
**Croix-Rouge
et Croissant-Rouge**

**Red Cross
and Red Crescent**

The legal status of National Red Cross and Red Crescent Societies

by

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Many texts about the International Red Cross and Red Crescent Movement start with a reference to Henry Dunant, maybe because the author expects it to prompt his or her inspiration. If the subject of the text is the legal status of Red Cross and Red Crescent Societies, this reference is indeed fully justified. In his masterpiece *A Memory of Solferino*, Dunant put forward two proposals: he called for the inviolability of the armed forces' medical personnel to be guaranteed, and for the forma-

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tion of relief societies to bring care to wounded and sick soldiers in the field. The first proposal has been a landmark in the development of modern international humanitarian law, with the 1864 Geneva Convention and its successive versions, while the second proposal led to the creation of Red Cross Societies and, later on, Red Crescent Societies, also called “National Societies”. Dunant urged that such societies be constituted in advance, in peacetime, so that they could step in as soon as an armed conflict began.

Dunant’s proposals were discussed by the 1863 Geneva Conference, at which unofficial representatives from sixteen States and various interested persons met and adopted ten resolutions and four recommendations. The first resolution starts as follows:

“Each country shall have a Committee whose duty it shall be, in time of war and if the need arises, to assist the Army Medical Services by every means in its power.”¹

This single paragraph gave rise to one of the key concepts concerning National Societies today, namely that they shall be “auxiliary to the public authorities in the humanitarian field”. We shall see in the first part of this article how the concept was established and has evolved, as part of a broader context in which National Societies appear as national organizations endowed with rights and obligations on the basis of international humanitarian law or of resolutions adopted within the Movement.

Another resolution of the 1863 Conference laid down principles for the internal organization of those future societies and their mutual relations. In the latter regard, it was agreed that “[t]he exchange of communications between the Committees of the various countries shall be made for the time being through the intermediary of the Geneva Committee”. This task was to play a very important role in the history of the Geneva Committee – which became, in 1875, the International Committee of the Red Cross – because it was not, at that time, intended to have clear operational functions. As the said task proved to be neither temporary nor confined to the exchange of

¹ See the *Handbook of the International Red Cross and Red Crescent Movement*,

13th ed., Geneva, 1994, for the text of official documents.

communications, it grew more and more demanding, especially with the rapid emergence of new National Societies. In 1868, the ICRC started a practice which became systematic eight years later, namely to inform all existing Societies of the establishment of a new Society. Setting increasingly rigorous standards for compliance with the relevant concepts and the verification of facts, after 1885 the ICRC referred to this function as “recognition” of National Societies – a term still used today. Between 1869 and 1887 a long process took place, primarily through International Conferences of the Red Cross, in which the tasks of the ICRC in general and its function of recognition in particular were confirmed; since then they have been endorsed several times, notably with the adoption of successive versions of the Statutes of the Movement (1928, 1952 and 1986). Today, there are 176 National Societies recognized by the ICRC.² In the second part of this article we shall examine the meaning of recognition, its legal basis and its effects, especially for the Societies’ status as a component of the International Red Cross and Red Crescent Movement.

The third and last aspect of the legal status of National Societies concerns their relationship with the International Federation of Red Cross and Red Crescent Societies, which was founded in 1919 under the name League of Red Cross Societies. At that time it had only five members – and there are 176 today, namely all the recognized National Societies. This membership creates rights and obligations for member Societies, and thus has a bearing on their legal status.

National Societies as organizations regulated by international humanitarian law

The very close relationship between a National Society and its country’s government was already reflected in the third resolution of the 1863 Conference, requesting that “[e]ach Committee shall get in touch with the Government of its country, so that its services may be accepted should the occasion arise”. This should be viewed in the context of that time. The founders of the Red Cross did not consider that entities still to be created by private persons would

² At 30 June 2000.

be entitled to be present on the battlefield, even for humanitarian purposes. Indeed, military considerations would have debarred such an approach. Nor had they in mind to give certain societies a better status than others: all would be welcome to offer their services, but accepting them would remain the privilege of the government. This is still the case today, as laid down by the successive versions of the Geneva Conventions for the protection of war victims, for whereas the 1864 and 1906 Geneva Conventions do not deal with the status of National Societies, the Conventions of 1929 and 1949 do so.

The system established by Articles 24 and 26 of the First Geneva Convention of 1949³ is as follows: in time of armed conflict National Society personnel have to be respected and protected in all circumstances – and, more generally, enjoy the same status as the armed forces' medical services — provided that those personnel:

- are exclusively engaged in certain tasks, namely the search for or the collection, transport or treatment of the wounded or sick, the prevention of disease, or the administration of medical units and establishments;
- are subject to military laws and regulations (with consequences in terms of security, regulations, uniforms, etc.);
- are working for a society which is duly recognized and authorized by its government, this recognition and authorization having to be notified to the other States.

Apart from Red Cross and Red Crescent Societies, a few religious organizations and national branches of the Order of Malta, hardly any other organization has ever availed itself of this status; the result is a quasi-monopoly of the Red Cross. If other organizations were to do so, however, they would be entitled to use the emblem of the red cross or red crescent for activities covered by Article 24 of the First Convention. This use of the emblem would be confined to those activities only, but would also be admissible in peacetime.

³ Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949.

Clearly, this protective status initially applied only to the relevant personnel of parties to an international armed conflict, including those of relief Societies of third (neutral) countries, if authorized by the warring party concerned. This has definitely become problematic, since the number of non-international armed conflicts nowadays far exceeds the number of those between two or more States.

The 1977 Protocols additional to the Geneva Conventions have admittedly extended the protection afforded to personnel undertaking the traditional function of National Societies, especially through Article 8 of Protocol I (on international armed conflict).⁴ It may be argued that the new definitions therein also affect the law on non-international armed conflict, as those established by Protocol I may also apply to Protocol II.⁵ The new rules on the protection of medical units and the increased flexibility in the use of the protective emblem have indubitably enhanced the protection of Red Cross and Red Crescent personnel.

However, the scope of protection on this basis alone remains somewhat limited. The question therefore arises whether the system established by the First Geneva Convention of 1949, even with the subsequent improvements in the 1977 Additional Protocols, meets today's needs. It may also be wondered whether that system always allows the principles of independence and, in some cases, of neutrality and impartiality to be fully respected.⁶ During the First World War, National Societies often tended to participate more than necessary in the war effort and were caught up in a nationalistic momentum which was difficult to avoid.⁷ Seen with today's eyes, the nationalism which prevailed at that time among the leaders of certain National Societies is slightly frightening. It led to a reaction by the Movement, especially

⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

⁶ Fundamental Principles of the International Red Cross and Red Crescent Movement – see *Handbook*, *supra* (note 1).

⁷ See John Hutchinson, *Champions of Charity, War and the Rise of the Red Cross*, Westview Press, Boulder, 1996.

after the case of the Belgian Red Cross during the First World War, the autonomy of which was seriously threatened – foreshadowing a recurrent phenomenon during the Second World War. This reaction also focused the Movement's attention more clearly on the need for independence and how to protect it, and resulted in the adoption of Article 63 of the Fourth Geneva Convention⁸ as a means of maintaining the autonomy of a National Society in an occupied country.

Nationalism also prevented National Societies from becoming stronger at the international level – a trend which was acknowledged by the ICRC, in particular by its President Gustave Ador. On the other hand, Florence Nightingale was one of the few people to see that States would abdicate their responsibility to provide assistance to wounded soldiers if National Societies became too strong. Even though we may not agree today with the role some National Societies played before and during the Second World War, we should not forget the huge amount of humanitarian work that those Societies have accomplished.

The traditional conception of the role of National Societies still has consequences today, although their activities are much broader than relief to wounded and sick soldiers in the field and other conflict-related activities. Indeed, their range has steadily increased, despite the fact that many Red Cross leaders, especially in the ICRC, were opposed to National Societies taking action in fields – for instance in aid to prisoners of war and civilians – other than those originally assigned to them, not to mention peacetime work. Yet it is certainly this diversification of activities which enabled the Movement to survive. The image and operational capacity of most National Societies would otherwise probably have been eroded during a long period of peace.

Apart from the very specific protection referred to above, National Societies also benefit from other provisions of international humanitarian law and of course by those rules established to cover the

⁸ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

activities of any relief organization, especially in aid of civilians and prisoners of war. But because they are specifically mentioned by several texts, the position of National Societies is often stronger than that of other organizations. There has been a tendency since 1949 to create a wider legal basis for National Society activities. In this respect, the International Conferences of the Red Cross and Red Crescent have played an important role in the development of the law. Today all those provisions, together with conventions and other texts established by various United Nations bodies, represent a relatively detailed corpus of legally binding or possible future norms. It is conceivable that there will in future be attempts to codify the status of humanitarian organizations, including that of the National Societies, possibly on the basis of the 1994 United Nations Convention on the Safety of United Nations and Associated Personnel. Such a codification may, however, have dangerous results if sovereignty were to prevail over humanitarian considerations.

International humanitarian law also contains provisions on the peacetime activities of National Societies: the training of qualified staff; the exclusive use of the emblem for indicative purposes; and the right to authorize third parties to use the emblem, subject to certain specific conditions. A number of National Societies have been recognized by their respective government as auxiliary to the public authorities on the basis of their peacetime activities, including cases in which those activities had nothing to do with armed conflicts. After all, recognition of a National Society on the basis of the Movement's Statutes⁹ may be more appropriate than a narrow recognition on the basis of Article 26 of the First Convention. In any case, recognition has at least the advantage of determining which Society is the "real" one in a given country, and often serves to define a number of concessions it can have, for instance with regard to taxation and use of the emblem. But in terms of its broader implications it certainly raises the question of the modern meaning of "auxiliary to public authorities in

⁹ Statutes of the International Red Cross and Red Crescent Movement, October 1986.

the humanitarian field”, a question whose importance is underscored by the Plan of Action for the Years 2000–2003, adopted by the 27th International Conference of the Red Cross and Red Crescent (Geneva, 1999),¹⁰ and the Strategy 2010, adopted by the Federation’s General Assembly that same year.¹¹ A “restatement” of this concept seems necessary to allow the establishment of a new partnership between States and National Societies and clarification of their mutual relations. Redefining this partnership would be justified by the fact that National Societies are also components of the Movement.

National Societies as components of the International Red Cross and Red Crescent Movement

National Red Cross and Red Crescent Societies become components of the Movement as soon as they are recognized by the ICRC. There is no procedure defined by the Statutes of the Movement for “admitting” National Societies as “members”, simply because the Movement is not a membership organization. It should be noted that these Statutes do not foresee the possibility for a National Society to “resign” from the Movement.

The decision whether or not to grant recognition rests with the ICRC. Yet this does not mean that the International Committee has unlimited discretionary power. It is bound by criteria stipulated in Article 4 of the Statutes of the Movement, which reads as follows:

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

1. Be constituted on the territory of an independent State where the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field is in force.

¹⁰ *IRRC*, No. 836, December 1999, pp. 880–895.

¹¹ *Ibid.*, p. 929.

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

The first version of these conditions was established towards the end of the nineteenth century, first as an internal ICRC text which nevertheless became public. Although the date is not certain, it was formulated after the 1887 Red Cross Conference, which had confirmed that the recognition of National Societies was to be undertaken by the ICRC. So that States, National Societies and the League of Red Cross Societies would be bound by these conditions – and following political problems in the Second World War and controversies with the League, which wanted to set its own criteria – a revised text was submitted to the 1948 International Conference of the Red Cross, which adopted them. In 1986, they were slightly amended

and enshrined in the Statutes of the Movement.¹² Modification of the conditions is consequently more difficult than before, because any amendment of the Movement's Statutes is subject to compliance with certain procedural requirements.¹³

It is noticeable that the ten conditions for recognition have scarcely changed in over a century. In a short article it is not possible to review all the problems raised by them. However, a few remarks should be made:

a) It should be noted that a State recognizing a National Society must be party to the First Geneva Convention on the protection of wounded and sick in the field, and not necessarily to the other three 1949 Geneva Conventions. Moreover, it is enough to be party to the 1929 Convention (and not to the 1949 instrument). It is, by the way, significant that the Red Cross Societies of North and South Korea were recognized, in 1955 and 1956, on the basis of the 1864 Convention! To require a State to be party to all four 1949 Conventions could reinforce the value of recognition, but this would necessitate a modification of the Movement's Statutes.

b) Every condition is likely to raise very complex legal problems, even though the text of each one is very brief. For instance, thought may have to be given to the definition of an independent State, the case of National Societies in exile in relation to the requirement that they must "be constituted on the territory of a State" and questions related to the succession of States, especially in the context of the former Yugoslavia.

c) The risk of political problems must be considered in relation to the principle of neutrality with which the ICRC must comply. With regard to the question of statehood, the ICRC largely relies on the decision of the Swiss Federal Council, the depository of the Geneva Conventions, which has been very useful in protecting the ICRC on many such occasions. To mention only a few situations

¹² *Supra*, note 9.

¹³ At the time of drafting this article a procedure for changing the Statutes was under way, with a view to introducing a third emblem.

which gave rise to difficult decisions, there were cases as diverse as Danzig (where a National Society was recognized in 1922), the Congo (National Society recognized in 1889), Manchukuo, Kurdistan, the Turkish Republic of Northern Cyprus, the Provisional Revolutionary Government of the Republic of South Vietnam, Palestine, Somaliland, etc.

In some circumstances the ICRC has to assess those political risks – in particular any possible effects on its own activities – and act accordingly. In its Circular Letters to National Societies the ICRC has sometimes underscored the reality of the independence of States, as it did for the Red Cross Societies of the Baltic States, Slovenia and Croatia between 1991 and 1993. On other occasions, when there was no risk of political dispute, the ICRC has been quite flexible in interpreting the conditions for recognition, for instance in granting it to the Icelandic Red Cross in 1925 although Iceland was not yet independent, or later to National Societies of British dominions. In other cases, such as Trieste in 1947, it had to refuse recognition, as the situation between East and West at that time was much too sensitive. In the case of divided States, the ICRC has had to draft careful circular letters and eventually strike a balance between two political blocs by granting recognition, though not necessarily simultaneously, to both Societies. The opinion of the majority of States is definitely important, as was clear in the case of the Russian Red Cross in the twenties – and in which operational considerations also played a significant role. Time is a major factor as well. Thus National Societies in exile from Baltic States were not, in the long term, treated in the same manner as the Kuwait Red Crescent Society during Kuwait's occupation by Iraqi forces.

An official policy *vis-à-vis* National Societies of States occupied during armed conflicts was established by the ICRC in 1941 and confirmed by the International Conference of the Red Cross in 1948, though not put into practice. According to this policy, any request for recognition from a Society on the territory of a warring party would have been frozen until the end of hostilities. Obviously, this policy is easier to apply during a generalized conflict than to a conflict such as that in the former Yugoslavia. But in some cases, it has

at least enabled the ICRC to avoid being perceived as violating the principle of neutrality.

d) The ICRC shows flexibility in interpreting the conditions in many respects. For instance, governmental recognition may in fact come from parliament or from the head of State. Moreover, a National Society may be authorized to use the red crescent emblem although, according to the letter of the Geneva Conventions, it should use the red cross emblem because the State to which it belongs was not using the red crescent in 1949.

The extension of activities to the entire territory has also been flexibly interpreted by the ICRC: a number of Societies have been recognized although they were not active throughout the country, either for lack of operational capacity at the time of their recognition (e.g. Polish, Liberian or Bahamas Red Cross) or for reasons beyond their control, in particular when part of the country was occupied (e.g. Croatian Red Cross in 1993). What the ICRC would certainly not accept would be a Society's failure to comply with this condition for political or ethnic considerations – which would be a clear violation of the principles of neutrality and impartiality.

Although the flexibility exercised by the ICRC is indispensable to avoid being placed in a situation where its own operational activities would be jeopardized, there are limits to it. Yet in certain instances where recognition raised serious questions as to respect for the Fundamental Principles, pressure on the ICRC to recognize a Society has been strong. The current case of the National Society in Bosnia-Herzegovina is symptomatic of this. The problem for the ICRC is therefore to strike the right balance between its role as guardian of the Fundamental Principles and its operational activities. There is nothing wrong in the ICRC using its margin of interpretation to protect its own interests (and hence the interests of the persons it assists and protects), nor is there any indication that it has ever postponed recognition for other reasons. It is, however, interesting to note that just after the Second World War the ICRC internally discussed the advisability of continuing to perform the task of recognizing Societies, because of the difficulties such decisions may generate for its own operations.

e) The conditions established for the recognition of new Societies are also a means of protecting the ICRC, in particular the stipulation that there may be only one National Society in any given State. This saves the ICRC the trouble of having to decide which is the “real” Society. The decision is even more difficult once a National Society has already been recognized and a new Society is set up, a government withdraws its recognition of that Society, or a Society is dissolved, possibly by judicial decision.

f) There are underlying links with the resolutions of the 1863 Conference and the Fundamental Principles in many aspects of the conditions for recognition, particularly in the version adopted by the League’s Council of Governors (Oxford, 1946) and in Jean Pictet’s famous book on the Red Cross Principles.¹⁴ Of course, the Fundamental Principles are not without inconsistencies, and their universality may be questionable. But the conditions for recognition are inter-related with them in a variety of ways, and every day shows how valuable they are.

g) The conditions for recognition have no direct effect on the organization of a National Society. In particular, they do not include any principle of democratic organization. Indeed, no such principle has been mentioned in the Movement’s policy guidelines in the last... fifty years!¹⁵ For that matter, no model whatsoever is provided for a Society’s organization. Moreover, the conditions do not even stipulate which activities a National Society should perform... The absence of any requirement to carry out certain activities is clearly reflected in their diversity. This certainly enhances the universality of the Movement but does not always facilitate collaboration among Societies, with their sometimes very different profiles, activities and priorities.

¹⁴ Jean Pictet, *Les principes de la Croix-Rouge*, Librairie Droz, Genève, 1955 (in English: *Red Cross Principles*, ICRC, Geneva, 1956).

¹⁵ See Board of Governors, XIXth session (Oxford, 1946), Resolution 12, *Principles*, ch. 9: “...to carry out its aims it is essential the a Red Cross Society should be organized on a truly democratic basis”.

At first sight, the task assigned to the ICRC to recognize National Societies may appear to be a form of control over them. However, this control is only limited. It is essentially concerned with formalities: all circular letters focus largely on legal documents and less on National Society activities. Thus the relevance of those activities or their compliance with the Fundamental Principles are less likely to be taken into consideration than purely legal documents. Formal criteria, such as the act of recognition by the State, are much easier to assess. The lack of benchmarks for appreciating the non-formal aspects means that political considerations weigh heavier and the risk of creating double standards is increased.

This is even more problematical in that some formal aspects which have a bearing on the activities of a National Society are likewise not examined. Rules of procedure, internal regulations, national laws which may affect its statutes, and regulations adopted at regional or local level are not systematically taken into account.

Until recently there were no clear criteria to evaluate the statutes of National Societies. The so-called "Model Statutes", first drafted in 1952 and slightly amended afterwards, were a rather poor and ambiguous tool. Based on French legislation applicable to associations, they were not adapted to the requirements of National Societies, whether legal or factual, such as the size of the territory or the country's administrative organization. Even more serious, they did not contain any provisions laying down the Society's rights and duties within the Movement. The said Model Statutes therefore did not set adequate standards, but on the contrary created even more confusion and a greater risk of double standards.

In view of these shortcomings, draft guidelines for National Society statutes were prepared and submitted to the Federation's General Assembly in 1999. The Assembly forwarded the draft to the Federation's Governing Board (the former Executive Council), which approved and put into effect a fine-tuned version of the guidelines at its May 2000 meeting.¹⁶ The new guidelines are a

¹⁶ Governing Board, 1st Session, 1999, Decision 5. – Text available (in French and in English) from: International Federation of Red

Cross and Red Crescent Societies, Ch. des Crêts, CH-1211 Geneva 19.

landmark for two reasons: for the first time, the limits to what is acceptable in statutes have been discussed and defined by National Societies themselves, and secondly, a clear distinction has been established between minimum requirements and recommended standards.

The new guidelines are also useful because, on the basis of two resolutions of the International Conference of the Red Cross (1973 and 1981), National Societies are obliged to submit any draft amendment to their statutes to the ICRC and the Federation (with regard to the latter, this obligation also derives from the Federation's Constitution). The 1973 resolution states that a Society wishing to change its statutes on points relating to the conditions for recognition and admission shall submit such changes to the ICRC and the League and shall take their recommendations into account. The resolution further stipulated that if the statutes of a National Society ceased to be in conformity with those conditions, that Society would "lay itself open to question".

This wording is weak because of the reluctance of most National Societies to accept any control by the Federation and the ICRC. In practice, several questions have remained open. In particular, each National Society has to decide on its own whether the draft amendment relates to the conditions for recognition and, consequently, whether it has to be communicated to the ICRC and the Federation or not. Moreover, there is no real system to ensure that Societies comply with the recommendations and submit their draft amendments in advance to the ICRC and the Federation. Of course, if the Society's statutes are part of a government act or decree, as is the case in a number of countries, the chance that comments are taken into account is close to zero.

In addition to this, there is no practice of withdrawing recognition from National Societies. The reason may be that, as for the recognition of a State by other States, a withdrawal of recognition is not possible. No provision for such a withdrawal is made by the Statutes of the Movement or by any resolution adopted by one of its statutory bodies, apart from the already mentioned effect of "lay[ing] itself open to question". However, it would be illogical not to have such a possibility. In a worst-case scenario of a Society seriously and

continuously violating all conditions for recognition, in particular by flouting the Fundamental Principles, there would be a need to withdraw recognition from it.

Of course, this might not be an easy task for the ICRC. Political and operational considerations (and, possibly, even financial ones) may deter it from taking such action. Indeed, there are no cases in which the ICRC has withdrawn recognition. Apart from several past cases in which it acknowledged that a Society had stopped functioning, the ICRC has usually waited for a Society to be reconstituted before informing other Societies of its predecessor's disappearance. The ICRC proceeded thus with regard to the German Red Cross in both the Federal Republic and the German Democratic Republic (1952 and 1954) or the National Societies that emerged from the former Yugoslavia and Czechoslovakia (1993). There have admittedly been instances in which the ICRC could not announce a withdrawal of recognition without breaching its neutrality, such as the Red Cross Societies of Ethiopia, Danzig and the Baltic States in the thirties. Obviously, this situation complicates matters when the list of participants has to be established for meetings of the Movement or the Federation. And even the ICRC has problems when it has to publish an accurate list of recognized National Societies. Caution may not always be compatible with accuracy. The situation of the Red Cross of the Federal Republic of Yugoslavia is a case in point. It should not be forgotten, however, that the reconstitution of National Societies does present the ICRC with quite a difficult task. Lastly, the only clear announcement by the ICRC of the end of a National Society was made when the Alliance of Red Cross and Red Crescent Societies in the USSR ceased to exist. This was a case of self-dissolution, and the main purpose of the information circulated by the ICRC was to make it clear that the Russian Red Cross is the Alliance's successor.

At the same time, the policy not to exclude any Society but instead to maintain dialogue is a true Red Cross approach. A constructive dialogue is better than ostracism. And in any case, even if the ICRC were to withdraw recognition from it, a National Society could continue to exist in its own country under its old designation of "Red Cross" or "Red Crescent", use the emblem and benefit from the

effects of international humanitarian law. Finally, it would seem that the real question is to know just how far a National Society may go in violating one or several conditions and still retain its recognized status. It is certainly far from easy to define the limits to be set. The deterrent effect of a possible withdrawal of recognition should nevertheless not be underestimated, provided it is understood as a fair and culturally sensitive means of action.

The effect of recognition by the ICRC is that the relevant National Society becomes a component of the International Red Cross and Red Crescent Movement. Of course, the fact that a Society is not recognized does not prevent it from having working relations with other components of the Movement, including the ICRC. But it is that status as a recognized Society which entails rights and obligations defined by the Statutes of the Movement. Solidarity with other components is one of those obligations, including the support to be given to the ICRC.

Only a recognized National Society is entitled to participate as a full member in that unique forum, the International Conference of the Red Cross and Red Crescent. After all, this is certainly the most important prerogative of National Societies, because the States party to the 1949 Geneva Conventions and the components of the Movement attend the Conference on an equal footing to discuss humanitarian matters of mutual interest.

Another important aspect is that the Movement has a key role to play in defining the agenda of the International Conference, through the Council of Delegates and the Standing Commission, the other two bodies established by the Statutes of the Movement, and that the right of representatives of National Societies to participate as full members in the Council of Delegates stems directly from that status as a recognized Society.

The status of component of the Movement also entails reciprocal rights and obligations between States and National Societies. Article 2 of the Statutes of the Movement deals with this question. It will be cited here in full, because its content is quite unique in international law and because not all consequences have yet been examined:

“1. The States Parties to the Geneva Conventions cooperate with the components of the Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference.

2. Each State shall promote the establishment on its territory of a National Society and encourage its development.

3. The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement. The same components, in their turn and in accordance with their respective statutes, support as far as possible the humanitarian activities of the States.

4. The States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles.

5. The implementation of the present Statutes by the components of the Movement shall not affect the sovereignty of States, with due respect for the provisions of international humanitarian law.”

To conclude this section, a few remarks may be made about the recognition procedure.

- Peer National Societies play no part in deciding which other entities should be considered as recognized Societies within the context of the Movement.
- The ICRC alone has the task of handling potentially sensitive situations and the associated risks.
- The know-how acquired by the ICRC has so far enabled it to perform the difficult exercise of recognition relatively smoothly. The Movement's rather complex structure and the sometimes cumbersome procedures should not be seen as issues on which attention should be focused. Since the League's foundation in 1919 too much attention may have been paid to them.

National Societies as members of the Federation

The idea of establishing a federation of National Societies was voiced quite soon after the inception of the Red Cross, among others by Gustave Moynier, the long-time President of the ICRC. However, his proposal that each National Society should

appoint a member of the International Committee was not followed, as he later felt that this approach might prove dangerous in a conflict situation. But the idea of merging the ICRC and the League was raised for discussion by other people many times in the following century.

The main reason for creating the League of Red Cross Societies in 1919 was to use the operational capacity of National Societies for peacetime activities, in close cooperation with the League of Nations. This being said, it is striking to note that the League's activities were always bipolar, reflecting the duality of its intention: to be an operational relief organization, on the one hand, or a centre for the transfer and exchange of information and knowledge among members, on the other.

Today, the Federation's object is very broad, as it is "to inspire, encourage, facilitate, and promote at all times all forms of humanitarian activities by the member Societies with a view to preventing and alleviating human suffering and thereby contributing to the maintenance and the promotion of peace in the world", according to Article 2 of its Constitution.

Relations between the ICRC and the League were tense until a "peace treaty" was concluded in 1928 with the adoption of the first Statutes of the International Red Cross. Even since then, working relations have sometimes not been very good, for various operational, personal or cultural reasons.

The special status that the five founders of the League – the Red Cross Societies of Japan, United States, United Kingdom, France and Italy – gave themselves in 1919, and which lasted until 1922, was not only a violation of the principle of equality but also a contradiction of the Movement's goal of universality. It furthermore led to increased tension with the ICRC. But this controversy was also symptomatic of the struggle to decide whether the Federation would be free to admit its own members or whether the ICRC would have a role to play in the process. The second solution eventually prevailed, but the situation was not absolutely clear until 1987. (A National Society may, however, be recognized by the ICRC and not become a member of the Federation.) The new Constitution of the Federation,

adopted in 1999, clarifies the situation once and for all by explicitly stating that only recognized National Societies can become Federation members.

The fact that the Federation cannot freely decide on its membership lessens the risk of political disputes. Another measure is conducive to this: the role of its Secretary General (as opposed to members of the Federation's governing bodies) in the process of recognition and admission of National Societies is codified by the Federation's Rules of Procedure. Accordingly, the Secretary General is entitled to examine the file of a National Society which seeks to be recognized. The decision remains, however, with the ICRC alone; the Federation's Secretary General has no veto right. This type of cooperation helps to avoid controversies between the two institutions.

The admission of a National Society to the Federation is subject to decision by the Assembly, which decides by a qualified majority of sixty per cent of the member Societies present and voting. In practice, only a handful of cases have been put to the vote; decisions are usually taken by consensus, especially because the Governing Board can provisionally admit members between two sessions of the Assembly.

On the basis of the Federation's Constitution, the rights of each member Society include, among others:¹⁷

- to be represented at and to participate in the work of the Assembly with the right to vote;
- to stand for election, and to nominate candidates, to all official bodies of the Federation;
- to request the Federation to provide representation in the international field;
- to submit, on its own initiative, in its name or in that of a group of member Societies, proposals to the Assembly and to other bodies of the Federation;
- to communicate directly with the Federation.

¹⁷ Constitution of the International Federation of Red Cross and Red Crescent Societies, Article 5 (latest revision: 1999).

The aforesaid rights are clearly those of members of any federation. The Constitution also mentions the “duties” (and, notably, not “obligations”) of each member Society. They are, among others:¹⁸

- to support the Federation in the pursuit of its general object and to apply the decisions adopted by the Assembly and by the Board;
- to ensure that the Fundamental Principles are carefully observed in the activities of the Society and that its bodies adhere to those Principles;
- to remit an annual contribution to the Federation approved by the Assembly;
- to inform the Federation, through the Secretary General, of any proposed amendments to its own Statutes and of the composition of its main governing and managing bodies;
- to transmit to the Federation, through the Secretary General, its annual reports, including financial statements.

It should be borne in mind that, on the basis of the Constitution, all Societies have the duty to apply decisions adopted by the Federation’s Assembly and Governing Board. The fact that a Society has voted against a decision does not mean that it can refuse to implement it. But the Federation’s objective, as mentioned above, and the possible range of General Assembly decisions are so broad that National Societies are reluctant to take decisions placing themselves under clear and firm obligations: among hundreds of decisions adopted since 1919, only a few are intended to create clear obligations for member Societies. In the past, the lack of a distinct focus in the Federation’s role has probably been an obstacle as well, and there is good reason to believe that the more focused policies adopted in recent years and the new Strategy 2010 could establish a new framework enhancing the Federation’s capability to take decisions and the will of member Societies to apply them.

However, the political situation is such that National Societies seem reluctant to extend the scope of decisions by the Federation. Even if they did so, the implementation of such decisions

¹⁸ *Ibid.*

by National Societies would give rise to further problems. As things stand, the Federation therefore seems closer to a confederation than to a federation, despite the majority rule for decisions.

A National Society ceases to be a member of the Federation only when it withdraws (as did the Red Cross Societies of Denmark, Finland, Norway and Sweden in the twenties) or when it is dissolved. There are no procedures for expulsion or exclusion. A Society can nonetheless be suspended from membership of the Federation in four cases, as first defined in 1932 and slightly modified later:¹⁹

- if the Society no longer fulfils all the conditions for admission provided for in the Constitution, in particular if, because of modification of its Statutes, they are no longer in conformity with the Fundamental Principles;
- if the Society on its own initiative or under pressure from the government of its country contravenes any of the Fundamental Principles;
- if the Society uses its connection with the Federation for a purpose which is not in conformity with one of the Fundamental Principles;
- when it acts contrary to the general object of the Federation, and persistently refuses to comply with its duties under the Constitution.

A decision on suspension must be taken by the Assembly, after examining the Board's recommendation, with a qualified majority of sixty per cent of the member Societies present and voting. The Board may provisionally suspend a Society from membership.

This is obviously an onerous procedure. As in the case of member States of an intergovernmental organization, there is great reluctance to take such a step, and peers have never suspended any member Society. Nevertheless, the result has been further discussions on integrity because suspension was too unwieldy a weapon to have a real deterrent effect. That reluctance was consequently preventing the

¹⁹ Constitution of the Federation, Article 6(3).

Federation from being, for National Societies, “the guardian of their integrity and the protector of their interests”, as stipulated in the Federation’s Constitution.

In the Federation, integrity is defined in relation to four possible cases: violation of the Fundamental Principles; interference by the government; statutes inadequate or not respected; and threats to its organization or management (especially of financial resources) or to the personal integrity of its members or leaders. Of course, this is only a general classification and most cases where integrity is at risk show more than one of those “symptoms”.

The policy on integrity has been rather slow to develop. The steps taken between 1946 and 1948 as a reaction to damage to the independence of many National Societies during the Second World War provided food for thought. But the time was not ripe, and no real follow-up was given to the recommendations of the Tansley Report which underlined the need to raise the level of integrity of a large number of National Societies.²⁰ However, the generation which assumed the Movement’s leadership in the nineties has become more sensitive to this issue, and it was in fact during that decade that the crucial steps were taken.

The decisions made at the 1993 to 1999 sessions of the General Assembly gave less emphasis to legal aspects, which are insufficient to analyse the issue of integrity, and more to institutional development, especially with the adoption of the document “Characteristics of a well-functioning National Society”.²¹ The 26th International Conference took note in 1996 of efforts towards institutional development. Offers of services by the Federation’s Secretary General to safeguard or restore integrity were also given the seal of approval, even for cases where the National Society would not have expressly requested the Secretary General’s intervention.

²⁰ Donald Tansley, *Final Report: An Agenda for Red Cross*, Joint Committee for the Re-appraisal of the Role of the Red Cross, 1975, pp. 97-98.

²¹ 26th International Conference of the Red Cross and Red Crescent, Report: Strengthening capacity to assist and protect the most vulnerable, Annex III: “Characteristics of a well-functioning Society”.

Proposals for establishing a reporting system were also discussed, but this is definitely something on which National Societies – on the basis of their independence, which is often and wrongly understood as independence vis-à-vis the ICRC and the Federation – are rather reluctant to agree. The debate is actually quite similar to those on the relationship between States and international organizations, such as the European Union, or on the distribution of power within federal States.

Conclusion

A knowledge of history is essential to understand the status of National Societies. Their role under international humanitarian law, in general, and their position as auxiliary to the public authorities, in particular, have always had a major impact on their development. But that role now needs to be re-examined and rethought so that concepts and structures defined in the nineteenth century do not hamper National Societies in tackling the challenges they have to face, especially in view of the need for increased independence of National Societies vis-à-vis their governments. Objective 3.3 of the Plan of Action, adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999, is important in this respect, as it requests the Federation to “initiate, in co-operation with National Societies and the ICRC, an in-depth study into the working relationship between States and National Societies, taking into account the changing needs in the humanitarian, health and social fields, the auxiliary role of National Societies and the evolving role of the State, the private sector and voluntary organizations in service provision”.²² The question remains as to which vision will prevail: the traditional concept of National Societies as auxiliary, stressing their autonomy vis-à-vis the international institutions, or an increased readiness for international cooperation, though aware that most activities of National Societies are undertaken at the national level.

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²² *Supra*, note 11.

Résumé

Le statut juridique des Sociétés nationales de la Croix-Rouge et du Croissant-Rouge

par CHRISTOPHE LANORD

Prenant comme point de départ les propositions de Henry Dunant dans son Souvenir de Solférino, l'auteur trace l'évolution du Mouvement international de la Croix-Rouge et du Croissant-Rouge jusqu'à nos jours, avec un intérêt particulier pour les Sociétés nationales. Il rappelle que les Sociétés de la Croix-Rouge et du Croissant-Rouge sont régies par le droit international (les Conventions de Genève de 1949 et leurs Protocoles additionnels), et il en examine les conséquences pour leur statut juridique. Les Sociétés sont en outre auxiliaires des pouvoirs publics de leurs pays respectifs, mais chacune d'elles est également une composante du Mouvement et membre de la Fédération internationale. L'auteur analyse cette situation complexe sous l'angle juridique et apporte des réponses concluantes à plusieurs questions d'actualité (par exemple, la procédure de reconnaissance d'une Société nationale ou ses droits et devoirs au sein du Mouvement), d'une part, ou comme membre de la Fédération, d'autre part.

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