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Study on Operational and Commercial and other Non-operational
Issues Involving the Use of the Emblems
(Item 7.3 of the Draft Provisional Annotated Agenda)

Study

Document prepared by

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

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TABLE OF CONTENTS

<i>Foreword</i>	5
<i>List of abbreviations</i>	6
<i>Introduction</i>	8
<i>Objectives and methodology</i>	8
<i>General principles and concepts</i>	13
 Part I. Recommendations on Operational Issues Involving the Use of the Emblem	20
 Chapter A. Use by State Authorities	20
1) May the medical services of States' armed forces party to an armed conflict temporarily change their emblem?	20
2) May the medical services of States' armed forces use the red cross/red crescent "double emblem"?	24
3) May two different recognized emblems be displayed on sites and means of transport shared by the medical services of the armed forces of States acting in coalition?	27
4) Combat lifesavers (CLS): Are they entitled to use the emblem?	29
5) May armed forces medical personnel, units and transports entitled to use the emblem carry weapons?	33
6) Who has the competence to authorize use of the emblem for protective purposes? What role could National Societies have in this regard?	39
7) How must the emblem be used in occupied territory:	43
a) By the medical services of the Occupying State's armed forces?	43
b) By the civilian hospitals (and their staff), civilian medical units, personnel and means of transport of the Occupied State?	43
8) Are civilian hospitals and medical units allowed to display the emblem in peacetime?	47
9) May the emblem be affixed to relief goods provided by a State?	53
10) May a State include a recognized distinctive emblem on a white background on its national flag?	55
 Chapter B. Use by National Societies	58
11) May a National Society temporarily change the emblem (protective or indicative uses)?	58

12) May a National Society use the "double emblem" (e.g. the red cross and red crescent side by side) for indicative or protective purposes?	61
13) May two different recognized emblems be displayed on the same sites and means of transport that are shared by National Societies?	64
14) Under what conditions may National Societies use the emblem as a protective device?	66
15) May a National Society use the emblem as a protective device during armed conflict without the express authorization of the authorities?	73
16) For what activities may National Society's personnel use the emblem as a protective device, i.e., within the framework of their role as auxiliary to the medical services of the armed forces?	76
17) May a National Society's medical personnel use the National Society's logo when acting as auxiliary to the medical services of the armed forces, i.e., when they are entitled to use the emblem as a protective device?	78
18) May a National Society use a large-sized indicative emblem (the National Society's logo)?	80
19) May a National Society authorize its personnel to use the National Society's logo when participating in its government's humanitarian response abroad, outside the scope of Article 26 of the First Geneva Convention of 1949?	84
20) How may a National Society use the emblem/the National Society's logo when it is in partnership with a UN agency or some other external partner?	87
21) What is the role of the host National Society with regard to use of the emblem/National Society's logo of a participating National Society providing assistance on its territory? ..	92
22) May the National Society's logo (or the emblem) be affixed to relief goods provided by a National Society?	97
23) In what circumstances may a National Society use the national flag simultaneously with the emblem?	100
Chapter C. Use by the ICRC	104
24) Under what circumstances may the ICRC decide not to display the red cross emblem? In such circumstances, under what conditions may the ICRC:	104
a) decide not to use any emblem at all?	104
b) decide to use the red crystal emblem?	104
c) decide to use the red crescent emblem?	104
25) What is the distinction between the red cross emblem and the ICRC logo? How does the ICRC use them?	108
26) How may the ICRC use the emblem when it resorts to armed protection?	111

Chapter D. Use by Other Actors 113

- 27) May international organizations (e.g. UN, African Union, European Union, NATO) use the emblem? 113
- 28) May the medical services of armed groups use the emblem during non-international armed conflicts? 117
- 29) Are entities other than medical services of States' armed forces or components of the Movement, particularly non-governmental organizations (NGOs), ever allowed to display the emblem as a protective device? 119
- 30) May private military and security companies (PMCs/PSCs) use the emblem? 126
- 31) Use of the emblem of third parties' ambulances and first-aid stations, under Article 44, 4th para., of the First Geneva Convention of 1949: What is the role of National Societies? 131

Part II. RECOMMENDATIONS ON COMMERCIAL AND OTHER NON-OPERATIONAL ISSUES INVOLVING THE USE OF THE EMBLEM..... 135

Chapter A. Use by State Authorities 135

- 32) The United Nations Convention of 8 November 1968 on road signs and signals and the European Agreement of 1 May 1971 supplementing the Convention on road signs and signals: Are they compatible with the rules governing use of the emblem? 135

Chapter B. Use by National Societies 141

- 33) May a National Society display the emblem/its logo on items that it distributes or sells to the public? 141
- 34) May a National Society allow its partner companies to display the emblem/the National Society's logo on items for distribution/sale or on advertising material? 144
- 35) May the National Society display:..... 147
a) The name/logo of its corporate supporter on the National Society's website? 147
b) The emblem/the National Society's logo on the website of its corporate supporter?..... 147
- 36) May National Society trading companies or other legal entities, owned or controlled by the National Society, whose profits or funds are devoted to the National Society, use the emblem/the logo of the National Society? 152
- 37) Sponsorship: to what extent may sports teams/players display the emblem/the logo of a National Society for promotion and/or fundraising purposes? What kinds of contracts are possible and what are their limits? 156
- 38) What emblems and logos should be displayed on cover pages of National Societies' publications, and in what manner? 160
- 39) What emblems and logos should National Societies reproduce on their letterheads? .. 162

Chapter C. Use by the ICRC.....	167
40) What emblems should the ICRC display on its publications relating to the International Red Cross and Red Crescent Movement?	167
41) How does the ICRC use its name, logo and image for commercial purposes?	169
Chapter D. Use by Other Actors	178
42) Non-governmental organizations or private corporations registering as "Red Cross", "Red Crescent" or "Red Crystal" in a State where a National Society is already recognized: How should this issue be dealt with?	178
43) May "spontaneous fundraisers" use the emblem/the National Society's logo?	186
Part III. Recommendations for Preventing and Stopping Misuses of the Emblem	190
Chapter A. The Obligations of States.....	190
44) What are the legal, regulatory and practical measures to be taken by States?	190
45) What are the obligations of States in terms of dissemination of the rules governing use of the emblem?	195
Chapter B. The Role of National Societies.....	198
46) What are the mandate and responsibilities of National Societies regarding use of the emblem?	198
Chapter C. The Role of the ICRC	205
47) What are the mandate and responsibilities of the ICRC regarding use of the emblem?	205
48) What are the ICRC responsibilities regarding use of the emblem when it is acting as lead agency, in accordance with the Seville Agreement? What measures should it undertake in this regard?	210
Chapter D. Special Issues	213
49) What is the meaning under international humanitarian law of the term "imitation" of the emblem or of the name?	213
50) How should misuse of the emblem and the name on the Internet be dealt with?	217
51) What strategies are effective for increasing awareness and preventing/reducing emblem misuse? Lessons learnt from "emblem protection campaigns"	222

FOREWORD

For nearly 150 years, the universally known emblems of the red cross, red crescent and red crystal (the emblem) have signified assistance for people in need, particularly people affected by armed conflicts and natural disasters.

The emblem is the symbol of independent, neutral and impartial humanitarian action undertaken by all components of the International Red Cross and Red Crescent Movement (the Movement), preventing and alleviating human suffering in times of crisis. The emblem represents the core identity and spirit of the Movement.

Because of its significance, there are rules regulating the use of the emblem. The 1949 Geneva Conventions granted the Movement, military medical services and religious personnel the right to use it. This privilege in turn gives us the moral and legal responsibility to ensure, through our actions and compliance with the rules, that the prestige of and the respect for the emblem are upheld at all times.

While the components of the Movement need to reinforce their visibility in order to obtain support to assist victims, this should not be carried out in ways that erode the protective value of the emblem and its symbolic power.

In this spirit, the ICRC was inspired to prepare the “Study on Operational and Commercial and other Non-operational Issues involving the Use of the Emblems”. The ICRC hopes that it will be a valuable tool for all the components of the Movement, State authorities and beyond, in our work to promote and reinforce respect for the rules governing the use of the emblem.

LIST OF ABBREVIATIONS

1907 Hague Regulations:	Regulations concerning the Laws and Customs of War on Land (Annex to Convention (IV) respecting the Laws and Customs of War on Land. The Hague, 18 October 1907).
1991 Emblem Regulations:	Regulations on the use of the Emblem of the Red Cross or Red Crescent by the National Societies, adopted by the 20th International Conference of the Red Cross and Red Crescent (Vienna, 1965) and revised by the Council of Delegates (Budapest, 1991).
2003 Minimum Elements:	"Minimum Elements to be included in operational agreements between Movement components and their external operational partners", annexed to Resolution 10 adopted by the Council of Delegates in 2003.
AP I:	Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
AP II:	Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.
AP III:	Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005.
AP:	AP I, AP II and AP III.
<i>Commentary on AP I and II:</i>	Sandoz, Yves, Swinarski, Christophe, Zimmermann, Bruno, <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949</i> , ICRC, Geneva, 1987.
<i>Commentary on AP III:</i>	Quéguiner, Jean-François, "Commentary on the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)", <i>International Review of the Red Cross (IRRC)</i> , No. 865, March 2007, pp. 175-207.
<i>Commentary on GC I:</i>	Pictet, Jean (ed.), <i>Commentary – I Geneva Convention</i> , ICRC, Geneva, 1952.
<i>Commentary on GC II:</i>	Pictet, Jean (ed.), <i>Commentary – II Geneva Convention</i> , ICRC, Geneva, 1960.
<i>Commentary on GC IV:</i>	Pictet, Jean (ed.), <i>Commentary – IV Geneva Convention</i> , ICRC, Geneva, 1958.
<i>Customary IHL Study:</i>	Henckaerts, Jean-Marie, Doswald-Beck, Louise, with contributions by Caroline Alvermann, Knut Dörmann and Baptiste Rolle, <i>Customary International Humanitarian Law – Volume I: Rules</i> , Cambridge University Press, Cambridge, 2005.

GC I:	Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.
GC II:	Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.
GC III:	Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.
GC IV:	Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
GC:	GC I, GC II, GC III and GC IV.
IAC:	International Armed Conflict(s).
ICC:	International Criminal Court.
ICRC:	International Committee of the Red Cross.
IHL:	International Humanitarian Law.
International Federation:	International Federation of Red Cross and Red Crescent Societies.
<i>IRRC</i> :	International Review of the Red Cross.
Movement:	International Red Cross and Red Crescent Movement.
NIAC:	Non International Armed Conflict(s).
NS:	National Society / National Societies
ONS:	Operating National Societies.
PNS:	Participating National Societies.
Secretary-General's Bulletin:	Secretary-General's Bulletin on the Observance by United Nations forces of International Humanitarian Law of 6 August 1999, UN doc. ST/SGB/1999/13.
Seville Agreement:	Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement (The Seville Agreement), adopted by the Council of Delegates (Seville, 25-27 November 1997).
Statutes of the Movement:	The Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25 th International Conference of the Red Cross and Red Crescent (Geneva, October 1986) and amended by the 26 th International Conference of the Red Cross and Red Crescent (Geneva, December 1995) and by the 29 th International Conference of the Red Cross and Red Crescent (Geneva, June 2006).

INTRODUCTION

OBJECTIVES AND METHODOLOGY

This Study on operational and commercial and other non-operational issues involving the use of the emblem – The Emblem Study – was prepared by the ICRC. It is distributed for information to the Council of Delegates, which takes place from 23-25 November 2009.

The term "emblem", in this document, includes all the distinctive emblems recognized in the 1949 GC and their AP of 1977 and 2005, i.e., the red cross, the red crescent, the red lion and sun¹ and the red crystal emblems.²

Framework

The Strategy for the International Red Cross and Red Crescent Movement (Strategy for the Movement), adopted by the Council of Delegates,³ requested the ICRC to undertake a study on the use of the emblem. More specifically, Action 10 of the updated Strategy for the Movement provides that:

"The ICRC, in consultation with the International Federation Secretariat and National Societies, initiates a comprehensive study of operational and commercial issues involving the use of the emblems."

This document is the ICRC response to the request made by the Council of Delegates. The ICRC has always considered the use of the emblem to be a very important issue for the Movement – as its identity is clearly linked to the emblems – and for ensuring general respect for IHL. The ICRC believes that the momentum created by the adoption in 2005 of AP III has increased interest in the subject and will have a positive impact on the dissemination of the content of the Study and on its impact and usefulness.

Objectives and audience

In preparing this Study, the ICRC had the following concrete objectives in mind:

- to address the most difficult questions associated with the use of the emblem, and/or those that recur with the greatest regularity, based on requests received from NS, ICRC and International Federation delegations, from State authorities and also from private individuals;
- to clarify some aspects of the 1991 Emblem Regulations, especially those related to commercial issues involving the use of the emblem, by applying existing rules to specific cases;

¹ The red lion and sun has not been used since the Islamic Republic of Iran's declaration, on 4 September 1980, that expressed the wish to use the red crescent as its distinctive emblem instead of the red lion and sun.

² The Emblem Study does not cover the use of other signs and emblems recognized under IHL (e.g. the distinctive emblem of cultural property, the international distinctive sign of civil defence or the international special sign for works and installations containing dangerous forces).

³ The Strategy for the Movement was adopted in 2001 by Resolution 3 of the Council of Delegates. It was updated in 2005 by Resolution 6 of the Council of Delegates.

- to strengthen the capacity of all the components of the Movement to provide explanations and guidance to their own members and employees, and to public and private actors, on the proper use of the emblem and on ways to tackle its misuse, particularly in conformity with their obligations as set out in Article 3(2) of the Statutes of the Movement;
- to develop a tool that can assist in reinforcing and strengthening the identity of the Movement around its recognized emblems;
- to provide States' authorities with a tool that will enable them to enhance their understanding of the many rules regulating the use of the emblem and of their obligations under IHL in this regard;
- to serve as a resource for developing dissemination tools for specific audiences, and for the general public, on the use of the emblem.

By strengthening the knowledge and understanding of the emblem and its use, the ultimate objective of this Study is to ensure greater respect for the emblem at all times from all section of society, and, particularly, to reinforce its protective value.⁴ The Study, therefore, contains recommendations on the contents of the rules governing the use of the emblem, as well as on the procedure to follow when faced with its misuse.

Such an objective is in keeping with the mission of the Movement, which is to prevent and alleviate human suffering. Obviously, to fulfil their mission, components of the Movement must have access to victims and persons in need. In order to have access – especially in a situation of armed conflict – it is crucial that the components be able to count on the trust of the authorities and the parties to the conflict. There can be no doubt that misuse of the emblem, whenever committed, creates confusion and distrust in the minds of the public in general, and in the parties to an armed conflict in particular. This undermines confidence in the components of the Movement, and threatens their access to victims and even their own security. By adding to people's understanding of the emblem and by providing recommendations for tackling its misuse, the Study will, thus, also be serving the general mission of the Movement.

Similarly, the Emblem Study is conceived as a tool for reducing and eventually eradicating continual misuses of the emblem. Such misuses impair access by the medical services of States' armed forces to the persons they are assigned to assist and protect.

Lastly, it may be worth mentioning what the Emblem Study does not aim to do. In order, at the outset, to prevent the possibility of confusion and of having false expectations raised, the following considerations must be kept in mind:

- The Study has not been drafted with a view to amending the 1991 Emblem Regulations, but to clarify some of their provisions. The Regulations already constitute the most extensive interpretation acceptable of the 1949 Geneva Conventions. As stated in the Preamble, 4th para., to the Regulations, "the scope allowed by the revised version is as wide as it possibly can be within the framework of the Geneva Conventions."
- The Study is not intended as a commentary on AP III. Some aspects of AP III have an impact on the recommendations formulated in the Study. To that extent, AP III is, of course, taken into consideration and reference is made to its relevant provisions. However, a separate commentary on AP III has already been prepared.⁵

⁴ The 2001 version of the Strategy for the Movement defined the expected result of the Study as follows: "Emblems are understood and respected both in conflict and non-conflict situations by all players and parts of society."

⁵ See Jean-François Quéguiner, "Commentary on the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)", *IRRC*, March 2007, No. 865, pp. 175-207.

Method and working process

As requested in the Strategy for the Movement, the Emblem Study has been drafted in wide consultation with the International Federation and NS.

In March 2006, a group of experts from the International Federation and from some 30 NS was constituted. In 2006-2007, the group was able to provide very valuable and insightful comments and recommendations on identifying the questions to be discussed and at subsequent stages of the drafting process. The experts have themselves also drafted some of the preliminary analyses and recommendations contained in the Study. During the same period, further advantage has been taken of every available opportunity for obtaining feedback and input from NS (e.g. the annual meeting of NS legal advisers organized by the ICRC, meetings of the European Legal Support Group and of the European Public Support Group, etc.).

A first version of the Emblem Study was submitted for information to the Council of Delegates which took place in November 2007. In Resolution 7 on the Strategy for the Movement, the Council:

“welcoming the Study on Operational and Commercial and other Non-operational Issues Involving the Use of the Emblems (the Study) prepared by the ICRC,

reaffirming the validity of the existing rules governing the use of the emblems, notably those contained in the 1949 Geneva Conventions, their Additional Protocols and the 1991 Regulations on the use of the emblem by the National Societies, and *emphasizing* the vital importance of respect for those rules to guarantee the protective value of the emblems and access to people in need of protection and assistance and to strengthen the identity of the Movement as a neutral and independent humanitarian actor,
(...)

7. *invite[d]* the components of the Movement to utilize the recommendations of the Study to enhance the implementation of the rules governing the use of the emblems and to provide feedback to the ICRC on the content and use of the Study;

8. *request[ed]* the ICRC to continue its work on the Study, taking into account feedback received from the components of the Movement and further extending its consultations to States, and to inform the Council on progress made.” (Footnote omitted)

On the basis of the mandate defined in Resolution 7, the ICRC conducted further consultations in 2008 and 2009. In particular, the Emblem Study (with some modified and some additional questions) was circulated for comments to all States, to all NS and to the International Federation on 30 May 2008.⁶ Consultations with States were indeed, for three main reasons:

- It is States which define and adopt the rules governing the use of the emblem;
- States, in particular their military medical services, are the primary users of the emblem (under the conditions set out in IHL instruments) and numerous questions dealt with in the Study directly address States' use of the emblem;
- States are primarily responsible for ensuring respect for the emblem.

⁶ Please note that informal consultations with States were already carried out in 2007 through the national Inter-ministerial Committees for the implementation of IHL. Inter-ministerial Committees on the implementation of IHL are competent to promote, advise on and coordinate all matters relating to the implementation of IHL at national level, and to compliance with and development of the law. Such bodies are usually composed of representatives of all government departments concerned with IHL, of the judicial and legislative branches, as well as of the NS.

The feedback received from NS touched upon a wide variety of issues and questions relating to the Study. However, the main comments received concerned the use of the emblem by NS in their fundraising activities (e.g. use of the NS logo in partnerships with the private sector) and for promotional activities (e.g. use of the NS logo on materials or premises of the NS). This prompted the ICRC to organize a workshop in Geneva on 23 February 2009 to discuss these matters. Attended by high-level representatives of NS together with International Federation and ICRC representatives, the workshop offered a very fruitful opportunity for dialogue on the Emblem Study, and on the promotion and fundraising carried out by the Movement's components, two activities of importance which permit the latter to discharge their mandate efficiently.

The main conclusions of the workshop were the following:

- The components of the Movement have to mobilize themselves, but also and in particular to mobilize States, to better promote the protective value of the emblem.
- The emblem/logo is part of the "Movement brand/identity". Relevant actions undertaken to enhance and promote the Movement's image/brand must comply with the existing legal framework governing the use of the emblem.
- Further reflections, separate from the Emblem Study, should be conducted in the upcoming 2-3 years on the development and promotion of the "Movement brand/identity", based on a better understanding of the Movement's "values" and perception.

Lastly, the Emblem Study benefited from the feedback on various aspects received from States. Such feedback was discussed bilaterally with States and presented in an information session that took place in Geneva on 15 June 2009.

The Study must therefore be considered as the result of extensive consultations within the Movement and with States. Despite this fact, the ICRC itself is ultimately responsible for the recommendations contained in the Study.

Structure

Table of contents:

The Emblem Study is divided into three main parts:

Part I attempts to identify what is legal, permissible or recommended when using the emblem in operational contexts.

Part II concentrates on commercial (and other non-operational) issues involving the use of the emblem.

Each of the first two parts contains four Chapters, which address questions on the use of the emblem raised by the various actors involved:

- use by State authorities;
- use by NS;
- use by the ICRC;
- use by other actors.

Part III attempts to set out the obligations and roles of the various actors (States, NS, the ICRC, etc.) in preventing or stopping misuse of the emblem. Its chief aim is to provide some step-by-step guidelines on what to do when faced with misuses of the emblem and how to prevent their occurrence.

Format for the questions:

For each question that has been identified, the Study provides a recommendation on what is legal/permissible or, when that is required, on how to deal with a particular misuse of the emblem. Each question follows this order:

- the legal or statutory basis that needs to be considered to answer the question;
- a recommendation, or recommendations, on how to answer the question;
- the analysis on which the recommendation(s) is/are based.

GENERAL PRINCIPLES AND CONCEPTS

The purpose of this introductory section is to provide background information on the emblem and to define or clarify some general concepts and principles related to its use.

These concepts and principles are used extensively throughout the Emblem Study. Therefore, it was thought useful to include them in an introductory section so as not to repeat them under every single question.

I. History and design of the emblem

In 1859, Henry Dunant, a Swiss businessman travelling through northern Italy, witnessed the horrifying aftermath of the battle of Solferino. After he returned to Geneva, he wrote an account of what he had seen, *A Memory of Solferino*, in which he put forward two proposals for improving assistance to war victims:

- to set up in peacetime, in every country, groups of volunteers ready to take care of casualties in wartime;
- and
- to persuade countries to accept the idea of protecting aid workers and the wounded on the battlefield.

The first proposal led to the establishment of NS. As of August 2009, there are 186 of these that are recognized within the Movement. The second proposal paved the way for the drafting of the Geneva Convention of 1864, precursor of the four GC of 1949, which are now accepted by all States.

The adoption of a single distinctive sign that would indicate protection granted under IHL for the medical services of armed forces, volunteer aid workers and victims of armed conflict was one of the main objectives of the five-member committee that met on 17 February 1863 to study Dunant's proposals. This committee would later evolve into the ICRC. The sign – or emblem, as it was eventually called – had to be simple, identifiable from a distance, known to everyone and identical for friend and foe alike.

The Diplomatic Conference that met in Geneva in 1864 adopted the heraldic emblem of the red cross on a white ground – the colours of the Swiss flag in reverse.⁷

During the 1876-1878 war between Russia and Turkey, the Ottoman Empire declared that it would use a red crescent instead of a red cross as its emblem, but agreed to honour the red cross used by the other side. Persia also opted for a different sign: the red lion and sun. The red crescent on a white ground and the red lion and sun on a white ground were officially recognized by a Diplomatic Conference held in 1929.⁸ The red lion and sun has not been in use since 1980, when the Islamic Republic of Iran declared that it wished to use the red

⁷ Article 53, 2nd para., of GC I indicates that a “tribute [was] paid to Switzerland by the adoption of the reversed Federal colours.”

⁸ Both emblems were recognized under Article 19 of the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, and subsequently confirmed under Article 38, 2nd para., of GC I. The red lion and sun is not specifically referred to in the analyses and recommendations of the Study because it is no longer in use. However, the rules governing the use of the emblem (and the recommendations of the Study) would of course similarly apply to the red lion and sun as to the other emblems.

crescent as the distinctive emblem of the medical services of its armed forces.

Lastly, in an attempt to strengthen the protection given to victims of armed conflicts, medical services of armed forces and humanitarian personnel, and to achieve universality for the Movement, an additional distinctive emblem – the red crystal on a white ground – was recognized in 2005 by the Diplomatic Conference that adopted AP III. It consists of “a red frame in the shape of a square on edge on a white ground” (Article 2 of AP III). The name “red crystal” is not contained in AP III, but was endorsed by the international community through the adoption of Resolution 1 of the 29th International Conference of June 2006 (para. 2).

II. The principal rules governing the use of the emblem

The principal rules governing the use of the emblem (as well as the designations of the Red Cross, Red Crescent and Red Crystal) are set out in the following instruments:

- GC I: Articles 38-44, 53 and 54;
- GC II: Articles 41-45;
- GC IV: Articles 18-22;
- AP I: Articles 8, 18, 38 and 85; and Annex 1;
- AP II: Article 12;
- AP III: Articles 1-7;
- 1991 Emblem Regulations; although these Regulations are, strictly speaking, binding only upon NS, the ICRC and the International Federation pledged to apply them to the fullest possible extent.⁹

III. The distinction between protective and indicative uses of the emblem

The emblem has existed for over a century, as the visible sign of the protection afforded under IHL to certain categories of people affected by armed conflicts and to those providing them with humanitarian aid.

It also symbolizes the neutrality, independence and impartiality of the Movement and its components.

The emblem, therefore, serves two very different purposes. It may be used:

- as a protective device;
- or
- as an indicative device.

⁹ In 1993, Resolution 8, para. 4, of the Council of Delegates invited the ICRC and the International Federation to observe the rules governing the indicative and decorative uses of the emblem as laid down in the 1991 Emblem Regulations.

The legal basis for the distinction between these two different uses of the emblem can be found in Article 44, 1st and 2nd paras, of GC I:

"With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words 'Red Cross', or 'Geneva Cross' may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph [red crescent and red lion and sun on a white ground], in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings."

The terminology used in the provisions of the GC and AP I relating to the emblem is, however, not always clear:

- The title of Chapter VII of GC I is "The Distinctive Emblem".
- As mentioned above, this Chapter introduces the distinction between "protective" and "indicative" uses of the emblem, a matter which is further developed in the 1991 Emblem Regulations.
- Article 8(I) of AP I defines "distinctive emblem" as "the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies".

In order to clarify the terminology, the present Study will emphasize the distinction between the two different uses of the emblem, by referring either to the "protective emblem" ("emblem used as a protective device", or "emblem used for protective purposes") or to the "indicative emblem" ("emblem used as an indicative device", "emblem used for indicative purposes", or "logo").¹⁰

As a **protective** device, the emblem is the visible sign of the special protection under IHL (mainly the GC and their AP) for certain categories of persons, units and transports (in particular medical personnel, facilities and means of transport).¹¹ In such circumstances, to ensure maximum visibility, the emblem must be large in comparison with the person or object displaying it and nothing must be added to either the emblem or the white ground. Displaying the emblem in certain places, such as on armlets or painted on the roofs of buildings, is always considered protective use.

As an **indicative** device, the emblem signifies the link between the person or object displaying it and the Movement. In this case, the emblem must be relatively small in comparison with the person or object displaying it; also, it usually bears additional information (e.g. the name or the initials of the NS).¹²

¹⁰ For an explanation of the distinction between "emblem" and "logo" and of the use of these terms throughout the Emblem Study, see Section V of this Introduction ("General principles and concepts").

¹¹ For a comprehensive list of persons, units and transports entitled to use the protective emblem, see Section IV of this Introduction ("General principles and concepts").

¹² On the difference between the emblem and the logos of the components of the Movement, see Section V of

As provided for under Article 4 of the 1991 Emblem Regulations (and its commentary),

“Any confusion between the protective use and the indicative use of the emblem must be avoided. In armed conflicts, the National Society which continues its peacetime activities shall take all the necessary measures to ensure that the emblem used indicatively, displayed on persons or objects, is seen only as marking their connection with the National Society and not as conferring the right to protection under international humanitarian law. In particular, the emblem shall be relatively small and shall not be placed on armlets or roofs. The National Society shall endeavour to follow the latter rule in peacetime so as to avoid from the very beginning of a conflict any confusion with the emblem used as a protective device.

It is not so much the design of the emblem that can lead to confusion as the circumstances in which it is displayed. Hence, it is particularly in situations in which the emblem may also be used as a protective device, i.e., in armed conflicts, that it is necessary to avoid any confusion. In order to obviate this risk, it is recommended that the National Societies use as an indicative device, already in peacetime, an emblem of relatively small dimensions. For the same reason, it is further recommended that, also in peacetime, they refrain from placing the emblem on armlets, roofs or even flags.”

However, the exact size of the emblem, when used for protective or indicative purposes, has not been defined. The *Commentary on GC I* (Article 44) gives a plausible explanation for that:

“For practical reasons, the Conference rejected a proposal that it should lay down the maximum dimensions of the indicatory sign. It merely stipulated that it should be comparatively small in size – that is, small in proportion to the protective sign used for any given category of persons or objects. Common sense must decide the actual size.”¹³

IV. Entitled users of the emblem (general rules)

The following is a list of the general principles that determine what persons or objects are entitled to display the emblem. It does not go into much detail as that is the purpose of this Study.

a) As a protective device

In times of armed conflict:

- medical services (personnel and units, such as hospitals, means of transport, etc.) and religious personnel of States’ armed forces;¹⁴
- medical personnel units and transports of NS that have been duly recognized and authorized by their governments to assist the medical services of the armed forces, when they are employed exclusively for the same purposes as the latter and are subject to military laws and regulations;¹⁵

this Introduction.

¹³ *Commentary on GC I*, Article 44, p. 331.

¹⁴ Articles 39-44 of GC I; Articles 22-23, 26-28, 34-37, 39 and 41-44 of GC II; Article 18(1) and (4) of AP I; and Article 12 of AP II. The protected medical services and religious personnel of States’ armed forces are defined under Articles 19-25 and 35-36 of GC I, Articles 22-23, 26-28, 34-37 and 39 of GC II, Articles 8(c)-(m), 9(2), 12, 13, 15, 21-31 of AP I, and Articles 9 and 11 of AP II. Although the Questions of the Study refer only to the medical services of States’ armed forces, the same rules and recommendations apply to the religious personnel of those armed forces.

¹⁵ Articles 40 and 42-44 of GC I. Protected NS medical personnel, units and transports are defined under Articles 24 and 26-27 and 34 of GC I, Articles 24-25, 27 of GC II, and Articles 8(c), (e) and (g)-(j) and Article 9(2) of AP I.

- civilian hospitals (public or private) that are recognized as such by the State authorities and authorized to display the emblem;¹⁶ and, in occupied territory and in zones of military operations, persons engaged in the operation and administration of such civilian hospitals (and also in the search for, removal and transport of and provision of care for wounded and sick civilians, the infirm and maternity cases);¹⁷
- all civilian medical and religious personnel in occupied territory and in areas where fighting is taking place or is likely to take place;¹⁸
- all civilian medical units and transports, as defined under AP I, recognized by the competent authorities and authorized by them to display the emblem;¹⁹
- other recognized and authorized voluntary aid societies, subject to the same conditions as those defined above for NS.²⁰

In peacetime:

- medical services and religious personnel of States' armed forces;²¹
- NS medical units and transports, whose assignment to medical duties in the event of an armed conflict has been decided, may already display the emblem as a protective device in peacetime, with the authorities' consent.²²

The ICRC and the International Federation may use the emblem at all times (in peacetime as well as in times of armed conflict) and without restriction.²³

b) As an indicative device

In times of armed conflict:

- NS;²⁴
- the International Federation;
- the ICRC.

¹⁶ Article 18, 3rd para., of GC IV. GC IV extends the right to use the emblem to land, sea and air transports as defined under its Articles 21 and 22. Annex I, Article 6, of GC IV provides as well that "zones reserved exclusively for the wounded and sick may be marked by means of the Red Cross (Red Crescent, Red Lion and Sun) emblem on a white ground." On the use of the emblem by civilian hospitals and medical units, see Question 6 of the Study.

¹⁷ Article 20, 1st, 2nd and 3rd paras, of GC IV.

¹⁸ Article 18(3) of AP I. Protected civilian medical and religious personnel are defined under Articles 8(c)-(d) and 15(1) of AP I. This category may include the medical personnel of NS provided that they correspond to the definition of AP I.

¹⁹ Article 18(4) of AP I. Protected civilian medical units and transports are defined under Articles 8(e) and (g), 12 and 13 of AP I. These categories may include medical units and transports of NS provided that they correspond to the definitions of AP I.

²⁰ Article 44, 1st para., of GC I. Voluntary aid societies are defined under Articles 26-27 of GC I and Article 9(2)(b) of AP I.

²¹ Article 44, 1st para., of GC I.

²² Article 13 of the 1991 Emblem Regulations.

²³ Article 44, 3rd para., of GC I.

²⁴ Article 44, 2nd para., of GC I.

In peacetime:

- NS;²⁵
- the International Federation;
- the ICRC;
- ambulances and first-aid stations operated by third parties, when exclusively assigned to provide free treatment to the wounded and sick, as an exceptional measure, on condition that the emblem is used in conformity with national legislation and that the NS has expressly authorized such use.²⁶

V. The distinction between the emblem and the logo

The *Commentary on GC I* (Article 44) states clearly that when the emblem is used as a protective device, it must always retain its original form: "[t]he protective sign, consisting of a red cross on a white ground, as prescribed by the Geneva Convention, should always be displayed in its original form, without alteration or addition."²⁷

Article 5, 1st and 2nd paras, of the 1991 Emblem Regulations is more specific in this regard:

"The emblem used as a protective device shall always retain its original form, i.e., nothing shall be added either to the cross, the crescent or the white ground. A cross formed with two cross-pieces, one vertical and the other horizontal crossing in the middle, shall be used. The shape and direction of the crescent are not regulated. Neither the cross nor the crescent shall touch the edges of the flag or the shield. The shade of the red is not specified. The ground shall always be white.

The emblem used indicatively shall be accompanied by the name or initials of the National Society. There shall be no drawing or writing on the cross or the crescent which shall always be the dominant element of the emblem. The ground shall always be white."

In principle, it is therefore possible, and useful, to make a clear distinction between:

- the "emblem", used for protective purposes, which is understood as the red cross/red crescent/red crystal on a white ground in its original form;
- and
- the "logo" of a component of the Movement, used for indicative purposes, which is understood as the red cross/red crescent/red crystal emblem on a white ground, accompanied by the name or initials of the component concerned: the logo is used for indicative purposes.²⁸

Unless stated otherwise, in this Study, the term "emblem" will be associated with its use as a protective device, while the term "logo" will signify use of the emblem as an indicative device.

²⁵ Article 44, 2nd para., of GC I.

²⁶ Article 44, 4th para., of GC I. On the use of the emblem by third parties' ambulances and first-aid stations, see Question 30 of the Study. For greater convenience, the use of the emblem by third parties' ambulances and first-aid stations authorized by an NS is included under "indicative device". However, the link between those users and the Movement is tenuous, since it merely consists in the authorization given by the NS.

²⁷ *Commentary on GC I*, Article 44, p. 334.

²⁸ For a detailed discussion on the use of a large-sized NS logo, see Question 18 of the Study.

VI. The emblem is not constitutive of protection

While the emblem may be used as a protective device, it is important to reiterate that it is not the emblem that grants protection to the persons or objects displaying it. Protection is granted by IHL (mainly the GC and their AP). The emblem is merely the visible manifestation of such protection.

Even if they did not display the emblem, the same persons and objects would therefore still retain their right to protection, particularly against attack. However, clearly, for protection to be effective, an enemy has to be able to recognize a protected person or unit as such.²⁹ Although there is no absolute obligation for entitled persons or objects to use the emblem, it is worth emphasizing that such use is nevertheless strongly recommended because of its protective value.

VII. Terminology: "misuse of the emblem" as a generic expression

In this Study, the term "misuse of the emblem" encompasses all violations of the rules governing the use of the emblem. Unless specifically stated otherwise, it will cover these three forms of misuse:

- Imitation: the use of a sign which, owing to its shape and/or colour, may be confused with the emblem;
- Improper use:
 - the use of the emblem by people usually authorized to do so, but in a manner inconsistent with IHL provisions on its use;
 - the use of the emblem by entities or persons not entitled to do so (commercial enterprises, pharmacists, private doctors, NGOs, ordinary individuals, etc.) or for purposes that are inconsistent with the Fundamental Principles of the Movement;
- Perfidious use: the use of the emblem during an armed conflict to protect combatants or military equipment when carrying out hostile acts. When this is done wilfully and causes death or serious injury to body or health, perfidious use of the emblem qualifies as a war crime in both international and non-international armed conflicts.³⁰

²⁹ See *Commentary on GC I*, Article 44, p. 325, and the commentary on Article 5 of the 1991 Emblem Regulations.

³⁰ See, in particular, Article 85(3)(f) of AP I and *Customary IHL Study*, Rule 156 (commentary), p. 599.

Part I. RECOMMENDATIONS ON OPERATIONAL ISSUES INVOLVING THE USE OF THE EMBLEM

Chapter A. USE BY STATE AUTHORITIES

1) *May the medical services of States' armed forces party to an armed conflict temporarily change their emblem?*

Legal or statutory basis

Common Article 3, GC
Articles 38--39 and 44, GC I
Article 8, AP I
Article 12, AP II
Articles 1 and 2, AP III

Recommendations

- Once a State has chosen its emblem (protective device) – the red cross, the red crescent or the red crystal – the authorized entities are entitled to use *permanently* only that emblem.
- However, on the condition that it "may enhance protection", the medical services of the armed forces of States party to AP III may *temporarily* use an emblem other than the one already chosen, whether in times of IAC or NIAC.
- Where AP III is applicable, the medical services of armed groups party to a NIAC, under the direction of their respective competent authorities, should be able to substitute *temporarily* the emblem they have already chosen with another one that may enhance their protection.³¹
- The possibility to change one's emblem temporarily must nevertheless be approached with the utmost seriousness. Besides the issues of national legislation and public image, the added value in terms of security (for the medical services that are considering changing emblems temporarily as well as for the other medical services and NS present in the context) must be given the most careful assessment. It must be borne in mind that the only appropriate motive for temporarily changing emblems should be the protection of those who are allowed to display the emblem.

³¹ On the use of the emblem by the medical services of armed groups, see Question 28 of the Study.

Analysis

Introduction

It follows from Articles 38 and 39 of GC I that a State has to choose one from all the recognized emblems and display it on flags and armlets and on all the equipment employed by the medical services of its armed forces.

The emblem chosen by a State, i.e. the red cross, the red crescent or the red crystal, then becomes the one which may be permanently used for protective purposes by the entities authorized by that State, under Article 44 of GC I.

To ensure the practicability of the GC, every State is required to adopt legislation/regulations/policies establishing the emblem for the medical services of its armed forces and for other entities allowed to use the emblem under Article 44 of GC I.³²

The emblem adopted by a State and implemented as such by law or policy is the one that must be used, in principle, by that State during armed conflicts. This principle is based on the fact that all the recognized emblems provide equal protection and must be considered neutral in every respect.³³ Accordingly, there should be no opposition to either the red cross, the red crescent or the red crystal.

Change of emblem

1. By the medical services of States' armed forces, whether in IAC and NIAC

Until recently, IHL did not specifically address temporary changes of emblem by the medical services of States' armed forces. However, AP III, which entered into force on 14 January 2007, has clarified the issue. It should be noted that AP III "applies in situations of armed conflict, whether international or non-international."³⁴

In some specific contexts, e.g. where the chosen emblem is not well received, because of its perceived religious or political connotations, or where the population is familiar with only one of the recognized emblems, this principle of temporary use of a distinctive emblem should be applied with flexibility and adapted in order to ensure the necessary protection. Article 2(4) of AP III provides that:

"The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article [i.e., the recognized emblems, including the red crystal] where this may enhance protection."

³² Article 54 of GC I provides that "[t]he High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53." As an example of what such legislation may be, Article 3.1 of the "Model law concerning the use and protection of the emblem of the red cross, the red crescent and the red crystal", prepared by the ICRC Advisory Service, gives the following instance:

"Use by the Medical Service of the armed forces

1. Under the control of the Ministry of Defence, the medical service of the armed forces of [name of the State] shall, both in peacetime and in time of armed conflict, use the emblem of the [name of the emblem to be used] to mark its medical personnel, medical units and transports on the ground, at sea and in the air."

³³ See Article 2(1) of AP III.

³⁴ *Commentary on AP III*, Article 1(2), p. 186.

Thus, the temporary use of an emblem other than the one permanently chosen by a State is permitted for States party to AP III, when it "may enhance protection." In practice, the assessment should be made, and the decision taken, by the competent military authority, in coordination with all armed forces concerned, with a view to ensuring the security of the entities allowed to display the emblem. In order to use the possibilities created by AP III, States are therefore encouraged to become party to it.

It might nevertheless be argued that, *based on humanitarian and practical considerations*, the medical services of all States' armed forces could avail themselves of the same possibility to temporarily change their emblem under the same conditions.

In every instance, when weighing practical considerations, the competent military authority should keep the following in mind:

- a) The temporary change of emblem by foreign armed forces (or a coalition of such forces) and their use of the emblem employed in the State where they are operating might create confusion, in the minds of opposing combatants and in the population, between the foreign/coalition forces and both the "host" State's military medical services and the host NS.
- b) The only legitimate motive for temporarily changing emblems is the protection of those allowed to display the emblem.
- c) The decision to change the emblem may contravene the domestic legislation of the States taking it, and have possible effect on public opinion in those States, but that is the States' own responsibility.

2. *By the medical services of armed groups party to a NIAC*

Article 12 of AP II indicates that:

"Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly."

The term "distinctive emblem", as used in the AP, is applicable only when the emblem is used for the purpose of protection.³⁵ Article 8(I) of AP I makes it clear that "'Distinctive emblem' means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies."³⁶ Article 12 of AP II was adopted on the basis of almost exactly the same definition.³⁷

It is directly in the interest of those enjoying protection to ensure that they can be identified, not only by the adverse party, but also by the armed forces or armed groups of their own side.³⁸

³⁵ *Commentary on AP I and II*, Article 12 of AP II, para. 4734.

³⁶ Under Articles 1(2) and 2(1) and (3) of AP III, the red crystal on a white ground must be added to the list of the "distinctive emblems".

³⁷ *Commentary on AP I and II*, Article 12 of AP II, para. 4734.

³⁸ *Commentary on AP I and II*, Article 12 of AP II, para. 4742.

Both parties to the NIAC thus have the right to use the emblem, under the direction of their respective competent authorities.³⁹ The *Commentary on AP I and II* (Article 12 of AP II) furnishes the following explanation:

"The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge. It should be recalled that the threshold for application of the Protocol requires a certain degree of organization in general, and in particular the ability of the insurgents to apply the rules of the Protocol."⁴⁰

All parties to NIAC – whether State actors or armed groups – are bound by the relevant rules of IHL. States are explicitly bound by the treaties to which they are party and by applicable customary law. Although only States may formally become party to international treaties, armed groups party to a NIAC must also comply with common Article 3 to the GC, customary IHL, and, where applicable, AP II.⁴¹

Similarly, where AP III applies, armed groups fighting the government in place could avail themselves of the same possibility to temporarily change their emblem under the same conditions as the medical services of States' armed forces under Article 2(4) of AP III.

Thus, temporary use by the medical services of armed groups of an emblem other than the one established by that the *de facto* authority should be possible, but only on the condition that it "may enhance protection" and only under the supervision of the said authority.⁴² Such a situation may arise if the adverse party to the NIAC demonstrates a lack of respect for one emblem, especially in conflicts with religious ramifications.

³⁹ On the use of the emblem by the medical services of armed groups, see Question 28 of the Study.

⁴⁰ *Commentary on AP I and II*, Article 12 of AP II, para. 4746.

⁴¹ See *Nicaragua v. US* (Judgment of 27 June 1986) (Merits) 1986 ICJ Rep. 14, at 114, para. 119; Report No 55/97, Case No 11.137 (Argentina), para. 174 (30 October 1997); Report No 26/97 Case No 11.142 (Colombia), para. 131 (30 September 1997); UN Security Council, Res. 1193 (1998), para. 12 (28 August 1998) (on Afghanistan); UN Security Council, Res. 812 (1993), para. 8 (12 March 1993) (on Rwanda); UN Security Council, Res. 794 (1992), para. 4 (3 December 1992) (on Somalia); No. ICTR-6-4-T, at 248, para. 611 (2 September 1998); UN Commission on Human Rights, Res. 1987/51, para. 3 (11 March 1987) (on El Salvador); UN Commission on Human Rights, Res. 1997/59, para. 7 (15 April 1997) (on Sudan).

⁴² It should always be kept in mind that displaying the emblem is not a condition for protection, but simply the visible sign of the protection granted by IHL (in this regard, see "General principles and concepts" in the Introduction of the Study).

2) *May the medical services of States' armed forces use the red cross/red crescent "double emblem"?*

Legal or statutory basis

Article 38 and Article 44, GC I
Article 2, AP III

Recommendation

- Based on legal as well as on practical arguments, the use of a double emblem by the medical services of armed forces is not permitted.

Analysis

The question of the use for protective purposes of the double emblem (e.g. red cross and red crescent side by side) by the medical services of the armed forces of a State has been debated for decades. The conclusion, based on legal as well as on practical arguments, is that the use of a double emblem by the medical services of armed forces is not permitted. The reasons are as follows:

Legal arguments

a) The GC do not mention the possibility to use a double emblem for protective purposes. Article 38 of GC I provides States with the possibility to use another emblem "in place of the red cross." The combination of two emblems would form a new emblem, which is not permitted for protective purposes. Consequently, the State concerned has to choose a single emblem, which then becomes the only one that may be used by those authorized to do so under Article 44 of GC I.

b) A State wishing to use a double emblem should have made a reservation to that effect when it ratified or acceded to the GC. Since no such reservation exists, this issue needs no further examination.⁴³

c) There is no practice indicating the emergence of a customary rule that would contradict Article 38 of GC I and would suggest the possibility for the medical services of armed forces to use a double emblem.

d) The Conventions would have to be revised through a Diplomatic Conference before permission could be granted for the use of a double emblem. Such a Diplomatic Conference took place in December 2005, giving States the opportunity to make such a revision. The fact that AP III does not allow the medical services of States' armed forces to use the double emblem confirms States' intention to not modify the provisions of IHL in this regard.

⁴³ See Article 19, Vienna Convention on the Law of Treaties, 23 May 1969. A reservation made posterior to accession or succession is not possible. A State that wishes to do so would have to denounce the Convention and then access again with a reservation. It is worth emphasizing that on 26 June 2001, the Republic of Kazakhstan revoked, by Decree No. 863 of its government, the reservation introduced at the time of its accession to the GC in 1993. This reservation stated that "The Republic of Kazakhstan uses a double heraldic emblem [made up] of the red crescent and red cross on a white ground as an emblem proper and as a distinctive sign of the Medical Services of armed forces".

On the contrary, Article 2(4) of AP III authorizes the replacement of the usual emblem by only one other; it does not permit the substitution of the usual emblem by a combination of several other emblems side by side. This conclusion logically flows from the use of the singular when authorizing the temporary use of “any distinctive emblem.” Moreover, according to the *Commentary on AP III*, “a reading of [Article 2(4)] as temporarily accepting a cumulative use of the recognized emblems would constitute a significant departure from prior law. Such a departure would be incompatible with paragraph 3, according to which Additional Protocol III does not seek to modify the recognized conditions for use of and respect for the emblems.”⁴⁴

Practical arguments

a) Legal considerations aside, it is crucial to ensure the effective protective function of the emblem. A double emblem does not ensure security for protected entities. For instance, it does not guarantee the necessary visibility. From a distance, the double emblem loses clarity, simplicity and visibility, which are essential to ensure the protective function of the emblem in a situation of armed conflict.

To be effective, the distinctive emblem – like any visual sign – must be fully visible and identifiable within the visual range for which it is designed. It should make medical personnel, units and transports identifiable to the naked eye in daylight and in clear weather (absence of fog, snow, rain, etc.), and from the same distance by which combatants are separated when they are able to shoot on sight.⁴⁵

Scientific tests on the visibility of the distinctive emblems from a distance, undertaken with a view to ensure the most effective protection possible,⁴⁶ have established that altering the shape of the emblems would reduce their protective impact on the battlefield.

b) Both the red cross and red crescent (and red crystal) provide equal protection and must be considered neutral in every respect. Accordingly, there should be no opposition to either. In areas where the red cross or red crescent are regarded with disfavour, it is doubtful that the use of both emblems together for protection would find greater acceptance.

c) Finally, juxtaposing the red cross and the red crescent might be perceived as evidence of the religious connotation of both emblems.⁴⁷

The possibilities created by AP III and the red crystal

The adoption of AP III, by introducing the possibility of using the red crystal emblem and expressly giving a State's armed forces' medical services (and religious personnel) the possibility to change its protective emblem under certain conditions, might provide a concrete solution to the question of the double emblem:

a) If a State has difficulty in choosing between the red cross and the red crescent, e.g. in a tense multi-religious context, it may now choose to use the red crystal permanently. In

⁴⁴ *Commentary on AP III*, Article 2, p. 190; Article 2(4) of AP III states that “[t]he medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of **any distinctive emblem** referred to in paragraph 1 of this Article where this may enhance protection.” (Emphasis added.)

⁴⁵ *Commentary on AP I and II*, Annex I, Chapter II of AP I, para. 4016.

⁴⁶ See *Commentary on AP I and II*, Annex I, Chapter II of AP I, paras 4018-4026, p. 1167; “Tests by the Dutch Air Force”, *IRRC*, March 1936, p. 204; “Test by the Swiss Air Force”, *IRRC*, May 1936, p. 408; Gérald C. Cauderay, “Visibility of the Distinctive Emblem on Medical Establishments, Units, And Transports”, *IRRC*, No. 277, pp. 295-321; *Manual for the use of technical means of identification by hospital ships, coastal rescue craft, other protected craft and medical aircraft*, 2nd ed., ICRC, Geneva, 1995.

⁴⁷ François Bugnion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, May 2007, p. 20.

principle, this State would need (i) to be party to AP III and (ii) to have adopted the necessary national legislation (and/or regulations) to that effect.⁴⁸

b) Furthermore, States party to AP III may also make temporary use of any distinctive emblem (including the red crystal) to identify the medical services of their armed forces, "where this may enhance protection."⁴⁹ This should be particularly useful in those situations where the emblem used by the medical services of the armed forces of the State in question may be regarded with disfavour.

⁴⁸ AP III entered into force on 14 January 2007. The ICRC Advisory Service is available to provide State authorities with legal and technical assistance designed to facilitate States' adhesion to IHL instruments and adoption of the legislative, regulatory or administrative measures required for the ratification and implementation of those instruments (see Question 47 of the Study).

⁴⁹ Article 2(4) of AP III.

3) *May two different recognized emblems be displayed on sites and means of transport shared by the medical services of the armed forces of States acting in coalition?*

Legal or statutory basis

Articles 38 and 44, GC I
Article 2(4), AP III

Recommendations

- Two different recognized emblems (protective devices) may be displayed on sites (e.g. hospitals) and means of transport (e.g. ambulances) that States acting in the same coalition share, provided that they cannot be perceived as a double emblem.
- The different emblems displayed on the same sites or means of transport must therefore be placed sufficiently far away from one another.
- Ideally, and where AP III is applicable, it would be advisable for States to agree on identifying such sites or means of transport with only one recognized emblem. It should logically be the emblem that is best known/accepted in the area where the action is deployed.

Analysis

This question deals with the use of the emblem by the medical services of armed forces, i.e., the use of the emblem as a protective device.

In principle, two different recognised emblems may be displayed on the same sites or means of transport shared by the medical services of the armed forces of States acting in the same coalition. However, as discussed in Question 2 above, the medical services of armed forces are not allowed to use a double emblem.⁵⁰ The use of both emblems on the same sites or means of transport by the medical services of the armed forces of different States participating in the same coalition may very well amount to – or give the appearance of – using a double emblem and would therefore not be admissible.

Measures must therefore be instituted in order that the coalition not give the appearance of using the double emblem.⁵¹ This could be done in a number of ways, such as:

- a) Not using both the red cross and the red crescent emblems on buildings – e.g. hospitals and offices – or avoiding placing the red cross and the red crescent emblems side by side, i.e., placing them sufficiently far away from one another so as to avoid any suggestion of the use of a double emblem;
- b) Not using the red cross and the red crescent emblems side by side on the same vehicles;
- c) Not using flags displaying both emblems at the same time.

⁵⁰ See in particular Article 38 of GC I. The related issue of the use of the emblem by international organizations (e.g. members of UN peacekeeping forces) is addressed under Question 27 of the Study.

⁵¹ The “double emblem” refers to any combination of two recognized emblems side by side (e.g. red cross/red crescent, red cross/red crystal, etc.).

The medical services of armed forces acting as a coalition might also take the consensual decision to choose and to use only one of the recognized emblems on the sites and means of transport attached to the coalition.⁵² In this regard, it is important to keep in mind that all the recognized emblems have the same legal status under IHL and must be equally respected.⁵³

However, this solution may be difficult to implement. Changing emblems, from the red cross to the red crescent or vice versa, on certain sites or means of transport, may contravene the laws or regulations of the States in the coalition.

The clarification made by AP III must be stressed. Article 2(4) of AP III provides that "[t]he medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection." In addition, Article 5 of AP III, dealing with the specific case of missions under UN auspices, provides that "[t]he medical services and religious personnel participating in operations under the auspices of the United Nations may, with the agreement of participating States, use one of the distinctive emblems mentioned in Articles 1 and 2" (red cross, red crescent or red crystal). Ratifying AP III would give this flexibility to States participating in coalitions. However, directly invoking the provisions of AP III may be legally difficult for States that have not ratified/acceded to the Protocol. Clearly, the larger the number of States party to AP III, the easier it will be to implement this recommendation.

As far as the choice of the emblem is concerned, the primary criterion – to ensure optimal protection – suggests that the emblem that enjoys the greatest familiarity/acceptance in the area of operation be chosen. For instance, if this happens to be an area where the red crescent is very familiar to both the parties and the population, then that is the emblem that should be chosen, and similarly for the red cross. Such a coalition may also, of course, choose to use the red crystal.

⁵² On the issue of the (temporary) change of emblem by the medical services of States' armed forces, see Question 1 of the Study.

⁵³ This has been confirmed by Article 2(1) of AP III which provides that "[t]his Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. The distinctive emblems shall enjoy equal status". See also *Commentary on AP III*, Article 2(1) and (4), pp. 186-187 and 189-190.

4) **Combat lifesavers (CLS): Are they entitled to use the emblem?**

Legal or statutory framework

Articles 24, 25, 41 and 44, GC I
Article 8(c), (e) and (k), AP I

Recommendation

- If Combat lifesavers (CLS) are not **exclusively** assigned to performance of medical duties, they are not entitled to use the protective emblem. In any event, while carrying out medical activities, i.e., the search for and collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or the prevention of disease, CLS must be respected and protected.

Analysis

Introduction

The role of combat lifesavers (CLS) is to perform far-forward medical tasks. CLS are military personnel in their units (such as infantrymen or engineers) who receive moderate amounts of extra emergency medical training in order to provide care points for the wounded and to act as a link between self-aid and medical personnel. Their purpose is to provide first aid within the "golden hour", the critical first 60 minutes following a traumatic injury. CLS may also provide back-up for medical personnel as the situation dictates. The question is whether CLS may be authorized to display the emblem.

Article 44, 1st para., of GC I confers the right to bear the emblem only on personnel protected by IHL.⁵⁴ It is therefore necessary to determine the categories of personnel protected under the GC and AP to which CLS may belong.

The GC regime: the distinction between **permanent** and **temporary** assignment to medical duties

As far as medical personnel are concerned, GC I sets out two levels of protection, depending on whether their assignment to medical responsibilities is permanent or temporary.⁵⁵

⁵⁴ Article 44, 1st para., of GC I reads as follows:

"With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words 'Red Cross', or 'Geneva Cross' may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters."

⁵⁵ *Commentary on GC I*, Article 25, pp. 221-222. The *Commentary on GC I* ("Medical personnel"), on p. 217, identifies six categories of protected personnel:

"Personnel protected by the present Convention comprise the following six categories:

1. Medical personnel of the armed forces exclusively engaged in the search for, or the collection, transport or treatment of the wounded and sick, or in the prevention of disease (Article 24).
2. Personnel of the armed forces exclusively engaged in the administration of medical units and establishments (Article 24).
3. Chaplains attached to the armed forces (Article 24).
4. The staff of National Red Cross Societies and other recognized relief societies, employed on the same duties as the personnel mentioned under 1, 2 and 3, and subject to military laws and regulations (Article 26).
5. Personnel of relief societies of neutral countries, who lend their assistance to a belligerent and are

a) With regard to **permanent** medical personnel, Article 24 of GC I states that:

"Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances."

As explained in the *Commentary on GC I*, to be assured of protection, and thus entitled to use the protective emblem, permanent medical personnel must be permanently employed on the duties which are enumerated in limitative fashion in the GC, i.e., the search for and collection, transport and treatment of the wounded and sick, and the prevention of disease.⁵⁶

b) As far as auxiliary medical personnel are concerned, Article 25 of GC I reads as follows:

"Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands."

Article 25 of GC I deals with a special military category which is **employed only for part of its time** in performing medical duties. Having received special training as medical orderlies or auxiliary stretcher-bearers, these members of the armed forces may be used by their officers to search for or look after the wounded. For the remainder of their time they will be assigned to other military duties.⁵⁷

According to Article 25 of GC I, auxiliary medical personnel are protected "if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands", i.e., on the battlefield.

The Diplomatic Conference allowed auxiliary personnel the use of the protective emblem, which however, should be "in miniature", on an armlet. Article 41 of GC I points out that:

"The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign in miniature; the armlet shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet."

duly authorized to do so (Article 27).

6. Members of the armed forces specially trained for employment, in case of emergency, as hospital orderlies, nurses or auxiliary stretcher-bearers (Article 25).

Personnel in the last of these categories are known as 'auxiliary personnel', as opposed to 'permanent personnel' (see title of Article 24) – a term which is sometimes used to describe the personnel in the first five categories."

⁵⁶ The *Commentary on GC I* states that:

"[...] This exclusive assignment to certain duties applies only to medical personnel, and it was at this price that the States agreed in the Geneva Convention to accord special immunity, even on the battlefield, to members of the enemy's armed forces. The words 'exclusively engaged' indicate that the assignment must be permanent, which is not the case in Article 25 dealing with auxiliary personnel." (*Commentary on GC I*, Article 24, pp. 218-219.)

⁵⁷ Up to 1949, this category of auxiliary medical personnel was not very numerous in practice; it could comprise for example regimental bandsmen, who had received instruction in medical work. However, already at that time, according to the *Commentary on GC I*, nothing prevented military personnel who were combatants in the true sense of the word to fill in this category. See *Commentary on GC I*, Article 25, p. 222.

The drafters of the GC felt that if use of the brassard normally worn by permanent medical personnel were to be authorized, the risk of abuse would have been too high. They therefore decided to have a special armlet for auxiliary personnel.⁵⁸

The two weaknesses of this solution were already clear at the time: the reduction in the size of the emblem tended to defeat the whole object of the provision (to protect auxiliary medical personnel); and the risk of confusion between the two types of armlets remained considerable.⁵⁹

The AP regime: the distinction between **exclusive** and **non-exclusive** assignment to medical duties

In order to remedy the two aforementioned weaknesses in the GC regime, the drafters of AP I abandoned the concepts of different levels of protection and of use of the armlet "in miniature".

The definition of "medical personnel" is set out in Article 8(c) of AP I, which is widely applied in State practice.⁶⁰

"'Medical personnel' means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. (...)"

Article 8(k) of AP I emphasizes the obligation of temporary personnel to be *exclusively* assigned to medical tasks during their time limited assignments:

"'Permanent medical personnel', 'permanent medical units' and 'permanent medical transports' mean those assigned exclusively to medical purposes for an indeterminate period. 'Temporary medical personnel', 'temporary medical-units' and 'temporary medical transports' mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms 'medical personnel', 'medical units' and 'medical transports' cover both permanent and temporary categories."⁶¹

Interpreting the word "temporary" is a difficult exercise. No time limit is fixed. However, to the greatest possible extent, there should be no change in the assignment of medical personnel or medical objects during an operation.⁶² For instance, infantry soldiers exclusively assigned to the search for and transport of the wounded and sick are protected under IHL and enjoy the right to use the emblem as a protective device.

⁵⁸ *Commentary on GC I*, Article 41, p. 317.

⁵⁹ *Commentary on GC I*, Article 41, p. 318.

⁶⁰ It is worth emphasizing that Article 8(c) of AP I was adopted by consensus. See also *Customary IHL Study*, Rule 25, p. 82.

⁶¹ It is worth noting the explanation given by the Drafting Committee (Committee II) for using the words "assign" and "devote" with regard to permanent and temporary personnel, respectively:

"These different words have been chosen in order to make it clear, that the protection of permanent units or personnel starts at the time of the order, assignment or similar act creating the unit or giving a medical task to the personnel. The protection of temporary units or personnel, however, commences only when they have in fact ceased to do other than medical work."

See the *Commentary on AP I and II*, Article 8(k) of AP I, para. 392.

⁶² *Commentary on AP I and II*, Article 8(k) of AP I, para. 395.

The case of CLS

In most cases, CLS are not exclusively engaged in the performance of medical duties but are deployed in the front line where they directly participate in combat. Accordingly, they do not qualify as medical personnel, whether permanent or temporary, and are not entitled to use the protective emblem.

However, in light of the *ratio legis* and purpose of Articles 8(c), (e) and (f) of AP I,⁶³ CLS must be respected and protected⁶⁴ while carrying out medical activities, i.e., the search for and collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or the prevention of disease.⁶⁵

Of course, it is essential in practice to strike a balance between the flexibility necessary to ensure the greatest possible aid for the wounded and the strict rules governing the exclusive character of medical assignments which are indispensable to the survival of this system of protection, based as it is on trust.⁶⁶

It might happen that CLS are assigned *ex officio* by the competent military authority to augment temporarily the medical personnel.⁶⁷ In that case, during the whole period of their *exclusive* assignment, CLS are entitled to make use of the protective emblem.

⁶³ According to Article 31, 1st para., of the Vienna Convention on the Law of Treaties, 1969, "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

⁶⁴ With regard to the meaning of the term "respect and protection", State practice, such as set out in the US Field Manual, shows that these personnel "must not knowingly be attacked, fired upon, or unnecessarily prevented from discharging their proper functions". United States of America, *Field Manual 27-10, The Law of Land Warfare*, US Department of the Army, 18 July 1956, as modified by Change No. 1, 15 July 1976, §§ 225-226.

⁶⁵ The *Commentary on AP I and II* highlights the cases of soldiers who did not belong to the medical personnel but had spontaneously acted as stretcher bearers. They were respected while they were carrying out this task. *Commentary on AP I and II*, Article 8(k) of AP I, para. 396.

⁶⁶ *Commentary on AP I and II*, Article 8(k) of AP I, para. 396.

⁶⁷ *Commentary on AP I and II*, Article 8(c) of AP I, para. 354.

5) *May armed forces medical personnel, units and transports entitled to use the emblem carry weapons?*

Legal or statutory basis

Common Article 3, GC

Articles 19, 22, 24-26, 35 and 44, GC I

Articles 35(1) and 36, GC II

Articles 18, 20 and 21, GC IV

Articles 8(c), (e) and (g), 12, 13, 15, 18, 21 and 28(3), AP I

Article 9(1) and 11(1), AP II

Recommendations

- As long as the medical personnel, units and transports of the armed forces are protected under IHL, they may use the protective emblem.
- The protected status of medical personnel of the armed forces does not cease if they are equipped with “small arms”, solely to defend their patients or themselves against acts of violence.
- If medical personnel use machine guns and any other heavy weapons which may not easily be transported by an individual and which have to be operated by a number of people, these medical personnel and their units and transports forfeit the protection of IHL and lose the right to display the emblem.
- The above recommendations do not prevent hospital ships from being equipped with purely defensive means of defence.

Analysis

Introduction

As a protective device, the emblem is the visible sign of the special protection granted by IHL to relief workers and medical personnel, facilities and means of transport. According to Article 44 of GC I, the protective emblem may be used “to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention”.

Consequently, should medical personnel, units and transports lose their protection under IHL, they would simultaneously lose the right to use the emblem. With regard to the question at issue, it is necessary to verify whether the use of weapons by protected persons, units and transports may affect their protection under IHL and their right to use the emblem.

Respect for and protection of medical personnel, units and transports

Medical personnel, units and transports, be they military or civilian, exclusively assigned to medical duties and purposes, must be respected and protected in all circumstances. State practice has established this rule as a norm of customary international law, applicable in both IAC and NIAC.⁶⁸

⁶⁸ *Customary IHL Study*, Rules 25, 28 and 29, pp. 79, 91-92 and 98.

With regard to medical personnel, this rule is set forth in Articles 19 and 24-26 of GC I, Article 36 of GC II and Article 20 of GC IV, and is expanded in Article 15 of AP I to cover civilian medical personnel (as defined under AP I) in all circumstances, in addition to military medical personnel. It is implicit in Article 3 common to the GC and explicitly stated in Article 9(1) of AP II.

As regards medical units, the same rule is set forth in Article 19 of GC I and Article 18 of GC IV. Article 12 of AP I extended its scope to cover civilian medical units (as defined under AP I) in all circumstances, in addition to military medical units. It is implicit in Article 3 common to the GC and explicitly stated in Article 11(1) of AP II.

As far as medical transports are concerned, the obligation to respect and protect them is set forth in Article 35 of GC I and Article 21 of GC IV, while Article 21 of AP I extended its scope to cover civilian medical means of transportation (as defined under AP I) in all circumstances, in addition to military medical means of transportation.

The terms "medical personnel", "medical units" and "medical transport" are defined in Article 8(c),⁶⁹ (e)⁷⁰ and (g)⁷¹ of AP I, respectively.

Equipment of the personnel of medical units and transports with weapons

Medical units

Article 22 of GC I, dealing with the conditions that would deprive medical units of protection, states that:

"The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

(1) That the personnel of the unit or establishment are **armed**, and that **they use the arms in their own defence, or in that of the wounded and sick in their charge (...)**". (Emphasis added)

Both the *Commentary on GC I* and the *Commentary on AP I and II* give the following elements of interpretation of this Article. First, if the principle that medical personnel have the right to carry weapons was accepted, it was obviously not for the reason that such personnel should use force to oppose the capture of the unit. In such a case, they would lose their

⁶⁹ Article 8(c) of AP I states that:

"'[M]edical personnel' means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organizations;
ii) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;
iii) medical personnel of medical units or medical transports described in Article 9, paragraph 2".

⁷⁰ Article 8(e) of AP I states that:

"'[M]edical units' means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment -- including first-aid treatment -- of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary".

⁷¹ Article 8(g) of AP I states that:

"'[M]edical transports' means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict".

status and the right to protection derived from that status. Article 22 of GC I allows for the possibility of such personnel reacting to uncontrolled elements or looters, as well as ensuring the maintenance of order and discipline in the units under their charge.⁷²

Secondly, the term "defence" should be interpreted in the restricted sense of defence against violence; medical personnel may not use force to try and prevent combatants of the adverse party from capturing the medical unit, without losing their right to protection.⁷³

The meaning of "defence" is still valid in Article 13 of AP I, which extends the right to bear weapons to the personnel of civilian medical units. Based on Article 22 of GC I, Article 13 of AP I deals with civilian medical units and is intended to determine exactly which acts result in losing the right to protection. It reads as follows:

- "1. The protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.
2. The following shall not be considered as acts harmful to the enemy:
 - (a) that the personnel of the unit are equipped with **light individual weapons** for their own defence or for that of the wounded and sick in their charge;
 - (b) that the unit is guarded by a picket or by sentries or by an escort;
 - (c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;
 - (d) that members of the armed forces or other combatants are in the unit for medical reasons."
 (Emphasis added)

It is worth noting that the principle that civilian personnel of medical units may carry weapons was adopted because it was admitted that civilian medical personnel were exposed to the same dangers and had to deal with the same situations as military medical personnel, as a result of the increased scope of their role envisaged in AP I.⁷⁴

State practice confirms that the protected status of civilian medical personnel does not cease if they are equipped solely to defend their patients or themselves against acts of violence by, for example, marauders.⁷⁵

Medical means of transport

The same rules generally apply to medical means of transport. Concerning hospital ships, Article 35(1) of GC II states that:

- "The following conditions shall not be considered as depriving hospital ships or sick-bays of vessels of the protection due to them:
- (1) The fact that the crews of ships or sick-bays are armed for the maintenance of order, for their own defence or that of the sick and wounded.(...)"

⁷² *Commentary on GC I*, Article 22, p. 203. See also the *Commentary on AP I and II*, Article 13(2) of AP I, para. 560.

⁷³ *Commentary on AP I and II*, Article 13(2) of AP I, para. 561.

⁷⁴ *Commentary on AP I and II*, Article 13(2) of AP I, para. 560.

⁷⁵ *Customary IHL Study*, Rule 25, p. 85.

The *Commentary on GC II* indicates that the purpose of Article 35(1) “is undoubtedly to make it possible for the medical personnel to ensure the maintenance of order and discipline in a hospital ship or sick-bay, as in a hospital on land, and protect it against individual hostile acts (by pillagers or irresponsible members of the armed forces)”. The *Commentary* further adds that in general:

“a medical establishment, whether on land or at sea, cannot have a real system of defence against military operations. It is inconceivable that a medical unit could resist by force of arms a systematic and deliberate attack by the enemy. Forces of considerable strength would be needed, and by definition a medical establishment cannot have such forces at its disposal.”⁷⁶

However, according to paragraph 170 of the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, the equipping of hospital ships with “purely deflactive weapons” is not prohibited: “Hospital ships may be equipped with purely deflactive means of defence, such as chaff and flares. The presence of such equipment should be notified.” The reason underlying this provision is that, with the technical possibility for military ships to deflect missiles, there is a risk that hospital ships in the vicinity of such military ships might be hit by the deflected missiles. However, there is “no doubt that hospital ships can only use deflactive means of defence, and not means that could be used in an offensive fashion, such as anti-aircraft guns”.⁷⁷

Concerning medical aircraft, Article 28(3) of AP I also states that:

“Medical aircraft shall not carry any armament except small arms and ammunition taken from the wounded, sick and shipwrecked on board and not yet handed to the proper service, and such light individual weapons as may be necessary to enable the medical personnel on board to defend themselves and the wounded, sick and shipwrecked in their charge.”

The *Commentary on AP I and II* confirms that the rule contained in Article 28(3) of AP I is the same as that governing medical units.⁷⁸

Lastly, paragraph 178 of the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* stipulates that medical aircraft “shall not be armed, except for small arms for self-defence, and shall only carry medical personnel and equipment”.⁷⁹

The type of weapons with which medical personnel may be equipped without losing their protection

Article 13 of AP I clarifies what type of weapons may be carried by both military and civilian personnel of medical units. In light of the considerations of the *Commentary on AP I and II*, it is possible to summarize the situation as follows.

a) When in 1949 military medical personnel were granted the right to carry weapons, the views regarding the lawful use that such personnel could make of those weapons implied that they must be light weapons. However, it was not considered necessary to specify this in Article 22 of GC I.

⁷⁶ *Commentary on GC II*, Article 35, pp. 194-195.

⁷⁷ See *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, paras 170.1-170.3, p. 235.

⁷⁸ As an example, the *Commentary on AP I and II* considers as conceivable the use of weapons in a defensive way only on the ground, particularly when an aircraft is forced to land or to alight on water. See *Commentary on AP I and II*, Article 28(3) of AP I, paras 1069-1070.

⁷⁹ The commentary on para. 178 indicates that the rules contained in Article 28 of AP I (summarized in para. 178) are of a customary nature. See *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, para. 178.1, p. 244.

b) During the 1974-1977 Diplomatic Conference, the decision was taken to specify in Article 13 of AP I that the weapons that may lawfully be used by the civilian personnel of a medical unit were limited to "light individual weapons".⁸⁰

c) The expression "light individual weapons" was not defined in Article 13 of AP I. However, according to the *Commentary on AP I and II*, "light individual weapons" refers to weapons which are generally carried and used by a single individual. Thus not only hand weapons such as pistols would be permitted, but also rifles or even sub-machine guns. On the other hand, machine guns and any other heavy weapons which may not easily be transported by an individual and which have to be operated by a number of people are prohibited.

d) Article 22 of GC I (dealing with military medical personnel) does not specify what type of weapons the personnel of military medical units may carry. However, as the tasks to be carried out are the same as in Article 13 of AP I (which deals with civilian personnel of a medical unit), any weapons that are heavier than those stipulated in that Article (i.e., "light individual weapons") may not be carried by the military personnel without depriving the unit of IHL protection and therefore of its right to use the emblem.⁸¹

It is worth mentioning further that in line with the interpretation given by the *Commentary on AP I and II*, numerous military manuals specify that the carrying of light individual weapons does not deprive medical personnel of their protected status.⁸² In particular, the Military Manual of Germany states that "individual weapons" are pistols, sub-machine guns and rifles.⁸³ The Military Manual of the Netherlands gives the same interpretation of the term and specifies that it excludes weapons intended for use against objects, such as missile launchers and other anti-tank weapons, and fragmentation hand grenades and the like.⁸⁴

⁸⁰ *Commentary on AP I and II*, Article 13(2) of AP I, para. 563.

⁸¹ *Commentary on AP I and II*, Article 13, paras. 562-564.

⁸² See, e.g., the military manuals of Argentina, *Leyes de Guerra*, RC-46-1, Público, II Edición 1969, Ejército Argentino, Edición original aprobado por el Comandante en Jefe del Ejército, 9 May 1967, para. 3.007; Australia, Australian Defence Force, *Law of Armed Conflict, Commanders' Guide*, Australian Defence Force Publication, Operations Series, ADFP 37 Supplement 1 – Interim Edition, 7 March 1994, para. 615; Australia, Australian Defence Force, *Manual on Law of Armed Conflict*, Australian Defence Force Publication, Operations Series, ADFP 37 – Interim Edition, 1994, para. 521, see also paras. 911 and 964; Belgium, *Droit de la Guerre, Dossier d'Instruction pour Soldat, à l'attention des officiers instructeurs*, JS3, État-major Général, Forces Armées belges (Undated), pp. 18-19; Benin, *Le Droit de la Guerre*, III fascicules, Forces Armées du Bénin, Ministère de la Défense nationale, 1995, Fascicule II, p. 16; Cameroon, *Droit International Humanitaire et Droit de la Guerre, Manuel de l'Instructeur en vigueur dans les Forces Armées*, Présidence de la République, Ministère de la Défense, État-major des Armées, Troisième Division, Édition 1992, p. 87, para. 142; Canada, *Code of Conduct for CF Personnel*, Office of the Judge Advocate General, Edition of 4 June 2001, Rule 10, para. 6; France, *Fiche de Synthèse sur les Règles Applicables dans les Conflits Armés*, Note No. 432/DEF/EMA/OL.2/NP, Général de Corps d'Armée Voinot (pour l'Amiral Lanxade, Chef d'État-major des Armées), 1992, para. 2.3; Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by the Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, August 1992, para. 631, see also paras. 315 and 619; Kenya, *Law of Armed Conflict, Military Basic Course (ORS)*, 4 Précis, The School of Military Police (Undated), Précis No. 3, p. 9; The Netherlands, *Toepassende Humanitair Oorlogsrecht*, Voorschrift No. 27-412/1, Koninklijke Landmacht, Ministerie van Defensie, 1993, p. VI-5; South Africa, *Presentation on the South African Approach to International Humanitarian Law*, Appendix A, Chapter 4: International Humanitarian Law (The Law of Armed Conflict), National Defence Force, 1996, para. 48; Spain, *Orientaciones. El Derecho de los Conflictos Armados*, Publicación OR7-004, 2 Tomos, aprobado por el Estado Mayor de Ejército, División de Operaciones, 18 March 1996, Vol. I, para. 4.5.b.(1)(b); UK, *Manual of the Law of Armed Conflict*, 2004, para. 7.15; United States of America, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.7, issued by the Department of the Navy, Office of the Chief of Naval Operations and Headquarters, US Marine Corps, and Department of Transportation, US Coast Guard, October 1995 (formerly NWP 9 (Rev. A)/FMFM 1-10, October 1989), para. 11.5.

⁸³ Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by the Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, August 1992.

⁸⁴ The Netherlands, *Toepassende Humanitair Oorlogsrecht*, Voorschrift No. 27-412/1, Koninklijke Landmacht, Ministerie van Defensie, 1993. See *Customary IHL Study*, Rule 25, p. 86.

e) In the 2005 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, the UN General Assembly defines “small arms” and “light weapons” as follows:

“(a) ‘Small arms’ are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) ‘Light weapons’ are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.”⁸⁵

The term “light individual weapon” used in AP I must be understood as the “**small arms**” defined in the Instrument quoted above.

⁸⁵ UN General Assembly, International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, 8 December 2005, para. 4(a)-(b).

6) *Who has the competence to authorize use of the emblem for protective purposes? What role could National Societies have in this regard?*

Legal or statutory basis

Articles 39, 42, 4th para., and 44, GC I
 Article 18, 3rd para., GC IV
 Article 18, AP I
 Article 12, AP II
 Article 5, 1st para., 1991 Emblem Regulations

Recommendations

- For **military entities** allowed to display the emblem (for protective purposes) under GC I (i.e., in IAC), a military authority of the State must be entrusted with the responsibility to authorize their use of it. This responsibility cannot be delegated to other institutions such as NS. Consequently, if NS, (the ICRC or the International Federation) receive requests from the medical services of armed forces, they should turn them down and redirect them to the competent military authority.
- For **civilian entities** allowed to use the emblem (for protective purposes) under GC IV and AP I, the responsible State authority may be either military or civilian. The State may delegate this competence to other institutions and the most suitable would be the NS. In that case, the NS may both authorize the marking of such entities and take an active part in their marking. Where the NS has been given the power to authorize the use of the protective emblem, it should also be allowed to distribute material of its own bearing the protective emblem (to the entities authorized to use the protective emblem).
- In NIAC, under AP II, governmental authorities (civilian or military) and *de facto* authorities of armed groups (civilian or military) may provide both authorization to use the emblem for protective purposes and material bearing the emblem.

Analysis

Introduction

Article 39 of GC I states that "[u]nder the direction of the **competent military authority**, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service." (Emphasis added)

Article 42, 4th para., of GC I adds that "**Parties to the conflict** shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action." (Emphasis added)

Finally, Article 18, 3rd para., of GC IV provides that "[c]ivilian hospitals shall be marked by means of the emblem provided for in Article 38 of the [GC I], but only if so **authorized by the State**." (Emphasis added)

The *relative obligation* to mark armed forces' medical units and establishments, as well as civilian hospitals, with the emblem

As mentioned in the introductory section of this Study, the emblem is not constitutive of protection – which is, in fact, granted by IHL – but, when used as a protective device, it is the visible manifestation of that protection.⁸⁶ Article 18(1) of AP I provides that "[e]ach Party to the conflict shall endeavour to ensure that medical and religious personnel and medical units and transports are identifiable".

Since the emblem is not constitutive of protection, the *Commentary on GC I* says that a belligerent is not under an absolute obligation to mark its units with the emblem. In some cases, it might be either impossible to mark an object with the emblem⁸⁷ or contrary to the interest of a party to identify its medical units.⁸⁸

In conclusion, as emphasized by the commentary on Article 5, 1st para., of the 1991 Emblem Regulations, protected persons and objects still retain their right to protection, even if they are not marked or are badly marked.

Competent authority responsible for the protective use of the emblem

1. IAC

a) As far as the medical units and establishments of the armed forces are concerned, the *Commentary on GC I* says that "it is the military commander who controls the emblem and can give or withhold permission to use it."⁸⁹ Furthermore, according to the same source:

"[T]he military authority is at all times responsible for the use made of the emblem, must keep a constant check on it, and see that it is not improperly used by the troops or by individuals.

(...)

[I]n actual practice, a general order is usually given once for all. So far as the Medical Service of the armed forces is concerned, the authorization must be largely presumed.

Who is the 'competent military authority'? In 1929, a definition was deliberately avoided, so as to allow of flexibility. The question is a private one for the armed forces of each country."⁹⁰

b) On the subject of civilian hospitals, Article 18, 3rd para., of GC IV is more flexible regarding the competent authority. The *Commentary on GC IV* suggests that:

"This provision does not (...) specify the body which is to give permission for marking; it merely says that the authority to do so is vested in the State. The provision thus possesses all the necessary flexibility and **it will be for internal legislation to determine the responsible body.**

The system of joint authorization by the State and the National Red Cross Society adopted at

⁸⁶ See "General principles and concepts" in the Introduction of the Study.

⁸⁷ "Small surgical instruments are a case in point." See the *Commentary on GC I*, Article 39, p. 307.

⁸⁸ "Sometimes, in front-line positions, a commander will camouflage his medical units in order to conceal the presence or real strength of his forces." See the *Commentary on GC I*, Article 39, p. 307. Where civilian hospitals are concerned, the *Commentary on GC IV*, Article 18, pp.149-150, offers these precise observations:

"The general rule that 'civilian hospitals' shall be 'marked' (...) is nevertheless subject to State authorization and this is optional. It follows therefore that while marking of civilian hospitals is obligatory in principle, its application depends on authorization by the State.

The marking of civilian hospitals is then a different matter from their recognition. It does not necessarily follow upon recognition. Whereas all civilian hospitals marked with the protective emblem must necessarily have been officially recognized, all recognized civilian hospitals may not necessarily be marked. Of course, in practice official recognition is most often accompanied by authority to display the distinctive sign."

⁸⁹ *Commentary on GC I*, Article 39, p. 308.

⁹⁰ *Commentary on GC I*, Article 39, p. 308.

Stockholm was not accepted by the Conference, nor was the condition of military consent, as provided for in the Government Experts' draft and which certain delegations to the Diplomatic Conference would have liked to see reinserted.

However, nothing in the present wording [of Article 18 of GC IV] prevents States delegating their powers in this matter **to the military authorities, to the National Red Cross or to any other qualified body**. What is important is that the **responsibility of the State** is clearly established by the Convention.⁹¹ (Emphasis added)

Article 18 of AP I does not specify which authority (military or civilian or NS) is competent to give authorization to use the emblem to medical units and transports.⁹² Since the *Commentary on AP I and II* is silent in this regard, it can be admitted that the interpretation of Article 18 of GC IV also applies here.

Lastly, in a situation where the NS has been given the power to authorize the use of the protective emblem, it should also be allowed to distribute material of its own bearing the protective emblem (to the entities authorized to use the protective emblem).

2. NIAC

In NIAC, the question of the competent authority is even more complex. Article 12 of AP II, which provides that the distinctive emblem must be displayed, "under the direction of the competent authority concerned", by medical and religious personnel and medical units, and on medical transports, is interpreted by the *Commentary on AP I and II* thus:

"The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority **may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge**. It should be recalled that the threshold for application of the Protocol requires a certain degree of organization in general, and in particular the ability of the insurgents to apply the rules of the Protocol."⁹³ (Emphasis added)

The competence delegated to NS, the ICRC or the International Federation

It should be clear, therefore, that State authorities – military or civilian – are responsible for authorizing the use of the emblem, for deciding how material bearing the emblem is to be distributed and for the ways in which the emblem may be displayed.

a) As the responsibility for authorizing military entities to use the emblem under GC I cannot be delegated to other institutions, if NS, the ICRC or the International Federation receive requests from the medical services of armed forces, i.e., for authorization to display the emblem or material displaying the emblem, they should turn them down and redirect them to the competent military authority.

b) For civilian entities allowed to use the emblem under GC IV and AP I, the responsible authority may be either military or civilian. States may delegate this competence to other institutions, such as NS. Although there is no specific stipulation in this regard, if a State wished to delegate such competence to another institution, it would be most suitable to delegate it to the NS, rather than to any other entity, due to the NS role as auxiliary to the

⁹¹ *Commentary on GC IV*, Article 18, p. 150.

⁹² The *Commentary on AP I and II* provides that: "Whether the units and transports are civilian or military, their use is subject to control by the Party to which they belong. Thus the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)". (*Commentary on AP I and II*, Article 18 of AP I, para. 766.)

⁹³ *Commentary on AP I and II*, Article 12 of AP II, para. 4746.

public authorities in the humanitarian field.

Should that be the case, the NS may both authorize the marking of such entities and take an active part in their marking.

c) In NIAC, under AP II, governmental authorities (civilian or military) and *de facto* authorities of armed groups (civilian or military) may be competent to authorize both the use of the emblem and material bearing the emblem. Furthermore, there is no legal bar against authorities of both kinds delegating such power to the NS recognized by the State in question.

- 7) ***How must the emblem be used in occupied territory:***
 a) ***By the medical services of the Occupying State's armed forces?***
 b) ***By the civilian hospitals (and their staff), civilian medical units, personnel and means of transport of the Occupied State?***

Legal or statutory basis

Article 43, 1907 Hague Regulations
 Article 39, GC I
 Articles 18, 20, 21, 22, 56 and 64, GC IV
 Articles 8, 12, 15 and 18, AP I
 Article 2(4), AP III

Recommendations

- The medical services of the armed forces of the Occupying Power must display their own emblem (protective device) in the occupied territory, i.e., the emblem (protective device) prescribed by the legislation (or regulations) of the Occupying Power.⁹⁴
- Officially authorized civilian hospitals, their buildings and staff, as well as civilian medical units, personnel and means of transport, must display the emblem of their own State (if the emblem is to be displayed). Presumably, the authorities of a State will have delivered the required authorization before a conflict arises, and thus, before occupation.
- If the competent body of the occupied State is still functioning, it should be allowed by the Occupying Power to continue granting recognition and authorization to display the emblem for protective purposes. If it is no longer functioning and cannot grant official recognition, the Occupying Power has to substitute itself for the authorities of the occupied State and is ultimately responsible for ensuring that the appropriate documents are issued.
- The emblem (protective device) used by civilian hospitals, their buildings and staff should still be that of the Occupied State, since it would otherwise contravene the provision requiring the Occupying Power not to change the legislation of the occupied territory.

Analysis

During occupation

1. The medical services of the Occupying State's armed forces

The medical services of the armed forces of the Occupying Power must, of course, display their own emblem in the occupied territory, i.e., the emblem prescribed by its own legislation or established practice. This follows, in particular, from Article 39 of GC I, from national legislation/regulations of the Occupying Power, and, as has already been seen, from the fact that a State should not, in principle, change the emblem of its medical services during an armed conflict.⁹⁵

⁹⁴ On the possibility to change one's emblem, see Question 1 of the Study.

⁹⁵ On the possibility to change one's emblem, see Question 1 of the Study.

Thus, if an Occupying Power that uses the red cross emblem occupies territory belonging to a State that uses the red crescent emblem, the medical services of the Occupying Power's armed forces must, in principle, display the red cross emblem. However, as has been demonstrated in Question 1 of the Study, Article 2(4) of AP III offers States party to AP III greater flexibility and the option of making temporary use of another emblem (the red cross, the red crescent or the red crystal) "where this may enhance protection."

2. The civilian hospitals (and their staff), civilian medical personnel, units and means of transport of the Occupied State

For civilian hospitals,⁹⁶ the staff of such hospitals,⁹⁷ and civilian medical personnel,⁹⁸ units,⁹⁹ and transports,¹⁰⁰ the situation is different.

a) Which State is responsible for authorizing the use of the emblem in the occupied territory?

In general terms, Article 43 of the 1907 Hague Regulations provides that, in times of occupation, the overall responsibility lies with the Occupying Power:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

On the specific issue of civilian hospitals in occupied territories, Article 18, 3rd para., of GC IV¹⁰¹ states that:

"Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, but only if so authorized by the State."

Article 20, 2nd para., of GC IV provides that:

"In occupied territory and in zones of military operations, the above personnel [persons regularly and solely engaged in the operation and administration of civilian hospitals] shall be recognisable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949."

Article 20, 4th para., of GC IV provides that:

"The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel."

⁹⁶ Article 18 of GC IV and Article 12 of AP I.

⁹⁷ Article 20 of GC IV and Article 15 of AP I.

⁹⁸ Article 15 of AP I.

⁹⁹ Article 12 of AP I.

¹⁰⁰ Articles 21 and 22 of GC IV and Articles 21-31 of AP I.

¹⁰¹ This and subsequent Articles also apply in the territory of the Occupying Power and to any other party to the armed conflict.

The *Commentary on GC IV* (Article 20) indicates that the list should be provided to the Occupying Forces "when they so request."¹⁰² As set out in this provision, such a list should be presented by those in charge of each hospital. However, this stipulation does not specify who is competent to deliver the above-mentioned authorizations and documents.

Article 56 of GC IV offers this elaboration:

"To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21."

Article 18(3) and (4) of AP I provides that:

"In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem."

Presumably, the authorities of a State would recognize and deliver the required authorization to the hospitals, units, personnel and means of transport at stake before a conflict arises, and thus before occupation.

If the competent body of the Occupied State is still functioning, it should be allowed by the Occupying Power to continue granting official recognition and the authorization to display the emblem. If it is no longer functioning and cannot grant official recognition, the Occupying Power has to substitute itself for the authorities of the Occupied State and issue the documents granting recognition and the right to display the emblem, to civilian hospitals (in particular, new ones), and to civilian medical units, personnel and transports.¹⁰³ The Occupying Power is ultimately responsible for ensuring that recognition and authorization to display the emblem are properly granted,¹⁰⁴ and for issuing identity cards and armlets to the staff of civilian hospitals.¹⁰⁵ The Occupying Power should grant official recognition and authorization to display the emblem only to the hospitals, staff and medical transports that fulfil the conditions laid down in Articles 18, 20 and 21 of GC IV.¹⁰⁶

b) Whose emblem may be authorized?

In occupied territory, the Occupying Power must respect the laws in force in the country **unless absolutely prevented from doing so**, in accordance with Article 43 of the 1907 Hague Regulations. Article 64, 2nd para., of GC IV also stipulates that the Occupying Power may subject the population of the occupied territory to new provisions if they are "essential to

¹⁰² *Commentary on GC IV*, Article 20, p. 169.

¹⁰³ *Commentary on GC IV*, Article 56, p. 315.

¹⁰⁴ The *Commentary on AP I and II* (Article 18(4) of AP I, para. 766) states that "the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)."

¹⁰⁵ *Commentary on GC IV*, Article 56, p. 315.

¹⁰⁶ *Commentary on GC IV*, Article 56, p. 315.

enable the Occupying Power to fulfil its obligations under [GC IV], to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

It is the emblem chosen by the Occupied State, e.g. through an Emblem Act, that will be displayed on civilian hospitals, by the staff of such hospitals, and on civilian medical units, personnel and transports belonging to the Occupied State during the occupation. An emblem, chosen, perhaps, through appropriate legislation, may not be changed by the Occupying Power; it is difficult to imagine why the Occupying Power would be "absolutely prevented" from respecting a recognized emblem other than its own and accepting its use, because all such emblems have exactly the same protective value and legal status.

8) *Are civilian hospitals and medical units allowed to display the emblem in peacetime?*

Legal or statutory basis

Article 27, 2nd para., 1907 Hague Regulations
 Articles 27 and 44, GC I
 Article 18, GC IV
 Articles 8(e), 9(2), 12 and 18, AP I
 Chapters I and II, Annex 1, AP I
 Articles 10, 13, 14, 19 and 21, 1991 Emblem Regulations

Recommendations

- The marking of all civilian hospitals and medical units (private and public) in peacetime for protective purposes is admissible subject to all the following conditions:¹⁰⁷
 1. *The civilian hospitals or medical units must be recognized as such.*
 This means that the hospitals/units must be organized to give care to the wounded and sick, the infirm and maternity cases. A civilian hospital that fulfils this condition has the right to be officially recognized and must be issued with a certificate of recognition by the proper authorities.
 2. *Once they have been recognized as such, the civilian hospitals and medical units may be identified by the emblem if authorized by the State.*
 The civilian hospitals and medical units recognized as such are not directly entitled to be marked by the emblem. The competent State authority must provide authorization for such marking.
 3. *When a State (or the authority to whom that State has delegated this power) decides whether to authorize the marking of civilian hospitals and medical units in peacetime, two points must be weighed against each other:*
 - a) The importance, for civilian hospitals and medical units authorized by the State, of being clearly identifiable from the very beginning of an armed conflict, to ensure their protection from attack; and
 - b) The risk of creating confusion within people's minds – including with the NS and its premises – if too many objects are marked with the emblem in peacetime. This entails the risk of eroding the protection attached to the emblem.
- The marking of public hospitals or medical units with the protective emblem in times of peace should be avoided and discouraged, the only exception to this rule being the painting of the roofs of hospitals and medical units. Civilian hospitals and medical units should be prepared to make themselves clearly identifiable from the very beginning of an armed conflict. One way in which they can do this is by equipping themselves in advance with large red cross or red crescent flags that can be displayed on their façades when needed.

¹⁰⁷ For the purposes of this question, hospitals and medical units belonging to, or used by, NS fall in the category of "civilian hospitals and medical units" unless they are placed at the disposal of the medical services of States' armed forces.

- The emblem should not be used as a directional aid or road sign, for the purpose of guiding the public to civilian hospitals and medical units. That can be done by marking such hospitals and units with a different sign and one appropriate to the context, e.g. by using a white "H" on a blue background as the road sign for hospitals.¹⁰⁸
- Since use of the indicative emblem is reserved solely for NS, civilian hospitals and medical units used by the NS (whether or not they belong to the NS) may display an indicative emblem, i.e., the logo of the NS.

Analysis

Protective use

1. The protection and marking of civilian hospitals and medical units

Article 27, 2nd para., of the 1907 Hague Regulations states that "[i]t is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand." The expression "such buildings" refers specifically to the hospitals mentioned in the first paragraph of the same Article.

However, this provision applies only to the "besieged" and does not provide for the measures that might be required for marking buildings in peacetime.

To fill the lacunae in the protection for civilian hospitals, which is treated somewhat sketchily in the 1907 Hague Regulations, GC IV extends the protection granted to the sanitary facilities of the medical services of armed forces to civilian hospitals. Article 12(1) of AP I extends this protection further, to cover civilian medical units (public or private), provided that they belong to one of the parties to the conflict, or are recognized and authorized by the competent authority from one of the parties to the conflict, or are authorized in conformity with Article 9(2) of AP I or Article 27 of GC I.¹⁰⁹ Article 8(e) of AP I gives the following definition of medical units:

"[The] establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary."

Regarding the marking of civilian hospitals with the emblem, Article 18, 3rd and 4th paras, of GC IV provide that:

"Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, but only if so authorized by the State. The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action."

¹⁰⁸ For issues related to the 1968 Road Signs Convention, see Question 32 of the Study.

¹⁰⁹ This extension of protection to medical units is part of customary law. The *Customary IHL Study* states that "medical units exclusively assigned to medical purposes must be respected and protected in all circumstances", i.e., in IAC and NIAC (*Customary IHL Study*, Rule 28, pp. 91-95).

This provision also applies to the civilian hospitals operated, or used by, an NS (whether or not they belong to the NS in question).¹¹⁰

Article 18(4) of AP I provides that civilian medical units, including those operated and used by an NS (whether or not they belong to the NS in question),¹¹¹ may be marked with the distinctive emblem. However, as in the case of civilian hospitals under GC IV, this marking, too, is subject to the consent of the competent authority.

2. Conditions for the marking of civilian hospitals and medical units

As for the timing and scope of the marking, the following rules and principles must be applied:

a) Civilian hospitals or medical units must **first** obtain the **recognition** of the State as stipulated in Article 18, 2nd para., of GC IV, to qualify for the authorization to display the emblem. Only establishments so recognized may avail themselves of the emblem with a view to obtaining protection.¹¹² This recognition is also required under AP I for medical units, as suggested by the *Commentary on AP I and II*.¹¹³

b) Such recognition must be formally expressed in legal instruments issued by the State, attesting to their status as civilian hospitals. The State may provide such certificates at the beginning of a conflict or even in peacetime.¹¹⁴ **So, in practice, this recognition may be, and often is, granted in peacetime.**

c) To obtain this recognition, the hospital/unit must be organized to give care to the wounded and sick, the infirm and maternity cases. Whenever a civilian hospital or medical unit fulfils this condition, it has the right to be officially recognized and must be issued with the certificate of recognition by the competent authority.¹¹⁵

d) Since neither the GC nor the AP specifies who is responsible for issuing certificates of recognition, States are free to designate such authority or to delegate such power to the NS.¹¹⁶

Once a civilian hospital has been recognized, it can make a request for authorization to display the emblem. In practice, official recognition is most often accompanied by authorization to display the emblem, although that might not be the case if the competent authority were to deem it inopportune, for instance for military reasons.¹¹⁷

¹¹⁰ See Article 10 of the 1991 Emblem Regulations and its commentary.

¹¹¹ See Article 10 (and its commentary), and Article 19, 1st para., of the 1991 Emblem Regulations.

¹¹² *Commentary on GC IV*, Article 18, p.148.

¹¹³ *Commentary on AP I and II*, Article 18(4) of AP I, para. 767:

"However, in reality the situation is more varied: certainly, the authority could not permit a unit or transport which is not recognized as a medical unit or transport within the meaning of the Protocol to be marked in this way. On the other hand, it is not out of the question that it desists from marking a medical unit or transport recognized as such, even if, in the great majority of cases, this would be against its own interest. Indeed, it may happen in some exceptional cases that a distinctive emblem is too striking, and this could be detrimental to military exigencies."

¹¹⁴ *Commentary on GC IV*, Article 18, pp. 148-149.

¹¹⁵ This is in accordance with Article 18, 2nd para., of GC IV, and applies also to medical units by analogy.

¹¹⁶ *Commentary on GC IV*, Article 18, pp. 149-150. On the authority competent to provide such recognition and to authorize the use of the emblem, see also Question 6 of the Study.

¹¹⁷ *Commentary on GC IV*, Article 18, p. 150.

As the *Commentary on GC IV* confirms, the State is competent to authorize displays of the emblem. The State is, therefore, obliged to designate the competent authority responsible for this task, by means of appropriate legislation. It may, for example, assign this competence to the Ministry of Defence or to high military authorities, or delegate it to some other qualified body, such as the NS.¹¹⁸

Once such recognition and authorization have been obtained, **the marking** of the civilian hospitals and medical units may be carried out.

This marking, although essentially a wartime measure, may, with the consent of the competent authority, be implemented in peacetime. That would ensure that all practical considerations would be taken into account to make the marking as effective as possible, should there be an outbreak of war. The *Commentary on GC IV* emphasizes that "[t]here is in fact no reason why a State, which is obliged to consider every possibility, should not be able to mark its civilian hospitals in peacetime."¹¹⁹

The *Commentary* goes on to say that:

"As for the choice of the best time to carry out the marking, it is advisable to leave the Governments concerned a wide discretionary power. In particular, a State would appear to be justified in using the sign for its hospitals in peace time when circumstances are such that war may be considered imminent and when other preparatory measures are being taken against the possibility of a conflict (preparations for mobilization, partial mobilization, general mobilization, etc.). However, it would seem preferable in this case to confine action to putting up fixed signs requiring a certain amount of work and time (painted signs for instance on roofs)."¹²⁰

Article 13 of the 1991 Emblem Regulations stipulates that, even in peacetime, medical units (including civilian hospitals) and medical transports belonging to NS may, with the consent of the competent authority, use the emblem and distinctive signals also for identification for protective purposes. This is, however, conditional on their already being definitively assigned to medical duties in case of armed conflict.

It must be noted that this system of requiring recognition and authorization from the State, to display the emblem for protective purposes, has been created to ensure that the prestige and protection attached to the emblem are not diluted. The provisions examined above aim to balance the necessity of marking civilian hospitals and medical units in peacetime, to be fully prepared for the eventuality of armed conflict, with that of preventing any confusion arising in people's minds over the use (protective or indicative) and the value of the emblem. The *Commentary on GC IV* makes the following observations on the subject:

"This system, which leaves discretionary power to the State, reveals clearly the anxiety of the Diplomatic Conference which, alive to the risks attendant upon any extension of the use of the emblem preferred to proceed with caution by making the authorization of the emblem optional. The Diplomatic Conference made the marking dependent on State authorization, thus enabling the Powers to wield this authority according to circumstances and experience gained: it will be widely applied if results are good in practice, whereas its use will be limited if experience shows that extended use of the red cross results in abuses harmful to its prestige and, consequently, to the cause of those whom it is designed to protect. Thus States conscious of their responsibility will be able to regulate what is done in this matter."¹²¹

¹¹⁸ *Commentary on GC IV*, Article 18, p. 150. See also Question 6 of the Study.

¹¹⁹ *Commentary on GC IV*, Article 18, p. 151.

¹²⁰ *Commentary on GC IV*, Article 18, p. 151.

¹²¹ *Commentary on GC IV*, Article 18, p. 150.

Those who have been given the responsibility of authorizing the display of the emblem should therefore seek to prevent any confusion arising in people's minds, and any doubts over, or blurring of, the objects of NS.¹²² To avoid such confusion, NS should display their logos, i.e., their names or initials, distinctly, and together with the emblem, on their premises and property.¹²³

It follows, from what has already been said, that civilian hospitals and medical units, including those belonging to NS, may be authorized to display the protective emblem in peacetime, taking into account exclusively those needs that may arise in wartime.

Thus, only markings which aim to ensure that a building is visible to, and identifiable by, the enemy should be authorized in such cases. This includes the painting of the emblem on the roof, mentioned above.

Such marking for protective purposes does not include identifying the direction of a hospital in peacetime (for instance on road signs). That kind of marking is a public benefit; its aim is to direct the patients to the hospital, and not to protect it from attack by an adverse party during a conflict. The advertisement of their identity, by hospitals and medical units in peacetime, should be achieved through other means. Certain elements contained in the 1968 Vienna Convention on Road Signs and Signals,¹²⁴ to which many European States are party, can be used for the purpose. For instance, a white "H" on a blue background might be used as a road sign for hospitals.¹²⁵

When the State, or the authority to whom the State has delegated this power, decides whether to authorize the marking of civilian hospitals or medical units in peacetime, two points have to be weighed against each other:

- a) The importance, for civilian hospitals and medical units authorized by the State, of being clearly identifiable from the very beginning of an armed conflict, to ensure their protection from attack;
- b) The risk of creating confusion within people's minds – including with the NS and its premises – if too many objects are marked with the emblem in peacetime. This could erode the protection attached to the emblem.

Ideally, since NS have a general mandate to assist the authorities in protecting the emblem, NS and the authorities in charge of granting the authorization should collaborate in this matter.¹²⁶

Civilian hospitals and medical units who have been recognized by the State and authorized to use the emblem (as stipulated in Article 18 of GC IV and Article 18 of AP I) should, in peacetime, already possess flags or other material displaying large-sized emblems, for protective purposes, which can be affixed to buildings as soon as a conflict breaks out. However, because of the risk of creating confusion, it is recommended not to affix such flags or other material in peacetime.¹²⁷

¹²² See *Commentary on GC IV*, Article 18, p. 151: "The unnecessary and inordinate use of the red cross in peace time on buildings not belonging to the Red Cross Society may create confusion in people's minds."

¹²³ *Commentary on GC IV*, Article 18, p. 151, footnote 11.

¹²⁴ Certain aspects of this Convention, related to the use of the emblem, are nevertheless problematic. For an analysis of those aspects, see Question 32 of the Study.

¹²⁵ Annex 1, Section E.II, para. 11, of the Convention makes reference to the capital white "H" on a blue background as a "sign [which] shall be used to notify drivers of vehicles that they should take the precautions required near medical establishments; in particular, that they should not make any unnecessary noise".

¹²⁶ Article 3(2) of the Statutes of the Movement.

¹²⁷ The only exception would be situations in which this affixing requires a lot of work, in case a conflict is imminent.

In order to ensure strict application of these provisions and principles, and to safeguard the protective power of the emblem, the civilian hospitals and medical units that have been authorized to fly the flag, should be continually supervised and monitored.¹²⁸

Such supervision and monitoring should not cease when authorization to mark a building with the emblem has been granted by the State, which should be verifying that the marking conforms at all times to the principles set out above.

Indicative use

1. Indicative use only

According to Article 44, 2nd para., of GC I and Articles 19 and 21 of the 1991 Emblem Regulations, the indicative use of the emblem, namely the emblem accompanied by the name or initials of the NS, is, by definition, exclusively the privilege of NS. In no instance may the emblem be employed for this purpose by a civilian hospital or medical unit that is not being used by the NS, e.g. hospitals or medical units belonging to and/or operated by the State or by private entities.

If an NS wants a hospital or medical unit (whether or not it belongs to the NS) to be identified as part of its premises,¹²⁹ that hospital or medical unit may not display an emblem that creates a false impression of protective use, i.e., it may not display a large emblem that does not bear the name of the NS.¹³⁰

For indicative use, an NS may display the emblem on the buildings and premises that it uses only if it is accompanied by the name of that NS (i.e., the NS logo), and if it is comparatively small. Such an indicative emblem may not be painted on the roof, as that might cause a blurring of the crucial distinction between indicative and protective use. In addition, when used for indicative purposes, the emblem should not be affixed to an armlet or placed on a large-sized flag.¹³¹

2. Simultaneous protective and indicative uses

These rules for indicative use apply also when an NS wishes to signal the fact that it uses a civilian hospital or medical unit that is already marked with the protective emblem in accordance with Article 14 of the 1991 Emblem Regulations. In other words, these rules apply when an NS wishes to make indicative use of the emblem in addition to authorized protective use. As stated above, in such cases the NS should display its logo in front of the building or affixed to it, together with the protective emblem, which would, usually, be painted on the roof.

¹²⁸ *Commentary on GC IV*, Article 18, p. 151.

¹²⁹ Article 19 of the 1991 Emblem Regulations.

¹³⁰ Article 44, 2nd para., of GC I and Article 19 of the 1991 Emblem Regulations.

¹³¹ See Article 4 of the 1991 Emblem Regulations and its commentary.

9) *May the emblem be affixed to relief goods provided by a State?*

Legal or statutory basis

Articles 19, 39 and 44, GC I

Articles 8(e) and 18(4), AP I

Recommendation

- Only medical equipment and medical supplies necessary for medical care may bear the emblem, as a protective device. This includes both heavy equipment – e.g. equipment for an operating theatre or even an entire field hospital – and medicine. Food packages, on the contrary, do not fall into any of these categories and may not bear the emblem.

Analysis

Introduction

This question deals with the use of the emblem by a State, as a protective device, and whether the emblem may be displayed on the relief goods that that State provides to the civilian population.¹³²

Use of the emblem on medical equipment and supplies

Article 39 of GC I and Article 18(4) of AP I stipulate that medical units and equipment should be marked with the emblem, with the consent and under the direction of the competent authority.

With regard to medical establishments and units that wish to be protected by the GC and to be entitled to display the emblem, the *Commentary on GC I* states that:

“They may only be composed of personnel and material belonging to the Medical Service and may not be intended to serve any purpose outside that Service. Such establishments and units must therefore, by analogy with Article 24 [of GC I] among others, be used exclusively for the treatment of the wounded and sick or for the prevention of disease.”¹³³

The *Commentary on GC I* adds that “it will not always be physically possible to mark an object with the emblem. Small surgical instruments are a case in point. But such articles will form an integral part of a larger unit, which will be marked.”¹³⁴

¹³² On the affixing of NS logos to relief goods provided by NS, see Question 22 of the Study.

¹³³ *Commentary on GC I*, Article 19, p. 196.

¹³⁴ *Commentary on GC I*, Article 39, p. 307.

Unlike "medical units", which are defined in Article 8(e) of AP I,¹³⁵ the "equipment employed in the Medical Service" is defined neither by the GC nor by their AP. However, the *Commentary on AP I and II* states that:

"As regards the expression 'medical equipment or medical supplies', this should be interpreted broadly. It includes any equipment and supplies necessary for medical care – particularly surgical equipment – but also heavier equipment (for example, the equipment for an operating theatre or even an entire field hospital), or even, quite simply, medicines themselves."¹³⁶

In conclusion, it is only when "relief goods" fall into the category of "medical equipment or medical supplies", as defined by the *Commentary on AP I and II*, that they are entitled to bear the (protective) emblem. Other kinds of "relief goods", such as food packages, because they do not qualify as "medical equipment or medical supplies", may not bear the emblem.

¹³⁵ "'Medical units' means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary". (Article 8(e) of AP I).

¹³⁶ *Commentary on AP I and II*, Article 8(f) of AP I, para. 382; see also *Commentary on AP I and II*, Article 14(2) of AP I, para. 587.

10) *May a State include a recognized distinctive emblem on a white background on its national flag?*

Legal or statutory basis

Articles 38, 53 and 54, GC I

Recommendations

- National flags of States party to the GC should not display any of the recognized emblems, any sign constituting an imitation thereof or any sign which otherwise might potentially be confused with any of the recognized emblems.
- However, if a State retains a flag bearing a recognized emblem, an imitation thereof or a sign which otherwise might potentially be confused with any of the recognized emblems, it should at least avoid using the flag when its armed forces are involved in an armed conflict, unless such use does not compromise the protective value of the emblem.

Analysis

GC I regime

Article 53 of GC I prohibits the use of the emblem, of any designation related to it, and of “any sign or designation constituting an imitation thereof”, by any “individuals, societies, firms or companies either public or private”, other than those entitled to do so under the GC.

This provision adds that the prohibition is valid whatever the object of such use of the emblem and applies at all times, irrespective of the date of adoption of such use of the emblem or designation or imitation thereof. The same prohibition applies to all the emblems protected by the GC and the AP.

Article 54 of GC I stipulates that States Parties are obliged to adopt adequate legislation “for the prevention and repression, at all times, of the abuses referred to under Article 53.”

Any design resembling an emblem is generally considered to be an imitation.¹³⁷ In this regard, the shape of the cross, for example, is not precisely defined in the GC. The *Commentary on GC I* explains:

“The statement in the Geneva Convention that the emblem of the red cross on a white ground is ‘formed by reversing the Federal colours’ has sometimes been thought to mean that the red cross must necessarily have the same form as the Swiss cross – which has been fixed. This is obviously not so. The word ‘colours’ should be taken literally to refer simply to the colours red and white. If it had been intended to speak of the Federal flag, the word ‘reversing’ would not have been used. The Proceedings of the Diplomatic Conference of 1906 are, moreover, explicit: the Conference deliberately refrained from defining the form of the cross, since definition might have led to dangerous abuses. The reasons are clear. If the form of the cross had been rigidly defined, attempts might have been made to justify attacks on installations protected by the Convention, on the pretext that the emblems displayed were not of the prescribed dimensions. Similarly, unscrupulous persons could have taken advantage of a rigid definition to use a slightly larger or slightly smaller red cross for commercial purposes.

¹³⁷ For further consideration as to what constitutes an imitation of the emblem, see Question 49 of the Study.

For the same reasons, the Convention does not specify the shape of the white ground or the exact shade of red in the cross, as Switzerland has done for its flag.¹³⁸

It is unlikely that the public "individuals, societies, firms or companies" cited in Article 53 of GC I include the States party to the GC themselves, i.e., unlikely that the emblem legislation required of a State should prevent that State from adopting a national flag that happens to bear a recognized emblem.

However, given the absoluteness of the prohibition on the use of the emblem by entities that are prohibited to do so under the GC and the AP, it seems to follow logically that national flags of States party to the GC should not display any of the recognized emblems. States that have been using an emblem on their national flags, before becoming party to GC I, may therefore have a maximum of three years to correct this situation after they become party to GC I.

Practical considerations

While the legal arguments regarding the design of national flags, i.e., the interpretation of Article 53 of GC I, may be subject to controversy, practical considerations lead to the conclusion that the emblems should not be used on such flags. In times of armed conflict, a State that displays the emblem on its national flag endangers respect and protection for the medical services of its armed forces as well as for the other persons and entities allowed to bear the emblem, because it would be virtually impossible for the adverse party to distinguish between regular soldiers and their medical services.

Further, for reasons of national pride and dignity, States are extremely reluctant to have such powerful symbols of national identity confused with anything else. In addition, attaching national flags, that are similar in design to an emblem recognized by the GC and AP on boats, planes or other objects, and on persons, may very well create confusion that neither a particular State nor the Movement desires.

Whatever the symbolic value of a flag or its associations of sovereignty and pride, legal, practical and security considerations should be decisive in this matter.

Concrete cases

The designs of national flag that would contain the emblem or an imitation thereof are contrary to States' obligations under the GC. The laws on the protection of the emblem, in these States, should have taken this use of the emblem into account.

Although their obligations under international law might supersede their domestic laws, this would remain an extremely sensitive issue for States as it has powerful implications for their sovereign status. It is therefore extremely difficult to obtain respect for these rules from those States who may be using a recognized emblem on their national flags. Naturally, the longer such a flag has been in use, the harder it would be to convince a State to change its design, as the flag will have accumulated a great deal of symbolic significance.

¹³⁸ *Commentary on GC I*, Article 38, pp. 305-306.

Thus, even after taking into account the legal and practical arguments developed above, it might be slightly utopian to expect States, the designs of whose flags conflict with the provisions of international law, to make a change in this regard.¹³⁹ A practical solution must be found: if a State chooses to retain a flag bearing a recognized emblem, despite the prohibition against doing so, that State should at least avoid using its flag when its armed forces are involved in an armed conflict.

A useful illustration is given by the flag of England, which displays the cross of St George. The St George's cross is many centuries old, and therefore cannot be considered an imitation of the red cross emblem. Nevertheless, the United Kingdom, acknowledging the risk of confusion, decided in 2005 that the St George's cross would not be displayed in certain specific theatres of operation.¹⁴⁰

¹³⁹ One possible solution for States might be to substitute the colour of the cross with another that cannot be mistaken for red and that, preferably, is of significance for the State and its people.

¹⁴⁰ Additionally, the UK emblem protection legislation is sufficiently broad that it prohibits the use of any design so nearly resembling the red cross emblem as to be capable of being mistaken for or understood as referring to the red cross emblem (Geneva Conventions Act 1957, section 6(2)(b)). This could be occasioned by, for example, a manufacturer using the St George's cross to advertise one of his medical products. In practice, such cases are rare.

Chapter B. USE BY NATIONAL SOCIETIES

11) *May a National Society temporarily change the emblem (protective or indicative uses)?*

Legal or statutory basis

Articles 26, 27, 38-40 and 44, GC I
 Article 9(2)(b), AP I
 Articles 2(4) and 3(3), AP III
 Article 15, 1991 Emblem Regulations

Recommendations

- In principle, NS should not use an emblem other than the one accorded by their national authorities.
- However, there are two exceptions to this principle, but they apply only to **protective use**:
 - i. NS personnel and objects attached to the medical services of armed forces of a party to a conflict may change their emblem with the authorization of their State when they have to harmonize their emblem with the one that has been temporarily adopted or changed according to Article 2(4) of AP III, by those armed forces;¹⁴¹
 - ii. When, for example, a Red Cross NS of a State not party to the conflict lends assistance to the medical services of the armed forces of a "Red Crescent" State party to the conflict (Article 27 of GC I), its personnel and objects may change emblems, with the authorization of that NS State (the "Red Cross State") and in accordance with its national legislation, in order to conform to the rules governing the protective use of the emblem established by the "assisted" party to the conflict.
- So far as **indicative use** is concerned, Article 3(3) of AP III stipulates that an NS may make temporary use of the distinctive emblem referred to in Article 2 of the same Protocol, i.e., the red crystal, provided that the following conditions are satisfied:
 - i. The use of the red crystal complies with national legislation;
 - ii. An exceptional circumstance justifies *temporary* use of the red crystal; and
 - iii. The NS is doing so to facilitate its work.

¹⁴¹ An NS personnel and objects are considered to be attached to the medical services of the armed forces of a party to a conflict when: (a) the NS acts as auxiliary to the medical services of the armed forces of its own State (Article 26 of GC I) or (b) the NS of a State not party to the conflict lends its assistance to a party to the conflict (Article 27 of GC I, Article 9(2)(b), of AP I and Article 15 of the 1991 Emblem Regulations).

Analysis

Protective use

1. An NS acting as auxiliary to the medical services of armed forces under Article 26 of GC I

Articles 38 and 39 of GC I confer the right to make use of the emblem upon the medical services of States' armed forces. An NS should use the same emblem as the medical services of its State's armed forces.

In fact, even though Article 26, 1st para., and Article 44, 1st para., of GC I place NS staff on the same footing as the personnel of the medical services of armed forces – when the former are auxiliary to the latter, under the conditions that (a) the NS has been duly recognized and authorized by its government, (b) the NS personnel and equipment assist the official medical services of their armed forces and are employed exclusively for the same purposes as the latter and that (c) the NS personnel and equipment that are at the disposal of the military medical services be subject to military laws and regulations –¹⁴² the NS is not entitled to decide on its own to make use of another emblem. The act/law/decreree by which the national authorities recognize the NS indeed includes the choice of the distinctive emblem that the NS may use.

Article 2(4) of AP III provides that medical services and religious personnel of the armed forces of the States party to AP III may make *temporary* use of any of the recognized distinctive emblems, *i.e.*, the red cross, the red crescent or the red crystal, when this may **enhance their protection**. Therefore, it is only when an NS acts as auxiliary to the medical services of armed forces, and when those armed forces decide to equip their medical personnel and material with an emblem different from the one they usually employ that the NS personnel and equipment placed at the disposal of those medical services may use an emblem (red cross, red crescent or red crystal) other than the one usually attributed to that NS. Thus, an NS may not decide on its own to use, for protective purposes, an emblem different from the one usually employed by it.

2. An NS of a State not party to the conflict, lending assistance to a party to the conflict

Article 27 of GC I states that:

“A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.”

Under Article 9(2) of AP I the provisions of Article 27 apply to permanent medical units and transports and their personnel made available to a party to the conflict for humanitarian purposes by a recognized and authorized aid society of a neutral or other State which is not a party to that conflict.

Article 15 of the 1991 Emblem Regulations requires an NS of a State not party to the conflict, that intends to lend assistance to a party to the conflict, to obtain the prior consent of that party and from its own State authorities. Furthermore, “[t]he rules governing the protective use of the emblem must be established by the said Party to the conflict.”

¹⁴² On the conditions under which an NS is entitled to use the emblem for protective purposes, see Question 14 of the Study.

Here too, the NS has to seek the prior consent of its government. However, in contrast to the situation described above, the NS is not incorporated into or attached to its own national armed forces. Still, these neutral personnel will be subject to military laws and regulations and will be attached to the medical services of the armed forces of the party to the conflict.

Hence, if an assisted party to the conflict establishes the rules on the protective use of the emblem (as provided for under Article 15 of the 1991 Emblem Regulations), it may require a third State NS to use the same emblem, i.e., the emblem of the assisted State. This might be because the emblem of the assisted State is better known in the country where its armed forces are deployed or because the use of a different emblem is likely to create confusion and difficulties.

It should be emphasized that an assisted State which decides, in accordance with Article 2(4) of AP III, to make **temporary use** of a different distinctive emblem, may also require the assisting NS, under Article 27 of GC I, to replace its emblem with this new one. In that case, if the assisting NS State has not ratified AP III, its use of the **temporary** emblem should be **authorized** by its State.

Indicative Use

The general prohibition against NS changing their emblems applies also to indicative use of the emblem. In fact, the aforementioned exceptions are first of all related to the use of the emblem by the medical services of States' armed forces, which may use the emblem only for protective purposes.

However, Article 3(3) of AP III stipulates that an NS may make temporary use of the distinctive emblem referred to in Article 2 of that Protocol, namely the red crystal, provided that:

- i. The use of the red crystal complies with national legislation;
- ii. An exceptional circumstance justifies **temporary** use of the red crystal;
- iii. The NS is doing so to facilitate its work.

12) May a National Society use the "double emblem" (e.g. the red cross and red crescent side by side) for indicative or protective purposes?

Legal or statutory basis

Article 44, GC I
Articles 2 and 3, AP III
Chapter III, 1991 Emblem Regulations
Article 4(5), Statutes of the Movement

Recommendations

- The use of a double emblem as a **protective** device by an NS (or any other person or entity allowed to display the protective emblem) is not admissible.
- Only AP III provides NS with the possibility of using a double emblem within the red crystal for indicative purposes. In accordance with Article 3(2) of AP III, an NS which has chosen to incorporate the double emblem within the red crystal may use, in conformity with national legislation, that double emblem **on its national territory**, even if it is not incorporated in the red crystal, but only for **indicative** purposes.
- NS working in coordination with the International Federation, subject to a service agreement, may use, upon the authorization of the International Federation, the Federation logo composed of a red cross and a red crescent side by side, set on a white background within a red rectangle, and accompanied by the name of the International Federation, only for indicative purposes.¹⁴³

Analysis

Protective use of the emblem

1. General rules

The issue of the use of the double emblem, e.g. red cross and red crescent side by side, by the medical services of the armed forces of a State has been addressed under Question 2 of this Study. The conclusions of this analysis are applicable *mutatis mutandis* to an NS using the emblem as a protective device:

- a) When the NS is acting as an auxiliary to the medical services of the State's armed forces;
- b) When an NS has obtained the authorization to display the emblem as a protective device, for its medical activities, from the State in which these activities are taking place.¹⁴⁴

The conclusion, based on legal and practical arguments, is that the use of a double emblem as a protective device by an NS (or any other person or entity allowed to display the protective emblem) is not admissible.

¹⁴³ Note, in this regard, that at the 1993 Council of Delegates, the International Federation and the ICRC pledged to apply the rules on indicative and decorative uses of the 1991 Emblem Regulations to the use of their own logos. See also Resolution 8 of the 1993 Council of Delegates (Use of the emblem).

¹⁴⁴ See Question 14 of the Study.

2. The possibilities created by AP III and the red crystal

The adoption of AP III and the red crystal emblem does not change the fact that using the double emblem as a protective device is forbidden. Article 2(1) and (3) of AP III confirms respectively that "[t]he distinctive emblems shall enjoy equal status" and that "[t]he conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblems established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols."

AP III nevertheless creates two possibilities for the medical services of States' armed forces that make the debate on the double emblem less pertinent. Logically, these two possibilities are available also to an NS when it acts as an auxiliary to the medical services of the State:

a) The possibility for a State to use the red crystal permanently for the medical services of its armed forces, provided that the State is party to AP III and has adopted the necessary regulations to that effect.¹⁴⁵ This may be extremely useful when a State finds it difficult to choose between the red cross and the red crescent (for example, in a tense multi-religious context). The additional emblem, free of any religious or cultural connotations (as, in fact, is the case with the other recognized emblems, although, over time, an erroneous perception has arisen among a section of the public), is a solution to this problem and eliminates the need to even consider the double emblem.

b) The possibility, for the medical services and religious personnel of the armed forces of States party to AP III, to make temporary use of any recognized emblem when this may enhance their protection.

Indicative use of the emblem

1. General rules

The rules on the indicative use of the emblem contained in Article 44, 2nd para., of GC I and Chapter III of the 1991 Emblem Regulations do not provide for the use of a double emblem. The stipulation is that an NS should use its logo for indicative purpose, i.e., one of the recognized emblems, comparatively small in size, accompanied by the name or initials of the NS (save in exceptional circumstances, as mentioned in Article 16 of the 1991 Emblem Regulations).¹⁴⁶

2. The possibilities created by AP III

Article 3 of AP III creates new options for NS in using the emblem as an indicative device. Article 3(1) of AP III provides that:

"National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes:

- a) a distinctive emblem recognized by the Geneva Conventions or **a combination of these emblems**; or
- b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol." (Emphasis added)

¹⁴⁵ AP III entered into force on 14 January 2007.

¹⁴⁶ See Articles 4 and 5 of the 1991 Emblem Regulations.

This incorporation into the red crystal must be, as set out in Article 3(1) of AP III, in accordance with national legislation.

Thus, AP III provides for NS to have a double emblem within the red crystal only for indicative purposes.

Furthermore, under Article 3(2) of AP III, the emblem (or a combination of emblems) that an NS has chosen to incorporate within the red crystal may be used by itself (i.e., without the red crystal) **within its national territory** and in conformity with national legislation. Thus, the double emblem may, in principle, be used by an NS on its national territory, exclusively for indicative purposes, even if it is not incorporated into the red crystal.

It should be noted that Article 3(3) of AP III also allows an NS to make temporary use of an emblem other than the established emblem for indicative purposes, in accordance with national legislation, in exceptional circumstances and to facilitate its work.

Unlike the medical services of the armed forces of a State, which may make temporary use of any of the recognized emblems (for protective purposes) under Article 2(4) of AP III, an NS is allowed, under Article 3(3) of AP III, to make temporary use only of the red crystal (for indicative purposes). As stated above, when an NS acts as an auxiliary to the medical services of the armed forces of a State, it may benefit from the greater flexibility provided under Article 2(4) of AP III.

3. Use of the International Federation's logo under the Federation's delegated projects

Under Article 44, 3rd para., of GC I, the International Federation (and the ICRC) may use the emblem without restriction. Consequently, an NS subject to a service agreement with the Federation, which establishes, in particular, the terms of conditions for running their own operations, may use the Federation logo, i.e., a red cross and a red crescent side by side, set on a white background within a red rectangle, and accompanied by the name of the International Federation. Such use of the logo is permitted only for indicative purposes since the double emblem may not be used for protective purposes. As usual, the logo used by an NS should be comparatively small in size and should not confuse the public. It should therefore not be displayed, for instance, on armlets or roofs.¹⁴⁷

¹⁴⁷ See the commentary on Article 4 of the 1991 Emblem Regulations.

13) *May two different recognized emblems be displayed on the same sites and means of transport that are shared by National Societies?*

Legal or statutory basis

Articles 38 and 44, GC I
Chapter III, 1991 Emblem Regulations

Recommendations

- Two different recognized emblems may be displayed for protective purposes on the same sites (e.g. hospitals) and means of transport (e.g. ambulances) that NS share, provided that they cannot be perceived as a double emblem.
- The different emblems displayed on the same sites or means of transport must therefore be placed sufficiently far away from one another.
- Ideally, and provided that nothing in their respective legislation prevents them to do so, it would be advisable for those NS to agree on identifying such sites or means of transport with only one recognized emblem, the one that is best known in the area where the action is deployed.
- Two NS may display their different logos on the sites or means of transport that they share, provided that this indicative use does in no way give the appearance of protective use. The NS should also ensure that such use cannot be perceived as the logo of the International Federation.

Analysis

Introduction

In certain situations, two (or more) NS share the same sites (buildings, etc.) or means of transport. For instance, they might be implementing a joint project.

The issue in this question is to determine what emblem(s) (for protective or indicative purposes) should be displayed on the sites or means of transport that are shared by two (or more) NS. The particular aim here is to clarify if two different emblems may be displayed side by side on such sites and means of transport.

It is assumed that the consent of the ONS to the PNS use of its emblem on the ONS territory has already been given,¹⁴⁸ and that the national legislation of that particular State does not prohibit the use of any recognized emblem.

¹⁴⁸ Such consent should be given in accordance with Resolution XI adopted by the 10th International Conference of 1921. For further analysis of this issue, see Question 21 of the Study.

Protective use of the emblem

a) When the NS in question are acting as auxiliaries to the medical services of their armed forces, the conclusions regarding the use of the emblems side by side by these medical services apply, *mutatis mutandis*, to the NS.¹⁴⁹

b) When an NS wishes to display its emblem as a protective device, it may do so only with the permission of the authorities of the State in which the NS activities are taking place (in this instance, the State in which the sites and means of transport in question are located).¹⁵⁰

c) The identification of the sites and means of transport shared by two or more NS might become an issue if the NS have different emblems (e.g. a red cross and a red crescent) and wish to display them side by side. As mentioned elsewhere,¹⁵¹ the use of the two emblems side by side may very well give the appearance of the use of a double emblem, which is prohibited under IHL and which does not provide the optimal visibility to ensure the protection of persons or objects.

In such a case, the NS in question should, ideally, reach a decision together to use only one of the recognized emblems. The deciding factor in choosing an emblem – the red cross, the red crescent or the red crystal – should be the context in which the operation is taking place.

d) However, such a consensual decision might be impracticable. It is possible that NS may not be able to use an emblem other than their own, e.g. because of their national legislation. In that case, the different emblems must be displayed in a way that does not suggest the use of a double emblem. The different emblems must not be so close to each other as to give the appearance of a double emblem, e.g. they must be placed on buildings (hospitals, offices, etc.) sufficiently far away from one another. They must not be placed side by side on the same vehicles nor displayed together on the same flag.

Indicative use of the emblem

When NS share sites or means of transport, they may use their logos in accordance with the general rules (Article 44, 2nd para., of GC I and Chapter III of the 1991 Emblem Regulations). There are no legal impediments to the use of different emblems (NS logos) as indicative devices on such sites and means of transport.

The only, and the usual, restriction is that this indicative use must in no way suggest protective use to the public. It should therefore not be displayed, for instance, on armlets or roofs.¹⁵²

¹⁴⁹ See Question 3 of the Study.

¹⁵⁰ On the use of the emblem by PNS for protective purposes, see Question 14 of the Study.

On the authority competent to deliver the required authorization in times of occupation, see Question 7.

¹⁵¹ See Question 3 of the Study.

¹⁵² See the commentary on Article 4 of the 1991 Emblem Regulations.

14) *Under what conditions may National Societies use the emblem as a protective device?*

Legal or statutory basis

Articles 24, 26, 27, 40-44, 53 and 54, GC I
 Articles 18, 3rd para., and 21, GC IV
 Articles 1(1), 8(c), (e) and (g), 9, 12, 15, 18 and Section II, Part II, AP I
 Articles 1(1), 9, 11 and 12, AP II
 Article 15, 1991 Emblem Regulations
 Article 2(3), Statutes of the Movement

Recommendations

In times of IAC:

- When acting as auxiliary to the medical services of the armed forces of its own State, an NS may use the emblem as a protective device (Article 26 of GC I), subject to all the following conditions:
 - i. It has been recognized and authorized by its own government authorities to assist the medical services of the armed forces of its own State;
 - ii. The emblem is to be used only by those NS personnel, units and equipment that are assisting the medical services of the armed forces, and are employed exclusively for the same purposes as the latter; and
 - iii. Such NS personnel, units and equipment have been placed under the authority of their own armed forces and are subject to their military laws and regulations.
- When lending the assistance of its medical personnel and units to the medical services of the armed forces of another State party to the conflict (Article 27 of GC I), the NS of a State not party to the conflict may use the emblem as a protective device under the same conditions stated above, provided that:
 - i. The NS has obtained authorization to do so from that particular party to the conflict;
 - ii. The adversary of the State accepting the assistance of the NS has been notified of the consent of the State of origin (the State not party to the conflict); and
 - iii. The party to the conflict that is accepting such assistance has notified its adverse party that it is doing so.
- Whether on its own territory or abroad, an NS may use the emblem as a protective device to identify its hospital, subject to all the following conditions:
 - i. The hospital has been recognized as a civilian hospital in the sense of GC IV by the State party to the armed conflict where the hospital is located; and
 - ii. The hospital has been authorized to use the emblem as a protective device by that State.

- In accordance with AP I, NS medical personnel, units and transports may be entitled to display the emblem as a protective device subject to all the following conditions:
 - i. They are protected under IHL, i.e., they correspond to the definitions of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;
 - ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict; and
 - iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict. This stipulation does not give the State the right to exercise rigid control over the activities of the NS; its aim is to ensure proper use of the emblem.

When an NS petitions a competent State authority for permission to use the emblem for protective purposes, in an IAC in which AP I does not apply, the ICRC encourages that authority to grant the necessary authorization, provided that the conditions of AP I are fulfilled.

In times of NIAC:

- NS medical personnel, units and transports may be entitled to display the emblem as a protective device subject to all the following conditions:
 - i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;
 - ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict, whether governmental authority (civilian or military) or authority of the armed groups (civilian or military); and
 - iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.

When an NS petitions competent authorities for permission to use the emblem for protective purposes, in a NIAC in which AP II does not apply, the ICRC encourages those authorities to grant the necessary authorization, provided that the conditions of AP II are fulfilled.

Analysis

In times of IAC

An NS may use the emblem as a protective device in the following situations:

1. Article 26 of GC I: NS acting as auxiliary to the medical services of its own State's armed forces

In order to be entitled to use the emblem as a protective device under Article 44 of GC I, NS personnel defined under Article 26, 1st para., of GC I must meet the following cumulative conditions:

- i. the NS is duly recognized and authorized by its government;
- ii. its personnel have the same duties as the medical personnel of the State's armed forces;¹⁵³ and
- iii. the personnel are subject to military laws and regulations.¹⁵⁴

2. Article 27 of GC I: the NS of a State not party to the conflict lending its assistance to the medical services of the armed forces of a State party to an armed conflict

In order to be entitled to use the emblem as a protective device under Articles 40 and 42-44 of GC I, the NS of a neutral State that intends to lend the services of its medical personnel or units to a party to an armed conflict must meet the following cumulative conditions:¹⁵⁵

- i. It has the recognition and authorization of its own government to assist the medical services of the armed forces of the party to the conflict;¹⁵⁶
- ii. It has obtained authorization to display the emblem from that party to the conflict;¹⁵⁷
- iii. The adversary of the State accepting the assistance of the NS has been notified of the consent of the State of origin;¹⁵⁸
- iv. The party to the conflict that is accepting such assistance has notified its adverse party that it is doing so;¹⁵⁹

¹⁵³ See Article 24 of GC I. It is worth noting that administrative personnel exclusively assigned to medical units and establishments enjoy the same protection as medical personnel themselves. They are "persons who look after the administration of medical units and establishments, without being directly concerned in the treatment of the wounded and sick. They include office staff, ambulance drivers, cooks (male or female), cleaners, etc. [...]. They form an integral part of medical units and establishments, which could not function properly without their help." *Commentary on GC I*, Article 24, p. 219. See also Article 8(c) of AP I.

On the activities that such personnel may carry out, see for further details Question 16 of the Study.

¹⁵⁴ Article 26, 1st para., of GC I provides that:

"The staff of National Red Cross Societies and that of other Voluntary Aid Societies, **duly recognized and authorized by their Governments**, who may be **employed on the same duties** as the personnel named in Article 24 [medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces], are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are **subject to military laws and regulations**." (Emphasis added)

¹⁵⁵ Article 9(2) of AP I extends the same right to display the protective emblem on the same cumulative conditions to permanent medical units and transports and their personnel made available to a party to the conflict for humanitarian purposes by a recognized and authorized aid society of a State neutral or other State which is not a party to that conflict. On the use of the emblem for protective purposes by private non-Red Cross/Red Crescent organizations, see Question 29 of the Study.

¹⁵⁶ Article 27, 1st para. of GC I.

¹⁵⁷ Article 42, 1st para., of GC I.

¹⁵⁸ Article 27, 2nd para., of GC I. As far as the notification of the consent is concerned, "[t]he neutral Government shall notify this consent to the adversary of the State which accepts such assistance."

¹⁵⁹ Article 27, 2nd para., of GC I. As far as the notification of the consent is concerned, "[t]he Party to the conflict

- v. Only those NS personnel, units and equipment that assist the medical services of the belligerent's armed forces, and are employed exclusively for the same purposes as the latter, may make such use of the emblem;¹⁶⁰ and
- vi. These NS personnel, units and equipment have been placed under the control of that party to the conflict¹⁶¹ and are subject to its military laws and regulations;¹⁶² this means that these personnel, units and equipment are attached to the medical services of one of the belligerent's armed forces.

3. Article 18 of GC IV: NS hospitals

According to Articles 18 and 21 of GC IV, a civilian hospital (including that of an NS), its medical staff and convoys may display the emblem as a protective device, with the prior formal recognition of the hospital as a "civilian hospital" by a State party to the conflict and only with the authorization by that State to use the emblem.¹⁶³

4. Article 18 of AP I: NS as "medical personnel, units and transports"

Article 18(3) and (4) of AP I provides that:

"In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem."

"Medical personnel", "medical units" and "medical transports" are defined by Article 8 of AP I essentially by their exclusive assignment to/organization for the "medical purposes" listed under Article 8(e) of AP I. NS personnel, units and transports exclusively assigned to/organized for "medical purposes" may therefore be qualified as medical personnel, units or transports within the meaning of AP I.

According to Article 44 of GC I and Article 18 of AP I, NS medical personnel, units and transports may be entitled to display the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of "medical personnel",¹⁶⁴ "medical units"¹⁶⁵ or "medical transports"¹⁶⁶ contained in Article 8(c), (e)

who accepts such assistance is bound to notify the adverse Party thereof before making any use of it."

¹⁶⁰ Article 26, 1st para., of GC I. On the activities that such personnel may carry out, see for further details Question 16 of the Study.

¹⁶¹ Article 27, 1st para., of GC I.

¹⁶² In particular, under Article 15 of the 1991 Emblem Regulations, such NS personnel and units must respect the rules governing the use of the emblem that have been established by the aforementioned party to the conflict.

¹⁶³ Article 18, 2nd and 3rd paras, of GC IV. The *Commentary on GC IV* states that "[w]hereas all civilian hospitals marked with the protective emblem must necessarily have been officially recognized, all recognized civilian hospitals may not necessarily be marked." (*Commentary on GC IV*, Article 18, p. 150). On the use of the emblem by civilian hospitals in peacetime, see also Question 8 of the Study. On the use of the emblem in situations of occupation and the question of State responsibility for granting authorization to use the emblem in such situations, see also Question 7 of the Study.

¹⁶⁴ Medical personnel are defined by Article 8(c) of AP I as "those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operations or administration of medical transports. Such assignments may be either permanent or temporary." As underlined by the *Commentary on AP I and II*, Article 8(c) of AP I, para. 354, "it is essential that the Party to the conflict, which is responsible for preventing the misuse of the protective emblem, retains the power to decide who is entitled to the protection reserved for medical personnel."

Article 15 of AP I provides that civilian medical personnel must be respected and protected.

¹⁶⁵ Medical units are defined by Article 8(e) of AP I as "establishments and other units, whether military or civilian,

and (g) of AP I;

- ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict;¹⁶⁷ and
- iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.¹⁶⁸ This stipulation does not give the State the right to exercise rigid control over the activities of the NS; its aim is to ensure proper use of the emblem.

However, it is important to bear in mind that the provisions of AP I do not necessarily always apply in every situation of IAC (since not all States are party to it). In that case, there is no stipulation barring an NS from petitioning the proper authority of the competent State for permission to use the emblem for protective purposes.¹⁶⁹

In such a situation, the ICRC encourages that authority to grant the necessary authorization, provided that the conditions of AP I are fulfilled. This would also be in line with Article 2(3) of the Statutes of the Movement, which provides that "States, in particular those which have recognised the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement."

In times of NIAC

Article 12 of AP II provides that:

"Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly."

organized for medical purposes [like] hospitals and other similar units". NS medical units must fulfil the additional conditions specifically set forth by Article 12(2)(b) of AP I for "civilian medical units" in order to be respected and protected by IHL, namely to be "recognized and authorized by the competent authority of one of the Parties to the conflict".

¹⁶⁶ Medical transports are defined by Article 8(g) of AP I as "any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict". Medical transports are respected and protected under IHL within the limits set forth under Section II, Part II, of AP I.

¹⁶⁷ See Article 18(3) and (4) of AP I. As for "medical personnel", even if AP I does not mention explicitly the "consent of the competent authority", such consent is implicit in the distribution by the authorities of identity cards certifying the status of the medical personnel, as provided for in Article 18(3) of AP I.

As far as the "party to the conflict" is concerned, the *Commentary on AP I and II* specifies that:

"Whether the units and transports are civilian or military, their use is subject to control by the Party to which they belong. Thus the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)." (*Commentary on AP I and II*, Article 18(4) of AP I, para. 766).

¹⁶⁸ Article 18(8) of AP I refers to the control over the use of the emblem by a competent authority by mentioning IHL "provisions relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof". As a reminder, Article 54 of GC I provides that States must take the necessary measures for the prevention and the repression, at all times, of misuses of the emblem.

The *Commentary on AP I and II*, Article 18(8) of AP I, paras 791 and 794, further explains that:

"To a great extent the system of the Conventions is based on the trust which can be placed in the distinctive emblem. The supervision of its use and the repression of abuses are therefore indispensable elements in the system.

(...)

However, the obligation upon the Contracting Parties (or, in the case of the Protocol, upon any other Parties to the conflict bound by it), to supervise the use of the distinctive emblem and signals by persons and on objects belonging to them, also arises in a more general way from their undertaking to respect and to ensure respect for the Conventions and the Protocol in all circumstances."

¹⁶⁹ On the authority competent to grant formal permission for the use of the emblem for protective purposes, see Question 6 of the Study.

The expression “distinctive emblem” referred to in the Article is synonymous to “protective emblem”. The *Commentary on AP I and II* states that:

“The term ‘distinctive emblem’, as used in both Protocols, refers only to the emblem used for the purpose of protection. Article 8 ‘(Terminology),’ subparagraph (1), of Protocol I reads: ‘Distinctive emblem’ means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground, when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies.’ Article 12 was adopted on the basis of almost exactly the same definition, which had been drafted for Protocol II.”¹⁷⁰

AP II does not contain definitions of “medical personnel”, “medical units” and “medical transports”. These terms, as used in NIAC, may be understood in the same senses as those defined in Article 8(c), (e) and (g) of AP I.¹⁷¹ As mentioned above, NS personnel, units and transports exclusively assigned to/organized for “medical purposes” could be qualified as “medical personnel”, “medical units” and “medical transports”.

Therefore, NS medical personnel, units and transports may be entitled to display the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;¹⁷² and
- ii. They use the emblem “under the direction of the competent authority”; this means that:
 - they are authorized to use the emblem as a protective device by the competent authority of a party to the conflict, whether governmental authority (civilian or military) or authority of the armed groups (civilian or military); and
 - they make use of the protective emblem under the control of the competent authority of a party to the conflict.¹⁷³

The competent authority of the party to the conflict, be it governmental or dissident, must take measures necessary for the prevention and repression of abuses and infractions (application by analogy with Articles 53 and 54 of GC I) and exercise close and constant supervision to ensure the proper use of the emblem.¹⁷⁴

There may be situations of NIAC where AP II does not apply. In such situations, however, when an NS petitions competent authorities for permission to use the emblem for protective purposes, the ICRC encourages those authorities to grant the necessary authorization, provided that the conditions of AP II are fulfilled.

¹⁷⁰ *Commentary on AP I and II*, Article 12 of AP II, para. 4734.

¹⁷¹ See the *Commentary on AP I and II*, Article 9 of AP II, paras 4663-4664; *Commentary on AP I and II*, Article 12 of AP II, paras 4711-4712; *Customary IHL Study*, Rules 25, 28 and 29, pp. 82-83, 95 and 100.

¹⁷² Article 9 of AP II provides that medical personnel must be respected and protected. Article 11 of AP II provides that medical units and transports must be respected and protected.

¹⁷³ The *Commentary on AP I and II* states that:

“If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge.”

Commentary on AP I and II, Article 12 of AP II, para. 4746.

¹⁷⁴ On the implementation of the obligations to supervise by the dissident authorities, see Question 28 of the Study.

To give this authorization would also be in line with Article 2(3) of the Statutes of the Movement, which provides that “States, in particular those which have recognised the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement”.

In times of internal disturbances and tension

The emblem may be used as a protective device only in times of armed conflict. NS may therefore not use the protective emblem in any other situation, including one of internal disturbances and tension.¹⁷⁵

¹⁷⁵ For further discussion on the use of the emblem in times of internal disturbances and tension, see also Question 18 of the Study.

15) *May a National Society use the emblem as a protective device during armed conflict without the express authorization of the authorities?*

Legal or statutory basis

Articles 44 and 53, GC I
Article 18, AP I
Article 12, AP II

Recommendations

- In times of armed conflict, an NS may use the emblem (protective device) without special permission from the authorities when those authorities are no longer able to discharge their responsibility for authorizing the use of the emblem.
- This use of the emblem for protective purposes is subject to the two following conditions:
 - i. The existence of urgent and obvious humanitarian needs that require the NS to act rapidly, in compliance with the Fundamental Principle of Humanity;
 - ii. The emblem is used to indicate the NS medical activities protected by IHL.
- As soon as the competent authority is re-installed, the situation should be rectified, i.e., the NS should obtain the authorization to use the emblem.

Analysis¹⁷⁶

Introduction

IHL subjects the protective use of the emblem by NS in times of armed conflict to the authorization of the competent State authority.¹⁷⁷ Such an authority must be able to exercise sufficient control and supervision to avoid misuse.

There are however exceptional cases in which the use of the emblem without permission from the competent State authority might be permissible. Two such cases spring to mind. They involve two not easily reconcilable factors: to strictly oppose any such use might put a stop to the provision of effective relief by NS for victims and gratuitously endanger the lives of their first-aid workers, while to allow it might promote misuse of the emblem and so lessen the protection of persons legitimately entitled to its use.

The *first case* is that in which a complicated and acute conflict so undermines government administration that the government can no longer – either temporarily or permanently – take and enforce the decisions that normally fall to it. The NS may then become one of the last institutions bringing relief to victims of the conflict; from being at first a mere auxiliary to the government medical services, the NS gradually becomes the main provider of such services. It is no longer subject to supervision which circumstances have made impossible.

¹⁷⁶ The analysis is based largely on an article by Antoine Bouvier that was published in the *IRRC*. Antoine Bouvier, "Special aspects of the use of the red cross or red crescent emblem", *IRRC*, No. 272, September-October 1989, pp. 443-447.

¹⁷⁷ See, in particular, Article 18 of AP I and Article 12 of AP II.

The *second* case may occur in very acute NIAC that make it impossible even to identify the authorities exercising real control over a part of the territory, so that an NS that is active throughout the territory may have to take the initiative without being able to apply for the permission normally required.

Three additional general observations must be made:

- a) In all the aforementioned cases the authorities are *de facto* unable to supervise the use of the emblem, but the NS might not necessarily be the only body carrying out medical activities;
- b) Members of an NS who are working in an ICRC or International Federation operation are not covered by these remarks;
- c) Unlike many other questions concerning the application of IHL, the questions raised by the use of the emblem without authorization (and the answers to them, if any) do not appear to differ according to whether the armed conflict is international or non-international.

Advantages and disadvantages of the protective use of the emblem by NS without the express permission of the authorities.

1. Arguments for its use without permission

- a) Extending the use of the emblem (and, accordingly, the number of first-aiders protected by it) means that many more victims are likely to be saved;
- b) authorizing an NS to reach a decision, independently, on the use of the emblem gives it responsibility and allows it to manoeuvre more freely. The latter point appears to be particularly important in NIAC, in which it is vitally important for the NS to be independent from the government;
- c) where government administration has become so weak that it can no longer authorize or supervise the use of the protective emblem by the NS, use of the emblem without governmental permission may enable the NS to continue its activities, which would otherwise be paralysed;
- d) increasing an NS freedom to manoeuvre lessens the danger in NIAC that "dissident" Societies will be set up. Protective use of the emblem without permission might therefore help to foster respect for the Fundamental Principle of Unity.

2. Arguments against its use without permission

- a) Any extension of the right to use the emblem may entail misuse thereof and harms the persons already entitled to its protection;
- b) the conditions for the use of the emblem that are laid down by applicable law (Articles 44 and 53 of GC I, the 1991 Emblem Regulations, etc.), have been arrived at only after long negotiation. Only by respecting these conditions can the real protective value of the emblem be upheld;
- c) to agree to the use of the emblem without permission in some circumstances could relieve States of responsibility in general. They might thenceforth rely entirely on the services of the NS, give up any supervision and take no further action against misuse of the emblem;

d) if NS are authorized to use the emblem without permission there is a danger that other organizations (which, unlike the components of the Movement, are not bound by its Fundamental Principles) would also demand the right to use the emblem.

Comparison of the above arguments would appear to show that, in spite of certain risks, the use of the emblem without express permission should, in principle, be recognized in exceptional circumstances, because it strengthens protection for victims and facilitates the work of NS.

The possibility for NS to use the protective emblem without permission in exceptional circumstances

The use by an NS of the protective emblem without express permission, in times of armed conflict, is not foreseen by IHL. However, in exceptional circumstances, when the competent authority is no longer functioning, it is submitted here that the NS should not be prevented from such use of the emblem, subject to all the following conditions:

- a) the existence of urgent and obvious humanitarian needs that require the NS to act rapidly, in compliance with the Fundamental Principle of Humanity; and
- b) the emblem is used to indicate the NS medical activities protected by IHL.

In any case, the NS should be able to show that it has made all possible efforts to obtain the necessary permission.

It is worth stressing that, as soon as the competent authority is re-installed, the situation should be rectified, i.e., the NS should obtain the authorization to use the emblem.

Lastly, it must be emphasized that examination of present practice appears to confirm these conclusions. Experience shows that where efficient NS, i.e., NS accepted and respected by all parties to a conflict, have used the emblem without special permission from the authorities, respect for the emblem and its prestige have not suffered, and many more persons have been saved.

16) For what activities may National Society's personnel use the emblem as a protective device, i.e., within the framework of their role as auxiliary to the medical services of the armed forces?

Legal or statutory basis

Articles 24, 26-27 and 40-44, GC I
Article 8, AP I
Article 9, 1991 Emblem Regulations

Recommendation

- In order to be entitled to use the protective emblem, NS personnel acting as auxiliary to the medical services of the armed forces must be assigned to medical activities only. Such activities encompass the search for, collection, transportation, diagnosis or treatment of the wounded, sick and shipwrecked, and prevention of disease. It can logically be extended to the training of medical personnel.

Analysis

According to Articles 26, 27 and 40-44 of GC I, NS medical personnel that have been duly recognized and authorized by their governments to assist the medical services of the armed forces may use the emblem as a protective device, when they are **employed on the same duties** as the latter and are subject to military laws and regulations.¹⁷⁸

As for such duties, Article 24 of GC I refers to:

"[armed forces] [m]edical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments (...)"¹⁷⁹

The *Commentary on GC I* emphasizes that such medical activities "are enumerated in limitative fashion" in Article 24 of GC I.¹⁸⁰ Article 8(e) of AP I nevertheless adds diagnosis to the list of medical activities protected under IHL.

The following must be taken into account in order to define more precisely this list of activities:

a) As regards the terms "**wounded**" and "**sick**", Article 8(a) of AP I specifies that:

"'wounded' and 'sick' mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, newborn babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility".

¹⁷⁸ For further explanation on the use of the protective emblem by NS in their role of auxiliary to the medical services of the armed forces, see Question 14 of the Study.

¹⁷⁹ See also *Customary IHL Study*, Rule 25, pp. 81-83.

¹⁸⁰ *Commentary on GC I*, Article 24, p. 219.

Consequently, psychological support for victims, their relatives and communities may be considered as falling under medical activities (e.g. providing psychological support for soldiers' relatives with stress disorders).

b) The *Commentary on GC I* justifies the introduction of **prevention of disease** to the list of medical activities as follows:

"In modern armies, hygienic and prophylactic measures for the prevention of disease – inoculation, delousing, disinfection of water supply, and so on – form an important part of the work of the medical staff. It was consequently necessary to include such measures among the duties which personnel of the Medical Service may carry out."¹⁸¹

Establishments which do not directly care for victims but attempt to reduce their number by preventing disease are also considered to be medical units. According to Article 8(e) of AP I (and the commentary thereon), the term "medical units" includes, for example, vaccination and blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units.¹⁸²

c) It is worth bearing in mind that staff exclusively engaged in the **administration of medical units and establishments** are protected by IHL and granted the right to use the emblem as a protective device. According to the *Commentary on GC I*, "[t]hey form an integral part of medical units and establishments, which could not function properly without their help".¹⁸³

Consequently, NS personnel made available to the administration of medical units and establishments are granted the same protection and right to use the emblem as a protective device, although these activities do not fall within the category of medical activities as such.

d) Even though the training of medical personnel is not specifically mentioned in the category of medical activities in the GC or AP I, it can logically be considered as a medical activity for the following reasons:

- i. It is likely that medical training takes place in the vicinity of wounded and sick, in most cases in the same building (e.g. a hospital);
- ii. The same reasoning that applies to the administration of medical units and establishments may be extended to the training of medical personnel, insofar as medical activities could not function properly without training. A reasonable analogy may be drawn between training medical personnel on how to perform their duties and the actual performance of such duties;
- iii. The *Commentary on AP I and II* indicates that "the assignment for medical purposes must be interpreted very flexibly".¹⁸⁴

¹⁸¹ *Commentary on GC I*, Article 24, p. 219.

¹⁸² *Commentary on AP I and II*, Article 8 of AP I, para. 376.

¹⁸³ *Commentary on GC I*, Article 24, p. 219.

¹⁸⁴ *Commentary on AP I and II*, Article 8 of AP I, para. 379.

17) *May a National Society's medical personnel use the National Society's logo when acting as auxiliary to the medical services of the armed forces, i.e., when they are entitled to use the emblem as a protective device?*

Legal or statutory basis

Articles 26-27 and 40-44, GC I
Articles 4 and 14, 1991 Emblem Regulations

Recommendations

- An NS, subject to any direction by the competent authority, may authorize its medical personnel acting as auxiliary to the medical services of the armed forces to display the NS logo (indicative device), simultaneously with the emblem used as a protective device.
- This possibility of using simultaneously the emblem (protective device) and the NS logo (indicative device) must nevertheless be approached by the NS and the competent authority with the utmost care, in particular because it may create confusion between the two different uses of the emblem, and between one of the parties to the conflict and the components of the Movement acting in the same context.

Analysis

Article 44, 1st and 2nd paras., of GC I provides that:

“(…) The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.
Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, **in time of peace**, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are **in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention**; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.”
(Emphasis added)

According to GC I, NS:

- a) may use the emblem as a protective device within the framework of their role as auxiliary to the medical services of the armed forces;
- b) may use the emblem as an indicative device for their activities which are in conformity with the Fundamental Principles;
- c) must ensure that the distinction between protective and indicative uses of the emblem is upheld at all times.

Article 14 of the 1991 Emblem Regulations reads as follows:

“Unless otherwise directed by the Authority, the National Society **may** authorize its members to display the emblem as an indicative device, together with its name, simultaneously with the emblem used as a protective device.

Under the same conditions, the objects placed at the disposal of the Authority may also bear the emblem with the name of the Society.

In such cases, the emblem used as an indicative device and the name of the National Society must be of small dimensions.” (Emphasis added)

Accordingly, Article 14 of the 1991 Emblem Regulations keeps the door open for simultaneous use of the emblem as a protective and as an indicative device by NS personnel. Such use is conditional on the authorization of the NS. The military authority has the power to refuse it, either on an ad hoc basis or under the provisions of military regulations. Such NS personnel would in fact be subject to military laws and regulations, but would not become military personnel. In general, the question of the uniform to be worn by such personnel remains a matter for national arrangement.¹⁸⁵

However, simultaneous use of the protective and indicative emblems may have negative impacts. The indicative use of the emblem signifies the link between the person or object displaying it and the Movement.¹⁸⁶ Simultaneous use could create confusion in the mind of the public and, even more problematically, in the minds of the combatants, as follows.

a) Confusion between the armed forces and the components of the Movement present in the same context. Although the military medical services of a party to the conflict should be considered as “neutral”, the NS – and all the other components of the Movement strictly abiding by the Fundamental Principles (in particular neutrality and independence) – would run the risk of being associated with a party to the conflict, thereby jeopardizing their access to the population in need and, in the worst cases, their security.

b) Confusion between the two purposes of the emblem. The crucial distinction between the two different uses of the emblem may be blurred, thereby jeopardizing its protective value.

The possibility of authorizing simultaneous use of the emblem (protective device) and the NS logo (indicative device) must therefore be approached by the NS with the utmost care. It is also recommended that the competent authority take the above-mentioned risks into account when assessing the decision of the NS to authorize its personnel to use its logo and the emblem simultaneously.

¹⁸⁵ See *Commentary on GC I*, Article 26, p. 227.

¹⁸⁶ See “General principles and concepts” in the Introduction of the Study.

18) *May a National Society use a large-sized indicative emblem (the National Society's logo)?*

Legal or statutory basis

Article 44, 2nd para., GC I

Articles 4, 5, 16, 17, 19, 21 and 23, 1991 Emblem Regulations

Recommendations

- In order to safeguard and reinforce the protective value of the emblem, it is important to always differentiate between protective and indicative uses of the emblem.
- Even if the most obvious and common method of making this distinction clear is the size of the emblem (the emblem when used for indicative purposes being small in size compared to the person or object displaying it), NS should, for indicative purposes, use their logos (the emblem together with the name or initials of the NS) rather than the emblem itself.
- First-aid NS workers (and facilities) might display a large-sized NS logo in the following exceptional circumstances:
 - i. in situations of internal disturbances and tension, (a) if it might enhance their medical assistance to victims of violence, and (b) if authorized, or at least not forbidden, to do so by national legislation; or
 - ii. in situations of natural disaster and in consultation with the lead agency (as defined under the Seville Agreement) and the ONS, if such use would significantly improve the chances of saving lives.
- The display of a large NS logo should be avoided when NS first-aid workers (and facilities) are covering needs on occasions of leisure events, such as concerts or sporting events.

Analysis

Introduction

The main purpose of the rules governing the use of the emblem is to safeguard its protective value.¹⁸⁷ In this regard, the distinction between protective and indicative uses of the emblem is crucial, the former being “the visible sign of the protection conferred by the GC”,¹⁸⁸ while the latter serves to indicate the link between the person or object and the Movement.¹⁸⁹ Raising the visibility of NS and promoting their activities are important objectives which should be encouraged. However, they must be pursued in full respect for the above-mentioned distinction between protective and indicative uses of the emblem.

¹⁸⁷ See “Objectives and methodology” in the Introduction of the Study.

¹⁸⁸ *Commentary on GC I*, Article 44, p. 330.

¹⁸⁹ *Commentary on GC I*, Article 44, p. 330. See “General principles and concepts” in the Introduction of the Study.

One emblem: two sizes for two purposes

Article 44, 2nd para., of GC I reads as follows:

“National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem (...) for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be **comparatively small in size** and may not be placed on armlets or on the roofs of buildings.” (Emphasis added)

Because “care must be taken that the distinction between the two uses [of the emblems] is always clearly drawn”,¹⁹⁰ Article 44 of GC I emphasizes the importance of the size-based distinction between the two uses of the emblem, the emblem used for indicative purposes being small in size compared to the person or object displaying it.

The actual size of the “indicative” and “protective” emblems, as the *Commentary on GC I* points out, is dictated by common sense:

“For practical reasons, the [1949] Conference rejected a proposal that it should lay down the maximum dimensions of the indicatory sign. It merely stipulated that it should be comparatively small in size – that is, small in proportion to the protective sign used for any given category of persons or objects. Common sense must decide the actual size. Thus, a flag one metre square, placed over the door of a building, would pass as an indicatory sign; an emblem of the same size, displayed on a vehicle would appear to be a protective sign and would have to be reduced to, say, 20 cm. square. An emblem of this latter size would in turn be too large to be worn by individuals, who would have to rest content with a sign one or two centimetres across.”¹⁹¹

“Common sense”, informed by expertise and law, is a useful guide. In any event, as States have primary responsibility for ensuring that the rules of IHL are respected, it is they that have to make the final decision, in specific cases, as to what may be considered as “comparatively small in size”.

It is also worth noting that even if these restrictions apply only in wartime, NS (and the other components of the Movement) are recommended:

“to employ the smaller sign even in peacetime for activities other than relief to the sick and wounded of the armed forces. Should the war break out, they would then be spared the task of reducing the size of signs, a costly process, difficult to carry out at short notice, and which, if not done properly, might lead to serious incidents.”¹⁹²

Furthermore, as already noted in the introduction to the Study (“General principles and concepts”, Section III), in order to emphasize the distinction between the two uses of the emblems, the components of the Movement are recommended, for indicative purposes, to use their logos (the emblem together with the name or initials of the component), rather than the emblem itself.¹⁹³

¹⁹⁰ *Commentary on GC I*, Article 44, p. 330.

¹⁹¹ *Commentary on GC I*, Article 44, p. 331.

¹⁹² *Commentary on GC I*, Article 44, p. 331.

¹⁹³ Article 5 of the 1991 Emblem Regulations, for instance, provides that:

“The emblem used as a protective device shall always retain its original form, i.e., nothing shall be added either to the cross, the crescent or the white ground (...) The emblem used indicatively shall be accompanied by the name or initials of the National Society.”

However, according to the commentary on Article 16 of the 1991 Emblem Regulations, “in some cases [NS volunteers] should be allowed to forego use of the name or initials of the Society alongside the emblem, for

Articles 4, 16, 17, 19, 21 and 23 of the 1991 Emblem Regulations confirm that the logo, when used by members and employees of NS and members of NS Youth, on buildings, premises, hospitals, aid stations and means of transportation of NS, as well as when used in campaigns and events organized by the NS, should be of "small" or "relatively small" dimensions. It is further recommended that NS refrain from displaying their logo on large flags.¹⁹⁴

However, if the rule is clear (NS logo of relatively small dimensions), the 1991 Emblem Regulations add that "the use of a large-size emblem [logo] is not excluded in certain cases, such as events where it is important for first-aid workers to be easily identifiable."¹⁹⁵

There can therefore be some exceptions to the general rule, but they must be driven by the need to make NS first-aid workers easily identifiable, in particular when considerations of aid to victims and improved protection for first-aid staff outweigh the aforementioned risk of confusion or misuse.

Is use of a large NS logo permitted in the following specific cases?¹⁹⁶

Given the risk of diminishing the protective value of the emblem, exceptions to the general rule should be considered with the utmost restraint and caution.

1. In situations of internal disturbances and tension

Despite the fact that neither the text nor the commentary on the 1991 Emblem Regulations specifies the circumstances in which a large NS logo may be displayed by NS first-aid workers (or NS first-aid facilities), the exceptional use of the large logo should apply in situations of internal disturbances and tension in order to significantly enhance the chances of saving lives, and to address the concern of NS to safeguard their personnel, hospitals, aid stations, medical means of transportation and other material resources that they employ to assist victims of acts of violence.

However, it should be noted that such use must be authorized, or at least not forbidden, by national legislation.

2. In situations of natural disaster

Natural disasters raise more difficult legal issues. NS first-aid workers (and facilities) should resort to the large NS logo only if it would significantly improve their chances of saving lives. As a matter of fact, an indiscriminate application of the exceptional rule mentioned above would ultimately erode the significance of the fundamental distinction between indicative and protective uses of the emblem.

The decision to use a large-sized logo should be discussed with the lead agency (ICRC, International Federation or ONS, depending upon the situation) and with the ONS (when it is not itself the lead agency).

example during internal disturbances when such marking may hinder their work".

¹⁹⁴ See Article 4, 2nd para., of the 1991 Emblem Regulations.

¹⁹⁵ Article 4, 2nd para., of the 1991 Emblem Regulations. It is worthwhile emphasizing that the same exception is mentioned in the commentary on Article 16, 3rd para., of the 1991 Emblem Regulations.

¹⁹⁶ On the possible exception, see also Antoine Bouvier, "Special Aspects of the Use of the Red Cross or Red Crescent Emblem", *IRRC*, No. 272, September-October, 1989, pp. 448-451.

3. During leisure events

When NS first-aid workers are sent out on occasions such as concerts or sporting events, the use of a large-sized NS logo (by the NS first-aid workers or its first-aid facilities) would neither significantly increase the chances of saving lives nor address the concern of NS to safeguard their volunteers and personnel.

In such situations, NS first-aid workers (tent, stations, etc.) should be identified with their logo (relatively small in size). Together with the small NS logo, they may also use another sign, such as, for instance, a large white cross on a green background or the words “First Aid” in large dimensions. In addition or as an alternative, the name of the NS could appear, large in size, perhaps marked in red on the NS first-aid facilities.¹⁹⁷

¹⁹⁷ See also in this regard Questions 27, 32, and 46 of the Study.

19) *May a National Society authorize its personnel to use the National Society's logo when participating in its government's humanitarian response abroad, outside the scope of Article 26 of the First Geneva Convention of 1949?*

Legal or statutory basis

Article 26, GC I

Articles 61-66, AP I

Articles 1(2) and 2(4), Statutes of the Movement

Fundamental Principles of the Movement (Independence, Neutrality, Impartiality)

Recommendations

- NS personnel acting as part of their government's humanitarian response must not use the emblem (protective device).
- Such NS personnel should avoid using the NS logo (indicative device), unless such use takes place in a context or situation where it does not create any confusion or misunderstanding that would undermine the impartiality, independence and neutrality of the Movement.
- If an NS is asked by its government to conclude an agreement on the participation of NS personnel in the government's humanitarian response abroad, it is recommended that the following elements be included in the agreement:
 - i. adherence by the NS personnel to the Fundamental Principles at all times;
 - ii. respect by the authorities for such adherence;
 - iii. acceptance by the NS of the recommendations on the use of the emblem set out in the bullet-points above.

Analysis

Introduction

This question covers situations in which an NS is requested by its authorities to make available staff (or material) for the government's humanitarian response abroad. Such participation by the NS may be based, for instance, on arrangements concluded between the NS and the authorities, whereby the former is asked to be ready to deploy at short notice and provide support, e.g. for consular services, or take some other action.¹⁹⁸ To the knowledge of the ICRC, in current practice, NS involvement in such government response is limited in scope and in time (e.g. two or three people for one or two weeks). This limited involvement usually takes place in the context of a government's rapid response to a natural disaster, for instance.

¹⁹⁸ For instance, NS personnel might be asked to participate in the evacuation of people from a war zone; or NS specialists in post-traumatic care might be asked to contribute to their government's effort to assist victims of a natural disaster.

The purpose here is neither to determine whether such activities fall within the auxiliary role of NS nor to explore how the Movement's coordination mechanisms apply in such circumstances. The sole object of this analysis is to clarify how the emblem should be used by NS personnel participating in their government's humanitarian response, in order to avoid any possibility of undermining the image and action of the Movement.

Use of the emblem

1. Protective use

In principle, the situation described above does not correspond to any circumstances in which an NS may use the emblem as a protective device under Article 44 of GC I.¹⁹⁹

2. Indicative use

In the case under consideration, the NS personnel are incorporated into the government's team and operate under its direction. Logically, such personnel should be identified as part of the government's team. In order to avoid any possible confusion or misunderstanding that would undermine the impartiality, independence and neutrality of the Movement, these NS personnel should therefore avoid using the NS logo for indicative purposes.

This recommendation is all the more valid when the humanitarian response in question occurs in a context of armed conflict, in a situation of internal violence or in a situation likely to (re-)escalate into an armed conflict. In such situations the confusion that could potentially arise between the government response and the activities of the Movement might be even more detrimental to the NS personnel's access (and that of other Movement components' personnel) to victims and to their security than in situations where no violence is involved.

However, this recommendation is not absolute as there may be contexts or situations in which the use of small identification signs bearing the NS logo is less likely to create confusion or misunderstanding that would undermine the impartiality, independence and neutrality of the Movement. In addition, given the comfort that the symbolic value of the NS logo may bring to the people to be assisted in such circumstances, displaying that logo might offer an emotional advantage.

3. Other identification signs

When NS personnel are incorporated into their government's response, they are not barred from displaying some other identification sign, e.g. the international distinctive sign of civil defence, provided the relevant conditions are met.²⁰⁰

¹⁹⁹ When acting as auxiliary to the medical services of States' armed forces under Article 26 of GC I, NS personnel are entitled to use the emblem as a protective device. See, e.g., "General principles and concepts" in the Introduction of the Study; for all the situations under which an NS may use the emblem as a protective device, see also Question 14 of the Study.

The possibility of NS medical personnel (involved in their government's humanitarian response) meeting the conditions set out under Article 18 of AP I for such personnel to use the protective emblem is not entirely excluded, but remains highly unlikely. For further explanation regarding these conditions, see Question 14 of the Study.

²⁰⁰ For instance, the NS personnel incorporated into the government's civil defence organization might be entitled to use the international distinctive sign of civil defence, an equilateral blue triangle on an orange ground. This is, of course, possible only with the authorization of the relevant authorities and in accordance with the conditions defined in Articles 61-66 of AP I. In particular, such NS personnel must be attached to a civil defence organization and exclusively devoted to civil defence tasks. In addition, it follows from Article 66(7) and (8) of AP I that the civil defence sign is capable in peacetime of wider use (than in times of armed conflict) and thus could be used as an indicative sign in certain circumstances by NS personnel engaged in the activities described above. See *Commentary on AP I and II*, Article 66 of AP I, paras 2644-2650, 2685 and 2690.

Elements to be included in a potential agreement between the NS and the authorities*1. Use of the emblem*

For the situation discussed under this question, any agreement between the NS and the authorities should include the recommendations on the use of the emblem and of the NS logo which are set out above. Other specific elements relating to identification (e.g. use of the international distinctive sign of civil defence or other signs or insignia) could be included as well, depending upon the kinds of activity that are envisaged.

2. Respect for the Fundamental Principles

The components of the Movement must abide by the Fundamental Principles at all times.²⁰¹ In particular, NS and their personnel should always be – and must be seen to be by the public – independent, neutral and impartial. Since the authorities are required to respect the NS adherence to the Fundamental Principles,²⁰² it is recommended that such respect be included as one of the provisions of the agreement between the NS and the authorities.

²⁰¹ Article 1(2) of the Statutes of the Movement.

²⁰² Article 2(4) of the Statutes of the Movement.

20) *How may a National Society use the emblem/the National Society's logo when it is in partnership with a UN agency or some other external partner?*

Legal or statutory basis

Article 25, 1991 Emblem Regulations

2003 Minimum Elements

Fundamental Principles of the Movement (Independence, Neutrality and Impartiality)

Recommendations

- The NS must retain sole control and all rights over the emblem and its logo, i.e., the emblem shown in association with its name or initials.
- The use of the **emblem** (as a protective device) together with the logo of an external partner is prohibited.
- The use of the **NS logo** (as an indicative device) together with the logo of an external partner should be avoided.
- The use of the NS logo (and its name) together with the logo of an external partner is permitted only subject to all the following conditions:
 - i. In exceptional circumstances, i.e., if no way of avoiding such joint use exists, in connection with humanitarian activities or dissemination campaigns;
 - ii. For a specific undertaking, i.e., for a specific project of limited duration;
 - iii. If the external partner is a humanitarian organization;
 - iv. If the joint use is discreet and does not give rise to confusion in the public mind between the NS and the external partner. In practice, the potential for confusion may often be avoided by a short written explanation of the relationship between the NS and its external partner;
 - v. If it is not displayed on buildings and equipment, including vehicles and other means of transport; and
 - vi. Where it does not compromise the NS identity as a neutral, impartial and independent actor.
- The NS is responsible for ensuring that all the foregoing conditions (based on the 1991 Emblem Regulations and the 2003 Minimum Elements) are reflected in the agreement concluded with the external partner and complied with.
- In addition, if there is a change in the conditions that led the NS to accept the joint use of logos, the NS must be in a position to terminate such joint use, in order to protect its image and that of the Movement. The chief consideration, at all times, is to ensure the NS security and its access to victims.
- The NS should be willing, and capable of, explaining to the external partner the importance of avoiding, as much as possible, the use of “double logos” and the mutual advantages of this policy.

- These restrictions do not in any way reduce or nullify the efforts to be undertaken to acknowledge to the fullest extent possible the external partner as donor and partner in reports, statements, advertisements and in all other such materials pertaining to the project.

Analysis

Introduction

This question deals with the impact that a partnership between an NS and external partners might have on the way in which components of the Movement might be regarded in a particular situation.

When an NS is the implementing partner in a given project – for example, of UN agencies such as UNHCR or WFP – it concludes an agreement with the external partner on the implementation of that project.

For reasons of visibility, these external partners may want their contribution, be it in kind or in cash, to be acknowledged by the NS. If acknowledging the partnership is consequential for launching and implementing new projects, the NS must proceed with the greatest delicacy, because of the impact its actions might have on the way in which the Movement and its components are regarded. If this acknowledgement takes the form of joint use of emblems/logos, i.e., the logo of the NS together with the logo of the external partner, that must be included in the agreement between the NS and the external partner.

The joint use of logos is potentially hazardous for perception of the NS – and consequently for that of all the other components of the Movement working in the same context – as a neutral, impartial and independent humanitarian actor. In certain contexts, an NS association with external organizations like the UN could jeopardize its access to people in need and endanger the security of its staff and volunteers.

When negotiating such an agreement, it is very important to keep in mind that the NS and the external partner are equals: they must know and understand their respective constraints and obligations, especially the obligations of the components of the Movement to abide by the rules governing the use of the emblem.

General elements on joint use of logos to be included in agreements with external partners

Given the risks for the whole Movement, as described above, the use of joint logos should be avoided as far as possible. Of course, the more violent and tense the situation, the more such associations, or merging of identities, should be avoided.

The following are the main general elements to be included in agreements with external partners:

- a) The NS must retain sole control and all rights over its logo and the emblem, i.e., it must not be required, against its will, to use its logo jointly with that of the external partner;
- b) The NS must strictly respect the GC, their AP, the Fundamental Principles, the 1991 Emblem Regulations and the 2003 Minimum Elements. This respect must be understood and acknowledged by external partners;
- c) Neither party to the agreement must request of the other uses of its name and logo that are not in conformity with its rules and regulations and with applicable international and national laws.

Conditions set forth in the 1991 Emblem Regulations and the 2003 Minimum Elements on joint use of logos

The Movement has adopted two instruments that regulate the joint use of logos. Any agreement signed with an external partner must reflect the elements of these instruments:

- a) Article 25 of the 1991 Emblem Regulations;
- b) Paragraph 2 of the 2003 Minimum Elements.

Article 25 of the 1991 Emblem Regulations and its commentary provide that:

"the National Society may in exceptional circumstances use the emblem jointly with that of another humanitarian organization, in the event of a specific undertaking and provided that such use is discreet and does not give rise to confusion in the public mind between the National Society and the other organization.

In principle, the National Society must not use its emblem jointly with that of other organizations. It must endeavour to find a way of avoiding such a procedure and should have recourse to joint use only in exceptional circumstances, in connection with humanitarian activities or dissemination campaigns (for example, in a joint publication). In such cases, only indicative use may be made of the emblem."

Paragraph 2 of the 2003 Minimum Elements provides that:

"The Agreement must reflect that the National Society or other Movement component will at all times clearly display its own individual identity and be clearly associated to the International Red Cross and Red Crescent Movement. It will not assume the identity of the Partner agency through the displaying of double logos or emblems on equipment or through the adoption of vehicle licenses. Its identity must not be compromised at any time while conducting its responsibilities under said agreement. The Regulations on the Use of the Emblem will be followed at all times. The protective emblem will only be utilized in conformity to regulations."

Joint use of logos is therefore possible only if the conditions set forth in the 1991 Emblem Regulations and the 2003 Minimum Elements are met. As far as the interpretation of these conditions is concerned, the following considerations are intended to clarify when the joint use of logos is possible:

1) If an NS resorts to the joint use of logos, it must be "in exceptional circumstances": the project in question must be humanitarian in nature, e.g. the provision of assistance in the form of relief consignments,²⁰³ or related to dissemination i.e., a publication about IHL, an information campaign on disease-prevention measures, etc. In any case, the NS must, as emphasized in the commentary on Article 25 of the 1991 Emblem Regulations, consider every possible way of avoiding joint use.

2) The agreement providing for the joint use of logos must be for a specific activity or set of activities to be accomplished within a clearly defined span of time. An NS must not be bound to joint use of logos for an unlimited period of time. This is in order to avoid being associated in the public mind with its various partners in the agreement, e.g. UN agencies, who might have different agenda or objectives from its own.

3) Joint use is possible only if the external partner is a humanitarian organization: this condition is absolute. It would do great harm to the image of an NS if it were to be associated with an organization with political objectives or a political agenda. In a situation of conflict, this might even threaten the security of the NS. In addition, owing to practical difficulties in differentiating between the various components of the Movement acting in a particular context, it would also impede the work of the other components in the context. Generally

²⁰³ On the use of the NS logo on relief consignments, see Question 22 of the Study.

speaking, the image of the Movement should not be associated with the UN. Depending on the context, even association with UN humanitarian agencies, e.g. UNHCR or the WFP, should be regarded with great wariness. NS must be particularly vigilant and must assess thoroughly whether, in a particular context, “humanitarian donors” (e.g. ECHO or USAID) are associated by either the public or by combatants, with one of the parties to the armed conflict, or whether such donors are otherwise, for whatever reason, perceived as not neutral or not impartial. Lastly, it is clear that the armed forces of States, whatever the activities they may have undertaken, cannot be considered to be “humanitarian organizations.”

4) Joint use must be discreet and must not give rise to confusion in the public mind. While the joint use of logos may be possible, under certain rigorously defined conditions, the emblem itself (comparatively large in size) is reserved for protective use and must never be displayed jointly with the logo of another organization, particularly in times of armed conflict. Consequently, the larger the logos used, the more joint use becomes riddled with complications. Any confusion that might arise will be difficult to remedy and will, ultimately, undermine the protective value of the emblem. A practical measure to prevent confusion would be to employ a short statement explaining the relationship between the two organizations.

5) Joint use is possible if the logos are not displayed together on equipment: this condition can be found in the 2003 Minimum Elements. It is very much linked to the previous condition and to the necessity of not compromising the image of the Movement and of not giving rise to confusion in the public mind. In this regard, it goes without saying that joint use of logos on buildings, vehicles and other means of transport would certainly engender such confusion, which could have very detrimental effects, especially during armed conflict. If the external partner provides vehicles or other means of transport to the NS in the framework of their project, it must be agreed to that the markings of the external partner on such vehicles will be covered or temporarily removed.

6) Joint use of logos would be permitted only when it does not compromise the NS identity as a neutral, impartial and independent actor and member of the Movement. This very much depends on the context and on the public image of the external partner in that context. Given the complications that might ensue from the joint use of logos, simply mentioning the partners' names, without recourse to logos, might be a practical and effective alternative.

Corollary to the conditions mentioned above, an NS should cease the joint use of its logo when it threatens respect for the Fundamental Principles or, more directly, respect for its image or that of the Movement. This means that the NS must be free to terminate at any time the agreement (or at least that part of it concerning the joint use of logos) if the conditions that led it to accept joint use have changed.

Dialogue with the external partners

It is extremely important for the NS, when discussing an agreement with possible external partners, to emphasize the advantage, to the partners themselves, of having the components of the Movement uphold their neutrality/impartiality/independence (or the perception thereof). The respect for the Fundamental Principles gives the components of the Movement the possibility of access to victims, whom the external partners would not at all have been able to approach by themselves. This illustrates the complementary roles of the NS and the external partner, and, also, the added value of the NS.

Lastly, NS must not refrain from explaining the arguments defined under this question with their partners. It is, in fact, both their right and their duty to do so, to create awareness of NS obligations concerning the use of the emblem/logo and to ensure that partners are ready to take those obligations into account. There are some recent encouraging precedents in this

regard. For instance, the new USAID marking rule clearly includes neutrality and public perceptions as grounds for not using the USAID logo. USAID notes that “an additional presumptive exception has been added to address the International Committee of the Red Cross concerns that any required marking not violate the international neutrality standards.”²⁰⁴ USAID has been one of the leaders over the last 25-40 years in creating rather strict “identification” requirements. The fact that such an organization is responding to this issue (positively for the Movement) shows some real promise with other major donors.

²⁰⁴ Agency for International Development (USAID), 22 C.F.R. Part 226 [Aid Reg 226], RIN 0412-AA55, Administration of Assistance Awards to U.S. Non-Governmental Organizations; Marking Requirements, 2 January 2006, Part A: General Comments, p. 18. Specifically, paragraph 226.91(h)(1) of the marking rules provides that:

“The above marking requirements in para. 226.91 (a)–(e) may not apply if marking would:

- (i) Compromise the **intrinsic independence or neutrality** of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.
- (ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings **must be seen as independent** (...)
- (iii) **Conflict with international law.**” (Emphasis added)

21) *What is the role of the host National Society with regard to use of the emblem/National Society's logo of a participating National Society providing assistance on its territory?*

Legal or statutory basis

Articles 26-27, 53 and 54, GC I

Article 9(2)(b), AP I

Preamble, paras 2 and 8, AP III

Fundamental Principles of the Movement (Humanity and Universality)

Resolution XI, 10th International Conference of the Red Cross of 1921

Resolution VII, 16th International Conference of the Red Cross of 1938

Articles 31(1) and 32, Vienna Convention on the Law of Treaties

Recommendations

- In general, national legislation for implementing IHL in the host State is paramount in determining what emblem (protective and indicative devices) is to be used. However, as far as possible, it should be interpreted and/or applied with sufficient flexibility to allow the following recommendations to be put into effect.
- An ONS should not refuse a PNS assistance solely because of the emblem/logo used by that PNS.
- If the ONS accepts the assistance offered by the PNS, it should also accept the PNS emblem/logo, provided that that emblem is recognized internationally.
- Only in the exceptional case that the security of the PNS personnel is at risk could the ONS suggest that the PNS, in consultation with the lead agency, not use its emblem and/or logo.
- Victims' needs and the effectiveness of the Movement's response should remain the primary criteria by which all decisions to accept assistance from abroad must be governed.

Analysis

Introduction

In principle, and in accordance with Resolution XI of the 10th International Conference of 1921, a PNS that wishes to provide assistance abroad must obtain the consent of the ONS, including in the matter of the emblem it wants to use.

While trying to determine the exact nature of the consent required of the ONS, it is necessary to clarify whether the ONS may refuse the assistance of the PNS solely on the grounds of the latter's emblem, and whether it could make its consent conditional on the PNS using an emblem other than its own.

The scope of this question covers the use of the emblem for both protective and indicative purposes by NS working abroad. The only exception is a situation in which the NS is authorized to use the emblem for protective purposes because it acts as auxiliary to the medical services of armed forces. In this instance, it must use the same emblem as the

medical services in question, wherever this use takes place, and the mechanisms of coordination of the Movement, such as Resolution XI of 1921, do not apply.

Applicable texts

The 1st para. of Resolution XI, which was adopted by the 10th International Red Cross Conference of 1921, provides that:

"No Red Cross Society shall set up a Section, Delegation, Committee or Organization, or have any activity in a foreign country²⁰⁵ without the consent of the Central Committee of the National Society of that country and of its own Central Committee, especially as far as the use of the name and emblem of the Red Cross is concerned."

Since para. 8 of the Preamble to AP III derives from Resolution XI of 1921 – it is, in fact, another way of stating the same principle – it is important in the present analysis to consider this paragraph as well. It reads as follows:

"National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use within the framework of such activities may be used in the country where the activity takes place and in the country or countries of transit."

1. General considerations

The following considerations are worth noting:

- a) the red cross, the red crescent and the red crystal emblems provide the same protection, and must be considered to be equal in status and as constituting, at all times, neutral symbols;
- b) any decision to oppose the use of a recognized emblem is to be regretted;
- c) every NS is bound by the legislation of its State; this, of course, includes the authorization granted to the NS to use the red cross, the red crescent or the red crystal. Therefore, it would be difficult to accept any practice that allows an ONS to require that a PNS change its emblem and violate its national legislation in the process;
- d) the national legislation of the host State is paramount, and it is this legislation (rather than any opinion of the ONS) which should govern the use of the emblem by the PNS operating in that host State: it would be difficult to expect an ONS to authorize a PNS to operate under the PNS emblem if that violates existing national legislation (see below).

2. Interpretation based on practice

Very few cases were found in the ICRC archives of a PNS emblem presenting an insurmountable obstacle to an ONS (in particular of an ONS refusing assistance, giving as its reason the PNS emblem; or of an ONS making acceptance of assistance on its territory conditional on a PNS changing its emblem).

In one case, an ONS recommended that a particular PNS not use a certain emblem, but this was based on security considerations and was certainly not a condition for the ONS to accept the presence and the activities of the PNS.

²⁰⁵ A later International Conference Resolution was adopted to clarify the meaning of Resolution XI. It makes no reference to an NS having "any activity in a foreign country" (Resolution VII adopted by the 16th International Conference in 1938).

It is thus difficult to draw conclusions when there is little evidence in practice. The little evidence there is suggests that there is a general understanding that when an ONS agrees to allow a PNS to undertake activities on its territory, it accepts the PNS emblem at the same time.

Therefore, apart from the difficulties, mentioned above, that might arise from the text of the host State's national legislation, the only restriction attached to this principle would be the recommendation not to use a certain emblem, when the security of the humanitarian personnel requires it.²⁰⁶

3. Interpretation based on Resolution XI of 1921 and on para. 8 of the Preamble to AP III

a) Resolution XI of 1921

Resolution XI provides that PNS may undertake activities abroad only "with the consent" ("*l'agrément*") of the host NS "especially as far as the use of the name and emblem of the Red Cross is concerned." Does this mean that the ONS can impose an emblem on the PNS, under which it must work on the territory of the ONS State?

It must be kept in mind that Resolution XI is merely an instrument for coordinating the Movement's response and that the Movement's objective is to provide the best possible assistance to people in need. It seems therefore reasonable to infer that the PNS proposal of assistance must be considered in good faith by the ONS, in compliance with the Fundamental Principle of Humanity and taking into account the primary importance of the needs of victims and of the effectiveness of the Movement's response.

The consent must not be refused for "fallacious" reasons, for instance because the ONS "does not like" the PNS emblem. The only criterion to be considered must be the effectiveness of the assistance provided to people in need.

In light of the Fundamental Principle of Universality, which imposes equality of status among all NS,²⁰⁷ it would seem difficult to accept that an ONS could impose an emblem on a PNS as a condition for consenting to the presence of the PNS on its territory. The equal status of the emblems themselves seems to point to the same conclusion.

Besides the consent referred to in Resolution XI, it is worth reiterating that, according to Articles 53 and 54 of GC I (and the national legislation on the emblem implementing those Articles), the State (usually a government department), and not the ONS, is the ultimate controlling authority in regard to the use of the emblem (see below).

b) Para. 8 of the Preamble to AP III

The 1969 Vienna Convention on the Law of Treaties defines the rules for interpreting international conventions. In particular, Article 31(1) of the Convention provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

In this regard, it must be recalled that the ultimate purpose of any "humanitarian convention" is to provide the best possible protection and assistance to all victims and persons in need in times of armed conflict.

²⁰⁶ Note that such a recommendation could also be given by the lead agency, or after discussions between the lead agency and the ONS, when deemed necessary for security reasons.

²⁰⁷ See also Article 4(9) of the Statutes of the Movement.

Moreover, as the *Commentary on AP III* stresses, "[a] preamble [to the Protocol] (...) usually seeks to explain the rationale behind the text as well as clearly state its object and purpose."²⁰⁸ Para. 2 of the Preamble to AP III defines the purpose of the Protocol when it says that it desires:

"to supplement the aforementioned provisions [provisions of the Geneva Conventions and their Additional Protocols, concerning the use of distinctive emblems] so as to enhance their protective value and universal character."

The *Commentary on AP III* notes that:

"even though the red cross and red crescent are universal symbols of assistance to victims of armed conflicts and disasters, they do not always enjoy, in certain limited geographical contexts, the respect to which they are entitled. Furthermore, certain states do not identify with either of these two emblems, or wish to be entitled to use both of them simultaneously.

The second paragraph of the preamble therefore explicitly states the main objectives pursued by Additional Protocol III. It is designed to supplement the Geneva Conventions and the first two Additional Protocols by adopting an additional emblem that will enhance the value of the distinctive emblems, especially in operational contexts where the existing emblems might be erroneously perceived as having political or religious connotations."²⁰⁹

Since the main object in adopting AP III was to find a remedy for situations where the existing emblems cannot be used, because of the religious or political connotations that they are thought to possess, it would not be correct to interpret para. 8 of the Preamble to AP III in a way that would defeat the very purpose of the Protocol.

In addition, when the text of a treaty is "ambiguous or obscure", the Vienna Convention on the Law of Treaties recommends that the preparatory work done before the conclusion or adoption of the treaty, and the circumstances of its conclusion, be examined.²¹⁰ During the negotiations that preceded the adoption of AP III, almost all States were in favour of finding a solution to the emblem issue as stated in para. 2 of the Preamble to AP III. It also seems that the text of AP III is not too controversial (although, the timing of the adoption of AP III was thought by some States to be inappropriate, which led to a vote on its adoption).

The logical conclusion therefore seems to be that the ONS and the PNS must work together in good faith to choose a recognized emblem that is acceptable to both, always keeping in mind the Movement's Fundamental Principle of Humanity and the emblem legislation of the ONS and the PNS States (see below). This also implies that the ONS must not interpret AP III in a way that would defeat the purpose of the Protocol, by rejecting the assistance of the PNS only because of its emblem (or by making the PNS emblem the grounds for withholding its consent to the PNS activities).

Issues related to the national legislation of the ONS

Again, it is worth reiterating that the legislation of all States party to the GC must provide for respect for and protection of the recognized emblems. Any provision that prohibits the use of any of the recognized emblems, although not necessarily in contradiction to the GC, is to be regretted.

The national legislation of the great majority of States, on the use and protection of the emblem, contains provisions authorizing NS to use the emblem. There are very few examples stipulating that only the NS of a particular State is entitled to use the emblem,

²⁰⁸ *Commentary on AP III*, Preamble, p. 179.

²⁰⁹ *Commentary on AP III*, Preamble, para. 2, p. 180.

²¹⁰ See Article 32 of the Vienna Convention on the Law of Treaties.

which could be interpreted as a prohibition against any other organization (including a PNS) using the emblem.²¹¹ However, the reason for such formulations of the law seems to be that the activities of PNS (or that of the ICRC or the International Federation) on the territory of the State were not foreseen by the framers of the law, and not some desire to prevent PNS from using the emblem in that State.

PNS use of the emblem abroad will always be subject to the provisions of the GC, their AP (where applicable), the 1991 Emblem Regulations and the national legislation of the host State. The competent government department of the State can (in fact, it has an obligation to do so) always intervene in case the emblem is misused by a PNS. However, as far as possible, this power of the host State should not be interpreted as giving it licence to prevent the use by the PNS of any of the recognized emblems, all of which have the same status and meaning and must be accorded the same protection and respect.

In conclusion:

- a) National legislation is seldom an obstacle to PNS use of the emblem;
- b) When national legislation does present an obstacle, flexibility must be exercised in implementing it, so as not to defeat the very purpose of the PNS intervention or diminish the effectiveness of the Movement's response to human suffering.

Use of the emblem as a protective device

Lastly, when considering the use of the emblem as a protective device by NS working abroad, the following considerations must be kept in mind:

- a) If an NS is acting as an auxiliary to the medical services of the armed forces of its State (or the medical services of the armed forces of another State),²¹² the question of the authorization of the PNS (or even that of the host country) does not arise;
- b) The specific question, as to when the medical units and personnel of an NS working abroad may use the emblem as a protective device in accordance with AP I, is dealt with elsewhere in the Study.²¹³

²¹¹ This conclusion is drawn from research into the national legislation on the use of the emblem available at the ICRC Advisory Service.

²¹² See Articles 26 and 27 of GC I, and Article 9(2)(b) of AP I.

²¹³ For more on the possibility for NS to use the emblem as a protective device, see Question 14 of the Study.

22) *May the National Society's logo (or the emblem) be affixed to relief goods provided by a National Society?*

Legal or statutory basis

Articles 26 and 44, 1st para, GC I

Articles 8 and 18(1), AP I

Articles 10 and 27, 1991 Emblem Regulations

Recommendations

- Only relief goods that qualify as “medical equipment” or “medical supplies” may be marked by the protective emblem, when the NS providing such medical equipment or supplies is authorized to use the emblem as a protective device.
- Where indicative use of the emblem is concerned:
 - i. The NS logo must not be displayed on the means of transport used for the consignment of relief goods, unless the means of transport is owned by or used and operated exclusively by the NS;
 - ii. The NS logo should not be displayed on the contents of relief consignments. Even though the packages containing relief goods may display the NS logo, it should not appear on the contents of those packages, i.e., on each single item of relief, since the NS would have no control over their use.

Analysis

Introduction

The distinction between protective and indicative uses of the emblem by an NS is, once again, at the core of the analysis. When it is used as a protective device, the emblem is the visible sign of the special protection conferred by IHL on certain categories of persons, units and transports (in particular medical personnel, facilities and means of transport). As an indicative device, the emblem signifies the link between the person or object displaying it and the Movement.²¹⁴

Protective use of the emblem

Article 44, 1st para., of GC states that “[t]he National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph”, which means that NS may use the emblem only “to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters.”²¹⁵

²¹⁴ Article 44 of GC I. See “General principles and concepts” in the Introduction of the Study.

²¹⁵ Article 44, 1st para., of GC I.

Article 18(1) of AP I extends the right to use the protective emblem to civilian medical units and means of medical transport, including those of the NS.²¹⁶ The Commentary on Article 10 of the 1991 Emblem Regulations points out that:

“With regard to the National Society, these [medical units and means of transport] include hospitals, ambulances, hospital ships, aircraft and stores of medical material when placed at the disposal of the Army Medical Service, as well as civilian hospitals belonging to it, when these have been recognized as such and authorized by the Authority to display the emblem”.

Consequently, the only relief goods which may be marked by the protective emblem are those that may be categorized as “medical material”, which is defined by the *Commentary on AP I and II* as “any equipment and supplies necessary for medical care – particularly surgical equipment – but also heavier equipment (for example, the equipment for an operating theatre or even an entire field hospital), or even, quite simply, medicines themselves.”²¹⁷

Indicative use of the emblem

When the emblem is used as an indicative device, it signifies the link between the person or object displaying it and the Movement. In particular, it symbolizes the Movement's neutral, independent and impartial humanitarian action. It is of paramount importance, therefore, to maintain the balance between (1) the need, for those NS that have provided the goods, to draw attention to the source of the relief by using the appropriate NS logos, and (2) the necessity of avoiding any suggestion that those who are receiving the relief goods are members of the Movement.

On the subject of relief consignments, Article 27 of the 1991 Emblem Regulations and its commentary provide that:

“The National Society may use the emblem, accompanied by its name or its initials, to mark relief consignments sent by rail, road, sea or air and intended for victims of armed conflicts or natural disasters. The National Society shall take the measures necessary to prevent any misuse.

It is important to note that this right applies **only to relief consignments themselves**, to allow identification of their origin, and not to the means of transport used.” (Emphasis added)

For the purposes of this question the term “consignment” is to be understood as “a batch of goods consigned”. An emblem of comparatively small dimension could therefore be displayed on such a batch of goods (*un lot*, in French) but not on each single item of relief.

²¹⁶ “Medical units” are defined, by Article 8(e) of AP I, as “establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary.” Article 8(g) of AP I defines “medical transports” as “any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict.”

²¹⁷ *Commentary on AP I and II*, Article 8(f) of AP I, para. 382; the *Commentary* actually make reference to “medical equipment or medical supplies”. See also Question 9 of the Study.

In conclusion, there are two restrictions on the indicative use of the emblem on relief goods:

- (a) The NS logo must not be displayed on the means of transport used for the consignment of relief goods; this rule does not apply to means of transport owned by the NS or that which is used and operated exclusively by it;
- (b) The NS logo should not be displayed on the contents of relief consignments. While packages containing relief goods may bear the NS logo, it should not appear on the contents of those packages, i.e., on each and every single item of relief.

23) *In what circumstances may a National Society use the national flag simultaneously with the emblem?*

Legal or statutory basis

Articles 26, 27, 28, 36, 42, 43 and 44, GC I

Articles 24, 25, 27 and 43, GC II

Articles 18, 33 and 40, GC III

Article 3, 1991 Emblem Regulations

Fundamental Principles of the Movement (Independence, Neutrality and Impartiality)

Recommendations

- In an IAC, when an NS is acting as auxiliary to the medical services of its State's armed forces, the national flag and the **protective** emblem may be displayed simultaneously on the uniforms of NS personnel and on their units, equipment and transports.
If the NS personnel fall into the hands of the adverse party:
 - they may continue to display both the emblem and their national flag on their uniforms and equipment; but
 - they are not permitted to continue to fly any flag other than the emblem over their units and transports.
- In an IAC, when the NS of a neutral country, with the proper authorization, lends the assistance of its medical personnel and units to a party to the conflict, it may display simultaneously its own national flag and the **protective** emblem on the uniforms and equipment of its personnel and on their units and transports, unless the relevant military authorities of the belligerent whose medical services they are assisting make a decision to the contrary. The national flag of the said belligerent may also be flown over the NS units and transports simultaneously with the **protective** emblem.
If the NS personnel fall into the hands of the adverse party:
 - they may continue to display both the emblem and their national flag on their uniforms, units, equipment and transports; but
 - they are not permitted to continue to fly the national flag of the belligerent whose medical services the NS is assisting.
- In an NIAC, NS personnel and units acting as auxiliaries to the medical services of their State's armed forces may display the national flag simultaneously with the emblem, if this is the practice among the said medical services. In all other circumstances, NS personnel and units should avoid simultaneous use of the national flag with the emblem, so that they may be seen to be upholding the Fundamental Principles of the Movement and thereby retain the confidence of all parties to the conflict.
- In principle, an NS should avoid displaying its national flag simultaneously with the emblem for **indicative purposes** (NS logo). Doing so might undermine the emblem's neutral character. It might also call into question the neutrality, independence and impartiality of the NS and, by association, that of other components of the Movement.

- However, it is admissible that, in peacetime and on its own territory, an NS display its national flag simultaneously with its logo, to acknowledge the cooperation or some other form of support provided by its national authorities in carrying out a specific humanitarian task or service. A wording explaining the relationship between the NS (its logo) and the State (the national flag) would help to preserve the distinction between NS and public authorities.

Analysis

Protective use

The GC make express reference to the simultaneous use by an NS of a national flag (an actual flag, such as would be flown on a flagstaff) together with one bearing the protective emblem. The reference occurs in connection with the marking of medical units and establishments of an NS acting as auxiliary to the medical services of its State's armed forces (Article 26 of GC I).²¹⁸ The simultaneous display of the national flag with the protective emblem is also permitted for the marking of hospital ships and small craft (Article 43 of GC II). The use of "national colours" with the emblem is prescribed for medical aircraft (Article 36 of GC I). These provisions enable medical units and transports of NS that are auxiliary to their country's military medical services to fly a national flag as well as a flag bearing the emblem.

The uniforms of NS staff, when they are acting as an auxiliary to the medical services of their State's armed forces, is chosen by each State individually. If such NS personnel wear the uniform of the medical service of their armed forces, "subject to military laws and regulations" (see Article 26 of GC I), it may include the design of the national flag, e.g. as a badge.

According to Articles 18 and 40 of GC III, when they are taken prisoner, NS personnel working in the medical services of armed forces are entitled to retain and wear badges of nationality, on the grounds that as detainees they benefit from the provisions of GC III (Article 28 of GC I). However, Article 42 of GC I provides that "medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention".

NS medical units from a neutral country lending their assistance to a party to a conflict (Article 27 of GC I) may fly a flag bearing the emblem and, subject to the orders of the commander of the belligerent party, may normally also fly their own national flag, even when taken prisoner. Further, unless they are taken prisoner, they may also fly the national flag of the belligerent, whose medical services they are assisting, if so decided by that belligerent.²¹⁹ NS personnel from a neutral country may wear the uniform of the medical service of their State's armed forces, or of the party whom they are assisting, which may include the design of that party's national flag.

²¹⁸ Article 42 of GC I states that:

"The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs."

²¹⁹ Article 43 of GC I states that:

"The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse Party."

The use by an NS, during an NIAC, of its national flag in association with the emblem, is not covered in international treaty law or by other regulations, e.g. the 1991 Emblem Regulations, although there might conceivably be national legislation that treats the subject. In such circumstances, those NS personnel, units and transports attached to the medical service of the State's armed forces will continue to follow established practice in using their national flag together with the emblem.

However, it might be difficult for an NS, in some cases, to convince all parties to a NIAC of its adherence to the Fundamental Principles of Neutrality and Independence (especially if some of its units are acting as auxiliary to the medical services of its country's armed forces). Accordingly, the NS should avoid simultaneous use of the national flag with the emblem whenever acting outside of its role of auxiliary to the medical services of the State's armed forces.

Indicative use

There is neither a specific prohibition against nor specific authorization for using the NS logo simultaneously with a national flag. Nevertheless, NS should always carefully consider whether simultaneous use is appropriate, given its potential to damage the NS neutrality and independence and the emblem's neutral character.

The 1991 Emblem Regulations are the main source for guidance in using the emblem as an indicative device, although national legislation may also be pertinent. The introduction to the Emblem Regulations (also Article 3 thereof) and Article 44 of GC I make it clear that use of the emblem must be in keeping with the Movement's Fundamental Principles. Too close an association between the emblem and a national flag might tinge the use of the emblem with nationalism, and might have a debasing effect on both the emblem and the NS in question, with, perhaps, adverse consequences for other components of the Movement. Such joint use in peacetime could work against the NS in the event of internal violence or armed conflict. For general purposes, it is better not to use the NS logo together with a national flag, in order to avoid suggesting too close an association between an NS and its government.

However, some exceptions to this general rule may be admissible. **In peacetime and on its own territory**, an NS may be able to display its national flag simultaneously with its logo, to acknowledge the cooperation or some other form of support provided by its national authorities in carrying out a specific humanitarian task or service. The following may constitute such exceptions:

- a) If an NS provides humanitarian services on behalf of the State, such as a national ambulance service or a national blood collection service;
- b) For relief consignments paid for by the government and distributed by the NS.²²⁰ Such relief consignments sent abroad through the NS should not display the NS logo together with the national flag. Such consignments could however display an explanatory wording like "with the generous support of".
- c) When the NS works closely with the public authorities in disaster response;
- d) When an NS government sponsors an NS activity or event, such as a conference to disseminate IHL, on publicity and other communication material associated with that activity or event;
- e) For activities undertaken on special occasions, such as a national holiday.

²²⁰ On the use of the emblem on relief consignments, see Questions 9 and 22 of the Study.

Depending on the national context, if practicable, it would be useful to include wording explaining the relationship between the NS (its logo) and the State (the national flag), e.g. “National ambulance service organized by the X Red Cross Society” or “Emergency services supported by the Y Red Crescent”, “Conference jointly organized by ...”. This would help to preserve the distinction between NS and public authorities.

Chapter C. USE BY THE ICRC

- 24) Under what circumstances may the ICRC decide not to display the red cross emblem? In such circumstances, under what conditions may the ICRC:**
- a) decide not to use any emblem at all?**
 - b) decide to use the red crystal emblem?**
 - c) decide to use the red crescent emblem?**

Legal or statutory basis

Common Article 1, GC

Article 44, 3rd para., GC I

Preamble, 10th para., and Article 4, AP III

Articles 3(2), 3rd sub-para., 5(2)(g) and 6(4)(j), Statutes of the Movement

Articles 3(2) and 4(1)(g), Statutes of the ICRC

Recommendations

- In the vast majority of situations, the ICRC has had no problem at all with the emblem it uses. However, *in exceptional circumstances* where ICRC staff might be at risk (e.g. because of criminal targeting of the red cross or because of certain perceptions attached to the emblem), the ICRC may (1) *provisionally* renounce its use of the emblem – either as a protective or as an indicative device – and/or (2) consider the option of armed protection.²²¹ In such *exceptional circumstances*, the ICRC may decide to renounce the use of the red cross emblem – either as a protective or as an indicative device, e.g. (1) for ICRC visits to detainees (2) for ICRC bilateral contacts (3) for ICRC cooperation activities (4) for ICRC dissemination activities (5) for ICRC assistance and field activities (6) for ICRC media interviews (7) on Red Cross messages (8) on ICRC-sponsored or ICRC-rehabilitated sites, facilities and equipment and (9) on ICRC motor vehicles or other means of transport, such as cars, aircraft and boats or ships.
- The ICRC is authorized to use the red crystal emblem in accordance with AP III. *In exceptional circumstances* where using the red cross emblem may constitute a factor of risk for the safety of the staff, the *red crystal* might be deemed to contribute to acceptance of the ICRC neutral and independent humanitarian action. However, the decision to use the red crystal may be taken only after assessing the necessity of first disseminating information about its significance and use.
- In conformity with its Statutes and in accordance with the 10th para. of the Preamble to AP III, the ICRC has no intention of changing either its emblem or its name.
- Although this would happen only in exceptional circumstances, the ICRC may decide to use temporarily the red crescent emblem if operational necessities absolutely require it.

²²¹ On the ICRC use of the emblem when accompanied by armed escorts or while under armed protection in some other form, see Question 26 of the Study.

Analysis

Introduction

This analysis will be preceded by two introductory remarks on (a) the significance of the red cross emblem and (b) the historical link between this distinctive sign and the ICRC.

a) The International Conference of October 1863 adopted the red cross emblem as the visible expression of the *neutral status* of the medical services of armed forces and the *protection* thus conferred on them.²²²

There is nothing in the preparatory documents of the 1863 International Conference to suggest any intention of attaching religious significance to the distinctive sign for volunteer nurses and military medical services. The sign that was adopted was formed by reversing the Swiss federal colours, “as a compliment” to Switzerland’s permanent neutral status.²²³

b) Despite the fact that the ICRC had itself designed, and had been the first to employ the red cross emblem, it was not – “in theory”²²⁴ – entitled to use the emblem until the 1949 GC. The *Commentary on GC I* (Article 44, 3rd para.) points out that “in view of the important work which the Committee [was] called upon to do in wartime, no one ha[d] ever contested its right to make use of the emblem.”²²⁵

The 1949 GC officially authorized the ICRC to use the red cross without reservation, in order to enable it to carry out the many important duties which the GC themselves had assigned to it.²²⁶ Article 44, 3rd para., of GC I states that:

“The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the red cross on a white ground.”

Article 3(2) of the Statutes of the ICRC provides that the emblem of the ICRC is “a red cross on a white ground”. Also, para. 10 of the Preamble to AP III notes the determination of the ICRC to retain its current name and emblem.

It should be clear that the ICRC has no intention of changing either its emblem or its logo. It will continue to use the red cross on a white ground in all its operations. However, there may be exceptional circumstances under which the ICRC may decide on an ad hoc basis, for the reasons explained below, to use no emblem at all, to use the red crystal emblem or to use the red crescent emblem.

²²² “[F]ollowing discussion, Mr Appia’s proposal [of a white armlet on the left arm, as a single distinctive sign of neutrality] was adopted after being amended to the effect that the white armlet would bear a red cross.” *Compte rendu de la Conférence Internationale réunie à Genève les 26, 27, 28 et 29 octobre 1863 pour étudier les moyens de pourvoir à l’insuffisance du service sanitaire dans les armées en campagne*, Genève, Imprimerie Fick, 1863, p. 119, quoted in François Bugnion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, May 2007, p. 6.

²²³ Article 38, 1st para., of GC I states that “[a]s a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.” This explanation of the choice of the red cross first appeared in Article 18 of the 1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. See also François Bugnion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, May 2007, p. 8.

²²⁴ *Commentary on GC I*, Article 44, p. 335.

²²⁵ *Commentary on GC I*, Article 44, pp. 335-336.

²²⁶ *Commentary on GC I*, Article 44, p. 336.

Circumstances under which the ICRC may decide not to display the red cross emblem and (if necessary) display the red crystal instead

The red cross emblem has been known and respected as the symbol of neutral and independent humanitarian action throughout the world. It must be emphasized that the use of the red cross emblem has caused difficulties in only an extremely limited number of cases, while in the vast majority of situations the ICRC has met with no trouble at all on account of it.

However, the ICRC has occasionally run into difficulties owing to the way in which the organization and, possibly, its emblem were perceived by certain groups or individuals. In **exceptional circumstances**, such perceptions may weaken the protective function of the emblem and constitute a factor of risk for the safety of the ICRC staff.

a) If, as a result of the perception that the ICRC and its emblem represent a "rich" organization, the ICRC is targeted by common criminality, it is unrealistic to attempt to solve the problem by resorting to a different distinctive sign.

In such *exceptional circumstances*, the ICRC, may (1) provisionally renounce its use of the emblem – either as a protective or as an indicative device – and/or (2) consider the option of armed protection.²²⁷

b) In those *exceptional circumstances* in which the ICRC and/or its emblem might be perceived as having certain connotations that could potentially endanger its staff, the ICRC may also decide to renounce use of the red cross emblem – either as a protective or as an indicative device:

- 1) for ICRC visits to detainees;
- 2) for ICRC bilateral contacts;
- 3) for ICRC cooperation activities;
- 4) for ICRC dissemination activities;
- 5) for ICRC assistance and field activities;
- 6) for ICRC media interviews;
- 7) on Red Cross messages;
- 8) on ICRC-sponsored or ICRC-rehabilitated sites, facilities and equipment;
- 9) on ICRC motor vehicles or other means of transport, such as cars, aircraft and boats or ships.

Since the ICRC is "simply" authorized by Article 44, 3rd para., of GC I to use the red cross emblem, it is not obliged to do so. However, any decision not to use the red cross emblem would be based only on operational necessity. It is important to bear in mind that decisions based on such practical considerations should always take into account the consistency of the ICRC approach in the field.

Article 4 of AP III stipulates that the ICRC and its duly authorized personnel may use the red crystal "in exceptional circumstances and to facilitate their work." The ICRC is therefore entitled to make use of the red crystal only if the following conditions are met: (1) the existence of exceptional circumstances and (2) the necessity of facilitating its work.

²²⁷ On the ICRC use of the emblem when accompanied by armed escorts or while under armed protection in some other form, see Question 26 of the Study.

In exceptional circumstances where the use of the emblem may constitute a factor of risk for the safety of the ICRC staff, the red crystal might create greater acceptance for the ICRC neutral and independent humanitarian action.

However, before deciding to exercise this option, an assessment must be made of the advisability, in a particular context, of using the red crystal without having first undertaken a widespread and effective dissemination campaign on AP III and the significance of the red crystal emblem. In fact, it may be necessary for combatants and civilians during armed conflicts, as well as for the civilian population in general, to become familiar with the red crystal as a new protective device before the ICRC decides to display it in the field.

It is worth recalling that States, NS, the ICRC and the International Federation, because they are the main authorized users of the emblem, have the responsibility for the dissemination of AP III and the red crystal.²²⁸

The circumstances under which the ICRC may decide to use the red crescent

Before using the red crescent the ICRC must take into account the following considerations:

- (a) The three protective emblems enjoy equal status;
- (b) The ICRC is entitled, under Article 44, 3rd para., of GC I and Article 4 of AP III respectively, to make use of the red cross and – under the two conditions already noted – of the red crystal;
- (c) The ICRC is not explicitly authorized to use the red crescent;
- (d) There may be exceptional circumstances in which the ICRC may nevertheless decide to use the red crescent emblem out of operational necessity.

A distinction is to be made between exceptional use of the red crescent (1) on a particular ICRC site/means of transport, or for a specific activity, and (2) its wide use in a particular context, e.g. on a national/delegation scale.

In the first instance, the Head of an ICRC delegation could authorize the use of the red crescent emblem – by analogy with Article 4 of AP III, i.e., in exceptional circumstances and to facilitate the work of the delegation. Display of the red crescent should then be limited to a specific period of time and to specific ICRC sites/means of transport or activities.

In the latter case, the decision to authorize wide use of the red crescent emblem in a particular context should be taken only by the appropriate authority at ICRC Headquarters, after consulting the NS and parties involved in the conflict.

In any case, it would undoubtedly be advisable for the ICRC to share and explain its decisions with the relevant authorities.

²²⁸ Article 7 of AP III, and Articles 3(2), 5(2)(g) and 6(4)(j) of the Statutes of the Movement.

25) What is the distinction between the red cross emblem and the ICRC logo? How does the ICRC use them?

Legal or statutory basis

Article 44, 3rd para., GC I
Articles 1, 4 and 5, 1991 Emblem Regulations

Recommendations

- The ICRC logo is in the form of a "roundel" i.e., a red cross enclosed in two concentric circles between which the words "COMITE INTERNATIONAL GENEVE" are written, with the appropriate initials (CICR, ICRC, MKKK, etc.) below them.
- The ICRC logo is used for indicative purposes.
- The ICRC is entitled to display its logo (for indicative purposes) together with the red cross emblem (for protective purposes) on the same objects.

Analysis

Introduction

The general distinction between the emblem and the logos of the components of the Movement has already been described in the introduction to this Study.²²⁹

The following passages show how to distinguish the emblem from the ICRC logo by explaining the differences in their design and in their use.

The emblem

The red cross emblem used by the ICRC is obviously the emblem per se, i.e., a red cross²³⁰ on a white background, in its original form and without alteration or addition.



The red cross emblem was recognized under the 1864 Geneva Convention and has been confirmed by subsequent Conventions. The ICRC designed the red cross emblem. It was the first organization to use it. GC I explicitly establishes its right to do so. Specifically, Article 44, 3rd para., of GC I grants the ICRC relative freedom in using the emblem by providing that "[t]he international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the red cross on a white ground."

²²⁹ See "General principles and concepts" in the Introduction of the Study.

²³⁰ For a discussion of the use of the red crystal or the red crescent by the ICRC, see Question 24 of the Study.

The *Commentary on GC I* declares that "[t]he protective sign, consisting of a red cross on a white ground, as prescribed by the Geneva Convention, should always be displayed in its original form, without alteration or addition."²³¹ During hostilities, a large-sized emblem is used (on flags, in the form of large badges, and on dossards/bibs/tabards/aprons, etc.) as the visible sign of protection, especially for marking personnel, vehicles, boats or ships, aircraft and buildings.

The ICRC uses the emblem to:

- make its buildings identifiable from the air by means of a 10 m x 10 m red cross emblem (or emblems, in the case of a group of buildings);
- make its aircraft identifiable from the ground and the air by painting red crosses (as large as possible) on their tops, sides and undersides;
- make its ships and boats identifiable by painting red crosses (as large as possible) on the hulls and, if possible, on other surfaces as well;
- make vehicles that belong to it identifiable from the air (done primarily for helicopters) by painting a red cross (as large as possible) on the roof.

This being said, the ICRC has developed a long-standing and accepted practice of using its "roundel" (i.e., a red cross enclosed in two concentric circles between which the words "COMITE INTERNATIONAL GENEVE" are written) for protective purposes.²³²

The ICRC logo

The ICRC logo is composed of the ICRC "roundel" with the appropriate initials (CICR, ICRC, MKKK, etc.) below.



ICRC

The ICRC logo is indicative (thus of relatively small size). It is used on all ICRC publications, websites, business cards, promotional items, flyers, brochures, etc.

²³¹ *Commentary on GC I*, Article 44, p. 334.

²³² Use of the roundel by the ICRC dates back as far as July 1865; see Gustave Moynier and Henry Dunant, *3ème Circulaire: Le Comité International de Genève à Messieurs les Présidents et les Membres des Comités de Secours aux militaires blessés dans les divers Pays*, Geneva, 31 July 1865. This long-standing and accepted practice is based on the following reasons:

- a) The ICRC need to distinguish itself in situations where, for a particular reason, the emblem of the red cross is associated with one of the parties to the conflict;
- b) The ICRC need to distinguish itself, in certain circumstances, from those who misuse the red cross emblem, by using a distinctive sign which is more difficult to imitate;
- c) The ICRC mandate, which requires it to act in all situations of armed conflict: as a result, the ICRC might need to be readily identifiable as such, in order to be able to effectively fulfil its unique mandate.

The ICRC has approved the use of its logo on communication material, i.e.:

- stationery, business cards, greeting cards;
- brochures, leaflets, flyers, posters, books, folders, etc.;
- promotional items or complimentary gifts like pens, mugs, clocks, key-holders, calendars, paperweights, business-card holders and pins;
- PowerPoint presentations or slides, audience handouts;
- standardized documents, such as press releases and reports;
- videos, CDs, DVDs and their covers.

There is no stipulation against the ICRC displaying its logo (as an indicative device) together with the large emblem (as a protective device).

26) *How may the ICRC use the emblem when it resorts to armed protection?*

Legal or statutory basis

Article 44, GC I

Resolution 5, *Armed protection of humanitarian assistance*, Council of Delegates, 1993

Resolution 9, *Armed protection of humanitarian assistance*, Council of Delegates, 1995

Recommendations

- When it resorts to armed protection, the ICRC decides, on a case-by-case basis, whether to use the emblem.
- Its decision is based, in particular, on the following considerations:
 - i. The ICRC (e.g. its convoy's) need to be identified by the parties to the conflict;
 - ii. The risk of blurring the distinction between the ICRC and its armed protectors.
- Whenever it decides to make use of armed protection, the ICRC should:
 - i. Explain to the parties to the conflict its reasons for doing so, and what it means;
 - ii. Ensure respect for the distinction between humanitarian workers and their armed protectors, in particular by ensuring that armed guards are not staff members of one of the components of the Movement and that they do not use the emblem.

Analysis

Introduction

The ICRC safety must derive primarily from respect for the rules of IHL, especially those relating to the emblem. Recourse to an armed escort for accomplishing its tasks remains, for the ICRC, a very exceptional measure. In fact, the presence of weapons may undermine confidence in the emblem and might give the impression that it harbours hostile and perfidious intentions.

However, in exceptional circumstances, when the safety of the ICRC staff is endangered and the protective value of the emblem not recognized, the question of armed protection must be considered.

Finally, the ICRC understands armed protection to mean any protection of ICRC staff, buildings or property on specific sites (security guards) or on the move (escorts) by armed personnel belonging to the regular forces of the public authority (e.g. the army, the police), irregular forces (e.g. guerrilla forces), international armed forces (e.g. UN forces) or private security companies.

The decision to make use of the emblem and its consequences

When it resorts to armed protection, the ICRC decides whether to use the emblem on a case-by-case basis. Its decision is based, particularly, on the following considerations:

- a) The ICRC need (e.g. its convoy) to be identified by the parties to the conflict;
- b) The risk of blurring the distinction between the ICRC and its armed protectors.

Whenever it decides to make use of armed protection, the ICRC should:

- a) Explain to all the parties to the conflict its reasons for doing so and, what it means i.e., the necessity of armed protection against criminals in addition to the emblem, which is the visible sign of the special protection conferred by IHL;
- b) Ensure respect for the distinction between humanitarian workers and armed protectors.

Concerning the latter distinction between humanitarian workers and armed protectors, ICRC delegates must ensure that:

- i. Armed guards are not staff members of one of the components of the Movement;
and
- ii. They do not use the emblem.

In fact, when they form part of a convoy, armed protectors must travel in vehicles that do not bear the emblem and can be distinguished from those of the Red Cross and Red Crescent. On occasion, one (or more) unarmed guard(s) may be allowed to board a vehicle marked with the emblem if this would be of immediate use (in finding the way, for example); they may do so also if no alternative means of transport is available to them.

Chapter D. USE BY OTHER ACTORS

27) May international organizations (e.g. UN, African Union, European Union, NATO) use the emblem?

Legal or statutory basis

Article 44, GC I

Articles 2 and 5, AP III

Article 9.7, Secretary-General's Bulletin

Recommendations

- **International organizations (IOs)** are not entitled **as such** to use the emblem (protective and indicative use).²³³
- However, the **medical services of the armed forces operating under an IO's command and/or control**, since they are drawn from national contingents, may use the protective emblem, as authorized by IHL rules.
- The medical services of the different armed forces operating under an IO's command and/or control may not display the different protective emblems (e.g. red cross and red crescent) in a way that amounts to use of a double emblem, in particular on sites (such as hospitals) and on means of transport (such as ambulances).²³⁴ The different emblems displayed on the same sites or means of transport must therefore be placed sufficiently far away from one another.
- In a situation where the national contingents under an IO's command are drawn from States party to AP III, if the IO's command decides to use only one of the recognized emblems for protective purposes, then the primary criterion – to ensure optimal protection – is that the emblem chosen be the one which enjoys the greatest familiarity in the area of operation.
- Furthermore, if used, the IO's distinctive signs, e.g. the lettered sign saying “UN”, must be displayed separately from the protective emblem, which must retain its original form (without alteration or addition). This would be best achieved by refraining from placing them on the same side of, for instance, ambulances or other medical vehicles.

²³³ The only exceptions to this stipulation would be the IO's first-aid posts or ambulances, which may lawfully display the distinctive emblem (small in size), but only if the five conditions set forth in Article 44, 4th para., of GC I are cumulatively fulfilled, including the fact that this exception is applicable only in peacetime. See the Analysis of this Question and also Question 2531 of the Study.

²³⁴ On the issue of choosing one recognized emblem to identify the medical services of the armed forces of States acting in coalition, see Question 3 of the Study.

Analysis

Introduction

International Organizations (IOs) are not formally party to the GC.²³⁵ Therefore, they are not entitled as such to the use of the emblem, which is reserved primarily for the medical services of the armed forces of States party to the GC.

Article 44, 1st para., of GC I indicates that the emblem may be used only by the personnel and on the objects protected by that Convention. In this aspect, the emblem is the visible manifestation of the protection conferred by GC and AP on victims of armed conflict and on those who come to their aid.

However, there is a distinction to be made between the armed forces operating under the auspices of an IO, which are composed of national military contingents and the IO as such and its staff.

For the purposes of this question, the expression "IO armed forces" refers to the armed forces operating under the command and/or control of an IO.

"IO armed forces"

1. "IO armed forces" are composed of national military contingents

Although they function under the command and/or control of an IO, "IO armed forces" are composed of national military contingents. Therefore, as long as they are drawn from the national armed forces of its member States, the rights and obligations set forth in GC and AP remain in force.

Medical personnel, units and transports of the national military contingents put at the disposal of an IO may thus employ the emblem used by the medical services of their respective national armed forces within the framework of the GC and AP.²³⁶

2. If "IO armed forces" are composed of contingents from States using different emblems, what protective emblem should they use?

Medical services of States' armed forces operating under IO command and/or control should display the emblem chosen by their respective States; that is to say, the rights and obligations related to the use of the emblem do not change. Consequently, different emblems may be used in a context of IO-commanded operations.

However, as specified in Article 2(4) of AP III, where it "may enhance protection", the medical services of a State party to AP III may *temporarily* use an emblem other than the one already chosen, whether in times of IAC or of NIAC.

As for "UN forces", Article 5 of AP III states that "[t]he medical services (...) participating in operations under the auspices of the United Nations may, with the agreement of participating States, use **one** of the distinctive emblems mentioned in Articles 1 and 2" (the red cross, the

²³⁵ For the purposes of this Question, the term "IO" encompasses all intergovernmental organizations, be they universal (e.g. UN agencies), or regional (e.g. African Union, European Union, NATO).

²³⁶ For instance, as far as UN forces are concerned, Article 9.7 of the Secretary-General's Bulletin states that: "The United Nations force shall in all circumstances respect the Red Cross and the Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited."

red crescent or the red crystal).²³⁷ (Emphasis added)

It is worth emphasizing that neither Article 2(4) nor Article 5 of AP III permits use of the double emblem (e.g. display of the red cross together with the red crescent).²³⁸ The combination of two different emblems would in fact form a new emblem, which is not permitted for protective purposes.²³⁹

In addition, if the IO's command decides to use only one of the recognized emblems for protective purposes, provided that the conditions set out in Articles 2(4) or 5 of AP III are fulfilled, then the primary criterion – to ensure optimal protection – is that the emblem chosen be the one which enjoys the greatest familiarity in the area of operation.

Of course, the decision to choose one emblem is likely to be taken after discussions at the level of the IO command, which is ultimately responsible for the operation in question. The fact that AP III has not yet been ratified or acceded to by a number of States, and also the national legislation of the States concerned, may create obstacles to a joint decision by the IO command.

*3. Use of the protective emblem in combination with the distinctive signs of the IO*²⁴⁰

The *Commentary on GC I* states that "[t]he protective sign, consisting of a red cross on a white ground, as prescribed by the Geneva Convention, should always be displayed in its original form, without alteration or addition".²⁴¹

Therefore, the distinctive signs of the IO, e.g. the lettered sign saying "UN" or "ISAF", should be displayed separately from the protective emblem, in a way which does not amount to use of a double emblem consisting of the sign of the IO and the protective emblem. The best way to ensure that the use of such a sign and of the protective emblem does not amount to a double emblem would be to refrain from placing them on the same side of, for instance, ambulances or other medical vehicles.

It should be added that respect for this recommendation is critical if components of the Movement working in the same context as the "IO armed forces" in question are to be perceived as independent, neutral and impartial humanitarian actors.

A particular case: Use of the emblem by an IO's ambulances and first-aid posts under Article 44, 4th para., of GC I

As has already been noted in the introduction to this analysis, no IO is formally party to the GC. No IO is therefore entitled as such to use the emblem. The only occasions on which an

²³⁷ Furthermore, it is worthwhile noting that Article 5 of AP III makes the possible change of the emblem by medical services of States' armed forces operating under UN auspices subject neither to "temporary use" of the different emblem nor to the requirement that it "enhance protection", as set forth in Article 2(4) of AP III.

²³⁸ According to the *Commentary on AP III*, Article 2(4) of AP III,

"[i]t remains to be said that this paragraph authorizes the replacement of the usual emblem by only one other; it does not permit the substitution of the usual emblem by a combination of several other emblems side by side. This conclusion logically flows from the use of the singular when authorizing the temporary use of 'any distinctive emblem'. Moreover, a reading of this paragraph as temporarily accepting a cumulative use of the recognized emblems would constitute a significant departure from prior law. Such a departure would be incompatible with paragraph 3 [of Article 2], according to which Additional Protocol III does not seek to modify the recognized conditions for use of and respect for the emblems".

(*Commentary on AP III*, Article 2(4), p. 190.)

²³⁹ On the use of the double emblem by medical services of States' armed forces, see Question 2 of this Study.

²⁴⁰ The "distinctive emblem and signs of the UN" mentioned under Articles 37 and 38 of AP I are examples of what is meant by "distinctive signs of the IO" under this Question.

²⁴¹ *Commentary on GC I*, Article 44, p. 334.

IO and its agencies could lawfully use the emblem would be under Article 44, 4th para., of GC I, which provides that:

"As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick."²⁴²

Clearly, this exception in no way provides for the use of the emblem as a protective device. The *Commentary on GC I* states that this exception must be interpreted very strictly and must imperatively comply with all the following conditions:²⁴³

1. *The use of the emblem is permissible only in peacetime.*
As soon as a State becomes party to a conflict, such emblems must disappear from throughout its territory. Consequently, such use should not be authorized by the competent NS in situations of tension or in situations that are likely to develop into an armed conflict.
2. *This use of the sign must be in conformity with national legislation.*
States may restrict the use of the emblem or make it subject to additional safeguards (consent of an official agency, supervision, etc.), but they may not extend its use.
3. *Use of the emblem requires the express authorization of the NS.*
Tacit approval is therefore not enough. As far as national legislation permits (see '2.' above), only the NS empowered to do so may give such authorization: no other entity, not even the State, has this right; and the NS itself may not delegate it.
4. *The first-aid posts (or ambulances) must be used exclusively for the sick and injured, and the aid furnished must be free of charge.*
Permission to use the emblem should be withdrawn if treatment is conditional on payment of a fee and the idea of voluntary service linked to the Movement is not being upheld.
5. *The emblem may be used only as an exceptional measure.*
Its use cannot be extended to cases other than those specified. The following are examples of cases that qualify as exceptional: first-aid stations at public meetings and large gatherings, first-aid posts that are placed at intervals along main roads in case of accidents, and motorized ambulances.

Thus, the use of the emblem by an IO can be considered lawful only if it fully complies with all of the above conditions. However, IO agencies are encouraged not to make use of the emblem to indicate their first-aid stations (ambulances), but rather to use an alternative sign, such as the white cross/white crescent on a green background, together with the words "First Aid". This "first-aid" sign is officially recognized by many States and its use would go a long way to avoid, in an operational context, between such first-aid stations and activities and the components of the Movement.²⁴⁴

²⁴² On the use of the emblem by first-aid stations and ambulances in accordance with Article 44, 4th para., of GC I, see Question 31 of the Study.

²⁴³ *Commentary on GC I*, Article 44, pp. 337-339.

²⁴⁴ In this regard, see also Questions 18, 32, and 46 of the Study.

28) *May the medical services of armed groups use the emblem during non-international armed conflicts?*

Legal or statutory basis

Articles 53 and 54, GC I

Articles 8(c), (e) and (g), 12, 15, 18 and Section II, Part II, AP I

Articles 9, 11 and 12, AP II

Recommendation

- Medical personnel, units and transports of armed groups may be entitled to display the emblem as a protective device subject to all the following conditions:
 - i. They are protected under IHL, i.e., they correspond to the definition of "medical personnel", "medical units" or "medical transports" contained in Article 8(c), (e) and (g) of AP I;
 - ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict (civilian or military); and
 - iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.

When medical personnel, units and transports of armed groups petition competent authorities for permission to use the emblem for protective purposes, in a NIAC in which AP II does not apply, the ICRC encourages those authorities to grant the necessary consent, provided that the conditions of AP II are fulfilled.

Analysis

Article 12 of AP II provides that:

"Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly."

The expression "distinctive emblem" referred to in the Article is synonymous to "protective emblem". The *Commentary on AP I and II* states:

"The term 'distinctive emblem', as used in both Protocols, refers only to the emblem used for the purpose of protection. Article 8 ' (Terminology), ' subparagraph (1), of Protocol I reads: 'Distinctive emblem' means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground, when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies.' Article 12 was adopted on the basis of almost exactly the same definition, which had been drafted for Protocol II."²⁴⁵

AP II does not contain definitions of "medical personnel", "medical units" and "medical transports". These terms, as used in NIAC, may be understood in the same senses as those defined in Article 8(c), (e) and (g) of AP I.²⁴⁶

²⁴⁵ *Commentary on AP I and II*, Article 12 of AP II, para. 4734.

²⁴⁶ See the *Commentary on AP I and II*, Article 9 of AP II, paras 4663-4664; *Commentary on AP I and II*, Article 12

"Medical personnel", "medical units" and "medical transports" are defined by Article 8 of AP I essentially by their exclusive assignment to/organization for the "medical purposes" listed under Article 8(e) of AP I. The medical personnel, units and transports of armed groups exclusively assigned to/organized for "medical purposes" could therefore be qualified as medical personnel, units or transports within the meaning of AP I.

Therefore, the medical personnel, units and transports of armed groups may be entitled to display the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of "medical personnel", "medical units"²⁴⁷ or "medical transports" contained in Article 8(c), (e) and (g) of AP I;²⁴⁸ and
- ii. They use the emblem "under the direction of the competent authority"; this means that:
 - they are authorized to use the emblem as a protective device by the competent authority of a party to the conflict (civilian or military); and
 - they make use of the protective emblem under the control of the competent authority of a party to the conflict.²⁴⁹

The competent authority of the party to the conflict must take measures necessary for the prevention and repression of abuses and infractions (application by analogy with Articles 53 and 54 of GC I) and exercise close and constant supervision to ensure the proper use of the emblem. If it is, usually, unrealistic to expect dissident authorities to apply all the relevant provisions in full, they must nevertheless devise and apply, at the very least, a simplified procedure for supervision. The requirement of supervision to ensure the proper use of the emblem is of the highest importance, and failure to observe it, whether voluntarily or because of inefficiency on the part of the authorities, must accordingly be regarded as a breach of IHL.

There may be situations of NIAC where AP II does not apply. In such situations, however, when medical services of armed groups petition competent authorities for permission to use the emblem for protective purposes, the ICRC encourages those authorities to grant the necessary authorization, provided that the conditions of AP II are fulfilled.

of AP II, paras 4711-4712; *Customary IHL Study*, Rules 25, 28 and 29, pp. 82-83, 95 and 100.

²⁴⁷ Medical units of armed groups are to be considered as "military medical units" within the meaning of Article 8(e) of AP I. Therefore, the additional conditions set forth by Article 12(2) of AP I for "civilian medical units" in order to be respected and protected do not apply to them.

²⁴⁸ Article 9 of AP II provides that medical personnel must be respected and protected. Article 11 of AP II provides that medical units and transports must be respected and protected.

²⁴⁹ The *Commentary on AP I and II* states that:

"If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge."

Commentary on AP I and II, Article 12 of AP II, para. 4746.

29) *Are entities other than medical services of States' armed forces or components of the Movement, particularly non-governmental organizations (NGOs), ever allowed to display the emblem as a protective device?*

Legal or statutory basis

Articles 24-27, 44, 53 and 54, GC I

Articles 8(c), (e) and (g), 9, 12, 15, 16, 18, 62, 64, 66(9) and Section II, Part II, AP I

Articles 9-12, AP II

Recommendations

- Private non-Red Cross/Red Crescent organizations²⁵⁰ (e.g. NGOs) are not as such entitled to use the emblem (protective and indicative devices).
- Under Article 26 of GC I, when acting as auxiliary to the medical services of the armed forces of its own State, an organization of this kind may use the emblem as a protective device, subject to all the following conditions:
 - i. The organization has been recognized and authorized by its own government authorities to assist the medical services of the armed forces of its own State;
 - ii. The emblem is to be used only for those personnel, units and equipment of the organization that are assisting the medical services of the armed forces and are employed exclusively for the same purposes as the latter; and
 - iii. Such personnel, units and equipment have been placed under the authority of their own armed forces and are subject to their military laws and regulations.
- Under Article 9(2)(b) of AP I, private non-Red Cross/Red Crescent organizations that are recognized as being auxiliaries to the military medical services of their State of origin, which is not party to the conflict, may use the emblem as a protective device, subject to all the following conditions:
 - i. The personnel, units and transports of such organizations are made available to a party to the conflict;
 - ii. They undertake exclusively medical activities;
 - iii. They are duly authorized to act by their State of origin and by a party to the conflict;
 - iv. They are under the supervision of the authorities of a party to the conflict;
 - v. The adversary of the State accepting the assistance of such an organization has been notified that the State of origin consents to the organization's activities; and
 - vi. The party to the conflict has communicated its acceptance of assistance to its adverse party.

²⁵⁰ The expression "private non-Red Cross/Red Crescent organizations" will be used in this Question to identify those entities that are not medical services of States' armed forces and not components of the Movement.

- Under Article 9(2)(c) of AP I, “impartial international humanitarian organizations” – provided that they respect the principle of impartiality, are humanitarian in nature and carry out humanitarian activities – may use the emblem as a protective device, under the conditions fixed by Article 9(2)(b) of AP I (see above), excluding that of being duly authorized to act by their State of origin.
- In accordance with AP I, medical personnel, units and transports of private non-Red Cross/Red Crescent organizations may be entitled to use the emblem as a protective device, subject to all the following conditions:
 - i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;
 - ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict; and
 - iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.
- In an NIAC, medical personnel, units and transports of **local** private non-Red Cross/Red Crescent organizations may be entitled to use the emblem as a protective device subject to all the following conditions:
 - i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;
 - ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict, whether governmental authority (civilian or military) or authority of the armed groups (civilian or military); and
 - iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.

Analysis

Introduction

In the early 1970s, a number of private non-Red Cross/Red Crescent organizations (in particular medical organizations of a new kind) were formed. They were not slow to adopt the red cross/red crescent emblem for their protection and not slow to overlook that its use was strictly regulated by IHL.

Two objectives that appear to contradict each other have to be reconciled: (1) the vital need to prevent misuse of the emblem as a protective device and (2) the provision of the best protection possible under IHL for organizations that are usually perfectly honourable and efficient.

Conditions for the use of the emblem as a protective device by private non-Red Cross/Red Crescent organizations

1. In times of IAC

a) When acting as auxiliary to the medical services of their States' armed forces (Article 26 of GC I)

The provisions of GC I that permit the use of the protective emblem by NS apply as well to "other Voluntary Aid Societies" which are placed by Article 26 of GC I "on the same footing" as the NS.²⁵¹ Accordingly, private non-Red Cross/Red Crescent organizations may be entitled to use the emblem as a protective device under the same conditions as NS, when they are acting as auxiliary to the medical services of their States' armed forces, i.e., when:

- i. such organizations have been duly recognized and authorized by their government;
- ii. their personnel are employed on the same duties as the medical personnel of the State's armed forces;
- iii. the personnel in question are subject to military laws and regulations.²⁵²

b) When their services are made available to a party to a conflict (Article 9(2)(b) and (2)(c) of AP I)

Article 27 of GC I sets out the conditions under which the NS of a neutral State, that is lending the assistance of its medical personnel and units to the medical services of the armed forces of another State party to the conflict, may be entitled to use the protective emblem in accordance with Article 44 of GC I.²⁵³

Article 9(2)(b) of AP I extends the same right to display the protective emblem on the same conditions to "permanent medical units and transports (...) and their personnel made available to a Party to the conflict for humanitarian purposes (...) by a recognized and authorized **aid society** of such a State" (emphasis added). These "aid societies" are to be understood as the "Voluntary Aid Societies" mentioned under Article 26 of GC I, i.e., a definition that potentially encompasses private non-Red Cross/Red Crescent organizations.

Similarly, Article 9(2)(c) of AP I extends the same right to display the protective emblem on the same conditions to "permanent medical units and transports (...) and their personnel made available to a Party to the conflict for humanitarian purposes (...) by an impartial international humanitarian organization." If a private non-Red Cross/Red Crescent organization meets the criteria for being considered an impartial international humanitarian organization, it may be entitled to use the protective emblem, under the conditions defined by Article 27 of GC I.

²⁵¹ *Commentary on GC I*, Article 26, p. 226. The Knights of Malta and the Order of St. John of Jerusalem are two examples of such "other Voluntary Aid Societies."

²⁵² See also Question 14 of the Study.

²⁵³ Article 27 of GC I reads as follows:

"A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong."

See also Question 14 of the Study.

The *Commentary on AP I and II* provides some explanation of these “impartial international humanitarian organizations”:

"An organization can be described as being 'impartial' when it 'fulfils the qualifications of being genuinely impartial.' This implies that it observes the principle of non-discrimination in its activities and, when providing medical aid as laid down in Article 9, does not make 'any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or any other similar criteria.' (...)

With regard to the organization's 'humanitarian character,' it is necessary first of all that its activities in the context of the armed conflict retain a purely humanitarian character. However, it is equally essential that the organization 'itself' has a humanitarian character, and as such, follows only humanitarian aims. This restriction excludes organizations with a political or commercial character."²⁵⁴

Clearly, such evaluations are very difficult to make in practice. As the *Commentary* rightly states, "it is not currently possible to designate the organizations which comply with the required criteria" or "to designate precisely all the organizations covered by the definition."²⁵⁵

Should such a case come up, the requirements to be met – before the use of the emblem can be authorized – will have to be assessed rigorously, to avoid problems in the field. The impartiality of the organization should be the focus of attention, so that the respect for and the protective power of the emblem, for the other actors and entities allowed to use it, may not be diminished.

c) Civilian medical personnel, units and transports, as defined under AP I (Article 18 of AP I)

Article 18(3) and (4) of AP I states that:

"In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem."

"Medical personnel", "medical units" and "medical transports" are defined by Article 8 of AP I essentially by their exclusive assignment to/organization for the "medical purposes" listed under Article 8(e) of AP I. Personnel, units and transports of private non-Red Cross/Red Crescent organizations exclusively assigned to/organized for "medical purposes" may therefore be qualified as medical personnel, units or transports within the meaning of AP I.

²⁵⁴ *Commentary on AP I and II*, Article 9(2) of AP I, paras 439-440.

²⁵⁵ *Commentary on AP I and II*, Article 9(2) of AP I, paras 437 and 440. To our knowledge, there has been no such case so far.

According to Article 44 of GC I and Article 18 of AP I, medical personnel, units and transports of private non-Red Cross/Red Crescent organizations may be entitled to display the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of "medical personnel",²⁵⁶ "medical units"²⁵⁷ or "medical transports"²⁵⁸ contained in Article 8(c), (e) and (g) of AP I;
- ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict;²⁵⁹ and
- iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.²⁶⁰

2. In times of NIAC²⁶¹

Article 12 of AP II provides that:

"Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all

²⁵⁶ Medical personnel are defined by Article 8(c) of AP I as "those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operations or administration of medical transports. Such assignments may be either permanent or temporary." As underlined by the *Commentary on AP I and II*, Article 8(c) of AP I, para. 354, "it is essential that the Party to the conflict, which is responsible for preventing the misuse of the protective emblem, retains the power to decide who is entitled to the protection reserved for medical personnel."

Article 15 of AP I provides that civilian medical personnel must be respected and protected.

²⁵⁷ Medical units are defined by Article 8(e) of AP I as "establishments and other units, whether military or civilian, organized for medical purposes [like] hospitals and other similar units." Medical units of private non-Red Cross/Red Crescent organizations must fulfil the additional conditions specifically set forth by Article 12(2)(b) of AP I for "civilian medical units" in order to be respected and protected by IHL, namely to be "recognized and authorized by the competent authority of one of the Parties to the conflict".

²⁵⁸ Medical transports are defined by Article 8(g) of AP I as "any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict." Medical transports are respected and protected under IHL within the limits set forth under Section II, Part II, of AP I.

²⁵⁹ See Article 18(3) and (4) of AP I. As for "medical personnel", even if AP I does not mention explicitly the "consent of the competent authority", such consent is implicit in the distribution by the authorities of identity cards certifying the status of the medical personnel, as provided for in Article 18(3) of AP I.

As far as the "party to the conflict" is concerned, the *Commentary on AP I and II* specifies that:

"Whether the units and transports are civilian or military, their use is subject to control by the Party to which they belong. Thus the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)." (*Commentary on AP I and II*, Article 18(4) of AP I, para 766).

As for the authorities competent to authorize use of the protective emblem, including the potential role of NS in this regard, see Question 6 of the Study.

²⁶⁰ Article 18(8) of AP I refers to the control over the use of the emblem by a competent authority by mentioning IHL "provisions relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof". As a reminder, Article 54 of GC I provides that States must take the necessary measures for the prevention and the repression, at all times, of misuses of the emblem.

The *Commentary on AP I and II*, Article 18(8) of AP I, paras 791 and 794, further explains that:

"To a great extent the system of the Conventions is based on the trust which can be placed in the distinctive emblem. The supervision of its use and the repression of abuses are therefore indispensable elements in the system.

(...)

However, the obligation upon the Contracting Parties (or, in the case of the Protocol, upon any other Parties to the conflict bound by it), to supervise the use of the distinctive emblem and signals by persons and on objects belonging to them, also arises in a more general way from their undertaking to respect and to ensure respect for the Conventions and the Protocol in all circumstances."

²⁶¹ This analysis is based partly on an article by Antoine Bouvier published in the *IRRC*, which constituted a comprehensive study of this issue: Antoine Bouvier, "Special Aspects of the Use of the Red Cross or Red Crescent Emblem", *IRRC*, No. 272, 1989, pp. 438-458.

circumstances. It shall not be used improperly.”

The expression “distinctive emblem” referred to in the Article is synonymous to “protective emblem”. The *Commentary on AP I and II* states that:

“The term ‘distinctive emblem’, as used in both Protocols, refers only to the emblem used for the purpose of protection. Article 8 ‘(Terminology),’ subparagraph (1), of Protocol I reads:

‘Distinctive emblem’ means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground, when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies.’

Article 12 was adopted on the basis of almost exactly the same definition, which had been drafted for Protocol II.”²⁶²

AP II does not contain definitions of “medical personnel”, “medical units” and “medical transports”. These terms, as used in NIAC, may be understood in the same senses as those defined in Article 8(c), (e) and (g) of AP I.²⁶³ As mentioned above, personnel, units and transports of private non-Red Cross/Red Crescent organizations exclusively assigned to/organized for “medical purposes” could be qualified as “medical personnel”, “medical units” and “medical transports”.

As regards the medical personnel (units and transports) under consideration here, namely the medical personnel of private non-Red Cross/Red Crescent organizations, it would appear that the States taking part in the Diplomatic Conference on Humanitarian Law (CDDH) intended to establish a distinction between *local* and *foreign* organizations of this kind. Under this interpretation, shared by the authors of the *Commentary on AP I and II*, only **local** (as opposed to foreign) relief organizations may be authorized to use the emblem as a protective device.²⁶⁴

Therefore, the medical personnel, units and transports of a local, private, non-Red Cross/Red Crescent organization may be entitled to display the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;²⁶⁵ and
- ii. They use the emblem “under the direction of the competent authority”; this means that:
 - they are authorized to use the emblem as a protective device by the competent authority of a party to the conflict, whether governmental authority (civilian or military) or authority of the armed groups (civilian or military); and
 - they make use of the protective emblem under the control of the competent authority of a party to the conflict.²⁶⁶

²⁶² *Commentary on AP I and II*, Article 12 of AP II, para. 4734.

²⁶³ See the *Commentary on AP I and II*, Article 9 of AP II, paras 4663-4664; *Commentary on AP I and II*, Article 12 of AP II, paras 4711-4712; *Customary IHL Study*, Rules 25, 28 and 29, pp. 82-83, 95 and 100.

²⁶⁴ See Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974-1977), Vol. XII, p. 270, CDDH/11/SR. 80, para 16, quoted in the *Commentary on AP I and II*, Article 9 of AP II, para. 4667. For further details regarding the basis of this interpretation see *Commentary on AP I and II*, Article 9(1) of AP II, paras 4660 and 4664-4667, and Article 12 of AP II, paras 4739-4740.

²⁶⁵ Article 9 of AP II provides that medical personnel must be respected and protected. Article 11 of AP II provides that medical units and transports must be respected and protected.

²⁶⁶ The *Commentary on AP I and II* states that:

“If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting

The competent authority of the party to the conflict must take measures necessary for the prevention and repression of abuses and infractions (application by analogy with Articles 53 and 54 of GC I) and exercise close and constant supervision to ensure the proper use of the emblem. If it is, usually, unrealistic to expect dissident authorities to apply all the relevant provisions in full, they must nevertheless devise and apply, at the very least, a simplified procedure for supervision. The requirement of supervision to ensure the proper use of the emblem is of the highest importance, and failure to observe it, whether voluntarily or because of inefficiency on the part of the authorities, must accordingly be regarded as a breach of IHL.

It must be kept in mind that there are situations where AP II does not apply. However, in such situations, if the competent authority is petitioned by a local private non-Red Cross/Red Crescent organization for permission to use the emblem for protective purposes, the ICRC encourages that authority to apply the aforementioned criteria flowing from AP II.

against the legal government this will be the *de facto* authority in charge."
Commentary on AP I and II, Article 12 of AP II, para. 4746.

30) *May private military and security companies (PMCs/PSCs) use the emblem?*

Legal or statutory basis

Articles 1 and 3 common to the four GC

Article 18, 3rd para., and Articles 24-27, 44, 53 and 54, GC I

Articles 1(1), 8(c), (e) and (g), 9, 12, 15, 18 and Section II, Part II, AP I

Articles 1(1), 9, 11 and 12, AP II

Recommendations

- PMCs/PSCs are not as such entitled to use the emblem (protective or indicative device).
- The medical personnel, units and transports of PMCs/PSCs might be entitled to use the emblem as a protective device, both in IAC and NIAC, subject to all the following conditions:
 - i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;
 - ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict; and
 - iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.

Analysis

Introduction

Over the last decade, States, but also private corporations, international and regional inter-governmental organizations, as well as non-governmental organizations, have resorted increasingly to the services of private military and security companies (PMCs/PSCs) in armed conflict situations. Motivated by economic dynamics, these companies may perform a variety of security and military functions that were traditionally the prerogative of States.²⁶⁷

In addition to the more traditional provision of logistic support, PMCs/PSCs have been involved more and more often in activities that bring them close to the heart of military operations – and thereby into close proximity with persons protected by IHL.²⁶⁸ These activities may include medical support at all levels.²⁶⁹

²⁶⁷ See “Private military companies”, *IRRC*, Vol. 88, No. 863, September 2006, pp. 442-711.

²⁶⁸ See Section VI of the ICRC Report to the 30th International Conference, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts”, 30IC/07/8.4, Geneva, October 2007, pp. 24-28, available at [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/30-international-conference-working-documents-121007/\\$File/30IC_8-4_IHLchallenges_Report&Annexes_ENG_FINAL.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/30-international-conference-working-documents-121007/$File/30IC_8-4_IHLchallenges_Report&Annexes_ENG_FINAL.pdf) (visited 26 August 2009).

²⁶⁹ See, for example, the services offered by Sandline Inc., <http://www.sandline.com/company/index.html> (visited 26 August 2009); Medical Support Solutions (MSS), <http://www.medsupportsolutions.com/> (visited 26 August 2009); Tangiers International, <http://tangiersinternational.com/> (visited 26 August 2009); Global Operational Resources Group, <http://www.gorgrp.com/> (visited 26 August 2009).

In the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict*, PMCs/PSCs are defined as follows:

“PMSCs’ are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”²⁷⁰

The question, therefore, is whether PMC/PSC personnel, units and transports are protected, under certain circumstances, by IHL and, if so, whether they are entitled to use the emblem as a protective device.

For the purposes of this question, two main categories of States and armed groups have a role to play in terms of respecting and ensuring respect for IHL,²⁷¹ namely, those that hire PMCs/PSCs and those on whose territory PMCs/PSCs operate.

Use of the emblem as a protective device by PMCs/PSCs

Article 44 of GC I, Article 18 of AP I and Article 12 of AP II grant personnel, units and transports protected under IHL the right to use the emblem.

In order to be protected by IHL and thus entitled to use the emblem, personnel, units and transports must fall into the category of a "voluntary aid society" (Articles 26 and 27 of GC I), an "aid society" (Article 9(2)(b) of AP I),²⁷² an "impartial international humanitarian organization" (Article 9(2)(c) of AP I), or "medical personnel", "medical units" and "medical transports" (Article 8(c), (e) and (g) of AP I respectively).

1. In times of IAC

a) May PMCs/PSCs qualify as "**voluntary aid societies**"/"**aid societies**"?

Personnel and units of "voluntary aid societies" (Articles 26 and 27 of GC I) or "recognized and authorized aid societies" (Article 9(2)(b) of AP I) are granted the same protection as the medical services of the armed forces named in Article 24 of GC I, provided that the staff of such societies are employed on the same duties and are subject to military laws and regulations.²⁷³

The *Commentary on GC I* points out that the expression "voluntary aid societies" does not mean that the staff of such societies are necessarily unpaid. It means that their work is not based on any obligation vis-à-vis the State, but on an engagement accepted of their own free will.²⁷⁴

²⁷⁰ *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict*, Swiss Initiative in Cooperation with the ICRC on Private Military and Security Companies, Montreux, 17 September 2008, para. 9, p. 3.

²⁷¹ Articles 1 and 3 common to the four GC, Article 1(1) of AP I, Article 1(1) of AP II. See also the *Commentary on AP I and II*, Part I of AP II, para. 4442 and the *Customary IHL Study*, Rule 139, pp. 495-498.

²⁷² Recognized and authorized aid societies of neutral States, which Article 9(2)(b) of AP I extends the right to display the protective emblem to, are to be understood as the "voluntary aid societies" mentioned under Article 26 of GC I. *Commentary on AP I and II*, Article 9 of AP I, para. 433.

²⁷³ Article 26, 1st para., of GC I.

²⁷⁴ *Commentary on GC I*, Article 26, pp. 224-225.

It is worth emphasizing that the entity's humanitarian character is implicit in the definition of "voluntary **aid** societies" or "**aid** societies". True, their staff may be paid. However, the society itself must pursue exclusively humanitarian ("aid") aims.

PMC/PSC personnel may, in some instances, provide medical services. However, by their very nature, PMCs/PSCs are "private business entities that provide military and/or security services, irrespective of how they describe themselves", which is incompatible with the definition of an "aid society".²⁷⁵ They therefore may not be protected and use the emblem under this qualification.

b) May a PMC/PSC qualify as an "**impartial international humanitarian organization**", according to Article 9(2)(c) of AP I?

The *Commentary on AP I and II* (Article 9(2)(c) of AP I), dealing with "impartial international humanitarian organizations", is more explicit on this issue than the *Commentary on GC I*. It reads as follows:

"An organization can be described as being 'impartial' when it 'fulfils the qualifications of being genuinely impartial'. This implies that it observes the principle of non-discrimination in its activities and, when providing medical aid as laid down in Article 9, does not make 'any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or any other similar criteria'.

(...)

With regard to the organization's 'humanitarian character', it is necessary first of all that its activities in the context of the armed conflict retain a purely humanitarian character. However, it is equally essential that the organization *itself* has a humanitarian character, and as such, follows only humanitarian aims. This restriction excludes organizations with a political or commercial character."²⁷⁶

PMCs/PSCs are driven by economic dynamics of profit, are not essentially of a humanitarian character and could hardly be considered as impartial. They may not be qualified as "international humanitarian organizations". They may not, therefore, be protected or use the emblem under this qualification.

c) May PMCs/PSCs qualify as "**medical personnel, units and transports**", as defined under AP I?

Article 18(3) and (4) of AP I provides that:

"In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem."

"Medical personnel", "medical units" and "medical transports" are defined in Article 8 of AP I essentially by virtue of their exclusive assignment to/organization for the "medical purposes" listed under Article 8(e) of AP I. PMC/PSC personnel, units and transports exclusively assigned to/organized for "medical purposes" could therefore qualify as medical personnel, units or transports within the meaning of AP I.

²⁷⁵ *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict*, Swiss Initiative, in Cooperation with the ICRC on Private Military and Security Companies, Montreux, 17 September 2008, para. 9, p. 3.

²⁷⁶ *Commentary on AP I and II*, Article 9(2) of AP I, paras 439-440.

According to Article 44 of GC I and Article 18 of AP I, PMC/PSC medical personnel, units and transports may be entitled to use the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of "medical personnel"²⁷⁷, "medical units"²⁷⁸ or "medical transports"²⁷⁹ contained in Article 8(c), (e) and (g) of AP I;
- ii. They are authorized to use the emblem as a protective device by the competent authority of a party to the conflict;²⁸⁰
- iii. They make use of the protective emblem under the control of the competent authority of a party to the conflict.²⁸¹

²⁷⁷ Medical personnel are defined by Article 8(c) of AP I as "those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operations or administration of medical transports. Such assignments may be either permanent or temporary." As underlined by the *Commentary on AP I and II*, Article 8(c) of AP I, para. 354, "it is essential that the Party to the conflict, which is responsible for preventing the misuse of the protective emblem, retains the power to decide who is entitled to the protection reserved for medical personnel." For the purposes of this Question, the authority responsible for the assignment of PMCs/PSCs' medical personnel to "medical purposes" is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs.

Article 15 of AP I provides that civilian medical personnel must be respected and protected.

²⁷⁸ Medical units are defined by Article 8(e) of AP I as "establishments and other units, whether military or civilian, organized for medical purposes [like] hospitals and other similar units". For the purposes of this Question, the authority responsible for the organization of PMCs/PSCs' medical units for "medical purposes" is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs.

Due to their specific nature, PMCs/PSCs medical units must fulfil the additional conditions specifically set forth by Article 12(2)(b) of AP I for "civilian medical units" in order to be respected and protected by IHL, namely to be "recognized and authorized by the competent authority of one of the Parties to the conflict".

²⁷⁹ Medical transports are defined by Article 8(g) of AP I as "any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict". For the purposes of this Question, the authority responsible for the assignment of PMCs/PSCs' medical transports to "medical purposes" is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs.

Medical transports are respected and protected under IHL within the limits set forth under Section II, Part II, of AP I.

²⁸⁰ See Article 18(3) and (4) of AP I. As for "medical personnel", even if AP I does not mention explicitly the "consent of the competent authority", such consent is implicit in the distribution by the authorities of identity cards certifying the status of the medical personnel, as provided for in Article 18(3) of AP I.

For the purposes of this Question, the "authority of a party to the conflict" which may grant the authorization to use the emblem for protective purposes is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs. See also the *Commentary on AP I and II*, Article 18(4) of AP I, para 766.

²⁸¹ Article 18(8) of AP I refers to the control over the use of the emblem by a competent authority by mentioning IHL "provisions relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof". As a reminder, Article 54 of GC I provides that States must take the necessary measures for the prevention and the repression, at all times, of misuses of the emblem.

The *Commentary on AP I and II*, Article 18(8) of AP I, paras 791 and 794, further explains that:

"To a great extent the system of the Conventions is based on the trust which can be placed in the distinctive emblem. The supervision of its use and the repression of abuses are therefore indispensable elements in the system.

(...)

However, the obligation upon the Contracting Parties (or, in the case of the Protocol, upon any other Parties to the conflict bound by it), to supervise the use of the distinctive emblem and signals by persons and on objects belonging to them, also arises in a more general way from their undertaking to respect and to ensure respect for the Conventions and the Protocol in all circumstances."

2. In times of NIAC

Article 12 of AP II provides that:

“Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.”

AP II does not contain definitions of “medical personnel”, “medical units” and “medical transports”. These terms, as used in NIAC, may be understood in the same senses as those defined in Article 8(c), (e) and (g) of AP I.²⁸² As mentioned above, PMC/PSC personnel, units and transports exclusively assigned to/organized for “medical purposes” could qualify as “medical personnel”, “medical units” and “medical transports”.

Therefore, PMC/PSC medical personnel, units and transports may be entitled to use the emblem as a protective device subject to all the following conditions:

- i. They are protected under IHL, i.e., they correspond to the definition of “medical personnel”, “medical units” or “medical transports” contained in Article 8(c), (e) and (g) of AP I;²⁸³ and
- ii. They use the emblem “under the direction of the competent authority”; this means that:
 - they are authorized to use the emblem as a protective device by the competent authority of a party to the conflict; and
 - they make use of the protective emblem under the control of the competent authority of a party to the conflict.²⁸⁴

The competent authority of the party to the conflict, be it governmental or dissident, that hires PMCs/PSCs must take measures necessary for the prevention and repression of abuses and infractions (application by analogy with Articles 53 and 54 of GC I) and exercise close and constant supervision to ensure proper use of the emblem.²⁸⁵

²⁸² See the *Commentary on AP I and II*, Article 9 of AP II, paras 4663-4664; *Commentary on AP I and II*, Article 12 of AP II, paras 4711-4712; *Customary IHL Study*, Rules 25, 28 and 29, pp. 82-83, 95 and 100. See also Question 23 of the Study. For the definitions of medical personnel, units and transports in AP I, see above the section “May PMCs/PSCs qualify as ‘medical personnel, units and transports’, as defined under AP I?”

²⁸³ Article 9 of AP II provides that medical personnel must be respected and protected. Article 11 of AP II provides that medical units and transports must be respected and protected.

²⁸⁴ The *Commentary on AP I and II* states that:

“If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge.”

Commentary on AP I and II, Article 12 of AP II, para. 4746.

²⁸⁵ On the implementation of the obligations to supervise by the dissident authorities, see Question 28 of the Study.

31) *Use of the emblem on third parties' ambulances and first-aid stations, under Article 44, 4th para., of the First Geneva Convention of 1949: what is the role of National Societies?*

Legal or statutory basis

Article 44, 4th para., GC I

Articles 22 and 23, 1991 Emblem Regulations

Fundamental Principles of the Movement (Impartiality and Neutrality)

Recommendations

- Under GC I, third parties' ambulances and first-aid stations may use the emblem subject to all the following conditions:
 - i. The emblem may be used only as an exceptional measure;
 - ii. Such use must be in conformity with national legislation;
 - iii. It is subject to the express authorization of the NS;
 - iv. The ambulances and first-aid stations must be used exclusively for the sick and wounded, and the aid furnished must be free of charge; and
 - v. The use is permissible only in peacetime.
- Even if allowed to do so by national legislation, NS are advised to be extremely cautious when authorizing use of the emblem by third parties' ambulances and first-aid stations because of the potential for confusion, particularly with NS premises and property.
- National legislation providing for the possibility for NS to grant such authorization must contain all the conditions listed in Article 44, 4th para., of GC I, and could make use of the emblem by third parties' ambulances and first-aid posts subject to additional safeguards, e.g. the consent of an official agency, supervision. However, national legislation may not, of itself, permit the use of the emblem on such ambulances or first-aid stations without the express permission of the NS.
- If the NS nevertheless decides to avail itself of the possibility of granting authorization for the use of the emblem, the following criteria must be fulfilled:
 - i. the aid is furnished by the third party without discrimination, particularly with regard to nationality, race, religious beliefs, class or political opinions;
 - ii. the third party and its staff do not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature;
 - iii. no confusion is created in the public mind between such ambulances and first-aid stations and the NS (its vehicles, units and so on) – an explanatory phrase, e.g. *Free Medical Treatment*, could be employed beside the emblem;
 - iv. the ambulances and first-aid stations in question have made a written request to use the emblem to the NS, together with a written commitment to respect the rules governing such use of the emblem;
 - v. the authorization is approved by the NS central leadership;
 - vi. the NS can exercise effective and permanent control of the use of the emblem; and

- vii. the emblem must be comparatively small in size so that it is not confused with the emblem used for protective purposes.
- NS are recommended, during situations of internal violence or when an armed conflict is imminent, not to issue fresh authorizations to third parties' ambulances and first-aid posts and to withdraw those authorizations already granted.

Analysis

Introduction

The question deals with the indicative use of the emblem by third parties' ambulances and first-aid stations in peacetime.

Under Article 44, 4th para., of GC I, a merely indicative sign may be used, with the express authorization of the NS in question, to mark ambulances and the positions of first-aid stations, even where these ambulances and first-aid stations are not in any way connected with that NS. Article 44, 4th para., of GC I, states:

“As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.”

As outlined in the *Commentary on GC I*, the use of the emblem by third parties' ambulances and first-aid stations “is after all a derogation from the guiding principle of the Convention in regard to the emblem.”²⁸⁶ This explains why such use of the emblem is permitted only as an exceptional measure, in peacetime and under strict conditions.

An exceptional use that is subject to strict conditions and to monitoring by NS

Strict conditions are defined in order to prevent any misuse of the emblem that would “diminish the prestige which the emblem must retain in all circumstances”.²⁸⁷ The *Commentary on GC I* (Article 44, 4th para.) describes the conditions under which the emblem may be used by third parties' ambulances and first-aid stations as follows:

- “(a) The emblem may be employed only as an exceptional measure. Its use cannot be extended to cases other than those specified.
- (b) The use of the sign must be in conformity with national legislation. Governments thus have the possibility of restricting it or of making it subject to such additional safeguards as they may consider desirable (consent of an official agency, supervision, etc.).
- (c) Use of the emblem is subject to express authorization. Tacit agreement is therefore not enough. Subject to what we have said under (b), such authorization can only be given by the National Red Cross (Red Crescent, Red Lion and Sun) Society. This right to give permission does not belong to any other society or even to the State; nor can the Red Cross Societies themselves delegate it.
- (d) The first-aid posts must be used exclusively for the sick and injured and the aid furnished must be free. In this way the idea which attaches to the emblem is safeguarded. From the moment a charge is made or medicines sold, permission to use the emblem should be withdrawn.
- (e) This use of the emblem is permissible only in peacetime. As soon as a country becomes a Party to a conflict, such emblems must disappear throughout its territory. This may appear

²⁸⁶ *Commentary on GC I*, Article 44, p. 337.

²⁸⁷ *Commentary on GC I*, Article 44, p. 338.

harsh, when it is considered that the purposes for which permission is given are equally useful in wartime. The stipulation is, however, quite definite. It must be remembered that the essential value of the red cross is in wartime, when it becomes a symbol of immunity. Everything else must be subordinated to this consideration.”²⁸⁸

1. The national legislation

If national legislation grants an NS the right to authorize third parties' ambulances and first-aid stations to use the emblem, then that legislation must include all the conditions listed in Article 44, 4th para., of GC I, in particular the NS exclusive authority to authorize the use of the emblem.

It is worth emphasizing that while national legislation *may not* of itself permit use of the emblem without the *express permission* of the NS, it may restrict such use further or make it subject to additional safeguards, e.g. consent of an official agency, supervision.

2. The role of the NS

The permission of the NS is a pre-condition for the use of the emblem by third parties in accordance with Article 44, 4th para., of GC I.

Because of "the high moral significance of the principles [the emblem] represents in the eyes of all peoples",²⁸⁹ NS are advised to exercise this power of authorizing the use of the emblem with the utmost restraint. In particular, before granting such authorization, NS should ensure that the following criteria, derived from the Fundamental Principles of the Movement and from Article 23 of the 1991 Emblem Regulations, are met:

- a) the aid is furnished without discrimination on the grounds of nationality, race, religious beliefs, class or political opinions or any other criteria whatsoever;²⁹⁰
- b) the third party and its staff do not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature;²⁹¹
- c) no confusion is created in the public mind between such ambulances and first-aid stations and the NS (its vehicles, units and so on) – an explanatory phrase, e.g. *Free Medical Treatment*, could be employed beside the emblem;²⁹²
- d) the ambulances and first-aid stations in question have made a written request to use the emblem to the NS, together with a written commitment to respect the rules governing such use of the emblem;

²⁸⁸ *Commentary on GC I*, Article 44, p. 338. As far as the "free treatment" condition is concerned, it must be stressed that, although the commentary on Article 22 of the 1991 Emblem Regulations is slightly less restrictive than Article 44, 4th para., of GC I and its *Commentary*, it endorses the same principle:

"Article 44, paragraph 4 of the First Convention allows the marking, besides ambulances, of aid stations "exclusively assigned for the purpose of giving free treatment". Experience has shown that this rule of free treatment is often interpreted with a degree of flexibility. This practice is acceptable, and in conformity with the spirit of the Convention, only in so far as treatment is in no case conditional on payment of a fee and the idea of voluntary service linked to the Movement is upheld."

²⁸⁹ General Rapporteur of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Geneva, 27 July 1929), in *Actes de la Conférence diplomatique de Genève de 1929*, Geneva, 1930, p. 619, quoted in the *Commentary on GC I*, Article 44, p. 339.

²⁹⁰ In compliance with the Fundamental Principle of Impartiality.

²⁹¹ In compliance with the Fundamental Principle of Neutrality.

²⁹² By analogy with Article 23, 3rd para., sub-para. a, of the 1991 Emblem Regulations.

- e) the authorization is approved by the NS central leadership; generally speaking, it is important to keep in mind that issues regarding the use of the emblem must be dealt with by NS at the central level and not by the branches since a consistent policy on the use of the emblem is crucial within the NS;²⁹³
- f) the NS can exercise effective and permanent control of the use of the emblem under consideration.²⁹⁴ The right to authorize use of the emblem implies a responsibility to exercise control and to ensure that no prejudice will result from it.²⁹⁵ Article 22 of the 1991 Emblem Regulations provides that “[t]he National Society shall only give this permission in exchange for the right regularly to control the use of the emblem. It shall reserve the right to withdraw this authorization at all times and with immediate effect”; and
- g) the emblem used by such ambulances or first-aid stations must be comparatively small in size and must in no circumstances be susceptible to confusion with an emblem used for protective purposes.

3. A use permissible only in peacetime

The *Commentary on GC I* points out that “[i]t must be remembered that the essential value of the red cross is in wartime, when it becomes a symbol of immunity. Everything else must be subordinated to this consideration.”²⁹⁶ Accordingly, in order to preserve this protective value, NS are recommended, during situations of internal violence or when an armed conflict seems imminent, not to grant fresh authorizations to third parties’ ambulances and first-aid posts and to withdraw those authorizations already granted.

A risk of creating confusion

It is well known that the number of misuses of the emblem, especially by the medical and related professions, is quite high. Although allowed to do so under IHL, NS should be extremely cautious when authorizing third parties’ ambulances and first-aid stations to display the emblem.

It is likely that such use of the emblem would create confusion in the public mind and also make it difficult to differentiate the activities of the NS from those of the third parties under discussion.

²⁹³ By analogy with Article 23, 3rd para., sub-para. g, of the 1991 Emblem Regulations.

²⁹⁴ It is worth noting that this condition is especially relevant when the ambulance service is operated by hospitals or the private sector. By analogy with Article 23, 3rd para., sub-para. b, of the 1991 Emblem Regulations. See also the *Commentary on GC I*, Article 44, p. 339.

²⁹⁵ As outlined as well in the *Commentary on GC I* (Article 44, p. 338):

“Red Cross Societies, whenever they grant permission in accordance with these provisions, would do well to exercise a very careful check on the use made of the authorization given, in order that there may be no abuses to diminish the prestige which the emblem must retain in all circumstances (...)

Red Cross Societies, before giving the permission on which every fresh use depends, would be well advised to make certain that no prejudice will result from it; they might even refuse their authorization unless satisfied that they can exercise effective and permanent control.”

²⁹⁶ *Commentary on GC I*, Article 44, p. 338.

Part II. RECOMMENDATIONS ON COMMERCIAL AND OTHER NON OPERATIONAL ISSUES INVOLVING THE USE OF THE EMBLEM

Chapter A. USE BY STATE AUTHORITIES

32) *The United Nations Convention of 8 November 1968 on road signs and signals and the European Agreement of 1 May 1971 supplementing the Convention on road signs and signals: Are they compatible with the rules governing use of the emblem?*

Legal or statutory basis

Article 44, 4th para., GC I

Article 18, GC IV

Preamble; Article 5(1)(b) and (c); Annex 1, Section E.II, para. 11; Annex 1, Section F.II, para. 1; Signs E (13a, 13b) and F (1a, 1b and 1c), United Nations Convention of 8 November 1968 on road signs and signals (1968 Road Signs Convention)

European Agreement of 1 May 1971 supplementing the Convention on road signs and signals, (1971 European Supplementary Agreement)

Recommendations

- The provisions of the 1968 Road Signs Convention concerning hospital and first-aid station signs are not in conformity with the rules on the use of the emblem (especially the GC) because:
 - i. the only purpose for which civilian hospitals may be marked with the emblem in peacetime, namely to be clearly identifiable from the very beginning of an armed conflict, is not served; and
 - ii. the application of those provisions of the 1968 Road Signs Convention would create confusion with the NS (and its premises).
- The 1968 Road Signs Convention (as well as the 1971 European Supplementary Agreement) should eventually be modified in order to uphold the provisions of the GC: in particular, the emblems represented in signs F (1a, 1b and 1c) to indicate first-aid stations should be replaced.
- To indicate hospitals, it is strongly advised to employ only the white capital letter "H" on a different coloured background
- NS should try as much as possible to disseminate the sign for hospitals (a white capital "H" on a different coloured background) and an alternative sign for first-aid stations (e.g. first-aid sign of a white cross on a green background), and advise their authorities not to use the emblem on road signs.²⁹⁷

²⁹⁷ The white cross on a green background is officially recognized for use in many countries. On the use of this

Analysis

Are the 1968 Road Signs Convention and the 1971 European Supplementary Agreement in conformity with IHL provisions on the emblem?

1. The problem

The 1968 Road Signs Convention provides that two road signs may be used to indicate the direction of civilian hospitals:

- a white capital "H" on a blue background (sign E,13a); and
- a white bed and a red cross on a blue background (sign E,13b).

The same Convention provides also for a choice of three different signs for first-aid stations:

- a red cross on a white background (sign F,1a);
- a red crescent on a white background (sign F,1b); and
- a red lion and sun on a white background (sign F,1c).²⁹⁸

2. Some observations on the marking of civilian hospitals in peacetime under the GC

It may be useful to keep in mind the general rules concerning the marking of civilian hospitals.

Article 18 of GC IV provides that "civilian hospitals shall be marked by means of the emblem (...) but only if so authorized by the State."²⁹⁹ GC IV does not specify if this marking is permissible also in peacetime. The *Commentary on GC I* is helpful in this regard:

"The marking of civilian hospitals is intended essentially for time of war; it is then that it takes on its real importance. However, the rule may be made more flexible in application, in order to ensure that practical considerations are taken into account so that the marking will be completely effective. There is in fact no reason why a State, which is obliged to consider every possibility, should not be able to mark its civilian hospitals in peace time.
(...) The unnecessary and inordinate use of the red cross in peace time on buildings not belonging to the Red Cross Society may create confusion in people's minds."³⁰⁰

Therefore, when deciding whether or not the State should authorize the identification of civilian hospitals in peacetime, two points must be weighed against each other: the importance for civilian hospitals authorized by the State to be clearly identifiable from the very beginning of an armed conflict, the risk of creating confusion in the public mind between

first-aid sign, see also Questions 18, 27, and 46 of the Study.

²⁹⁸ As far as civilian hospitals are concerned, the 1971 European Supplementary Agreement provides for the same signs to be used as the 1968 Road Signs Convention (E, 13a and E, 13b). For first-aid stations, only the red cross (F, 1a) can be used and not the red crescent (F, 1b) or the red lion and sun (F, 1c).

²⁹⁹ Please note that in any case, in order to be entitled to display the emblem (whether in peacetime or in times of armed conflict), civilian hospitals must fulfil the conditions laid down in Article 18 of GC IV:

- The civilian hospital must be recognized as such. This means that the hospital must be "organized to give care to the wounded and sick, the infirm and maternity cases" (Article 18, 1st para., of GC IV). Whenever a civilian hospital fulfils this condition, it has the right to be officially recognized and must be issued by the authority with the certificate of recognition (Article 18, 2nd para., of GC IV).

- The recognized civilian hospitals shall then be identified by the emblem, "but only if so authorized by the State" (Article 18, 3rd para., of GC IV). Please note that if recognition is mandatory when the condition of being assigned to the treatment of the wounded and the sick is fulfilled, the civilian hospitals recognized as such are not directly entitled to be marked by the emblem: the competent State authority must provide authorization for such marking. For further consideration of this subject, see Question 8 of the Study.

³⁰⁰ *Commentary on GC IV*, Article 18, p. 151.

the NS (and its premises) and other objects, if too many of the latter are already marked with the emblem in peacetime. This issue must be discussed by the NS and the authorities. Generally speaking, identifying civilian hospitals with the emblem in peacetime should be discouraged because of the risk of creating confusion in the public mind. This does not mean that civilian hospitals may not prepare to make themselves identifiable from the very beginning of an armed conflict (for instance, large flags bearing the emblem could be got ready for display on their façades).³⁰¹

This recommendation seems even more valid in regard to road signs indicating the direction to civilian hospitals. In this case, where the aim is to indicate the way to a hospital, the primary interest of making civilian hospitals clearly identifiable from the very beginning of an armed conflict does not enter into consideration. Consequently, the secondary interest, of not confusing the public, must prevail and the emblem not be used on road signs.

3. *The marking of first-aid stations under the GC*

Article 44, 4th para., of GC I states that:

"As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick."

Accordingly, in order for first-aid stations to be lawfully marked by the emblem, five conditions must be fulfilled:

- a) the emblem may be used only as an exceptional measure;
- b) the use of the emblem must be in conformity with national legislation;
- c) the use of the emblem is subject to express authorization by the NS;
- d) the first-aid posts or ambulances must be used exclusively for the sick and injured, and the aid provided must be free of charge;
- e) the use of the emblem is permissible only in peacetime.³⁰²

It is quite clear therefore that using road signs displaying the emblem to indicate the way to first-aid stations (as provided for under the 1968 Road Signs Convention) is not in conformity with Article 44 of GC I.

Moreover, there is an established sign for first-aid - a white cross on a green background - which is officially recognized in the European Union, North America, Australia and in other States. This sign is frequently displayed together with the words "First Aid". Not only is the sign accurate, its use helps to correct the common misconception that the red cross/red crescent is a general sign for representing first aid.³⁰³ This sign (or other appropriate alternatives)³⁰⁴ should be used on first-aid stations and on road signs in place of the emblem.

³⁰¹ In this regard, see the answer to Question 8 of the Study as well.

³⁰² For details concerning the marking of first-aid stations (and ambulances) with the emblem, see Question 31 of the Study.

³⁰³ Movement components themselves could do more to ensure that their first-aid activities and products, such as first-aid manuals, are marked with the proper white-and-green sign, and not just the emblem and their names. This would help to preserve the unique significance of the emblem as a symbol of neutrality and protection. On the use of this first-aid sign, see also Questions 18, 27, and 46 of the Study.

³⁰⁴ In certain States, the words "First-aid stations", written in red, are also used to indicate first-aid stations.

4. The 1968 Road Signs Convention

It is important to emphasize that the purpose of this Convention, as expressed in its Preamble, is to "facilitate international road traffic and to increase road safety." This is totally unrelated to making hospitals identifiable as such at the very beginning of an armed conflict (see point 2 above), which is the only justification under IHL for the marking of civilian hospitals by the emblem (red cross/red crescent) in peacetime.

If we look at the two classes of road signs under which the signs for hospitals and first-aid stations are categorised under the 1968 Road Signs Convention, we come to the same conclusion, i.e., that the purpose served by hospital (or first-aid stations) signs has nothing to do with the purpose (described under point 2 above) that might justify the marking of hospitals with the emblem:

a) "Special regulations signs" (for the hospital signs), which, as defined by the 1968 Road Signs Convention, means: "to inform road-users of special obligations, restrictions or prohibitions with which they must comply" (Article 5(1)(b)); Annex 1 to the Convention (Section E.II, paragraph 11) further provides that the "HOSPITAL" sign

"shall be used to notify drivers of vehicles that they should take the precautions required near medical establishments; in particular that they should not make any unnecessary noise. There are two models of this sign: E, 13a and E, 13b.

(...) The red cross on sign E, 13b may be replaced by one of the symbols referred to in section f, subsection II, paragraph 1."

b) "Informative signs" (for the first-aid station signs), which, as defined by the 1968 Road Signs Convention, means: "intended to guide road-users while they are travelling or to provide them with other information which may be useful" (Article 5(1)(c)).

The foregoing provisions of the 1968 Road Signs Convention are in contradiction to the relevant provisions of the GC because:

- i. the 1968 Road Signs Convention does not deal with the question of the marking of hospitals or first-aid stations themselves, but with the use of road signs displaying the red cross/red crescent emblem;
- ii. the expressed purpose of the 1968 Road Signs Convention does not fall into the category of reasons that may be used to justify the marking of hospitals by the emblem under GC IV;
- iii. the use of such road signs under the 1968 Road Signs Convention would create confusion in the public mind with the NS and its premises.

What steps can be taken to remedy the problem?

1. What was done in the past?

The adoption of the 1968 Road Signs Convention and the 1971 European Supplementary Agreement received little publicity. Unfortunately, that seems to explain the inaction in ensuring that no provision included in those instruments contradicted the GC.

The ICRC documents suggest that up to the early 1980s only the white capital "H", usually on a blue background, was used to indicate the way to hospitals, at least in Western Europe. Undoubtedly, this, too, has contributed to the inaction with regard to rectifying the 1968 and 1971 instruments.

2. Amending the 1968 Road Signs Convention and the 1971 European Supplementary Agreement

It is obvious from the various requests received by the ICRC and the discussions that have been held, especially with European NS, that the use of road signs displaying the emblem has become an issue.

The reservations set out in this analysis oblige the Movement to act and try to remedy the problem. The ultimate objective should be to amend the 1968 Convention (as well as the 1971 European Supplementary Agreement) in order to uphold the provisions of the GC.

In this regard, it would be appropriate to assess how to proceed and what is currently feasible. A useful first step would certainly be to contact the Working Party on Road Traffic Safety, acting within the framework of the policies of the UN Economic Commission for Europe. This Working Party is, among others duties, mandated to “develop and keep up to date the Conventions on Road Traffic and on Road Signs and Signals, done at Vienna in 1968, and the European Agreements which supplement them of 1971.”³⁰⁵ It should be possible, once this initial contact has been made, to determine how exactly to approach the issue.

3. Dissemination of the alternative hospital and first-aid signs

Ultimately, in order to reach the objective of amending these instruments, it would be very helpful if the general public would come to associate the white capital “H” and the first-aid sign (rather than the red cross/red crescent emblem) with hospitals and first-aid stations.

Some surveys indicate that sometimes the emblem, rather than the white capital “H” on a blue background, is thought to indicate hospitals and that the emblem is believed to indicate first-aid stations.³⁰⁶

This clearly shows the need for vigorous efforts to disseminate information not only about the red cross/red crescent/red crystal emblem, its significance and its authorized users, but also about the existence and usefulness of the sign displaying the white capital “H” on a blue background (or other signs indicating the way to hospitals) and alternative first-aid signs. NS should be encouraged to undertake as much as they can of this type of dissemination.

*4. Advising the authorities not to use the emblem on road signs*³⁰⁷

NS may be confronted with various situations in which it would be important that they provide advice to their authorities with regard to the use of road signs. This will clearly be the case when the authorities are considering the possibility of displaying the emblem on road signs, or have already decided to do so, as provided for under the 1968 Road Signs Convention. It is possible that the authorities would approach NS to obtain their views on such a possibility.

³⁰⁵ See *Report of the Working Party on Road Traffic Safety on its Forty-Seventh Session*, Addendum 1, 12-15-September 2005, Doc. TRANS/WP.1/100/Add.1, 27 October 2005, p. 3.

³⁰⁶ See, e.g., ANWB, *Onderzoek verkeersborden (Research on Traffic Signs)*, 2005.

³⁰⁷ For further reflections on NS mandate to cooperate with the public authorities to ensure protection of the emblem, see Question 46 of the Study.

In all those circumstances, NS should take all possible actions to prevent future use or stop existing use of road signs displaying the emblem. They should brief the appropriate ministry on the issue and on the potential inconsistency between the provisions of the GC and of the 1968 Road Signs Convention (and the 1971 European Supplementary Agreement). NS arguments should be based on:

- (a) the analysis developed under this question, in particular the importance of using the capital white "H" on a different coloured background and the alternative sign for first-aid stations rather than the emblem on road signs;
- (b) the fact that, faced with two opposed interests, priority should be given to that which serves the more important purpose, such as preserving the lives of persons affected by a conflict or a disaster and ensuring the security of those providing assistance to such persons;
- (c) the detrimental effects such a decision could potentially have on all those entitled to use the emblem, including the medical services of the State's armed forces.

In addition, wherever this is an issue or is likely to be one, NS should take advantage of any reform of road traffic legislation by their authorities to bring up the issue and brief the appropriate parliamentarians and/or ministry, with a view to having the issue resolved. The analysis developed under this question should also be used to try to persuade the authorities.

Chapter B. USE BY NATIONAL SOCIETIES

33) *May a National Society display the emblem/its logo on items that it distributes or sells to the public?*

Legal and statutory basis

Articles 44 and 53, 1st para., GC I
Preamble, and Articles 3 and 23, 1st and 2nd paras, 1991 Emblem Regulations

Recommendations

- It is prohibited to display the emblem (protective device, i.e., in its original form without accompanying wording) on items distributed or sold by an NS to the public.
- During the periods of promotional, dissemination or fundraising campaigns (or events), an NS may display its logo (indicative device) on items that it distributes or sells to the public, subject to all the following conditions:
 - i. Nothing in the sale or in the nature of the items is inconsistent with the Fundamental Principles of the Movement or tarnishes the prestige of the emblem or reduces the respect due to it; and
 - ii. The items displaying the NS logo must be of reduced dimensions or else made of rapidly perishable material and must in no way suggest the protection of IHL (the NS logo is reduced in size) or membership into the Movement (e.g. the NS logo is accompanied by a text or graphic design identifying the campaign).

Analysis

Introduction

This question is related to the use of the emblem/NS logo during campaigns or events organized by NS, e.g. on promotional items distributed or sold by the NS to the public. Article 23 of the 1991 Emblem Regulations expressly addresses the use of the emblem by NS during such campaigns or events related to dissemination, promotion and fundraising.

It is clear that, in such circumstances, the emblem would not be used for protective purposes. Therefore, the use of the emblem itself (in its original form) is prohibited. Consequently, the analysis will concern itself only with the use of the NS logo.

The importance, for NS and for all the Movement's components, to be able to promote their activities and to raise funds in an efficient manner is not to be underestimated. Promotion and fundraising have an impact on their ability to accomplish their mandate. This is recognized in the Preamble to the 1991 Emblem Regulations, which points out that: "One of the purposes of revising the Regulations in 1991 was to enable the National Societies to diversify and expand their sources of income, without prejudice to the respect due to the emblem and the name of the red cross or red crescent."

However, before moving to the interpretation of Article 23 of the 1991 Emblem Regulations, it is also worth noting this passage in the Preamble to the Regulations:

“While it [the ICRC] considers that **the scope allowed by the revised version [of the Emblem Regulations] is as wide as it possibly can be within the framework of the Geneva Conventions**, it nonetheless finds this broad interpretation of them acceptable. There is however, nothing to prevent National Societies from setting narrower limits [if] they so wish.” (Emphasis added)

Conditions for displaying its logo on items distributed or sold by an NS to the public

Article 23, 1st para., of the 1991 Emblem Regulations states that:

“The National Society may use the emblem to support the campaigns and events it organizes to make its activities known, to disseminate knowledge of international humanitarian law and of the Movement's Fundamental Principles, or to raise funds, within the limits of Articles 2 to 5 of the Regulations.”

According to Article 3 of the 1991 Emblem Regulations, NS may use the emblem only for activities consistent with the Fundamental Principles and “shall ensure at all time that nothing shall tarnish [the] prestige [of the emblem] or reduce the respect due to the emblem.”³⁰⁸ These conditions must be strictly adhered to.

In addition, according to the commentary on Article 23, 1st para., of the 1991 Emblem Regulations, an NS is allowed to distribute or sell objects bearing its logo to the public, provided that “sales of objects or services of the National Society and the events it organizes [do not become] more representative of its work than its humanitarian and social activities.” Therefore, the distribution or sale should not last over too long a period of time.³⁰⁹ In addition, the item sold “shall be of reduced dimensions or else made of rapidly perishable material”.³¹⁰

The main stipulation contained in Article 23, 2nd para., of the 1991 Emblem Regulations is that the emblem displayed on the items distributed or sold by the NS to the public should “in no way suggest the protection of international humanitarian law or membership of the Movement”, i.e., protective and indicative uses of the emblem:

a) To avoid any suggestion of protective use of the emblem, the same paragraph of Article 23 of the 1991 Emblem Regulations requires the items that are sold to be of “reduced dimensions”.

b) To avoid any suggestion of indicative use of the emblem, the commentary on Article 23, 2nd para., of the 1991 Emblem Regulations, says that it is preferable that the NS logo be accompanied by a text or a graphic design identifying the campaign.³¹¹ The items sold “can consist of printed matter and objects of all kinds: leaflets, publications, posters, philatelic souvenirs, films, pencils, etc.”³¹² Displaying an NS logo on certain items (such as clothing) is very likely to suggest an association between the user of the items and the NS and/or the Movement. Accordingly, it is recommended not to display the NS logo on such items

³⁰⁸ For instance, displaying the emblem on products associated with animals, on items promoting a candidate in an electoral campaign, on products clearly harmful to the environment or, obviously, on cigarettes or weapons.

³⁰⁹ As indicated in the commentary on Article 23, 1st para., of the 1991 Emblem Regulations, “the name and emblem may be used for fundraising purposes to sell an object or give a momentary service, but not, for instance, to sell a lasting or a long-term service, especially if the service has no connection with the Movement's traditional activities or competes with other similar services provided on a commercial basis”.

³¹⁰ Article 23, 2nd para., of the 1991 Emblem Regulations.

³¹¹ If the items are intended to be sold or distributed by the NS to its staff, members or volunteers, the condition not to suggest an indicative use of the emblem does not apply.

³¹² Commentary on Article 23, 2nd para., of the 1991 Emblem Regulations.

(although it is not prohibited to do so).³¹³

³¹³ The commentary on Article 23, 2nd para., of the 1991 Emblem Regulations indicates that “[w]ith regard to clothing, flags or banners – given the risk of confusion which such objects could create, in the event of armed conflict, with the emblem used as a protective device – it is essential to ensure that the emblem is accompanied by the name of the National Society, or a text or a publicity drawing”.

34) *May a National Society allow its partner companies to display the emblem/the National Society's logo on items for distribution/sale or on advertising material?*

Legal and statutory basis

Articles 44 and 53, 1st para., GC I

Preamble and Article 23, 3rd and 4th paras, 1991 Emblem Regulations

Resolution 10 Council of Delegates, 2005, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships."

Recommendations

- The "Movement policy for corporate sector partnerships", adopted by the 2005 Council of Delegates, must be respected whenever an NS enters into partnership with the corporate sector.
- NS are never allowed to authorize partner companies to display the emblem (protective device, i.e., in its original form without accompanying wording).
- NS, in accordance with Article 23, 4th para., of the 1991 Emblem Regulations, may authorize partner companies to mention a donation or other contribution to the NS work on **items for sale or distribution** – in compliance with Article 23, 3rd para., sub-paras a) and c)-h), of the 1991 Emblem Regulations – **without displaying the NS logo**, and with the provision that such mention remains discreet and does not give rise to confusion about the relationship between the NS and its partners.
- An NS may authorize a partner company to display the NS logo (indicative device) on the partner's **advertising material**, subject to all the following conditions:
 - i. the NS logo is small in size and accompanied by a clear explanation of the assistance given to the NS;
 - ii. it must be in compliance with Article 23, 3rd para., sub-paras a) and c)-h), of the 1991 Emblem Regulations, e.g. the display is linked to a particular event or campaign and limited in time and space; and
 - iii. such display remains discreet and does not give rise to confusion about the relationship between the NS and its partner.

Analysis

Introduction

This question is related to the authorization given by an NS to partner companies to use the emblem/the NS logo:

- on items sold/distributed by the companies;
- on the advertising material of the companies.

It is clear that, in such circumstances, the emblem would not be used for protective purposes. Therefore, the use of the emblem itself (in its original form) is prohibited. Consequently, the analysis will concern itself only with the use of the NS logo.

As indicated under Question 33 of the Study, the importance, for NS and for other Movement components, to be able to raise funds in an efficient manner is not to be underestimated and has an impact on their ability to accomplish their mandate. This is recognized in the Preamble to the 1991 Emblem Regulations, which states that: "One of the purposes of revising the Regulations in 1991 was to enable the National Societies to diversify and expand their sources of income, without prejudice to the respect due to the emblem and the name of the red cross or red crescent."

However, before moving to the interpretation of Article 23 of the 1991 Emblem Regulations, it is also worth noting this passage in the Preamble to the Regulations:

"While it [the ICRC] considers that **the scope allowed by the revised version [of the Emblem Regulations] is as wide as it possibly can be within the framework of the Geneva Conventions**, it nonetheless finds this broad interpretation of them acceptable. There is however, nothing to prevent National Societies from setting narrower limits [if] they so wish." (Emphasis added)

Lastly, it is important to keep in mind that the 2005 Council of Delegates adopted the "Movement policy for corporate sector partnerships." Whenever entering into partnership with the corporate sector, NS must respect the provisions of this policy. This applies with particular force to the selection criteria for the company with which the NS enters into partnership and to the mandatory and recommended requirements for Movement components' partnership contracts.³¹⁴

May the NS logo be displayed on items distributed or sold by the partner companies?

Article 23, 4th para., of the 1991 Emblem Regulations prohibits NS from authorizing companies to display the emblem on items for sale, "since they are often designed to last and the National Society has no control over their use."³¹⁵

The packaging or the label is part of the item for sale. NS are therefore prohibited from allowing the display of their logos on packaging or on labels of items distributed or sold by their partner companies.

However, with regard to the sale of those items, the proceeds from which are to be donated in full or in part to it, an NS may authorize a company to mention a donation or other contribution to the NS work (in this case, compliance with sub-paras a, c, d, e, f, g, and h of Article 23 of the 1991 Emblem Regulations is required).³¹⁶ The company may mention that a

³¹⁴ Resolution 10 of the 2005 Council of Delegates, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships."

³¹⁵ Commentary on Article 23, 4th para., of the 1991 Emblem Regulations.

³¹⁶ Article 23, 3rd para., of the 1991 Emblem Regulations states that:

- a) no confusion must be created in the mind of the public between the company's activities or the quality of its products and the emblem or the National Society itself;
- b) (...)
- c) the campaign must be linked to one particular activity and, as a general rule, be limited in time and geographical area;
- d) the company concerned must in no way be engaged in activities running counter to the Movement's objectives and Principles or which might be regarded by the public as controversial;
- e) the National Society must reserve the right to cancel its contract with the company concerned at any time and to do so at very short notice, should the company's activities undermine the respect for or the prestige of the emblem;

part of the price of a specific product will be donated to the NS (or to one specific NS programme), **without any display of the emblem or the NS logo**. In addition, as the commentary on Article 23, 4th para., of the 1991 Emblem Regulations explains, NS "must ensure that such mention remains discreet and not give rise to confusion."³¹⁷

May the NS logo be displayed on the advertising material of partner companies?

Article 23, 4th para., of the 1991 Emblem Regulations permits NS to authorize the display of its logo "on advertising material [of the partner company] only with the utmost restraint and on condition that the emblem be of small dimensions and accompanied by a clear explanation of the assistance received by the Society." Such an explanation should enable the public to clearly understand the relationship between the NS and its partner company.³¹⁸

The phrase "advertising material" includes such things (posters or leaflets, broadcast or website advertisements, etc.) which advertise a company or a product and which should not be "designed to last". The NS may authorize the display of its logo only on such material, provided that all the conditions enumerated under Article 23 of the 1991 Emblem Regulations are met; in particular, the display must be linked to a particular event or campaign and limited in time and space.

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- f) the material or financial advantage which the National Society gains from the campaign must be substantial without, however, jeopardizing the Society's independence;
 - g) the contract between the National Society and its partner must be in writing;
 - h) the contract must be approved by the National Society's central leadership."

For a more detailed explanation of these conditions, see the commentary on Article 23, 3rd para., of the 1991 Emblem Regulations; see also Question 35 of the Study.

³¹⁷ Commentary on Article 23, 4th para., of the 1991 Emblem Regulations.

³¹⁸ See commentary on Article 23, 4th para., of the 1991 Emblem Regulations.

35) May the National Society display:

- a) *The name/logo of its corporate supporter on the National Society's website?*
- b) *The emblem/the National Society's logo on the website of its corporate supporter?*

Legal or statutory basis

Articles 44 and 53, 1st para., GC I

Preamble and Article 23, 3rd and 4th paras, 1991 Emblem Regulations

Resolution 10 Council of Delegates, 2005, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships"

Recommendations

- The "Movement policy for corporate sector partnerships", adopted by the 2005 Council of Delegates, must be respected whenever an NS enters into partnership with the corporate sector.
- The rules governing the use of the emblem, in particular Article 23 of the 1991 Emblem Regulations, fully apply to the use of the NS logo (and name) on the Internet as to any other use.³¹⁹
- **On its website**, an NS may display the logo of key corporate supporters (for purposes of acknowledging very significant support), provided that all the following conditions, based upon Article 23, 3rd para., of the 1991 Emblem Regulations, are met:
 - i. No confusion must be created between the identities of the NS and its corporate supporter: the reason why the corporate supporter's name/logo is displayed on the NS website must be clear (e.g., the corporate supporter's logo could be accompanied by a descriptive statement such as "the XYZ Company is proud to support the NS Measles Initiative");
 - ii. The NS must retain control over the display of the logo and name of the corporate supporter on its website;
 - iii. The display of the logo and name of the corporate supporter must be linked to one particular activity and be limited in duration;
 - iv. The corporate supporter must not be engaged, in any way, in activities running counter to the Movement's objectives and Fundamental Principles or in any activity that might be regarded by the public as controversial;
 - v. The material or financial advantage that the NS gains from the support must be substantial; and
 - vi. The display of the logo and name of the corporate supporter must be part of a written contract/agreement with the NS, which must have the formal approval of the NS central leadership. The NS must reserve the right to cancel such a contract or agreement at any time and at very short notice, should the supporter's activities undermine the respect for or the prestige of the emblem.

³¹⁹ On measures for tackling the misuse of the emblem (and the name) on the Internet, see Question 50 of the Study.

- **On the NS corporate supporter's website**, the NS logo (indicative device) may be displayed for the supporter's advertising purposes subject to all the following conditions:
 - i. All the conditions mentioned above (in the case of the NS website) are met, with the exception of condition "ii" above (direct control retained by the NS);
 - ii. A statement on the corporate supporter's website should make clear the nature of the assistance received by the NS, thereby ensuring that the display of the NS logo is not to be understood to mean that the NS endorses the corporate supporter, its products, services, opinions or political positions; and
 - iii. The written contract/agreement between the NS and the corporate supporter must include the following elements:
 - a. The corporate supporter must obtain the NS approval before any and every use of the NS logo on the corporate supporter's website;
 - b. The corporate supporter must remove the NS logo from its website immediately after it is told to do so by the NS.
- The NS must not allow the display of the emblem (protective device, i.e., in its original form without accompanying wording) on the websites of third parties and should authorize the display of its logo/name on its corporate supporters' websites with the utmost restraint.

Analysis

Introduction

Partnerships between NS and the private sector are growing, in particular with the aim of raising funds for the NS activities. This question is related to the use of the Internet to advertise the partnerships that NS may develop with the private sector. In this regard, it is important to keep in mind that the 2005 Council of Delegates adopted the "Movement policy for corporate sector partnerships". Whenever entering into partnership with the corporate sector, NS must respect the provisions of this policy. This is particularly relevant with regard to the selection criteria for the company with which an NS enters into partnership and to the mandatory and recommended requirements for Movement components' partnership contracts.³²⁰ All this is clearly applicable in the case of partnerships through the Internet.

As far as the use of the emblem/NS logo on Internet websites is concerned, because of the reach of the medium, NS (and the components of the Movement in general) must be particularly careful not to create confusion over or misinterpretation of the Movement or its activities and principles in the public mind.

The applicability to websites of the rules on the use of the emblem

It is obvious that the GC, their AP I and II, and even the 1991 Emblem Regulations were adopted at times when the Internet did not exist (or was not in general use).

³²⁰ Resolution 10 of the 2005 Council of Delegates, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships."

However, this does not mean that the rules defined in the instruments mentioned above are not applicable to the use of the emblem on the Internet. Article 53, 1st para., of GC I states that:

"The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross", or any sign or designation constituting an imitation thereof, **whatever the object of such use, and irrespective of the date of its adoption**, shall be prohibited **at all times**." (Emphasis added)

Likewise, the Preamble to the 1991 Emblem Regulations makes it clear that one of the purposes of the revised Regulations was to enable the NS to diversify and expand their sources of income, which is important for the accomplishment of their mission, in a way that does not prejudice the respect due to the emblem. Therefore, it may logically be concluded that the 1991 Emblem Regulations cover the partnerships developed by NS with corporate supporters and the use of logos on websites.

The display of the corporate supporter's name/logo on the NS website

Whether on its website or on other media, the use by an NS of its logo together with the name/logo of a corporate supporter is regulated by Article 23, 3rd paragraph, of the 1991 Emblem Regulations. This Article provides that "[a] National Society which co-operates with a commercial company or other organization in order to raise funds or further its dissemination activities may display the company's trademark, logo or name on articles used by the Society, on its advertising material or items which it sells".

As explained in the commentary on Article 23, 3rd paragraph, of the 1991 Emblem Regulations, the NS should be able to acknowledge the assistance received from corporate supporters; it could be difficult to find or retain donors if they remained totally anonymous. However, "[i]t is nevertheless important that the National Societies closely monitor the manner in which the assistance is publicized so as to avoid any abuse or risk of confusion in the mind of the public". Article 23, 3rd paragraph, therefore subjects the possibility for an NS to display its corporate supporters' names and logos on the NS website to a series of cumulative conditions. Adapted to the Internet, they are to be understood as follows:

- a) No confusion must be created between the identities of the NS and its corporate supporter (or the supporter's activities or products): it must be clear to a reasonable person, why the name and logo of the corporate supporter are displayed on the NS website (e.g., the corporate supporter's logo could be accompanied by a descriptive statement such as "the XYZ Company is proud to support the NS Measles Initiative"). The name/logo of the corporate supporter must not be perceived as a guarantee for the quality of the corporate supporter's products.
- b) The NS must retain control over the display of the logo and name of the corporate supporter on its website; in particular, the name/logo of the corporate supporter must be of a reasonable size.
- c) The display of the logo and name of the corporate supporter must be linked to one particular activity and be limited in duration.
- d) The corporate supporter must not be engaged, in any way, in activities running counter to the Movement's objectives and Fundamental Principles or in any activity that might be regarded by the public as controversial; the commentary on Article 23, 3rd para., sub-para d, of the 1991 Emblem Regulations as well as the "Movement policy for corporate sector partnerships" provide some examples of activities falling under this category, such as: the manufacture or sale of arms, and ammunition; the manufacture or sale of products publicly recognized as deleterious to health;

business practices materially contributing to armed conflicts or natural disasters; or activities that would undermine the reputation, image or emblems of the Movement.³²¹

- e) The material or financial advantage that the NS gains from the support must be substantial; however, the NS independence must not be jeopardised due to the high level of support from the corporate supporter.
- f) The display of the logo and name of the corporate supporter must be included in a written contract/agreement with the NS, which must have the formal approval of the NS central leadership. The NS must reserve the right to cancel such a contract or agreement at any time and at very short notice, should the supporter's activities undermine the respect for or the prestige of the emblem.³²²

Use of an NS logo on the website of a corporate supporter

Article 23, 4th para., of the 1991 Emblem Regulations specifically provides that:

“[The NS] shall not authorize the display of its emblem on items for sale and may authorize its display on advertising material only with the utmost restraint and on condition that the emblem be of small dimensions and accompanied by a clear explanation of the assistance received by the Society.”

Article 23 therefore prohibits the display of the NS logo on items sold by its corporate supporter while such display could be authorized on the corporate supporter's advertising material.³²³ It would probably be incorrect to say that a website in itself can be regarded as “advertising material”, although most of what is included on a website is of an advertising nature. One could imagine indeed web pages dedicated to on-line sale of products which would be close, for our purposes, to be regarded as “items for sale”.

However, in any case, the authorization to display the NS logo on the website of a corporate supporter must be clearly for the supporter's advertising purposes (as opposed to the sale of items) and is subject to strict compliance with almost the same conditions defined above for the use of the logo or name of the corporate supporter on the NS website. The only exception would be the second of those conditions (*i.e.*, that the NS must retain full control over the display of the NS logo and name on the corporate supporter's website) which would be very difficult to apply. On the other hand, in order to avoid any abuse by the corporate supporter, the following two conditions must be added:

- a) A statement on the corporate supporter's website must make clear the nature of the assistance received by the NS in order to ensure that the display of the NS logo is not to be understood to mean that the NS endorses the corporate supporter, its products, services, opinions or political positions;³²⁴ and
- b) The written contract/agreement between the NS and the corporate supporter must include the following elements:
 - i. The corporate supporter must obtain the NS approval before any and every use of the NS logo on the corporate supporter's website;
 - ii. The corporate supporter must remove the NS logo from its website immediately after it is told to do so by the NS.

³²¹ See in particular the criteria defined under Section 3.3 of the “Movement policy for corporate sector partnerships”.

³²² The commentary on Article 23, 3rd para., sub-para. e, of the 1991 Emblem Regulations gives the example of an activity of the corporate supporter that could prove embarrassing for reasons not known to the NS when signing the agreement, such as serious pollution caused by the company concerned.

³²³ See also Question 33 of the Study.

³²⁴ This condition derives from the “Mandatory elements for Movement components' partnership contracts” (Annex – Resolution 10, 2005 Council of Delegates, para. 5.3.6).

Lastly, given the worldwide reach of the Internet and the “considerable risk of abuse” (as stated in the commentary on Article 23, 4th para., of the 1991 Emblem Regulations), a high level of cautiousness is certainly required. This means that an NS should only authorize the display of its logo/name on its corporate supporters’ websites with utmost restraint.

36) *May National Society trading companies or other legal entities, owned or controlled by the National Society, whose profits or funds are devoted to the National Society, use the emblem/the logo of the National Society?*

Legal or statutory basis

Articles 44 and 53, GC I

Articles 2-5, 23 and 24, 1991 Emblem Regulations

Fundamental Principles of the Movement

Resolution 10 Council of Delegates, 2005, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships"

Recommendations

- NS trading companies (legal entities owned or controlled by the NS) are not allowed to use the emblem (protective device, i.e., in its original form without accompanying wording).
- An NS may allow its trading company to use the NS logo (indicative device) subject to all the following cumulative conditions:

With regard to the NS trading company:

- i. Sales of object or services by the NS trading company must not become more representative of the NS work than its humanitarian and social activities; and
- ii. The NS trading company must not in any way be engaged in activities running counter to:
 - a. the Movement's objectives and Fundamental Principles;
 - b. principles of IHL; and
 - c. internationally recognized human rights standards.

With regard to the use of the NS logo by the NS trading company:

- i. The limits of Articles 2 to 5 of the 1991 Emblem Regulations are respected, notably the NS logo must be small in size and must not be over-used or displayed on inappropriate objects;
- ii. No confusion must be created in the public's mind between the NS trading company's activities or the quality of its products and the emblem or the NS itself;
- iii. The NS must retain strict control over use of its logo; and
- iv. The NS should have a written agreement with the company, authorizing and regulating its use of NS logo.

Analysis

Introduction

This question deals with the use of the NS logo by NS trading companies. An NS trading company is a legal entity separate from but owned or controlled by the NS and whose profits are devoted to the NS. Regarding shareholders, the NS should always have the controlling

interest in the trading company.

The scope of this question does not extend to independent legal entities whose purpose is not commercial but solely to make known or to promote the activities of the NS and of the Movement, as defined under Article 24, 3rd para., of the 1991 Emblem Regulations.³²⁵

The legal and policy framework

a) According to Article 23, 1st para., of the 1991 Emblem Regulations, an NS can use the emblem and its name "to disseminate knowledge of international humanitarian law and of the Movement's Fundamental Principles, or to raise funds, within the limits of Articles 2 to 5 of the Regulations". This means that the NS name and logo may be used by the NS for fund-raising activities, such as selling an object or providing a temporary service.

Nevertheless, sales of objects or services of the NS must not become more representative of its work than its humanitarian and social activities.³²⁶ Even if Article 23, 1st para., of the 1991 Emblem Regulations deals with the use of the emblem by the NS itself, this requirement applies as well to the sales or services of the NS trading company.

b) Article 23, 3rd and 4th paras, of the 1991 Emblem Regulations deals with "commercial companies or other organizations". These are entities which are entirely separate from the NS.

It should be added that the 2005 Council of Delegates adopted the "Movement policy for corporate sector partnerships". Whenever entering into partnership with the corporate sector, NS must respect the provisions of this policy. This is particularly relevant with regard to the selection criteria for the company with which an NS enters into partnership and to the mandatory and recommended requirements for Movement components' partnership contracts.³²⁷

The NS may authorize commercial companies or other organizations (other than NS trading companies) to display its logo on advertising material only, in strict compliance with the conditions set out in Article 23, 3rd para., sub-para. a and c-h, of the 1991 Emblem Regulations and "with the utmost restraint and on condition that the emblem be of small dimensions and accompanied by a clear explanation of the assistance received by the Society".³²⁸

c) The 1991 Emblem Regulations appear to be silent on the question of use of the NS logo by a commercial company established by an NS, as opposed to a commercial entity that is co-operating with an NS but separate from it. However, one could argue that the reference to commercial companies or other organizations in Article 23 should be interpreted as covering the position of a commercial company established by an NS. Certainly it would appear absurd if a company with a legal relationship to an NS – and whose sole purpose is to raise funds to support the work of that NS – was in a less favourable position than an organization which was entirely independent.

³²⁵ According to Article 24, 3rd para., of the 1991 Emblem Regulations, the NS may authorize and then must control the use of its logo by such legal entities (e.g. associations or foundations), whose purpose is not commercial.

³²⁶ Commentary on Article 23, 1st para., of the 1991 Emblem Regulations. See also Question 33 of the Study.

³²⁷ Resolution 10 of the 2005 Council of Delegates, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships".

³²⁸ Article 23, 4th para., of the 1991 Emblem Regulations. See also Questions 34 and 35 of the Study.

Accordingly, and by analogy, an NS may allow its trading company to use its logo subject to all the following cumulative conditions:

With regard to the NS trading company, it must not in any way be engaged in activities running counter to:

- a) the Movement's objectives and Fundamental Principles;³²⁹
- b) principles of IHL; and
- c) internationally recognized human rights standards as embodied especially in the Universal Declaration of Human Rights of 1948, the Declaration on Fundamental Principles and Rights at Work of 1998, the Convention on the Elimination of all Forms of Racial Discrimination of 1965 and the Convention on the Elimination of Discrimination against Women of 1979.³³⁰

With regard to the use of the NS logo by the NS trading company:

- a) the limits of Articles 2 to 5 of the 1991 Emblem Regulations are respected, notably the NS logo must be small in size and must not be over-used or displayed on inappropriate objects;³³¹
- b) no confusion must be created in the public's mind between the NS trading company's activities or the quality of its products and the emblem or the NS itself;³³²
- c) the NS must retain strict control over use of its logo;³³³ and
- d) the NS should have a written agreement with the trading company, authorizing and regulating its use of the NS logo.

Specific aspects

1. NS control over the activities of its trading company

As already indicated, it is essential that the NS maintains control over the activities of the trading company, including use of the NS name and logo. Since the trading company is a separate legal entity, the NS should write formally to the company setting out the conditions on which it is entitled to use the NS logo. For example, where an internal referral and approval procedure for use of the NS logo exists within an NS, the trading company should be required to follow the established procedure.

The NS must be careful to avoid allegations of unfair competition against its trading company, e.g. if it uses a prominent NS logo on first-aid products without any other sign, such as the first-aid sign of a white cross on a green background, while companies selling similar items are unable to use the emblem for the same purposes.

³²⁹ For instance, whereas it would be appropriate to provide used clothing, it would be inappropriate to sell cigarettes or religious, political or controversial publications. Related to this, care should be taken with use of the emblem and the NS name on a product which could give rise to misuse. For example, it would be inappropriate for the NS trading company to sell luggage to members of the general public, since such luggage could be misused.

³³⁰ By analogy with Article 3.3 of the Annex of Resolution 10 of the 2005 Council of Delegates.

³³¹ By analogy with Article 23, 1st para., of the 1991 Emblem Regulations.

³³² By analogy with Article 23, 3rd para., sub-para. a, of the 1991 Emblem Regulations.

³³³ By analogy with Article 23, 4th para., of the 1991 Emblem Regulations.

2. Explanation of the relationship between the NS and its trading company

Firstly, it may be that an activity or a fund-raising event, such as a card and gift catalogue or a film premiere respectively, can be promoted as being in aid of the NS, using the NS logo, with reference to the trading company being limited to the payee of cheques or money orders. In such cases, there is no need for the name of the trading company to be displayed together with the NS logo, although for practical reasons, it may be useful to explain briefly in words the relationship between the trading company and the NS.

However, there may be a significant activity which requires the NS trading company to use the NS logo, such as an NS charity shop or a used clothes service. The NS name could be used in connection with such enterprises e.g. “Blueland Red Cross Shop” or “Newland Red Crescent Clothes Agency”. A small size NS logo could then be used e.g. “+ Blueland Red Cross Shop” or “c Newland Red Crescent Clothes Agency”. The association between the enterprise and the NS should be made clear e.g. by a sign placed near the paying counter inside the premises or on invoices or similar documentation. Such a statement might be as follows: “Blueland Red Cross Shop Limited (registered company number 1234) is wholly owned by the Blueland Red Cross Society (registered charity number 6789) and trades only to raise funds for the Society’s objectives.”

3. Use of the NS logo by NS trading company partners

The NS trading company cannot authorize the use of the NS logo by any other entity, even by the NS trading company partners. Those other entities may only be allowed to use the NS logo on the authorization of the NS itself and in strict compliance with the conditions set out under Article 23 of the 1991 Emblem Regulations.³³⁴

4. Loss of controlling interest by the NS

If the NS loses its controlling interest in the trading company, then the company should not use the NS name and logo in the title of the company any longer, since shareholders outside the NS or the Movement would be the primary beneficiaries of the enterprise, which also may then be primarily commercial in nature. However, reference could be made to the minority benefit obtained by the NS in compliance with the conditions defined under Article 23 of the 1991 Emblem Regulations and in appropriate ways e.g. in small size print, at the foot of stationery, and other printed materials, without the emblem or NS logo.³³⁵

Concluding observation

Use of the NS logo by an NS trading company is not expressly covered by the 1991 Emblem Regulations. Therefore, great care must be taken to ensure that the dignity of the emblem, and of the name of the NS, is upheld at all times, always keeping in mind that the emblem’s primary purpose is as a protective device during armed conflicts and that its life-saving power must not be diminished.

³³⁴ On the conditions set out in Article 23 of the 1991 Emblem Regulations, see Question 34 of the Study.

³³⁵ On the conditions set out in Article 23 of the 1991 Emblem Regulations, see Question 34 of the Study.

37) *Sponsorship: to what extent may sports teams/players display the emblem/the logo of a National Society for promotion and/or fundraising purposes? What kinds of contracts are possible and what are their limits?*

Legal or statutory basis

Articles 44 and 53, GC I

Preamble, Articles 2-5 and Article 23, 1991 Emblem Regulations

Resolution 10 Council of Delegates, 2005, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships".

Recommendations

- The "Movement policy for corporate sector partnerships", adopted by the 2005 Council of Delegates, must be respected whenever an NS enters into partnership with the corporate sector.
- The large-sized emblem (protective device, i.e., in its original form and without accompanying wording) must never be displayed by sports teams/players having a partnership with an NS.
- Because it might undermine the public image of the NS (and thereby of the Movement) and the prestige of the emblem, NS are strongly recommended not to authorize sports teams/players to display NS logos (indicative device).
- If an NS nevertheless decides to authorize sports teams/players to display its logo for fundraising/promotion purposes, the following cumulative conditions must be met:
 - i. the sponsorship in general supports the Fundamental Principles of the Movement and, in particular, the cooperation with the sports team/player in no way jeopardizes the neutrality and independence of the NS or of any other component of the Movement;
 - ii. the behaviour/activities of the sports team/player must in no way tarnish the prestige of nor reduce the respect due to the emblem;
 - iii. the NS logo on the team's jerseys is small in size and should be accompanied by a short text explaining the sponsorship;
 - iv. as far as possible, the NS logo is clearly separated from other logos on the team's jerseys, to avoid confusing the NS with the companies represented by the other logos and any suggestion of association with them;
 - v. the logo is used only on the jerseys worn by the players and not on the jerseys that the sports teams/clubs might sell to the public; and
 - vi. the contract between the NS and the sports teams/players must:
 - a. be in writing;
 - b. be valid only for a short period of time (e.g. one to three years);
 - c. contain all the foregoing conditions governing the use of the NS logo;
 - d. be terminated by the NS with immediate effect, without it being liable for any compensation, whenever the conditions governing the use of the NS logo are

violated or whenever the prestige of the emblem is undermined by the activities or behaviour of the sports teams/players.

Analysis

Introduction

It is important for NS to find new ways of raising funds and/or promoting their activities. That is a reason why, in some instances, NS have built partnerships with sports teams.³³⁶ It must, however, be kept in mind that the 2005 Council of Delegates adopted the "Movement policy for corporate sector partnerships". Whenever entering into partnership with the corporate sector, NS must respect the provisions of this policy. This is particularly relevant with regard to the selection criteria for the company with which an NS enters into partnership and to the mandatory and recommended requirements for Movement components' partnership contracts.³³⁷

Many NS have first-aid teams in place at major sports events. The presence of their first-aid teams is normally the result of written agreements. Consequently, many NS have developed relationships with numerous sports teams, and from time to time, because of their actions at sports events, NS first-aid teams are made visible in the media.

At the same time, major humanitarian disasters have prompted sports teams to support NS fundraising work and activities and/or to promote NS activities. Fundraising/promotion events might take the form of games or matches, appearances by major athletes in fundraising events, and so on.

Partnerships also develop sometimes between NS, sports teams and private companies (involved in, for instance, finance or insurance) that have been sponsoring sports teams for many decades. In some instances, a private company has become interested in sponsoring both an NS and a sports team.

One of the things that an NS brings to such partnerships is its image. However, this raises two issues:

- May a sports team be authorized to display the emblem/the NS logo on its players' jerseys and, if so, how?
- What should be included in the contract between the NS and the sports team authorizing such use of the emblem or the NS logo?

May a sports team be authorized to display the emblem/the NS logo on its players' jerseys and, if so, how?

The 1991 Emblem Regulations were drafted with full knowledge of the importance of enabling NS to diversify and expand their sources of income. The 3rd para. of the Preamble to the Regulations states that:

"One of the purposes of revising the Regulations in 1991 was to enable the National Societies to diversify and expand their sources of income, without prejudice to the respect due to the emblem and the name of the red cross or red crescent."

³³⁶ For the purposes of the analysis of this Question, the expression "sports teams" encompasses also "sports players".

³³⁷ Resolution 10 of the 2005 Council of Delegates, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships".

It must be remembered that the 1991 Emblem Regulations are already a broad interpretation of the GC. As the Preamble to the Regulations states, it is the ICRC view that the scope allowed by the Regulations is “as wide as it possibly can be”. Therefore, the provisions of the Regulations must be adhered to strictly.

Article 23, 1st para., of the 1991 Emblem Regulations, states that an NS may use the emblem to support the campaigns and events it organizes to make its activities known, to disseminate knowledge of IHL and of the Fundamental Principles or to raise funds. However, such use of the emblem must always be made “within the limits of Articles 2 to 5” of the 1991 Emblem Regulations, particularly the following:

- a) Under Article 4, 1st para., of the 1991 Emblem Regulations, “any confusion between the protective use and other uses of the emblem must be avoided.” In the present case, the question of protective use does not arise. As noted in the introduction of the Study, in such a case, it is the logo of the component of the Movement which must be used and which “shall be relatively small.”³³⁸ Article 23, 2nd para., of the 1991 Emblem Regulations adds that “[t]he object shall in no way suggest the protection of international humanitarian law or membership of the Movement.”³³⁹ The commentary on this latter Article states that with clothing the risk of confusion is acute.

It can be concluded from these provisions that a sports team may be authorized to display the NS logo, one that is small in size and, as far as possible, accompanied by an explanatory text.³⁴⁰ Clearly, if the sports team were to make use of a large NS logo, there is a risk of creating undesirable confusion: the team may be perceived as the “Red Cross/Red Crescent/Red Crystal team”, or may be confused with the staff of components of the Movement when they (the Movement staff) wear a *dossard* displaying the emblem for protective purposes.

- b) Article 3 of the 1991 Emblem Regulations states that “[t]he National Society may use the emblem only for activities consistent with the principles set out by International Conferences of the Red Cross and Red Crescent. It shall ensure at all time that nothing shall tarnish its prestige or reduce the respect due to the emblem.” This very general provision is crucial, as it reaffirms the fact that the prestige of and respect for the emblem must be preserved at all times.³⁴¹

The sports team in question must therefore in no way be connected to activities which might be contradictory to the humanitarian work of the NS or the Movement or to the Fundamental Principles. In this regard, it is true that there are sports teams with positive public images and reputations. By linking the public image and sporting activities of sports teams to NS sponsorships (for fundraising or promotion activities), NS may acquire access to groups normally out of their reach. However, NS must carefully balance the potential advantages of such links with their risks. Indeed, professional sport sometimes has a negative image – owing, for instance, to drugs scandals, money-orientated policies, violence, hooliganism and outbreaks of racist behaviour –, which may

³³⁸ Article 4, 1st para., of the 1991 Emblem Regulations.

³³⁹ Article 5, 3rd para., of the 1991 Emblem Regulations specifies that “Use of the emblem for decorative purposes is permitted, within the limits of Article 3, on the occasion of public events or on material intended to promote the National Society and the Movement.” In such cases, “a freer design is permitted.” However, there is no exception to the size of the emblem, which must still be relatively small, and the prestige of the emblem must as always be preserved (see commentary on Article 5, 2nd and 3rd paras, of the Regulations).

³⁴⁰ Generally speaking, to avoid any misunderstanding, it is important to make sure that the public understands why the NS logo is being displayed on the jerseys of a sport team.

³⁴¹ On a related subject, Article 23, 3rd para., sub-para. d, of the 1991 Emblem Regulations provides that an NS co-operating with a commercial company or other organization may display the company’s trademark provided, *inter alia*, that “the company concerned must in no way be engaged in activities running counter to the Movement’s objectives and Principles or which might be regarded by the public as controversial.”

have a negative impact on the prestige of and respect for the emblem. At the very least, the reputation of the sports team and its “behaviour” should be carefully assessed and regularly monitored.

Lastly, to protect the prestige of the emblem, the position of the NS logo on the team's jerseys must be given a great deal of careful thought. As far as possible, it is important to not give the general public any reason for confusing the NS logo with other logos and any suggestion of association with them.

- c) Article 23, 4th para., of the 1991 Emblem Regulations also states that an NS “shall not authorize the display of its emblem on items for sale.” Therefore, if an NS is able to authorize the display of its logo on the jerseys of a sports team, it must allow use of its logo **only on the jerseys that are actually worn by the team's players** and not on the jerseys that are sold by the sports team/club to the public.

What should be included in the contract between the NS and the sports team authorizing such use of the emblem or the NS logo?

Any contract signed by an NS, authorizing the use of its logo by a sports team, must contain a number of important conditions. The most important, in keeping with the stipulations of Article 23, 3rd and 4th paras, of the 1991 Emblem Regulations, are the following:

- a) The contract between the NS and its partner must be in writing.
- b) The contract must be valid only for a short period of time (e.g. one to three years) and the NS must regularly assess that the prestige of the emblem and its perception are not jeopardized.
- c) Specifically, in accordance with Article 23, 4th para., of the 1991 Emblem Regulations, the conditions governing the use of the emblem must be an essential element in the contract and deliberate violation of those conditions must entitle the NS to terminate the contract with immediate effect, without being liable for any compensation. Similarly, if the prestige of the emblem is undermined by the activities or behaviour of the sports team, the NS must reserve the right to terminate the contract.

It is also important that the written contract be approved by the NS legal experts before it is signed.

Warning

Entering such a bilateral (or three-sided) sponsorship agreement is a difficult undertaking from a legal and a business point of view. It is no easy task for an NS to foresee all the situations that might hamper the work of the Movement and/or put at risk the status of the NS logo. In particular, the initiative must be launched with the greatest care. The NS must also be prepared to go to great lengths in explaining its role in the partnership and the benefit to it of having its logo displayed on the jerseys of the sports team.

Developing sponsorships and raising its visibility are perfectly valid objectives for any NS. However, there are difficulties and risks related to respect for the use of the emblem and the public image of the NS and, by extension, of the Movement. These are such that authorizing the use of NS logos by sports teams in the framework of their partnership with NS are not encouraged.

38) *What emblems and logos should be displayed on cover pages of National Societies' publications, and in what manner?*

Legal or statutory basis

Article 44, 2nd para., GC I
 Preamble, para. 10, AP III
 Article 3(2), 3rd sub-para., Statutes of the Movement

Recommendations

- As components of the Movement and members of the International Federation, NS are allowed to display the red cross and red crescent emblems side by side (representing the Movement) and the International Federation's logo on their own publications.
- NS may not display the ICRC logo on such publications, unless authorized by the ICRC.³⁴²
- If an NS decides to display the International Federation's logo on the cover pages of their own publications, it may add a descriptive statement, such as, "A member of the International Federation of Red Cross and Red Crescent Societies".
- On their own publications, in view of recent developments in international law (i.e., the adoption of AP III), NS are recommended to display – in the chronological order of their adoption – the red cross, the red crescent and the red crystal. Since the components of the Movement should not use them in a way that might suggest a change of name or emblem for the Movement, a descriptive statement should accompany such display, for instance:
 - i. "Distinctive emblems of the International Red Cross and Red Crescent Movement";
 - or
 - ii. "Distinctive emblems which may be used by the components of the International Red Cross and Red Crescent Movement."³⁴³

Analysis

Introduction

Since NS are components of the Movement and members of the International Federation, they are allowed to display the latter's signs on their own publications, e.g. on front/back pages.

However, NS may not display the ICRC logo on their publications.³⁴⁴ The ICRC and NS are distinct components of the Movement, independent from one another.

³⁴² On the use by the ICRC of its logo, see Question 25 of the Study.

³⁴³ These are examples of statements. NS are free to select different wording provided that it conveys a correct message. In case of doubt, NS are invited to consult the ICRC. On the ICRC policy regarding this issue, see Question 40 of the Study.

³⁴⁴ On the use by the ICRC of its logo, see Question 25 of the Study.

The High Contracting Parties to AP III note, in para. 10 of the Preamble to AP III, "the determination of the (...) International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems."

Consequently, if NS decided to depict graphically the International Federation *and/or* the Movement on their publications, e.g. on front/back pages, they may continue to display only the red cross and the red crescent.

Graphic depiction of the International Federation

If an NS decides to depict the International Federation on the front/back pages of its own publications, it may add to the International Federation's logo a descriptive statement, such as, "A member of the International Federation of Red Cross and Red Crescent Societies". The logo of the International Federation is a red cross and a red crescent, side by side, set on a white background within a red rectangle, and accompanied by the words, "International Federation of Red Cross and Red Crescent Societies".

Emblems that may be used by the components of the Movement

In accordance with para. 10 of the Preamble to AP III, the components of the Movement should not use the red cross, the red crescent and the red crystal together in a way that might suggest a change of name or emblem for the Movement.

Article 3(2) of the Statutes of the Movement gives NS a mandate to "disseminate and assist their governments in disseminating international humanitarian law." Disseminating (through their publications, etc.) the contents of AP III, particularly of the significance of the red crystal, is therefore a duty of NS.

In view of this and of recent developments in international law (i.e., the adoption of AP III), it is recommended that NS display – in the chronological order of their adoption – the red cross, the red crescent and the red crystal. A descriptive statement should accompany such display, for instance:

- i. "Distinctive emblems of the International Red Cross and Red Crescent Movement"
- or
- ii. "Distinctive emblems that may be used by the components of the International Red Cross and Red Crescent Movement."³⁴⁵

These are examples of statements. NS are free to select different wording provided that it conveys a correct message. In case of doubt, NS are invited to consult the ICRC.

³⁴⁵ On the ICRC policy regarding this issue, see Question 40 of the Study.

39) *What emblems and logos should National Societies reproduce on their letterheads?*

Legal or statutory basis

Article 44, 2nd para., GC I
 Articles 1 and 5, 1991 Emblem Regulations
 Preamble, para. 10, Articles 2 and 3(1) and (2), AP III
 Article 3(2), Statutes of the Movement

Recommendations

- On their letterheads, NS should adopt a logo (indicative device) that is strict in its design (the emblem together with the name or initials of the NS), without any decoration, as an application of the general rules about the logo.
- As far as the adoption of the red crystal is concerned, NS that wish to use, for indicative purposes, a combination of emblems (Article 3(1)(a) of AP III) or another emblem which has been in effective use by a High Contracting Party and meets the other requirements of Article 3(1)(b) of AP III, should include their chosen emblem(s) in the red crystal on letterheads and on any other material which is likely to be sent out of their national territory.
- As members of the International Federation, it is possible for NS to add the International Federation's logo to their letterheads. This should be accompanied by a descriptive statement, such as, "A member of the International Federation of Red Cross and Red Crescent Societies".
- On their letterheads, in view of recent developments in international law (i.e., the adoption of AP III), it is recommended that NS display – in the chronological order of their adoption – the red cross, the red crescent and the red crystal. Since the components of the Movement should not use them in a way that might suggest a change of name or emblem for the Movement, a descriptive statement should accompany such display, for instance:
 - i. "Distinctive emblems of the International Red Cross and Red Crescent Movement";
 - or
 - ii. "Distinctive emblems which may be used by the components of the International Red Cross and Red Crescent Movement."³⁴⁶
- In order to avoid creating confusion between the different components of the Movement, NS must not add the ICRC logo to their letterheads.
- Because of the strictly indicative nature of letterheads, the components of the Movement should not display the logo of an external partner together with their own logos on their letterheads, in order to avoid assuming the identity of that partner.³⁴⁷

³⁴⁶ On the ICRC policy regarding this issue, see Question 40 of the Study.

³⁴⁷ For a further consideration of the use of such a "double logo", see Question 22 of the Study.

Analysis

The logo on the letterhead: an indicative use of the emblem

The commentary on Article 5, 2nd and 3rd paras, of the 1991 Emblem Regulations makes a distinction between "the indicative use showing that a person or an object is linked to the Society, in which case strict design is essential" and "indicative use for the purpose of promoting the National Society and the Movement, in which case a freer design is permitted if it is not prejudicial to the prestige of the emblem".

The commentary goes on to say that the use of the emblem(s) on letterheads illustrates the former kind of indicative use.³⁴⁸

1. Not less than the logo

As a "purely" indicative use, the employment of the emblem(s) by NS on their letterheads and on other official documents (and publications) must be in accordance with Article 5, 2nd para., of the 1991 Emblem Regulations, which stipulates that:

"The emblem used indicatively shall be accompanied by the name or initials of the National Society. There shall be no drawing or writing on the cross or the crescent [or the crystal] which shall always be dominant element of the emblem. The ground shall always be white."

Thus, in line with the first sentence of Article 5, 2nd para., of the 1991 Emblem Regulations, NS are recommended to retain their full names (or initials) in their logos.³⁴⁹ Since "Red Cross", "Red Crescent", "Red Crystal", "Red Cross and Red Crescent", etc. are neither the names nor the initials of any NS, using only "Red Cross", etc. without reference to the State would be an extremely dubious practice.

There is also a serious, concrete risk of confusing the general public about the different components of the Movement: if all NS decided to omit the names of their respective States and to use only "Red Cross", "Red Crescent", "Red Crystal", or some combination thereof, on their logos, it would be almost impossible to differentiate them from one another.

2. Not more than the logo

The emblem in its indicative function (logo) requires a strict design, as specified in the second sentence of Article 5, 2nd para., of the 1991 Emblem Regulations,³⁵⁰ i.e., the emblem together with the name or initials of the NS. Adding decorative elements to this strict design should therefore be avoided.

³⁴⁸ In this regard, the French version of the commentary is even more clearly phrased than the English:

*"Il faut ici distinguer l'utilisation de l'emblème pour indiquer qu'une personne ou un bien est rattaché à la Société, utilisation pour laquelle la rigueur du graphisme s'impose, et l'utilisation à titre de promotion de la Société et du Mouvement, où une certaine souplesse est tolérable si elle ne porte pas atteinte au prestige de l'emblème. Dans ce dernier cas, c'est à la Société nationale de juger, en fonction de la législation nationale et de son contexte national, s'il est possible et opportun d'autoriser un tel usage. La souplesse du graphisme pourra consister par exemple en une croix rouge sertie d'or, un croissant dont la nuance du rouge contient des gradations, une croix découpée, un emblème recouvert d'un motif. **La Société n'utilisera pas d'un tel graphisme sur les bâtiments qu'elle utilise, ni sur son papier à lettres, puisqu'il s'agit là à l'évidence de cas d'usage indicatif.**"* (Emphasis added)

³⁴⁹ The reference to "full name or initials" means the name under which it was established as an NS by the State and recognized by the ICRC. The name or initials of the NS may be placed on either side of the red cross/red crescent/red crystal, below these emblems, or somewhere else.

³⁵⁰ See also the commentary on Article 5, 2nd para., of the 1991 Emblem Regulations.

In addition, it is important that each component of the Movement (NS, the International Federation, the ICRC) retain its own identity. For instance, NS should not enclose the emblem in a circle or two circles (a “roundel”) which could create confusion with the ICRC logo.³⁵¹

3. Use of the red crystal

Where the use of the red crystal as an indicative device is concerned, Article 3(1) and (2) of AP III states that:

- “1. National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes:
 - a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems; or
 - b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol (...)
2. A National Society, which chooses to incorporate within the third Protocol emblem another emblem in accordance with paragraph 1 above, may, in conformity with national legislation, use the designation of that emblem [or of a combination of those emblems] and display it within its national territory.”

Thus, if an NS were to adopt the red crystal as its emblem (which would require an amendment of its domestic law), it may decide also to incorporate within the red crystal, for indicative purposes, one or a combination of the existing emblems.

If the red crystal is chosen, the NS may use the name, “National Red Crystal Society”, or employ the name of the emblem (or of the combination of the emblems) incorporated within the red frame. “National Red Crystal Society”, “National Red Cross Society”, “National Red Crescent Society”, “National Red Cross and Red Crescent Society” are concrete examples of the possibilities provided for NS by Article 3(1) and (2) of AP III.

For the letterhead, correct application of Article 5, 2nd para., of the 1991 Emblem Regulations requires that the name of the country (or its adjective) be mentioned in proximity to the name of the NS emblem(s) in its logo.

Finally, the *Commentary on AP III* (Article 3(2)) explains that, although an NS may retain the *designation* of the emblem(s) incorporated in the red crystal as its name at all times, it may use the unframed combination of emblems (Article 3(1)(a) of AP III) or “another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol” (Article 3(1)(b) of AP III) only on its national territory.³⁵²

For example, if an NS chose the name of “National Red Cross and Red Crescent Society”, it would not be authorized to display, outside its national territory, as its indicative device, the red cross and red crescent not incorporated within the red crystal.

³⁵¹ The use of the roundel by the ICRC dates back as early as July 1865; see Gustave Moynier and Henry Dunant, *3ème Circulaire: Le Comité International de Genève à Messieurs les Présidents et les Membres des Comités de Secours aux militaires blessés dans les divers Pays*, Geneva, 31 July 1865.

³⁵² *Commentary on AP III*, Article 3(2), p. 192.

Consequently, an NS wishing to use a combination of emblems, or another emblem which has been in effective use by a High Contracting Party and meets the other requirements of Article 3(1)(b) of AP III, must not display, without incorporating it in the red crystal, the design or pictorial arrangement they have chosen on letterheads or on any other material which is likely to be sent out of its national territory. For letters or material likely to be sent out of the national territory, such an NS should incorporate its chosen emblem(s) in the red crystal.

Logos of other entities on NS letterheads³⁵³

1. The ICRC logo

As stated above, in relation to the adoption by an NS of a logo that is similar to the ICRC's, it would be better if each component of the Movement were to retain its own identity. In keeping with the logic of this recommendation, NS must not add the ICRC logo to their letterheads (which are "purely" indicative).

Although they are components of the same Movement and cooperate very closely in fulfilling their respective mandates, NS and the ICRC are separate and independent entities. The incorporation of the ICRC logo in NS letterheads (or if the ICRC were to do the same with an NS logo) would create unnecessary confusion between the different components of the Movement.

2. The logo of the International Federation

The importance for each component of the Movement to retain its own identity has already been mentioned. However, NS are members of the International Federation. Therefore, NS may add the logo of the International Federation to their letterheads,³⁵⁴ accompanied by a descriptive statement, such as "A member of the International Federation of Red Cross and Red Crescent Societies."

3. Emblems that may be used by the components of the Movement

In accordance with para. 10 of the Preamble to AP III, the components of the Movement should not use the red cross, the red crescent and the red crystal together in a way that might suggest a change of name or emblem for the Movement.

Nevertheless, Article 3(2) of the Statutes of the Movement gives NS a mandate to "disseminate and assist their governments in disseminating international humanitarian law." Disseminating the contents of AP III, particularly of the significance of the red crystal (through their publications, etc.), is therefore a duty for NS.

³⁵³ For an analysis of the graphic depiction of the Movement on NS publications or documents, see Question 38 of the Study.

³⁵⁴ A reminder: the logo of the International Federation is the red cross and the red crescent enclosed in a rectangle with the words "International Federation of Red Cross and Red Crescent Societies."

In view of recent developments in international law (i.e., the adoption of AP III), NS are recommended to display on their letterheads – in the chronological order of their adoption – the red cross, the red crescent and the red crystal. A descriptive statement should accompany such display, for instance:

- a) “Distinctive emblems of the International Red Cross and Red Crescent Movement”
- or
- b) “Distinctive emblems that may be used by the components of the International Red Cross and Red Crescent Movement.”³⁵⁵

*4. The logos of external partners*³⁵⁶

As explained in the 1991 Emblem Regulations, the logo used on letterheads is a “typical case” of indicative use of the emblem.³⁵⁷ That means that it defines the identity of the NS.

In order to ensure the independence, neutrality and impartiality of the Movement, and to secure the confidence of the general public and combatants that the Movement abides by these principles, it is crucial that components of the Movement not assume the identities of external partners. It is therefore recommended that components of the Movement not add the logos of external partners to their letterheads.

³⁵⁵ On the ICRC policy regarding this issue, see Question 40 of the Study.

³⁵⁶ For a further consideration of the use of such a “double logo”, see Question 22 of the Study.

³⁵⁷ Commentary on Article 5, 2nd and 3rd paras, of the 1991 Emblem Regulations.

Chapter C. USE BY THE ICRC

40) *What emblems should the ICRC display on its publications relating to the International Red Cross and Red Crescent Movement?*

Legal or statutory basis

Article 44, 3rd para., GC I
 Preamble, para. 10, AP III
 Article 5(2)(g), Statutes of the Movement
 Article 4(1)(g), Statutes of the ICRC

Recommendations

- In principle, the ICRC should display the red cross, red crescent and red crystal emblems on all its publications that are related to the emblem or to other Movement issues.
- The display of the emblems should reflect the chronological order of their adoption: the red cross first, then the red crescent and, lastly, the red crystal.
- Since the components of the Movement should not use the emblems in a way that could be interpreted as suggesting a change of name or emblem for the Movement, an explanatory statement should accompany the display of the three distinctive emblems on the cover pages of ICRC *reference documents* that are related to Movement issues. The ICRC has chosen the following phrase: "Distinctive emblems of the International Red Cross and Red Crescent Movement."³⁵⁸

Analysis

Introduction

In para. 10 of the Preamble to AP III, the High Contracting Parties note "the determination of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems."

This means that any official decision to change the current names or the emblems of the Movement can be taken only by a Statutory body of the Movement (presumably the International Conference).

However, para. 10 of the Preamble to AP III does not forbid the representation of the three distinctive emblems (the red cross, the red crescent and the red crystal) for didactic purposes, e.g. on the front pages of information sheets or other documents related to Movement issues. Nevertheless, an explanatory statement should accompany such a representation on ICRC *reference documents*, e.g. on the cover pages of the Handbook of the Movement.

³⁵⁸ For recommendations to the other components of the Movement on the display of the emblems on documents/publications related to the Movement, see Questions 38 and 39 of the Study.

The display of the distinctive emblems on ICRC publications for dissemination purposes

The two following remarks are of substantive importance regarding the motivation of the ICRC to display the *red crystal* on its publications for dissemination purposes:

- i. Combatants and civilians during armed conflicts, as well as the civilian population in general, have to become accustomed to the red crystal as a new protective device. This emblem must be respected and protected in the same way as the red cross and the red crescent.
- ii. Article 5(2)(g) of the Statutes of the Movement and Article 4(1)(g) of the Statutes of the ICRC, both declare that the ICRC "[has] to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof." Consequently, the ICRC is obliged to disseminate the contents of the comparatively recent AP III, in order to implement its mandate.

Regarding the sequence in which the emblems are to be represented, the ICRC has decided to follow the chronological order of their adoption: the red cross (officially recognized in 1863-1864), the red crescent (officially recognized in 1929) and the red crystal (officially recognized in 2005).

The display of the distinctive emblems on ICRC reference documents

In accordance with para. 10 of the Preamble to AP III, and in order to make clear that the Movement is not adopting a new graphic representation, an explanatory statement should accompany the display of the three distinctive emblems on ICRC *reference documents* that are related to Movement issues.

The ICRC has chosen the following phrase: "Distinctive emblems of the International Red Cross and Red Crescent Movement".³⁵⁹

³⁵⁹ The preposition "of" has to be broadly interpreted. The wording of the explanatory statement must not be understood as meaning that the three emblems together constitute the graphic representation of the Movement.

41) *How does the ICRC use its name, logo and image for commercial purposes?*

Legal or statutory basis

Article 44, 3rd para., GC I

Article 23, 1991 Emblem Regulations

Resolution 10, Council of Delegates, 2005, Annex: "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnership"

Introduction

This section presents the instruments adopted by the ICRC concerning the commercial issue involving the use of its name, logo and image. It contains the following:

- the Guidelines on the use of the name and image of the ICRC by providers of goods and services;
- the Guidelines on the use of the red cross emblem and the name and logo of the ICRC for fundraising purposes;
- the ICRC Corporate Support Group.

It is worth reiterating that the ICRC has pledged to apply the 1991 Emblem Regulations to the greatest possible extent. As stated in the Preamble to the Regulations, the ICRC "considers that the scope allowed by the revised version is as wide as it possibly can be within the framework of the Geneva Conventions." Thus, the guidelines and policies presented in this section are designed in keeping with the criteria defined in the Emblem Regulations, in particular their Article 23. The other pertinent legal or statutory bases are Article 44, 3rd para., of GC I and the "Substantive provisions of the International Red Cross and Red Crescent Movement for corporate sector partnerships" (Annex to Resolution 10 of the 2005 Council of Delegates).

The structure of this section is slightly different from the rest of the Study: it does not contain recommendations, but is instead a short presentation of the manner in which the ICRC has dealt with the commercial issues involving the use of its name, logo and image.

If NS consider these guidelines and policies to be appropriate for their own purposes, the ICRC would encourage them to adopt similar instruments.

a) **Guidelines on the use of the name and image of the ICRC by providers of goods and services**

Guidelines on the use of the name and image of the ICRC by providers of goods and services

Adopted in September 2005

Purpose

The present guidelines establish the framework for the use of the name and image of the ICRC¹ by companies that provide the organization with goods and services (hereafter: providers). In particular, they set the terms and conditions under which the ICRC may authorize providers to use its name or image for public communication purposes.²

The purpose of the guidelines is to preserve the ICRC's image, reputation and integrity. It is also to maintain the exclusive character of use of the name and image of the ICRC by private companies so as to ensure that a partnership with the ICRC remains attractive and of value to donor companies.

General principle

Providers may not use the ICRC logo.³ This logo may only be used, on certain conditions, by donor companies that enter into partnership with the ICRC. Beforehand, the ICRC shall carry out an ethical evaluation of the activities and behaviour of these companies.⁴

In principle, providers may not refer to the ICRC for public communication purposes. The contracts that the ICRC signs with its providers must clearly stipulate that no use may be made of the name, image or logo of the ICRC or of the red cross or red crescent emblem⁵ without prior authorization.

If a provider wishes to use the name "ICRC" (or "International Committee of the Red Cross") or an image in which the ICRC appears, it must first obtain the ICRC's explicit authorization to do so. The ICRC prohibits the use of its name or image on articles for sale.

¹ The name of the ICRC is understood as meaning the acronym "ICRC" (or "CICR", etc.) or the full name "International Committee of the Red Cross" (or "Comité international de la Croix-Rouge", etc.). The image of the ICRC is any representation of the ICRC or its activities (e.g. a delegate with an ICRC badge, a building with an ICRC flag or a car or truck with an ICRC sticker).

² Public communication comprises public communication strategies and efforts (relations with the media, websites, marketing activities, campaigns, audio-visual productions, etc.). It does not include the provider's internal communications to its staff members or subsidiaries.

³ The ICRC logo consists of a red cross surrounded by two concentric circles in which the words "Comité international Genève" appear above the initials CICR (or ICRC, etc.).

⁴ The Head of Corporate Partnerships at the ICRC's External Resources is in charge of ethical evaluations.

⁵ The emblem has a protective use in wartime. Misuse of the emblem is any use not expressly authorized by the Geneva Conventions and their Additional Protocols.

Conditions

Authorization to use the name or image of the ICRC – and the certificate⁶ confirming such authorization – will only be granted to providers on the following conditions:

- a) Use of the name or image of the ICRC must not give rise to any confusion in the public's mind between the ICRC and the provider's activities and/or the quality of its product and services.
- b) The name and image of the ICRC may only be used for a clearly specified period of time.
- c) The name and image of the ICRC may only be used in connection with goods or services actually provided.
- d) The ICRC must derive material or financial benefits from the use of its name or image through improved relations with the provider.⁷

If it appears that a provider's policies or activities contravene the Policy for Corporate Sector Partnerships,⁸ the ICRC shall not authorize the provider to use its name or image. The ICRC shall also examine the appropriateness of terminating its relationship with the provider.

Withdrawal of authorization

The ICRC reserves the right to withdraw its authorization at any time if there is a risk that a provider's activities might jeopardize the ICRC's reputation.

Legal recourse

The ICRC reserves the right to avail itself of the laws in force in Switzerland on the protection of the red cross / red crescent emblem, trademarks and personality, and in the country of the provider if that country's laws afford at least the same degree of protection as that afforded under Swiss law, and to take whatever action is provided for thereunder.


⁶ After authorization is granted, the ICRC shall issue a certificate with a description of the plan for use of the name and/or image of the ICRC by the provider on the overleaf.

⁷ From a cost-benefit perspective (cost recovery), it is important to ensure that the investment required to implement these guidelines is markedly lower than the expected benefits, which may, for example, take the form of more favourable sales terms granted by the provider.

⁸ The policy was adopted by the Council of Delegates in Seoul in November 2005. It stipulates that the components of the Movement may not enter into partnership with companies whose activities are contrary to the aims and principles of the Movement (production of weapons, violations of human rights, international humanitarian law or labour law, activities that are detrimental to health or may have a negative impact on the Movement's operational capacity, etc.).

Annex: Certificate confirming the authorization to use the name or image of the ICRC

NS are free to adopt a similar practice of issuing a certificate with the authorization to use their own image, such as the one presented below. It was felt that the practice and model certificate might be of interest to NS. Please note that the Guidelines on the use of the name and image of the ICRC by providers of goods and services are reproduced on the back of the Certificate.

Usage du nom et du logo CICR	Le Comité international de la Croix-Rouge autorise	Comité international de la Croix-Rouge
	L'entreprise XXX	19, Avenue de la Paix 1202 Genève Suisse
	Adresse	Tél.: +41 22 734 60 01
	NP Lieu	Fax: +41 22 730 27 68
		www.icrc.org
	à faire usage du nom et de l'image du CICR pour la période qui s'étend du	
	XX.XX.XXXX au XX.XX.XXXX	
	Donneurs d'autorisation	
	M. XXXXX M. XXXXXX	
	Genève le, XX.XX.XXXX	 CICR

b) **Guidelines on the use of the red cross emblem and the name and logo of the ICRC for fundraising purposes**

Guidelines on the use of the red cross emblem and the name and logo of the ICRC for fundraising purposes

This note gives replies to basic questions on the use of the emblem in the context of partnerships.

1. Introduction

The **red cross emblem** – a red cross on a white ground – is a **symbol of protection** (protective use) and of membership of the International Red Cross and Red Crescent Movement (indicative use). In times of armed conflict it is the visible sign of the protection conferred by the Geneva Conventions on the victims and those who come to their aid; in peacetime, it shows that a person or object is linked to the International Red Cross and Red Crescent Movement, of which the International Committee of the Red Cross (ICRC) is the founding body. Hence the emblem is also a symbol of the Movement's seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

2. Use of the ICRC logo

The ICRC may use its logo for fundraising events or campaigns that it organizes, in accordance with the Movement's Regulations on the Use of the Emblem. Private companies may be associated with such events or campaigns under the following conditions:

- (a) no confusion must be created in the mind of the public between the company's activities or the quality of its products on the one hand and the ICRC logo or the ICRC itself on the other;
- (b) the event or campaign must be linked to one particular activity; hence the use of the logo is limited in time;
- (c) the company concerned must in no way be engaged in activities which run counter to the Movement's objectives and principles or might be regarded by the public as controversial;
- (d) the ICRC reserves the right to cancel its contract with the company concerned at any time and to do so at very short notice, should the company's activities undermine respect for the emblem or the ICRC logo or detract from the prestige which is attached to them;
- (e) the material or financial advantage that the ICRC gains from the event or campaign must be substantial;
- (f) the ICRC shall not authorize the display of the ICRC logo on items offered for sale, but may authorize its reproduction in separate leaflets accompanying the items for sale and in the company's advertising material;
- (g) accompanying leaflets as well as any kind of advertising material showing the ICRC logo must contain a clear explanation regarding the event or campaign, the services rendered to the ICRC and the use to be made of the proceeds;
- (h) the size of the ICRC logo must be of reasonable proportions in comparison with the rest of the display;

- (i) any kind of advertising that displays the ICRC logo must be approved by the ICRC before it goes to print or production.

3. Use of the ICRC's name

The above guidelines also apply to use of the name "International Committee of the Red Cross" and its acronym "ICRC". The correct names and acronyms in English, French, German and Spanish are as follows:

- International Committee of the Red Cross (ICRC)
- Comité international de la Croix-Rouge (CICR)
- Internationales Komitee vom Roten Kreuz (IKRK)
- Comité Internacional de la Cruz Roja (CICR)

The correct names and acronyms in other languages will be supplied upon request.

c) The ICRC Corporate Support Group

For decades, the ICRC has been developing close relations with civil and military authorities, international organizations, non-governmental organizations and academic institutions. Until recently however, the ICRC had very few systematic contacts with the business community, except when buying goods and services from private suppliers.

By the end of the 1990s the ICRC, with several objectives in mind, felt it necessary to expand its network by engaging with the private sector to exchange expertise and know-how, for instance, and to diversify its funding sources. This is why the ICRC has recently approached a selected group of Swiss-based companies to establish the *Corporate Support Group* (CSG).

In order to become a member of the CSG, a company must:

- have strong ethics, and policies and activities compatible with the ICRC principles and values;
- have pledged to donate a minimum amount of three million Swiss francs over a period of six years;
- fulfil the criteria defined in the Movement Policy for Corporate Sector Partnerships;³⁶⁰
- fulfil the "Ethical principles guiding partnerships" that are listed below.³⁶¹

³⁶⁰ Resolution 10 of the 2005 Council of Delegates; the "Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships" are annexed to the Resolution.

³⁶¹ These Principles are always annexed to the Memorandum of Understanding signed with the corporate partners.

Ethical principles guiding partnerships

ICRC's ethical principles for corporate partnerships establish a framework for the relationship between the ICRC and companies supporting the organization and are in keeping with the Movement's own principles, the Movement's statutes and the specific mandate of the ICRC itself.

The decision to establish a partnership is taken on a case-by-case basis after three concerns have been weighed:

1. As a matter of absolute priority, the ICRC does not accept any support from a company if this may endanger the organization's ability to carry out its mandate.
2. The ICRC accepts support from the private sector only if the policies and activities for the company concerned do not fundamentally contradict the Movement's statutes and the specific mandate of the ICRC.
3. The ICRC assesses the potential impact of a partnership on its public image.

To guide it in these decisions, the organization has set out the following ethical criteria:

- The ICRC does not accept support from companies involved in the direct manufacture or sale of arms, or having a majority stake in such companies.
- The ICRC does not accept support from companies involved in any violations of international humanitarian law which come to its attention by means of the information available to the organization through its worldwide presence in conflict-prone areas.
- The ICRC does not accept support from companies which fail to respect internationally recognized human rights and fundamental labour standards, in particular those set out in the Universal Declaration of Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.
- The ICRC does not accept support from companies whose products are widely recognized as harmful to health, or against which there are credible allegations of non-observance of widely recognized rules and regulations such as those formulated by the World Health Organization (WHO).
- The ICRC also considers whether there are major public controversies surrounding the company's products, policies or activities. It bases its judgment on reports and assessments provided by professional rating agencies and other information available from credible sources.

The ICRC seeks partnerships with companies that are committed to meeting the standards mentioned above. It also favours partnerships with companies that value and implement basic principles of sustainable development and ecological management of environmental resources.

CSG members may choose to allocate their donations to the capital or "endowment fund" of the Foundation for the ICRC or directly to humanitarian activities in the field. A mixed solution may also be chosen by CSG members. Interest from the Fund finances the continuous training of ICRC staff.

CSG members benefit from an exclusive partnership with the ICRC. Membership in the Group offers the following benefits to companies:

1. A privileged relationship with a truly global humanitarian actor

CSG members are global players on world markets. Every major humanitarian disaster that occurs, anywhere in the world, affects them and their stakeholders in one way or another. The ICRC, active in more than 80 countries, is one of the few truly global organizations that provide an immediate response to humanitarian catastrophes. For the Corporate Partner, becoming a CSG member means building a long-term, exclusive and privileged relationship with the ICRC, enabling both partners to jointly discuss and respond to urgent humanitarian crises.

2. Relations with stakeholders

Upon request, the ICRC will play an active role in special events that the Corporate Partner wishes to organize for its key stakeholders such as employees, clients, special guests or suppliers.

For instance, ICRC operations managers may give a presentation upon their return from the field in order to share their experiences and insights. An ICRC director or expert may focus on a specific issue such as crisis management, health services, water treatment and provision, risk assessment, and so on.

Furthermore, the ICRC may provide ongoing information on its humanitarian activities in "hot spots", through news flashes, videos, posters, publications and other modes of communication.

3. Exclusive meetings, information and exchange of skills

The Corporate Partner will enjoy exclusive benefits in terms of dialogue and informational exchanges with the ICRC.

The ICRC will organize an annual, high-level meeting with CSG members, focusing on strategic issues of mutual interest.

Ad hoc meetings at the level of senior executives will be organized between the ICRC and Corporate Partners interested in addressing a specific issue (e.g. geopolitical trends, communication and human resources management during a crisis, risk assessment).

4. Image and communication

This is the most important aspect of the subject for the purpose of this Study. Certain privileges are granted to CSG members, but always in conformity with the 1991 Emblem Regulations. CSG membership entitles a member company to use the name, image and logo of the ICRC in its communications, as laid out hereafter, and pursuant to prior written approval by the ICRC. The baseline "ICRC Corporate Partner" below is reserved exclusively for CSG members:



The CSG member may use this baseline in its corporate communications (however not for the purpose of advertising, marketing or selling their products and services).

Further, it is important to note that the "Guidelines on the use of the red cross emblem and the name and logo of the ICRC for fundraising purposes" presented above (under point (b) of this section) are always appended to the Memorandum of Understanding signed with CSG members.

Lastly, the ICRC shall acknowledge the contributions of its Corporate Partners in its institutional communications (e.g. its annual report). The list of CSG members is published under the corporate support section of the ICRC website.

Chapter D. USE BY OTHER ACTORS

42) *Non-governmental organizations or private corporations registering as "Red Cross", "Red Crescent" or "Red Crystal" in a State where a National Society is already recognized: How should this issue be dealt with?*

Legal or statutory basis

Articles 38, 53, 1st para., and 54, GC I
 Articles 2(3) and (4), and 4 (2), Statutes of the Movement
 Fundamental Principles of the Movement (Unity)

Recommendations³⁶²

- The registration of an NGO or private corporation as a "Red Cross" or a "Red Crescent" (or a "Red Crystal") in a State with a recognized Red Cross/Red Crescent NS violates the rules governing the use of the name and emblem as well as the Fundamental Principle of Unity. It is prohibited.
- If this happens, the recognized NS must initiate, in consultation with the competent State authorities, the appropriate demarches to remedy the problem:
 - i. amicable interventions (contact with the NGO or private corporation);
 - ii. official request to the registering office to "de-register" the NGO or private corporation;
 - iii. judicial proceedings against the NGO or private corporation.
- The responsibility for ensuring proper respect for the rules governing the use of the emblem is primarily that of the State authorities and the NS has to cooperate with them. The demarches mentioned above must therefore be undertaken by the NS and/or by the authorities, but always in consultation with one another. The ICRC and the International Federation are prepared to support NS demarches in this regard.

Analysis

Introduction

This situation, in which a "Red Cross", a "Red Crescent" or a "Red Crystal" society or organization registering³⁶³ in a State with a recognized NS, has arisen in several countries.

Registration by an NGO or a private corporation as a "Red Cross", a "Red Crescent" or a "Red Crystal" has occurred on different bases, according to the context and the legal framework of the State in question, for instance:

- a) as a trust in the competent office of registration;
- b) as a society in the office of the Registrar of Societies;

³⁶² The recommendations apply, *mutatis mutandis*, also to situations in which an NGO or a private corporation using the name and/or emblem is not, or not yet, registered. The NS should use the same arguments and undertake similar demarches to solve the issue.

³⁶³ The word "incorporation" is sometimes used instead of "registration".

- c) as a charitable company under the Companies Act in the office of the Registrar of Companies;
- d) as a private law association under the Law on Associations;
- e) as an NGO under the relevant legislation.

Why is it a problem?

The situation is untenable when regarded from two different angles:

1. Misuse of the name and emblem

Article 53, 1st para., of GC I provides that:

“The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross", or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.”

Article 54 of GC I adds that “[t]he High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53”.

The name and emblem of the Red Cross/Red Crescent/Red Crystal are therefore protected under international law and States have the obligation to implement such protection in their national legislation.³⁶⁴ This legislation should define the persons and the entities entitled to the use of the name and emblem of the Red Cross/Red Crescent/Red Crystal, including the recognized NS.³⁶⁵

The misuse of such names and/or emblems is therefore prohibited and must be prevented and/or stopped by the competent authorities. The use by an entity of the name and emblem of the Red Cross, Red Crescent or Red Crystal, when a recognized NS is already in existence in a particular State constitutes a misuse.

2. Violation of the Fundamental Principle of Unity

The Fundamental Principle of Unity (contained in the Preamble to the Statutes of the Movement) reads as follows: “[t]here can be only one Red Cross or one Red Crescent Society in any one country.”

Article 4(2) of the Statutes of the Movement states that “[i]n order to be recognized (...) as a National Society, the Society shall meet the following conditions: (...) [b]e the only National Red Cross or Red Crescent Society of the said State”.

In the vast majority of States, the NS is recognized indeed as the sole Red Cross/Red Crescent Society that may carry out its activities within the national territory. This recognition is usually included in a piece of legislation or in a decree defining the status of the NS.³⁶⁶ The

³⁶⁴ On States' obligation in this regard, see Questions 44 and 45 of the Study.

³⁶⁵ Depending upon the legal tradition and system, this piece of legislation could be a Geneva Conventions Act, a specific law on the use and the protection of the emblem, etc.

³⁶⁶ A Model law on NS recognition has been developed by the Movement within the framework of the 1999 International Conference. Article 1.3 of the Model law stipulates that among the minimum requirements to be included in such legislation, this should be one: "The Society is the only National Society of the Red Cross or Red Crescent in (name of the country)". This provision is part of the minimum legal requirements for an NS to be recognized by the ICRC.

same provision is usually included in the Statutes of the NS. This is important. If the registration/incorporation office registers/incorporates the NS on the basis of Statutes containing such a provision, it would be a defiance of logic to register/incorporate another entity using the emblem.

The registration/incorporation of another Red Cross/Red Crescent/Red Crystal entity on the same territory as a recognized NS is therefore an important issue not only for the recognized NS itself but also for the office that is responsible.

Article 2(3) and (4) of the Statutes of the Movement provides that:

“The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement (...) The States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles.”

States, as members of the International Conference of the Red Cross and Red Crescent, unanimously adopted the Statutes of the Movement. As part of their obligation to "support" recognized NS, States are expected, at the very least, not to take measures contradicting the provisions of the Statutes.

Arguments to be used

The following arguments can be developed by NS (and State authorities) while tackling the problem under discussion:

- a) The Red Cross, Red Crescent and Red Crystal – the emblems and the names – are protected under international law (notably Articles 38 and 53 of GC I) and the authorities are obliged to take all the measures necessary to prevent and repress misuses of the emblems and the names (Article 54 of GC I).
- b) These emblems and names are also protected by the State's national legislation that sanctions a person or an entity who use the emblems/names without being entitled to do so.
- c) Serious damage may result from misuses of the emblems. This erodes, in every instance, the respect that combatants and civilians have for the Movement, and thus compromises the Movement's ability to fulfil its humanitarian mission. Misuse also causes confusion over the significance of the emblems and the names, and thereby dilutes the protection granted to the persons who are authorized to use them in times of armed conflict.
- d) The recognized NS has been established and recognized by national legislation (recognition law or decree). That article of the legislation, which provides that the recognized NS shall be the sole National Red Cross/Red Crescent/Red Crystal Society in the State, may be quoted in the demarches undertaken.
- e) The registration/incorporation of the entity misusing the emblem and name contravenes the Fundamental Principle of Unity. The Fundamental Principles are contained in the Statutes of the Movement, which were adopted in 1986 by the International Conference, which included the State in question.
- f) Alternative emblems and names should be suggested to the entity misusing the emblem (e.g., a green, instead of a red, cross or crescent).³⁶⁷

³⁶⁷ For examples of other alternative emblems, see Question 46 of the Study.

g) The possibility of launching legal proceedings based on national legislation should at least be left open and mentioned to the party misusing the emblem, if the amicable interventions prove to be unsuccessful.

Steps to remedy the problem

As in all cases of emblem misuse, the primary responsibility for stopping it rests with the State's authorities. NS have a mandate to cooperate with the authorities in such cases. So, if the issue is to be tackled effectively, consultation and cooperation between the NS and the competent State authorities is important.

However, it must be emphasized that NS must take the initiative in this situation because it is directly of consequence to them. Since it is a priority for the NS (and not necessarily one for the authorities), the NS should take the lead in the demarches for remedying the problem.

The ICRC and the International Federation are prepared to assist NS in such cases.³⁶⁸

It is recommended to undertake the following sequence of demarches:

a) The first step for the NS is always to formally contact (orally or in writing)³⁶⁹ the entity misusing the name and the emblem, in consultation with the competent public authorities, to request a change in its name and emblem. The arguments developed above should be part of this first demarche. Most cases of misuse are the result of ignorance of the existing rules. In the case under discussion, too, it is to be hoped that a clear explanation of the issues will be sufficient.

b) The NS could then write a letter to the competent State authorities, asking them to write to the entity in question to change its emblem and name in keeping with the provisions of the GC, of their AP and of national legislation. The competent authorities might be either the ministry responsible for ensuring the implementation of IHL or the protection of the emblem, or the ministry of whose portfolio includes NS issues.

c) In case the entity in question fails to take the appropriate steps to change its emblem and name, the next step is for the NS and/or the competent State authorities to write a letter to the appropriate registering authority, asking to have the entity struck off the register.³⁷⁰ This does not mean that it may not be registered/incorporated at all: it may be legally "registered/incorporated", but under a different emblem and name.

d) If it refuses to change its emblem and name, another possibility for the NS and/or the competent State authorities is to file a suit in the appropriate court of law under the law on the use and protection of the emblem.³⁷¹ The court would then decide that the entity has committed a misuse of the emblem (and the name) and order it to change its emblem and name (and impose the penalty defined in the applicable legislation). The complexity of the process and the chances of success, as well as the financial costs and the duration of the

³⁶⁸ For a specific explanation of the roles of the State authorities, the NS and the ICRC when a misuse of the emblem occurs, see Chapter III.A-D of the Study. As far as the International Federation is concerned, it is interesting to note that Resolution 9 of the XIXth session of the Board of Governors of the then League (held in Oxford in 1946) states:

"The Board of Governors, taking into account that sometimes there exists, at the same time as a National Society, another Society which illegally uses the same name, considers that in such a situation, the League should intervene to stop this state of affairs and request Governments to support National Societies in their efforts to that effect."

³⁶⁹ See model letter in Annex 1 to this Question.

³⁷⁰ See model letter in Annex 2 to this Question.

³⁷¹ Depending upon the national context, the procedure and the competent court could be defined in different types of legislation.

proceedings, must be carefully assessed before the decision is taken to institute legal action. In any event, in any legal action, the NS will need the support of its competent State authorities (if these authorities do not themselves take the lead in these legal proceedings).

Facilitating factors

1. Legislation

It is clear that the quality and precision of the domestic legislation adopted by States to implement IHL and to protect the emblem play a critical part in the solution to the problem.

When the legislation is clear, it is much easier for a party using improperly the emblem to understand why it should change its emblem and name, for the NS to develop its arguments and for the court to take the appropriate decision (should the situation have to be resolved in that manner).

Similarly, when the legal status of the NS, and the fact that it is the only NS recognized in the State, are clearly defined in the legislation/decreed regarding the NS, the process of convincing the entity and, if necessary, the competent court, is very much easier.

It is therefore important to keep in mind that NS should lobby their competent authorities for the adoption of appropriate legislation.

In this regard, the ICRC would like to remind NS and States of the existence of the following model laws that might assist them in framing adequate pieces of legislation:

- a) the Model law concerning the use and protection of the emblem of the red cross, the red crescent and the red crystal;
- b) the Model Geneva Conventions Act, also drafted by the ICRC Advisory Service;
- c) the Model law on the recognition of NS, mentioned in the Plan of Action for the years 2000-2003, which was adopted by the 27th International Conference of the Red Cross and Red Crescent.³⁷²

2. Dissemination

In order to avoid such problems, dissemination of information, on the role of an NS, on the Fundamental Principles of the Movement and on the significance of the emblem and of the rules governing its use, is very important. Given the fact that misuses of the emblem are very often caused by ignorance of these rules, a well-designed dissemination programme by the NS is the best way to prevent this “double NS” situation from occurring.³⁷³

³⁷² Resolution 1, Annex 2, Final Goal 3.3, para. 14(b).

³⁷³ ICRC delegations are, of course, at the disposal of the NS for assistance and cooperation in designing and implementing such dissemination activities.

Annex 1: Model letter: NS to NGO/private corporation/association

Dear Sir/Madam,

We have recently learned of the existence of your organization, [XXXX Red Cross/Red Crescent/Red Crystal]. As the only recognised Red Cross/Red Crescent/Red Crystal Society of [name of the State], we would urge you to modify the name and emblem of your organization.

The emblems and the names of the red cross, red crescent and red crystal are protected under the 1949 Geneva Conventions on the protection of war victims (especially Articles 38 and 53 of the First Convention) and their Additional Protocols. [Name of the State], by becoming party to the Geneva Conventions, has committed itself to taking all necessary measures to prevent and repress any misuse of these emblems and names (Article 54 of the First Convention).

In this regard, we would like to remind you that the domestic legislation of [name of the State] also protects the emblems and the names of the red cross, red crescent and red crystal, and provides for penalties for persons or entities who use them without being entitled to do so (see Section XXXX of XXXX Act/Law/Decree).

It is crucial that you understand that any misuse of the emblems or the names at any time erodes the respect that combatants and civilians have for the International Red Cross and Red Crescent Movement, thus compromising the Movement's ability to fulfil its humanitarian mission. It also causes confusion about the significance of the emblems and the names, and thus weakens the protection granted to the persons who are authorized to use them during armed conflict.

The XXXX Red Cross/Red Crescent/Red Crystal Society was established in [year] and recognized by the [name of the act/law/decreed of recognition]. This [act/law/decreed] declares that the XXXX Red Cross/Red Crescent/Red Crystal Society is the only National Red Cross/Red Crescent/Red Crystal Society that may conduct its activities in the territory of [name of the State].

The use by your organization of the name and the emblem of the red cross/red crescent/red crystal therefore constitutes a violation of the laws of [name of the State].

The International Red Cross and Red Crescent Movement is guided by seven Fundamental Principles. These Principles are included in the Statutes of the Movement, which were unanimously adopted in 1986 by the 25th International Conference of the Red Cross and Red Crescent, where the States party to the Geneva Conventions were represented and could vote. The Principle of Unity, which is one of these Principles, states clearly that "there can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory."

In view of the foregoing, we would like to strongly urge you to stop using the name and the emblem of the red cross/red crescent/red crystal. We suggest that you modify the name and emblem of your organization, by using, for instance, the name and the emblem of the ["Green Cross/Crescent/Crystal"]. This might be a workable solution, one that would not be financially burdensome for your organization.

Yours sincerely,

cc: Ministry [in charge of the implementation of IHL/the protection of the emblem];
Ministry [whose portfolio includes the NS];
ICRC delegation;
International Federation delegation.

Annex 2: Model letter: NS to registration/incorporation office

Dear Sir/Madam,

It has come to our knowledge that the XXXX Red Cross/Red Crescent/Red Crystal Society has been registered as an NGO/incorporated as a company under [XXXX Law/Act/Decree].

The XXXXX Red Cross/Red Crescent/Red Crystal Society was established in [year] and recognized by the [name of the act/law/decreed of recognition]. Under this [act/law/decreed, Article/Section XXXX], the XXXXX Red Cross/Red Crescent Society is the only National Red Cross/Red Crescent/Red Crystal Society that may conduct its activities in the territory of [name of the State].

The registration/incorporation of the XXXX Red Cross/Red Crescent/Red Crystal therefore constitutes a violation of the laws of [name of the State].

Furthermore, the law on the use and protection of the emblem/Geneva Conventions Act [exact name of the law/act/decreed, Article/Section XXXX] specifies who may use the name and the emblem of the red cross/red crescent/red crystal and makes unauthorized use of those names and emblems a [criminal] offence.

The registration/incorporation of the XXXX Red Cross/Red Crescent/Red Crystal constitutes a violation of the laws of [name of the State] from this perspective as well.

Lastly, the International Red Cross and Red Crescent Movement, which consists of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies and National Societies is guided by seven Fundamental Principles. These Principles are included in the Statutes of the Movement, which were unanimously adopted in 1986 by the 25th International Conference of the Red Cross and Red Crescent, where the States party to the Geneva Conventions were represented and could vote. The Principle of Unity, which is one of these Principles, states clearly that "there can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory."

Thus, the registration/incorporation of the XXXX Red Cross/Red Crescent/Red Crystal Society is a violation of the Principle of Unity.

In view of the foregoing, we wish to emphasize our concern over the registration/incorporation of the XXXX Red Cross/Red Crescent/Red Crystal as an NGO/a company and request that the registration/incorporation of this organization/company in [name of the State] be annulled or withdrawn.

Yours sincerely,

XXXXXXXXXX

cc. Ministry [in charge of the implementation of IHL/the protection of the emblem];
Ministry [whose portfolio includes the NS];
ICRC delegation;
International Federation delegation.

43) May "spontaneous fundraisers" use the emblem/the National Society's logo?

Legal or statutory basis

Article 53, 1st para., GC I
Articles 2-5 and 23, 1991 Emblem Regulations

Recommendations

- As a general rule, in accordance with Article 53, 1st para., of GC I, individuals, societies, firms or companies, either public or private, other than those entitled thereto under the GC are prohibited at all times from using the emblem, or any sign or designation constituting an imitation thereof, whatever the object of such use, including fundraising for a component of the Movement.
- Private persons or entities undertaking fundraising without previously informing the NS are not allowed to use the NS logo.
- NS could produce a special logo, **which does not display a distinctive emblem (or imitation thereof)**, and, upon request, authorize "spontaneous" fundraisers to display it, with the following cumulative restrictions:
 - i. No confusion is created in the mind of the public between the fundraisers' activities or the quality of their products and NS themselves;
 - ii. The display of the logo is linked to one particular activity and, as a general recommendation, limited in time and geographical scope; and
 - iii. The fundraiser concerned is in no way engaged in activities that are counter to the Movement's objectives and Fundamental Principles or that might be regarded by the public as controversial.

Analysis

Introduction

Many factors, wide media coverage among them, bring humanitarian crises and responses to them, closer to the public, mobilizing its solidarity. Spontaneous fundraising – a fundraising event or campaign undertaken by a private person or entity to benefit a component of the Movement without the latter's knowledge – is one of the products of common humanitarian impulses.

There appear to be two types of spontaneous fundraising by third parties in support of Movement programmes, i.e., an event or activity in which the third party:

- a) simply encourages donors to make contributions directly to the NS ("type a");
- b) undertakes to collect money from donors with a promise to remit the proceeds collected to the "Red Cross/Red Crescent" ("type b").

The rules governing the use of the emblem for fundraising purposes

Under Article 53, 1st para., of GC I,

"the use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem (...) or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times."

On the other hand, Article 23 of the 1991 Emblem Regulations allows for the use of the NS logo in fundraising activities *led by NS* on the following conditions:

- a) NS may use the emblem to raise funds, within the limits set by Articles 2 to 5 of the 1991 Emblem Regulations.³⁷⁴ Article 23, 2nd para., of the 1991 Emblem Regulations stipulates that "[w]hen displayed on printed matter, objects or other advertising material of such campaigns, the emblem shall be accompanied, as far as practically possible, by the name of the Society or a text or publicity drawing."
- b) NS that cooperate with a commercial enterprise or some other organization, in order to raise funds or to further their dissemination activities, may display the company's trademark, logo or name on articles used by them, on their advertising material or on items which they sell, provided that the eight conditions, mentioned under Article 23, 3rd para., of the 1991 Emblem Regulations, are met.³⁷⁵

These conditions set out precise guidelines that enable NS to closely monitor the manner in which the assistance they receive is publicized, "so as to avoid any abuse or risk of confusion in the mind of the public."³⁷⁶ Thus, the NS taking part in an initiative will be able to ensure that the third party and its activities are in consonance with the Fundamental Principles and objectives of the Movement. National legislation, too, may require strict conformity with the rules and procedures as a condition for issuing tax receipts for charitable contributions.

³⁷⁴ Article 23, 1st para., of the 1991 Emblem Regulations. For further development of this aspect, see also Question 33 of the Study.

³⁷⁵ Article 23, 3rd para., of the 1991 Emblem Regulations states that:

- "(a) **no confusion** must be created in the mind of the public between the company's activities or the quality of its products and the emblem or the National Society itself;
- (b) the National Society must retain **control** over the entire campaign. In particular the choice of articles on which the company's trademark, logo or name is displayed and the siting, form and size of such markings;
- (c) the campaign must be linked to **one particular activity** and, as a general rule, be limited in time and geographical area;
- (d) the company concerned must in no way be engaged in activities running counter to the **Movement's objectives and Principles** or which might be regarded by the public as controversial;
- (e) the National Society must reserve the **right to cancel** its contract with the company concerned at any time and to do so at very short notice, should the company's activities undermine the respect for or the prestige of the emblem;
- (f) the **material or financial advantage** which the National Society gains from the campaign must be substantial without, however, jeopardizing the Society's independence;
- (g) the **contract** between the National Society and its partner must be in **writing**;
- (h) the contract must be **approved** by the National Society's central leadership." (Emphasis added)

On the use on NS websites of the logos of their corporate partners, see also Question 35 of the Study.

³⁷⁶ Commentary on Article 23, 3rd para., of the 1991 Emblem Regulations.

The issue of "spontaneous fundraising"

When a private person or entity, without formal authorization, sets out to raise funds to benefit a component of the Movement, without the latter's knowledge, there is a risk that its activities (e.g. damaging the environment) or involvement with third entities (e.g. arms companies) might not conform to the Movement's objectives or Fundamental Principles.

Enabling or facilitating spontaneous use of the red cross/red crescent/red crystal emblem (or an imitation thereof), or its name, might lead to embarrassing situations in which an NS has to refuse donations made to it by individuals.

In "type a) spontaneous fundraising" – fundraising undertaken by private individuals on their own initiative – the NS may not be aware that donations made directly to it by donors were the result of a spontaneous fundraising effort. Normally, these donations will be accepted and receipted for tax purposes. If the association between the fundraising and the donations comes to light, the NS should review the fundraising after the fact, as it were. If it is found to be compatible with the Fundamental Principles and the NS own objectives, it may accept the donations even though the fundraising was unauthorized. If the fundraising is found to be out of step with the Fundamental Principles and the NS own objectives, the donations should be returned to donors.

In "type b) spontaneous fundraising", the nature of the method of raising funds is likely to be disclosed when the proceeds are eventually donated to the NS. A similar review should be undertaken, and the NS may accept the donations if the required compatibility is apparent. If, for reasons of incompatibility, the donation is refused, the donor should be encouraged to return their donation to the contributors (which might very well prove to be impracticable) or to seek out a related cause for its donation. The organizer of the fundraising effort should be informed about the inappropriateness of undertaking such activities without the NS authorization under a proper third-party fundraising agreement, and should also be briefed about misusing the red cross/red crescent/red crystal name and emblem.

Use of the emblem

In both "type a)" and "type b)" spontaneous fundraising, the private person, or entity, that has undertaken the fundraising, without previously informing a component of the Movement, is not allowed – under the GC and the 1991 Emblem Regulations – to use the distinctive emblem(s).

NS should draw the attention of "spontaneous fundraisers" to the prohibition on the use of the emblem and on that of the names and logos. NS should also explain that they may accept only donations solicited in a manner that is compatible with the Fundamental Principles. Bearing this in mind, an NS could produce a special logo for potential private fundraisers.

Such a logo should not display any of the emblems. It could, for example, be constituted of the following words, underlined in red:

"Supporting *name/initials of the NS*"

Upon request, NS could authorize "spontaneous" fundraisers to use such a logo on their flyers, advertising material or on items that they plan to sell, provided that the three following conditions are met:

- a) No confusion is created in the mind of the public between the fundraisers' activities or the quality of their products and NS themselves;³⁷⁷
- b) The display of the logo is linked to one particular activity and, as a general recommendation, limited in time and geographical scope;³⁷⁸ and,
- c) The fundraiser concerned is in no way engaged in activities that are counter to the Movement's objectives and Principles or that might be regarded by the public as controversial.³⁷⁹

³⁷⁷ By analogy with Article 23, 3rd para., sub-para. a, of the 1991 Emblem Regulations.

³⁷⁸ By analogy with Article 23, 3rd para., sub-para. c, of the 1991 Emblem Regulations.

³⁷⁹ By analogy with Article 23, 3rd para., sub-para. d, of the 1991 Emblem Regulations.

Part III. RECOMMENDATIONS FOR PREVENTING AND STOPPING MISUSES OF THE EMBLEM

Chapter A. THE OBLIGATIONS OF STATES

44) *What are the legal, regulatory and practical measures to be taken by States?*

Legal or statutory basis

Articles 1, 38-44, 47, 49, 53 and 54, GC I

Articles 1, 41-45 and 48, GC II

Article 1, Article 18, 3rd and 4th paras, Article 20, 3rd para., and Article 144, GC IV

Articles 1, 18, 23, 37-38, 83, 85(3)(f) and 87(2), AP I

Articles 12 and 19, AP II

Articles 1(1), 6 and 7, AP III

Resolution 5 of the Diplomatic Conference, Geneva, 1949

Resolution XI, 23rd International Conference of the Red Cross, Bucharest, 1977

Recommendations

- States must adopt internal legal, regulatory and practical measures, examples of which are given below:
 - i. Define the emblems that are recognized and protected in the State;
 - ii. Define the authorized uses of the emblems;³⁸⁰
 - iii. Define the entitled users of the emblems;³⁸¹
 - iv. Establish the national authority/authorities entrusted with regulating and monitoring the use of the emblems;
 - v. Provide for means by which entitled users of the emblem may identify themselves by use of the emblem (for example, the display of the distinctive emblem on flags, brassards and equipment belonging to the medical services of the armed forces), and the recognition to be accorded to it;
 - vi. Inform all concerned parties, including the armed forces, civil servants and the public, about the proper use of the emblems.³⁸²
- States are required to provide, in their domestic legislation, for measures for the prevention, the suppression and the punishment of all cases of misuse of the emblem, both in peacetime and in situations of armed conflict. Such measures may take the form of penal, administrative or disciplinary sanctions.

³⁸⁰ See "General principles and concepts" in the Introduction of the Study.

³⁸¹ See "General principles and concepts" in the Introduction of the Study.

³⁸² On dissemination of the rules governing the use of the emblem, see Question 45 of the Study.

- The incorporation of the appropriate rules in domestic law and practice may take different forms. In some States, special stand-alone legislation to regulate the use and sanction cases of misuse may be sufficient. In other States, this may need to be incorporated in a variety of domestic legal instruments (including the criminal, military or administrative codes, the national law on the recognition and the status of the NS, or trademark law). It may also be necessary to include provisions on the use and protection of the emblem in military regulations and manuals.
- The ICRC Advisory Service on IHL has developed a comprehensive "Model Law concerning the use and the protection of the emblem of the red cross, the red crescent and the red crystal", as well as a model "Geneva Conventions Act" incorporating specific provisions intended for punishing misuse. These model laws are proposed for consideration by States that have a civil law or a common law system, respectively.

Analysis

Introduction

Under Article 1 common to the four GC, the States party to the GC undertake to respect and to ensure respect for the GC in all circumstances. This obligation, spelt out in AP I and AP III as well,³⁸³ is part of the general obligation of States to respect international law, and has been established by State practice as a norm of customary international law applicable in both IAC and NIAC.³⁸⁴

The "two-sided obligation",³⁸⁵ to respect and to ensure respect, means that the State is under an obligation (a) to do everything it can to ensure that the rules in question are respected by its organs as well by all others under its jurisdiction and (b) to take all possible measures to ensure that the rules are respected by all.

State's obligations resulting from the rules of IHL

Article 54 of GC I requires the States party to the GC to include in their domestic legislation all necessary measures to prevent and repress, at all times, the misuses of the emblem referred to under Article 53 of GC I.³⁸⁶ The *Commentary on GC I* explains what this means:

"Apart from the measures of an administrative nature which the competent authorities must take at all times, it is necessary for each country to enact legislation to prohibit and punish abuses, both collective and individual.

Offences against the protective sign in wartime come naturally under the penal legislation which deals with offences against the laws and customs of war. Other abuses will usually form the subject of special laws in application of the Geneva Conventions; being a part of public or administrative law, these will of course contain penal clauses."³⁸⁷

³⁸³ Article 1(1) of AP I and Article 1(1) of AP III.

³⁸⁴ *Customary IHL Study*, Rule 139, p. 495.

³⁸⁵ Laurence Boisson de Chazournes, Luigi Condorelli, "Common Article 1 of the Geneva Conventions revised: Protecting collective interests", *IRRC*, No. 837, 2000, pp. 67-87.

³⁸⁶ Article 54 of GC I states that "The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53." With regard to naval warfare, Article 45 of GC II, too, requires States to prevent and repress the misuses of the emblem referred to under Article 44 of GC II. In addition, Resolution 5 of the 1949 Diplomatic Conference, held in Geneva, recommends that "States take strict measures to ensure that the [red cross] emblem, as well as other emblems referred to in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, is used only within the limits prescribed by the Geneva Conventions, in order to safeguard their authority and protect their high significance."

³⁸⁷ *Commentary on GC I*, Article 54, p. 392.

Article 53, 1st and 4th paras, of GC I is quite clear in this regard:

"The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation 'Red Cross' or 'Geneva Cross' or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.
(...)

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38."³⁸⁸

The *Commentary on GC I* states that a clear distinction must be drawn between misuse of the *protective* sign and misuse of the *indicative* sign:

"The first, in time of war, is infinitely the more serious, because it may endanger human lives. The gravity of the offence will vary with circumstances – from the thoughtless action of a doctor who wears a red cross armband in good faith although not a member of the medical personnel, to acts of treachery such as the placing of large-sized emblems on an ammunition dump in order to mislead the enemy. Between these extremes, one can conceive of abuses of every possible degree of gravity.

Typical examples of misuse of the indicative sign are the unauthorized use of the badge of a Red Cross Society, or the use of the emblem by chemists, or in trade-marks."³⁸⁹

As Article 54 of GC I is mandatory – the States Parties themselves, on ratifying the GC, accepted all the obligations resulting from them – wherever national legislation is inadequate, it must be amended.³⁹⁰

National measures for the implementation of the rules of IHL

1. Legislative measures

The Governments of States party to the GC were invited by Resolution XI of the 23rd International Conference of the Red Cross (Bucharest, 1977) "to enforce effectively the existing national legislation" for the prevention and repression of the misuse of the emblem and, where no such legislation existed, to enact it; and to prescribe adequate penalties for offenders.³⁹¹

³⁸⁸ The *Commentary on GC I* states that "Article [53 of GC I] has the same standing as the various other prohibitions in the Convention (in regard to the wounded, medical units, and so on)." *Commentary on GC I*, Article 53, p. 383.

³⁸⁹ *Commentary on GC I*, Article 53, p. 381. The *Commentary* states also that "[i]t is the duty of the authorities in each country to decide if a given mark constitutes an imitation. The decision may sometimes be a difficult one. The criterion should be whether there is a risk of confusion in the public mind between the mark and the red cross emblem, as it is precisely this that the clause is intended to prevent." *Commentary on GC I*, Article 53, p. 385.

³⁹⁰ *Commentary on GC I*, Article 54, p. 393.

³⁹¹ Resolution XI states that:

"The 23rd International Conference of the Red Cross,

having considered the difficulties arising in several countries by the misuse of the emblem of the red cross, red crescent, red lion and sun by numerous unauthorized persons, private enterprises and organizations,

recalling the provisions of the First Geneva Convention of 12 August 1949 restricting the use of the emblem, by which the States Parties to this Convention have undertaken to take necessary measures for the prevention and repression at all times of the misuse of the emblem,

invites the governments of States Parties to the Geneva Convention to enforce effectively the existing national legislation repressing the abuses of the emblem of the red cross, red crescent, red lion and sun, to enact such legislation wherever it does not exist at present and to provide for punishment by way of adequate sentences for offenders,

takes note with satisfaction of the steps undertaken by the ICRC in this field with National Societies and invites it to continue its efforts in conjunction with those governments wherever necessary,

invites the National Societies to assist their own governments in fulfilling their obligations in this respect and to support the efforts of the ICRC to that end."

Typical issues that a national legislator should take into consideration:

- a) Highlighting the distinction between the protective and indicative uses of the emblem;³⁹²
- b) Defining the scope of the protection;³⁹³
- c) Defining the distinctive emblems and designations protected under domestic law;
- d) Defining those bodies, persons, personnel, units and transports entitled to make use of the emblem as a protective device and the circumstances and conditions for such use;
- e) Defining the conditions for the use of the emblem by NS and by the international actors within the Movement;
- f) Providing for measures to control and prevent misuse of the emblem, in particular appropriate criminal sanctions in the event of misuse, e.g. the incrimination of perfidious use as a war crime,³⁹⁴ and for dissemination measures to the armed forces;³⁹⁵
- g) Providing for measures to be taken in the event of misuse, such as the seizure and/or destruction of objects and material at stake;
- h) Adopting measures to prevent the registration of associations, trade names and trademarks making improper use of the emblems or their designations;
- i) Defining the national authority (or national authorities) in charge of monitoring the use of the emblem, and providing for a role for the NS in this field, and for contributions from it.

In order to facilitate this process, the ICRC has drawn up a model law, in the hope that it might serve as a source of inspiration to lawmakers, in drafting national legislation or while improving existing laws for the prevention and repression of the misuse of the emblem.³⁹⁶

It is worth emphasizing that comprehensive legislation on this subject may take the form of a piece of stand-alone legislation or incorporation in a variety of domestic laws and regulations (e.g. penal or military criminal codes, trademark laws, laws on the recognition or the status of the NS, military regulations).

The "Model law concerning the use and the protection of the emblem of the red cross, the red crescent and the red crystal" is based on the 1949 GC and their AP of 1977 and 2005.³⁹⁷ It outlines the provisions that should be included in a comprehensive legal regime for regulating the use and protection of the emblem in conformity with the requirements of the GC and their AP.

³⁹² See Articles 38-44 of GC I; Articles 41 and 42 of GC II; Article 18 and 20 of GC IV; Article 18 of AP I; Article 12 of AP II; Article 3 of AP III. See "General principles and concepts" in the Introduction of the Study.

³⁹³ States are required under Article 18 of AP I to extend the protection under the law to the distinctive signals for identifying medical units and transports pursuant to the Protocol's first Annex.

³⁹⁴ See especially Article 85(3)(f), of AP I and Article 8(b)(vii) of the ICC Statute.

³⁹⁵ See especially Article 47 of GC I, Article 48 of GC II, Article 144 of GC IV, Articles 83 and 87(2) of AP I, Article 19 of AP II and Article 7 of AP III. On dissemination of the rules governing the use of the emblem, see Question 45 of the Study.

³⁹⁶ See Jean-Philippe Lavoyer, "National Legislation on the Use and Protection of the Emblem of the Red Cross or Red Crescent", *IRRC*, No. 313, 1996, pp. 482-485.

³⁹⁷ The ICRC is proposing this model law to States in pursuance of the Final Declaration of the International Conference for the Protection of War Victims (Geneva, 30 August to 1 September 1993) and of the Recommendations of the Intergovernmental Group of Experts (Geneva, 23 to 27 January 1995). The amended model law amended after the adoption of AP III is accessible at:

[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem-model-law-150708/\\$File/Model%20law.emblem-0708_eng%20.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem-model-law-150708/$File/Model%20law.emblem-0708_eng%20.pdf) (visited 26 August 2009).

The model law is intended to provide States with a working instrument which is readily comprehensible and illustrates the range of subjects to be covered. It should, of course, be adapted, modified or supplemented to suit the legal system and the requirements of each particular State.

In States with a common law system, protection of the emblem is usually provided in a chapter of a Geneva Conventions Act. When they are becoming party to AP III, or in order to do so, such States should review their Geneva Conventions Act to extend the protective regime of the red cross and the red crescent to the additional emblem – the red crystal – and to incorporate the text of AP III as a schedule.

The ICRC Advisory Service on IHL has developed a model Geneva Conventions Act and may be contacted for any technical assistance in the implementation of the provisions of AP III.³⁹⁸

In addition, to facilitate the adoption of national measures for implementing IHL, each State is advised to set up a National Committee made up of all the proper national authorities. The National Committee could be responsible for drafting a law on the use and protection of the emblems.³⁹⁹

2. Additional measures

States must also consider the adoption of a range of additional regulatory or practical measures, to ensure, in particular, that all concerned parties – in the armed forces, among civil servants, and in professional groups – are aware of the rules regulating the emblems, and that preparatory measures for identification and signalisation are taken (e.g. for the display of the distinctive emblem on flags, brassards and on equipment attached to the medical services of the armed forces).

Conclusion

The red cross, the red crescent and the red crystal are symbols that are recognized and protected by IHL. The adoption of domestic measures to ensure respect for them is essential for maintaining the impartiality and neutrality associated with the provision of humanitarian assistance identified by such symbols. This will make it much easier to improve the situation of those in need of protection and assistance.

A State's failure to take appropriate measures can lead to misuses of the emblems and diminish the respect and confidence that is accorded them. It must also be borne in mind that the failure to suppress misuse during times of peace will contribute to misuse during armed conflict. This will erode the protective value of the emblems, endanger the lives of those entitled to use them, and interfere with the provision of care and protection for civilians as well as for wounded or sick combatants.

³⁹⁸ See http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/advisory_service_ihl?OpenDocument (visited 26 August 2009).

³⁹⁹ Jean-Philippe Lavoyer, "National Legislation on the Use and Protection of the Emblem of the Red Cross and Red Crescent", *IRRC*, No. 313, July-August 1996, pp. 482-485.

45) *What are the obligations of States in terms of dissemination of the rules governing use of the emblem?*

Legal or statutory basis

Article 1, 1907 Hague Regulations
Article 47, GC I
Article 48, GC II
Article 127, GC III
Article 144, GC IV
Articles 80, 83(2) and 87(2), AP I
Article 19, AP II
Article 7, AP III

Recommendations

- As with all the other IHL rules, States have the obligation to disseminate the rules governing the use of the emblem as widely as possible among arms carriers / decision-makers and to the population at large.
- When the rules governing the use of the emblem are disseminated among the armed forces, they must be incorporated into normal training and manoeuvres, and made habitual. Commanders, in particular, must be trained to incorporate the prescribed responses to misuses (including perfidious use) of the emblem into their decision-making process and in the execution of their decisions.
- With regard to dissemination in institutions of higher education, IHL (and, therefore, also the core rules governing the use of the emblem) should be included in the official standard programmes and curricula of law faculties and of departments of international relations, at the graduate, undergraduate and postgraduate levels.
- States are also strongly recommended to disseminate IHL (and, therefore, also the core rules governing the use of the emblem) among young people.

Analysis

Introduction

Ratifying IHL treaties and implementing them in domestic law are necessary steps towards compliance with IHL rules. Disseminating their contents as widely as possible is the other essential element in any strategy for creating an environment conducive to lawful behaviour. IHL rules must primarily be disseminated among the armed forces, in higher education and universities, and among young people.

Dissemination among the armed forces⁴⁰⁰

a) By ratifying the 1907 Hague Convention, States made a commitment to "issue instructions to their Armed Forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention."⁴⁰¹

Likewise, by ratifying the GC, States made a commitment to "disseminate the text" and to "include the study thereof in their programmes of military (...) instruction".⁴⁰²

AP I elaborates on that obligation, notably providing that Parties shall "without delay take all necessary measures for the execution of their obligations (...) give orders and instructions to ensure observance (...) and supervise their execution" (Article 80 of AP I); that "any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be fully acquainted with the text thereof" (Article 83(2) of AP I); and that "commensurate with their level of responsibility, commanders [shall] ensure that members of the Armed Forces under their command are aware of their obligations" (Article 87(2) of AP I).

As far as NIAC are concerned, the obligation stipulated by Article 19 of AP II – to disseminate the contents of AP II "as widely as possible" – applies both to governmental forces and to all armed groups taking part in the armed conflict.

b) In the same way as for the military aspects, the armed forces must, already in peacetime, prepare themselves for the humanitarian aspects of any possible conflict. Observance of IHL, during military operations, depends to a large extent on the law having been previously incorporated into each and every aspect of military life.

In order to enhance compliance with IHL rules, steps should be taken to incorporate the relevant law into the military culture through doctrine, education, training and disciplinary measures.⁴⁰³

Although translating the instruments of IHL into national languages is an essential preparatory measure, with regard to the emblem, it is not enough for soldiers to just be informed of the need to respect the emblem or of the very detailed rules governing its use. The core rules governing the use of the emblem during armed conflict, like the other core IHL rules, must be incorporated into the training and manoeuvres of soldiers, and made habitual.

Commanders must be aware of the concrete measures necessary to tackle misuses (in particular perfidious uses) of the emblem committed by subordinates for whom they are responsible. They must be trained to incorporate this knowledge into their decision-making process and in the execution of their decisions.

Dissemination in higher education

States Parties are obliged to disseminate the contents of the GC and their AP as widely as possible in their respective jurisdiction. As essential as the incorporation of IHL into military instruction is, it is just as important promote knowledge of IHL among those whom it is intended to protect – the civilian population – as well as among those who have to apply it

⁴⁰⁰ See the document prepared by the ICRC Unit for the Relations with Armed and Security Forces: "Armed Forces: Integration of IHL", available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-forces-ihl-integration-310503?opendocument> (visited 26 August 2009).

⁴⁰¹ Article 1 of the 1907 Hague Convention.

⁴⁰² Article 47 of GC I; Article 48 of GC II; Article 127 of GC III; and Article 144 of GC IV.

⁴⁰³ See the ICRC booklet, *Integrating the Law*, ICRC, Geneva, 2007; see also Question 47 of the Study.

already or will have to apply it in the future – public officials, judges, lawyers, diplomats, journalists, students. This is indispensable for ensuring the implementation of IHL in times of armed conflict.⁴⁰⁴

Therefore, in higher education, IHL should be included in the official standard programmes and curricula of law faculties and of departments of international relations, at the graduate, undergraduate and postgraduate levels.⁴⁰⁵

Moreover, research and publication in the area of IHL should be supported. Documentation centres and training programmes in IHL should be developed, especially for academics teaching law, international relations, human rights, and so on. Knowledge of and interest in IHL could be also developed among university students through promotional events, such as moot courts, essay-writing competitions and exchanges between universities.

Dissemination among young people

A knowledge of IHL is relevant, meaningful and useful also for young people. The subject is pertinent and timely everywhere – regardless of a particular country's experience of armed conflict or other situations of violence – for a number of reasons:

- a) In many parts of the world today, young people are increasingly affected by armed conflicts and other situations of violence;
- b) Young people, in greater numbers than ever, are exposed to media coverage of such violence as well as to forms of entertainment that play down the effects of violence;
- c) In times of acute social and political tensions, such as during post-conflict situations or in periods of social reconstruction, educational programmes may have an indirect pacifying effect.

The ICRC has developed, in close cooperation with Educational Development Centre, Inc. (EDC), an educational programme titled *Exploring Humanitarian Law* (EHL). Directed at young people everywhere, who are between the ages of 13 and 18, the programme's objective is to introduce adolescents to the basic rules of IHL by emphasizing the application of ideas, about respect for and protection of life and human dignity, to armed conflict and other actual situations of violence.⁴⁰⁶

States and NS are strongly recommended to take advantage of this useful pedagogical tool. As the programme does not provide a detailed treatment of the rules governing the use of the emblem, teachers are encouraged to refer to the Introduction of the present Study.

⁴⁰⁴ Marco Sassoli, Antoine Bouvier, *How Does Law Protect in War?*, Volume I, ICRC, 2nd Edition, Geneva, 2006, p. 274; Umesh Kadam, "Teaching International Humanitarian Law: an Overview of an ICRC Dissemination Programme", *IRRC*, No. 841, 2001, pp. 167-169.

⁴⁰⁵ Stéphane Hankins, "Promoting International Humanitarian Law in Higher Education and Universities in the Countries of the Commonwealth of Independent States", *IRRC*, No. 319, 1997, pp. 451-454; Luisa Vierucci, "Promoting the Teaching of International Humanitarian Law in Universities: the ICRC's experience in Central Asia", *IRRC*, No. 841, 2001, pp. 155-165.

⁴⁰⁶ To discover the range of teaching materials, lesson plans, discussion activities, video clips and more, visit the website: <http://www.ehl.icrc.org/> (visited 26 August 2009).

Chapter B. THE ROLE OF NATIONAL SOCIETIES

46) What are the mandate and responsibilities of National Societies regarding use of the emblem?

Legal or statutory basis

Articles 3(1) and (2), 5(2)(f) and (4)(a), Statutes of the Movement
Introduction, 3rd para., and Article 7, 1991 Emblem Regulations

Recommendations

- NS must always conduct their humanitarian activities, particularly when they make use of the emblem/NS logo, in compliance with the GC, their AP, their own Statutes, the 1991 Emblem Regulations and national legislation.
- NS are also recommended to adopt internal regulations so as to ensure respect for the emblem within their organizations.
- At the national level, NS should promote both the ratification of the GC and their AP, and the adoption of national legislation regarding the emblem, by their State authorities.
- In addition, NS should cooperate with the authorities to ensure the protection of the emblem (preventing and stopping misuse). Practically, NS are strongly encouraged to take the following measures for stopping misuse of the emblem:
 - i. contacting (through e-mail or letters) those misusing the emblem, explaining the protection enjoyed by the emblem, the risk attendant on misuse and offering alternative signs for their use;
 - ii. ensuring that follow-up of this initial contact is undertaken (e.g. phone calls);
 - iii. if all these efforts are unsuccessful, reporting the case to the competent authority for further action.
- NS should raise awareness amongst, disseminate to and conduct training on the significance of the emblems with, in particular, their staff, their volunteers, arms carriers (e.g. the police and the armed forces), school students and the general public.
- NS are encouraged to contact ICRC delegations and/or Headquarters for further assistance, advice or to exchange information in all these matters. Other NS with experience of emblem protection may also be useful sources of advice and information.

Analysis

Introduction

Two kinds of responsibilities follow from the NS right to use of the emblem: the NS must respect the rules governing its use and cooperate with national authorities in monitoring its usage.⁴⁰⁷

Even though it might appear to be burdensome sometimes, this essential task must be considered, as Michael Meyer has remarked, "part of the price the Movement pays for its unique position."⁴⁰⁸

The use of the emblem by NS

Article 3(1) of the Statutes of the Movement stipulates that NS must "carry out their humanitarian activities in conformity with their own statutes and national legislation, in pursuance of the mission of the Movement, and in accordance with the Fundamental Principles."

With regard to the emblem, NS must always respect the restrictions imposed by the 1991 Emblem Regulations. Of course, NS may lay down stricter rules of their own.⁴⁰⁹

The link between the 1991 Emblem Regulations and the GC is explained in the introduction of the Regulations: the Regulations "develop Article 44 of the First Convention which sets out the obligations of the National Societies with regard to the emblem".⁴¹⁰ With regard to the AP, "[w]hen Protocol I is applicable, certain provisions of the Regulations take on a broader meaning which concerns the National Society of the State in which Protocol I is in force; it does not concern the National Society of a State not party to Protocol I, except with the consent of the Authority."⁴¹¹

It is clear that NS must always make use of the emblem in compliance with the GC and their AP and with the 1991 Emblem Regulations. Moreover, NS should adopt internal regulations so as to ensure respect for the emblem within their organizations. Article 7 of the 1991 Emblem Regulations states that:

"The National Society shall lay down the conditions governing the use of the emblem in regulations or internal directives.

The regulations or directives may consist, for example, of:

A. Concerning the protective use of the emblem:

- the reference to the national legislation on the subject and to the Regulations;
- the indication of the competent authorities who can authorize the use of the emblem;
- the list of steps to be taken at the beginning of a conflict to avoid any confusion with the indicative use of the emblem;
- the conditions governing the use of the emblem for persons and objects of the National Society.

⁴⁰⁷ Michael Meyer, "Protecting the Emblems in peacetime: the experience of the British Red Cross Society", *IRRC*, No. 272, 1989, pp. 459-464.

⁴⁰⁸ Michael Meyer, "Protecting the Emblems in peacetime: the experience of the British Red Cross Society", *IRRC*, No. 272, 1989, p. 459.

⁴⁰⁹ Introduction, para. 3, of the 1991 Emblem Regulations; see also Preamble, 4th para., of the 1991 Emblem Regulations.

⁴¹⁰ Introduction, para. 3, of the 1991 Emblem Regulations.

⁴¹¹ Introduction, para. 3, of the 1991 Emblem Regulations.

B. Concerning the indicative use of the emblem:

- the reference to the national legislation on the subject and to the Regulations;
- the conditions governing the use of the emblem by members of the National Society and by members of the Red Cross or Red Crescent Youth;
- the mention of other persons not members of the National Society but trained by it and authorized to wear the emblem;
- the list of aid stations and ambulances run by third parties authorized to use the emblem;
- the dimensions and proportions of the emblem;
- details concerning the use of the emblem for fund-raising and dissemination purposes and on medals or other tokens of acknowledgement;
- the rules governing the documents carried by persons to justify their use of the emblem, or persons in charge of objects marked with the emblem.”

NS role in helping their governments to protect the emblem

a) It is easier to stop misuses of the emblem when a State has both ratified the GC and implemented them in its national legislation. In that case, NS efforts to tackle misuses of the emblem can be based on the GC (and their AP, if they, too, have been ratified and implemented) and on national legislation.

NS can play an important role in the implementation of the rules governing the use of the emblem by persuading their State authorities to ratify the GC and their AP and to adopt national legislation on the emblem.⁴¹²

b) Dissemination activities on the significance of the emblems can help to enhance understanding and raise awareness among the general public and/or among specific sections of the population.

Under the Statutes of the Movement, NS are given a specific mandate to disseminate IHL, which clearly includes the rules governing the use of the emblem. Article 3(2) of the Statutes stipulates that NS “disseminate and assist their governments in disseminating international humanitarian law.”

Also, Article 5(2)(f) and (4)(a) of the Statutes of the Movement stipulates that the ICRC and NS cooperate in disseminating IHL, training medical personnel and preparing medical equipment.

The following are a few examples of NS initiatives in this regard:

- Posters (e.g. “How to say don’t shoot me in 350 languages”, British Red Cross);
- Brochures (e.g. “*Herkent u dit teken?*” (“Recognize this sign?”), Netherlands Red Cross);
- Web pages (e.g. the online form prepared by the Canadian Red Cross for reporting misuses of the emblem);⁴¹³
- The emblem quiz on the website of the Belgian Red Cross (Flemish section; or Belgian Red Cross-Flanders).
- Contacts and information provided to the Patent Office to ensure that no registered trademarks are misusing/imitating the emblem (or the name) (Norwegian Red Cross);

⁴¹² With regard to the adoption by State authorities of legal, regulatory and practical measures at the national level, see Question 44 of the Study.

⁴¹³ See the “emblem misuse form” at: <http://www.redcross.ca/article.asp?id=010952&tid=001> (visited 26 August 2009).

- Regularly mailing brochures or other documents to design agencies, hospitals and other concerned parties (e.g. the open letter sent by the Canadian Red Cross to developers of computer games). Since most misuses of the emblem occur in the medical field, regular contacts should be maintained with professional medical and dental associations, as well as with ministries or departments of health, which could then transmit the information to the appropriate institutions and services. Advocating the inclusion of IHL in the curricula of faculties or departments of medicine in universities might also be useful.⁴¹⁴

c) NS should play a crucial role in monitoring the use of the emblem and in tackling its misuse. It is recommended that NS implement the following step-by-step approach:

i. *Reporting possible misuses of the emblems and their designations*

Suspected cases of the unauthorized use of the emblems and their designations, or of their misuse, should be reported, by private individuals as well as by NS members, to NS headquarters. It is very important that there should be consistency in the treatment of all cases of misuse of the emblem.

ii. *Sending an e-mail message / a letter*⁴¹⁵

NS staff should write a polite and tactful e-mail message / letter, drawing attention to the restrictions on the use of the emblem under IHL and to the harm misuse may cause. Alternative signs should be suggested as well.

The letter should also describe the special role of the NS in helping to monitor the use of the emblem and in ensuring follow-up in case of its misuse.

A copy of the relevant section of the national legislation/legislative Act protecting the emblem at the national level, as well as the suggested alternative signs, should be enclosed in the letter or sent as attachments to the e-mail message.

The rationale of the emblem should be carefully explained and the legal bases for its restricted use clearly delineated in the letter / e-mail message. However, the tone of the letter should not be too legalistic. Similarly, a letter that mainly emphasizes the possibility of legal action might alienate sympathy for the Movement and be counter-productive.

Practice shows that both letters and e-mail work rather well. Letters, however, besides being a more formal mode of address, enable the NS to include a brochure containing additional information on IHL, the NS, the Movement and the emblem.

⁴¹⁴ These are a few examples of the very important measures NS have developed with regard to the use of the emblem.

⁴¹⁵ See the model letter in the Annex to this Question.

When the use of alternative signs is suggested, the following can be given as examples:



1. First-aid sign
white cross
on a green
background



2. Ambulances



3. Hospitals
white
capital "H"
on a blue
background



4. Pharmacies



5. Pharmacies
green cross
on a white
background



6. Medical care

iii. *Phone calls*

Less suitable than letters or e-mail messages for initial contact, phone calls could be very useful for following up.

iv. *Legal action*

If the party in question refuses to stop misusing the emblem, legal action might be required. This may be initiated by the State authorities or by the NS. Practice shows it is usually the NS who initiates legal action in such cases. For instance, an NS might try to persuade the prosecuting authorities to press charges against the party in question.

The legal proceedings are in the hands of governmental bodies, but the NS may be consulted for advice.

It must be noted that the costs of such legal action can be very high in terms of both money and time. It is therefore preferable to think of it as a last resort.

N.B.: Through its staff, both in the field and at headquarters, the ICRC is at the disposal of NS to provide any assistance that may be required of it by an NS in such matters.⁴¹⁶ Similarly, other NS with experience of emblem protection may also be useful sources of advice and information.

⁴¹⁶ On the role of the ICRC with regard to the prevention and repression of misuses of the emblem, see Question 47 of the Study.

Annex: Model letter:

Dear Sir/Madam,

First of all, we would like to thank you for having taken the time to contact us. As you may know, the use of the red cross/red crescent/red crystal emblem is a very important issue for the NS because of the impact it can have on our work and on that of the entire International Red Cross and Red Crescent Movement.

In this respect, we would like to draw your attention to the following points:

1. The use of the red cross emblem and of the other protected emblems (the red crescent and the red crystal) is regulated at all times (i.e., both in times of armed conflict and in peacetime) by the 1949 Geneva Conventions and their three Additional Protocols.

Article 44, 1st, 2nd and 3rd paras, of the First 1949 Geneva Convention states that:

"With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the red cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the red cross on a white ground."

2. As you can see, the institutions entitled to use the red cross emblem (or other protected emblems) are defined in the 1949 Geneva Conventions. Without entering into too many details, these are mainly the following:

- the medical services of the armed forces of States;
- the components of the International Red Cross and Red Crescent Movement (the Movement), i.e., the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and National Red Cross or Red Crescent Societies; and
- civilian hospitals and medical units (under specific conditions).

3. Private companies are not, in principle, allowed to use the emblem. The only exceptions to this rule, and that is under strict conditions, are ambulances and aid stations that have been assigned exclusively to the task of giving free treatment to the wounded or sick (Article 44, 4th para., of the First 1949 Geneva Conventions).

4. Although not exactly the same as the red cross emblem recognized under the 1949 Geneva Conventions, the logo that you have submitted for our consideration/that you are using [a red cross behind a blue cross] is very similar to the emblem protected under international law. It would appear to constitute a prohibited imitation of the red cross emblem.

In this regard, we would like to draw your attention to Article 53, 1st para., of the First 1949 Geneva Convention which stipulates that:

"The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross" or **any sign or designation constituting an imitation thereof**, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times" (Emphasis added)

Even if slightly modified, a red cross on a white background constitutes a prohibited imitation. This view is endorsed by the Commentary on the First 1949 Geneva Convention (*Commentary of the Geneva Conventions of 12 August 1949*, Volume I, Article 53, ICRC, Geneva, 1952, p. 385). Indeed, the criterion to decide whether a logo can be considered as an imitation of the emblem should be whether there is a risk of confusion in the public mind between the logo and the red cross emblem, as it is precisely this confusion that the clause is intended to prevent. Even if the user means no harm, a different logo should be substituted.

5. Further, it is important to note that the States party to the 1949 Geneva Conventions are under the obligation to adopt a legislation ensuring the prevention and repression of the misuses of the emblems, including imitation thereof (Article 54 of the First 1949 Geneva Convention).

6. The [name or initials of the NS] considers that using the submitted logo would constitute a misuse of the red cross emblem. The [name or initials of the NS] therefore urges you not to make use of it and to choose another graphic design as the logo of your company [e.g. a blue cross that does not have a red cross behind it].

Finally, we would like to emphasize that these rules, strict though they may appear to be, were adopted by the States party to the 1949 Geneva Conventions to serve the best interests of victims (particularly of armed conflicts) and of the humanitarian mission. Protecting the emblem is crucially important in this context. Any misuse of the emblem generates confusion in the public mind and endangers those entitled to use it. We are confident that you will understand and agree with these principles.

Yours sincerely,

Chapter C. THE ROLE OF THE ICRC

47) *What are the mandate and responsibilities of the ICRC regarding use of the emblem?*

Legal and statutory basis

Article 44, 3rd para., GC I
 Article 5(2)(c) and (g), Statutes of the Movement
 Article 4(1)(c) and (g), Statutes of the ICRC
 Article 6.1.2.A)(d), Seville Agreement
 Resolution 8, para. 4, Council of Delegates, 1993

Recommendations

- The ICRC must respect the rules governing the use of the emblem in all circumstances.
- As “guardian of IHL”, the ICRC must ensure, to the best possible extent, that the rules governing the use of the emblem are understood, accepted, disseminated and applied in all situations, and in particular in times of armed conflict.
- In the fulfillment of this mandate, the ICRC should notably undertake the following activities:
 - i. Assisting States in the accession and ratification of IHL instruments and in the development of national measures of implementation of IHL, notably on the use and protection of the emblem;
 - ii. Disseminating the rules governing the use of the emblem to relevant audiences, such as arms carriers (notably State’s armed forces), universities or the youth;
 - iii. Advising on or taking the measures required to prevent and/or stop misuses of the emblem;
 - iv. Assisting in strengthening NS ability to cooperate with the authorities to ensure the protection of the emblem (preventing and stopping misuses);⁴¹⁷
 - v. Whenever necessary, stimulating discussions of serious problems encountered regarding the use of the emblem and possible solutions, whether such solutions involve changes to the law or otherwise.

Analysis

Introduction

The ICRC was founded in 1863 to examine and work towards the implementation of the two proposals Henry Dunant put forward in his book *A Memory of Solferino*: (1) to form in peacetime voluntary relief societies to act as auxiliaries to the medical services of armed forces in time of war; and (2) to get States to sign a convention protecting the wounded on

⁴¹⁷ For further considerations on the role of NS with regard to the protection of the emblem, see Questions 46 and 51 of the Study.

the battlefield and all those who came to their aid. The first proposal was at the origin of the Movement, the second was the fountainhead of IHL.⁴¹⁸

The adoption of a single distinctive sign to indicate both the army medical services and volunteers relief societies was then one of the ICRC principal objectives since its very first meetings.⁴¹⁹

Identified by the emblem of the red cross, the ICRC plays a unique role in the international system, working for the faithful application, dissemination and possible development of IHL, including the rules governing the use of the emblem.

The use of the emblem by the ICRC

Article 44, 3rd para., of GC I provides that "[t]he international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground".

The ICRC (as well as the International Federation) is therefore granted the right to use the emblem without reservation.⁴²⁰ This right of course implies a corresponding obligation to strictly respect the rules on the use of the emblem. As underlined by the Commentary on GC I, "[t]he international organizations should, like the National Red Cross Societies, be careful to exercise the right, so freely granted to them, with due circumspection".⁴²¹

Furthermore, Resolution 8, para. 4, adopted by the Council of Delegates 1993 invites the ICRC (and the International Federation) to observe the rules governing the indicative and decorative uses of the emblem as laid down in the 1991 Emblem Regulations. Since the 1991 Emblem Regulations "develop Article 44" of GC I,⁴²² there is no reason why the ICRC (and the International Federation) should depart from the provisions of the Regulations.

In view of the above, it is obvious that the ICRC must respect the rules governing the use of the emblem in all its activities and in all circumstances. Compliance with this obligation in turn gives the ICRC the necessary credibility to fulfil its specific role with regard to IHL, in particular, the rules governing the emblem.

The ICRC as "guardian of IHL"

Article 5(2)(c) and (g) of the Statutes of the Movement provides that the ICRC has the mandate:

"c) to undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law;

⁴¹⁸ François Bugnion, *Red Cross, Red Crescent, Red Crystal*, Geneva, ICRC, May 2007, pp. 4-5; see also Yves Sandoz, *The International Committee of the Red Cross as guardian of international humanitarian law*, ICRC, Geneva, 1998, 32 pp.

⁴¹⁹ Jean Pictet, ed., "Unpublished documents relative to the founding of the Red Cross, Minutes of the Committee of Five", *IRRC*, English supplement, Vol. II, No. 3, March 1949, p. 127; *Procès-verbaux des séances du Comité international de la Croix-Rouge, 17 février 1863 – 28 août 1914*, ed. Jean-François Pitteloud, with Caroline Barnes and Françoise Dubosson, Geneva, ICRC and Henry Dunant Society, 1999, p. 18, quoted by François Bugnion, *Red Cross, Red Crescent, Red Crystal*, Geneva, ICRC, May 2007, p. 5.

⁴²⁰ As stated in the *Commentary on GC I*, "[t]he authorization is without reservation. Consequently – as the discussions at the Conference clearly show – the sign may have protective value when circumstances and the nature of the work require". *Commentary on GC I*, Article 44, p. 336. (Footnote omitted).

⁴²¹ *Commentary on GC I*, Article 44, p. 336.

⁴²² Introduction, para. 3, of the 1991 Emblem Regulations.

(...)

g) to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof".⁴²³

As far as the emblem is concerned, the Seville Agreement gives as well the ICRC a specific function. According to Article 6.1.2.A(d) of the Seville Agreement, in situations where the ICRC is acting as lead agency, it is its specific responsibilities "to ensure respect for the rules in force relating to the use of the red cross and red crescent emblems for protective purposes".

The Seville Agreement emphasizes the specific responsibility of the ICRC regarding the use of the emblem in situations of armed conflicts. However, it does not replace or annul the general responsibility of the ICRC to do its utmost in all situations to prevent and stop misuses of the emblem, like any other violations of IHL.

In the framework of its role of "guardian of IHL" and in relation to the emblem, the ICRC has thus developed a wide range of activities in order to fulfill a threefold objective:

- the existing rules are accepted, known, understood and applied as widely as possible;
- States and Movement components are well equipped to promote use of the emblem and to protect it from misuses;
- the rules are adapted, whenever necessary, in order to reinforce the protective value of the emblem.

The concrete activities undertaken by the ICRC

1. States' participation in IHL treaties and national implementation measures

In order to promote IHL, the ICRC encourages States to ratify the instruments adopted by diplomatic conferences. It is essential, in fact, especially where armed conflicts occur that all parties be governed by the same rules.

The ICRC Advisory Service is responsible for providing State authorities with legal and technical assistance in order to facilitate States becoming party to IHL instruments (e.g. with model instruments of accession and ratification) and adopting the legislative, regulatory or administrative measures required for the ratification and implementation of such instruments.⁴²⁴

This service has also developed both a model "Law concerning the use and the protection of the emblem of the red cross, the red crescent and the red crystal" and a model "Geneva Conventions Act", for States with a civil or common law system respectively, highlighting the provisions to be included in a comprehensive legal regime regulating the use and protection of the emblem.⁴²⁵

2. Integration and dissemination of the rules governing the use of the emblem

As already mentioned, States have the obligation to disseminate IHL as widely as possible.⁴²⁶ The ICRC has long assisted States in meeting this obligation, developing a broad range of activities and related promotional tools.

⁴²³ Article 4(1)(c) and (g) of the Statutes of the ICRC contains the same text.

⁴²⁴ The model instrument of accession and ratification to AP III is available in the Internet at the following address: <http://www.icrc.org/Web/eng/siteeng0.nsf/html/emblem-ratificationkit-110107> (visited 26 August 2009).

⁴²⁵ With regard to national measures of implementation of the rules of IHL to be taken by States, see Question 44 of the Study.

⁴²⁶ See Question 45 of the Study.

Regarding the dissemination to the armed, security and police forces, and other weapon bearers, the ICRC has developed the concept of "integration" of the law,⁴²⁷ meaning that in order for military operations to be conducted in compliance with the IHL (and thus the rules regulating the use of the emblem), IHL must become an integral part of the following four elements: doctrine,⁴²⁸ education,⁴²⁹ training/equipment⁴³⁰ and sanctions.⁴³¹

The ICRC does not provide arms carriers with practical technical training; it focuses on the legal framework within which they have to operate, helping them to identify its operational implications and the actions they must take in order to comply with the law.

With regard to the promotion of IHL to the youth and in higher education and universities, the ICRC is convinced that the rules of IHL must be taught as part of the general curriculum.⁴³² To that end, the ICRC Education and Behaviour Unit notably provides new tools for the dissemination of IHL among adolescents;⁴³³ plans teaching programs with Ministries of Education;⁴³⁴ supports university programs on IHL;⁴³⁵ provides, in cooperation with NS, annual summer courses on IHL,⁴³⁶ and it co-organizes and supports moot court competitions.⁴³⁷

3. Advice and demarches to prevent and stop misuses of the emblem

The ICRC gives its assistance notably to States, NS, NGOs, firms and private individuals on all the issues related to the use of the emblem/logo.

In case of emblem misuses, the ICRC *contacts* the violator; *raises awareness* of the impact such a misuse could have on ICRC action and on the action of the whole Movement; reminds the *relevant rules* governing the use of the emblem (rationale of the emblem and the legal base); suggests *possible solutions*, e.g. the use of alternative emblems; and ensures *follow-up* until the misuse has stopped. These advice and demarches are undertaken by ICRC delegations with the technical support of ICRC Headquarters whenever required.

⁴²⁷ See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 17.

⁴²⁸ "Doctrine is understood as all standard principles that guide the action of arms carriers at strategic, operational and tactical levels, independently of the formats these principles take." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 23.

⁴²⁹ "Education focuses on providing personnel with theoretical knowledge on what to do." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 26.

⁴³⁰ "The training of arms carriers focuses on providing personnel with practical experience of how to perform their functions while complying with the law." "Equipment provides personnel with the assets needed to conduct missions in accordance with the law." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, pp. 29 and 32.

⁴³¹ "Sanctions must be visible, predictable and effective." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 35.

⁴³² See Question 45 of the Study.

⁴³³ The ICRC developed for example the educational programme called Exploring Humanitarian Law (EHL), designed to introduce adolescents (age 13 – 18) to the basic rules and principles of international humanitarian law (IHL) and related issues. The significance of the emblem and the basic rules governing its use are contained in such a programme.

⁴³⁴ See Stéphane Hankins, "Promoting International Humanitarian Law in Higher Education and Universities in the Countries of the Commonwealth of Independent States", *IRRC*, No. 319, 1997, pp. 451-454; Yves Sandoz, *The International Committee of the Red Cross as guardian of international humanitarian law*, ICRC, Geneva, 1998, 32 pp.; Luisa Vierucci, "Promoting the Teaching of International Humanitarian Law in Universities: the ICRC's experience in Central Asia", *IRRC*, No. 841, 2001, pp. 155-165.

⁴³⁵ As an example, the "Academy of International Humanitarian Law and Human Rights" in Geneva specializes in the fields of law related to armed conflicts and states of emergency.

⁴³⁶ The ICRC annual summer courses on IHL provide a comprehensive introduction to the subject through a combination of lectures and case studies.

⁴³⁷ The Jean-Pictet Competition is a week long training event on IHL intended for students, consisting in simulations and role plays, allowing the jury of the Competition to evaluate teams' theoretical knowledge and practical understanding of IHL.

The ICRC, through its delegations, assists as well NS in the design and implementation of “emblem protection campaigns”, notably through sharing assessments of the problems and needs, and designing plan of action.⁴³⁸

4. Assistance in strengthening NS competences

As explained in other parts of the present Study, NS have the mandate to cooperate with the public authorities to ensure protection of the emblems.⁴³⁹

The ICRC tries to be as helpful as possible to NS in this respect to assist NS in building their capacities to fulfill their mandate. This assistance takes in particular the following forms:

- a. the demarches jointly undertaken by the ICRC and the NS to stop (or prevent) emblem misuses (as described above under point 3) could help NS to strengthen their knowledge of the issue (as it helps the ICRC);
- b. the ICRC develops materials and tools for NS (and other interested parties), such as the new “three emblems, one Movement, serving humanity” leaflet (produced together with the International Federation), posters, PowerPoint presentations, and so on.
- c. the ICRC supports as well, either through funding or technical assistance, NS “Law and Fundamental Principles” programmes, which includes dissemination of the significance and the rules governing the use of the emblem.

5. Development of new instruments

The ICRC works for the development of new instruments of IHL in general, which potentially encompasses new instruments on the emblem.

This work may result in the adoption of new international conventions, such as AP III, but it is not necessarily the case. The adoption and revision of the 1991 Emblem Regulations and, to a certain extent, the present Study give an idea of the variety of different tools and instruments that could result from the ICRC work on this issue.

⁴³⁸ This has been the case for example of the campaigns undertaken in Bangladesh, India, Nepal or Uganda (see Question 51 of the Study).

⁴³⁹ On the role of the NS with regard to the emblem, see Questions 46 and 51 of the Study.

48) *What are the ICRC responsibilities regarding use of the emblem when it is acting as lead agency, in accordance with the Seville Agreement? What measures should it undertake in this regard?*

Legal or statutory basis

Article 5, Statutes of the Movement
Article 6.1.2.(A)(c) and (d), Seville Agreement

Recommendations

- In its function of lead agency, the ICRC is responsible for ensuring respect for the rules governing the use of the emblem. These rules are incorporated into locally managed security frameworks that the ICRC develops in cooperation with the ONS, its primary partner. Security frameworks aim to guarantee, to the greatest extent possible, the physical safety of the personnel who are operating within a coordinated Movement approach. Proper use of the emblem is critical in managing the security framework.
- To fulfil its mandate as the “guardian of IHL”, the ICRC must do its utmost to ensure proper use (protective and indicative) of the emblem, including on those occasions when the ICRC acts as a lead agency, as reiterated under the Seville Agreement.⁴⁴⁰
- It is recommended that the components of the Movement consult the ICRC and follow its recommendations on the use of the emblem, particularly in situations of armed conflict.

Analysis

The ICRC responsibilities under the Seville Agreement

Article 6.1.2.(A)(d) of the Seville Agreement stipulates that when the ICRC is acting as a lead agency, it has a specific responsibility “to ensure respect for the rules in force relating to the use of the red cross and red crescent emblems for protective purposes.”⁴⁴¹

Article 6.1.2.(A)(c) of the Seville Agreement stipulates that when the ICRC is acting as a lead agency, it has also “to define and ensure the application of any measure which may prove necessary to guarantee, to the greatest extent possible, the physical safety of personnel engaged in relief operations in the field”.

Clearly, these two provisions are connected to each other. Visibility and clear identification are essential for ensuring the safety of the operating staff and volunteers of the components of the Movement. At the same time, in order to guarantee the proper respect for the emblem, it is extremely important that the persons and entities entitled to use it respect the rules that govern its use.

⁴⁴⁰ On the general mandate and responsibilities of the ICRC regarding the use of the emblem, see Question 47 of the Study.

⁴⁴¹ Please note that where the International Federation or an NS acts as the lead agency, they have similar responsibilities to ensure respect for the rules in force relating to the use of the emblem.

Paragraph (d) of Article 6.1.2.A) of the Seville Agreement underlines the importance of ensuring respect for the emblem when it is used as a protective device. However, as noted elsewhere in this Study,⁴⁴² it is quite clear that misuse of the indicative function of the emblem has an impact on the respect accorded to the emblem in general, and thus on its protective function as well. Consequently, the ICRC, as part of its permanent mandate and in its temporary role of lead agency, considers that it has a specific responsibility, under the Seville Agreement, to deal with all issues related to the use of the emblem.

Implementation of responsibilities

In order to implement its responsibilities as lead agency, the ICRC undertakes the following:

- It continues to develop a general “Movement Security Framework”, which includes a section on the use of the emblem: this is the general framework to be followed by the components of the Movement in order to ensure their security in situations of armed conflict.
- Whenever necessary, the ICRC delegations develop guidelines to address specific issues that crop up in particular contexts. These are specific guidelines, designed for specific contexts, which have been developed to tackle the particular problems or risks that have been identified. They might be very detailed, concentrating on a very specific topic, or they might simply reiterate the basic rules that must be applied in a given context. These guidelines should be discussed with (and endorsed by) the ONS as the primary partner of the ICRC (and, possibly, with all the other components of the Movement that might be involved) and disseminated as widely as possible among them. Cooperation with the ONS is particularly important since it has first-hand knowledge of the context, of the potential for difficulties associated with the use of the emblem and of the relevant legislation and regulations.
- It makes itself available to the components of the Movement for discussions of any issue related to the use of the emblem. For instance, the ICRC is prepared to give advice, specific and general, on the use of the emblem or to make the interventions required to stop misuses reported by the components, and so on.
- It is ready to make the necessary representations to the authorities in order to ensure that they (and all other persons or entities) use the emblem properly.

The ICRC expectations as lead agency

The ICRC is responsible for establishing, managing and maintaining a Movement security framework and for ensuring proper use of the emblem within the Movement in situations of armed conflict. It has many years’ experience and a wide knowledge of best practices on which it can draw.

The way the components of the Movement use the emblem and, more generally, the way they are identified, in a given context is very important for the impact and success of their activities there. It is therefore necessary to ensure consistency and respect for the rules governing the use of the emblem. The ICRC is committed to do its utmost to provide adequate guidance in this respect. At the same time, the ICRC urges all components of the Movement involved in a situation of armed conflict to consult it and to follow its recommendations.

⁴⁴² See, e.g. the Introduction, as well as Part III, of the Study.

The ICRC as the “guardian of IHL”

It is important to remember that the ICRC remains committed to ensuring the greatest possible respect, in all circumstances, for the rules governing the use of the emblem.⁴⁴³ As the “guardian of IHL”, it is mandated to provide recommendations with that objective in mind and to make all the necessary representations for preventing and stopping misuses of the emblem.

Finally, it is important to bear in mind that while the ICRC has a special role in ensuring the proper use of the emblem when it acts as a lead agency, all components of the Movement are individually responsible for ensuring that they use the emblem properly at all times.

⁴⁴³ Under Article 5(2)(c) of the Statutes of the Movement, the ICRC has a duty “to work for the faithful application of international humanitarian law.” For further analysis of this subject, see Question 47 of the Study.

Chapter D. SPECIAL ISSUES

49) *What is the meaning under international humanitarian law of the term "imitation" of the emblem or of the name?*

Legal or statutory basis

Articles 53 and 54, GC I
Article 6(1), AP III

Recommendations

- Imitation is a form of misuse of the emblem or the name, that is, the use of a sign or designation that, owing to its shape and/or colour or title, may be confused with the emblem or its name.
- The criterion for deciding if a given mark constitutes an imitation should be whether there is a risk of confusion in the public mind between that mark and the emblem or its name. This test should be interpreted in the manner most favourable to the GC and the emblem (and/or name).
- Entities or persons authorized to use the emblem under specific conditions may not use an imitation thereof when those conditions are not fulfilled.

Analysis

Introduction

Misuses of the emblem (and/or name) have existed since the adoption of the 1864 Geneva Convention.⁴⁴⁴ Almost from the initial recognition of the emblem, it was obvious that misuses, including use of the emblem in trademarks, caused problems and that they had to be expressly prohibited under international law, which was not the case under the 1864 Geneva Convention.

Articles 23 and 27 of the 1906 Geneva Convention took care of this lack of express prohibition of emblem misuse.⁴⁴⁵ However, very rapidly after adoption of this express

⁴⁴⁴ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, adopted in Geneva on 22 August 1864. For further explanation, see, for instance, *Commentary on GC I*, Article 53, pp. 381-382. Unless indicated otherwise, in this Question, misuses (imitations) of the emblem also refer to misuses (imitations) of the name "Red Cross", "Red Crescent" and "Red Crystal".

⁴⁴⁵ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, adopted in Geneva on 6 July 1906. Articles 23 and 27 of the 1906 GC provided that:

"Art. 23. The emblem of the red cross on a white ground and the words 'Red Cross' or 'Geneva Cross' may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and 'matériel' protected by the convention.

(...)

Art. 27. The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

prohibition, commercial companies started using signs which could not be said to be the red cross, but gave the impression that they were. Such companies believed that they would be able thereby to claim with impunity some of the prestige attached to the emblem.⁴⁴⁶

Prohibition of imitation of the emblem

In order to settle the issue described above, Articles 24 and 28 of the 1929 Geneva Convention forbade unauthorized use not only of the original emblem, but also of every sign or name that constituted an imitation of the emblem and title.⁴⁴⁷ This innovation was maintained in Article 53, 1st, 2nd and 4th paras., of GC I, which reads as follows:

"The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation 'Red Cross' or 'Geneva Cross', or any sign or designation constituting an **imitation** thereof, **whatever the object of such use**, and irrespective of the date of its adoption, **shall be prohibited at all times**.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and **of the confusion which may arise between the arms of Switzerland and the distinctive emblem** of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.
(...)

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38."⁴⁴⁸ (Emphasis added)

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition."

⁴⁴⁶ See, for instance, *Commentary on GC I*, Article 53, pp. 385-386.

⁴⁴⁷ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, adopted in Geneva on 27 July 1929. Articles 24 and 28 of the 1929 GC provided that:

"Art. 24. The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used either in time of peace or in time of war, except to protect or to indicate the medical formations and establishments and the personnel and material protected by the Convention.
(...)

Art. 28. The Governments of the High Contracting Parties whose legislation is not at present adequate for the purpose, shall adopt or propose to their legislatures the measures necessary to prevent at all times:

(a) The use of the emblem or designation "Red Cross" or "Geneva Cross" by private individuals or associations, firms or companies, other than those entitled thereto under the present Convention, **as well as the use of any sign or designation constituting an imitation, for commercial or any other purposes;**

(b) By reason of the compliment paid to Switzerland by the adoption of the reversed Federal colours, the use by private individuals or associations, firms or companies of the arms of the Swiss Confederation or marks constituting an imitation, whether as trademarks or as parts of such marks, for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment.

The prohibition in (a) of the use of marks or designations constituting an imitation of the emblem or designation of 'Red Cross' or 'Geneva Cross,' as well as the prohibition in (b) of the use of the arms of the Swiss Confederation or marks constituting an imitation, shall take effect as from the date fixed by each legislature, and not later than five years after the coming into force of the present Convention. From the date of such coming into force, it shall no longer be lawful to adopt a trademark in contravention of these rules." (Emphasis added)

⁴⁴⁸ The prohibition of imitation of the red crystal is set forth in Article 6(1) of AP III.

Definition of "imitation"

As mentioned in the Introduction of the Study, imitation is a form of emblem misuse, namely the use of a sign or designation that, owing to its shape and/or colour or title, may be confused with the emblem or its name.

According to Article 54 of GC I, State authorities are responsible for deciding whether a given mark constitutes an imitation.⁴⁴⁹ As mentioned in the *Commentary on GC I* (Article 53), the criterion should be whether there is a **risk of confusion** in the public mind between the sign or designation and the emblem or its name.⁴⁵⁰

As far as the sign is concerned, the **shape and colour** of the sign must be so close to those of the emblem that, **cumulatively**, they may potentially trigger confusion in the public mind. A red horse or a yellow cross would not amount to imitations, since both the design of the horse and the yellow colour are too far from the design and the red colour of the emblem. In contrast, depending on the shade, an orange cross or a purple crescent could constitute imitations of the emblem.

The *Commentary on GC I* (Article 53) provides the following examples of imitation of the red cross emblem:

"[A] red cross with a figure or another cross superimposed; a cross which had only the outline or part of it in red; backgrounds of different colours; a cross half red and half white on a ground in which the two colours were reversed; a red star which from a distance looked like a cross".⁴⁵¹

The following signs depict some other cases of imitation:



The aforementioned criterion of the risk of confusion in the public mind applies also to the imitation of the emblem's designations. Consequently, "bed cross" or "rex crystal", for instance, would be imitations of the emblem's designation, prohibited by IHL.

In principle, the intention of the person using the emblem improperly or using an imitation thereof must not be taken into account: improper use of the emblem and imitation thereof are illegal.⁴⁵² However, in case of doubt as to whether a mark constitutes an imitation or not, an attempt may be made to determine whether the person had any actual intention of deceiving

⁴⁴⁹ "State authorities" should be broadly understood as covering not only executive authorities, but also courts, or other State bodies which may be responsible for taking the measures necessary to prevent and repress misuse of the emblem.

⁴⁵⁰ *Commentary on GC I*, Article 53, p. 385.

⁴⁵¹ *Commentary on GC I*, Article 53, p. 385.

⁴⁵² On the distinction between improper use of the emblem and imitation thereof, see "General principles and concepts" in the Introduction of the Study.

the public or exploiting the prestige of the emblem. In light of the *Commentary on GC I* (Article 53), the test should be interpreted in the manner most favourable to the GC and the emblems:

"If the user means no harm, why should he choose a mark resembling the red cross [or the red crescent or the red crystal]? There can be no valid objection to substituting an entirely different symbol."⁴⁵³

This means that if there might be a reasonable doubt that a mark or sign could be mistaken for the emblem, it must be considered as an imitation and must therefore not be registered as a trademark or used in any other way.

Lastly, it is worth underlining that entities or persons authorized to use the emblem under specific conditions may not use an imitation thereof when such conditions for use of the emblem are not fulfilled.

⁴⁵³ *Commentary on GC I*, Article 53, p. 386. The French version of the *Commentary on GC I*, Article 53, put the emphasis on the attempts of exploiting the universal recognition of and good will toward the emblem for (commercial) advantage: "[N]y a-t-il aucune idée de fraude, aucune arrière-pensée de profiter de la notoriété de l'emblème ?" See *La Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne*, *Commentaire publié sous la direction de Jean S. PICTET*, Genève, CICR, 1952, p. 434.

50) *How should misuse of the emblem and the name on the Internet be dealt with?*

Legal or statutory basis

Articles 53 and 54, GC I

Articles 2(3), 3(2), 5(2)(c) and (g), and 6(4) (j), Statutes of the Movement

Recommendations

- States, in cooperation with the components of the Movement, have the same responsibility to prevent and repress the misuse of the emblem (and name) on the Internet as they do for any other form of misuse (as provided for under Articles 53 and 54 of GC I).⁴⁵⁴ In particular, appropriate mechanisms should be in place to make possible immediate action against fraudulent use of the emblem (and name).
- In cases of misuse on **Country Code Top Level Domains** (CCTLDs), the following measures should be taken:
 - i. States should identify, and communicate to the NS, the authority responsible for taking action;
 - ii. States' Internet regulators should assist in identifying servers from which e-mail messages misusing the emblem or the name are sent and suggest appropriate courses of action;
 - iii. NS should follow the same steps and procedures as described for other forms of emblem (or name) misuse: contacting the owner or provider of the website; explaining the protection enjoyed by the emblem; requesting an end to the misuse; and, if need be, reporting the case to the competent State authority;⁴⁵⁵
 - iv. NS are encouraged to reserve CCTLDs to eliminate the possibility of others stepping in and using them;
 - v. NS are encouraged to familiarize themselves with the techniques, available from their States' Internet regulators, for determining the ownership and management of domains.
- In cases of misuse on **Global Top Level Domains** (GTLDs), the following measures should be taken:
 - i. Once the ownership of a GTLD website involving the misuse of the emblem or name has been established, it is the responsibility of the State of ownership to take the steps necessary to shut down the pertinent web pages. The measures concerning CCTLDs that are listed above could then be followed.
 - ii. When more than one State are involved, their authorities, as well as the NS concerned, should cooperate with a view to removing the unlawful material as quickly as possible. They should also inform the ICRC and the International Federation.

⁴⁵⁴ On the role and responsibilities of States in the prevention and repression of misuse of the emblem, see Question 44 of the Study.

⁴⁵⁵ On the steps and measures that NS should take when confronted with a misuse of the emblem (or the name), see Question 44 of the Study.

- iii. In the most serious cases of fraudulent use of the emblem or the name on GTLD websites involving several States (e.g. where police work might need to be coordinated between several States), Interpol might have to play a role.
- The International Federation and the ICRC are prepared to advise NS in their efforts to tackle misuses of the emblem and the name on the Internet.

Analysis

Introduction

The Internet is now an important vehicle for many businesses, and a major source of news, information and entertainment.

The ease with which individuals or companies can place their material on the Internet has made possible the proliferation of trademark infringements of every kind, as well as the distribution of material the possession of which can be a criminal offence. It is also relatively easy for individuals or groups to download and make use of the logos, trademarks or other identification signs of other businesses or groups. This is done, sometimes, to attract business, or to present products in a way designed to mislead or even defraud the reader. This is happening more and more often.

The Internet operates through a system of "domains", which are international and national authorities regulating the web. Domains are managed through a private sector not-for-profit company, the Internet Corporation for Assigned Names and Numbers (ICANN), which is located in California. Global Top Level Domains (GTLD) are those whose internet addresses (URLs) end with the suffix ".com", ".net" etc. The addresses of Country Code Top Level Domains (CCTLD) end with a country suffix (ch = Switzerland, eg = Egypt, etc). In general, material appearing on a CCTLD website should be regarded as if it had been printed in that country.

Misuses of the emblem on the Internet, even more than with other media, can be spotted and reported from anywhere in the world, because of the reach of the Internet. Commercial services for detecting fraud are available, and are used by some NS. Most instances of misuse are reported by members of NS who have come across them or by members of the public who have been swindled.

The Internet is accessible anywhere in the world, but the way the material is posted can give a clue to the identity of the author, and to the applicable law in that case.

The applicability of the rules on the use of the emblem to the Internet and the responsibility for implementing them

It is obvious that the GC, their AP I and II, and even the 1991 Emblem Regulations were adopted at times when the Internet did not exist (or was not in general use).

However, this does not mean that the rules defined in the above-mentioned instruments are not applicable to the use of the emblem on the Internet. On the contrary, Article 53, 1st para., and Article 54 of GC I provide that:

"The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross" or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

(...)

The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53."

It follows from those Articles that States have the primary responsibility for "[taking] measures necessary for the prevention and repression" of the misuse of the emblem (and names) on the Internet just as they are in all other situations.⁴⁵⁶ As part of their general responsibility to ensure respect for IHL, States must therefore ensure that appropriate legislation or other instruments are in place to immediately tackle misuse in this form.

As for the NS, their mandate (defined under Article 3(2) of the Statutes of the Movement) to "cooperate with their governments (...) to protect the distinctive emblems recognized by the Geneva Conventions and their Additional Protocols" remains unchanged with regard to misuses of the emblem on the Internet.⁴⁵⁷ Thus, NS must be ready to co-operate with the public authorities, in the same way as in "conventional" misuses of the emblem.

The important point to keep in mind is that the obligations and mandates of States and NS clearly cover the misuse of the emblem (or of the name) on the Internet and that the protection enjoyed by the emblem and the name is universal, as all States are now parties to the GC.

The ICRC and the International Federation, in their respective roles and responsibilities, must do their utmost to assist State authorities and the NS in tackling such misuses.⁴⁵⁸ Both the ICRC and the International Federation are prepared to advise NS and State authorities on the measures to be undertaken to tackle misuses of the emblem and the name on the Internet.

However, the unique character of the Internet complicates the process of stopping misuses of the emblem or the name. This uniqueness of the Internet must be taken into account when trying to stop misuses.

How should the misuse of the emblem and the name on the Internet be tackled?

1. Misuse on a CCTLD website

Whenever misuse or abuse of the names "Red Cross", "Red Crescent" or "Red Crystal", in any language, or of the emblems, is reported,⁴⁵⁹ every effort should be made to have it removed from the World Wide Web immediately.

The State authorities should take the following steps in particular:

- a) The State must identify the authority responsible for taking action in such cases. This authority must be made known to the appropriate persons at the NS and in the government so that the issue can be dealt with as quickly and efficiently as possible.

⁴⁵⁶ On the roles and responsibilities of States in the prevention and repression of misuse of the emblem, see Questions 44 and 45 of the Study.

⁴⁵⁷ On the roles and responsibilities of NS in the prevention and repression of misuse of the emblem, see Question 44 of the Study.

⁴⁵⁸ See Article 5(2)(c) and (g), of the Statutes of the Movement. On the role and responsibilities of the ICRC in the prevention and repression of misuse of the emblem, see Question 47 of the Study. Under Article 6(4)(j), of the Statutes of the Movement, among the International Federation's functions is its obligation "to assist the [ICRC] in the promotion and development of international humanitarian law."

⁴⁵⁹ There will be cases from time to time where the fraud is not directed against the "host" NS but against other NS or the ICRC or the International Federation. Action can and should be taken in these cases as well.

- b) Typically, fraud on the Internet is perpetrated by people using e-mail addresses rather than domain names. States' Internet regulators should be able to assist in identifying the server from which such messages are sent and suggest the appropriate course of action.

It must be noted as well that a misuse originating in State A and aimed at the population of State B (e.g. targeting people in the language of State B) is prohibited. However, the prohibition needs to be enforced by the authorities of State A.

As to the role of the NS when a misuse of the emblem or the name occurs on a CCTLD website, it will often be possible for the NS to have it removed, as would be the case if the misuse had occurred in the print media of the State concerned. However, ways of tackling such misuse will vary from country to country according to the way the domains and the Internet are managed.

In order to tackle emblem misuses on the Internet, the NS should:

- a) Familiarize themselves with the techniques, available through their States' Internet regulators, for determining the ownership and management of domains. This is a vital component in any strategy for removing abusive content.
- b) Follow the same steps and procedures as described for other forms of emblem misuse: contacting the owner or provider of the website; explaining the protection enjoyed by the emblem; requesting an end to the misuse; and, if need be, reporting the case to the competent State authority.⁴⁶⁰
- c) Consider taking pre-emptive measures in addition to combating misuses: NS should note that it is now common best practice to reserve CCTLDs to eliminate the possibility of others stepping in and using them.

2. Misuse on a GTLD website

When the misuse takes place on a GTLD website, the issue is more complicated, as these can be managed from anywhere in the world. It is, however, possible to get basic information about the owner of the domain and proceed from there. Most GTLDs are likely to be headquartered in the United States, where relatively few Internet users make use of the CCTLD option (.us).

When an instance of misuse has been spotted, the first step is to establish the ownership of the GTLD website carrying the offending material. It is then the responsibility of the State concerned to take the steps necessary to shut down the pertinent web pages. However, this will often involve more than one State. The authorities concerned should cooperate with a view to removing the unlawful material as quickly as possible.

The NS in question should also play an important role in the process. Very often they will be the ones reporting the misuse of the emblem or the name to their competent authorities and requesting that actions be taken to stop such misuse.

Likewise, the NS should also inform the ICRC and the International Federation of the cases and of the results of the measures undertaken. In complex cases, in particular the ones involving many different States, the involvement of the ICRC and the International Federation might have an added value.

⁴⁶⁰ On the measures that NS should take when confronted with a misuse of the emblem (or name), see Question 46 of the Study.

Lastly, there have been occasions when GTLD websites have carried material - including a Movement name and emblem - which clearly involved a misuse or displayed material which called for action by the police. In such cases, where police work might need to be coordinated between several States, Interpol might have to play a role.

51) *What strategies are effective for increasing awareness and preventing/reducing emblem misuse? Lessons learnt from "emblem protection campaigns"*

Legal or statutory basis

Articles 3(2), and 5(2)(f) and (4)(a), Statutes of the Movement
Relevant national legislation on the use and protection of the emblem

Recommendations

- In contexts marked by widespread misuse of the emblem, the NS, in accordance with its mandate to ensure the protection of the emblem, should launch a campaign for improving respect for and protection of the emblem.
- In order to conduct a successful emblem protection campaign, the NS should determine whether the following conditions are in existence and, if they are not, try, as much as possible, to bring them about while implementing the campaign:
 - i. Individual and organizational commitment, and motivation, for eradicating emblem misuse must be ensured, in particular by assigning the responsibility for the campaign to a focal point or group.
 - ii. The legal framework for protecting the emblem – its strengths and weaknesses – must be familiar to all concerned and must be used to guide the campaign.
 - iii. In order that the NS may lead by example, internal regulations, instructing its members, staff and volunteers how to use the emblem, should be adopted.
 - iv. The NS should acquire, as soon as possible, the commitment of key government (at national and regional levels) and other stakeholders (medical associations, etc.), especially in the form of written statement(s) from the appropriate ministry(-ies). The NS should also persuade regulatory associations to provide written commitments and to issue directives supporting the campaign.
 - v. The network of NS volunteers should be used to widen the reach of the campaign.
 - vi. The NS should make use of its standing and credibility in the community to convince all those misusing the emblem to stop doing so. The NS should also take advantage of the campaign to promote its own image and identity.
 - vii. The NS should capitalize on pre-existing knowledge: the launch of the campaign should serve as the trigger for making those, misusing the emblem, who are already aware of the proper use of the emblem to effect the necessary changes.
 - viii. The campaign should be conducted in a friendly and informative manner, assisting those who are being asked to change their logos to promote their new logos, and acknowledging (and possibly rewarding) achievements by those who have previously misused the emblem.
 - ix. The NS should involve other Movement partners as needed and mobilize the Movement's support for the campaign's goals. ICRC delegations are, as far as their capacities and resources will permit, prepared to provide assistance in the design or the implementation of the emblem protection campaign.

- The NS must develop a comprehensive plan of action, taking into account all the foregoing. It must make certain that the plan incorporates the following elements: an assessment of the root causes of misuse; an appropriate budget; the assignment of roles and responsibilities that are clear to all concerned; appropriate strategies (e.g. letters, door-to-door campaigning, etc.) to reach those misusing the emblem and the general public; a clear time framework; the production of the necessary material; determination to take advantage of all available opportunities for creating a “misuse free environment”; a system for monitoring, evaluating and adjusting the plan of action; a long-term maintenance strategy.

Analysis

Introduction

It has already been emphasized that NS have a mandate to disseminate IHL and to ensure protection of the emblem.⁴⁶¹

In some regions or States, the practice of misusing the emblem, mainly for commercial purposes, is entrenched and widespread. In most cases, this can be attributed to ignorance of the real significance of the emblem and of the conditions for its use. The range of persons and entities who misuse the emblem is very broad (advertisement agencies, film producers, supermarket chains, commercial firms of different kinds and sizes, etc.). However, the main responsibility for widespread misuse is to be found in the field of health-care and medicine, and to the institutions and professions associated with it (chemists, doctors, pharmacies, para-medical groups or organizations, etc.).

To fulfil their mandate in such circumstances, NS should consider carefully what they can do in order to reduce, limit and eventually eradicate this pattern of misuse. One possibility is to launch a comprehensive “emblem protection campaign” for minimizing misuse and raising awareness about the emblem’s protective and indicative value.

Based on conclusions drawn from case-studies,⁴⁶² the following passages suggest how a successful “emblem campaign” might be conducted.

Some of the conditions given below may be in existence even before the campaign is launched. This would increase the likelihood of the campaign being successful. If they do not exist, then that must be taken into account while planning the campaign.

⁴⁶¹ See Question 46 of the Study.

⁴⁶² This Question is largely based on two assessments prepared by Leslie Leach at the beginning of 2007:

- *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007;
- *Bangladesh Red Crescent Society. Emblem Protection Campaign Review*, in collaboration with the Bangladesh Red Crescent Society and the ICRC, March 2007.

Some other emblem protection campaigns have been considered in drafting this Question, notably the campaign that took place in Uganda between September 1992 and March 1993.

Conditions for a successful "emblem protection campaign"

The essential conditions that contribute to a campaign's success can be summarized as follows:

1. Individual and organizational commitment to eradicate emblem misuse

Organizational commitment is brought about by the commitment of impassioned and dedicated individuals to achieving a common goal. The importance of having unfaltering NS organizational commitment, resulting from the zeal of a few key individuals at the leadership level, to launch a comprehensive emblem protection campaign, cannot be over-emphasized as a key condition for success.

Sporadic and unplanned initiatives that are focused mainly on generating awareness, and make no "call to action", are very likely to be unsuccessful. For instance, overzealous NS volunteers who have learnt the proper use of the emblem in dissemination sessions, but who have not been taught how to approach those misusing the emblem, might at times adopt a needlessly aggressive manner. Behaviour of this sort is not conducive to success, and does not add to the positive image of the NS. It is therefore crucial that the NS leadership (with the support, possibly, of the ICRC) consciously decide to take a more intensive and comprehensive approach.

The various levels of leadership within the NS must also develop ownership for the emblem protection campaign and commitment to it. For instance, the NS General Assembly could issue resolutions at regular intervals providing direction and defining priorities for the campaign. The management of the NS should assist the campaign by developing a well-planned and adequately funded strategy for it.

Putting a group or person in charge of the campaign – a "focal point", so to speak – is essential. Qualifications appropriate to the task, such as a legal background, and qualities like enthusiasm, imagination, enterprise and dedication to the goals of the campaign, should be taken into account in selecting the "focal point."⁴⁶³ The "focal point" must obviously be able to rely on all the staff and volunteers of the NS, in developing a strategy and a plan of action, in fundraising, and in conducting activities related to the campaign. A core group of people could be formed within the NS to assist the "focal point" in his or her task.

The NS national headquarters must be responsible for coordinating and supporting a well-thought out and phased implementation plan.⁴⁶⁴ This does not exclude the creation of a system of decentralized responsibility and authority for taking decisions and mobilizing the campaign.

2. Legal framework for emblem protection

The existence of well-developed and implemented legislation on the use and protection of the emblem is important to the success of an emblem protection campaign.⁴⁶⁵ It would be very helpful if the persons and entities entitled to use the emblem, and the penalties for its misuse, were clearly defined in a piece of legislation. This would have a strong preventive effect and make it easier to stop misuse.

⁴⁶³ In the case of Nepal, for instance, the head of the dissemination department was appointed "focal point"; see Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 8.

⁴⁶⁴ As mentioned earlier, all issues related to the use of the emblem within an NS must be the responsibility of the central level because of the need to ensure consistency of use throughout the NS.

⁴⁶⁵ On the obligation of States to adopt such legislation, and on its contents, see Question 45 of the Study.

It must, however, be pointed out that in the case of Nepal, despite having neither an Emblem Protection Act nor a Geneva Conventions Act incorporating emblem protection provisions, the Nepal Red Cross Society was able to successfully implement its emblem protection campaign. A key element in its success was the active support of influential stakeholders in the Ministry of Health and in the professional regulatory associations, and the letters written by them. In this case, it was decided to emphasize “moral or ethical persuasion” and convince individuals that it was in their own best interest to have an NS that could be acknowledged as a truly neutral and impartial organization and protected in times of armed conflict, and therefore one that was more able to provide assistance and protection to those in need.

These two aspects – appropriate legislation and the strong support of the authorities through statements or regulations – have a strong impact on the success of a campaign.⁴⁶⁶

In order to be successful, NS must have a very clear understanding of the legal framework protecting the use of the emblem in their national context: this legal framework includes the two aspects mentioned above, as well as the rules on the use of the emblem defined under the GC, their AP and the 1991 Emblem Regulations.

3. Internal regulations on the use of the emblem

The components of the Movement must always set a good example for proper use of the emblem. This becomes even more important when an NS decides to undertake an emblem protection campaign.

The efforts of the NS would be largely unproductive if its members, staff or volunteers improperly used the emblem. It is therefore important to ensure that appropriate internal policies and guidelines are in place to govern the use of the indicative and protective emblem by the NS personnel (clothing and means of identification for staff, volunteers and members) and by its assets (printed material, ambulances, marketed items, etc.).

4. Commitment of key government and other stakeholders

Securing the leadership and support of influential stakeholders at the highest levels, early on in the campaign, is indispensable for its success. Strong, ongoing evidence-based advocacy and means of persuasion should be used in this regard. It could take place before or during the campaign, but it must be ensured as early as possible.

Gaining the support of key ministries and regulatory bodies/associations in advance adds immensely to the credibility and authority of the campaign, making the ‘grassroots’ part much easier to implement successfully.

The sooner the regulatory bodies distribute letters to their members advising them to stop using the emblem and to begin using their association logo, the better it is for the campaign. If this is done before the NS door-to-door campaign, it will greatly facilitate the initial contacts with those who are misusing the emblem.

The support of the appropriate ministry is also crucial to the success of the campaign. The NS (and the components of the Movement in a given context) must develop and strengthen their relationships with key government representatives. If these officials understand the rationale for the campaign even before it has begun, then a lot of time and effort will be

⁴⁶⁶ General perceptions of the law and of authority in different regions of the world and the relationship between people and the law and authority might also have an impact on the importance of the legal framework on the success of an emblem campaigns.

saved.

Take the example of Nepal. The Ministry of Health issued public notices in the newspapers, circulated letters to all concerned agencies soliciting their assurance that they would not use the emblem, and barred vehicles with unauthorized emblems from entering their premises. In the brochure specifically designed for the campaign, their support was emphasized. All the branches of the Nepal Red Cross who were interviewed pointed to the Health Ministry's written statement, contained in the brochure, as a key factor in convincing those who were misusing the emblem to mend their ways. This statement was instrumental in securing the commitment and support of various medical associations linked with pharmacies, doctors and paramedics/ambulance services.⁴⁶⁷

Regional or local officials can make crucial contributions to the success of a campaign, for instance, by attending an initial regional/local gathering of the most important or influential among those who misuse the emblem and reinforcing the campaign through supportive statements and even, at times, by suggesting the possibility of punishment for those who refuse to change.

5. A strong and diverse NS network

In a context where emblem misuse is common, well-established and widespread, rampant and extends throughout the State to the most remote areas, the existence of a large and varied network of committed volunteers and staff is essential for a campaign's success. The NS should not hesitate to involve its volunteers in the campaign so as to reach all the areas where the emblem is being misused. The volunteers must be well-informed and well-trained.

In the emblem protection campaign in Nepal, the NS youth volunteers were mobilized throughout the country, even in the remotest regions, and trained. They were instrumental in the door-to-door aspect of the campaign.⁴⁶⁸

6. The NS credibility within the community

It might be said that the stronger the NS standing in the community, the easier it would be to convince those who are misusing the emblem to support an emblem protection campaign.

If the NS is well known throughout the State, and among all communities, it can only add to its credibility. The credibility of the campaign will benefit greatly.

This familiarity with the NS and the services provided by it is likely to be of help in convincing the public to participate in the campaign.

The NS should attempt to incorporate its image, mandate and activities into the design of the campaign. This will help it to strengthen its identity.

7. History of dissemination to key groups

Dissemination sessions for key stakeholders and sections of the population, including local or regional officials and members of the medical community, helps to pave the way for the campaign both within the organization and externally. It may well be the case that these officials and those who misuse the emblem already know what proper use of the emblem is,

⁴⁶⁷ See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 9.

⁴⁶⁸ See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 10.

but in the absence of a “call to action” or a demand for altered behaviour, no one has been given a reason to act differently. The launch of the campaign might trigger a change in the behaviour of these persons; the NS should exploit the fact that they already know what proper use of the emblem is.

It would be an additional benefit if many of those in the medical community were to become members of the NS; they would then be more likely to support the goals of the campaign.

8. Cooperative approach

As mentioned above, the way volunteers from the NS approach those who misuse the emblem during the campaign could have an impact on its overall success. As was the case in Nepal, contacts with those who misuse the emblem should not be aggressive, but friendly and informative. The objective, after all, is to convince them of the validity of the request to not use the emblem any longer.⁴⁶⁹

This cooperative approach could be implemented in the following ways:

- a) helping those who have to change their logos to promote their new logos to the general public, lending a hand in painting over the red cross/crescent, and providing them with stickers of their new logo;
- b) helping promote these new logos to the general public, which in turns helps the medical (or other) community shift into their new identity;
- c) recognizing and acknowledging achievements by the NS, by key stakeholders (government and regulatory bodies) and by those previously misusing the emblem;
- d) rewarding success, within the NS and in the world beyond it, and involving the community in the attempt to create an environment in which no misuses of the emblem occur;
- e) offering those previously misusing the emblem the opportunity to become members of the NS.

This unthreatening approach in the “emblem protection campaign” could, as a side-effect, contribute positively to the image of the NS and the Movement in general within the community.

9. The support of the other components of the Movement

The ICRC has assisted several NS in designing and implementing their “emblem protection campaign”.⁴⁷⁰ Such campaigns and their positive outcomes are of consequence for the ICRC as well as for the Movement itself.

As far as their resources will permit, ICRC delegations will support ONS wishing to launch such campaigns, particularly by sharing assessments of existing problems and needs, and by designing a plan of action.

Besides the ICRC delegation, the NS should contact the various components of the Movement (International Federation and PNS) in the State where the campaign is to be launched. The NS should keep them informed about the campaign and discuss how they could contribute to the success of the campaign (through advice or material support, e.g. funding).

⁴⁶⁹ See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, pp. 7-8, 15-16 and 24-25.

⁴⁷⁰ This has been the case in, for instance, the campaigns in Bangladesh, India, Nepal and Uganda.

Assessing the situation and developing a strategy and a plan of action

The campaign must be carefully planned. In order to get the attention of those who are misusing the emblem and of the public, to successfully tackle the forms of misuse that have been identified, and to attract funds for the campaign, a proper strategy and plan of action must be developed.

In developing a plan of action and a strategy, the foregoing elements should be taken into account, and the following actions carried out:

- a) Assess the situation, understand and analyze the environment; in particular, identify those who are misusing the emblem and the reasons for it (scope and problem analysis); the root causes of misuse and those who are misusing the emblem (the medical community, sign painters, manufacturers, media, embassies/donors, etc.) must be tackled;
- b) Develop a comprehensive plan and budget based on targets (those who are misusing the emblem) with clearly set out roles, responsibilities and strategies/activities at the national and district levels.
- c) Choose a variety of suitable strategies such as information sessions, media campaigns, door-to-door campaigning, letter-writing, rewarding and acknowledging certain achievements, etc.
- d) Establish a clear time framework for the campaign.
- e) Ensure that the plan covers the proper use of the emblem within the NS as well as in the community.
- f) In addition to targeting the most important or influential among those misusing the emblem, ensure that the plan incorporates the general public, in order to make them aware of who is entitled to use the emblem; the plan must also include the alternative emblems for pharmacies, ambulances, doctors/clinics, medical hospitals.
- g) Prepare, print and distribute the necessary marketing resources; develop media campaign resources; train district/regional personnel, including youth; acquire funds.
- h) Make use of every opportunity during the year to promote an environment in which no misuse of the emblem takes place (e.g. publish articles in NS newsletters and in those issued by the associations of regulatory bodies; include the subject in all major speeches made by the NS leadership and in all media releases as a tag line where appropriate; mention the subject in all speeches and external documents such as the annual report; emphasize the subject in all NS programming as well as in dissemination sessions; organize a celebration on the theme on World Red Cross Day; plan an Emblem Protection Awareness week, etc.).
- i) Monitor and evaluate progress and adjust the plan as necessary;
- j) Develop and implement a long-term strategy to ensure the prevention of future misuses.

The environment: existence of an armed conflict

The occurrence of an armed conflict might reveal the necessity of an emblem protection campaign (as was the case in Nepal, for instance). It should, of course, not be thought a necessary condition for the success of such a campaign. However, it must be said that conditions of armed conflict would have an influence both within the NS and on external stakeholders.

The conditions of armed conflict might be a sad but powerful motivation for NS to ensure a successful campaign both at the national and the branch levels. A situation of armed conflict, and the attendant unfortunate consequences, might also assist in persuading those who are misusing the emblem, the media and the authorities to support the campaign.

The obstacles faced by an NS in gaining safe access to those in need during the conflict, owing to the misuse of the emblem, might lead the NS leadership to prioritize the need for an emblem protection campaign and could also provide the NS with persuasive examples of this challenge to use in the community during the campaign. It is recommended that the NS undertake an analysis of the safety and access issues it faces while trying to provide assistance to those in need, and assess to what extent the rampant misuse of the emblem may be responsible for the identity and recognition challenges it faces in its work. This assessment could be carried out with the support of the ICRC, as was the case for instance in Nepal.⁴⁷¹

Further, the existence of an armed conflict may also help to convince governmental authorities of the need for a successful emblem protection campaign. It would make clear the risks faced by the medical services of the armed forces as a result of the misuse of the emblem, and the consequences for the prestige of the emblem in the public mind and among combatants.

Obviously, conditions of armed conflict may not have the desired impact on those misusing the emblem. Some might want to continue using the emblem for their own protection, while others might agree that having a clearly identified NS that is able to provide protection and assistance to those in need is of value to themselves and their families. It is, of course, important to insist on the latter possibility in order to alter the behaviour of as many people as possible, to minimize the misuse of the emblem.

⁴⁷¹ See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 7.