

## **CHARITY COMMISSION**

### **APPLICATION FOR REGISTRATION OF CONCORDIS INTERNATIONAL TRUST**

#### **DECISION OF THE COMMISSION MADE ON 23 JULY 2004**

##### **1. The issue before the Commission**

The Commission considered an application by a company limited by guarantee called Concordis International Trust ("Concordis") for registration as a charity. If the company was established as a charity it should be entered on the Central Register of Charities under section 3(2) of the Charities Act 1993.

##### **2. Decision**

The Commission:

- having considered the case which has been put to them by Concordis; including legal submissions and full supporting evidence, and
- having considered and reviewed the relevant law and the governing document and activities of Concordis and the social environment in which it operates,

concluded that Concordis is established for exclusively charitable purposes and would be registered as a charity with the following objects:

*"To promote national and international conflict resolution and reconciliation for the public benefit with a view to relieving suffering, poverty and distress and building and maintaining social cohesion and trust within and between communities by:*

*Investigating and identifying probable causes of the conflict*

*Examining probable solutions to the conflict through participatory research into relevant economic and social issues*

*Mediating with parties to the conflict and others together to discuss such research and possible solutions enabling them to build relationships of trust*

*Recommending to the international community and the parties involved the measures which, in the trustees' opinion, are likely to result in the resolution or prevention of the conflict or the reduction of any humanitarian crisis that may ensue from the conflict*

*Publishing reports for the public benefit on the causes and recommended solutions of particular conflicts*

*Provided that all activities shall be balanced and shall maintain or enhance the Trust's commitment to remaining impartial."*

### **3. The objects and activities of Concordis**

#### **3.1 The objects**

The objects originally proposed by Concordis in their application were:

*"To help in resolving conflict within and between nations and in building just and sustainable peace, on the basis that the long term solution to conflict is found in building relationships of trust, by:*

*carrying out applied research into economic and social issues relevant to conflict resolution in the UK and internationally and in relation to specific conflicts;*

*engaging parties to a conflict in discussions to explore possibilities for peace on a systematic and well informed basis; and*

*encouraging and facilitating whatever activities are appropriate, to establish long-term community, regional and ethnic peace and stability".*

#### **3.2 The Activities**

Concordis previously operated as part of the Relationships Foundation<sup>1</sup> and was responsible for its international work. The intention was to separate the international work and register it as a distinct charity.

The objects of the Relationships Foundation are:

*"(a) to carry out research into theological principles and economic and social issues concerning the organisation and conduct of human relationships in personal and public life both nationally and internationally and to publish the results of such research. (b) to provide education and training to the general public regarding all such research and related issues."*

Relevant work carried out as part of the Relationship Foundation included;

- i) A programme in Sudan which focused on building relationships of trust with and between key senior figures representing all the

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<sup>1</sup> registration number 327610

main parties involved in the conflict and on providing a neutral forum for them to discuss critical issues relating to a peace settlement. High level consultations were held during 2002.

- ii) Prior to the ending of apartheid, the team behind Concordis was instrumental in establishing confidential dialogue between leading members of the ANC and the white establishment.
- ii) In the aftermath of Rwanda's 1994 genocide, the group facilitated successful dialogue between leading national and international policy makers, particularly in the areas of agricultural development for future conflict prevention.<sup>2</sup>

#### **4. The legal basis for consideration of the activities of Concordis**

The Commission considered that it was unclear whether the objects as set out in the Memorandum were charitable. The term 'just' is arbitrary and reference to 'building a just and sustainable peace' invites a subjective interpretation and is consequently capable of being a political purpose.

While as a general rule of construction the courts do not normally look beyond the plain language used in the governing document establishing the body, they may, where necessary and appropriate, look at the circumstances in which a body came into existence and the sphere in which it operates in order to come to a view about the purpose for which it is established.<sup>3</sup> This was particularly the case where, as here, the express purposes were capable of both charitable and non-charitable construction. The Commission considered it was necessary and appropriate in this case to look at the activities of the organisation in order to determine the purpose which Concordis was established and thereafter to consider whether Concordis was established for a charitable purpose for the benefit of the public or for a non charitable political purpose.

The Commission noted that the purpose, if charitable, was likely to be a purpose under the fourth head of charity (other purposes for the benefit of the public) and as such it is for Concordis to demonstrate that it is established for exclusively charitable purposes and for the public benefit.

For the purpose of considering these aspects, it is necessary to look at the type of activities which the trustees intended to promote under the banner of resolving conflict. Taking into account the activities undertaken by Concordis would help establish as a question of construction the purposes for which Concordis is established and whether it is established for the public benefit.

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<sup>2</sup> The Concordis International Strategic Plan 2003 to 2006

<sup>3</sup> Dicta of Sachs LJ in *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, at 91 approved in *Southwood v A-G* Judgment of Mr Justice Carnwath 9 October 1998

## **5. Initial Consideration of activities**

The Commission noted that the activities of Concordis fell into the key areas of research, consultation and publication.

The Commission reviewed three publications that related to the peace-building programme in the Sudan - 'Alternative Constitutional Frameworks, Alternative Transitional Arrangements and Mineral Resources in the Sudan,' 'Military and Security Issues and Internally Displaced Persons and Refugees in the Sudan' and 'The Inter-Sudanese Consultation on Peace and Justice'.

The Commission noted that the fact-finding missions and preparation of these reports about the causes of this particular conflict had been undertaken objectively and thoroughly. It was evident that Concordis consulted appropriate experts and gave consideration to the experts' views.

The Commission noted that Concordis carried out consultations on an informal low profile basis and placed particular emphasis on taking a non-partisan approach to its work.

The Commission noted that Concordis received funding from the British, American and Norwegian Governments. The Commission had also received correspondence from the British Government's Foreign and Commonwealth Office which confirmed it viewed Concordis as being politically neutral.

The Commission considered that all of the activities were carried out with a view to furthering the purpose of promoting conflict resolution by identifying the cause of conflict and trying to build relationships to resolve it.

## **6. The Promotion of Conflict Resolution in a National or International context for the Benefit of the Public – Recognising a New Charitable Purpose**

### **6.1 Recognising a new purpose**

The Commission considered whether the promotion of conflict resolution in a national or international context could be charitable by way of analogy with accepted purposes and for the benefit of the public following their own policy statement on the acceptance of new charitable purposes.<sup>4</sup>

The Commission had decided that when asked to draw an analogy with existing charitable purposes, they should take a constructive and imaginative approach, adapting the concept of charity to meet constantly evolving social needs.

The Commission had already accepted as charitable for the public benefit organisations that advance education into causes and effects of conflict and

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<sup>4</sup>RR1A Recognising New Charitable Purposes

<sup>5</sup> Restorative Justice Consortium. Decision of the Commission 15<sup>th</sup> January 2003

organisations that provide services directed towards conciliation and mediation in conflicts. The Commission had also accepted the promotion of restorative justice as a means of resolving conflict and promoting reconciliation in the community.<sup>5</sup>

The Court had decided that international friendship or understanding was not charitable.<sup>6</sup> The Commission distinguished such a purpose from conflict resolution, the latter being intended to address and relieve the consequences of struggle or war between groups or nations, rather than the promotion of a closer and more sympathetic understanding between two nations.

The Commission considered that to promote conflict resolution in a national or international context by identifying the causes of a conflict and seeking to resolve it was analogous to the following existing purposes;

- i) *Relief of poverty, sickness and distress.*<sup>7</sup>

This is relevant in so far as the resolution and prevention of conflict has an impact on civilians suffering from the consequences of war or civil unrest.

- ii) *The protection of human life and property.*

*The preservation of public order and the prevention of breaches of the peace*<sup>8</sup>

An institution which aims to relieve suffering resulting from war or civil unrest through recommending solutions to conflict may be regarded as comparable to those charities with an object for the preservation of public order or which save lives in a more visible manner.

- iii) *The promotion of the moral and spiritual welfare or improvement of the community.*<sup>9</sup>

In the same way that moral improvement is achieved by the promotion of Human rights, moral improvement could be achieved by the promotion of conflict resolution, which may also be seen as fundamental to the proper functioning of society.

Once satisfied that the promotion of conflict resolution in a national or international context could be a charitable purpose, the Commission went on to consider whether such a purpose would be for the public benefit.

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<sup>6</sup>Anglo –Swedish Society v IRC (1931) 47 TLR 295

<sup>7</sup>Charitable Uses Act 1601

<sup>8</sup>Charitable Uses Act 1601. Picarda Third Edition on certain patriotic purposes. IRC v City Glasgow Police Athletic Association (1953) AC 380

## 6.2 Considering whether a purpose is for the public benefit

Whether such a purpose is for the benefit of the public is a question of law and fact to be answered by forming in any particular case a view on the evidence in the light of current standards and social and cultural considerations.<sup>10</sup> If tangible and objective benefits cannot be shown public benefit can be demonstrated by evidence of the approval by the common understanding of enlightened opinion for the time being.<sup>11</sup>

The Commission noted the considerable harm caused by conflict and the clear benefits arising from promoting resolution to conflict. They noted that this view is supported by evidence that;

- i) The promotion of conflict resolution nationally and internationally would result in tangible benefits by reducing death, injury, famine, disease, poverty and homelessness.
- ii) There is a common understanding of enlightened opinion that promoting conflict resolution by identifying the cause of conflict is for the public benefit in light of the following:
  - Article 28 of the Universal Declaration of Human Rights set out a right of all to social and international order in which the rights and freedoms set forth in the declaration can be realised
  - The outcome of the G8 Africa Action plan peace and security measure includes conflict resolution
  - The United Nations International Peace Keeping Force plays a role in sustaining peace after conflict

The Commission concluded that the promotion of conflict resolution in a national or international context was therefore capable of being a charitable purpose for the public benefit

## 7. Conflict resolution, the promotion of peace and political purposes

It may be that an institution, which is seeking to resolve a conflict, becomes involved in promoting peace between nations or in a civil conflict. The promotion of peace as a charitable purpose is a difficult issue given that it may clearly be carried out by political means and could constitute a political purpose.

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<sup>9</sup> For a discussion of relevant cases see the Decision of the Charity Commissioners on the application for registration as a charity by the Church of Scientology – 17 November 1999

<sup>10</sup> A detailed explanation of the law is set out in the Commission paper RR8 on The Public Character (under revision) available on the Commission website

<sup>11</sup> National Anti-Vivisection Society v IRC (1947) 2 All ER 217. Commission paper RR8

An organisation whose stated purposes include the achievement of a political purpose cannot be a charity. This is because case law has established that the Court has no way of judging whether or not a proposed change in the law will or will not be for the public benefit.<sup>12</sup>

The courts have accepted that gifts for certain societies established for the advancement of peace were charitable gifts<sup>13</sup>. In 1983, the Commissioners considered that the promotion of peace is capable of being a charitable object if attained in a suitable way but that this had to be distinguished from the promotion of pacifism. <sup>14</sup>

*“The Commissioners recognised, however, that the promotion of peace is a particularly difficult area of charitable law inasmuch as a trust for such a purpose could well be carried out by means which would be improper for a charity. Every individual case would need to be examined carefully and thoroughly to determine whether on its merits the trust could be properly accepted as charitable.”*<sup>15</sup>

The Court has indicated that *“There is no objection – on public benefit grounds – to an educational programme which begins from the premise that peace is generally preferable to war.”* <sup>16</sup>

The Court went on to state:

*“The premise that peace is generally preferable to war is not to be equated with the premise that peace at any price is always preferable to any war.”*

*“There are differing views as to how best to secure peace and avoid war. The Court is in no position to determine that promotion of one view rather than the other is for the public benefit... to attempt to do so would be to usurp the role of government.”*<sup>17</sup>

The Commission concluded that the promotion of conflict resolution in a national or international context was capable of being a charitable purpose for the public benefit. However, each case would need to be assessed to determine whether an organisation was established for such a charitable purpose for the benefit of the public or for a non-charitable political purpose.

The Commission therefore went on to consider further the activities and particular features of Concordis.

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<sup>12</sup>Southwood v AG WTLR 1199 The Times October 26 1998

## **8. Features of Concordis promoting Conflict Resolution**

In considering whether Concordis promoted conflict resolution as a charitable purpose the Commission had regard to the following features of the organisation;

### *Political neutrality*

The Commission had received a letter from the Foreign and Commonwealth Office, confirming it considered Concordis to be politically neutral.

It was apparent that Concordis adopted a non-partisan approach. This was demonstrated by the Reports considered by the Commission and the Operating Principles of Concordis – these refer to working impartially and working as ‘neutral facilitators’. Concordis also referred to the need for a non-partisan approach when assessing its activities – recognising it is precluded, for example, from advocating a particular position.

### *The standing of the trustees*

The Commission was satisfied that the trustees had the weight and recognised ability to promote conflict resolution for the public benefit. The trustees included a member of the House of Lords, the former British Ambassador to the Vatican, an accountant with longstanding experience in East Africa and an expert on child health in developing countries.

### *Suitable expertise of the trustees*

The trustees had expertise in relevant fields. It was also clear that the trustees were able to call on the suitable expertise of the members of the Advisory Board. These members included the Chair of the Foreign Affairs Committee of the UK Parliament, the Principal of the Muslim College, London and the former British Ambassador to the Kingdom of Saudi Arabia.

### *Field staff and reports and Consultation with experts*

The Commission had been sent three consultation reports which related to the peace-building programme in the Sudan.

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<sup>13</sup>Re Harwood (1936) Ch 285

<sup>14</sup>Minutes of a meeting held on 6 July 1983. Report of the Charity Commission for England and Wales 1983. The Commissioners considered two applications for registration. In respect of York Peace Trust Limited it was decided that not all of the activities proposed could be carried out by the Company and that the promoters should be invited to reopen discussion. In respect of The Disarmament Study Trust Limited, it was decided that further inquiry as to the precise intention of the promoters was required

<sup>15</sup>Ibid

<sup>16</sup>Southwood v AG WTLR 1199 The Times October 1998

<sup>17</sup>Southwood v AG



The fact-finding missions and preparation of these reports about the causes of this particular crisis had been undertaken objectively and thoroughly. It was evident that Concordis consulted appropriate experts and gave consideration to the experts' views. By way of example, the participants in these consultations included former members of the Sudanese Parliament, international representatives from the UK and US Governments, university professors and research and policy advisers.

#### *Trustees meetings*

There was no evidence of any grounds for concern regarding the conduct of trustee meetings.

#### *Methods of persuading the international community to take recommended measures*

The Reports referred to indicate that Concordis sets out the background and detail to its recommendations for others to have regard to, rather than simply applying pressure for recommendations to be effected.

#### *Implementation of recommendations*

The focus of Concordis is to act as a facilitator and bridge builder, working alongside those affected by conflict so that they may build relationships and develop consensus on ways forward.

Although there was no independent report expressly indicating the extent to which the involvement of Concordis had assisted in resolving particular conflicts, letters and emails of support and endorsement of the work of Concordis have been supplied. These included letters from the Chair of the Sudan Human Rights Commission and Chair of the Sudan Federal Democratic Alliance.

#### *The stature of the organisation*

Concordis has an established track record in this area of work having previously operated under the umbrella of the Relationship Foundation. The level of financial support received from overseas governments and a letter of support from the Foreign and Commonwealth Office also indicate the respect with which Concordis is regarded.

#### *Public Policy*

A letter from Foreign and Commonwealth Office confirmed it considered Concordis did not operate in a way that was contrary to UK public policy.

#### Additional Criteria

Concordis had also set out the criteria it used to assess which activities would be pursued in furtherance of its objects. These were:

- i) That the activity will build or improve relationships between people of influence belonging to different groups that have been or may be in future conflict;
- ii) That the research underpinning the activity focuses on practical solutions and possible ways forward to sustainable peace rather than short term cease-fires;
- iii) That the activity will maintain or enhance the organisation's conscious impartiality – this precludes, for example, advocacy by Concordis of a particular position, favours low profile consultation that allows individuals to meet out of the limelight and requires research that is undertaken by a balanced range of experts from the conflict affected society and the international community;
- iv) That the activities take place over a protracted period seeking long term solutions not short-term shallow solutions.

Concordis had also identified their primary criterion for selection of relevant economic and social issues to be researched and discussed at consultation. This was that the issue forms a significant probable cause of the conflict.

This approach indicated that Concordis operated in a non-partisan and neutral manner. The Commission considered that the criteria further demonstrated that Concordis advanced conflict resolution in a charitable way.

The Commission then considered the expressed objects for which Concordis was established.

## **9. The Charitable Objects of Concordis**

In recent years, the Commission had accepted as charitable a number of purposes with a requirement to define in the objects the means by which the purpose is to be furthered. This was to ensure both that the purpose was exclusively charitable and not capable of being furthered other than for the public benefit (for instance not in a political manner or in a manner which the court or the Commission could not determine as being for the public benefit).

The Commission therefore decided that the promotion of conflict resolution in a national and international context could be accepted as a charitable purpose for the public benefit where the activities were limited to those carried out on an impartial and non-partisan basis. It was considered that where these features were present, it was unlikely that any substantial body of opinion in England and Wales would not consider the promotion of conflict resolution to be beneficial to the community.

The Commission considered that an organisation intending to involve itself in an area of conflict must have the necessary expertise and sensitivity to handle the situation. In order to demonstrate the requisite public benefit resulting from its activities the organisation should be able to show that it actually improves

situations of conflict or had the capacity to do so. It was therefore important to be satisfied that not only did the trustees have the qualities necessary, the staff of the organisation possessed them too.

The Commission considered that the objects should ideally specify the means by which conflict resolution could be achieved, to ensure the objects did not permit any non-charitable activity. This would enable Concordis to promote conflict resolution in a manner that did not contravene the principle that a charity may not have a political purpose.

## **10. Conclusion**

The Commission concluded that Concordis was established for exclusively charitable purposes. However it considered that the following objects more closely reflected the purposes for which Concordis was established.

*“To promote national and international conflict resolution and reconciliation for the public benefit with a view to relieving suffering, poverty and distress and building and maintaining social cohesion and trust within and between communities by:*

*Investigating and identifying probable causes of the conflict*

*Examining probable solutions to the conflict through participatory research into relevant economic and social issues*

*Mediating with parties to the conflict and others together to discuss such research and possible solutions enabling them to build relationships of trust*

*Recommending to the international community and the parties involved the measures which, in the trustees’ opinion, are likely to result in the resolution or prevention of the conflict or the reduction of any humanitarian crisis that may ensue from the conflict*

*Publishing reports for the public benefit on the causes and recommended solutions of particular conflicts*

*Provided that all activities shall be balanced and shall maintain or enhance the Trust’s commitment to remaining impartial.”*

The Commission noted that Concordis was willing to change its objects to those specified above and would be entered on the Register of Charities pursuant to Section 3 of the Charities Act 1993.