COUNCIL OF DELEGATES
Seoul, 16-18 November 2005

BACKGROUND DOCUMENTS AND GUIDING QUESTIONS FOR DEBATE IN COMMISSIONS

ON CHALLENGES REGARDING

"ACCESS TO VICTIMS AND VULNERABLE PEOPLE"
(First session of the Commissions)

AND

"NEUTRAL AND INDEPENDENT HUMANITARIAN ACTION"
(Second session of the Commissions)

(Item **4 and 10** of the provisional agenda)

**Document on "Access to victims and vulnerable people"
prepared by**

**the International Federation of Red Cross and Red Crescent Societies
in consultation with
the International Committee of the Red Cross**
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**Document on "Neutral and independent humanitarian action"
prepared by**

**the International Committee of the Red Cross
in consultation with
the International Federation of Red Cross and Red Crescent Societies**

Geneva, October 2005

HUMANITARIAN CHALLENGES OF TODAY:
GENERAL INTRODUCTION TO THE WORK OF THE COMMISSIONS
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At the 28th International Conference of the Red Cross and Red Crescent, representatives of States party to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement affirmed their commitment "to ***protect human dignity*** in all circumstances by enhancing respect for the relevant law and reducing the vulnerability of populations to the effects of armed conflicts, disasters and diseases."[1]

To protect human dignity is to ensure respect for human beings without regard to nationality, ethnic background or religious or political beliefs. It constitutes the essence of the Fundamental Principles of humanity and impartiality and of our common mission as a Movement. In order to protect human dignity, we seek to gain the confidence of all, notably by adhering to our principles of neutrality and independence. The ability of the components of the Movement to protect and assist vulnerable people in accordance with their respective mandates thus depends on the Movement's adherence to the Fundamental Principles, as well as on people's understanding and acceptance of these principles in a changing environment.

This changing environment reinforces the importance of the Fundamental Principles, yet it also provokes discussions about their meaning in today's world.

The two sessions to be held by the Commissions of this Council of Delegates will seek to foster debate around the four above-mentioned Fundamental Principles, which are so essential to the Movement's work. The session on access to victims and vulnerable people will focus on the principles of humanity and impartiality, which form the *basis* on which we reach out to vulnerable people and help them. The session on neutral and independent humanitarian action will be devoted to the principles of independence and neutrality, which, taken together, define the Movement's attitude and *modus operandi,* that is to say the *means* by which its components seek to gain access to those most in need and develop a substantial dialogue on humanitarian issues with the relevant actors and authorities.

The attached discussion papers are meant to raise questions on these issues and are thus to be considered as entry points into the debate. They do not claim to present a full-fledged analysis of today's world or to provide actual responses to the questions raised; rather, the members of the commissions are kindly requested to help identify ways of meeting the contemporary challenges to the Movement's humanitarian mission and way of working. The results of the discussions will also help define the issues to be raised and worked on with States in preparation for the 2007 International Conference of the Red Cross and Red Crescent.

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[1] "Protecting Human Dignity," Declaration, 28th International Conference of the Red Cross and Red Crescent (Geneva, 2-6 December 2003).

First session of the Commissions
(16 November 2005 – 2.30 - 5 pm)

HUMANITARIAN CHALLENGES OF TODAY:
ACCESS TO VICTIMS AND VULNERABLE PEOPLE

Document prepared by

**the International Federation of Red Cross and Red Crescent Societies
in consultation with
the International Committee of the Red Cross**

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1. Introduction

Humanitarian workers encounter difficulties in gaining access to people affected by armed conflicts and disasters. Problems of access may arise for a variety of reasons. Among the most obvious are outright denial of access by authorities or parties to a conflict and logistical and geographical challenges. Among the less obvious are laws and bureaucratic procedures that fail to adequately account for the need for effective and timely humanitarian access.

Thanks to their particular role and unique status in international law and many national laws, the components of the Red Cross and Red Crescent Movement rarely experience complete denial of access. In today's operational environments, they nevertheless face "access challenges" in carrying out their mission to prevent and alleviate human suffering.

Issues regarding access are manifold. This background paper attempts to identify some of these issues and the challenges faced in gaining access to people in need. It does not reflect a Movement position but is meant to serve as a basis for discussion in the Commissions of the Council of Delegates.

2. Factors affecting access to victims and vulnerable people

2.1 Country-related factors

National authorities bear the primary responsibility for ensuring that the humanitarian needs of the population are met. In order to fulfil these obligations, which are rooted in international norms, they directly provide humanitarian aid; if the needs exceed their capacity, they must give positive consideration to external offers of impartial humanitarian assistance and facilitate its provision. One factor in the decision to grant access to vulnerable populations is perceived respect for State sovereignty.

In addition, a State's decision to reject, accept or even request external humanitarian aid will depend on the **political situation** in the country and the **type of crisis** involved. In times of armed conflict, the security situation and the relationship between humanitarian actors and the various parties to the conflict also determine access. Denying access to humanitarian actors or restricting access to particular geographical areas or specific categories of victims can be part of a military strategy. Likewise, requesting humanitarian aid, but only for specific areas or categories of victims, can be a way to promote other, "non-humanitarian" agendas. In situations of natural disaster, States may specifically request the help of humanitarian actors or either deny or restrict access for similar reasons. An analysis of the overall context can shed light on the environment for humanitarian action. The magnitude of the crisis and the capacity of the authorities to act will further affect their attitude.

Access to victims and vulnerable people is also determined by a country's **legal framework**. Any humanitarian action carried out in that country will be subject to the laws in force there, be they national or international. The Geneva Conventions and their Additional Protocols have a number of specific provisions relating to access by humanitarian actors to people in need of assistance. However, these treaties, and international humanitarian law in general, only apply in conflict situations, leaving a grey area for humanitarian action in other situations.

In peace time laws of general application such as those governing food inspections and the quality of food, housing standards or national security can affect the delivery of humanitarian relief. Depending on their particular legal personality, international actors may face barriers such as visa requirements, customs restrictions and duties, professional qualification requirements, landing and overflight rights and other rules governing their entry into the country and operation on the ground. Such rules are not designed for disaster or emergency situations. Frequently, moreover, the operations of international actors are insufficiently regulated, either at the international or the national level, which can lead to coordination problems and inadequate respect for the principle of complementarity with domestic actors, as well as raising questions regarding liability and accountability.

Finally, the level of skills within the country's borders and the situation of its population with regard to health, education, civil protection, etc. will also affect the degree of access granted. International actors may be denied access if the **coping capacities** at the local and national levels are sufficiently developed. In such situations, local organizations are the sole service providers and the National Red Cross and Red Crescent Society may become especially prominent.

2.2 Movement-related factors

Because they act at the international, regional, national and local levels, the components of the Movement are particularly well placed to respond to the humanitarian needs generated by armed conflicts, disasters and other situations of crisis. Their respect for and **adherence to the Fundamental Principles** are essential factors in gaining access to vulnerable people in all circumstances – as are other related factors such as their reputation, credibility and **acceptance** at local, national and international levels. In general, the greater an organization's acceptance by all concerned, the better its access to those in need.

National Societies occupy a unique position as "**auxiliaries in the humanitarian services of their governments.**" The nature of this auxiliary status defines the relationship of National Societies with their governments and has a strong impact on their humanitarian role within their own countries. According to the Statutes of the Movement, this auxiliary status must be acknowledged in national law. In many countries, however, its ramifications are not clearly spelled out, for example through the detailed incorporation into the national disaster plan of the National Society's role in various types of emergency. Meanwhile, the International

Federation, and especially the ICRC, enjoy privileged access either on the basis of the Geneva Conventions, their mandates and their legal status agreements, or on the basis of dialogue with governments. Thus, the relationship with governments is essential for all the components of the Movement in fulfilling their respective humanitarian mandates.

For National Societies acting as international partners in countries other than their own, the situation is more complex. As auxiliaries to their governments, they may work in close cooperation with them in international deployments and may therefore be perceived as an integral part of these governments – despite their adherence to the principle of independence. Even though such deployments might facilitate short-term access in a particular context, they can hinder long-term access in other contexts – particularly when they contradict the Movement's rules and procedures. Such deployments may have an impact on the reputation of the Movement as a whole, making it difficult to coordinate the humanitarian response, jeopardizing access for others in the Movement and increasing security risks. Consequently, they can endanger the work of other components of the Movement, both internationally and locally.[2]

The ability of a **National Society** to secure access to those affected by armed conflicts and disasters in its own country is influenced by its rooting in local communities through its volunteer base and by its level of credibility and acceptance within the country. The internal functioning of the National Society, its organizational capacities, its staff and volunteer membership, its scope of activities, its organizational culture, its values and the behaviour of its personnel are usually known within the country and its perceived degree of integrity will determine access to people affected by a crisis.

Given the multitude of humanitarian actors, especially in times of natural disaster, it is crucial to coordinate assistance efforts and ensure that they are complementary. However, as stressed in the background paper on neutral and impartial humanitarian action, too close an affiliation or unregulated association with other State or non-State actors may undermine the perceived independence and neutrality of the Movement, raising future challenges for access.

2.3 Other factors

In today's world the **media** play a more important role than ever. They can fuel armed violence or support mediation efforts, focus attention on disasters and diseases, provide visibility to crisis situations or completely neglect them, and stimulate private and public generosity. They can also influence how actors perceive and respond to crises. Even though the action of the components of the Movement is rooted in the Fundamental Principles and should therefore be pro-active and non-discriminatory, it is often shaped by public opinion as well. The response to humanitarian needs in forgotten conflicts and areas affected by disaster or disease – indeed, the very capacity to act in such circumstances– can suffer as a result of selective or restrictive media coverage.

Cultural sensitivity plays a key role in determining an organization's working methods. Insensitive, discriminatory or stigmatizing behaviour by humanitarian actors can hamper their ability to collect the necessary information, gain access to vulnerable individuals or groups and deliver humanitarian services to them.

Finally, the priorities set by donors – both within and outside the Movement – may also influence access. A donor-driven approach to determining the focus of aid and cooperation

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[2] See document CD 2005 – 12/1, "National Societies as Auxiliaries to the Public Authorities in the Humanitarian Field."

compromises the principles of humanity and impartiality, which require a needs-driven, non-discriminatory approach.

3.   **Key challenges**

In order to alleviate human suffering, one of the main prerequisites of Red Cross and Red Crescent action is to secure access to vulnerable people, even in difficult circumstances. The activities of the Movement must be "driven by needs, informed by rights." With regard to the above-mentioned factors, the key challenges regarding access to crisis-affected populations are outlined below.

3.1 Enhancing the Movement's tools for facilitating access

Various tools for securing impartial and safer access are available to the components of the Movement: adherence to the Fundamental Principles (in particular humanity, independence and neutrality), pertinent references to international humanitarian law (when applicable), use of the emblem, application of the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief and the continued clarification and development of the international legal and regulatory framework for international response to disasters (International Disaster Response Laws, Rules and Principles, IDRL) are all means to carry out effective operations and secure access to crisis-affected populations.

3.2 Securing non-discriminatory access

It is essential to secure access to all sections of society, the most vulnerable in particular. Often these people belong to the most marginalized groups in society: minorities, migrants, refugees, asylum seekers, detainees, displaced persons, people living with HIV/AIDS and the disabled, to name just a few. Humanitarian action should not perpetuate existing discrimination, but rather prioritize access to individuals and groups on the basis of their needs. The availability of relevant information on humanitarian crises, the conduct of needs assessments taking into account the demographic, economic, social, religious and cultural make-up of the population, appropriate data collection mechanisms and the availability of disaggregated data are crucial to securing **non-discriminatory access** and taking **appropriate action**. The host National Society can play a key role in this regard.

3.3 Maintaining and improving access by local actors

Even in the best of cases, there will always be **limits to access**. Clearly there will always be a time lag before international humanitarian actors can reach those in need. In addition, faced with the choice of allowing unregulated access or protecting their borders, States may in certain circumstances refuse access to external humanitarian actors. Consequently, local actors must be as self-sustaining and as well-prepared as possible for different forms of crisis. The role of National Societies will always be absolutely fundamental and must be actively developed and supported by the components of the Movement

3.4 Recognizing the need for self-imposed restrictions

Security threats and the need to ensure the safety of humanitarian personnel may also compel the components of the Movement to curtail their action and restrict access to victims and vulnerable people. Other internal constraints include the lack of training of available personnel, insufficient use of local capacities and the need to ensure the quality of aid and the adequacy of delivery modes. In addition, it is essential to ensure that the delivery of aid is properly coordinated, avoid any duplication of efforts and take due account of the

complementary roles of all the actors involved, especially those assigned to the components of the Movement within the framework of the Seville agreement. .

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The relative importance to be given to all the various considerations that must be taken into account when seeking access to victims and vulnerable people will depend on the respective mandates of the components of the Movement. How to strike the right balance in this area is a question that requires further discussion within the Movement in order to develop a common position on the many dilemmas surrounding the crucial issue of access.

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4.   Questions for the Commissions

4.1 What can the Movement do to secure access to victims and vulnerable people when access is hampered or prevented by:
(a) discriminatory practices and intolerant attitudes
(b) lack of compliance with existing national or international laws or gaps in the legal basis and
(c) threats to the safety of humanitarian workers?

4.1.1 In this regard, what is the best way to use the available tools for securing access to victims and vulnerable people and what measures (training, coordination, IHL, IDRL, etc.) should be taken at each level (national/regional/international) to secure access?

4.1.2 How can the components of the Movement work together in a spirit of mutual respect, maximizing the effectiveness of their complementary roles, to secure better access to victims and vulnerable people?

4.2 What are the legitimate trade-offs for securing access to victims and vulnerable people *(e.g. delivering services to non-vulnerable populations in order to secure access to vulnerable ones)*? Would it ever be justified to compromise the Fundamental Principles of the Movement to secure access?

Second session of the Commissions
(17 November 2005 – 2.30-5 pm)

HUMANITARIAN CHALLENGES OF TODAY:
NEUTRAL AND INDEPENDENT HUMANITARIAN ACTION

Document prepared by

**the International Committee of the Red Cross
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1. Introduction

The ability of the components of the Movement to protect and assist people in need depends first and foremost on gaining the acceptance and respect of all parties concerned – including the intended beneficiaries themselves. Red Cross and Red Crescent action relies on widespread understanding of its neutral and independent approach. Failing that, it may not be supported; in some contexts, it can even become impossible or excessively dangerous both for those in need of help and for Red Cross and Red Crescent personnel.

It is important to recall that independent and neutral humanitarian action is not the only type of humanitarian action possible, although it is generally agreed that all such action must be impartial. Assistance can be provided by State institutions (including the military), intergovernmental organizations or NGOs, even if their ultimate objectives may be political or religious. Neutral and independent humanitarian action, however, is the only type of humanitarian action that has the potential to be acceptable to all. Consequently, it is an effective means to reach and help those in greatest need, regardless of who they are or where they are from.

Yet in today's world, the Movement's way of working is being challenged on many fronts.

2. A changing environment: challenges to neutral and independent humanitarian action

2.1 Increased polarization and radicalization

While the end of the Cold War also brought an end to several conflicts supported by the superpowers of the time, it allowed tensions previously contained to resurface, embroiling the world in a complex maze of local, national and regional conflicts. In addition, changes brought about by the end of the Cold War led to a rise in the number of non-state actors involved in armed violence – including networks practicing transnational violence – and often to a blurring of political and criminal objectives.

Although the causes, nature and characteristics of contemporary conflicts continue to be extremely diverse, there is a renewed tendency towards polarization and radicalization in the world. For example, an increasing number of States and militant armed groups are engaged in various forms of confrontation that are often global and asymmetric in character. These confrontations are ideological in that they involve the collision of value- and belief-systems. Polarization has taken on various shapes and forms including, firstly, the so-called "global war on terror" or "global struggle against violent extremism," which pits a number of countries against non-state actors who are determined to oppose what they perceive as Western influence and resort to the use of non-conventional methods to achieve their ends, for example attacks against civilians and "soft targets" such as humanitarian organizations.[3]

Another form of polarization is the "North-South divide." This divide is not new in itself, but some of its current consequences are. For example, the economic issues that separate the developed world and the developing world and the conflicting approaches proposed to such related issues as equitable development (rich nations versus poor nations) and sustainable development (climate, biodiversity, trade) have provided a breeding ground for militant ideologies in dispossessed or poverty-stricken communities. Natural resources are of obvious importance to the economies of all regions and disputes over scarce resources are an additional source of insecurity and tension. Access to water, oil and minerals is an issue that continues to spark violence and civilians are often caught up in wars waged by forces vying for control of these resources to further their political or economic objectives.

2.2. Impact on humanitarian action and implications for the Movement

This external environment places humanitarian action at risk, mainly of being rejected or instrumentalized.

The 1990s saw a broadening of the capacity for humanitarian action and a rise of the number of humanitarian actors. This was partly due to the end of the Cold War and the consequent lifting of many restrictions on humanitarian action, but also to a widespread interest in and need for an active humanitarian response to human suffering in the absence of strong political action from governments. This tendency was clearly evident in conflict environments such as the Balkans, the Great Lakes and the Caucasus, but it also emerged in situations of economic, environmental and social crisis. Hence the spotlight was placed on humanitarian players, leading some to believe that humanitarian action could replace political action. As a

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[3] The overriding moral and legal challenge facing the international community is to find ways of dealing with this form of violence while preserving existing international standards protecting human life and dignity. At the 28th International Conference of the Red Cross and Red Crescent, the participants stated that "the existing provisions of international humanitarian law form an adequate basis to meet challenges raised by modern armed conflicts." ("Protecting Human Dignity," Declaration, December 2003)

result, national and international political actors became increasingly convinced that humanitarian action could be considered as one among many crisis-management tools, ranging from military interventions to political, diplomatic and other measures such as development aid, for building peace, supporting regime changes or providing security.

Even though the present climate of polarization and confrontation is different from that prevailing in the early 1990s, the readiness of States to promote civil-military relations[4] – that is, to combine military and humanitarian activities – has persisted and even intensified. In politically unstable contexts, a prime example is the practice of entrusting military units with civilian tasks in order to "win the hearts and minds" of the local population, thereby facilitating the achievement of their military objectives.[5]

Hence in politically unstable environments, actions presented as humanitarian are often met with suspicion, perceived rightly or wrongly as part of a wider strategy to defeat an opponent or enemy. Recent attacks against humanitarian workers in a number of unstable contexts testify to the fact that such suspicion may lead to outright rejection of humanitarian action or force the withdrawal of much-needed humanitarian assistance. Indeed, there are reasons to believe that some of these attacks may stem from the confusion that has arisen from the blurring of the roles and objectives of humanitarian actors, on the one hand, and political and military actors on the other.

Since humanitarian actors today face growing difficulties and dangers in carrying out their work, some political players are actively promoting the involvement of the military in the delivery of aid as a measure that they consider to be both legitimate and necessary. What is more, a number of humanitarian organizations – including some National Societies – have agreed to operate under military protection, blurring the lines still further.

In responding to large-scale emergencies, governments have also increasingly offered National Societies the use of military assets such as cargo planes, helicopters and ships to transport relief items to the affected areas. To accept such offers is to run the risk that a component of the Movement could become associated with the military in people's minds. In conflict situations, use of military assets could thus easily be construed as a breach of the principle of neutrality and undermine the trust and acceptance the Movement needs to operate. In situations of natural and technological disasters that do not occur in conflict environments, on the other hand, such a practice may be less problematic in terms of public image and perception. Even then, however, it could create precedents that might be difficult to reverse.

Meanwhile, within the UN system, efforts are under way to examine the overall role of the organization, including its approach to humanitarian action and security management. Discussions are currently being held on a concept of conflict management involving integrated missions through which the UN would seek to help countries move from war to lasting peace. While there may be positive aspects to this approach, there is the risk that humanitarian action could be associated with the political and security goals of the UN system in general, and of some of the more influential member States in particular. This approach, which would include the components of the Movement, may prove difficult to

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[4] "Civil-military relations" is a term used to describe the relations between humanitarian actors and multinational military missions in situations associated with armed conflict. It reflects the trend for humanitarian operations to become a mainstream, non-combat function of military forces employed in combat or stabilization operations or as part of nation-building agenda.

[5] However, it is broadly accepted by the public in many countries that the military should make their assets available in times of natural disaster.

reconcile with the Movement's own internal mechanisms for coordinating and managing international assistance.

The same can be said of the European Union's concept of "Civil Protection Capacity", which, if the relevant authorities do not take into account the Movement's Fundamental Principles and operating procedures, could result in the assets of National Societies eventually being registered with a central EU civil protection office with the authority to deploy them without taking any Movement mechanism into account.[6] This would seem to contradict the commitment of States party to the Geneva Conventions to respect the autonomy of National Societies in their role as auxiliaries to their governments in the humanitarian field.[7]

As components of one and the same Movement, "we are all in the same boat." In this age of global communication where the media are omnipresent, the activities of a particular Red Cross or Red Crescent organization may receive worldwide attention. Perceptions travel: an action perceived to fall short in terms of neutrality and independence can harm the image and work of other components of the Movement elsewhere.

3. A key challenge for the Movement

Although it is difficult to say whether the described trends are likely to be short-lived or enduring, the question arises of their longer-term impact on the credibility of humanitarian organizations and on their real and perceived legitimacy and capacity to act. Indeed, the above-mentioned factors have already had an impact on the ability of the Movement's components to carry out neutral and independent humanitarian operations.

At the 28th International Conference of the Red Cross and Red Crescent, all States and National Societies solemnly affirmed:

> "Profoundly alarmed by the growing number of acts of violence or threats against humanitarian workers, we state that they must be respected and protected in all circumstances in their vital role to prevent and alleviate suffering. Their independence from political and military actors must be reaffirmed. (…) We reaffirm the responsibility of States to respect the adherence of the components of the International Red Cross and Red Crescent Movement to its Fundamental Principles in order to provide impartial, neutral and independent protection and assistance for all those most in need." [8]

The constant challenge for neutral and independent humanitarian action in today's world is to be able to gain access to, protect and assist those who are most vulnerable and in need in an effective and timely manner without discrimination of any sort. If the Red Cross and Red Crescent is to have such access, it must be respected and supported by all – particularly State and non-State actors, intergovernmental institutions and civil society – and its independence and neutrality must be understood and recognized. It is thus essential that we secure the support of our stakeholders for what was stated at the 28th International Conference.

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[6] The European Union's work on this concept is not yet complete. It is mentioned here as an indicator of the ways in which an increasingly globalized world is affecting the concepts of neutrality and independence.

[7] See the Statutes of the International Red Cross and Red Crescent Movement, Preamble and Art. 2.4.

[8] "Protecting human dignity," Declaration, December 2003.

4. Questions for the Commissions

4.1 Neutral and independent humanitarian action cannot be imposed; it must be accepted. What are the major challenges involved in adhering to the principles of independence and neutrality in (a) peacetime, (b) situations of armed conflict or unrest? *(e.g. perception by and communication with key stakeholders; security of humanitarian personnel; preserving the Movement's identity and image.)*

4.2 How can the components of the Movement best preserve the principles of independence and neutrality in their interactions with coordination and integration mechanisms for humanitarian action set up by States or intergovernmental organizations in response to situations of armed conflict or natural disaster *(e.g. UN reform; EU Civil Protection Capacity; auxiliary role of National Societies)*?

4.3 What should the components of the Movement do to maintain their independence and neutrality in situations where governments integrate humanitarian activities into their military operations? How should they react to offers by governments to use military assets (e.g. means of transport; armed protection and escorts) in responding to humanitarian needs related to (a) armed conflicts, (b) natural disasters?

4.4 When engaging in international humanitarian activities, how can the components of the Movement support one another in fulfilling their respective roles and responsibilities in accordance with the Fundamental Principles, especially with regard to external influences and pressures *(e.g. from governments or other organizations)*?