted at International Conferences,<sup>12</sup> the Canadian Red Cross – in conjunction with the international network of the Movement – takes action to reconnect families separated by conflicts, natural and man-made disasters, population movements and other humanitarian crises. The Canadian Red Cross Restoring Family Links program helps Canadians to re-establish contact with immediate family members after separation due to war, internal conflict, natural disaster and other humanitarian crises. Similarly, individuals in other countries can place inquiries to find relatives in

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<sup>11</sup> These monies are sent to the Canadian Red Cross, which then immediately transfers the funds to Geneva under an administrative arrangement between CIDA and the Red Cross. None of these funds remain with the Canadian Red Cross.

<sup>12</sup> Resolution XXI of the 24th International Conference (Manila, 1981), Resolutions XV and XVI of the 25th International Conference (Geneva, 1986), and Resolution 2D of the 26th International Conference (Geneva, 1995).

Canada through the International Red Cross and Red Crescent network of 185 National Societies and the ICRC.

Under the *Seville Agreement*, when operating abroad, National Societies must observe a set of specific standards. Emergency relief work abroad must be coordinated through the Movement's lead agency, either the ICRC or the Federation, and must conform to the Statutes of the Movement and the Fundamental Principles. In addition, based on Article

***Subject to the International Movement's coordination rules, should the Canadian Red Cross seek or accept a role abroad as "auxiliary to government" in humanitarian activities?***

3.3 of the Statutes, assistance to victims of armed conflict, natural disasters and other emergencies must be carried out through the National Society of the country concerned, the ICRC or the Federation. For the above reason, it is usually felt that as a rule, the Canadian Red Cross activities performed abroad (other than providing support for the

medical services of the armed forces as per Article 26 of the *First Geneva Convention*) do not fall under its auxiliary role. The quality of the relationship between a government and its National Society in an international operational context is of great importance since it can have an impact on all components of the Movement and their acceptance by the actors involved.

Some examples of international emergency relief operations where the Canadian Red Cross led in mobilizing Canadians to respond include the 2001 Gujarat earthquake, the September 11, 2001, attacks, the 2003 Bam earthquake, the 2004 Southeast Asia tsunami and, in 2005, Hurricane Katrina and the South Asia earthquake. In response to the tsunami, the Canadian Red Cross raised and committed over \$370 million in donations to support the relief and recovery efforts in Indonesia, Sri Lanka, India, the Maldives and East Africa. CIDA provided \$132 million for this relief through the Canadian Red Cross and, responding to various other Federation and ICRC appeals in 2005, it contributed another \$24.7 million. CIDA also funds the Canadian Red Cross's Emergency Operations Support Centre (EOSC), which the Society manages and maintains on a twenty-four hour, seven days a week level of readiness. The EOSC also includes a warehouse stocked

with relief supplies ready for rapid deployment. This is done in collaboration with DND, which provides transportation, and with commercial supply chain management companies. After the tsunami, the EOSC unit deployed over 67 000 kilograms of essential relief supplies to Indonesia, Sri Lanka and the Maldives within forty-eight hours.

### **Emergency Recovery**

**Canada** – Repeatedly, the Red Cross has remained in communities to support long-term recovery efforts after all other agencies have left. Since 1996, the Red Cross has raised and distributed well over \$100 million within Canada to support both relief and recovery efforts. The Canadian Red Cross comprehensive recovery services complement government recovery assistance to help Canadians rebuild their homes and re-establish their normal daily routine. Following the Edmonton tornado, the Saguenay and Badger floods and the 9/11 attacks, Canadian Red Cross recovery assistance extended over five years to address the long-term needs of those affected. The Canadian Red Cross has an unrivalled domestic and international network from which to draw human, financial and material resources, with an extensive capacity to help restore family links nationally and internationally. It has access to some of the most experienced disaster management personnel in the world, field hospitals and international fundraising, and is able to support governments with an efficient and direct pipeline to distribute assistance in Canada.

**International** – The Canadian Red Cross also manages longer-term development and rehabilitation programs internationally. This can be done by entering into bilateral relations with other National Societies on specific development projects such as long-term health and capacity building activities targeted at host civil society organizations. The Canadian Red Cross sends Canadian personnel with the required skills and expertise to work on these development and rehabilitation programs. Canadian donations have been spent and committed to tsunami aid and recovery in the affected areas. Canadian Red Cross recovery and rehabilitation programs vary from the construction of houses and community health and wellness centres to waste management and water sanitation. A Restoring Family Links project, which includes the ICRC, the Indonesian Red Cross and

Indonesian authorities, is also in place to help address the needs (legal, logistical, social, and religious) of the families of missing persons. The Red Cross Movement has estimated that full recovery and rehabilitation in Asia could take up to a decade. The Canadian Red Cross is committed to being there until the job is done.

## **Health and Injury Prevention**

When the International Federation of Red Cross and Red Crescent Societies was founded in 1919, its first objective was to improve the health of those in countries affected by the devastation of the First World War. Its goals were “*to strengthen and unite, for health activities, already-existing Red Cross Societies and to promote the creation of new Societies.*” As noted above, from a legal standpoint, this mission is part of the *Letters Patent, 1970* that states that the aims of the Canadian Red Cross are (inter alia) “*(c) to work for the improvement of health and prevention of disease anywhere in the world.*” Today, the central role of health has been recognized in the four goals set in the Global Agenda for all National Societies. It has been further reinforced by the Health Policy adopted by the General Assembly of the International Federation of Red Cross and Red Crescent Societies in November 2005.

**Canada** – The Canadian Red Cross is committed to reducing and preventing injuries, which are a major public health concern in Canada. The economic burden of unintentional and inflicted injuries combined is estimated to be more than \$12.7 billion per year or eight percent of the total direct and indirect costs of illness, ranking fourth after cardiovascular disease, musculo-skeletal conditions and cancer.<sup>13</sup> The Canadian Red Cross offers a wide variety of first aid



**Training volunteers of all ages**

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<sup>13</sup> Figures are from “The Economic Burden of Illness in Canada, 1998” Health Canada, 2002.

and CPR training courses to help individuals and workplaces comply with both federal and provincial/territorial occupational health and safety legislation. Through Red Cross first aid training, people learn how to prevent injuries and how to think, react and improvise in emergencies to stay safe and healthy. The Canadian Red Cross trains millions of Canadians of all ages every year in first aid, water safety, boating safety and lifeguarding to provide individuals and communities with the knowledge and skills that can help them prevent emergencies, injuries and the transmission of disease. Since 1946, the Canadian Red Cross has worked to reduce water-related fatalities in Canada and has succeeded in bringing down the drowning rate from 8 to 1.4 victims per 100 000 inhabitants.

In addition to reducing injuries and fatalities in, on, and around water, the new Red Cross swim programs also promote fitness for children. This program is well aligned and supportive of Health Canada's objective of increasing by ten percent the level of physical activity among children to help combat the growing public health issue of inactivity and obesity in young people.

Building on decades of experience in community-based safety programs, the Canadian Red Cross has been helping to break the cycle of abuse, neglect, harassment and interpersonal violence for twenty-two years with the RespectED: Violence and Abuse Prevention program. This program meets the ever-increasing demand for training, education and awareness building about violence and abuse prevention with its numerous programs for children, youth and adults.

The Canadian Red Cross offers homecare and health equipment loan services in several locations across the country. For more than seventy years, the Canadian Red Cross has been providing in-home community services to help people in Ontario live independently. The services, now expanded to Atlantic Canada, enhance a person's dignity and well-being whether they are frail or elderly, children at risk, people with disabilities or palliative patients. Homecare services have taken on a more significant role in Canada's health care system in recent years. Major hospital restructuring has meant shorter hospital stays for many Canadians, resulting in increased health care at home.

Home support – such as meals and general assistance for seniors, medical equipment rentals and transportation – is also offered, depending on the needs of a particular community.

In terms of future strategy, the question has arisen about the need to re-position the Canadian Red Cross so that it is more aligned with the Federation Health Policy. In fact, it has been suggested that the development of such a health strategy for the Society makes complete sense. This type of strategy could also potentially help the Society reconfigure its resources to improve our response to public health emergencies and disease outbreaks both nationally and internationally with the cooperation and assistance of the Federation. There are similar synergies in other health related areas. A pandemic exercise held in December 2006 revealed how Injury Prevention resources and reserves could contribute to such an emergency and be a critical partner to our Emergency Management team.

**International** – The Canadian Red Cross works closely with its sister National Societies around the world to respond to pressing global health challenges with a number of innovative approaches. Health projects of the Canadian Red Cross focus primarily on mothers and children, who are often the most vulnerable to disease, malnutrition, conflicts, disasters, poverty and marginalization. CIDA provides substantial funding for various Canadian Red Cross primary health care projects around the world. CIDA also supports the very successful Canadian Red Cross anti-malaria campaign in Africa and community health care activities in Nicaragua, Honduras and Pakistan.

## **Humanitarian Issues**



**Street Relief in Toronto**

All Canadian Red Cross programs promote humanitarian values consistent with the Fundamental Principles, which are the foundation of the International Red Cross and Red Crescent Movement. Within the context of a multicultural Canada, the Canadian Red Cross views promoting respect for diversity

and understanding among communities as a critical component in achieving our mission. The Humanitarian Issues program partners with communities and groups across Canada to increase awareness of, respect for, and actions that promote humanitarian values and international humanitarian law. Through our programming, we engage, educate and mobilize communities, groups and opinion shapers. The goal of our work is to contribute to an environment in Canada, and throughout the world, that promotes respect for human dignity in times of war and peace.

Canadian Red Cross programs and initiatives contribute to “improving the lives of vulnerable people in Canada and around the world” and helping communities and individuals respond to the challenges that face them. Disasters and emergencies represent the convergence of both vulnerability and hazard. All Red Cross programs, including Disaster Management, First Aid, Water Safety, Violence and Abuse Prevention, and Homecare and Community Services, work to reduce vulnerability and mitigate hazards. Under the umbrella of this core area of focus, the Canadian Red Cross sponsors a group of programs aimed at providing individuals and communities with the knowledge and tools to identify vulnerabilities and build on existing capacities and resilience. The goal is to help create environments promoting respect for human dignity.

### **Tracing/Restoring Family Links**

For nearly 100 years, the Canadian Red Cross has played a role in restoring contact between families separated because of conflict and other humanitarian crises. In 1914, the Canadian Red Cross set up a National Information Bureau based in London to support tracing and detention visits to Canadians serving in the First World War. Records indicate the Canadian Red Cross also played a role in transmitting news of the fate of people affected by the Halifax Explosion of 1917.

Under international law, all people have the right to know the fate of their loved ones, and to correspond and communicate with family members. The four *Geneva Conventions* of 1949 and the First Additional Protocol (AP I) of 1977 address the protections afforded to persons affected by international armed conflict. The Second Additional Protocol (AP

II) of 1977 and common Article 3 in all four *Geneva Conventions* concerns the protection of persons in situations of non-international armed conflict, who are not, or are no longer, taking part in hostilities. Common Article 3 comprises a minimum set of rules that the parties to a conflict are bound to apply at all times.

The main responsibility for ensuring these rights are respected lies with States Parties to the *Geneva Conventions* and their *Additional Protocols*. Consistent with Articles 3, 5, and 6 of the *Statutes of the International Red Cross and Red Crescent Movement*, specific activities undertaken by the Canadian Red Cross include

- requesting news from conflict or disaster affected areas and coordinating the exchange of family news;
- tracing individuals who have gone missing or with whom contact has suddenly been lost;
- collecting, managing and forwarding information that can support recovery and identification of human remains;
- providing information and referral services to people with missing family members; and
- forwarding documents that can help to restore family links.

Given the above, the Canadian Red Cross acts in its auxiliary role to the Government of Canada by performing tasks under the Restoring Family Links program that are in support of Canada's international obligations under the *Geneva Conventions* and its *Additional Protocols* and that complement federal government efforts in this area. While the *Geneva Conventions* and *Additional Protocols*



### **Restoring Family Links**

govern the rights of families affected by conflict, the Canadian Red Cross extends our mandate to include assisting families separated by any humanitarian crisis, migration processes, or other events outside the control of the persons involved. Hence, the

Canadian Red Cross collaborates closely with DFAIT and Citizenship and Immigration Canada (CIC) to ensure successful results.

### **Promotion of Humanitarian Values and Law**

For several decades, the Canadian Red Cross has played a role in disseminating information on IHL and related issues in Canada to the civilian population and the Canadian Forces. This set of activities was formalized in 2003 through the establishment of the Humanitarian Issues program. Under international law, States Parties to the *Geneva Conventions* and their *Additional Protocols* have an obligation to inform the civilian population and the armed forces about the role of the Movement and its position on existing and emerging IHL issues. In particular, Article 83 of AP I provides the following:

*The High Contracting Parties undertake, in times of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population so that those instruments become known to the armed forces and to the civilian population.*

In addition, Article 4 of the Statutes of the Movement, which are adopted by National Societies and their governments, stipulates that National Societies have a mandate in their own country to assist their government in disseminating information about IHL and the principles and ideals of the Movement.

Currently, the Canadian Red Cross is involved in a number of training programs with the Canadian Forces held at the Peace Support Training Centre (PSTC), at the Pearson Peacekeeping Centre, at bases such as Val-Cartier, and by the Office of the Judge Advocate General (JAG). The Canadian Red Cross provides training on the roles and mandates of the various components of the Movement, and the Movement's operating principles and emerging IHL issues. The Society also participates in simulation and role-playing exercises. The Canadian Red Cross is currently discussing possible MOUs to formalize the training relationship with the JAG and PSTC.

Consequently, the Canadian Red Cross acts in its auxiliary role to the Government of Canada by performing tasks under its various dissemination and youth programs that are in support of Canada's international obligations under the *Geneva Conventions* and its *Additional Protocols*. Moreover, the Canadian Red Cross also supports government in promoting Canadian values of tolerance, respect and non-discrimination through its various Promotion of Humanitarian Values and Law activities that reach thousands of youth, adults and the media every year. Using information tools provided by the ICRC and the Inter-Parliamentary Union, the Canadian Red Cross could potentially play a more significant role in helping parliamentarians understand the various aspects of IHL, including the *Geneva Conventions*.

### **Detention Monitoring Program**

The work of the Canadian Red Cross on behalf of persons detained dates back as early as the First World War. Canadian Red Cross staff stationed in London, England, at this time would, based on lists provided by German authorities, regularly send packages with food, clothing and tobacco to Canadians detained in German prisoner of war camps. In Canada, the inception of the Detention Monitoring program came in 1999 following the detention of hundreds of Chinese marine arrivals on the west coast. Following media reports alleging concerns with detention conditions, the Canadian government asked the Canadian Red Cross to conduct monitoring visits aimed at identifying potential problems and recommending how to address them. Based on this request, the Red Cross agreed to enter into a relationship with CIC in order to provide independent monitoring of detention conditions. In that same year, both DND and CIC also called upon the Red Cross to coordinate humanitarian assistance to over 5000 Kosovar refugees for several months.

Since then, this successful collaboration between the Canadian Red Cross and CIC has evolved into a long-term agreement between the Canadian Red Cross and the Government of Canada regarding the Red Cross detention-monitoring mandate, paving the way for a nationwide MOU in 2002. At that time, the Canadian Red Cross was granted access to all places of immigration detention in Canada with a mandate to assess the conditions of persons held in those facilities. The monitoring is conducted based on

domestic and international standards governing detention conditions. In 2002, under the terms of the MOU, the Canadian Red Cross expanded its detention monitoring services to Ontario and Quebec. The program has been well received by the federal government, which sees these activities as a valuable quality control and transparency mechanism. It has also been welcomed by immigration detainees who are often already familiar with the protective mandate of the Red Cross and who recognize the effect our monitoring visits have had on detention conditions. An MOU was signed with Canadian Border Services Agency (CBSA) in November 2006 to reflect the new relationship.

As the detaining authority, CBSA is responsible for protecting persons within their custody and ensuring international and domestic standards regarding detention are fully respected. Based on its observations in the detention centres, the Canadian Red Cross makes recommendations to the detaining authorities on how to improve detention conditions and follows up to ensure progress in their implementation. The Canadian Red Cross also feeds its observations up to the CBSA representatives, offering a national picture of how the federal immigration detention facilities are performing in relation to relevant standards. The Canadian Red Cross, through its privileged partnership with CBSA and its detention-monitoring program, assists and supports the Government of Canada in meeting domestic and international standards governing immigration detention. Through the auxiliary role, the Canadian Red Cross conducts its activities in an independent manner consistent with the Fundamental Principles of the Movement. Furthermore, because of the Independence, Neutrality and Impartiality principles governing the protective mandate of National Societies, the Canadian Red Cross is uniquely suited to this role.

### **Other Areas of Cooperation**

While too numerous to mention, there are areas of present and possible future cooperation at every level of the Society and at every level of government across Canada. At the federal level, the Red Cross has many important working relationships with federal departments, some of which touch other levels of the Society and other levels of

government. In the area of injury prevention, Transport Canada is engaged with the Red Cross on the issue of boating safety. The Red Cross has always had an excellent relationship with Canadian Heritage – especially with the Citizenship and Heritage sector, which coordinates the Voluntary Sector Initiative and the Multiculturalism and Human Rights branches, and with their International and Sports Branch. In DND, there are contracts for Emergency Medical Services Training and, as mentioned above, an MOU on Red Cross training for the Canadian Forces is under discussion. There has been and continues to be much cooperation and communication with DFAIT on Movement issues such as the Third Additional Protocol to the *Geneva Conventions* (the red crystal emblem), anti-personnel landmines, small arms and light weapons, and IHL. Noteworthy also is the participation by the Canadian Red Cross Secretary General on the National Security Advisory Committee, which provides direct advice to the federal government on a wide range of security matters. In addition, the Society has an important tool for addressing the Government of Canada on IHL issues through the Canadian National Committee on Humanitarian Law (CNCHL). In fact, the Canadian Red Cross is the current chair and serves as the permanent secretariat of the CNCHL.

All of these various arrangements point to increasing cooperation and collaboration between the Canadian Red Cross and public authorities. Inasmuch as the relationship has grown, the Red Cross believes there are

other areas where the Society could possibly augment the government's humanitarian activities. For example, the Canadian Red Cross assisted public authorities when the Lebanon evacuees returned to Canada. In the aftermath of the Lebanese evacuation, it is worth exploring

***Outside the four areas of current strategic focus, are there other activities the Canadian Red Cross might pursue with public authorities to achieved shared humanitarian objectives?***

whether there could be an expanded role for the Canadian Red Cross (working in collaboration with the Movement, a sister National Society and DFAIT personnel) in the mass evacuation of Canadians from a foreign country, and while respecting Movement coordination rules. An example of where this might be required is a Caribbean holiday

destination suddenly struck by a natural disaster or some other form of serious emergency. It should be noted that Canadian delegates have also undertaken key responsibilities within both Federation and the ICRC operations abroad. Valuable experience gained from emergency management operations by Red Cross staff and volunteers can potentially be applied to our advantage in both domestic and international crises.

Another possible role for the Canadian Red Cross would be in assisting the federal government in instances where Canadians are victims of terrorist attacks and disasters abroad. In the attacks of September 11, 2001, and during the Bali bombings, Canadians were victims. Other terrorist incidents such as the Madrid and London bombings all increase the probability that Canadians travelling outside of the country may become victims. To assist their nationals, other countries such as France, Great Britain and Australia have put in place victim assistance programs through their National Societies. Perhaps it is time to consider something similar for Canada.

As a general principle, the Canadian Red Cross believes it enjoys a “balanced relationship” with governments at all levels – one that is characterized by a desire to be mutually supportive while at the same time respecting Red Cross principles, especially Independence. Still, there has been insufficient discussion about the auxiliary role and the many nuances of what constitutes a “balanced

***How can the Canadian Red Cross distinguish itself as “auxiliary to government” and fundamentally different from NGO’s, without alienating itself from the NGO community or jeopardizing its relationships/partnerships with specific Canadian NGO’s?***

relationship.” While there are some good reasons to celebrate the constructive relationship between the Red Cross and governments in Canada, two areas need attention if the full potential of the auxiliary role is to be realized.

First, the concept of the auxiliary role is not well understood among some public authorities. While many government officials seem pleased to work with and conclude agreements with the Red Cross, more often than not the Red Cross's auxiliary status is not a factor in the decision-making process. Of course, at the federal level, the close links between the Government of Canada and the Canadian Red Cross that existed when the Society was responsible for the blood supply are not as strong as perhaps they once were. In a world with a steadily increasing number of non-governmental organizations (NGOs), the Red Cross is largely seen by the public authorities as just another NGO – a large and established NGO with important international connections, but still just another NGO. It is this perception of the Canadian Red Cross as “just another NGO” that must change if we are to realize the full potential of the auxiliary relationship.

Second, inasmuch as a lack of understanding prevails within government on what the auxiliary role involves, the same applies for National Societies in general and the Canadian Red Cross in particular. In Canada and elsewhere, there is a need for a

***Is there a strong correlation between a revitalized auxiliary role and the ability of the Canadian Red Cross to deliver its programs in the future in a more coordinated and effective manner?***

discussion that sheds some light on these issues not just for government officials, but also for those in the Red Cross Movement and the public. Such a dialogue will allow all concerned to understand better the role of the Red Cross and its relationship to public authorities. Whatever the outcome, any definition of the auxiliary role and what constitutes a “balanced relationship” must also

be flexible enough to support the changing needs of the governments and people of Canada as well as the evolving areas of competence and the priorities of the Canadian Red Cross.

The “auxiliary to government” issue has very long roots in the history of the Movement going back to the *First Geneva Convention*. Pressure to better define the auxiliary role has accelerated in recent years in response to a changed international environment and the

challenges faced by States and National Societies. It should be a common aim of the Red Cross, governments at all levels and the Canadian people to create a “balanced relationship” with a positive and constructive auxiliary role. Achieving this objective has the potential to be a critical driver for the Red Cross in the years ahead. More importantly, it will be indispensable from the perspective of delivering on the Red Cross mission to assist the most vulnerable both nationally and internationally.



## Part III The Red Cross Emblem and Related Issues

### History and Importance of the Movement Emblems

Prior to the nineteenth century, the symbols used to identify armed forces' medical services varied according to their country of origin. The symbols were not generally well known, were rarely respected and were not entitled to any form of legal protection. In the second half of the nineteenth century, the rapid development in firearms technology led to a dramatic increase in the number of dead and wounded during wartime. The story of Henry Dunant, the Swiss citizen who witnessed the battle of Solferino, and his book *A Memory of Solferino*, have been recounted earlier in this paper. Also described above were Dunant's proposals for volunteer national relief societies and the need to get countries to agree to protect first aid volunteers and the wounded on the battlefield. Of course, the first proposal resulted in the creation of the Red Cross Movement that now exists in 185 countries. The second resulted in the *Geneva Conventions*, which now have 194 States Parties.<sup>14</sup>

One of the objectives of the meetings called to study Dunant's proposals was the need to adopt a single distinctive symbol supported by law to protect army medical services, volunteers with first aid societies and the victims of armed conflicts. The symbol had to be simple, universally recognizable, identifiable from a distance, known to everyone and ideally the same for friend and foe alike. As recounted above, on October 26, 1863, the first International Conference adopted ten resolutions providing for the establishment of "relief societies" for wounded soldiers. These were the future Red Cross and, later, Red Crescent Societies. The conference also adopted a red cross on a white background as the new emblem, created by reversing the colours of the Swiss flag.

In August 1864, the Diplomatic Conference called to transform the resolutions adopted in 1863 into treaty rules adopted the *First Geneva Convention*. Considered by legal scholars to be the birth of modern IHL, this Convention formally recognized a red cross on a white

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<sup>14</sup> The accession of Nauru on June 27 and Montenegro on August 2, 2006, make the *Geneva Conventions* of 1949 the only universal treaty in international law.

background as the single, uniform, distinctive emblem. As such, it reflected the neutrality of the armed forces' medical services and the protection conferred on them. The neutrality associated with the Swiss flag was important since Switzerland's permanent neutral status had been firmly established in practice for many years and had been confirmed by the treaties of Vienna and Paris in 1815. Furthermore, the white flag was and remains a symbol of the wish to negotiate and/or to surrender. Armed aggression against anyone displaying a white flag in good faith was then and continues to be a serious breach of the laws and customs of armed conflict. The resulting red cross emblem had the advantage of being easily produced and recognizable at a distance because of its contrasting colours.

During the war between Russia and Turkey (1876–78), the Ottoman Empire unilaterally declared it would use a red crescent on a white background in place of a red cross. While respecting the red cross symbol, the Ottoman authorities believed the red cross was, by its very nature, offensive to Muslim soldiers. The red crescent was temporarily accepted for the duration of this conflict. After the First World War, a Diplomatic Conference was called in 1929 to revise the *Geneva Conventions*. The Turkish and Egyptian delegations requested the red crescent be recognized. The Persian delegation called for recognition of the red lion and sun emblem. After lengthy discussions, the Conference agreed to recognize them as distinctive emblems in addition to the red cross. However, in order to avoid any proliferation of emblems, it limited the authorization to the three countries that already used them. That subsequently changed as new Muslim states joined the Movement. Moreover, sixty years later in 1980, the Islamic Republic of Iran declared that it was waiving its right to use the red lion and sun and would use the red crescent as its distinctive symbol. However, it reserved the right to return to the red lion and sun should new emblems be recognized.

The Diplomatic Conference convened in 1949 to revise the *Geneva Conventions* in the aftermath of the Second World War studied three proposals for a solution to the question of the emblems: (1) a proposal from the Netherlands for a new single symbol; (2) a proposal to revert to using a single red cross symbol; and (3) a proposal from Israel for

the recognition of a new emblem, the red shield of David, which was used as the distinctive symbol of the Israeli armed forces' medical services. All three proposals were rejected. The conference expressed its opposition to the proliferation of protective emblems on the basis that too many distinctive emblems would undermine its protective value. Consequently, the red cross, the red crescent, and the red lion and sun remained the only recognized emblems of the Movement.

### **The Need for an Additional Emblem**

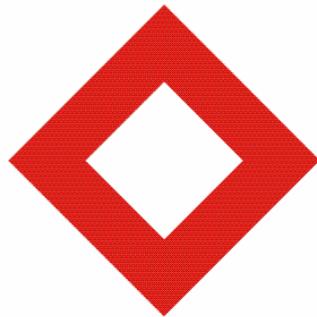
Debate about the emblems continued after the 1949 decision. A number of countries and their National Societies still wanted to use specific national emblems or both the cross and crescent together. By the 1990s, there was also concern about respect for the neutrality of the red cross or red crescent in certain conflicts. In 1992, the then president of the ICRC called publicly for the creation of an additional emblem devoid of any national, political or religious connotation. The 1999 International Conference of the Red Cross and Red Crescent endorsed a proposal that a joint working group of States and National Societies on the emblems be formed to find a comprehensive and lasting solution acceptable to all parties in terms of substance and procedure.

The working group realized a majority of States and National Societies were deeply attached to the red cross and red crescent emblems. Thus, the only way to find a widely accepted solution was to adopt an additional emblem that put a premium on flexibility but that safeguarded the integrity of the emblem's protective function. The design of the new emblem was intended to enable a National Society using it to (1) insert a cross or a crescent; (2) insert a cross and a crescent side by side; and (3) insert any other symbol currently in use that had been communicated to the depositary State of the *Geneva Conventions* and the ICRC. In December 2005 during a Diplomatic Conference in Geneva, the States adopted AP III to the *Geneva Conventions* creating an additional emblem alongside the red cross, red crescent, and red lion and sun.<sup>15</sup>

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<sup>15</sup> See Appendix IX for a text of Additional Protocol III to the Geneva Conventions

The new emblem – known as the red crystal – resolved two major issues the Movement had faced over many years. First, it allowed for the possibility of countries unwilling to adopt the red cross or the red crescent emblems to join the Movement as full members by using the red crystal. Second, it provided for the possibility of using the red cross and the red crescent emblems together. In June 2006, an International Conference of the Red Cross and Red Crescent met in Geneva to amend the Statutes of the Movement to take into account the creation of the new emblem. Therefore, the ICRC then recognized two new National Societies, the Palestinian Red Crescent and the Israeli Magen David Adom as full National Society members of the Movement.<sup>16</sup>



### **The red crystal**

The acceptance by State Parties to the *Geneva Conventions* of the Movement's amended Statutes means that National Societies will benefit from the flexibility afforded by AP III in the use of the red crystal or of a combination of emblems recognized by the Conventions. The use of the red crystal is also intended to provide additional protection to war victims and humanitarian workers in conflict situations where neither the red cross nor the red crescent can be used. However, it has also created an additional challenge internationally in terms of public education and respect for the Movement emblems. In future, the ICRC, the Federation and National Societies might use the red crystal temporarily and in exceptional circumstances. However, no State or National Society is obliged to make any change to the emblem it currently uses. The ICRC and the

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<sup>16</sup> See Appendix X for a text (without annex) of the Conference Resolution requesting the ICRC to admit the PRCS to the International Red Cross and Red Crescent Movement.

Federation will not change their respective names and emblems. And so today, four distinctive emblems enjoy equal status under the *Geneva Conventions* – the red cross, the red crescent, the red crystal, and the red lion and sun (no longer in active use). In all, 151 National Societies use the red cross and 33 use the red crescent (including the newly admitted Palestinian Red Crescent Society). The Israeli MDA intends to use the red crystal when operating abroad.

As a State Party to the *Geneva Conventions*, the Government of Canada has a responsibility to update domestic law to reflect the passage of AP III. This may require amendments to *The Geneva Conventions Act*, *The Canadian Red Cross Society Act*, the *Trade-marks Act* and the *Crimes Against Humanity and War Crimes Act*. There is currently no indication as to when the federal government might introduce these legislative changes. However, it would appear there are two choices: the government can proceed quickly with these amendments to Canadian law or it can combine the amendments with a wider, more comprehensive statute revision process. While either approach is acceptable to the Canadian Red Cross, it is worth emphasizing that simply passing the housekeeping amendments associated with the Third Additional Protocol will fall far short of what is required to modernize the Canadian Red Cross statute and deal with a wide range of other issues affecting the institution and the protection of the emblem.

## **Protection of the Emblems in IHL**

Why is it necessary to protect the emblems of the Movement? Quite simply, ensuring respect for the integrity of these protective emblems means the care and protection of those providing and receiving aid is enhanced. It is for this reason that the red cross and red crescent symbols are recognized and protected by IHL. The adoption of domestic measures to ensure these symbols are respected is also a fundamental step in maintaining the neutrality and impartiality associated with the provision of humanitarian assistance. The failure of a State to respond appropriately can lead to the misuse of the emblems and undermine the respect and confidence that they enjoy. In addition, the failure to suppress misuse during times of peace can contribute to confusion over what these symbols

actually mean and result in misuse during armed conflict. Such misuse erodes the protective value of the emblems, endangers the lives of those legitimately entitled to employ them and interferes with the safety and security of combatants and civilians alike.

***How strong is the link between emblem misuse and the erosion of its protective value in IHL?  
How concerned should the International Movement be?***

The red cross and red crescent on a white background are two of the very few symbols that are immediately recognized by people around the world. In time, it is hoped the new red crystal will also enjoy a similar level of recognition. As noted above, the red cross and red crescent were originally created to identify the medical services of the armed forces (and relief societies) and allow the protection of the sick and wounded. Today, they have come to represent the impartial humanitarian assistance provided to those who suffer in wars and disasters. Although widely recognized, the red cross emblem is also one of the most misunderstood. Many, for instance, believe the emblem is in the public domain as a universal symbol for first aid and that its use is unrestricted. In fact, the use of the emblems is strictly governed by the *Geneva Conventions* of 1949, their *Additional Protocols* of 1977 and national legislation.

The *Geneva Conventions* clearly establish that the emblems of the Movement are protected in law. These provisions define who is entitled to use the emblems and the purposes for which they may be employed. Their use is regulated at all times during periods of peace as well as during times of armed conflict. An important prohibition exists in *Geneva Convention I* Article 53 relating to the “Repression of Abuses and Infractions.” It states that

*The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation “Red Cross” or “Geneva Cross” or any sign or designation*

*constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.*<sup>17</sup>

As a general principle, the emblem can be used to protect the medical services (facilities and vehicles) of the armed forces and in wartime civilian hospitals. This is referred to as its *protective use*. The emblem is also employed by National Societies, the Federation and the ICRC. This type of use is known as the *indicative use* of the emblem. However, in some circumstances, especially in conjunction with the work of the ICRC but also in

***What can the Canadian Red Cross do to better educate citizens about the significance of the red cross emblem and the rules governing its use?***

relation to the Federation and National Societies, the emblem can also have a “protective” value. The responsibility for authorizing the employment of the red cross or red crescent emblems rests with the State that must regulate their utilization consistent with the terms of the *Geneva Conventions* and

*Additional Protocols*. In order to effectively control the use of the emblems, a State must adopt internal measures establishing the following: (1) the identification and definition of the emblem(s) recognized and protected; (2) the national authority with the competence to regulate the use of the emblems; (3) which entities have permission to employ the emblems; and (4) the uses for which permission is authorized.

It is important to note that the Movement and individual National Societies do not own the emblems. They are, in fact, akin to licensees under the *Geneva Conventions* with legislated authority from their national governments to use the emblem for specific humanitarian purposes. A State determines who can use the emblem and how, but it must also enact national legislation prohibiting and punishing unauthorized use. This legislation must apply to all forms of personal and commercial use and prohibit imitations or designs that could be mistaken for the red cross or red crescent. It is fundamental that the measures to prevent misuse also apply to the members of the armed forces. However,

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<sup>17</sup> See Appendix XI for the relevant provisions (Articles 38 to 44, 53 and 54) *First Geneva Convention*, 1949 relating to “The Distinctive Emblem” and “Repression of Abuses and Infractions.”

this is normally established through the laws of armed conflict and processes governing military justice.

These are not trivial or obscure points of IHL. The use of the emblems to hide or shelter combatants or military equipment during armed conflict (i.e., perfidious use) is a war crime under the *Geneva Conventions*. IHL also requires that lesser violations be punished. The

***How can the federal government better fulfill its obligations under the Geneva Conventions to prevent red cross emblem misuse in Canada?***

prevention and repression of emblem misuse are not accomplished solely by the adoption of penal or regulatory measures. A State also has the responsibility to inform and educate the public, businesses and the medical community on the proper use of the emblems.

The Movement has made important declarations on the subject of the responsibilities of governments in relation to IHL and the emblems. The 27th International Conference of the Red Cross and Red Crescent of November 1999 adopted a Plan of Action, one component of which was Final Goal 1.3: “*Universal acceptance of international humanitarian law and the adoption of all necessary measures by States at the national level to ensure the implementation of their obligations under international law.*” The Plan of Action provided further elaboration on Final Goal 1.3 with the exhortation that

*States adopt the necessary implementing measures, in particular national legislation for (inter alia) **the protection of the red cross and red crescent emblems.** States are encouraged to create or further develop national committees or other mechanisms, with the support of National Societies, in order to facilitate co-ordination between ministries. [emphasis added]*

The suggestion that “national committees” be established was the inspiration for the Canadian National Committee on Humanitarian Law which has been operating for almost ten years.

## Status of Emblem Protection in Canada

Legislative protection of the red cross emblem in Canada began with *The Canadian Red Cross Society Act, 1909*. Section 3 (1) of the Act states that

*The Society shall have the right to have and use in carrying out its purposes as an emblem and badge a Red Cross on a white ground as the same has been described in the treaty of Geneva dated the twenty-second day of August, 1864, and adopted by the several nations acceding thereto.*

Section 4 (1) addresses the issue of people falsely representing themselves as agents of the Canadian Red Cross for the purposes of collecting money. However, it is Section 4 (2) that directly addresses the emblem misuse issue:

*No person or corporation shall wear, use or display for the purposes of his or its trade or business or for the purpose of inducing the belief that he or it is a member of, or agent for The Canadian Red Cross Society, **or for any other purposes whatsoever** without the written consent and authority of The Canadian Red Cross Society, the heraldic emblem of the Red Cross on a white ground, or the words “Red Cross” or the Geneva Cross or any other word, mark, device or thing likely to be mistaken for them or either of them. [emphasis added]*

It is worth noting that this section of *The Canadian Red Cross Society Act, 1909* places significant responsibility for emblem protection on the shoulders of the Canadian Red Cross rather than on the Government of Canada, since anyone wishing to use the emblem must seek “*the written consent and authority of The Canadian Red Cross Society.*”

While the wording of subsection (2) is explicit and comprehensive, the penalties contained in Section 4 (3) of the 1909 Act require some review and revision. This section states the following:

*Any person or corporation violating the provisions of this section shall be guilty of an offence, and shall be liable on summary conviction to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offence, and shall be liable to forfeit any goods, wares or merchandise upon which, or in connection with which, the said emblem or words or any*

*coloured imitation thereof were used. The fine so collected shall be paid to The Canadian Red Cross Society.*

What is not clear from the Statute is whether the mass production of a single product that displays the red cross emblem in an unauthorized manner constitutes one offence or a number of offences equal to the number of products. In addition, the misuse of the red cross emblem on websites for commercial purposes creates a similar problem from the standpoint of whether one website equals one offence or whether the offence is based on the number of times a website was accessed. Obviously, in either situation this makes a significant difference in determining the amount of the fine levied.

The penalties in the 1909 Act, including “*imprisonment for a term not exceeding one year,*” relate to emblem misuse as well as false representation and fraud. Fraud and misrepresentation are serious offences under the Criminal Code that, in certain cases, warrant severe punishment including incarceration. Whether incarceration should be part of a new law governing emblem protection is certainly debatable. The Red Cross believes penalties must be a realistic, but also a fair and just deterrent to emblem misuse. The fact that the Act stipulates that any fines be paid to the Red Cross is noteworthy. While the Society appreciates the intent of the Act, the reality is that over the years, there have been few prosecutions and little if any revenue generated. No Canadian government has taken a strong interest in emblem protection and, consequently, the Canadian Red Cross has largely been on its own in funding activities to protect the emblem and pursuing those who misuse it. The American experience in this regard is instructive. Decades ago, amendments to the Congressional Charter of the American Red Cross moved the penalties for emblem misuse from the Charter to the Federal Criminal Code.

As indicated above, the 1909 Act gives the Canadian Red Cross a very direct and important role in emblem protection. In contrast, however, the 1949 *Geneva Conventions* place very significant responsibilities on national governments for the control and protection of the emblem. Article 54 of the *Geneva Conventions* states that “*The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under*

*Article 53*” (referenced above). These laws bind Canada not only as a State Party to the *Geneva Conventions*, but also because these Conventions form part of Canadian law under *The Geneva Conventions Act, 1949*. Therefore, in effect, all of the provisions of the *Geneva Conventions*, including those involving the protection of the emblem, are part of domestic Canadian law. A legitimate question is whether there are any inconsistencies or ambiguities between the *Geneva Conventions Act, 1949* and *The Canadian Red Cross Society Act, 1909* concerning where the primary responsibility for emblem protection in Canada lies, i.e., with the Red Cross or with the Government of Canada.

As we have seen, protection is afforded to the emblem under various Acts of Parliament. However, there are further statutory protections under the *Trade-marks Act*.<sup>18</sup> Among other things, the Act specifies the following under Section 9 (1):

*No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for: ... (f) the emblem of the Red Cross on a white ground, formed by reversing the federal colours of Switzerland and retained by the Geneva Convention for the Protection of War Victims of 1949 as the emblem and distinctive sign of the Medical Service of armed forces and used by the Canadian Red Cross Society, or the expression “Red Cross” or “Geneva Cross;” (g) the emblem of the Red Crescent on a white ground adopted for the same purpose as specified in paragraph (f) by a number of Moslem countries; (h) the equivalent sign of the Red Lion and Sun used by Iran for the same purpose as specified in paragraph (f); (h.1) the international distinctive sign of civil defence (equilateral blue triangle on an orange ground) referred to in Article 66, paragraph 4 of Schedule V to the Geneva Conventions Act.*

Importantly, under Canadian law the red cross emblem is not considered a registered trademark. Rather it falls into a special category of “prohibited marks” that includes items such as the Royal Coat of Arms, the Coat of Arms of Her Excellency the Governor General, the emblem of the United Nations and any coat of arms or flag associated with a province or municipality.

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<sup>18</sup> See Appendix XII for relevant sections of the *Trade-marks Act*.

The penalties provided for under the *Trade-marks Act* are covered in Section 53 (2), which states that

*Where a court is satisfied, on application of any interested person, that any act has been done contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits and for the destruction, exportation or other disposition of any offending wares, packages, labels and advertising material and of any dies used in connection therewith.*

Protecting the emblem has been a challenge for National Societies around the world. The experience of the Canadian Red Cross is representative of the experience other National Societies also face. If pursued through the courts, it is a time-consuming and expensive exercise. While virtually all the responsibility for emblem protection has fallen to the Canadian Red Cross, there has been no allocation of resources from the federal government to support this effort. As a humanitarian organization, the Red Cross's expertise is focussed on assisting the most vulnerable rather than policing cases of emblem misuse. Nevertheless, ignoring emblem misuse is simply not an option for either the Canadian Red Cross or the Movement generally. Nor should it be an option for the Canadian government. Both the Movement and States Parties to the *Geneva Conventions* are legally and morally bound to uphold the *Geneva Conventions* and the entire body of IHL, which aims to protect those who are not or are no longer participating in hostilities.

Emblem protection is not a theoretical or academic issue for staff and volunteers within the Canadian Red Cross or the Movement. In recent years, two Canadian delegates with the ICRC, Nancy Malloy in Chechnya and Vatche Arslanian in Iraq, were killed by combatants who did not respect the legal protections under IHL afforded to Red Cross workers. Respect for IHL has always been an uphill struggle. Still, there are many inside and outside the Movement who would argue that respect for IHL starts with respect for the Movement emblems.

The extent of emblem misuse in Canada is significant. Despite the public education efforts of the Red Cross, including website information and special brochures that are

available in Canadian Red Cross offices across the country, the problem continues. With the emergence of the internet as an informational, recreational and commercial tool, there are more and more opportunities for emblem misuse. The challenges of protecting the emblem have increased exponentially. The primary misusers of the emblem are companies associated with first aid and health products, medical practitioners and clinics, pharmaceutical and computer repair firms, toy makers, print and electronic media, clothing manufacturers, and video games.



### **Are we losing control of the red cross emblem?**

Video games are particularly problematic. Game developers and distributors are reaching audiences in the millions. Some have used the emblem in a historical context within their games, which could be considered one of the more benign uses. Other games have used the emblem indiscriminately as a sign of first aid, health or injury recovery. Still others have displayed the red cross on game characters involved in acts of violence and in other ways that are inconsistent with the Fundamental Principles of the organization. Two problems arise. The first is that the extent of misuse in the new electronic media, especially videos games, means that the federal government and the Canadian Red Cross are on the verge of losing control of the red cross emblem. The second is that many in the young generation of video game users have no conception of what the red cross emblem represents.

Responsibility for emblem protection within the Canadian Red Cross is split between the four operational zones and the National Office under the responsibility of Public Affairs. The zones generally address emblem misuses at the local level with National Office involved in larger cases that deal with national or multinational companies that utilize national or international websites. In a recent six-month period, the National Office worked on with fifty cases of misuse and the zones dealt with approximately 100. The Red Cross experience has shown that emblem misuse is not confined to companies or individuals. Governments at all levels have used the emblem in ways inconsistent with the intent of the *Geneva Conventions*. The Canadian Red Cross has dealt with recent cases involving three federal government department websites, two Ontario government agencies, and one charitable organization doing international development work.

The approach taken by the National Office and the zones on the issue of emblem misuse is based primarily on education – ensuring that those who have engaged in emblem misuse for commercial or other purposes are aware of the status of the emblem in IHL. In the vast majority of cases, a letter providing information on the emblem and seeking cooperation is sufficient to conclude the matter. However, not all cases have been settled without recourse to the courts. Eight years ago, the Canadian Red Cross was forced into litigation to oppose a trademark application by a company that had made an application under the *Trade-marks Act* for a logo in the shape of a modified red cross that bore a very strong resemblance to the red cross emblem. Citing Section 4 of *The Canadian Red Cross Society Act, 1909* and Section 9 (1) (f) of the *Trade-marks Act*, the Trade Marks Board found in favour of the Canadian Red Cross in opposition to the trademark application. However, the company continued to use its logo and to defend a Federal Court action brought by the Society to stop the misuse. After protracted pleadings, motion materials and negotiation, the company finally agreed to change the colour of its logo. The Red Cross bore extensive expense in pursuing this course of action – a cost that was significant for a humanitarian organization. There were other emblem enforcement efforts that did not result in favourable outcomes for the Red Cross, mostly due to insufficient resources.

These situations re-enforce the Red Cross's view that the federal government must closely examine its responsibilities in the area of emblem protection and, if it wishes to continue to have the Red Cross involved, consider providing financial support for red cross emblem protection efforts. Other situations have also arisen which could benefit from a discussion of the issues surrounding emblem protection. For instance, within the last eighteen months, a letter was sent from the Canadian Red Cross to the publisher of a prominent Canadian newspaper. It noted that on at least two occasions the paper had used

***Does the improper use of the red cross emblem in the media raise legitimate questions about free speech guaranteed under the Charter of Rights and Freedoms?***

the red cross emblem in an inappropriate manner. In one case, it was used as a graphic to depict hospital locations on a map of London, England, following the subway and bus bombings in July 2005. In the second instance, it was used gratuitously on a nurse's uniform in what

was intended to be a humorous article. In neither case was the use of the emblem part of a news story depicting either military medical services or a National Society activity or material to the message conveyed in any way. The concern of the Canadian Red Cross was that the manner in which the red cross emblem was used in both circumstances encourages people to believe the emblem is "public property" and can be freely used for any purpose whatsoever.

The written response of the newspaper's lawyer to the Red Cross's request for future cooperation in the appropriate display of the emblem invoked, among other things, the paper's constitutional right of free speech under the Charter. The lawyer's letter stated that the paper "*declines to accommodate your attempt to censor its editorial/journalistic presentation of issues to the public. We will vigorously defend our right to publish our newspaper in an uncensored fashion.*" Clearly, this interpretation of the Red Cross's intentions could benefit from a wider examination of the issues exploring the right of free speech and whether or not "protected" emblems violate those rights. Such a debate would be helpful to all concerned.

Perhaps the discussion around further statutory protection for the Movement emblems could begin around adapting to the Canadian milieu a model statute on the emblem that has been prepared by the ICRC.<sup>19</sup> This model law deals with rules on the protective and indicative uses of the emblem. It covers a wide variety of circumstances such as those relating to hospitals and civilian medical units in times of armed conflict, National Societies, the ICRC and Federation, and religious personnel attached to armed forces. It also stipulates which ministry or department has control of the emblem and outlines a role for the National Society in cooperating with government to prevent and repress misuses. Finally, the model law also contains provisions for penalties relating to the misuse in times of war and peace.

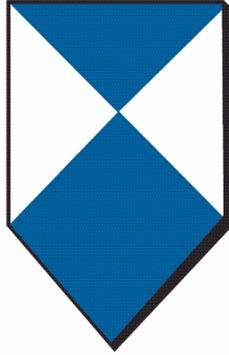
The issue of emblem protection is as old as the Movement itself. That is why over the years considerable time and energy have been expended providing legal protection for the emblem in national and international law. It has been widely recognized that misuse, if left unchecked, would mean a slow and steady erosion of the protective value of the emblem. The consequence of that, as noted above, is to put the medical units of military forces, Red Cross humanitarian workers and those they are trying to assist at a greater risk for injury or death.

While to some this may appear to be an obscure point of IHL, the weight of legal and historical evidence to the contrary is compelling. The fact is that the protection of the emblems of the Movement is very much at the centre of IHL. Regrettably, many countries, including Canada, have not been as vigilant as they should in enforcing the rules. The resources required to educate the public need not be significant, but the message has to be clear and unequivocal – the emblems of the Movement must be respected so that humanitarian assistance can be provided in circumstances of safety and security. In Canada, the age and effectiveness of some of the existing statutes and the challenges brought on by the new media (internet and video games) mean that the time has come to devote some energy and attention to a legislative overhaul of existing emblem protection measures.

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<sup>19</sup>See Appendix XIII for a full text of the ICRC model statute on emblem protection.

## Distinctive Signs Under IHL



**Distinctive sign for cultural property**

Related to the emblem issue is that of “distinctive signs” under IHL. Within the Canadian Trade-marks Act, Section h.1 provides protection for the international distinctive sign of civil defence (equilateral blue triangle on an orange ground). However, it does not provide similar trademark protection for two other important “distinctive signs.” The first is the blue and white shield used to mark “cultural property” under the “Convention for



**Distinctive sign for dangerous forces**

the protection of cultural property in the event of armed conflict” signed at The Hague on May 14, 1954. The second is the distinctive sign of works or installations containing dangerous forces (nuclear reactor sites, dams, dykes). This sign consists of a group of three bright orange circles on the same axis and is referenced in AP I Article 56 relating to the protection of victims of international armed conflicts.



## **Part IV    Revising *The Canadian Red Cross Society Act***

### **Issues to Be Considered in the Statute Revision Process**

Canada is not unlike some other countries with respect to the definition of the Canadian Red Cross's legal rights and duties residing in more than one piece of legislation. The Canadian Red Cross has an interest or is affected by various statutes, as mentioned above. They include *The Canadian Red Cross Society Act, 1909*, the *Trade-marks Act*, *The Geneva Conventions Act, 1949* and *The Crimes against Humanity and War Crimes Act*. Of course, the *Letters Patent, 1970* is also an extremely important legal instrument for the Society. Because we are a national volunteer humanitarian organization, the statute concerning the Red Cross is not just the law regulating the rights, duties, governance structures and activities of the organization. It is also a critical information tool. Canadians should be able to refer to the Act as a comprehensive repository of facts on the organization and governance of the Canadian Red Cross, its links to the *Geneva Conventions* and IHL, its Fundamental Principles, and its connection to the Movement. In this respect, it is the view of the Canadian Red Cross that a new single statute, drawing on elements of *The Canadian Red Cross Society Act, 1909*, the *Letters Patent, 1970*, the Movement's Draft Model Law for National Societies, and the Draft Model Law on Emblem Misuse, is required.

There are some other issues to be considered in the statute revision process to modernize the legislation. For instance, neither *The Canadian Red Cross Society Act, 1909* nor the *Letters Patent, 1970* require the public authorities to “*respect the adherence by the Society to the Fundamental Principles of the International Red Cross and Red Crescent Movement.*” Also, existing Canadian legislation does not require the Canadian Red Cross to “*comply with its duties as a component of the International Red Cross and Red Crescent Movement and as a member of the International Federation of Red Cross and Red Crescent Societies*” (for both these points, see the model law, Appendix III). As the Commentary on the draft model law notes, “*When they become members of the International Federation of Red Cross and Red Crescent Societies which in itself is a*

*legal body, the National Societies commit to respect the decisions taken by its governing bodies.”*

The existing provisions of *The Canadian Red Cross Society Act, 1909* related to the reporting relationship of the organization are antiquated. The Act designated the Minister of Militia and Defence and the Minister of Health as the government officials responsible for receiving the annual report of the Canadian Red Cross. While the relationship between the Red Cross, DND and Health Canada is still very important, the strategic

***What legal instruments should be included in a new statute for the Canadian Red Cross? Should such a statute be based upon the Federation’s model law or more specifically adapted for Canadian circumstances?***

focus on emergency management may make the Minister of Public Safety a better official contact for the Society from the standpoint of the “Minister responsible.” Obviously, it is up to the federal government to decide which minister should be designated. It would also seem to make sense for the Public Safety Minister to receive the Canadian Red

Cross annual report and table it in Parliament. It would be valuable to get public comment in this regard. The suggestion has also been made that the Canadian Red Cross annual report attempt to quantify in general terms the value of the work of Red Cross volunteers to their fellow Canadians.

The *Canada Corporations Act* provides direction on how a non-profit volunteer organization such as the Canadian Red Cross operates in relation to its constitution and bylaws. The Red Cross draft model law re-enforces this in Article 2.2: “*The Society shall at all times act in accordance with its statutes (Constitution, by-laws) adopted by the (relevant body of the Society).*” As the Commentary notes, it is important for reasons of flexibility not to include excessive detail in a new statute relating to organization, structure or activities. This also applies to the Statutes of the National Society itself. The law should focus instead on essential principles leaving room for the National Society to adjust bylaws, organization and structure from time to time as required. A new statute

may, based on a recent Canadian Red Cross initiative relating to membership, wish to recognize that the Society is formally a membership-based organization and that such membership is open to all Canadians subject to their acceptance of the Fundamental Principles. Pursuant to the earlier discussion on the concept of being “auxiliary to government,” a new statute may also afford the opportunity to discuss the possible inclusion of representation from public authorities on the Canadian Red Cross Board of Governors.

The issue of government representation on the board of a National Society is not a new one. For instance, the first American Red Cross Charter passed by the U.S. Congress in 1900 identified fifty-five Red Cross

supporters as “Incorporators.” Because of governance problems related in part to the early management of the American Red Cross, Congress passed a new charter in 1905 providing for a Central Committee of eighteen representatives, twelve of

***What are the benefits or risks in having representatives from public authorities become part of the governance structure of the Canadian Red Cross?***

whom (including the Chairperson) were appointed by the U.S. President. This Central Committee became the principal governing body of the American Red Cross.

A governance review of the American Red Cross in 1947 abolished the Central Committee as well as the “Incorporators” and replaced them with a fifty-member Board of Governors. The U.S. President retained the power to appoint eight members of the Board (including the Board President, who serves as the CEO of the corporation). The seven remaining presidential appointees were to be federal government officials “*whose positions and interests are such as to qualify them to contribute toward the accomplishment of Red Cross programs and objectives.*” Interestingly, the American Red Cross is currently reviewing the structure of their board. As governance issues are discussed within the Canadian Red Cross, it may be useful to exchange ideas and examine certain aspects of the American model such as having government representation on the board, which is common in many National Societies. While having such representation makes sense from the perspective of the auxiliary role, too many

“public authority” representatives could be problematic in relation to the principle of Independence.

There is another very important component of the “auxiliary to government” issue that could also be included in a new law. Article 5.6 of the Red Cross draft model law refers to cost recovery related to “auxiliary to government” activities undertaken by National Societies on behalf of governments. These are often outlined in MOUs. The draft model law takes this one step further. It states that

*The public authorities shall make provisions for covering the cost of any service or activity which they may entrust to the Society within the scope of the Society’s object and functions. The conditions for the implementation of such services or activities shall be laid down in agreements between the Society and the relevant public authority.*

Finally, in relation to financial issues, there may be other aspects of the relationship with government, including core funding and aspects of the tax exempt status of the Red Cross, which may need to be further discussed to ensure that, in the discharge of its responsibilities as “auxiliary to government,” the Canadian Red Cross has long-term financial sustainability.

## **Conclusion**

In a rapidly changing world, a dynamic organization such as the Canadian Red Cross requires a relationship with public authorities that is relevant to current needs and challenges and that provides a better framework for cooperation. The Canadian Red Cross’s Strategic Plan, developed in the wake of the blood tragedy, focuses on four areas of activity: Emergency Management, Health and Injury Prevention, Humanitarian Issues, and Organizational Capacity. While the Red Cross’s relationships with public authorities at all levels are tremendously important, it is reasonable to believe that in certain areas, such as Emergency Management, the relationships with public authorities will only become stronger. At the federal level, the Red Cross needs to discuss with stakeholders

and public authorities the benefits and drawbacks of having one principal departmental point of contact for coordination purposes.

The Movement has encouraged National Societies to engage in a discussion on the concept of being “auxiliary to government” and to update their “legal basis.” A new statute for the Canadian Red Cross would help the Government of Canada fulfill its obligations under IHL and would better equip the Canadian Red Cross in executing its important mandate for the benefit of the governments and people of Canada. Discussion around a new statute would give Canadians an opportunity to understand their National Society and the International Red Cross and Red Crescent Movement.

Although it has experienced some trying circumstances in recent years, the Canadian Red Cross has, on balance, proven to be a strong and resilient humanitarian actor. It has been a respected contributor within the context of Canada’s national development and is seen as a vital and reliable player within the Movement. In the history of every important national institution, there is a time when it is appropriate to revisit first principles and fundamental questions and to take stock of what has been accomplished and what lies ahead. The Canadian Red Cross believes that time has come. Given developments over the last decade, a national dialogue to more precisely discuss and define the auxiliary role of the Red Cross could not be more auspicious. Such a discussion would provide valuable assistance to the Society’s General Assembly, whose role is to formulate and keep under review the mission and strategic goals that establish the overall direction for the Society. It could also lay the groundwork for revising and updating the 100-year-old statute integral to the governance structure of the Society. It would also engage Canadians on the future of their Red Cross. In doing so, it would better equip the organization to execute its mission to mobilize the power of humanity to assist the most vulnerable in the twenty-first century. Almost 150 years after the Battle of Solferino, the need to keep Henry Dunant’s humanitarian vision alive remains as strong as when the Red Cross Movement was founded.



# Appendices



## Appendix I

### An Act to incorporate The Canadian Red Cross Society, 1909, c. 68

[Assented to 19th May, 1909]

#### Preamble

WHEREAS an Association known as The Canadian Red Cross Society has been in operation for some years past, and was actively engaged during the late war in South Africa in contributing funds and tending the sick and wounded; and whereas the said association was in affiliation with the Society in England known as “The National Society for Aid to the Sick and Wounded in War”, and the work, operations and powers of the last named Society have now been transferred to and are being carried on, under the patronage of His Majesty King Edward the Seventh, by the British Red Cross Society, with which The Canadian Red Cross Society has now become affiliated; and whereas the International Conference of Geneva of 1863 recommended: “That there should exist in every country a Committee whose mission consists in co-operating in times of war with the hospital service of the armies by all means in its power”; and whereas it is expedient that there should be a permanent organization in Canada in affiliation with the British Red Cross Society to carry out the purposes of the said treaty, and especially to secure supplies and to execute the humane objects contemplated by the said treaty, with the power to adopt and use the distinctive flag and badge specified by the said treaty in Article 7, on which shall be the sign of the Red Cross, and for the purpose of co-operating with the “Comité International de secours aux militaires blessés”; and whereas it is expedient that the existing association in Canada should be incorporated for the purposes aforesaid: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:--

#### Incorporation Corporate name

1. His Honour Colonel John Morrison Gibson, Lieutenant Governor of the province of Ontario; Sir Louis H. Davies, Ottawa; The Honourable George W. Ross, Toronto; The Honourable Hugh John Macdonald, Winnipeg; The Honourable George A. Cox, Toronto; Colonel George Sterling Ryerson, Toronto; Lieutenant-Colonel A. E. D. Labelle, Montreal; Lieutenant-Colonel T. G. J. Loggie, Fredericton; Lieutenant-Colonel John Bayne MacLean, Toronto; Colonel Frederick Minden Cole, Montreal; Lieutenant-Colonel The Honourable John S. Hendrie, Hamilton; Lieutenant-Colonel William N. Ponton, Belleville; Lieutenant-Colonel George A. Sweny, Toronto; Lieutenant-Colonel John Irvine Davidson, Toronto; Colonel James Mason, Toronto; Colonel Sir Henry M. Pellatt, Toronto; Lieutenant-Colonel Hugh H. McLean, St. John, N.B.; Charles R. Dickson, M.D., Toronto; The Honourable George E. Foster, Toronto; Alexander MacNeill, Warton; The Honourable W. H. Montague, Winnipeg; Sir Charles Hibbert Tupper, Victoria; Judge D. J. Hughes, St. Thomas; Justin Miller, Mayor of Ingersoll; John George Hodgins, L.L.D., Toronto; James Algernon Temple, M.D., Toronto; Daniel R. Wilkie, Toronto; Thomas G. Roddick, M.D., Montreal; Frederick M. Montizambert, M.D., Ottawa; Henry S. Strathy, Toronto; John T. Small, K.C., Toronto; and Charles Alfred Hodgetts, M.D., Toronto; and the following ladies, president of local organizations: Mrs. H. A. Boomer, London; Mrs. Harrington, Dorchester, N.B.; Mrs.

Cornelia de Lancry Smith, Moncton, N.B.; Mrs. Helen Arnold, Sussex, N.B.; Mrs. Edith Boulton Nordheimer, Toronto; Mrs. Jennie C. McFadden, Brampton; Mrs. Florence A. Robertson, Newmarket; Mrs. Emma Tyrwhitt, Bradford; Mrs. Frances M. Du Moulin, Hamilton; Mrs. Emily C. Watson, Edmonton; Lady Tilley, St. John, N.B.; Mrs. Alberta Poulle, Sackville, N.B.; Mrs. Jessie McEwen, Brandon; Mrs. Annie Lett, Guelph; Mrs. Kate I. Hare, Whitby; and Mrs. A. I. Domville, Rothesay, N.B.; and their associates and successors are hereby created a body corporate and politic in and for the Dominion of Canada under the name of “The Canadian Red Cross Society”, hereinafter called “the Society”.

### **Purposes**

2. The purposes of the Society shall be:--

#### **Aid to sick and wounded in war**

(1) To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the conference of Geneva of October, 1863, and also of the treaty of the Red Cross or the treaty of Geneva of August twenty-second, 1864, to which Great Britain has given its adhesion;

#### **National duties under treaty of Geneva**

(2) To perform all the duties devolved upon a national society by each nation which has acceded to said treaty, but in affiliation with the British Red Cross Society;

#### **Succession to former association**

(3) To succeed to and take over all the rights and property heretofore or now held and enjoyed by and all the duties heretofore performed by the unincorporated association known as The Canadian Red Cross Society;

#### **Work in time of peace**

(4) In time of peace or war to carry on and assist in work for the improvement of health, the prevention of disease and the mitigation of suffering throughout the world. 1909, c. 68, s. 2; 1919, c. 101 (1st Session), s. 1; 1922, c. 13, s. 2.

#### **Emblem and badge**

3. (1) The Society shall have the right to have and use in carrying out its purposes as an emblem and badge a Red Cross on a white ground as the same has been described in the treaty of Geneva dated the twenty-second day of August, 1864, and adopted by the several nations acceding thereto.

#### **By-laws and regulations**

(2) The Society may make by-laws and regulations, not inconsistent with the laws of Canada or of any province thereof; and may appoint such officers of the Society as it may deem proper, and generally may do all such acts and things as are necessary to carry into effect the provisions of this Act and promote the purposes of the Society.

### **Canadian organization**

(3) The Society is hereby authorized with or without the co-operation of any other society, association or organization which has been accorded similar powers by Act of the Parliament of Canada, to act in matters of relief under the said treaty. 1909, c. 68, s. 3; 1922, c. 13, s. 2.

### **False representation**

**4.** (1) From and after the passing of this Act it shall be unlawful for any person or corporation within the jurisdiction of the Parliament of Canada to falsely and fraudulently hold himself or itself out as, or represent or pretend himself or itself to be a member of, or agent for, The Canadian Red Cross Society for the purposes of soliciting, collecting or receiving money or material.

### **Unlawful use of name, emblem, badge, etc.**

(2) No person or corporation shall wear, use or display for the purposes of his or its trade or business or for the purpose of inducing the belief that he or it is a member of, or agent for The Canadian Red Cross Society, or for any other purposes whatsoever without the written consent and authority of The Canadian Red Cross Society, the heraldic emblem of the Red Cross on a white ground, or the words "Red Cross" or the Geneva Cross or any other word, mark, device or thing likely to be mistaken for them or either of them.

### **Penalty**

(3) Any person or corporation violating the provisions of this section shall be guilty of an offence, and shall be liable on summary conviction to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offence, and shall be liable to forfeit any goods, wares or merchandise upon which, or in connection with which, the said emblem or words or any coloured imitation thereof were used. The fine so collected shall be paid to The Canadian Red Cross Society. 1909, c. 68, s. 4; 1922, c. 13, s. 2.

### **Acquisition and holding of property Disposal of property**

**5.** (1) The Society may purchase, take, have, hold, possess, retain and enjoy any property, real or personal, corporeal or incorporeal, whatsoever, and for any or every estate or interest therein whatsoever, given, granted, devised, or bequeathed to it, or appropriated, purchased, or acquired by it in any manner or way whatsoever, to, for, or in favour of the uses and purposes of the Society. The Society may, from time to time, dispose of any such property in such manner and upon such terms as it may deem advisable and may grant, alienate, pledge, mortgage or otherwise dispose of the aforesaid property, estate or rights.

### **Limit of real estate**

(2) The annual value of the real estate held in Canada by or in trust for the Society shall not exceed two hundred thousand dollars. 1909, c. 68, s. 5; 1922, c. 13, s. 2; 1926, c. 5, s. 1; 1931, c. 24, s. 1; 1950, c. 62, s. 1.

### **Central Council**

6. (1) The governing body of the Society shall be a Central Council, consisting of not more than sixty members appointed or elected in such manner as may be determined from time to time by the Central Council.

### **Provincial divisions and branches**

(2) The Central Council shall have power to organize provincial divisions and branches in the various provinces of Canada under such rules as the Council may prescribe. Existing organized provincial divisions and branches are hereby continued.

### **Executive Committee Quorum**

(3) There shall be an Executive Committee consisting of not less than twenty and not more than thirty persons appointed or elected by the Central Council from its members. A majority of the members shall be a quorum.

### **Powers**

(4) The Executive Committee shall have and exercise all the powers granted by this Act when the Central Council is not in session, subject, however, to such regulations or restrictions as the Central Council may from time to time determine. 1909, c. 68, s. 6; 1916, c. 58, s. 1; 1922, c. 13, s. 2; 1931, c. 24, s. 2; 1937, c. 7, s. 1; 1950, c. 62, s. 2.

### **Report of proceedings**

7. (1) The Society shall, not later than the first day of May of each year, furnish to the Minister of Militia and Defence and to the Minister of Health a report of its proceedings for the previous calendar year, including a full, complete and itemized report of receipts and expenditures of whatever kind, which report shall be duly audited by the Department of Militia and Defence.

### **Penalty for not furnishing report**

(2) If for the space of one month the Society neglects or refuses to furnish such report the Society shall be liable to a penalty not exceeding twenty dollars for every day during which such default continues, and any member of the Society who knowingly or wilfully authorizes or permits such default shall be liable to the like penalty. 1909, c. 68, s. 7; 1916, c. 58, s. 2; 1922, c. 13, s. 2.

### **Present Central Council continued**

8. The existing Central Council heretofore elected shall continue to be the Central Council of the Society, for the purpose of this Act, until a new council has been elected, pursuant to the terms of this Act. 1922, c. 13, s. 2.

### **French name**

9. The name of the Society in the French language shall be “La Société canadienne de la Croix-Rouge”. 1950, c. 62, s. 3.

## Appendix II

### LETTERS PATENT

The document which follows is an office consolidation of the Letters Patent continuing The Canadian Red Cross Society under the *Canada Corporations Act* in 1970 and all amendments made up to December 8, 2001.

The formal incorporation documents of the Society consist of the 1970 Letters Patent and seven separate Supplementary Letters Patent which may be ordered by mail, upon payment of a fee, from:

Industry Canada  
Corporations Directorate  
9th Floor, Journal Tower South  
365 Laurier Avenue West  
Ottawa, Ontario K1A 0C8  
Telephone: 613-941-9042

### LETTERS PATENT

Continuing

THE CANADIAN RED CROSS SOCIETY  
as a corporation under Part II of the  
*Canada Corporations Act* under the name  
THE CANADIAN RED CROSS SOCIETY  
LA SOCIETE CANADIENNE DE LA CROIX-ROUGE

Dated: 6th November, 1970  
Recorded: 28th May, 1971  
Film 279 Document 11  
“L. McCann”  
Deputy Registrar General of Canada

Amended: 17th December, 1981  
Recorded: 13th May, 1982  
Film 478 Document 208  
“David D. Kirchmayer”  
Deputy Registrar General of Canada

CANADA

By the Minister of Consumer and Corporate Affairs. To all to whom these presents shall come, or whom the same may in anywise concern,

GREETING:

WHEREAS, in and by section 147B of Part IIA of the *Canada Corporations Act*, it is in effect enacted that any corporation without share capital incorporated by Special Act of the Parliament of Canada for the purpose of carrying on, without pecuniary gain to its members, objects, to which the legislative authority of the Parliament of Canada extends, of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, or sporting character, or the like objects, may apply for letters patent continuing it as a corporation under Part II of the *Canada Corporations Act*;

AND WHEREAS it has been established that THE CANADIAN RED CROSS SOCIETY (hereinafter called "the Society") was incorporated by Chapter 68 of the Statutes of Canada, 8-9 Edw. VII, as amended by 6-7 Geo. V, c. 58; 9-10 Geo. V, c. 101; 12-13 Geo. V, c. 13; 16-17 Geo. V, c. 5; 21-22 Geo. V, c. 24; 1 Geo. VI, c. 7; 14 Geo. VI, c. 62;

AND WHEREAS the Society has applied for letters patent continuing it as a corporation under Part II of the *Canada Corporations Act* under the name THE CANADIAN RED CROSS SOCIETY/LA SOCIETE CANADIENNE DE LA CROIX-ROUGE and has satisfactorily established the sufficiency of all proceedings required by the said Act to be taken and the truth and sufficiency of all facts required to be established previous to the granting of such letters patent;

NOW KNOW YE that the Minister of Consumer and Corporate Affairs, by virtue of the power vested in him by section 147B of the *Canada Corporations Act*, does, by these letters patent, continue the Society as a corporation under the provisions of Part II of the said Act and does ordain and declare as follows:

CONSOLIDATION OF TERMS OF LETTERS PATENT DATED NOVEMBER 6, 1970

AND SUPPLEMENTARY LETTERS PATENT DATED JULY 4, 1975; DECEMBER 17, 1981; AUGUST 18, 1983; JULY 10, 1985; DECEMBER 7, 1987; JANUARY 4, 1989;

OCTOBER 5, 1994; OCTOBER 6, 1996; AND DECEMBER 8, 2001.

1. The present members of the Society and such others as may hereafter become members are and shall continue to be a body politic and corporate under the name THE CANADIAN RED CROSS SOCIETY--LA SOCIETE CANADIENNE DE LA CROIX-ROUGE.
2. The constitution of the Society is based on the *Geneva Conventions* and all protocols to which Canada is a party and on the fundamental principles of the International Red Cross and Red Crescent Movement, namely:
  - (a) 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, co-operation and lasting peace amongst all peoples.

- (b) **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.
  - (c) **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.
  - (d) **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.
  - (e) **VOLUNTARY SERVICE:** It is a voluntary relief movement not prompted in any manner by desire for gain.
  - (f) **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.
  - (g) **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 world-wide.
3. The Canadian Red Cross Society is officially recognized by the government as a voluntary relief society, auxiliary to the public authorities, and particularly to the medical services of the Armed Forces, in accordance with the provisions of the *First Geneva Convention*, and as the only National Red Cross Society which may carry out activities in Canadian territory. Its aims shall be:
- (a) to provide protection and assistance to victims of armed conflicts and disasters,
  - (b) to prevent and alleviate human suffering, and
  - (c) to work for the improvement of health and prevention of disease anywhere in the world, in accordance with the fundamental principles of the

International Red Cross and Red Crescent Movement, the *Geneva Conventions* and *Additional Protocols*.

4. The Society shall be continued with the following provisions:
- (a) The Society shall have the right to have and use in carrying out its objects as an emblem and badge a red cross on a white ground as the same has been described in the *Geneva Conventions for the Protection of War Victims*, dated August 12, 1949, and adopted by the nations acceding thereto;
  - (b) The Society may make by-laws and regulations, not inconsistent with the *Canada Corporations Act*, and may appoint such officers of the Society as it may deem proper and generally may do all such acts and things as are necessary to carry into effect the objects of the Society;
  - (c) The governing body of the Society shall be the Annual Meeting of the Society, consisting of not more than sixty-one (61) people appointed or elected in such manner as may be determined by by-law;
  - (d) There shall be a Board of Governors consisting of not fewer than fourteen (14) or more than sixteen (16) persons, including the President and two Vice-Presidents elected by the Annual Meeting of the Society, the immediate Past-President and the remainder elected as Governors by the Annual Meeting of the Society in accordance with all pertinent legislation and the by-laws of the Society;
  - (e) The Society may purchase, take, have, hold, possess, retain and enjoy any property real or personal, corporeal or incorporeal, whatsoever, and for any or every estate or interest therein whatsoever, given, granted, devised, or bequeathed to it, or appropriated, purchased, or acquired by it in any manner or way whatsoever, to, for, or in favour of the uses and purposes of the Society. The Society may, from time to time, dispose of any such property in such manner and upon such terms as it may deem advisable and may grant, alienate and, subject to the provisions of section 65 of the *Canada Corporations Act*, pledge or mortgage or otherwise dispose of the aforesaid property, estate or rights;
  - (f) (1) The Society may where authorized by by-law sanctioned by at least two-thirds of the votes cast at a special general meeting of the national members duly called for considering the by-law.
    - (i) borrow money upon the credit of the Society;
    - (ii) limit or increase the amount to be borrowed;
    - (iii) issue debentures or other securities of the Society;

- (iv) pledge or sell such debentures or other securities for such sums and at such prices as may be deemed expedient; and
    - (v) secure any such debentures, or any other present or future borrowing or liability of the Society, by mortgage, hypothec, charge or pledge of all or any currently owned or subsequently acquired real and personal, movable and immovable property of the Society, and the undertaking and rights of the Society;
  - (f) (2) Any such by-law may provide for the delegation of such powers by the national members to such governors, officers or members of the Society to such extent and in such manner as may be set out in such by-law.
  - (f) (3) Nothing in this section limits or restricts the borrowing of money by the Society on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Society;
  - (g) The Head Office of the Society as continued, shall be in the City of Ottawa in the Province of Ontario, Canada;
  - (h) The Society may establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences, intended or calculated to benefit employees or ex-employees of the Society or the dependents or connections of such persons, may grant pensions and allowances to such persons and may make payments towards insurance for the benefit of such persons, or for any object like or similar to those foregoing.
5. The Society is to continue to be carried on without pecuniary gain to its members and any profits or other accretions to the Society are to be used in promoting its objects.



## Appendix III

### The Model Red Cross / Red Crescent Law (Updated - 27 July 1999)

#### Draft model law on the recognition of the (name of the Red Cross or Red Crescent Society)

Text annexed to the reference document sent out on 16.09.1999 to the members of the 27th International Red Cross and Red Crescent conference (Geneva, 1999). This reference document was adopted by the Conference as an annex to its Resolution 1 (Plan of Action for the years 2000-2003).

#### Commentary

*The purpose of this “model law” on Red Cross/Red Crescent Societies is to encourage governments and National Societies to give due consideration to the legal aspects of supporting and protecting the functions of the National Societies and, at the same time, provide sample clauses covering the main areas of concern for the Movement and from which to draw inspiration for legislative work.*

*The reference to “recognition” in the Title means that the special legislation concerning the Red Cross or Red Crescent Society may, but does not always have to, constitute the act through which a government formally recognises its Society as an auxiliary to the public authorities in the humanitarian field on the basis of the Geneva Conventions. Such recognition may derive from other acts of government (legislative or executive branch).*

#### Article 1

1.1 This law regulates the legal status of the (name of the Society) (hereinafter called “the Society”) and may be quoted as “The (name of the Society) Act”.

**1.2 The Society is a voluntary aid society, auxiliary to the public authorities in the humanitarian field, recognised and authorised on the basis of the Geneva Conventions (and their Additional Protocols) to render assistance to the medical services of the armed forces in times of armed conflict.**

**1.3 The Society is the only National Society of the Red Cross or Red Crescent in (name of the country). It carries out its activities on the entire territory of (name of the country).**

1.4 The Society shall at all times act in conformity with the Geneva Conventions (and their Additional Protocols), the laws of (name of the country) and the Fundamental Principles of the International Red Cross and Red Crescent Movement adopted by the International Conference of the Red Cross and Red Crescent.

**1.5 The public authorities shall at all times respect the adherence by the Society to the Fundamental Principles of the International Red Cross and Red Crescent**

## **Movement as required by resolution 55(I) of the General Assembly of the United Nations.**

### Commentary

*The sections in bold contain minimum legal requirements for the recognition of National Societies by the ICRC in conformity with the Statutes of the Movement. These Statutes as well as the Fundamental Principles have last been adopted by the 25th International Conference of the Red Cross and Red Crescent (Geneva, 1986).*

*In some countries, the definition of the Society's legal rights and duties does not necessarily appear in one single piece of legislation concerning the National Society, but may be spread over various legal codes or laws such as e.g. the civil code, fiscal law, social security legislation, penal code, etc. The various clauses contained in this model law may therefore be used separately for integration in the specific legislation concerned.*

*Resolution 55(I) can be found in the Handbook of the International Red Cross and Red Crescent Movement (1994, p. 732).*

### **Article 2**

2.1 The Society is a corporate body with legal personality.

**2.2 The Society shall at all times act in accordance with its statutes (Constitution, by-laws) adopted by the (relevant body of the Society).**

### Commentary

*The legal nature of the National Society (e.g. private law association, public law institution, etc.) depends on the local legal system and its traditions and is therefore up for decision by each national government.*

*The legislator may also want to determine general principles regarding the branch structure of the Society as well as regarding the Society's governance (definition of its main governing bodies).*

*In order to allow the Society to adjust its structure, activities and administration to changing needs and circumstances, the law should be limited to essential principles and leave room for the Society itself to adapt its statutes. It is therefore not recommended to include the entire text of the Society's statutes as part of the law.*

### **Article 3**

3.1 In addition to rendering assistance to the medical services of the armed forces in times of armed conflict, the object of the Society is to prevent and alleviate human suffering with complete impartiality, making no discrimination as to nationality, race, gender, religious beliefs, class or political opinions.

3.2 In order to achieve its object as defined in the previous paragraph, the Society shall carry out the functions as defined in its statutes, international treaties to which (name of the country) is a party and the resolutions of the International Conference of the Red

Cross and Red Crescent.

Commentary

*In certain countries, the legislator may want to specify here that none of the Society's activities generating revenue that is exclusively allocated to the Society's object, shall be qualified as a transaction subject to the laws regulating trade and commerce, even if they are performed through contractual arrangements which stipulate a price for goods and services provided by the Society.*

**Article 4**

The Society shall comply with its duties as a component of the International Red Cross and Red Crescent Movement and as a member of the International Federation of Red Cross and Red Crescent Societies.

Commentary:

*Once recognised by the ICRC, the Society, as a component of the Movement takes part in the decision-making of the statutory bodies of the Movement. When they become members of the International Federation of Red Cross and Red Crescent Societies which in itself is a legal body, the National Societies commit to respect the decisions taken by its governing bodies. The current provision allows a National Society at all times to respect the decisions taken within the framework of the Movement and the International Federation.*

**Article 5**

5.1 The Society, within the limits laid down by its object and functions, may acquire, own, alienate and administer such property as it deems fit. It may accept any conveyance of real estate to its use or benefit.

5.2 The Society may, in accordance with its object and functions, accept unrestricted contributions and assistance in any form from individuals, the public authorities and private or public bodies. It may accept as agent or trustee funds or property in trust or earmarked for particular use, provided that such use is within the general scope of its object and functions.

5.3 The Society may constitute and administer any reserve, insurance or other funds for its staff or any of its activities.

5.4 The assets of the Society, including its financial resources and real estate as well as the revenue from its income generating activities, shall be exempted from all taxes and duties.

5.5 Donations made to the Society by any individual or legal body shall benefit from tax exemption.

5.6 The public authorities shall make provisions for covering the cost of any service or activity which they may entrust to the Society within the scope of the Society's object and functions. The conditions for the implementation of such services or activities shall

be laid down in agreements between the Society and the relevant public authority.

Commentary

*The legislator may want to specify that all subsidiary bodies of the Society, including those with legal capacity or those set up under the auspices of the Society, shall benefit from the all or part of the provisions of this law, in particular those regarding the Society's fiscal status.*

**Article 6**

6.1 The Society shall be authorised to use as its emblem a red cross (red crescent) on a white ground for all the purposes foreseen by the International Conference of the Red Cross and Red Crescent, in conformity with the Geneva Conventions of 1949, the present law and the Regulations on The Use of The Emblem by National Societies adopted by the International Conference of the Red Cross and Red Crescent.

6.2 Any use of the emblem of the red cross (red crescent) other than foreseen in the Geneva Conventions of 1949 or in paragraph 1, is prohibited and will be punished with (penalty)(in conformity with the relevant provision of the penal code or a specific law repressing abuse of the emblem).

Commentary

In countries where a separate law is in force to repress abuse of the emblems and designations of the red cross and red crescent, the civil defence sign and electronic signals provided for in Additional Protocol I, a reference to that specific law may be included in paragraph 6.1. In the absence of such a special law, this clause is to be regarded as the minimum legal protection of the emblem of the red cross or red crescent. It is recommended, however, that governments enact proper and detailed legislation on the use of the emblems of the Geneva Conventions.

The ICRC has published a model law for that purpose (International Review of the Red Cross, July-August 1996, No. 313, pp. 482-495) and the ICRC Advisory Service on IHL has examples of emblem legislation adopted in some 80 States.

The Regulations on the Use of the Emblem by National Societies were adopted by the International Conference in 1965 (and revised by the 1991 Council of Delegates after approval by the States Parties to the Geneva Conventions in a written procedure).

In some countries, the funds resulting from penalties mentioned in paragraph 2, are transmitted to the Society to contribute to its general financial resources.

**Article 7**

The present law shall come into force on (date) and shall replace from that date (the previous law in force).

## Appendix IV

### Canadian Red Cross Society Historical Highlights The First Hundred Years

- 1885 During Riel rebellion, Doctor George Sterling Ryerson displayed first Red Cross flag flown in Canada.
- 1896 Society began as first overseas branch of British Red Cross founded under Ryerson's chairmanship at meeting in Toronto.
- 1898 Relief operations Spanish American War.
- 1899 Outbreak of South African war, Society organized branches to collect supplies and contributions for troops.
- 1909 The Canadian Red Cross Society incorporated by Act of Parliament establishing it as corporate body providing volunteer aid according to the Geneva Conventions.
- 1914 First group of children anywhere in the world to be organized under aegis of Red Cross - Greenfield Park, Quebec.
- W.W. I Society contributed money and materials valued at over \$22 million for comfort and relief of sick and wounded soldiers; 34,325 cases of supplies sent overseas
- 1915 First Red Cross Charter issued anywhere in the world granted by Canadian Red Cross to children's group, Northgate, Saskatchewan.
- 1917 Canadian Red Cross responds to the Halifax Explosion
- 1919 Cannes World Conference of Health suggests Red Cross continue to discharge its humanitarian duties in times of peace and conflict. Society officially adopted three-pronged Red Cross program: promotion of health, prevention of disease and mitigation of suffering throughout the world. Canadian Red Cross supports development of number of voluntary agencies; gave grants to the Canadian National Institute for the Blind for several years, particularly for blinded soldiers; founded the Canadian Tuberculosis Association and financed first tuberculosis clinic by special grants for five years (1923-28) in Trois Rivieres, Quebec. Canadian Red Cross becomes member of the League of Red Cross Societies.

- 1920 Society helped establish and finance courses in public health nursing in five Canadian universities: University of Toronto, McGill, British Columbia, Alberta and Dalhousie.
- 1920 Outpost hospitals and nursing stations opened in remote areas. Skilled nursing and first aid practised, served as health centres offering a full programme of public health nursing.
- 1920 Introduction of Junior Red Cross into schools.
- 1922 Junior Red Cross officially recognized in Canada by amendment to CRCS Act to include peace time activities. Junior Red Cross handicapped and crippled children's fund established.
- 1923 First Home Nursing classes established.
- 1925 Inaugurated a visiting housekeeper service. Trained women supplied to families temporarily deprived of a wife and mother.
- 1927 Recognized by the International Committee of the Red Cross as independent national society.
- 1929 Nutrition service established.
- 1934 First Aid posts established on highway between Montreal and Toronto – providing emergency care for victims of traffic accidents.
- 1938 Initial First Aid program established.
- 1938 Blood Donor Recruitment program launched.
- W.W. II Society organized the contribution of money and materials valued at \$80 million dollars for comfort and relief of sick and wounded; also shipped overseas 2,160,095 cases of supplies; value of shipped material estimated at \$87,564,207.
- 1939 Establishment of Canadian Red Cross Corps; Society grew to 2,088 branches in nine provincial divisions with separate national headquarters coordinating work of provinces.
- 1939 W.W.W. (Women's War Work) was initiated.
- 1940 Transport division of the Canadian Red Cross Corps organized.

- 1945 Central Council of Society approved plan to supply blood, plasma and transfusion equipment free of charge to all Canadian hospitals. Launching of Swimming and Water Safety Services. Arts and Crafts program attached to D.V.A. hospitals as volunteers completely turned over to Red Cross by January 1947.
- 1945 The Sickroom Equipment Loan Service was initiated.
- 1947 First scientific study of nutritional value of school luncheons; inauguration of the Canadian Red Cross Blood Transfusion Service organized by Dr. Stuart Stanbury. Aim was to provide blood free of charge to anyone in Canada who needed it.
- 1948 Society subsidy enabled foundation of Canadian Rheumatism and Arthritis Society.
- 1949 Noronic Disaster
- 1950 Manitoba Flood
- 1951 Canadian Red Cross Medico-Social Welfare team sent to Korea; British Columbia Floods
- 1952 Canadian Red Cross hosts 18<sup>th</sup> International Red Cross Conference in Toronto. Responsible for training and preparation of Home Nursing auxiliaries for civil defence.
- 1953 Canadian Red Cross named administrator of Canadian National European Relief Fund; First Canadian Red Cross representative sent to Korea to serve on Joint Red Cross teams for the exchange of prisoners of war. Later appointed as representative of League of Red Cross Societies as advisor to Korean Red Cross.
- 1954 Hurricane Hazel.
- 1956 Canadian Red Cross Society named administrator of Canadian Hungarian Fund and operated refugee camps in Austria and the Netherlands; Springhill Disaster.
- 1958 Canadian Junior Red Cross announced International Study Centre, Toronto.
- 1963 Supplies and people were sent by Canadian Red Cross to Hay River and Fort Simpson during extraordinary spring floods.
- 1966 Canadian Junior Red Cross Youth team in Jamaica.

- 1973 Publication of **And Who is My Stranger**, a report of the Long Range Planning Committee.
- 1975 Small Craft Safety Service established as a national program.
- 1978 The Senior's Services programme was initiated.
- 1979 Mississauga Train Derailment; Society begins study of National Office relocation from Toronto to Ottawa
- 1980 Small Craft Safety Programme introduces the survival boating programme.
- 1981 Special Task Force report on Organization and Administration. (Balfour Report)
- 1982 Alta Vista Drive site in Ottawa chosen for location of Head Office. Completion of National Senior's Service Needs Assessment.
- 1985 International Youth Congress in Calgary; Barrie Tornado; Society undertakes Directional Plan and Review of Operations..

## **Appendix V**

### **Red Cross Fundamental Principles**

In 1965, the seven Fundamental Principles were adopted by the 20th International Conference. They were developed to link together the International Committee, Federation and National Societies.

#### **Humanity**

The International Red Cross and Red Crescent Movement, born of 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 to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation 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 only be 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 world-wide.



## Appendix VI

**Observer status for the International Federation of Red Cross and Red Crescent Societies  
in the General Assembly, G.A. res. 49/2, 49 U.N. GAOR Supp. (No.49) at 5, U.N. Doc.  
A/49/49 (1994).**

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Forty-ninth session  
Agenda item 152

### RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

*The General Assembly,*

*Recalling* 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,<sup>1/</sup>

*Considering* the specific role of the International Federation in international humanitarian relations as further defined by the International Conference of the Red Cross and Red Crescent,

*Desirous* of promoting cooperation between the United Nations and the International Federation,

1. *Decides* to invite the International Federation of Red Cross and Red Crescent Societies to participate in the sessions and the work of the General Assembly in the capacity of observer;
2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.

*38th plenary meeting  
19 October 1994*



## **Appendix VII**

### **The Seville Agreement - Council of Delegates, Seville, 25-27 November 1997 Sevilla, 26 November 1997**

#### **PREAMBLE**

#### **PART I — GENERAL**

- Article 1 Scope of the Agreement
- Article 2 Object and Purpose of the Agreement
- Article 3 Guiding Principles
- Article 4 Management Principles

#### **PART II — INTERNATIONAL RELIEF ACTIVITIES**

- Article 5 Organization of International Relief Operations
- Article 6 Responsibilities for General Direction and Coordination of International Relief Operations

#### **PART III — STRENGTHENING THE MOVEMENT: DEVELOPMENT AND FUNCTIONAL COOPERATION**

- Article 7 Development of National Societies
- Article 8 Functional Cooperation between the Components of the Movement
- Article 9 Communication, Fundamental Principles and International Humanitarian Law

#### **PART IV — IMPLEMENTATION AND FINAL PROVISIONS**

- Article 10 Implementation
- Article 11 Final Provisions

#### **Preamble**

The mission of the International Red Cross and Red Crescent Movement is “*to prevent and alleviate human suffering wherever it may be found, to protect life and health, and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance*”.

The accomplishment of this common mission calls for the combined efforts and participation of all the components of the Movement. To respond with speed, flexibility and creativity to the needs of all those calling for impartial humanitarian protection and assistance, the components must join their forces and capitalize on their diversity. To achieve that goal through effective collaboration in a spirit of mutual trust, to ensure an efficient mobilization of resources, the components must therefore, based on a clear sense of purpose and their common mission, organize their international activities on a sound and predictable basis. This implies observance of the Fundamental Principles and of the

Statutes of the Movement, and a synergetic cooperation, coupled with a clear division of labour, among components having distinct but closely related and complementary roles and competencies.

This Agreement is more than an instrument of operational management or a statement of understanding. It sets into motion a profound change in attitude between members of the same Movement: the adoption of a collaborative spirit, in which every member of the Movement values the contributions of other members as partners in a global humanitarian enterprise. It is an agreement on cooperation and not merely on a division of labour, and it applies to all those international activities which, under the Movement's Statutes, the components are called upon to carry out in close collaboration. It establishes clear guidelines for the performance of tasks by Movement members, using the specific areas of competence and the complementary capacities of each to best effect. It provides for continuity of activities as situations change, and aims at fostering among the components a stronger sense of identity, of solidarity, of mutual trust and of shared responsibility.

With those objectives set out, this Agreement on the organization of the international activities of the Movement's components constitutes an essential element of a new common strategy of action that will allow the components to achieve three important goals:

- to provide more effective response to humanitarian needs using to best effect the Movement's many resources;
- to promote better respect for humanitarian principles, and for international humanitarian law;
- to create a stronger International Red Cross and Red Crescent Movement in which all components cooperate to the optimum extent.

## **Part I GENERAL**

### **Article 1: Scope of the Agreement**

1.1 The Agreement applies to those international activities which the components are called upon to carry out in cooperation, on a bilateral or multilateral basis, to the exclusion of the activities which the Statutes of the Movement and the Geneva Conventions entrust to the components individually.

1.2 The "international activities" of the components are the activities of the National Societies defined in Article 3, paragraphs 3 and 5 of the Statutes of the Movement; the activities of the International Committee of the Red Cross defined in Article 5, paragraphs 2, 3 and 4 of the Statutes of the Movement; and the activities of the International Federation of Red Cross and Red Crescent Societies defined in Article 6,

paragraphs 3, 4 and 5 of the Statutes of the Movement.

1.3 Pursuant to Article 7, paragraph 1 of the Statutes of the Movement, the Agreement defines the organization of international activities carried out in bilateral or multilateral cooperation between:

- the National Societies and their Federation;
- the National Societies and the ICRC;
- the National Societies between themselves;
- the ICRC and the Federation;
- the ICRC, the Federation and the National Societies.

1.4 Nothing in this Agreement shall be interpreted as restricting or impairing the specific role and competencies of each component according to the Geneva Conventions and their additional Protocols, and under the Statutes of the Movement.

## **Article 2: Object and Purpose of the Agreement**

The object and purpose of the Agreement is:

- a) to promote the efficient use of the human, material and financial resources of the Movement and to mobilize them as rapidly as possible in relief operations and development activities in the interest of the victims of armed conflicts or of internal strife and their direct results, as well as of natural or technological disasters, and of vulnerable persons in other emergency and disaster situations in peacetime;
- b) to promote closer cooperation among the components in situations referred to in Article 2 a) above;
- c) to strengthen the development of National Societies and to improve cooperation among them, thus enabling National Societies to participate more effectively in the international activities of the Movement;
- d) to obviate differences between the components as to the definition and the organization of their respective international activities and responsibilities within the Movement;
- e) to strengthen functional cooperation among the ICRC, the Federation and National Societies.

### **Article 3: Guiding Principles**

The organization of the international activities of the components is at all times governed by the values and principles which guide the Movement as enshrined in:

- the Fundamental Principles of the Red Cross and Red Crescent;
- the Statutes of the Movement;
- the Geneva Conventions and their Additional Protocols.

### **Article 4: Management Principles**

Implicit in the Statutes of the Movement are two organizational concepts which this Agreement defines as “the lead role” and “the lead agency”.

#### *A) Lead Role*

4.1 The Geneva Conventions and the Statutes of the Movement entrust specific competencies to each component which therefore plays a lead role in these matters.

4.2 The concept of lead role implies the existence of other partners with rights and responsibilities in these matters.

#### *B) Lead Agency*

4.3 The lead agency concept is an organizational tool for managing international operational activities. In a given situation, one organization is entrusted with the function of lead agency. That organization carries out the general direction and coordination of the international operational activities.

4.4 The lead agency concept applies primarily in emergency situations as referred to in Article 2 a) above, where rapid, coherent and effective relief is required in response to the large-scale needs of the victims, on the basis of an evaluation of these needs and of the capacity of the National Society concerned to meet them.

4.5 Effective coordination between the components under the responsibility and general direction of the lead agency requires the establishment of appropriate mechanisms for consultation and a commitment by all those taking part to abide by coordination rules and procedures.

4.6 The effectiveness of an operation depends on adequate prior training and preparation of those carrying out the operation (emergency preparedness).

## **Part II**

### **INTERNATIONAL RELIEF ACTIVITIES**

#### **Article 5: Organization of International Relief Operations**

##### *5.1 Situations Requiring a Lead Agency*

A) International and non-international armed conflicts, internal strife and their direct results, within the meaning of the Geneva Conventions and their Additional Protocols and the Statutes of the Movement:

a) within the meaning of the Geneva Conventions and of this Agreement, the term “situation of armed conflict” covers the entire territory of the parties to a conflict as far as the protection and assistance of the victims of that conflict are concerned;

b) the term “direct results of a conflict” within the meaning of the Geneva Conventions applies beyond the cessation of hostilities and extends to situations where victims of a conflict remain in need of relief until a general restoration of peace has been achieved;

c) the term “direct results of a conflict” shall also apply to situations in which general restoration of peace has been achieved, hence the intervention of the ICRC as a specifically neutral and independent institution and intermediary is no longer required but victims remain in need of relief during the post-conflict period, especially within the context of reconstruction and rehabilitation programmes;

d) the term “direct results of a conflict” shall also apply to situations in which victims of a conflict are to be found on the territory of a State which is neither party to a conflict nor affected by internal strife, especially following a large scale movement of refugees.

B) Natural or technological disasters and other emergency and disaster situations in peace time which require resources exceeding those of the operating National Society and thus call upon the Principles and Rules for Red Cross and Red Crescent Disaster Relief to apply;

C) Armed conflict concomitant with natural or technological disasters.

##### *5.2 Armed Conflict and Internal Strife: Elements of Identification*

For the purposes of the application of the present Agreement and the organization of the international activities of the components,

a) an armed conflict exists when the armed action is taking place between two or more parties and reflects a minimum of organization;

b) internal strife does not necessarily imply armed action but serious acts of violence over a prolonged period or a latent situation of violence, whether of political, religious, racial,

social, economic or other origin, accompanied by one or more features such as: mass arrests, forced disappearances, detention for security reasons, suspension of judicial guarantees, declaration of state of emergency, declaration of martial law.

### 5.3 Lead Agency Role of each Component

5.3.1 The ICRC will act as lead agency, as provided for in Article 4 of the present Agreement, in situations of international and non-international armed conflicts, internal strife and their direct results as referred to in Article 5.1, Section A and in paragraphs a) and b), and in Section C (armed conflict concomitant with natural or technological disasters).

5.3.2 The Federation will act as lead agency in situations referred to in Article 5.1, paragraphs c) and d) of Section A, and in Section B (natural or technological disasters and other emergency and disaster situations in peace time which require resources exceeding those of the operating National Society).

5.3.3 A National Society may undertake the functions of lead agency necessary for the coordination of international relief assistance within its own territory subject to the concurrence of the ICRC or the Federation, as the case may be, as provided for in Article 3, paragraph 3 of the Statutes of the Movement.

5.3.4 If a natural or technological disaster occurs in a situation of conflict where the ICRC is already engaged, the ICRC will call upon the Federation to provide additional appropriate expertise to facilitate relief.

5.3.5 If an armed conflict or internal strife breaks out in a situation where there is ongoing Federation relief assistance activity, the transition provisions apply, as provided for in Article 5.5 of the present Agreement.

### 5.4 Unforeseen Situations

In handling unforeseen situations which do not fall within the situations referred to in Part II, Articles 5.1 and 5.3, the components of the Movement directly concerned undertake, in good faith and with common sense, to be guided by the Fundamental Principles and the Statutes of the Movement, to ensure, in the interest of the victims, maximum efficiency of the operation and harmonious cooperation within the Movement as a whole.

### 5.5 Transition

5.5.1 Where, as a result of a change of situation, responsibility for directing and coordinating an international relief operation is transferred from the ICRC or from the Federation in accordance with the relevant Articles of the present Agreement, the incumbent lead agency shall, in agreement with the operating National Society and in consultation with the participating National Societies, take all the steps appropriate to ensure an efficient and harmonious handover of the management and conduct of the new

international relief operation by the component taking over the lead agency function.

5.5.2 Subject to the agreement of the donors who have contributed to financing the international relief operation which is being phased out, the funds and relief supplies available, together with the logistic and material resources deployed in the field, shall, if they are suited to the objectives of the new operation, be placed at the disposal of the lead agency henceforth responsible for its general direction and coordination.

## 5.6 Other International Relief Actions by National Societies

5.6.1 In situations where the needs of the victims do not call for the organization of an international relief operation under a lead agency, a National Society which provides direct assistance to the Society of the country affected by a conflict or a disaster shall immediately inform the ICRC or the Federation, as the case may be.

5.6.2 Mutual emergency relief assistance agreements in case of natural or technological disasters between neighbouring National Societies, and bilateral or multilateral development agreements between National Societies shall be notified in advance to the Federation.

5.6.3 The fact that one or several National Societies submit a request for aid to the ICRC or to the Federation, or hand over relief supplies to one of them, shall in no way be deemed to modify the organization of functions and responsibilities between the two institutions as defined in the present Agreement. In such an event, the institution which is not competent will so inform the National Society or Societies concerned and will refer the matter without delay to the competent institution.

## 5.7 Operational Difficulties

5.7.1 Should an international relief operation directed and coordinated either by the ICRC or by the Federation be obstructed for a prolonged period, the lead agency shall consult the components involved with a view to bringing their combined influence to bear so that the obstacles to the operation may be overcome as soon as possible in the sole interest of the victims.

5.7.2 Where appropriate they may, by mutual agreement, decide to implement provisional measures which shall in no way be regarded as precedents affecting the respective mandates of the components of the Movement or the organization of tasks provided for in the present Agreement.

## 5.8 United Nations Specialized Agencies

5.8.1 In order to maintain among the components a coherent approach that will preserve the Movement's unity and independence, a National Society wishing to conclude a cooperation agreement with a specialized agency of the United Nations, shall keep the Federation and/or the ICRC informed.

5.8.2 In particular, it shall keep the Federation and/or the ICRC informed of any negotiations likely to lead to a formal agreement with the UNHCR which should be undertaken in association with the Federation and/or the ICRC.

## **Article 6: Responsibilities for General Direction and Coordination of International Relief Operations**

6.1 In situations defined in the present Agreement, where the general direction and coordination of an international relief operation is exercised by the ICRC or the Federation acting as lead agency, this function carries the following responsibilities:

### 6.1.1 General Responsibilities

- a) to define the general objectives of the international relief operation based on access to the victims and on an impartial assessment of their needs;
- b) to direct the implementation of these objectives;
- c) to ensure that all actions within the relief operation are effectively coordinated;
- d) to establish appropriate mechanisms of consultation with Red Cross and Red Crescent partners;
- e) to coordinate international Red Cross and Red Crescent relief operations with the humanitarian activities of other organizations (governmental or non-governmental) where this is in the interest of the victims and is in accordance with the Fundamental Principles;
- f) to act as a spokesman for the international relief action and to formulate the Red Cross and Red Crescent partners' response to public interest;
- g) to mobilize financial resources for the relief operation and to launch appeals integrating when necessary other directly or indirectly related Red Cross and Red Crescent activities.
- h) to ensure that the resources mobilized for an international relief operation are managed in a sound and efficient manner by the operating and the participating National Societies;
- i) to promote, by means of project delegations, bilateral or multilateral cooperation agreements between participating and operating National Societies;

### 6.1.2 Specific Responsibilities

A) In situations where the ICRC is acting as lead agency:

- a) to establish and maintain relations and contacts with all the parties to the conflict and take any steps necessary for the conduct of international relief operations for victims, in

accordance with the relevant provisions of international humanitarian law and in compliance with the Fundamental Principles of independence, neutrality and impartiality;

b) to assume ultimate responsibility for international relief operations vis-à-vis the parties to the conflict and the community of States party to the Geneva Conventions;

c) to define and ensure the application of any measure which may prove necessary to guarantee, to the greatest extent possible, the physical safety of personnel engaged in relief operations in the field;

d) to ensure respect for the rules in force relating to the use of the red cross and red crescent emblems for protective purposes;

e) to draw up, in consultation with the National Societies concerned, public statements relating to the progress of the relief operation.

B) In situations where the Federation is acting as lead agency:

a) to ensure that the participating and the operating National Societies comply with the Principles and Rules for Red Cross and Red Crescent Disaster Relief (1995) and the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief* (1995);

b) to offer the National Societies rapid information on disasters in order to permit mobilization and coordination of all possible forms of relief;

c) to promote, beyond the emergency phase, the establishment and the development of rehabilitation and reconstruction programmes, and to mobilize for this purpose the support of National Societies of other countries;

d) to decide, in agreement with the National Society of the country concerned, and after consultation of the donor Societies, on the use of any goods or funds that remain available at the end of an international relief operation.

## 6.2 *Coordination of an International Relief Operation by a National Society within its own Territory*

### 6.2.1 Taking into account:

— the nature of the situation and the resulting constraints imposed upon the implementation of the operation;

— the scope of the needs to be met;

— the logistic means to be deployed;

— the preparedness and capacity of the National Society to undertake efficiently the action required in conformity with the Fundamental Principles, a National Society may act as a lead agency in the sense of undertaking the coordination of an international relief operation within its own territory, subject to the concurrence of, and on the basis of general objectives defined by the ICRC or the Federation, as the case may be.

6.2.2 In this context, this function of coordination by a National Society within its own territory implies primarily the following responsibilities:

- a) to direct the implementation of the general objectives defined for the international relief operation;
- b) to direct the work of personnel made available by participating National Societies placed under the authority of the operating National Society for the purpose of the operation;
- c) to coordinate the relief operation with the humanitarian activities of other organizations (governmental or nongovernmental) having a representation and being active locally when this is in the interest of the victims and in accordance with the Fundamental Principles;
- d) to act as a spokesman for the international relief operation to respond to public interest;
- e) to ensure respect for the rules in force relating to the use of red cross and red crescent emblems;
- f) to ensure that the action is carried out and conducted in accordance with the Principles and Rules for Red Cross and Red Crescent Disaster Relief (1995) and the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (1995)*;
- g) to ensure that the financial and material resources made available for the purpose of the relief operation through the ICRC and/or the Federation, as the case may be, are managed in a sound and efficient manner;
- h) to provide required and appropriate information to the Federation or the ICRC, as the case may be, on the progress of the relief operation in order to enable them to report to donors having responded to international appeals launched to mobilize the necessary financial resources to meet the general objectives set out.

**Part III**  
**STRENGTHENING OF THE MOVEMENT:**  
**DEVELOPMENT AND FUNCTIONAL COOPERATION**

All components shall strive to assist each other to realize their full potential and adopt a policy of constructive complementarity in elaborating a comprehensive development approach.

**Article 7: Development of National Societies**

7.1 A National Society is primarily responsible for its own development.

7.1.1 National Societies shall contribute as far as their means permit to the development of other National Societies requiring such assistance, by means of bilateral or multilateral development agreements.

7.1.2 Such agreements shall take account of the relevant policies and strategies adopted by the Federation's General Assembly.

7.2 The Federation has the lead role with regard to development activities and to the coordination of international development support to National Societies. The ICRC provides support in matters falling within its statutory core competencies.

7.2.1 The specific tasks of the Federation in development activities include:

- a) formulating and reviewing development policies on behalf of the Movement in consultation with the other components;
- b) assisting National Societies to draw up development plans and project proposals;
- c) providing standards and guidelines for programme design and planning;
- d) setting criteria for mobilization and allocation of resources for development.

7.2.2 The ICRC shall contribute to the development of the National Societies in the following matters, in coordination with the Federation:

- a) technical and legal assistance in establishing and reconstituting National Societies;
- b) support of the National Societies' programmes for disseminating knowledge of international humanitarian law and the Fundamental Principles;
- c) involvement of the National Societies in measures taken to promote international humanitarian law and ensure its implementation;
- d) preparation of the National Societies for their activities in the event of conflict;

e) contribution to the training of National Society personnel in fields related to its mandate.

7.2.3 In armed conflict situations, internal strife and their direct results, the Federation may continue to assist the National Society of the country concerned in its further development, taking into account that in such situations, where the ICRC is acting as lead agency as provided for in Article 5.3, the ICRC has the responsibility to coordinate and direct the relief operations in favour of the victims.

7.2.4 In armed conflict situations, internal strife and their direct results, the ICRC may expand its cooperation with the operating National Society concerned in order to strengthen its operational capacity. In such cases, the ICRC shall coordinate with the plans of the National Society concerned and the Federation in this regard.

7.2.5 Whenever it appears to either institution that a National Society has become unable to protect its integrity and to act in accordance with the Fundamental Principles, the ICRC and the Federation shall consult each other on the advisability of taking action, either jointly or separately. In the latter case, the two institutions shall keep each other informed of any action taken and of subsequent results.

#### **Article 8: Functional Cooperation between the Components of the Movement**

8.1 The coherence of the action of the components of the Movement depends on cooperation and coordination among them in undertaking emergency actions in general or specific cases, as well as in all other areas of activity.

8.2 Functional cooperation between the ICRC, the National Societies and the Federation applies in particular to the following areas of international activities:

- a) establishment and recognition of National Societies and protection of their integrity;
- b) use and respect of the red cross and red crescent emblems;
- c) human resources development, training and preparation of personnel for international relief operations;
- d) cooperation at delegation level;
- e) relations with international institutions, non-governmental organizations and other actors on the international scene;
- f) coordination of international fundraising.

8.3 The principles outlined in Articles 3 and 4 of this Agreement may serve as a frame of reference for more detailed bilateral agreements on an *ad hoc* basis, that the ICRC and

the Federation may wish to conclude for organizing their cooperation in specific areas at the institutional or regional levels.

8.4 The process of development of functional cooperation among the components, and the opportunities for its evolution in response to changes in the external environment can only be enhanced by continuous dialogue and regular consultation between those responsible for international activities within the ICRC and the Federation and with National Societies with a view to analyzing and anticipating needs. The initiative in respect of each specific area might best be taken by the organization having the lead role in that area.

## **Article 9: Communication, Fundamental Principles and International Humanitarian Law**

### *9.1 Public Relations and Information*

9.1.1 In their public relations, the ICRC, the Federation and National Societies, while performing their respective functions and thereby informing the public of their respective roles within the Movement, shall harmonize their activities so as to present a common image of the Movement and contribute to a greater understanding of the Movement by the public.

9.1.2 In order to ensure maximum efficiency in advocating humanitarian principles, according to the policies promulgated to that effect by the Council of Delegates, the components of the Movement shall cooperate in coordinating campaigns and developing communication tools. Whenever necessary, they may set up mechanisms to that effect, taking into account the lead roles of the different components.

### 9.2 Fundamental Principles

9.2.1 All components of the Movement shall ensure that the Fundamental Principles are respected by the Movement's components and statutory bodies.

9.2.2 The ICRC has the lead role in the maintenance and dissemination of the Fundamental Principles. The Federation and the ICRC shall collaborate in the dissemination of those Principles among the National Societies. National Societies have a key role to play in upholding and disseminating the Fundamental Principles within their own country.

### 9.3 International Humanitarian Law

9.3.1 The ICRC has the lead role for promoting, developing and disseminating international humanitarian law (IHL). The Federation shall assist the ICRC in the promotion and development of IHL and collaborate with it in the dissemination of IHL among the National Societies.

9.3.2 National Societies shall disseminate, and assist their governments in disseminating IHL. They shall also cooperate with their governments to ensure respect for IHL and to protect the red cross and red crescent emblems.

## **Part IV IMPLEMENTATION AND FINAL PROVISIONS**

### **Article 10: Implementation**

10.1 All components of the Movement undertake to respect and implement the present Agreement on the organization of their international activities, in accordance with Article 7 of the Statutes of the Movement.

10.2 Each component — the Federation, the ICRC, and National Societies — is individually responsible for the implementation of the provisions of this Agreement, and shall instruct its volunteers and staff accordingly.

10.3 Beyond their individual responsibility to implement the provisions of this Agreement, the ICRC and the Federation, because of their directing and coordinating roles, have a special responsibility to ensure that the Agreement be fully respected and implemented by the Movement as a whole.

10.4 As the institutions most often called on to act as lead agency in international activities, the ICRC and the Federation have a need to:

— share information on global operational activities of common interest;

— discuss possible difficulties which may hamper smooth cooperation between the components.

It is for these institutions to agree between themselves what arrangements are best suited to meet this need.

10.5 The Standing Commission, by virtue of the role conferred upon it by Article 18 of the Statutes of the Movement, shall call annually for a report on the implementation of the Agreement from the ICRC and the Federation, which will be transmitted to all National Societies as part of a consultative process.

10.6 The Standing Commission shall include an item on the Agreement on the agenda of each Council of Delegates, thus establishing a process of regular review of the Agreement.

10.7 If differences arise between the components concerning the implementation of the Agreement and if these cannot be otherwise resolved, the Standing Commission may establish an ad hoc independent body, as and when required, to arbitrate, with the

agreement of the Parties, differences between the components of the Movement where conciliation and mediation have failed.

**Article 11: Final Provisions**

The present Agreement replaces the 1989 Agreement between the ICRC and the League of Red Cross and Red Crescent Societies (International Federation). It was adopted by consensus, in Resolution 6 of the Council of Delegates in Seville, Spain, on 26 November 1997.



## **Appendix VIII**

### **Resolution 6**

#### **Council of Delegates, 2003**

**(Paragraphs 3, 4, 5 are most pertinent)**

- 3) "...takes note of the concept outlined in the conclusions of the study concerning the "Characteristics of a balanced relationship between States and National Societies" and invites National Societies to initiate discussions internally and with their government with a view to further developing the "characteristics" and strengthening government understanding of the value of the auxiliary character of National Societies and the importance of a balanced relationship."
- 4) Invites the International Federation in cooperation with the ICRC to press ahead with its work on this subject, including through further consultation with National Societies, States and International Organizations.
- 5) Invites the Federation to keep National Societies regularly informed of progress made in this regard to provide updated and more specific guidance for consideration by the Council of Delegates in 2005 and the International Conference in 2007."



## Appendix IX

**Protocol additional  
to the Geneva Conventions of 12 August 1949,  
and relating to the Adoption  
of an Additional Distinctive Emblem  
(Protocol III)  
Geneva, 8 December 2005**

### *Preamble*

*The High Contracting Parties,*

(PP1) *Reaffirming* the provisions of the Geneva Conventions of 12 August 1949 (in particular Articles 26, 38, 42 and 44 of the First Geneva Convention) and, where applicable, their Additional Protocols of 8 June 1977 (in particular Articles 18 and 38 of Additional Protocol I and Article 12 of Additional Protocol II), concerning the use of distinctive emblems,

(PP2) *Desiring* to supplement the aforementioned provisions so as to enhance their protective value and universal character,

(PP3) *Noting* that this Protocol is without prejudice to the recognized right of High Contracting Parties to continue to use the emblems they are using in conformity with their obligations under the Geneva Conventions and, where applicable, the Protocols additional thereto,

(PP4) *Recalling* that the obligation to respect persons and objects protected by the Geneva Conventions and the Protocols additional thereto derives from their protected status under international law and is not dependent on use of the distinctive emblems, signs or signals,

(PP5) *Stressing* that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance,

(PP6) *Emphasizing* the importance of ensuring full respect for the obligations relating to the distinctive emblems recognized in the Geneva Conventions, and, where applicable, the Protocols additional thereto,

(PP7) *Recalling* that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems,

(PP8) *Recalling further* that National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use within the framework of such activities may be used in the country where the activity takes place and in the country or countries of transit,

(PP9) *Recognizing* the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems,

(PP10) *Noting* the determination of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems,

*Have agreed on the following:*

***Article 1 - Respect for and scope of application of this Protocol***

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.
2. This Protocol reaffirms and supplements the provisions of the four Geneva Conventions of 12 August 1949 (“the Geneva Conventions”) and, where applicable, of their two Additional Protocols of 8 June 1977 (“the 1977 Additional Protocols”) relating to the distinctive emblems, namely the red cross, the red crescent and the red lion and sun, and shall apply in the same situations as those referred to in these provisions.

***Article 2 - Distinctive emblems***

1. This Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. The distinctive emblems shall enjoy equal status.
2. This additional distinctive emblem, composed of a red frame in the shape of a square on edge on a white ground, shall conform to the illustration in the Annex to this Protocol. This distinctive emblem is referred to in this Protocol as the “third Protocol emblem”.
3. The conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblems established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols.
4. The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection.

***Article 3 - Indicative use of the third Protocol emblem***

1. National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes:
  - a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems; or
  - b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol.Incorporation shall conform to the illustration in the Annex to this Protocol.
2. A National Society which chooses to incorporate within the third Protocol emblem another emblem in accordance with paragraph 1 above, may, in conformity with national legislation, use the designation of that emblem and display it within its national territory.
3. National Societies may, in accordance with national legislation and in exceptional circumstances and to facilitate their work, make temporary use of the distinctive emblem referred to in Article 2 of this Protocol.



***Article 11 - Entry into force***

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.
2. For each Party to the Geneva Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

***Article 12 - Treaty relations upon entry into force of this Protocol***

1. When the Parties to the Geneva Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.
2. When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.

***Article 13 - Amendment***

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, whether a conference should be convened to consider the proposed amendment.
2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol.

***Article 14 - Denunciation***

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in a situation of armed conflict or occupation, the denunciation shall not take effect before the end of the armed conflict or occupation.
2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.
3. The denunciation shall have effect only in respect of the denouncing Party.
4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict or occupation, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

***Article 15 - Notifications***

- The depositary shall inform the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol, of:
- a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 8, 9 and 10;
  - b) the date of entry into force of this Protocol under Article 11 within ten days of said entry into force;
  - c) communications received under Article 13;
  - d) denunciations under Article 14.

**Article 16 - Registration**

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

**Article 17 - Authentic texts**

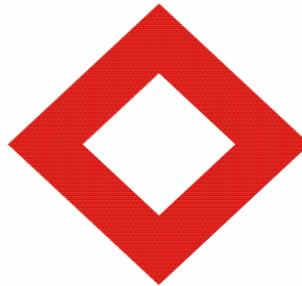
The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Geneva Conventions.

**ANNEX**

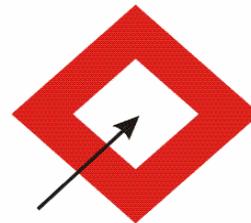
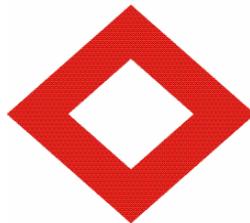
**THIRD PROTOCOL EMBLEM**

(Article 2, paragraph 2 and Article 3, paragraph 1 of the Protocol)

*Article 1 - Distinctive emblem*



*Article 2 - Indicative use of the third Protocol emblem*



Incorporation in  
accordance with Art. 3



## Appendix X

### 29th International Conference of the Red Cross and Red Crescent, Geneva, 20 to 21 June 2006, Resolution 1

The 29th International Conference of the Red Cross and Red Crescent,

*noting* the report of the Standing Commission of the Red Cross and Red Crescent on the follow up to resolution 3 of the 28th International Conference,

*taking account* of the Third Protocol Additional to the Geneva Conventions adopted on 8 December 2005 in Geneva, and of the Final Act of the Diplomatic Conference on the emblem,

*acknowledging* that the Memorandum of Understanding signed on 28 November 2005 and referred to in paragraph 15 of the Final Act of the Diplomatic Conference was concluded in an effort to facilitate the adoption of the Third Protocol and to pave the way for the membership of both signatory societies in the International Red Cross and Red Crescent Movement,

*considering* the unique and special situation of the Palestine Red Crescent Society,

*emphasizing* that the recognition and admission of the Palestinian Red Crescent Society do not under any circumstances create a precedent for any other entity or territory,

*guided* by the Fundamental Principles of the Red Cross and Red Crescent, in particular the Principle of Universality,

1. *adopts* the draft amendments to the Statutes of the International Red Cross and Red Crescent Movement annexed hereto;
2. *decides* that the Third Protocol emblem will henceforth be designated as the «red crystal»,
3. *requests* the International Committee of the Red Cross to recognize the Palestine Red Crescent Society, and *requests* the International Federation of Red Cross and Red Crescent Societies to admit this Society as a member.



## **Appendix XI**

### **First Geneva Convention, August 12, 1949**

#### **Articles 38 – 44**

#### **Articles 53 and 54**

### **Chapter VII. The Distinctive Emblem**

#### **Article 38**

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.

#### **Article 39**

Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

#### **Article 40**

The personnel designated in Article 24 and in Articles 26 and 27 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to wearing the identity disc mentioned in Article 16, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

#### **Article 41**

The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign in miniature; the armlet shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet.

#### **Article 42**

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities. In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention. Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action.

#### **Article 43**

The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may on all occasions fly their national flag, even if they fall into the hands of the adverse Party.

#### **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 rational legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the

principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

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.

## **Chapter IX. Repression of Abuses and Infractions**

### **Article 53**

The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation “Red Cross “ or “ Geneva Cross “ or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of 27 July 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38.

#### **Article 54**

The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

## APPENDIX XII

### Excerpts from the Trade-Marks Act

#### UNFAIR COMPETITION AND PROHIBITED MARKS

##### Prohibited Marks

9. (1) No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for,
- (a) the Royal Arms, Crest or Standard;
  - (b) the arms or crest of any member of the Royal Family;
  - (c) the standard, arms or crest of His Excellency the Governor General;
  - (d) any word or symbol likely to lead to the belief that the wares or services in association with which it is used have received, or are produced, sold or performed under, royal, vice-regal or governmental patronage, approval or authority;
  - (e) the arms, crest or flag adopted and used at any time by Canada or by any province or municipal corporation in Canada in respect of which the Registrar has, at the request of the Government of Canada or of the province or municipal corporation concerned, given public notice of its adoption and use;
  - (f) the emblem of the Red Cross on a white ground, formed by reversing the federal colours of Switzerland and retained by the Geneva Convention for the Protection of War Victims of 1949 as the emblem and distinctive sign of the Medical Service of armed forces and used by the Canadian Red Cross Society, or the expression “Red Cross” or “Geneva Cross”;**
  - (g) the emblem of the Red Crescent on a white ground adopted for the same purpose as specified in paragraph (f) by a number of Moslem countries;**
  - (h) the equivalent sign of the Red Lion and Sun used by Iran for the same purpose as specified in paragraph (f);**
  - (h.1) the international distinctive sign of civil defence (equilateral blue triangle on an orange ground) referred to in Article 66, paragraph 4 of Schedule V to the Geneva Conventions Act;**
  - (i) any territorial or civic flag or any national, territorial or civic arms, crest or emblem, of a country of the Union, if the flag, arms, crest or emblem is on a list communicated under article 6ter of the Convention or pursuant to the obligations under the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement stemming from that article, and the Registrar gives public notice of the communication;
  - (i.1) any official sign or hallmark indicating control or warranty adopted by a country of the Union, if the sign or hallmark is on a list communicated under article 6ter of the Convention or pursuant to the obligations under the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement stemming from that article, and the Registrar gives public notice of the communication;
  - (i.2) any national flag of a country of the Union;
  - (i.3) any armorial bearing, flag or other emblem, or any abbreviation of the name, of an international intergovernmental organization, if the armorial bearing, flag, emblem or

abbreviation is on a list communicated under article 6ter of the Convention or pursuant to the obligations under the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement stemming from that article, and the Registrar gives public notice of the communication;

(j) any scandalous, obscene or immoral word or device;

(k) any matter that may falsely suggest a connection with any living individual;

(l) the portrait or signature of any individual who is living or has died within the preceding thirty years;

(m) the words “United Nations” or the official seal or emblem of the United Nations;

(n) any badge, crest, emblem or mark

(i) adopted or used by any of Her Majesty’s Forces as defined in the National Defence Act,

(ii) of any university, or

(iii) adopted and used by any public authority, in Canada as an official mark for wares or services,

in respect of which the Registrar has, at the request of Her Majesty or of the university or public authority, as the case may be, given public notice of its adoption and use;

(n.1) any armorial bearings granted, recorded or approved for use by a recipient pursuant to the prerogative powers of Her Majesty as exercised by the Governor General in respect of the granting of armorial bearings, if the Registrar has, at the request of the Governor General, given public notice of the grant, recording or approval; or

(o) the name “Royal Canadian Mounted Police” or “R.C.M.P.” or any other combination of letters relating to the Royal Canadian Mounted Police, or any pictorial representation of a uniformed member thereof.

## APPENDIX XIII

### Draft Model Law – Emblem Protection

#### GENERAL RULES

##### ARTICLE 1

###### Scope of protection

Having regard to:

- the Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 [1], including Annex I to Additional Protocol I as regards the rules on identification of medical units and transports; [2]

- the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, as adopted by the 20th International Conference of the Red Cross and Red Crescent, and subsequent amendments; [3]

- the law (decree, or other instrument) of ... (date) recognizing the Red Cross (Red Crescent) of ....., [4]

the following are protected by the present law:

- the emblem of the red cross or red crescent on a white ground; [5]

- the designation “Red Cross” or “Red Crescent”; [6]

- the distinctive signals for identifying medical units and transports.

##### ARTICLE 2

###### Protective use and indicative use

In time of armed conflict, the emblem used as a protective device is the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on medical personnel and medical units and transports. The dimensions of the emblem shall therefore be as large as possible.

The emblem used as an indicative device shows that a person or an object is linked to a Red Cross or Red Crescent institution. The emblem shall be of a small size.

## II. RULES ON THE USE OF THE EMBLEM

### A. Protective use of the emblem [7]

#### ARTICLE 3

##### Use by the Medical Service of the armed forces

Under the control of the Ministry of Defence, the Medical Service of the armed forces of ... (name of the State) shall, both in peacetime and in time of armed conflict, use the emblem of the red cross (red crescent) [8] to mark its medical personnel, medical units and transports on the ground, at sea and in the air.

Medical personnel shall wear armlets and carry identity cards displaying the emblem. These armlets and identity cards shall be issued by ... (Ministry of Defence). [9]

Religious personnel attached to the armed forces shall be afforded the same protection as medical personnel and shall be identified in the same way.

#### ARTICLE 4

##### Use by hospitals and other civilian medical units

With the express authorization of the Ministry of Health [10] and under its control, civilian medical personnel, hospitals and other civilian medical units, as well as civilian medical transports, assigned in particular to the transport and treatment of the wounded, sick and shipwrecked, shall be marked by the emblem, used as a protective device, in time of armed conflict. [11]

Civilian medical personnel shall wear armlets and carry identity cards displaying the emblem. These armlets and identity cards shall be issued by ... (Ministry of Health). [12]

Civilian religious personnel attached to hospitals and other medical units shall be identified in the same way.

#### ARTICLE 5

##### Use by the Red Cross (Red Crescent) of ... [13]

The Red Cross (Red Crescent) of ... is authorized to place medical personnel and medical units and transports at the disposal of the Medical Service of the armed forces. Such personnel, units and transports shall be subject to military laws and regulations and may be authorized by the Ministry of Defence to display the emblem of the red cross (red crescent) [14] as a protective device.

Such personnel shall wear armlets and carry identity cards, in accordance with Article 3, para. 2, of the present law.

The National Society may be authorized to use the emblem as a protective device for its medical personnel and medical units in accordance with Article 4 of the present law.

B. Indicative use of the emblem [15]

#### ARTICLE 6

Use by the Red Cross (Red Crescent) of ...

The Red Cross (Red Crescent) of ... is authorized to use the emblem as an indicative device in order to show that a person or an object is linked to the National Society. The dimensions of the emblem shall be small, so as to avoid any confusion with the emblem employed as a protective device. [16]

The Red Cross (Red Crescent) of ... shall apply the “Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies”. [17]

National Red Cross or Red Crescent Societies of other countries, present on the territory of ... (name of the State) with the consent of the Red Cross (Red Crescent) of ..., shall use the emblem under the same conditions.

C. International Red Cross and Red Crescent organizations

#### ARTICLE 7

Use by the international organizations of the International Red Cross and Red Crescent Movement

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies may make use of the emblem at any time and for all their activities. [18]

### III. CONTROL AND PENALTIES

#### ARTICLE 8

Control measures

The authorities of ... (name of the State) shall at all times ensure strict compliance with the rules governing the use of the emblem of the red cross or red crescent, the name “Red Cross” or “Red Crescent” and the distinctive signals. They shall exercise strict control over the persons authorized to use the said emblem, name and signals. [19]

They shall take every appropriate step to prevent misuse, in particular by disseminating the rules in question as widely as possible among the armed forces [20], the police forces, the authorities and the civilian population. [21]

## ARTICLE 9

Role of the Red Cross (Red Crescent) of ...

The Red Cross (Red Crescent) of ... shall cooperate with the authorities in their efforts to prevent and repress any misuse [22]. It shall be entitled to inform ... (competent authority) of such misuse and to participate in the relevant criminal, civil or administrative proceedings.

## ARTICLE 10

Misuse of the emblem [23]

Anyone who, wilfully and without entitlement, has made use of the emblem of the red cross or red crescent, the words "Red Cross" or "Red Crescent", a distinctive signal or any other sign, designation or signal which constitutes an imitation thereof or which might lead to confusion, irrespective of the aim of such use;

anyone who, in particular, has displayed the said emblem or words on signs, posters, announcements, leaflets or commercial documents, or has affixed them to goods or packaging, or has sold, offered for sale or placed in circulation goods thus marked;

shall be punished by imprisonment for a period of ... (days or months) and/or by payment of a fine of ... (amount in local currency). [24]

If the offence is committed in the management of a corporate body (commercial firm, association, etc.), the punishment shall apply to the persons who committed the offence or ordered the offence to be committed.

## ARTICLE 11

Misuse of the emblem used as protective device in wartime [25]

Anyone who has wilfully committed, or has given the order to commit, acts resulting in the death of, or causing serious injury to the body or health of an adversary by making perfidious use of the red cross or red crescent emblem or a distinctive signal, has committed a war crime and shall be punished by imprisonment for a period of ... years. [26]

Perfidious use means appealing to the good faith of the adversary, with the intention to deceive him and make him believe that he was entitled to receive or was obliged to confer the protection provided for by the rules of international humanitarian law.

Anyone who, wilfully and without entitlement, has used the red cross or red crescent emblem or a distinctive signal, or any other sign or signal which constitutes an imitation thereof or which might lead to confusion, shall be punished by imprisonment for a period of ... (months or years).

#### ARTICLE 12

##### Misuse of the white cross on a red ground

Owing to the confusion which may arise between the arms of Switzerland and the emblem of the red cross, the use of the white cross on a red ground or of any other sign constituting an imitation thereof, whether as a trademark or commercial mark or as a component of such marks, or for a purpose contrary to fair trade, or in circumstances likely to wound Swiss national sentiment, is likewise prohibited at all times; offenders shall be punished by payment of a fine of ... (amount in local currency).

#### ARTICLE 13

##### Interim measures

The authorities of ... (name of the State) [27] shall take the necessary interim measures. They may in particular order the seizure of objects and material marked in violation of the present law, demand the removal of the emblem of the red cross or red crescent and of the words "Red Cross" or "Red Crescent" at the cost of the instigator of the offence, and order the destruction of the instruments used for their reproduction.

#### ARTICLE 14

##### Registration of associations, trade names and trademarks

The registration of associations and trade names, and the filing of trademarks, commercial marks and industrial models and designs making use of the emblem of the red cross or red crescent or the designation "Red Cross" or "Red Crescent" in violation of the present law shall be refused.

#### IV. APPLICATION AND ENTRY INTO FORCE

#### ARTICLE 15

##### Application of the present law

The ... (Ministry of Defence, Ministry of Health) is responsible for the application of the present law. [28]

## ARTICLE 16

### Entry into force

The present law shall enter into force on ... (date of promulgation, etc.).

### Notes :

1. To make it easier to find these treaties, it is advisable to indicate their precise location in the official compendium of laws and treaties. Their text is also reproduced in the Treaty Series of the United Nations: Vol. 75 (1950), pp. 31-417, and Vol. 1125 (1979), pp. 3-699.
2. This Annex was revised on 30 November 1993 and its amended version came into force on 1 March 1994. It was reproduced in the IRRC, No. 298, January-February 1994, pp. 29-41.
3. The current Regulations were adopted by the 20th International Conference of the Red Cross in 1965 and revised by the Council of Delegates in 1991, then submitted to the States party to the Geneva Conventions before coming into force on 31 July 1992. The Regulations are reproduced in the IRRC, No. 289, July-August 1992, pp. 339-362.
4. As a voluntary relief society, auxiliary to the public authorities in the humanitarian sphere. Wherever the present law refers to the “Red Cross (Red Crescent) of ...”, “Red Cross of ...” or “Red Crescent of ...” should be specified. The official name as it appears in the law or instrument of recognition should be used.
5. It is important that national legislation in all cases protect both the emblem of the red cross and that of the red crescent, as well as the names “Red Cross” and “Red Crescent”.
6. When reference is made to the emblem, the term “red cross” or “red crescent” is generally in lower case while the designation “Red Cross” or “Red Crescent” with initial capitals is reserved for Red Cross or Red Crescent institutions. This rule helps to avoid confusion.
7. In order to confer optimum protection, the dimensions of the emblem used to mark medical units and transports shall be as large as possible. The distinctive signals provided for in Annex I to Protocol I shall also be used.
8. The emblem to be used should be indicated here.
9. Pursuant to Article 40 of the First Geneva Convention, armlets are to be worn on the left arm and shall be water-resistant the identity card shall bear the holder’s photograph. States can model the identity card on the example attached to this Convention. The authority within the Ministry of Defence which is to issue armlets and identity cards must be clearly specified.

10. It is very important to indicate clearly the authority which is competent to grant such authorization and monitor the use of the emblem. This authority shall work together with the Ministry of Defence, which may, if necessary, give advice and assistance.

11. See Articles 18 to 22 of the Fourth Geneva Convention, and Articles 8 and 18 of Protocol I. Article 8 in particular defines the expressions “medical personnel”, “medical units” and “medical transports”. Hospitals and other civilian medical units should be marked by the emblem only during times of armed conflict. Marking them in peacetime risks causing confusion with property belonging to the National Society.

12. As regards armbands and identity cards for civilian medical personnel, Article 20 of the Fourth Geneva Convention and Article 18, para. 3, of Protocol I provide for their use in occupied territory and in areas where fighting is taking place or is likely to take place. It is, however, recommended that armbands and identity cards be widely distributed during times of armed conflict. A model of an identity card for civilian medical and religious personnel is given in Annex I to Protocol I. The authority which is to issue the armbands and identity cards should be specified (for example a Department of the Ministry of Health).

13. Pursuant to Article 27 of the First Geneva Convention, a National Society of a neutral country may also place its medical personnel and medical units and transports at the disposal of the Medical Service of the armed forces of a State which is party to an armed conflict.

Articles 26 and 27 of the First Geneva Convention also provide for the possibility that other voluntary aid societies recognized by the authorities may be permitted, in time of war, to place medical personnel and medical units and transports at the disposal of the Medical Service of the armed forces of their country or of a State which is party to an armed conflict. Like the personnel of National Societies, such personnel shall then be subject to military laws and regulations and shall be assigned exclusively to medical tasks. These aid societies may be authorized to display the emblem. Such cases are rare, however. If such an authorization has been granted, or is to be granted, it might be useful to mention this in the present law.

Furthermore, Article 9, para. 2, subpara. c), of Protocol I provides for the possibility of an impartial international humanitarian organization placing medical personnel and medical units and transports at the disposal of a State which is party to an international armed conflict. Such personnel shall then be placed under the control of this Party to the conflict and subject to the same conditions as National Societies and other voluntary aid societies. They shall in particular be subject to military laws and regulations.

14. I.e., always the same emblem as that used by the Medical Service of the armed forces (see Article 26 of the First Geneva Convention). With the consent of the competent authority, the National Society may, in time of peace, use the emblem to mark units and transports whose assignment to medical purposes in the event of armed conflict has already been decided (Article 13 of the Regulations on the Use of the Emblem).

15. Pursuant to Article 44, para. 4, of the First Geneva Convention, the emblem may be used, as an exceptional measure and in peacetime only, as an indicative device for marking vehicles, used as ambulances by third parties (not forming part of the International Red Cross and Red Crescent Movement), and aid stations exclusively assigned to the purpose of giving treatment free of charge to the wounded or sick. Express consent for displaying the emblem must, however, be given by the National Society, which shall control the use thereof. Such use is not recommended, however, because it increases the risk of confusion and might lead to misuse. The term “aid station” by analogy also covers boxes and kits containing first-aid supplies and used, for example, in shops or factories.

The United Nations Convention of 8 November 1968 on road signs and signals provides for road signs displaying the emblem to mark hospitals and first-aid stations. As these signs are not in conformity with the rules on the use of the emblem, it is advised to employ alternative signs, for example the letter “H” on a blue ground to indicate hospitals.

16. The emblem may not, for example, be placed on an armet or the roof of a building. In peacetime, and as an exceptional measure, the emblem may be of large dimensions, in particular during events where it is important for the National Society’s first-aid workers to be identified quickly.

17. These Regulations enable the National Society to give consent, in a highly restrictive manner, for third parties to use the name of the Red Cross or the Red Crescent and the emblem within the context of its fundraising activities (Article 23, “sponsorship”).

18. Article 44, para. 3, of the First Geneva Convention.

19. It is recommended that responsibilities be clearly set down, either in the present law or in an implementing regulation or decree.

20. Within the context of the dissemination of international humanitarian law.

21. In particular among members of the medical and paramedical professions, and among non-governmental organizations, which must be encouraged to use other distinctive signs.

22. The National Societies have a very important role to play in this regard. The Statutes of the International Red Cross and Red Crescent Movement stipulate expressly that the National Societies shall “also cooperate with their government to ensure respect for international humanitarian law and to protect the red cross and red crescent emblems” (Article 3, para. 2).

23. This type of misuse should be repressed both in peacetime and in time of armed conflict. Even though violations of the emblem used as an indicative device are less serious than those described in Article 11 below, they must be taken seriously and

rigorously repressed. Indeed, the emblem will be better respected during an armed conflict if it has been protected effectively in peacetime. Such effectiveness derives in particular from the severity of any penalties imposed. Consequently, it is recommended that the punishment imposed should be imprisonment and/or a heavy fine, likely to serve as a deterrent.

24. In order to maintain the deterrent effect of the fine, it is essential to review the amounts periodically so as to take account of the depreciation of the local currency. This remark also applies to Articles 11 and 12. It could therefore be considered whether it might not be appropriate to set the amounts of the fines by means other than the present law, for example in an implementing regulation. A National Committee for the implementation of international humanitarian law could then review the amounts as required.

25. This is the most serious type of misuse, for in this case the emblem is of large dimensions and is employed for its primary purpose, which is to protect persons and objects in time of war. This Article should be brought into line with penal legislation (for example the Military Penal Code), which generally provides for the prosecution of violations of international humanitarian law, and in particular the Geneva Conventions and their Additional Protocols.

26. By virtue of Article 85, para. 3, subparagraph f), of Protocol I, perfidious use of the emblem is a grave breach of this Protocol and is regarded as a war crime (Article 85, para. 5). Such misuse is therefore particularly serious and must be subject to very severe penalties.

27. Indicate the competent authority (courts, administrative authorities, etc.).

28. It is particularly important to specify precisely which authority has ultimate responsibility for applying this law. Close cooperation between the Ministries directly concerned, generally the Ministries of Defence and Health, would be advisable. A National Committee for the implementation of international humanitarian law could play a useful role in this respect.