

Response of the International Federation of Red Cross and Red Crescent Societies to the International Law Commission

10 March 2009

This memorandum responds to a query of the International Law Commission (ILC) to the International Federation, as transmitted by the ILC's Secretary, Ms. Mahnoush Arsanjani, on November 6, 2008. The query was as follows:

“How has the International Federation of the Red Cross [sic] institutionalized roles and responsibilities, at global and country levels with regard to assistance to affected populations and States in the event of disasters – in the disaster phase but also in pre- and post-disaster phases – and how does it relate in each of these phases with actors such as States, intergovernmental organizations, non-governmental organizations, specialized national response teams, national disaster management authorities and other relevant actors?”

We thank the ILC for its interest. Our response is organized in three parts. We begin with a brief overview of the International Red Cross and Red Crescent Movement, which we believe will provide some useful context. We then discuss the various issues raised in the ILC's query from the point of view of National Red Cross and Red Crescent Societies (hereinafter, “National Societies”) responding to disasters in their own countries in purely domestic operations. Finally, we address the Movement's arrangements for international disaster response.

1. Overview of the International Red Cross and Red Crescent Movement

a. Historical development of the Movement

The International Red Cross and Red Crescent Movement (hereinafter, “the Movement”) has its origins in the Battle of Solferino of 1859, whose 150th anniversary will be marked this year.¹ Swiss businessman Henry Dunant happened to be present in the aftermath of this clash between the Austrians and the Franco-Sardinian forces and was appalled to find tens of thousands of wounded soldiers from both sides left to die on the battlefield without care or support. After organizing a spontaneous volunteer relief operation to help some of those soldiers, he became convinced of the need for permanent relief societies and an international legal regime to deal with such situations in the future.

In 1863, Dunant and several colleagues formed the “International Committee for Aid to Wounded Soldiers,” later renamed the “International Committee of the Red Cross.” They convened representatives of governments and key organizations to the first international humanitarian conference later that year in Geneva, which called for the establishment of national relief committees in every nation. In 1864, the first Geneva Convention was adopted by twelve states.

National Societies (at that time called “committees”) began to form very soon after the 1863 conference. Their initial rationale, as noted above, was to address humanitarian needs in situations of armed conflict. However, in 1869, the Second

¹ See generally, Hans Haug, *Humanity for All* (1993).

International Conference of the Red Cross adopted a resolution deciding, among other things, that National Societies should also provide relief “in case of public calamity which, like war, demands immediate and organized assistance,” in part to ensure their “vigorous development” and to “prepare their action in time of war.”² Since then, disaster mitigation and response has become one of the major activities of National Societies around the world.

In 1919, National Societies founded the League of Red Cross Societies (now known as the “International Federation of Red Cross and Red Crescent Societies” (IFRC)), with the hope that it could serve as humanitarian parallel to the League of Nations.³ As described in its establishing articles of association, the IFRC’s purposes included encouraging the development of National Societies in every country and coordinating relief work in “great national or international calamities.”⁴ Almost immediately upon its formation, the IFRC began coordinating international disaster response operations. As of this date, it has been involved in over 2,000 of them.

b. The components of the Movement today

Today, the Movement is the world’s largest humanitarian network. It is formed of three components:

- **National Societies**

National Societies are “the basic units and constitute the vital force of the Movement.”⁵ Pursuant to the Movement’s Statutes and Fundamental Principles, there can only be one National Society per country.⁶ They currently number 186 worldwide, deploying nearly 100 million volunteers and reaching some 233 million beneficiaries per year.

National Societies provide a range of services including disaster relief, health and social programmes. They also promote awareness of humanitarian values and speak and act on behalf of the most vulnerable in their countries. During wartime, National Societies assist the affected civilian population and support the army medical services where appropriate. Through their branch structures and extensive use of volunteers, National Societies are present at the community level and are thus in a unique position to mitigate and respond to disasters, large and small.

National Societies are established by legislation or equivalent legal act in all countries, and recognised by their governments as the auxiliaries to the public authorities in the humanitarian field. As such, they do not qualify as “NGOs” in the United Nations sense, and are represented in the international community by the IFRC.

² Resolution 3, 2nd International Conference of the Red Cross (1869), paras. 20-21.

³ In turn, the Covenant of the League of Nations expressly committed member states to support the development of, and cooperation between, National Societies, whose purposes were described broadly as “the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.” Covenant of the League of Nations, art. 25 (1924).

⁴ See Clyde Buckingham, *For Humanity’s Sake* (1964), at 84.

⁵ See Statutes of the International Red Cross and Red Crescent Movement (as amended in 2006), at art. 3.

⁶ See the Principle of Unity, *id.* at preamble.

- **IFRC**

The IFRC “comprises the National Red Cross and Red Crescent Societies. It acts under its own Constitution with all rights and obligations of a corporate body with legal personality.”⁷ Its status as an organization with international legal personality entitled to diplomatic privileges and immunities has been recognized in over 70 status agreements with states. Its observer status at the United Nations General Assembly gives it the capacity to participate in the debates of any organ in the United Nations system.

The IFRC’s general object is to “inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by the National Societies[.]”⁸ It works to build the capacity of its members (among other things) to mitigate and respond to disasters. Through its secretariat (headquartered in Geneva and with over 60 regional and country offices), it also carries out relief operations, coordinates international assistance between its members, and represents its members in international fora.

- **ICRC**

The ICRC is an impartial, neutral and independent organization formally recognized by the Geneva Conventions and the International Conference, whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance.⁹ It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. It too benefits from over 80 status agreements and observer status at the United Nations General Assembly, in addition to its specific mandates in the Geneva Conventions.

The ICRC directs and coordinates the international relief activities conducted by the Movement in situations of armed conflict. While its primary focus is on alleviating suffering in war-time, the ICRC can also become involved in the response to disasters,¹⁰ particularly when the latter coincide with situations of conflict.

c. Key governing bodies and disaster-related instruments

The Movement has a significant number of governing and policy-making structures with an impact on how roles and responsibilities are assigned with regard to disaster response. For purposes of this memorandum, it is sufficient to mention three of them: the International Conference of the Red Cross and Red Crescent, the Movement Council of Delegates and the IFRC General Assembly.

The International Conference is the Movement’s “supreme deliberative body”, which convenes all the components of the Movement as well as all the state parties to the Geneva Conventions every four years to “examine and decide upon humanitarian

⁷ *Id.* at art. 6.

⁸ *Id.*

⁹ *See id.* at art. 5.

¹⁰ For purposes of this memorandum, the term “disaster” will refer only to non-conflict emergencies.

matters of common interest and any other related matter”.¹¹ The Council of Delegates convenes all of the components of the Movement (*i.e.*, the National Societies, the IFRC and the ICRC, without the states) every two years to “discuss matters which concern the Movement as a whole.”¹² The General Assembly is the “supreme governing body” of the IFRC and convenes all of the National Societies (only) every two years.¹³

The International Conference has traditionally been an engine for the development of international humanitarian law (IHL), including the Geneva Conventions of 1949 and their additional protocols. It has also provided an inter-governmental imprimatur¹⁴ to a number of key instruments relevant to Movement cooperation in non-conflict disasters. These include the Statutes of the Movement (first adopted in 1928 and most recently amended in 2006), which set out basic roles and responsibilities of the components of the Movement and also articulate its seven Fundamental Principles, as well as the Principles and Rules for Red Cross and Red Crescent Disaster Relief (first adopted in 1969 and most recently amended in 1995) (hereinafter “Principles and Rules”), which govern Movement cooperation in non-conflict disasters.

More recently, the Council of Delegates has adopted two additional instruments related to Movement cooperation in the response to disasters and armed conflicts. These are the Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement (commonly known as the “Seville Agreement”) of 1997 and the Supplementary Measures to Enhance the Implementation of the Seville Agreement (commonly known as the “Supplementary Measures”) of 2005.

For its part, the IFRC General Assembly has adopted a Constitution for the IFRC (most recently amended in 2007) as well as a number of policies and strategies related to disaster mitigation and response.

2. National Societies and domestic disaster management

Per the Principles and Rules, the Red Cross and Red Crescent has “a fundamental duty to provide relief to all disaster victims and assistance to those most vulnerable to future disasters.”¹⁵ Accordingly, “[i]t is the duty of National Societies to prepare themselves to give assistance in the event of a disasters.”¹⁶

¹¹ Statutes, art. 8.

¹² *Id.* at art. 12.

¹³ See Constitution of the International Federation of Red Cross and Red Crescent Societies (as amended in 2007), at arts. 15-16.

¹⁴ In this respect, article 2 of the Statutes of the Movement provides that “[t]he 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.” See also Richard Perruchoud, *Les Résolutions des Conférences Internationales de la Croix-Rouge* (1979).

¹⁵ See Principles and Rules, at para. 6.1.

¹⁶ *Id.* at art. 2.1. See also IFRC Constitution, art. 8.1.B.b (providing that National Societies have a duty to “work diligently in pursuit of their humanitarian objectives . . . , including minimizing the impacts of disaster and disease . . .”).

These activities are carried out in close cooperation with domestic authorities.¹⁷ In fact, as provided by the Statutes, each National Society must be formally acknowledged by national legislation as an “auxiliary to the public authorities in the humanitarian field” as a pre-condition to recognition as a member of the Movement.¹⁸

The auxiliary role implies a “specific and distinctive partnership, entailing mutual responsibilities and benefits, and 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.”¹⁹ It rests on the understanding that “it is the primary responsibility of States and their respective public authorities to provide humanitarian assistance to vulnerable persons on their respective territories and that the primary purpose of National Societies as auxiliaries to the public authorities in the humanitarian field is to supplement them in the fulfilment of this responsibility.”²⁰ At the same time, “the National Society must be able to deliver its humanitarian services at all times in conformity with the Fundamental Principles, in particular those of neutrality and independence, and with its other obligations under the Statutes of the Movement as agreed by States at the International Conference.”²¹

In practice, National Societies are, in fact, the preferred partners of a large majority of governments with regard to disaster risk reduction, response, and recovery activities. According to a recent survey of National Societies by the IFRC, fully 90% of respondents whose governments had national emergency plans reported that their Societies were accorded a formal role in them.²² Many National Societies are the only non-state actor permitted to participate in the highest-level governmental disaster management committees.

While programmes and capacities vary from country to country, National Societies are, in many cases, also the largest humanitarian actor aside from the government. As indicated by the above-mentioned survey, 75% of National Societies have disaster management programming at the community level and 52% have community-based disaster preparedness and risk reduction programmes.²³

National Societies do not work only with governments. Through informal and formal coalitions, they collaborate with many civil society organizations to assist

¹⁷ *See id.* at para 3.1; Statutes, at art. 3.2.

¹⁸ *See* Statutes of the Movement, at art. 4.3. A specific aspect of this auxiliary role in wartime is also recognized in article 26 First Geneva Convention, with regard to the assistance provided by National Societies to the medical divisions of the armed forces. *See generally*, International Federation of Red Cross and Red Crescent Societies, “The Specific Nature of the Red Cross and Red Crescent Movement in Action and Partnerships and the Role of National Societies as Auxiliaries to the Public Authorities in the Humanitarian Field,” Background Document to the 30th International Conference of the Red Cross and Red Crescent, Doc. No. 30IC/07/7.1 (2007).

¹⁹ Resolution 2, 30th International Conference of the Red Cross and Red Crescent (2007), at para. 3.

²⁰ *Id.* at para. 1.

²¹ *Id.* at para. 3. *See also* the Fundamental Principle of Independence, Statutes, at preamble (providing in part that “National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain autonomy so that they may be able at all times to act in accordance with the principles of the Movement”)

²² *See* IFRC, Well Prepared National Society Survey, Phase II (publication forthcoming in 2009).

²³ *See id.*

communities to address disasters.²⁴ Moreover, many receive support from the IFRC secretariat and foreign National Societies to help them to strengthen the effectiveness of their personnel, planning and programmes prior to the advent of a disaster. The arrangements for this “development” assistance are sometimes formalized in multilateral agreements between the various Red Cross/Red Crescent actors concerned, known within the Movement as “Cooperation Agreement Strategies” (CAS) and “Operational Alliances”.

National Societies are also guided in their domestic work by the various disaster-related policies adopted by the General Assembly. These include policies on disaster preparedness, emergency response, food security, and post-emergency rehabilitation, among others.²⁵

3. Cooperation in international disaster response

a. Cooperation within the Movement

When a disaster exceeds the capacity of a National Society, it can call on the IFRC,²⁶ other National Societies²⁷ and, in some circumstances, the ICRC²⁸ for help. In light of the key function of the IFRC to “organize, coordinate and direct international relief operations,”²⁹ the Principles and Rules direct that all such requests must first be addressed to the IFRC.³⁰

Even when international assistance is not needed or desired, National Societies are obliged to immediately inform the IFRC “of any major disaster occurring within their country, including data on the extent of the damage and on the relief measures taken at the national level to assist victims.”³¹ Moreover, in the absence of a formal request, the IFRC is permitted to take the initiative to offer its assistance to the National Society concerned and the latter is enjoined to “consider such offers with urgency and goodwill, bearing in mind the needs of the disaster victims and the spirit in which such offers are made.”³²

When a National Society requests or accepts the IFRC’s offer of assistance after a disaster of significant magnitude, the latter generally deploys a “Field Assessment and Coordination Team” (FACT) to assess the extent of the needs and begin to coordinate relief. These teams are made up of disaster management experts from the IFRC secretariat and member societies. Depending on the assessment of the FACT team,

²⁴ As noted in the above survey, 93% of National Societies responding indicated that they participated in inter-agency coordination.

²⁵ See our website at <http://www.ifrc.org/who/policy/index.asp> for the full text of these policies.

²⁶ See Statutes, including among the functions of the Federation: “to bring relief by all available means to all disaster victims” (art. 6.4.c), and “to assist National Societies in their disaster relief preparedness, in the organization of their relief actions and in the relief operations themselves” (art. 6.4.d).

²⁷ Statutes, art 3.3 (“Internationally, National Societies, each within the limits of its resources, give assistance . . . for victims of natural disasters and other emergencies”).

²⁸ As described below.

²⁹ Statutes, art. 6.4.e.

³⁰ See Principles and Rules para. 14.1

³¹ See Principles and Rules para. 12.1.

³² *Id.* at para. 14.2.

additional IFRC secretariat staff may be deployed to assist with relief and recovery activities.

In addition, with the consent of the National Society concerned, the IFRC can, when the conditions call for it, launch an appeal to other National Societies for assistance.³³ When such an appeal is made, those National Societies may forward funds to the IFRC or the National Society to support relief and recovery operations and/or they may send experts to assist in relief and/or recovery activities.

These experts may come in specialized teams, such as the “Regional Disaster Response Teams” (RDRTs) (consisting of specially trained disaster response experts of mixed nationality from nearby National Societies – also sometimes deployed at the assessment phase) or “Emergency Response Units” (ERUs) (consisting of units of persons with standardized training and materiel with expertise in one of nine types of response specialization³⁴). They may also be seconded to the IFRC secretariat or sent directly from the other National Society.

In any configuration, “all international resources for an emergency operation channelled in whatever way, and regardless through which institution, are to be considered part of the overall coordinated approach of the Movement.”³⁵

In order to best coordinate the potentially large number of Movement actors in any given operation,³⁶ the Seville Agreement and Supplementary Measures set out a system for assigning a “lead agency”. The lead agency is responsible, among other things, for defining the general objectives of the relief operation and coordinating the actions of the various Movement actors toward those objectives.³⁷

In general, according to the Seville Agreement,³⁸ the ICRC will serve as the lead agency in situations of armed conflict and internal strife, including when natural or technological disasters occur in the same context. The IFRC will be the lead agency in peace-time disasters, refugee situations in non-conflict settings and in post-conflict settings. However, the National Society in the affected country (known as the “Host National Society”) may instead serve as lead agency with the concurrence of the either the ICRC or IFRC, as the case may be.

If it is not acting as lead, the Host National Society nevertheless “maintains at all times its role and mandate according to the Statutes of the Movement.” It is the “primary partner” of the lead agency and must be consulted as to all aspects of the Movement’s response.³⁹

³³ *Id.* at para. 14.2.

³⁴ The five types are : logistics, water and sanitation (3 module types depending on the size of the beneficiary population), basic health care, referral hospitals, base camp, IT and telecommunications, and relief.

³⁵ Supplementary Measures, para. 4.6.

³⁶ This is also important in order to give full effect to the Fundamental Principle of Unity, which provides that there can be only one National Society in each country. *See* Statutes, preamble. Thus international assistance operations cannot displace the role of the Host National Society.

³⁷ *See* Seville Agreement, art. 6.

³⁸ *See* Seville Agreement, art. 5.

³⁹ *See* Supplementary Measures, paras. 1.2 & 1.7.

Pursuant to the Supplementary Measures, memoranda of understanding are also established between the various Movement actors in specific operations to supplement the more general terms of the Seville Agreement and other global instruments.⁴⁰

In addition to the above arrangements for large-scale disasters, the IFRC also administers the “Disaster Response Emergency Fund” (DREF), which is available for small-scale grants to assist National Societies to respond to disasters not large enough to justify a full international appeal or other involvement of outsiders.

b. Cooperation with external actors

While large indeed, the Movement cannot address all humanitarian needs by itself. It is therefore critical, while maintaining its independence and neutrality, for it to cooperate and coordinate with other key actors in international response operations.

At a global level, the IFRC represents its members in a great many humanitarian policy and coordination bodies. These include the Inter-Agency Standing Committee (IASC), which both the IFRC and ICRC attend as standing invitees, the Steering Committee for Humanitarian Response (SCHR) (which convenes the IFRC and some of the largest non-governmental organizations), and the Global Humanitarian Platform (which seeks to improve standards of cooperation between the UN, the Red Cross/Red Crescent and NGOs). The IFRC and ICRC also take part in meetings and activities with the International Council of Voluntary Agencies (ICVA), which brings together hundreds of smaller NGOs, including many from developing countries.

The IFRC also reaches out to a number of inter-governmental and regional organizations to improve its cooperation with states. This has included, for instance, involvement regional simulation exercises in various parts of the world.

The IFRC is an active participant in the thematic humanitarian “clusters” created as a result of the “humanitarian response reform” spearheaded by OCHA in 2005-06.⁴¹ While participating in several of the clusters, the IFRC is the global convenor for the cluster dedicated to shelter in natural disasters.⁴² This role requires the IFRC to lead efforts to coordinate, develop and strengthen the shelter responses of all participating humanitarian organizations (including UN agencies and major NGOs). It also provides support to the “United Nations Disaster Assessment and Coordination” (UNDAC) teams.

At the country level, where a lead agency has been designated for the Movement in an operation, it has primary responsibility “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 in accordance with the Fundamental Principles.”⁴³ In practice, the IFRC and its

⁴⁰ *See id.* at art. 3.

⁴¹ *See generally*, <http://www.humanitarianreform.org>.

⁴² This role is governed by a MOU between the IFRC and OCHA. In light of its Principles of Independence and Neutrality, the IFRC has taken on a role somewhat different from those of the other “cluster leads”.

⁴³ Seville Agreement, at para. 6.1.e.

members participate in coordination through governmental channels, and in “country IASC teams” and clusters, among other fora.

Host National Societies also make great efforts to channel communication with their authorities in disaster operations, often serving as an intermediary when problems arise. Pursuant to the Principles and Rules, they are responsible for making efforts to obtain legal facilities from their governments, such as access to visas, tax exemptions and transit permissions, for Red Cross/Red Crescent relief.⁴⁴

Conclusion

As might be expected from a humanitarian network with over a century of experience and a truly global reach, the Movement’s arrangements for cooperation in disaster management are complex and varied. They include a number of internal agreements and mechanisms as well as inter-governmentally approved procedures of long pedigree. They are admittedly far from perfect and have often had to be updated to keep pace with changing times, but they have allowed for very effective humanitarian assistance in thousands of disasters.

⁴⁴ See Principles and Rules, at para.9.