

Draft model law

Law on the recognition of the (name of the Red Cross or Red Crescent Society)

*(For an introduction of the draft model law:
see the relevant section of the Background Paper)*

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).