

## **Model law<sup>1</sup> concerning the use and the protection of the emblem of the red cross, the red crescent and the red crystal<sup>2</sup>**

### **I. GENERAL RULES**

#### **ARTICLE 1**

##### ***Scope of protection***

Having regard to:

- the Geneva Conventions of 12 August 1949, their Additional Protocols I and II of 8 June 1977,<sup>3</sup> including Annex I to Additional Protocol I as regards the regulations concerning identification of medical units and transports,<sup>4</sup> and Additional Protocol III of 8 December 2005;<sup>5</sup>
- the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, as adopted by the 20th International Conference of the Red Cross, and subsequent amendments;<sup>6</sup>

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<sup>1</sup> This model law is proposed for consideration by States that have a civil law system. It outlines the provisions that should be included in a comprehensive legal regime regulating the use and protection of the emblem in conformity with the requirements of the Geneva Conventions, their two Additional Protocols of 1977 and Additional Protocol III of 2005. The said requirements may be met through the adoption of a stand-alone legislation for which the following may serve as a model.

In States with a common law system, the protection of the emblem is usually regulated in a chapter of a Geneva Conventions' Implementation Act. In consideration of Additional Protocol III, such States should review their Geneva Conventions' Act to both extend the protective regime of the red cross and the red crescent to the new emblem – the red crystal – and to incorporate the text of Additional Protocol III as a schedule. The ICRC Advisory Service on international humanitarian law has developed a model Geneva Conventions' Act and may be contacted for technical assistance in the implementation of the provisions of Additional Protocol III.

<sup>2</sup> The "red crystal" is not formally recognized as the designation of the new distinctive emblem in the text of Protocol III additional to the Geneva Conventions, as adopted on 8 December 2005. It was decided by Resolution 1 of the 29th International Conference of the Red Cross and Red Crescent (Geneva, 20-21 June 2006) to use the name "red crystal" to designate the distinctive emblem of Protocol III. Accordingly, Article 1 of the preamble to the following model law provides for the protection of the "red crystal" designation.

<sup>3</sup> To make it easier to find these treaties, it is advisable to indicate their precise locations in the official national compendium of laws and treaties. They are also reproduced in the *Treaty Series of the United Nations*, Vol. 75 (1950), pp. 31-417, and Vol. 1125 (1979), pp. 3-699 and posted on the website of the Swiss Federal Department of Foreign Affairs (<http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html>). They may also be accessed on the Website of the ICRC at <http://www.icrc.org/ihl.nsf/CONVPRES>

<sup>4</sup> This Annex was revised on 30 November 1993 and its amended version entered into force on 1 March 1994. It is reproduced in the *International Review of the Red Cross*, No. 298, January-February 1994, pp. 29-41.

<sup>5</sup> The full text of Additional Protocol III is available on the website of the Swiss Federal Department of Foreign Affairs (<http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic/gvapr3.html>). It may also be accessed on the ICRC Website at <http://www.icrc.org/ihl.nsf/FULL/615>

<sup>6</sup> The current Regulations were adopted by the 20th International Conference of the Red Cross in 1965 and revised by the Council of Delegates in 1991. They were submitted to the States party to the Geneva Conventions and

- Resolution 1 of the 29<sup>th</sup> International Conference of the Red Cross and Red Crescent (Geneva, 20-21 June 2006);<sup>7</sup>
- the law (decree, or other act) of [date] recognizing the [National Society of ...];<sup>8</sup>

the following are protected by the present law:

- the emblems of the red cross, the red crescent and the red crystal on a white ground;<sup>9</sup>
- the designations "red cross," "red crescent" and "red crystal";<sup>10</sup>
- the distinctive signals for identifying medical units and transports.

## ARTICLE 2

### *Protective use and indicative use*

1. In time of armed conflict, the emblem used as a protective device is the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on medical personnel and medical units and transports. The dimensions of the emblem shall therefore be as large as possible.

2. The emblem used as an indicative device shows that a person or an object is linked to an institution of the International Movement of the Red Cross and Red Crescent. The emblem shall be of a small size.

## II. RULES ON THE USE OF THE EMBLEM

### A. Protective use of the emblem<sup>11</sup>

## ARTICLE 3

### *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.

Medical personnel shall wear armlets and carry identity cards displaying the emblem. These armlets and identity cards shall be issued by ... [e.g. Ministry of Defence].<sup>12</sup>

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entered into force on 31 July 1992. The Regulations are reproduced in the *International Review of the Red Cross*, No. 289, July-August 1992, pp. 339-362.

<sup>7</sup> Accessible on the ICRC website at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/international-conference-resolution-220606>

<sup>8</sup> As a voluntary relief society, auxiliary to the public authorities in the humanitarian sphere. Wherever the present law refers to the "National Society of ...," the name of the Society should be inserted. The official name as it appears in the law or instrument of recognition should be used.

<sup>9</sup> It is important that national legislation in all cases protect the emblems of the red cross, the red crescent and the red crystal, as well as the names "red cross," "red crescent" and "red crystal."

<sup>10</sup> When reference is made to the emblem, the term "red cross", "red crescent" or "red crystal" is generally in lower case while the designation "Red Cross," "Red Crescent" or "Red Crystal" with initial capitals is reserved for Red Cross, Red Crescent or Red Crystal institutions. This rule helps to avoid confusion.

<sup>11</sup> In order to confer optimum protection, the dimensions of the emblem used to mark medical units and transports shall be as large as possible. The distinctive signals provided for in Annex I to Protocol I shall also be used.

<sup>12</sup> Pursuant to Article 40 of the First Geneva Convention, armlets are to be worn on the left arm and shall be water-resistant; the identity card shall bear the holder's photograph. States can model the identity card on the example

Religious personnel attached to the armed forces shall be afforded the same protection as medical personnel and shall be identified in the same way.

2. Where this may enhance protection, the medical services and religious personnel attached to the armed forces may, without prejudice to their current emblem, make temporary use of either of the other distinctive emblems recognized by, and enjoying equal status under, the Geneva Conventions and their Additional Protocols.

## **ARTICLE 4**

### ***Use by hospitals and other civilian medical units***

1. With the express authorization of the Ministry of Health<sup>13</sup> and under its control, civilian medical personnel, hospitals and other civilian medical units, as well as civilian medical transports, assigned in particular to the transport and treatment of the wounded, sick and shipwrecked, shall be marked by the emblem, used as a protective device, in time of armed conflict.<sup>14</sup>

2. Civilian medical personnel shall wear armlets and carry identity cards displaying the emblem. These armlets and identity cards shall be issued by ... *[Ministry of Health]*.<sup>15</sup>

3. Civilian religious personnel attached to hospitals and other medical units shall be identified in the same way.

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attached to this Convention. The authority within the Ministry of Defence which is to issue armlets and identity cards must be clearly specified.

<sup>13</sup> It is important to indicate clearly the authority which is competent to grant such authorization and monitor the use of the emblem. This authority shall work together with the Ministry of Defence, which may, if necessary, give advice and assistance.

<sup>14</sup> See Articles 18 to 22 of the Fourth Geneva Convention, and Articles 8 and 18 of Protocol I. Article 8 in particular defines the expressions “medical personnel,” “medical units” and “medical transports.” Hospitals and other civilian medical units should be marked by the emblem only during times of armed conflict. Marking them in peacetime risks causing confusion with property belonging to the National Society.

<sup>15</sup> As concerns armlets and identity cards for *civilian* medical personnel, Article 20 of the Fourth Geneva Convention and Article 18, para. 3, of Protocol I provide for their use in occupied territory and in areas where fighting is taking place or is likely to take place. It is, however, recommended that armlets and identity cards be widely distributed during times of armed conflict. A model of an identity card for civilian medical and religious personnel is given in Annex I to Protocol I. The authority which is to issue the armlets and identity cards (for example a department of the Ministry of Health) should be specified.

## ARTICLE 5

### *Use by the [National Society of ...]*<sup>16</sup>

1. The *[National Society of ...]* is authorized to place medical personnel and medical units and transports at the disposal of the medical service of the armed forces.

Such personnel, units and transports shall be subject to military laws and regulations and may be authorized by the Ministry of Defence to display as a protective device the emblem of the red cross *[red crescent or red crystal]*, or, where this may enhance protection, to make temporary use of either of the other distinctive emblems recognized by, and enjoying equal status, under the Geneva Conventions and their Additional Protocols.<sup>17</sup>

Such personnel shall wear armlets and carry identity cards, in accordance with Article 3, paragraph 2, of the present law.

2. The National Society may be authorized to use the emblem as a protective device for its medical personnel and medical units in accordance with Article 4 of the present law.

### **B. Indicative use of the emblem**<sup>18</sup>

## ARTICLE 6

### *Use by the [National Society of ...]*

1. The *[National Society of ...]* is authorized to use the emblem as an indicative device in order to show that a person or an object is linked to the National Society. The dimensions of the emblem shall be small, so as to avoid any confusion with the emblem employed as a protective device.<sup>19</sup>

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<sup>16</sup> Pursuant to Article 27 of the First Geneva Convention, a National Society of a neutral country may also place its medical personnel and medical units and transports at the disposal of the medical service of the armed forces of a State which is party to an armed conflict.

Articles 26 and 27 of the First Geneva Convention also provide for the possibility that other voluntary aid societies recognized by the authorities may be permitted, in time of war, to place medical personnel and medical units and transports at the disposal of the medical service of the armed forces of their country or of a State which is party to an armed conflict. Like the personnel of National Societies, such personnel shall then be subject to military laws and regulations and shall be assigned exclusively to medical tasks. These aid societies may be authorized to display the emblem. Such cases are rare, however. If such an authorization has been granted, or is to be granted, it might be useful to mention this in the present law.

Furthermore, Article 9, para. 2, sub-paragraph c) of Protocol I provides for the possibility of an *impartial international humanitarian organization* placing medical personnel and medical units and transports at the disposal of a State which is party to an international armed conflict. Such personnel shall then be placed under the control of this party to the conflict and subject to the same conditions as National Societies and other voluntary aid societies. They shall in particular be subject to military laws and regulations.

<sup>17</sup> This should in principle be the same emblem as that used by the medical service of the armed forces. With the consent of the competent authority, the National Society may, in time of peace, use the emblem to mark units and transports whose assignment to medical purposes in the event of armed conflict has already been decided. See Article 13 of the Regulations on the Use of the Emblem.

<sup>18</sup> Pursuant to Article 44, paragraph 4, of the First Geneva Convention, the emblem may be used, as an *exceptional measure* and in peacetime only, as an indicative device for marking vehicles, used as ambulances by third parties (not forming part of the International Red Cross and Red Crescent Movement), and aid stations exclusively assigned to the purpose of giving treatment free of charge to the wounded or sick. Express consent for displaying the emblem must however be given by the National Society, which shall control the use thereof. Such use is not recommended, however, because it increases the risk of confusion and might lead to misuse. The term "aid station" by analogy also covers boxes and kits containing first-aid supplies and used, for example, in shops or factories.

The *United Nations Convention of 8 November 1968 on road signs and signals* provides for road signs displaying the emblem to mark hospitals and first-aid stations. As these signs are not in conformity with the rules on the use of the emblem, it is advised to employ alternative signs, for example the letter "H" on a blue ground to indicate hospitals.

2. The *[National Society of ...]* may, in accordance with national legislation and in exceptional circumstances and to facilitate its work, make temporary use of the red crystal.<sup>20</sup>
3. The *[National Society of ...]* shall apply the “Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies.”<sup>21</sup>
4. National Societies of other countries present on the territory of *[name of the State]* shall, with the consent of the *[National Society of ...]*, be entitled to use the emblem under the same conditions.

## **C. International Red Cross and Red Crescent organizations**

### **ARTICLE 7**

#### ***Use by the international organizations of the International Red Cross and Red Crescent Movement***

1. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies may make use of the emblems of the red cross and red crescent at any time and for all their activities.<sup>22</sup>
2. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, and their duly authorized personnel, may make use of the red crystal in exceptional circumstances and to facilitate their work.<sup>23</sup>

## **III. CONTROL AND PENALTIES**

### **ARTICLE 8**

#### ***Control measures***

1. The authorities of *[name of the State]* shall at all times ensure strict compliance with the rules governing the use of the emblems of the red cross, the red crescent and the red crystal, the names “red cross,” “red crescent” and “red crystal”, and the distinctive signals. They shall exercise strict control over the persons authorized to use the said emblems, names and signals.<sup>24</sup>
2. They shall take every appropriate step to prevent misuse, in particular:
  - by disseminating the rules in question as widely as possible among the armed forces, the police forces, the authorities and the civilian population,<sup>25</sup>

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<sup>19</sup> The emblem may not, for example, be placed on an armlet or the roof of a building. In peacetime, and as an exceptional measure, the emblem may be of large dimensions, in particular during events where it is important for the National Society's first-aid workers to be identified quickly.

<sup>20</sup> Paragraph 2 is not applicable for the domestic legislation of States which National Societies have opted to use the red crystal in accordance with Article 3, paragraph 1, of Protocol III.

<sup>21</sup> These Regulations enable the National Society to give consent, in a highly restrictive manner, for third parties to use the name of the Red Cross or the Red Crescent and the emblem within the context of its fundraising activities (Article 23, “sponsorship”).

<sup>22</sup> Article 44, paragraph 3, of the First Geneva Convention and Article 1, paragraph 4 of the Internal Regulations of the International Federation of Red Cross and Red Crescent Societies.

<sup>23</sup> Article 4 of Additional Protocol III.

<sup>24</sup> It is recommended that responsibilities be clearly set down, either in the present law or in an implementing regulation or decree.

<sup>25</sup> In particular among members of the medical and paramedical professions, and among non-governmental organizations, which must be encouraged to use other distinctive signs.

- by issuing instructions to national civilian and military authorities on the use of the distinctive emblem in accordance with the Geneva Conventions and their Additional Protocols and by providing for the necessary penal, administrative and disciplinary sanctions in cases of misuse.

## ARTICLE 9

### ***Misuse of the emblem as a protective device in time of armed conflict<sup>26</sup>***

1. Anyone who has wilfully committed or given the order to commit acts resulting in the death of, or causing serious harm to the body or health of, an adversary by making perfidious use of the red cross, the red crescent, or a distinctive signal, has committed a war crime and shall be punished by imprisonment for a period of [...] years.<sup>27</sup> Perfidious use of the red crystal under the same conditions shall be subject to the same penalty.<sup>28</sup>

Perfidious use means appealing to the good faith of the adversary, with the intention to deceive him and make him believe that he was entitled to receive or was obliged to confer the protection provided for by the rules of international humanitarian law.

2. Anyone who in time of armed conflict has used wilfully and without entitlement the red cross, the red crescent, or the red crystal, or a distinctive signal, or any other sign or signal which constitutes an imitation thereof or which might lead to confusion, shall be punished by imprisonment for a period of [...] months or years].

## ARTICLE 10

### ***Misuse of the emblem as an indicative device in peacetime and in time of armed conflict<sup>29</sup>***

1. Anyone who, wilfully and without entitlement, has made use of the emblem of the red cross, the red crescent or the red crystal, the words “red cross,” “red crescent” or “red crystal”, a distinctive signal or any other sign, designation or signal which constitutes an imitation thereof or which might lead to confusion, irrespective of the aim of such use;

anyone who, in particular, has displayed the said emblem or words on signs, posters, announcements, leaflets or commercial documents, or has affixed them to goods or packaging, or has sold, offered for sale or placed in circulation goods thus marked;

shall be punished by imprisonment for a period of [...] days or months] and/or by payment of a fine of [amount in local currency].<sup>30</sup>

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<sup>26</sup> This is the most serious type of misuse, for in this case the emblem is of large dimensions and is employed for its primary purpose, which is to protect persons and objects in time of war. This Article should be brought into line with penal legislation (for example, the military penal code), which generally provides for the prosecution of violations of international humanitarian law, and in particular the Geneva Conventions and their Additional Protocols.

<sup>27</sup> By virtue of Article 85, paragraph 3, sub-paragraph f) of Protocol I, perfidious use of the emblem is a grave breach of this Protocol and is regarded as a *war crime* (Article 85, para. 5). Such misuse is therefore particularly serious and must be subject to very severe penalties.

<sup>28</sup> See Article 6, paragraph 1, of Additional Protocol III.

<sup>29</sup> Even though misuse of the emblem as an indicative device is less serious than the misuse described in Article 9, it must be taken seriously and rigorously prevented or, failing that, suppressed. Indeed, the emblem will be better respected during an armed conflict if it has been protected effectively in peacetime. Such effectiveness derives in particular from the severity of any penalties imposed. Consequently, it is recommended that the penalties include imprisonment and/or a heavy fine likely to serve as a deterrent.

<sup>30</sup> In order to maintain the deterrent effect of the fine, it is important that its amount be periodically reviewed so as to take account of the depreciation of the local currency. This remark also applies to Article 11. It might therefore be appropriate to set the amounts of the fines by other means than the present law, for example in an implementing regulation.



2. If the offence is committed in the management of a corporate body (commercial firm, association, etc.), the punishment shall apply to the persons who committed the offence or ordered the offence to be committed.

## **ARTICLE 11**

### ***Misuse of the white cross on a red ground***

Owing to the confusion which may arise between the arms of Switzerland and the emblem of the red cross, the use of the white cross on a red ground or of any other sign constituting an imitation thereof, whether as a trademark or commercial mark or as a component of such marks, or for a purpose contrary to fair trade, or in circumstances likely to wound Swiss national sentiment, is likewise prohibited at all times; offenders shall be punished by payment of a fine of *[amount in local currency]*.

## **ARTICLE 12**

### ***Interim measures***

The authorities of *[name of the State]*<sup>31</sup> shall take the necessary interim measures. The authorities may in particular order the seizure of objects and material marked in violation of the present law, demand the removal of the emblem of the red cross, the red crescent or the red crystal and of the words “red cross,” “red crescent” or “red crystal” at the cost of the instigator of the offence, and order the destruction of the instruments used for their reproduction.

## **ARTICLE 13**

### ***Registration of associations, trade names and trademarks***

1. The registration of associations and trade names, and the filing of trademarks, commercial marks and industrial models and designs making use of the emblem of the red cross, the red crescent or the red crystal or the designation “red cross,” “red crescent” or “red crystal” in violation of the present law shall be refused.

2. Persons making use of the red crystal or the designation “red crystal,” or of any sign constituting an imitation thereof, prior to the adoption of Additional Protocol III<sup>32</sup> shall be permitted to continue such use, provided that the said use shall not be such as would appear, in time of armed conflict, to confer the protection of the Geneva Conventions and their Additional Protocols, and provided that such rights were acquired prior to the entry into force of this Act.

## **ARTICLE 14**

### ***Role of the [National Society of ...]***

The *[National Society of ...]* shall cooperate with the authorities in their efforts to prevent and repress any misuse.<sup>33</sup> It shall be entitled to inform *[competent authority]* of such misuse and to participate in the relevant criminal, civil or administrative proceedings.

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<sup>31</sup> Indicate the competent authority (e.g. courts, administrative authorities, etc.).

<sup>32</sup> Additional Protocol III was adopted on 8 December 2005.

<sup>33</sup> The National Societies have a very important role to play in this regard. The Statutes of the International Red Cross and Red Crescent Movement stipulate expressly that the National Societies shall “also cooperate with their governments to ensure respect for international humanitarian law and to protect the red cross and red crescent emblems” (Article 3, paragraph 2).

#### **IV. APPLICATION AND ENTRY INTO FORCE**

##### **ARTICLE 15**

##### ***Application of the present law***

The ... *[Ministry of Defence, Ministry of Health]* is responsible for the application of the present law.<sup>34</sup>

##### **ARTICLE 16**

##### ***Entry into force***

The present law shall enter into force on *[date of promulgation, etc.]*.

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<sup>34</sup> It is particularly important to specify which national authority has ultimate responsibility for applying this law. Close cooperation between the ministries directly concerned, generally the Ministries of Defence and Health, would be advisable. A national committee for the implementation of international humanitarian law could play a useful role in this respect.