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# INTERNATIONAL REVIEW

## OF THE RED CROSS



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# INTERNATIONAL REVIEW OF THE RED CROSS

## CONTENTS

SEPTEMBER-OCTOBER  
N° 272

### THE RED CROSS AND RED CRESCENT EMBLEMS

<b>Yves Sandoz:</b> The red cross and red crescent emblems: what is at stake . . . . .	405
<b>François Bugnion:</b> The red cross and red crescent emblems . . . . .	408
<b>Professor Habib Slim:</b> Protection of the red cross and red crescent emblems and the repression of misuse . . . . .	420
<b>Antoine Bouvier:</b> Special aspects of the use of the red cross or red crescent emblem. . . . .	438
<b>Michael A. Meyer:</b> Protecting the emblems in peacetime: The experiences of the British Red Cross Society . . . . .	459

### 1864-1989

<b>Marking the 125th anniversary of the 22 August 1864 Geneva Convention.</b> . . . . .	465
---	-----

### INTERNATIONAL COMMITTEE OF THE RED CROSS

President of the Swiss Confederation visits ICRC . . . . .	471
Federal Councillor Flavio Cotti visits ICRC . . . . .	472
	403

News from Headquarters . . . . .	472
----------------------------------	-----

*EXTERNAL ACTIVITIES:*

Africa — Latin America — Asia — Middle East . . . . .	474
---	-----

**IN THE RED CROSS AND RED CRESCENT WORLD**

<b>Supercamp 1989</b> . . . . .	480
---------------------------------	-----

Death of Mr. Eustasio Villanueva Vadillo . . . . .	482
--	-----

**MISCELLANEOUS**

<b>Tribute to Gustave Moynier</b> . . . . .	484
---	-----

The Principality of Liechtenstein ratifies the Protocols . . . . .	488
--	-----

The People's Democratic Republic of Algeria accedes to the Protocols . . . . .	489
--	-----

The Grand Duchy of Luxembourg ratifies the Protocols . . . . .	490
--	-----

**BOOKS AND REVIEWS**

Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention (Michael A. Meyer, ed.) . . . . .	491
--	-----

The Law of Naval Warfare (Natalino Ronzitti, ed.) . . . . .	492
---	-----

Necessità e proporzionalità nell'uso della forza militare in diritto internazionale (Necessity and proportionality in the use of military force under international law) (Gabriella Venturini) . . . . .	494
--	-----

<b>Addresses of National Red Cross and Red Crescent Societies</b> . . . . .	496
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## THE RED CROSS AND RED CRESCENT EMBLEMS: WHAT IS AT STAKE

*The emblems of the red cross and the red crescent are both the strength and the weakness of the Movement.*

*They are its **strength** because, being the visible and respected symbols of relief to war victims, over the past 125 years they have enabled the Movement to provide protection, assistance and human warmth to millions of wounded persons, prisoners, families and children during the most terrible conflicts mankind has ever known. They are the strength of our Movement because all over the world the image they convey is one of humanity and compassion.*

*But these emblems are also the **weakness** of the Movement in that they sow the seeds of division among its members and prevent it from becoming really universal.*

*In these circumstances one would of course be tempted to try and re-make history. Why did the brilliantly inspired founders of the Red Cross fail to see that the emblem, which they had chosen as a symbol of neutrality in all domains—including that of religion—might be seen as the Christian symbol? Why was it then decided to “put matters right” by accepting the red crescent, and then the red lion and sun, thus emphasizing the emblem’s religious connotation and opening the way to further diversity?*

*That decision was taken back in 1929. Half a century later the Movement again gave much thought to the problem, but in 1981 it finally opted for the status quo. Because of the well-founded apprehension that a proliferation of emblems would considerably reduce their protective value, the Movement refrained from opening what it feared might turn into a new Pandora’s box. The strength of the emblems, which have now become part of human consciousness the world over, was judged more important than their weaknesses. The profound attachment felt for the red cross and the red crescent prevailed over every other consideration.*

*The Movement therefore did not dare break with over a hundred years of noble tradition, although admittedly the present situation is neither wholly logical nor indeed entirely right and fair.*

*However, reflections on the emblem will continue within the Movement as long as it exists, because they are an intrinsic part of its identity.*

*I should now like to raise two issues which I believe are of topical interest.*

*The first problem is the **improper use** of the emblem, which is a subject of constant concern to the National Societies.*

*Misuse of the emblem—often committed unwittingly—occurs all over the world and is a direct corollary of the high regard in which it is held—indeed, no one would use an emblem that did not inspire respect. But misuse, be it in times of conflict for protection, or in peacetime for commercial purposes, can only lead to confusion and discredit.*

*Hence the care with which the Movement must try and prevent such misuse, particularly since the victims for whom it was created will be the first to suffer if the emblem is not respected. In granting every National Society the right to display the emblem that they created to protect wounded soldiers on the battlefield, the States laid a heavy burden on those Societies. But the National Societies must not betray the trust placed in them, and although legal repression of misuse is the responsibility of governments, the Societies have a major educational role to play in making the public aware of the significance of the emblem, as part of their programmes to disseminate international humanitarian law and the principles of the Movement.*

*However, the Movement's first priority today must be to question its own attitude. By permitting use of the emblem, considerable sums could probably be raised for the benefit of the victims whom it is the Movement's task to assist. Is it right to give up this source of income? But can the Movement obtain those funds without violating the law in force, without impairing the image evoked by the emblem and without weakening its protective power, thereby cutting itself off in the long term from those very victims?*

*These are sensitive issues which the Movement cannot evade; they must be addressed without further delay.*

*The second problem I should like to raise is the need to maintain the emblem's strict **neutrality** with regard to religion. Both Christians and Moslems within the Movement have a special responsibility in this respect; they must make every effort to avoid stirring up religious fervour connected with the emblem and refrain from exerting any pressure on governments and National Societies as to the choice of the*

*red cross or the red crescent. What is at stake here is the fundamental role of our Movement in armed conflicts and its credibility in the eyes of all those—particularly when they are neither Christian nor Moslem—who give the emblem its true significance, devoid of any religious connotation.*

*A series of historical accounts, articles with general and specific themes and even some very personal opinions appears in this issue of the Review, to stimulate debate on this inexhaustible subject. Is it strength or weakness, or indeed both strength and weakness, that characterizes the red cross and red crescent emblems? We must not forget that the emblems are not an end in themselves; their role is to afford protection to war victims and to contribute to the Movement's efficacy and unity.*

*That efficacy and unity can be maintained only by means of sustained, open and constructive dialogue. Together we must find the solution to this problem that is close to the hearts of all who work for our Movement's noble cause.*

*May this issue of the Review be a step in that direction.*

**Yves Sandoz**  
*Director*  
*Department of Principles,*  
*Law and Relations*  
*with the Movement*  
**ICRC**

# The red cross and red crescent emblems\*

by François Bugnion

*Only the unity of the distinctive sign can ensure that it is respected internationally.*

Max Huber\*\*

In the first half of the nineteenth century in Europe, each army used a different colour to mark its medical services: Austria a white flag, France a red one, Spain yellow, others black. Sometimes, the emblems varied from one corps of troops to another. Moreover, the carts used to transport the wounded bore no particular markings to distinguish them from the other army service vehicles, and there was no means of identifying members of the medical corps at a distance.

It is easy to imagine the consequences of such a situation: soldiers were barely able to recognize their own army's ambulances, let alone those of the enemy. Medical vehicles were just as likely to come under fire as those used to transport ammunition. Doctors and nurses were no less exposed to attack than the combatants themselves.

Under these circumstances, there was no question of bringing relief to the wounded before the fighting ended. In order to place them beyond the range of enemy fire, ambulances were stationed a long way from the battlefield; but for the unfortunate casualties this meant a long haul on uncomfortable farm carts or on the straw-covered floor of wagons, their broken limbs interminably jolted and jerked, while their wounds became infected. The medical services, their resources spread over too great a distance, were not equal to their task, and when the wounded finally reached the hospitals there was often no alternative but

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\* This article reflects the author's personal views and does not engage the responsibility of the ICRC.

\*\* *Fourteenth International Conference of the Red Cross, Brussels, October 1930, Report, p. 127.*

to amputate. Troops returning from campaigns were followed by a long procession of maimed and disabled men.

One of the first steps to be taken to improve the plight of soldiers wounded on the battlefield was thus the adoption of a single distinctive sign, used by all armies, to protect the wounded and anyone endeavouring to come to their assistance.

This was one of the objectives which the International Committee for Relief to the Wounded—the future International Committee of the Red Cross—set itself, when it was created in 1863, to implement the two ideas put forward by Henry Dunant in *A Memory of Solferino*:

- to promote the founding in each country of a voluntary society for relief to wounded soldiers;
- to promote the establishment of a convention protecting the wounded and anyone endeavouring to assist them.

Right from its very first meeting, the International Committee concerned itself with the adoption of a single distinctive sign, both for army medical services and for the relief societies which it was planned to set up. The record of the meeting of 17 February 1863 contains the following statement:

*Finally, a badge, uniform or armlet might usefully be adopted, so that the bearers of such distinctive and universally adopted insignia would be given due recognition.*<sup>1</sup>

The matter was then referred to the October 1863 Conference, convened at the International Committee's initiative, which instituted the relief societies for wounded soldiers—the future National Red Cross Societies.

In preparation for the Conference, the International Committee had drawn up a draft covenant, Article 9 of which stipulated that:

*Voluntary nurses in all countries shall wear a distinctive and identical uniform or sign. They shall be inviolable and military commanders shall give them protection.*<sup>2</sup>

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<sup>1</sup> “Unpublished documents relative to the foundation of the Red Cross, Minutes of the Committee of Five”, Jean S. Pictet, ed. In: *Revue internationale de la Croix-Rouge*, English Supplement, Vol. II, No. 3, March 1949, pp. 123-140; *ad* p. 127.

<sup>2</sup> *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*, Imprimerie Fick, Geneva, 1863, p. 16.

The International Conference used the International Committee's draft as a basis for its work; draft Article 9 was considered during the third meeting, on 28 October 1863.

The matter was introduced by Dr. Appia, a member of the International Committee:

*Dr. Appia stressed the importance of a distinctive international sign and proposed adding to the first paragraph the sentence: "The Conference proposes a white armlet on the left arm". He went on to say that the Conference should not disregard the effect of a symbol the mere sight of which, like the flag for a soldier, could stimulate the esprit de corps which would attend this most generous idea, this undertaking common to all civilized mankind.*<sup>3</sup>

The minutes do not say why the Conference decided to add a red cross to the white armlet proposed by Dr. Appia, but merely record the result of the discussions:

*... following discussion, Mr. Appia's proposal was adopted after being amended to the effect that the white armlet would bear a red cross.*<sup>4</sup>

Dr. Brière, delegate of Switzerland, again raised the question of the inviolability of ambulances and medical personnel:

*Dr. Brière recommended that the wounded be succoured irrespective of the side to which they belonged; that those who tended the wounded be safeguarded and not taken prisoner; that the same flag be given to all military hospitals and ambulances of the various nations; that any place displaying that flag be considered as an inviolable place of asylum; and that a single distinctive sign, if possible a uniform of a special colour or an easily recognizable mark be attributed to the military medical corps of every army.*<sup>5</sup>

The Conference had no hesitation in adopting the principle of the unity of the distinctive sign to be worn by volunteer nurses. Resolution 8 states:

*They shall wear in all countries, as a uniform distinctive sign, a white armlet with a red cross.*<sup>6</sup>

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<sup>3</sup> *Idem*, p. 118.

<sup>4</sup> *Idem*, p. 119.

<sup>5</sup> *Idem*, p. 120.

<sup>6</sup> *Idem*, p. 148; *International Red Cross Handbook*, Twelfth edition, International Committee of the Red Cross—League of Red Cross Societies, Geneva, 1983, p. 548.

The Conference further recommended that a uniform sign be adopted in all countries to indicate ambulances and army health services.<sup>7</sup>

However, the October 1863 Conference was not empowered to make decisions binding on governments. So the following year the Federal Council of the Swiss Confederation convened a diplomatic conference which adopted the Geneva Convention of 22 August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field.

The principle of the unity of the distinctive sign for army medical services was embodied in Article 7 of the Convention:

*A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties. It should in all circumstances be accompanied by the national flag.*

*An armband may also be worn by personnel enjoying neutrality but its issue shall be left to the military authorities.*

*Both flag and armband shall bear a red cross on a white ground.*<sup>8</sup>

Thus, the adoption of a uniform distinctive sign emerged as one of the prerequisites for the inviolability of medical services, ambulances and voluntary nurses.

For reasons which it was not considered necessary to record in the minutes of the October 1863 Conference, the emblem chosen was the red cross on a white ground. Contemporary documents—at least those which are still available—do not shed any light on the reasons for the choice. We are therefore reduced to conjecture.<sup>9</sup>

Since the dawn of time, the white flag had been recognized as a sign of the wish to negotiate or of surrender; firing on anyone displaying it in good faith was forbidden. With the addition of a red cross, the flag's message was taken a stage further, demanding respect

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<sup>7</sup> *Compte rendu...*, p. 149; *International Red Cross Handbook*, p. 548.

<sup>8</sup> *Compte rendu de la Conférence internationale pour la Neutralisation du Service de Santé militaire en Campagne*, Geneva, 8-22 August 1864 (handwritten), Annex B; *International Red Cross Handbook*, p. 20.

<sup>9</sup> On the origin of the red cross sign, reference may be made to the following works: Maurice Dunant, "Les origines du drapeau et du brassard de la Croix-Rouge", *La Croix-Rouge Suisse*, XXX<sup>e</sup> année, No. 1, January 1922, pp. 2-5; Jean Pictet, "The Sign of the Red Cross", *Revue internationale de la Croix-Rouge*, English Supplement, Vol. II, No. 4, April 1949, pp. 143-175; Perceval Frutiger, "L'origine du signe de la croix rouge", *Revue internationale de la Croix-Rouge*, No. 426, June 1954, pp. 456-467; Pierre Boissier, *From Solferino to Tsushima: History of the International Committee of the Red Cross*, Henry Dunant Institute, Geneva, 1985, in particular pp. 77-78.

for the wounded and for everyone coming to their assistance. Furthermore, the resulting sign had the advantage of being easy to make and recognizable at a distance.

There is every reason to believe that the October 1863 Conference did not have the slightest intention of conferring any religious significance whatsoever on the distinctive sign for medical services, and was not in the least conscious that any religious significance could be attached to the emblem, since the very aim of the founders of the Red Cross was to set up an institution which would transcend national and religious frontiers.

However, nineteenth-century Europe saw itself as the centre of the world, and those who devised the emblem no doubt overlooked the fact that it might meet with opposition when the institution extended beyond the bounds of the old continent.

Yet problems were just around the corner.

Right at the beginning of the Russo-Turkish war of 1876-1878, the Ottoman Empire, although it had acceded to the Geneva Convention of 22 August 1864 without any reservation, declared that it would henceforth use the red crescent to mark its own ambulances, while respecting the red cross sign protecting enemy ambulances. The Sublime Porte stated that the distinctive sign of the Convention "*has so far prevented Turkey from exercising its rights under the Convention, because it gave offence to Muslim soldiers*".<sup>10</sup>

There followed a lengthy exchange of correspondence, which we shall not dwell upon here.<sup>11</sup> Ultimately, the modification unilaterally decided by the Porte was accepted, but only for the duration of the conflict under way.

The Ottoman Empire nonetheless continued to use the red crescent emblem to indicate its health services, and to request that the red crescent be recognized by the international conferences convened to revise the Geneva Convention, while at the same time Persia called for recognition of the red lion and sun emblem.

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<sup>10</sup> Message from the Sublime Porte to the Federal Council, 16 November 1876, quoted in the *Bulletin international des Sociétés de Secours aux Militaires blessés*, No. 29, January 1877, pp. 35-37, ad p. 36.

<sup>11</sup> For more details, refer to the communications reproduced in the *Bulletin international des Sociétés de Secours aux Militaires blessés*, No. 29, January 1877, pp. 35-37; No. 30, April 1877, pp. 39-47; No. 31, July 1877, pp. 83-91; No. 32, October 1877, pp. 147-154. An account is also given in our study: *The Emblem of the Red Cross, A brief history*, ICRC, Geneva, 1977.

The Diplomatic Conference of 1906 maintained the general rule of the unity of the distinctive sign, while authorizing the Ottoman Empire and Persia to formulate reservations.<sup>12</sup> The Diplomatic Conference of 1929, on the other hand, agreed to recognize the red crescent emblem, which was used by Turkey and Egypt, and the red lion and sun emblem, used by Persia; nevertheless, in order to forestall further requests in future, the Conference made a point of clearly specifying that no new emblems would be recognized.<sup>13</sup>

The outcome was Article 19 of the Geneva Convention of 27 July 1929 which, while retaining the general rule of the unity of the distinctive sign, authorized use of the red crescent emblem or the red lion and sun emblem for the countries which were already using them.<sup>14</sup>

The Diplomatic Conference of 1949, convened to revise the Geneva Conventions following the events of the Second World War, had before it various proposals, including:

- a proposal by the Netherlands for the adoption of a new single sign;
- the recommendation of the Seventeenth International Conference of the Red Cross, held in Stockholm in 1948, for a return to the single red cross sign;
- an Israeli proposal for recognition of a new emblem, the red shield of David, which was used as a distinctive sign by Israeli army medical services.

These proposals gave rise to lively and lengthy debates.<sup>15</sup> The first two were not taken up, while the Israeli proposal was set aside after several successive votes had been taken.

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<sup>12</sup> *Actes de la Conférence de Révision réunie à Genève du 11 juin au 6 juillet 1906*, Imprimerie Henry Jarrys, Geneva, 1906, pp. 17, 63, 160-164, 175, 199, 214, 260 and 286.

<sup>13</sup> *Actes de la Conférence diplomatique convoquée par le Conseil fédéral suisse pour la Révision de la Convention du 6 juillet 1906 pour l'Amélioration du Sort des Blessés et Malades dans les Armées en Campagne, et pour l'Elaboration d'une Convention relative au Traitement des Prisonniers de Guerre, réunie à Genève du 1<sup>er</sup> au 27 juillet 1929*, Imprimerie du Journal de Genève, Geneva, 1930, pp. 19, 247-254, 570, 615 and 666.

<sup>14</sup> *Idem*, p. 666.

<sup>15</sup> *Final Record of the Diplomatic Conference of Geneva of 1949*, 4 volumes, Federal Political Department, Bern, 1949, Vol. I, pp. 53, 213 and 348; Vol. II-A, pp. 89-92, 150-151, 187-188, 197-198; Vol. II-B, pp. 223-232, 255-262, 393-395, 518-520 and 534; Vol. III, pp. 40, 167-168 and 176-179.

The outcome was Article 38 of the First Geneva Convention of 12 August 1949, which is identical to Article 19 of the 1929 Convention:

*As 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.*

*Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.*<sup>16</sup>

The State of Israel—which had acceded to the 1929 Convention without reservation—ratified the new Geneva Conventions subject to the following reservation:

*Subject to the reservation that, while respecting the inviolability of the distinctive signs and emblems of the Convention, Israel will use the Red Shield of David as the emblem and distinctive sign of the medical services of her armed forces.*<sup>17</sup>

At the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974-1977), the Israeli delegation again submitted a draft amendment with a view to securing recognition of the red shield of David.<sup>18</sup> However, seeing that the proposal would not obtain the necessary number of votes to be adopted, the Israeli delegation withdrew the amendment.

In a note of 4 September 1980, the Islamic Republic of Iran announced that it was adopting the red crescent emblem as the distinctive sign of the medical services of her armed forces, instead of the red lion and sun.<sup>19</sup>

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<sup>16</sup> *Idem*, Vol. I, p. 213; *International Red Cross Handbook*, p. 37.

<sup>17</sup> *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. I, p. 348.

<sup>18</sup> *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, (Geneva, 1974-1977), 17 volumes, Federal Political Department, Bern, 1978, Vol. III, p. 14.

<sup>19</sup> "Adoption of the red crescent by the Islamic Republic of Iran", *International Review of the Red Cross*, No. 219, November-December 1980, pp. 316-317.

Gravely concerned by the problems caused by the multiplicity of emblems within the Red Cross Movement, the International Committee proposed at the Twenty-third International Conference of the Red Cross held in Bucharest in 1977 that a working group be set up to study the matter.<sup>20</sup> The group considered a large number of different suggestions, but was unable to reach agreement on any specific proposal; accordingly, it was dissolved by the Twenty-fourth International Conference held in Manila in 1981.<sup>21</sup>

Finally, the Twenty-fifth International Conference of the Red Cross held in Geneva in 1986 adopted the Statutes of the International Red Cross and Red Crescent Movement, to replace the Statutes of the International Red Cross which had been adopted by the Thirteenth Conference in The Hague in 1928 and revised by the Eighteenth Conference in Toronto in 1952.<sup>22</sup>

\* \* \*

The upshot of these developments is that the emblem of the red cross and the emblem of the red crescent are recognized on an equal footing as distinctive signs for army medical services and as emblems of National Red Cross or Red Crescent Societies. The new Statutes of the International Red Cross and Red Crescent Movement confirm the long-standing equality of status between the two emblems and the two names.

The red lion and sun emblem has not been used since 1980. Insofar as Article 19 of the Geneva Convention of 27 July 1929 and Article 38 of the First Geneva Convention of 12 August 1949 recognized the red crescent and red lion and sun emblems only for countries which already used them, it must be assumed that the red lion and sun emblem has now become obsolete, since it has not been used for nearly ten years.

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<sup>20</sup> Twenty-third International Conference of the Red Cross, Bucharest 15-21 October 1977, *Report*, pp. 60 and 149.

<sup>21</sup> Twenty-fourth International Conference of the Red Cross, Manila 7-14 November 1981, *Report*, pp. 49-58 and 171-172; *International Review of the Red Cross*, No. 226, January-February 1982, pp. 35-39.

<sup>22</sup> Statutes of the International Red Cross and Red Crescent Movement (adopted by the Twenty-fifth International Conference of the Red Cross, Geneva, October 1986), *International Review of the Red Cross*, No. 256, January-February 1987, pp. 25-44.

The emblem of the red shield of David is covered in a reservation whose validity has been challenged by a number of authors.<sup>23</sup> Without embarking on a lengthy analysis of a controversial technical legal point, we hold the view that opponents of the State of Israel are bound to respect Israeli medical personnel and equipment on the field of battle.

In any event, the protective emblem is not constitutive of protection under the Convention; it is merely the visible sign thereof. Members of the medical service shall command respect by virtue of their relief mission, and not because they are indicated by any given distinctive sign.

On the other hand, the International Committee of the Red Cross has been unable formally to recognize the Israeli Red Shield of David Society (*Magen David Adom*), with which it has maintained excellent working relations for over forty years, owing to the fact that the Society does not fulfil one of the conditions for recognition of new National Societies laid down by the Seventeenth International Conference of the Red Cross in Stockholm in 1948 and confirmed by the Twenty-fifth Conference in Geneva in 1986, to the effect that the applicant Society, to be entitled to recognition, must “*use the name and emblem of the Red Cross or Red Crescent in conformity with the Geneva Conventions*”.<sup>24</sup> For the same reason, the League of Red Cross and Red Crescent Societies could not admit the Israeli relief society.

\* \* \*

The solution adopted by the 1929 Diplomatic Conference and confirmed by the 1949 Conference was somewhat illogical. It recognized two exceptions to the principle of the unity of the sign, while planning to shut the door to any further exceptions in the future. Yet no-one could guarantee that the circumstances which had led to recognition of the red crescent and red lion and sun emblems would not recur.

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<sup>23</sup> The validity of Israel's reservation has been challenged, *inter alia*, by Claude Pilloud, “Reservations to the Geneva Conventions of 1949”, *International Review of the Red Cross*, No. 180, March 1976, pp. 107-124, and No. 181, April 1976, pp. 163-187; the opposite view is defended by Shabtai Rosenne, “The Red Cross, Red Crescent, Red Lion and Sun and the Red Shield of David”, *Israel Yearbook on Human Rights*, Vol. 5, 1975, pp. 9-54.

<sup>24</sup> Seventeenth International Conference of the Red Cross, Stockholm, 20-30 August 1948, *Report*, pp. 77-78 and 89-90; Statutes of the International Red Cross and Red Crescent Movement, Article 4, paragraph 5, *International Review of the Red Cross*, No. 256, January-February 1987, pp. 31-32.

The solution has serious drawbacks, which it may be worth recalling.

- a) It may legitimately be asked whether the situation resulting from Article 38 of the First Geneva Convention is truly consistent with the principle of equality which should govern international relations. It implies, at least on the face of it, preferential treatment in favour of Christian and Muslim countries over other religions (Buddhism, Hinduism, Judaism, etc.).

Many pages have been written on the religious significance or lack of religious significance of the red cross or red crescent emblems. We have avoided expressing any view on this aspect; after all, an emblem ultimately takes on the significance which people attach to it. Nevertheless, it must be pointed out that owing to the coexistence of the red cross and red crescent, the two emblems take on a religious connotation which is not necessarily inherent in either. To some extent, it is the emergence of the red crescent alongside the red cross which has projected onto the latter a religious connotation which the founders of the institution certainly had no intention of conferring on it.

The return to a single emblem, devoid of any national or religious connotation, would eliminate any semblance of discrimination or prejudice.

- b) The coexistence of two emblems is at odds with the principle of unity of the International Red Cross and Red Crescent Movement, and bears within it the seeds of division.

In adopting the Movement's new Statutes, it was complacently stated that putting the red cross and red crescent on equal footing strengthened the unity of the Movement. Yet public opinion was left with the overriding feeling that the Movement was no longer capable of uniting under a single emblem and a single name.

- c) The present situation undermines the universality of the International Red Cross and Red Crescent Movement since the majority of the Israeli population feels that it cannot identify with any of the emblems referred to in Article 38 of the First Convention, whereas the Movement's Statutes require each and every National Society to use one or other of those emblems.
- d) The situation constitutes an open invitation to further splits. The Israeli request is not unique. In 1977, for instance, the Indian Red Cross requested recognition of a new emblem.

- e) The coexistence of two emblems at the international level causes many problems in countries where different religious communities live together. However great the efforts made by the National Society to serve the whole population, it will be identified with the social group evoked by its emblem. This will impede its ability to develop. In the event of an internal conflict, there is a danger that the National Society's relief work will be paralysed.

It might be thought that the National Societies of countries in which Christian and Islamic communities live together should use the double emblem of the red cross and red crescent, already employed by the League of Red Cross and Red Crescent Societies. However, this solution is not consistent with the law in force, since the double emblem does not enjoy international recognition. Furthermore, it would be ineffectual in countries where other communities are involved.<sup>25</sup>

- f) Finally, and most seriously, the coexistence of two emblems—even three, if the Israeli reservation is taken into account—undermines their protective force, in particular when two opposing parties use different emblems. Instead of appearing as a symbol of neutrality, the distinctive sign becomes identified with one or other of the parties to the conflict.

For, over and above the provisions of the Conventions, the emblem derives its protective value from the fact that the same sign is used by friend and foe. Once, the unity of the sign is breached, respect for the emblem—and hence the safety of the wounded and everyone endeavouring to assist them—is threatened.

Article 38 of the First Convention could be amended only by a diplomatic conference to which all the States party to the Geneva Conventions were convened.

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<sup>25</sup> The Alliance of Red Cross and Red Crescent Societies of the USSR is a special case. In the spirit of the Constitution of 31 January 1924, which conferred a federative structure upon the Union of Soviet Socialist Republics, the Russian Red Cross was reorganized to ensure the decentralization and autonomy of its branches in the various Republics. At the national level, these branches were recognized as autonomous Societies and their choice of the red cross or red crescent emblem was determined according to the group which composed the majority of the population in each case. These Societies established a co-ordinating body in Moscow, the Alliance of Red Cross and Red Crescent Societies of the USSR, which is responsible, *inter alia*, for representing them internationally. For administrative purposes, the Alliance uses the double emblem of the red cross and red crescent. However, to the best of our knowledge, each Society uses its own emblem in its operational activities.

To our mind, however, it is within the International Red Cross and Red Crescent Movement that a solution to the problems arising from the present situation has to be worked out, for submission to States. After all, it is the Movement that is the main victim of the situation, which jeopardizes its unity, its universality and its relief work.

By approaching the problem without preconceptions and uniting around a single emblem, the Movement would provide a living example of its ideal—a movement of solidarity spanning national, cultural, religious and ideological frontiers.

**François Bugnion**

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# Protection of the red cross and red crescent emblems and the repression of misuse

by Professor Habib Slim

A certain State-recognized civilian hospital employed two kinds of doctors who appeared on its staff lists: full-time doctors, and part-time doctors used to reinforce its medical team during an armed conflict with a neighbouring country. Some weeks later the country was occupied by the enemy. Two part-time doctors on their way home in a private car marked with a red cross for protective purposes were stopped by a police patrol, which seized the car and confiscated the doctors' identifying armlets. This was done on the grounds that improper use was being made of the Red Cross emblem as a protective device, contrary to Articles 24, 25, 26 and 44 of the First Geneva Convention of 12 August 1949 for the amelioration of the condition of the wounded and sick in armed forces in the field, and Articles 20 and 21 of the Fourth Geneva Convention of 12 August 1949 relative to the protection of civilian persons in time of war.<sup>1</sup>

This incident is *imaginary*, but might well have taken place in Lebanon, Nicaragua or Afghanistan.

It would be easy to imagine many other instances of misuse of the red cross or red crescent emblem in some armed conflicts, by doctors or civilians, or by prisoners trying to protect themselves from the dangers of war by using the emblem as a protective device in circumstances not allowed by the Geneva Conventions of 12 August 1949.

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<sup>1</sup> By virtue of Articles 24 and 26 of the First Convention and Article 20 of the Fourth Convention, *non-permanent* personnel is considered to be protected only when on duty, and not when travelling between home and workplace. Consequently the two doctors were not entitled to wear the armlets. Under Article 21 of the Fourth Convention they were not entitled to use the emblem to identify their private car.

National Red Cross or Red Crescent Societies<sup>2</sup> are making increasing use of the emblem to advertise the fund-raising operations they undertake with commercial companies. Two recent incidents have highlighted even more strongly certain serious types of misuse of the emblem. The first was in Nicaragua, where the Contras appeared to be using a helicopter bearing the Red Cross emblem to transport military supplies.<sup>3</sup> Such an abuse would be a grave breach of international humanitarian law. The ICRC therefore issued a warning on 17 June 1987, pointing out that the emblem should automatically inspire respect.<sup>4</sup>

The second case appears harmless and is therefore even more insidious. In a recent James Bond film, "The Living Daylights", scenes ostensibly taking place in Afghanistan show the red cross emblem on sacks of opium and on helicopters obviously used for anything but humanitarian purposes. This led to a sharp protest from several National Societies, which was entirely endorsed by the ICRC. One Society managed to get a notice inserted at the beginning of the film, drawing attention to this misuse.<sup>5</sup>

Any number of such examples could be quoted; in many countries the red cross and red crescent emblem is continually being misused, not always deliberately but through ignorance or misunderstanding of the Conventions of 12 August 1949.

These Conventions lay down rules for the protection of the wounded, sick and shipwrecked and of prisoners and civilian persons in armed conflicts. Doubtless because of the importance ascribed to the matter, they also make provision for the protection of the red cross/red crescent emblem against abuse or perfidious use of any kind, either in peacetime or in time of war.

Those who drafted the Conventions at the Diplomatic Conference held in Geneva in 1949 foresaw several ways in which the red cross or red crescent might be misused for commercial purposes, for advertising,

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<sup>2</sup> In 1989, of the 148 National Societies which are recognized by the ICRC and are members of the League of Red Cross and Red Crescent Societies, 125 have adopted the red cross emblem, 22 the red crescent emblem and one Society only (that of the USSR) uses both emblems.

<sup>3</sup> See the article in the American weekly magazine *Newsweek* entitled "The New Contras?" illustrated with a photograph showing soldiers disembarking from a helicopter bearing the Red Cross emblem. The caption states that the aircraft was transporting military supplies (*Newsweek*, 1 June 1987).

<sup>4</sup> See *Le Monde*, 19 June 1987.

<sup>5</sup> The ICRC vigorously affirms that the emblem cannot fulfil its noble purpose unless it is considered as sacrosanct: see Y. Sandoz, "The Stakes are High", *ICRC Bulletin*, No. 141, October 1987, p. 2.

etc. This is bad enough in peacetime, if only because associations of ideas in the mind of the public inevitably cheapen and even discredit these symbols. It was also felt that in time of war there might be several ways in which the emblem could be used perfidiously to deceive the enemy and confer some degree of immunity on persons or things connected with the conflict but not with the Red Cross or Red Crescent.

The First Geneva Convention of 1949 (for the amelioration of the condition of the wounded and sick in armed forces in the field) contains the essentials of the arrangements for protection of the emblem, together with a system of repression of abuses that requires accused persons to be brought before the courts of the States party to the Convention. These rules are contained in Articles 38, 44, 53 and 54 of the Convention.

To begin with, Articles 38 to 43 of the Convention define the procedure for use of the emblem to facilitate identification and recognition of medical personnel, units and establishments. Article 44 imposes severe restrictions on the use of the emblem, with certain exceptions, applying mainly in peacetime, set out in paragraphs 2, 3 and 4. Article 53 defines misuse of the emblem. Article 54 requires the contracting parties to include in their domestic legislation all necessary steps to prevent and repress such misuse.

The Second Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea also makes provision for the use and protection of the emblem. Articles 41 to 43 define the conditions for the application and identification of the emblem when used on hospital ships. Article 44 of this Convention limits the use of the emblem and Article 45 requires States to prevent and repress its misuse.

Lastly, the Fourth Geneva Convention relative to the protection of civilian persons in time of war refers to the First Convention in providing for use of the emblem to protect civilian hospitals (Article 18), the staff of such hospitals (Article 20), and civilian medical transports (Article 22).<sup>6</sup>

Furthermore, Resolution 5 of the Diplomatic Conference (Geneva, 1949) recommended that States repress misuse of the distinctive emblems "to safeguard their authority and protect their high significance".

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<sup>6</sup> For all these provisions of the four Geneva Conventions of 12 August 1949, see *The Geneva Conventions of 12 August 1949*, 3rd edition, ICRC, Geneva, 1951. See also *Final Record of the Diplomatic Conference of Geneva of 1949*, Federal Political Department, Berne, 1949, 4 volumes.

Bearing all these provisions in mind, this paper will now examine (I) the principles governing protection of the emblem and (II) the scope of that protection.

## PART I

### PRINCIPLES FOR THE PROTECTION OF THE EMBLEM

Articles 39, 40 and especially 44 of the First Geneva Convention of 1949 draw a distinction of the highest importance in the use of the red cross or red crescent emblem. Article 44 clearly distinguishes between two different uses of the emblem: as a protective device, and as an indicative device.

It will be seen that this article grants the protective emblem the strictest guarantees in certain limited circumstances; but it also allows National Societies to use the emblem fairly freely in their activities, as an indicative device only. It should be mentioned here that all these provisions of the Geneva Conventions are supplemented and explained in the *Regulations on the use of the emblem* adopted by the Twentieth International Conference of the Red Cross (Vienna, 1965). A revised draft of the Regulations was adopted by the Council of Delegates in Rio de Janeiro in 1987. The new draft is to be submitted to the forthcoming International Conference of the Red Cross and Red Crescent.<sup>7</sup>

Lastly, the two Additional Protocols adopted on 8 June 1977 have practically nothing new to say on the protection of the emblem, but they extend its use as a protective device.

This paper will accordingly examine (A) the system worked out in Geneva in 1949 and supplemented in 1977, and (B) the principles for its application established by the Regulations adopted at the Vienna Conference.

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<sup>7</sup> See *Regulations on the use of the emblem of the red cross, of the red crescent and of the red lion and sun by the National Societies*, Geneva, 1965. See *Revision of the Regulations on the use of the emblem of the red cross, of the red crescent and of the red lion and sun by the National Societies*, Geneva, July 1986, Doc. C.II/3/1. These regulations were provisionally adopted by Resolution 6 of the Council of Delegates at its session in Rio de Janeiro on 27 November 1987. See also below, p. 436.

## **(A) The system established by the 1949 Conventions and the 1977 Protocols**

The 1949 Conventions established a system for the protection of the emblem based on a vital distinction between the use of the red cross/red crescent emblem (a) as a protective device and (b) as an indicative device. The 1977 Protocol I extended the protective use of the emblem by giving to the competent State authority the possibility of granting such use to categories of persons and objects not covered by the 1949 Conventions.

### **1. The distinction between protective and indicative use of the emblem in the 1949 Conventions**

This basic distinction did not always exist in former Geneva Conventions, including those of 1929, but dates from the Diplomatic Conference of 1949. The legal instrument produced by the Conference clearly distinguished between these two uses of the emblem. Also, it tried to reconcile two essentials: the need to surround the protective device with the strictest guarantees, and the need to allow Red Cross and Red Crescent Societies to use an emblem that they had helped to make well known and to which they were legitimately entitled.<sup>8</sup>

It will be seen that this distinction is all the more necessary as the protective device and indicative device are so different in nature that their only common element is their external appearance.

#### ***(1) The protective device***

The essential significance of the emblem is its protective value. In the words of an expert, it is “the sign of the Convention” in time of war, being the visible sign of the protection accorded by the Convention to persons or things (medical personnel, units, vehicles and equipment).

In fact the emblem does not really confer protection. In the words of a specialist, it is only a “a virtually constitutive element of protection”.<sup>9</sup> Indeed, the fact that a medical unit does not clearly display the red cross emblem does not deprive it of all protection, for if the enemy recognizes it as a medical unit by any other means he must respect it.

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<sup>8</sup> See François Bugnion, *The emblem of the red cross: a brief history*, ICRC, Geneva, 1977, p. 95.

<sup>9</sup> See J. S. Pictet, *The sign of the red cross and the repression of abuses of the red cross emblem*, ICRC, Geneva, 1951, p. 29.

Generally speaking, however, a medical unit that does not use the protective emblem is no longer at all safe. The protective device belongs essentially to States and their army medical corps, and must be clearly visible to give full protection.

It must therefore be large in size in relation to the thing marked by it, like the huge crosses or crescents on hospital roofs or on the decks of hospital ships, and the tabards and armlets worn by personnel.

The emblem protects:

- Mobile medical units and fixed medical establishments of the army and relief societies (Articles 19 and 42 of the First Convention).
- Medical units and personnel of societies of neutral countries lending assistance to one of the belligerents (Articles 27, 40 and 43).
- Permanent medical and religious personnel of the army and relief societies, including administrative personnel (Articles 24, 26 and 40).
- Temporary medical personnel of the army while carrying out medical duties and wearing special armlets (Articles 25 and 41).
- Medical material belonging to the army and relief societies (Articles 33, 34 and 39); medical transports or vehicles and medical aircraft (Articles 35, 36 and 39).

The organizations entitled to use the protective device during hostilities are:

(a) the army medical service;

(b) recognized relief societies lending their assistance to the medical service, in accordance with Article 26 (in particular National Societies). National Societies are not the only ones allowed to use the protective device; governments may allow the emblem to be used by other relief societies, such as the Order of St. John of Jerusalem and the Order of the Knights of Malta.

It should be made clear that all these societies may use the protective device only for their personnel and material assigned to army service (Article 26) and rendering assistance to wounded and sick members of the armed forces.

(c) The international organizations of the Red Cross and their personnel are entitled to use the emblem at all times.

## ***(2) The emblem as a purely indicative device***

The emblem is indicative when it is used only to show that a person or thing has a link with the Red Cross or Red Crescent but is not entitled to the protection of the Geneva Conventions. To avoid misunderstanding the emblem must then generally be small in size, and be used in such a way as to remove any possible risk of confusion. It may not, for example, be displayed on an armlet or a roof.

National Societies must take care to maintain a clear distinction between these two uses of the emblem, by adopting small-size emblems already in time of peace. Moreover, in accordance with Article 44 of the First Convention, the activities for which the emblem is used must be in conformity with the Fundamental Principles of the Red Cross.

Clearly, these two uses of the emblem are completely different and have two different meanings, whereas the symbol is the same apart from its size. Some authors have therefore suggested that to avoid creating the wrong impression it would have been preferable to use two different symbols, one as a protective device, and the other as a merely indicative device and emblem of National Societies.<sup>10</sup>

To help to solve this problem, the ICRC persuaded the Centenary Congress of the International Red Cross (Geneva, 1963) and the Vienna Conference in 1965 to adopt Regulations on the use of the emblem of the red cross, of the red crescent and of the red lion and sun<sup>11</sup> by the National Societies. A revised version of these Regulations was provisionally adopted by the Council of Delegates in 1987.<sup>12</sup>

## **2. Extension of the protective use of the emblem in the Additional Protocols of 1977**

Protocol I of 8 June 1977 relating to the protection of victims of international armed conflicts extends the protective use of the emblem in international armed conflicts to all persons, units and civilian and military transports assigned exclusively to medical or religious purposes (Articles 12 and 15).

Foreign relief societies working under the control of the authorities may benefit from such protection by displaying the emblem.

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<sup>10</sup> See Pierre Gaillard, statement at the Beirut Congress, 15-20 February 1971, ICRC, *Report*, p. 12.

<sup>11</sup> This emblem now enjoys only theoretical protection under the 1949 Conventions and the 1977 Protocols additional thereto, Iran and its National Society having ceased to use it in 1980, when they adopted the red crescent.

<sup>12</sup> See Note 7 above.

As foreign relief societies, emergency medical organizations may therefore display the emblem provided they respect three conditions (Articles 9, 12 and 18):

- (1) that they are duly authorized to take action by their States of origin and by the competent authorities of one party to the conflict, the other party being notified;
- (2) that they act under the control of the competent authorities;
- (3) that they carry out only medical activities compatible with medical ethics.

As regards relief of the civilian population, Article 71 of Protocol I declares that relief personnel shall be respected and protected, but makes no provision for the use of the emblem.

Protocol I also provides for the use of distinctive signals, that is, any means of signalling intended solely for the identification of medical units and medical transports, such as light signals, radio signals and electronic identification systems.<sup>13</sup>

Articles 37 and 38 of Protocol I prohibit any improper use of the emblem or of the signs or signals prescribed by the Conventions and the Protocol. The use of recognized emblems, or of the signs and signals prescribed by the Conventions and the Protocol, in order to deceive the enemy is considered as a perfidious act under Article 37, and is classed by Article 85, para. 3 (f) as a grave breach of the Conventions and the Protocol.<sup>14</sup>

Such misuse must be repressed as a grave breach when committed wilfully and causing death or serious injury to body or health. Article 18, para. 5 of Protocol I extends to distinctive signals the provisions of the Conventions and Protocol that relate to the prevention and repression of misuse of the emblem.

In relation to non-international armed conflicts, Protocol II fills a gap in Article 3 common to the four Conventions of 1949, which does not mention any use of the emblem. In practice, however, the States and the ICRC had reached agreement on a use of the emblem that was codified as follows in Article 12 of Protocol II:<sup>15</sup> “Under the direction of the competent authority concerned, the distinctive emblem ... shall be

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<sup>13</sup> See Protocol I, Article 18, para. 5 and Annex I, Chapter III.

<sup>14</sup> Grave breaches are listed in Articles 50 of the First Convention, 51 of the Second Convention, 130 of the Third Convention and 147 of the Fourth Convention.

<sup>15</sup> Article 12, therefore, merely codified a customary usage and introduced nothing new.

displayed by medical and religious personnel and medical units, and on medical transports”. The article ends with a bare statement of the two principles necessary for protection by the emblem: “It shall be respected in all circumstances. It shall not be used improperly”.

However, the application of these general principles raises the problem of scrutiny of the use of the emblem, both by the rebels and by the government authorities. The government authorities have to conform to all the rules relating to protection of the emblem and repression of its misuse that are contained in the Conventions and Additional Protocols, and perhaps in national legislation. For the rebel authorities, however, the problem is more complicated, for the legal basis of the requirements applying to them is different. All that can be said is that these *de facto* authorities have to take steps, in the spirit of the Conventions and Additional Protocols, to ensure that the emblem is protected, and repress its misuse. It is in their interest to do so if they want to benefit from the protection offered by the emblem for medical and relief activities.

We must now consider the circumstances in which National Red Cross and Red Crescent Societies may use the emblem.

## **(B) The principles of the Regulations on the use of the emblem by National Societies**

The National Societies do not have an *ex officio* right to use the emblem as a protective device. Only persons, buildings, vehicles and equipment placed by them at the disposal of the army medical services in time of war may display the emblem according to directives laid down by the military authorities. However, in time of peace the National Societies may freely use the emblem as an indicative device in accordance with national legislation. They may continue to use the emblem as an indicative device in time of war, provided that there is no possibility of confusion with its use as a protective device.

For simplicity's sake, and to prevent confusion or alterations to the emblems, the National Societies are invited to accustom their members already in peacetime to the correct use of the emblems, and to use only emblems that comply with the Geneva Conventions. The emblem will therefore always be of small dimensions and must not lead to confusion with the emblem as a protective device; it must not be displayed on a roof or armlet.

National Societies may not carry out their activities under cover of the emblem unless these are “in conformity with the principles laid

down by International Conferences of the Red Cross” and with the aims of the institution, namely voluntary assistance to the sick and wounded and to the direct and indirect victims of conflicts and of natural and man-made disasters.

However, when carrying out other activities which have only a tenuous connection with their essential mission (such as activities for leisure or for gainful ends) National Societies must refrain from displaying the red cross or red crescent emblem, for such activities do not conform to the basic principles of the Movement.

The Regulations contain precise instructions on the design of the emblem, and try to make a visible distinction between its protective and its indicative use.

The emblem used as a protective device must always retain its original form without alteration or addition. National Societies are asked to use preferably a red Greek cross,<sup>16</sup> always on a white ground; the shade of red is not specified. The shape, dimensions and direction of the crescent are not restricted.

When the emblem is used for indicative purposes the Society’s name or initials should preferably appear around or beneath it, no drawing or inscription being displayed on the cross or crescent itself.

National Societies are asked to set for themselves the conditions governing the use of the emblem, but it is laid down that no person may wear the Society’s emblem unless he/she holds a document (a membership card or a duty order issued by the Society) empowering him/her to do so. Similarly, any person in charge of buildings, premises or vehicles bearing the emblem must also be in possession of written authorization.

From the above principles Jean Pictet extracted three distinct aspects of the indicative use of the emblem.<sup>17</sup>

## **1. The appurtenant emblem**

This, when accompanied by the name of the National Society of course, indicates that a person or object belongs to a National Red Cross or Red Crescent organization. It may figure on a flag, a plaque bearing an address, or a vehicle plate, staff badge, etc. However,

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<sup>16</sup> A Greek cross having four equal branches formed of one vertical and one horizontal arm intersecting in the middle and not touching the edges of the flag or shield. The length and breadth of these branches are not regulated. See ICRC, *Regulations ...*, *op. cit.*, Art. 5.

<sup>17</sup> See J. S. Pictet, *op. cit.*, pp. 38-39.

resolutions adopted by the International Conferences of the Red Cross<sup>18</sup> recommended that to avoid abuse National Societies should not authorize their members or personnel to display an emblem except when on duty.

## **2. The decorative emblem**

It is used when the emblem appears on medals, buttons or other awards, publicity posters or decorative drawings used by National Societies.

## **3. The associative emblem**

The emblem is associative when it appears on first-aid stations or ambulances that do not belong to the National Society but are reserved for emergency treatment given free of charge to injured or sick civilians, with the permission of the National Society; for example, many highway first-aid stations display this allusive sign.

This, however, is really a breach of the very strict general principle which the First Convention lays down for the use of the emblem. It has therefore been necessary to restrict this practice as far as possible, to avoid abuses. In such cases the emblem may not be used without special permission from the National Society, and permission will be given only when services are rendered free of charge, so as to keep faith with the spirit of the emblem, and solely in peacetime. National Societies are consequently duty bound to keep a close check on allusive use of the emblem.

Article 18 of the Fourth Geneva Convention provides that civilian hospitals shall at all times be marked by means of the emblem of the red cross or red crescent, but only if so authorized by the State.

The purpose of Article 18 is obvious: it is of course in wartime that identification and protection of civilian hospitals by means of the emblem are most necessary, but to provide for all contingencies it was thought preferable to mark them in this way in peacetime. On the other hand it seemed necessary, again so as to avoid misuse, to make such markings conditional on State permission and permanent State supervision.

In other words, the purpose of State intervention is to ensure that the use of the emblem in peacetime and in time of war conforms to the

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<sup>18</sup> In particular those held in Geneva and Brussels.

purely humanitarian objectives of the Geneva Conventions of 1949, which are the repository of Henry Dunant's philosophy.

Since the texts do not specify what State authority is qualified to give this guarantee, it follows as a matter of course that each State will fix the nature of this authority in its national legislation, together with the circumstances in which it will operate and repress illicit use of the emblem.

## PART II

### SCOPE OF THE PROTECTION AFFORDED BY THE EMBLEM

Obviously, prohibiting or declaring illegal the misuse of the emblem gives it some protection, but such protection is based only on the principles laid down in the Geneva Conventions, the Protocols additional thereto, and the Regulations. As previously stated, these principles establish conditions that restrict use of the emblem.

Thus they prohibit any use of the emblem that does not respect these restrictive conditions, including such use by persons otherwise entitled thereto. This prohibition applies to individuals, societies, firms or companies either public or private, as stated in Article 53 of the First Convention.

In particular, doctors and pharmacists are not *automatically* entitled to use the emblem to identify themselves as such.

*A fortiori*, use of the emblem or imitations thereof for commercial or pseudo-medical purposes is prohibited.<sup>19</sup>

However, cases of illicit use of the emblem may be of varying degrees of gravity. Naturally, the most serious cases are those of misuse of the protective device during hostilities, either as a deliberately perfidious act (such as carrying weapons in an ambulance) or by unauthorized use (for example on an armlet). In such cases States are required to prescribe very strict penalties in their military penal codes. The ICRC and the National Societies have always vigorously opposed such practices, which undermine the credibility of the emblem.

Where the emblem is used only for indicative purposes the consequences of improper use are generally less serious; but States are also required to prevent misuse of the emblem as an indicative device,

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<sup>19</sup> See the commentary on Articles 53 and 54 of the First Convention in "La répression des abus du signe de la croix rouge" in *Revue internationale de la Croix-Rouge*, No. 390, April 1951, p. 280.

and to repress such misuse in their national legislation. Article 54 of the First Convention goes so far as to require States to do so adequately—penalties in national legislation must be consonant with the gravity of each kind of improper use of the emblem.

In practice, the greatest danger to the emblem is certainly that it might forfeit public esteem by being used too often (and more or less irregularly) as an indicative device in time of peace; this might have unfortunate results in time of war. Rules therefore have to be made to govern the use of the emblem by all persons or bodies allowed to use it, in particular National Societies, and all users must be strictly supervised to ensure that they respect those rules.

Thus it appears that effective protection of the emblem depends largely on State action through legislation and court decisions, since it is the States that are required to enforce the provisions of the Conventions. State response has, however, on the whole been disappointing, and the ICRC has had to embark on a series of measures to facilitate it.

### **(A) Model law for the protection of the emblem and the name of the red cross and red crescent**

Many States party to the four Geneva Conventions of 1949 have been so reluctant to enact legislation for effective protection against misuse of the emblem that the ICRC drafted a model law<sup>20</sup> which was submitted to the States for their information, in the hope that it would serve as a source of inspiration to lawmakers.

This text comprises 14 articles. It sets out the essential principles restricting the use of the emblem by civilians, enumerates breaches of those principles and penalties therefore, and provides that National Red Cross and Red Crescent Societies shall lay down, and submit to their governments for approval, regulations for the proper use within the Society of the emblem and of the name of the red cross or red crescent (Article 3, para 2.).

The efforts of the ICRC did not stop there. Indeed, the institution has launched a sustained campaign, directed at governments and National Societies, for greater protection of the emblem by adequate repression of its misuse.

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<sup>20</sup> See “Loi-type pour la protection du signe et du nom de la Croix Rouge”, *Revue internationale de la Croix-Rouge*, No. 391, July 1951, pp. 535-541.

## **(B) Action taken by the ICRC to improve protection of the emblem**

The growing number of cases of misuse of the emblem and, in many States party to the Geneva Conventions, the inadequacy of measures to prevent such misuse, have always been matters of concern to the ICRC. Unfortunately, the model law submitted to the States in 1951 to facilitate the enactment of sufficiently repressive national laws did not have the expected results.

Since then the ICRC has brought up this question at practically every International Conference of the Red Cross—at the Eighth, Ninth, Twelfth, Fourteenth, Twentieth, Twenty-third and Twenty-fourth Conferences. The ICRC has constantly tried in various ways to encourage States to enact national legislation, or improve their existing laws for prevention and repression of misuse of the emblem, and to make National Societies aware of what they can do to help.

The same question was brought up at regional level, at the First Asian Regional Red Cross Conference (New Delhi, 9-16 March 1977), which led the ICRC to survey existing national legislation.

### **1. The New Delhi Conference of March 1977**

At this Conference several delegations drew attention to the alarming state of affairs concerning the emblem—its increasing misuse by individuals and organizations unrelated to the Red Cross or Red Crescent, especially in developing countries—and pointed out that several countries had no national legislation at all to prevent and repress misuse, or laws that were quite inadequate.

The ICRC submitted a draft recommendation to the Conference which was adopted and included in the final report. In it the Conference invited the governments signatory to the Geneva Conventions to enforce national legislation repressing misuse of the emblem or, where there was no such legislation, to enact it, and in particular to prescribe exemplary penalties for offenders. The ICRC and the National Societies were also urged to make similar representation to governments, in order to ensure that those governments properly fulfilled their obligations.

### **2. Consultation on existing legislation**

In accordance with the wishes of the New Delhi Conference, and aware that the situation discussed at that Regional Conference was generalized, the ICRC decided to send circulars to all National

Societies, asking them for information on their existing national legislation for prevention and repression of misuse of the emblem.<sup>21</sup>

In October 1977, Resolution XI of the Twenty-third International Conference of the Red Cross invited the governments of States party to the Geneva Conventions “to enforce effectively the existing national legislation” for the prevention and repression of improper use of the emblem and, where no such legislation existed, to enact it; and to prescribe adequate penalties for offenders.

In the same resolution the Conference noted with satisfaction the ICRC’s efforts in that direction, and asked it to continue them.<sup>22</sup>

In spite of the ICRC’s diligence and its reminders to National Societies, the results of the consultation were disappointing:<sup>23</sup> only 55 (44%) of the 125 Societies approached had replied to the Committee by 18 July 1981.

Ultimately, however, the survey led to important conclusions. The first of these was that in most States party to the Geneva Conventions it is difficult to ascertain the exact position, probably because there is no national legislation to repress misuse of the emblem. According to certain ICRC documents, only about 50 States have any such legislation.<sup>24</sup> The National Societies of 45 of these States sent the ICRC copies of their national legislation on the subject or quoted extracts from it in their replies.

Another important point is that in only 41 countries is the law on this subject rated effective, and even in some of these it is often broken.

The survey shows that most of the misuse reported by National Societies appears to be related to health and medicine—pharmacies are often indicated by the red cross or red crescent emblem—and is usually due to ignorance of current regulations.

This prompts the conclusion that in all countries having the relevant national regulations, information drives making those regulations known would be the best way to prevent breaches and ensure respect for the emblem. In this the National Societies should co-operate with their governments as vigilant defenders of the emblem.

Some National Societies pointed out that their national legislation

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<sup>21</sup> Circular No. 507 of 15 September 1977.

<sup>22</sup> See ICRC, Twenty-fourth International Conference of the Red Cross, *Use and protection of the emblem, an explanatory guide*, Doc. CP A/5.1/1, Geneva, July 1981, Annex I.

<sup>23</sup> After sending them a reminder in a letter of 26 January 1981, the ICRC invited National Societies to a briefing session on 29 April 1981.

<sup>24</sup> See P. Gaillard, *op. cit.*, p. 20.

should be updated as a consequence of the adoption in 1977 of the Protocols additional to the Geneva Conventions of 1949.<sup>25</sup>

Accordingly, in all States bound by the Conventions and Protocols it is incumbent on the public authorities to make or update laws or regulations to enforce the provisions of those treaties protecting the emblem and distinctive signals against all kinds of misuse.

To help States in this complicated but necessary task the ICRC brought out an Explanatory Guide to the national legislation that should be adopted for the use and protection of the emblem. The guide, published in July 1981, reviews the relevant provisions of the 1949 Geneva Conventions and the 1977 Protocols, and explains the object and content of the legislation or regulations that should be introduced. It was intended to replace the model law drawn up in 1951.

### **3. The Manila Conference of November 1981 and the draft revision of the Regulations**

Besides attempting to persuade States to introduce effective measures to repress misuse of the emblem, the ICRC decided to approach the National Societies, whose use of the emblem was also causing problems. It therefore embarked on a revision of the Regulations of 1965 in the light of the Additional Protocols of 1977 and the National Societies' experience of those Regulations.

Following the ICRC circular sent them on 11 February 1981, the National Societies agreed that such a revision would be appropriate, at least as regards the protective use of the emblem, which should conform to the Additional Protocols of 1977.

Several Societies also proposed amendments relating to indicative use of the emblem, for example to make clear how far they were entitled to use the emblem for publicity and fund-raising.

In the end, the ICRC judged that it would be premature to submit a draft revision to the Manila Conference. Instead, it continued its consultations until the Twenty-fifth International Conference of the Red Cross (Geneva, October 1986).

The Manila Conference merely adopted a resolution (No. XII) requesting the International Committee of the Red Cross to prepare a draft revision of the Regulations, in order to improve them and adapt them to the Protocols of 1977. The ICRC's first draft was completed in July 1985 and discussed by the Council of Delegates when it met in

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<sup>25</sup> By 30 June 1989 the States party to Protocol I numbered 84 and the States party to Protocol II only 74.

Geneva on 25 and 26 October of the same year. A second draft was then prepared, and submitted to the Council of Delegates at its meeting on 23 April 1986.

Thereafter, the ICRC prepared a final draft<sup>26</sup> comprising 35 articles in three chapters, the first dealing with general rules, the second with protective use of the emblem and the third with its indicative use.

Chapter I sets out the general rules for the use of the emblem. Chapter II enumerates the procedure for use of the emblem, or of signals, for the protection of persons (Section 2) and objects (Section 3). Chapter III states the rules for use of the emblem for identification of National Society personnel (Section 1), buildings, hospitals, aid stations and vehicles (Section 2), and for dissemination, fund-raising and other uses (Section 3).

This draft was submitted to the Twenty-fifth International Conference of the Red Cross and Red Crescent, which unfortunately could not examine it for lack of time. It was studied by the Council of Delegates, meeting on 27 November 1987 in Rio de Janeiro, which decided in its Resolution No. 6 to submit the draft to the Twenty-sixth International Conference of the Red Cross and Red Crescent for formal approval. Meanwhile it recommended that National Societies should observe the Regulations on a provisional basis.<sup>27</sup>

Once the Regulations are in force, the use of the emblem by National Societies will be fairly satisfactorily regulated by a few rules applicable to all of them. It is to be hoped that the National Societies will then, in co-operation with the ICRC, make the effort needed to disseminate these rules.

It now remains to persuade the public authorities in all States to introduce into their national legislation the repressive measures necessary to prevent improper use of the emblem, or to add to those they already have.

The position in Tunisia can be regarded as typical. The Tunisian Red Crescent has several times pointed out to the public authorities that there is no adequate legislation for prevention and repression of improper use of the emblem, and that the gap should be filled by legislation based on the model law proposed by the ICRC.<sup>28</sup> These

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<sup>26</sup> See Note 7 above.

<sup>27</sup> See "Resolutions of the Council of Delegates (adopted at its session of 27 November 1987)" in *International Review of the Red Cross*, November-December 1987, No. 261, pp. 599-600.

<sup>28</sup> A draft decree restricting the use of the emblem was prepared by the Ministry of Health, but was dropped in the end because it made no provision for penalizing offenders.

approaches have so far been without result, probably because the Health Ministry is aware of the enormous number of breaches that would have to be repressed if such legislation were introduced. Thus the authors of the draft decree merely granted persons contravening its provisions a period of grace in which to stop misusing the emblem. To any event, they could not impose penalties without impinging on the competence of the law established by Article 34 of the Constitution of 1 June 1959.

In practice it is not easy to ascertain the extent of breaches without first making a survey, but anyone who is familiar with the situation realized that, here as elsewhere, the emblem is often misused in good faith to identify ambulances, emergency and relief services, dispensaries and other establishments that have no direct link with the National Society or the army medical services.

### **Professor Habib Slim**

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# Special aspects of the use of the red cross or red crescent emblem

by Antoine Bouvier

## INTRODUCTION

The emblem of the red cross was one of the most remarkable innovations of the Convention of 1864. Ever since then there have been discussions, questions and controversy as to its nature and purpose, the persons it is meant to protect, and the rules that should govern its use.

Like the emblem of the red crescent, the emblem of the red cross very soon became vitally important in the application and implementation of international humanitarian law (IHL). The law of armed conflicts now depends largely on respect for the emblem and on the conditions in which it may legitimately be used.

The emblem originated merely as a distinctive sign of army medical services and their auxiliary troops. It was so successful that in the course of time its use increased considerably.

The steady extension of the use of the red cross emblem has its bad and good sides: the *bad* side is the frequent misuse of the emblem both in peacetime and in time of war, often because the public does not exactly realize its essential purpose; the *good* side—a fine achievement—is that many victims have been saved by people whose protected status was due only to the amendments to the rules on the use of the emblem made in the successive versions of the Geneva Conventions and in the Protocols additional thereto.

The international community, like the balance of power that governs it, is in a constant state of flux. This necessarily means that the form of armed conflicts, and of conflicts in general, is also constantly changing.

Humanitarian law too must adapt to change, because its primary purpose is to protect the weakest element in international society—the individual. The law of armed conflicts cannot afford to be “one war

behind the times"; perhaps more than any other branch of international law, it must keep up to date.

The following pages answer three thorny questions recently raised regarding the use of the emblem:

- (a) the protective use of the emblem by National Societies *in time of armed conflict*, without the express permission of authorities no longer able to exercise their responsibilities (circumstances regulated by the Conventions);
- (b) the use of the emblem in time of internal disturbances and tension (circumstances not regulated by the Conventions);
- (c) the use of the emblem by bodies not forming part of the International Red Cross and Red Crescent Movement.

International humanitarian law does not answer these questions clearly. They can therefore be answered only by interpreting legal regulations. Some of the basic rules on the emblem are therefore recapitulated below, for easy reference.

Without pre-judging any answers found to the above questions, it seems necessary to point out that the use of the emblem should not be extended in any way until two opposing arguments have been carefully weighed against each other: (a) the danger that any such extension may lead to misuse of the emblem, and (b) the direct benefits to victims that may be expected from any such extension.<sup>1</sup>

Our research must also be guided by considerations of *efficacy*; it may well be that, in these matters, and since national conditions vary widely, any attempt at lawmaking may appear premature or counter-productive, and pragmatic approaches may be preferable.

Nevertheless these questions are causing concern to National Red Cross and Red Crescent Societies and to certain non-Red-Cross medical bodies, and must be answered.

## I. THE EMBLEM: GENERAL BACKGROUND AND THE LAW IN FORCE

Before examining the feasibility of extending the use of the emblem to situations not covered by present legal regulations, it seems

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<sup>1</sup> The results of any such weighing of interests may of course vary, but the consultations about the draft *Regulations on the Use of the Emblem* (and even more the text adopted by the Council of Delegates in 1987) appear to show that the prevailing tendency in the Movement is a restrictive one designed to prevent misuse.

necessary to draw attention to some of the most important features of those regulations.

First and foremost, the emblem is a means of alleviating the suffering of the wounded, sick and shipwrecked, and in general of all individual victims of armed conflict.

It therefore protects persons whose duty is to relieve victims, the equipment used for that purpose, and hospitals and medical units sheltering victims or engaged in medical duties.

This is not the place for detailed consideration of legal rules on the emblem. Their gist is contained in the Conventions of 1949 and the Protocols additional thereto of 1977, in resolutions adopted by the International Conferences of the Red Cross, and in the *Regulations on the Use of the Emblem of the Red Cross or Red Crescent by the National Societies*.<sup>2</sup>

Many studies and detailed explanatory commentaries have been made of these rules.<sup>3</sup>

The purpose of the regulations on the use of the emblem is clear and they are often very detailed. The circumstances in which the emblem may be used, and who uses it or is entitled to use it, have been defined with the utmost precision to ensure that the emblem's protective powers are as wide as possible and to preclude misuse.

As stated above, the danger that the emblem will be misused must be very carefully considered whenever it is proposed to extend the number of persons entitled to use it. The emblem itself protects nothing; it cannot do what the Conventions require of it unless the regulations for its use are scrupulously respected. As soon as it is used in circumstances that are not strictly regulated (for example when there is no effective procedure for *supervision* of its use) it will probably if not certainly be misused. And as experience has amply shown, misuse of the emblem, even in isolated cases of only one kind, inevitably leads to a general decline in its authority and therefore in the protection of those entitled thereto.

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<sup>2</sup> These Regulations replaced similarly entitled Regulations adopted in 1965 by the Twentieth International Conference of the Red Cross and were provisionally adopted by the Council of Delegates at Rio de Janeiro in November 1987.

<sup>3</sup> For a recent example, see the *Guide for National Red Cross and Red Crescent Societies to Activities in the Event of Conflict*, a document prepared by the ICRC and presented at the Twenty-fifth International Conference, Geneva, 1986.

### *The present state of applicable law*

Article 44 of the First Convention of 1949 prescribes two different uses of the red cross or red crescent emblem on a white ground.<sup>4</sup>

(a) The use of the emblem is considered to be *protective* when it is the visible sign of the protection granted by the Conventions to persons or property (the armed forces' medical services, personnel of recognized relief societies operating as auxiliaries of those services, vehicles and equipment for medical purposes, ambulances, etc.). When used in this way the emblem, in order to ensure its visibility and thereby give maximum protection, must be as large as possible and bear no text. To prevent its misuse, the emblem may not be used as a protective device except in the following circumstances:

- its users must be *authorized* by the State to make use of it;
- they must be placed *under State control*. The State must ensure that it is used correctly and will be held responsible for its misuse;
- the emblem may be used for *medical* purposes only.

(b) The emblem is used as an *indicative* device when used to show that a person or object is linked to the Red Cross but cannot, and is not intended to be, placed under the protection of the Convention.

In such circumstances it may not be used unless:

- its use is in accordance with national legislation;
- it covers only activities compatible with the principles of the Red Cross.

## II. SPECIAL CASES OF USE OF THE EMBLEM BY NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

The right of *National Societies* to use the emblem varies considerably between peacetime and time of armed conflict.

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<sup>4</sup> Setting aside the special case of the international bodies of the Red Cross, which enjoy a special status and may use the emblem either as a protective or indicative device for all their activities, provided these are in accordance with the Fundamental Principles of the Red Cross.

### *In peacetime*

The National Society uses the emblem in peacetime as an *indicative device* (and on the above-mentioned conditions). Article 44 of the First Convention is the main legal basis on this subject but gives no exact information as to the size of the “indicative” emblem; it does say however that, when peacetime activities are continued 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 (*ed.: protective device*); the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings”.

To prevent any confusion in the event of conflict and avoid having to reduce the size of signs used in peacetime (an inevitably difficult and costly operation), the National Societies are requested “to use as an indicative device an emblem of relatively small dimensions already in peacetime”.<sup>5</sup>

As a general rule, then, when the emblem is used as an indicative device it must be of small size, in peacetime as in time of war. In peacetime only, however, “the use of a large-size emblem is not excluded in certain cases, such as events where it is important for first-aid workers to be easily identifiable”.<sup>6</sup>

It is also stated that “with the consent of the authority, the National Society may, already in time of peace, use the emblem (...) to identify units and transports whose assignment to medical purposes in the event of an armed conflict is definitively decided”.<sup>7</sup> This is not a protective use of the emblem, but solely an instance of preparing resources that would be allowed to use the emblem as a protective device in time of conflict. In this case emblems must be of large dimensions.

### *In time of war*<sup>8</sup>

In such circumstances and provided national legislation so allows, National Societies may continue to use the emblem as an indicative device for activities other than co-operation with official medical services. In such cases the emblem must always be of small dimensions.

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<sup>5</sup> See the *Regulations on the Use of the Emblem* (Rio de Janeiro, 1987), commentary on Article 4.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, Article 13.

<sup>8</sup> This refers to international and non-international armed conflicts, excluding internal disturbances and tension.

National Societies have no absolute right to use the emblem as a protective device. They are entitled to do so only for that part of their personnel that is:

- assisting the medical services of the armed forces. This personnel must be performing the same duties as military medical personnel, and is subject to military laws and regulations; it is therefore practically in the same category as the armed forces' medical services;
- employed exclusively in civilian hospitals or civil defence medical services.

These very strict conditions are imposed to prevent misuse of the emblem. To limit such misuse it has been agreed that only members of the medical staff directly under the control of the authorities should be allowed to use the emblem as a protective device.

Protocol I admittedly broadens these conditions by extending the protection of the emblem to the whole of the medical personnel of National Red Cross and Red Crescent Societies and other duly recognized and authorized national voluntary aid societies, and lastly to the hospitals and medical equipment administered by such societies. This extended use of the emblem must however be “duly recognized and *authorized*” by the authorities, whose responsibility is thus reaffirmed.

## **II.1 Protective use of the emblem by a National Society in time of armed conflict, without the express permission of the authorities**

As stated above, IHL subjects protective use of the emblem to one absolute condition, namely that the user of the emblem should be acting under the *responsibility* of the competent state authority, which must therefore exercise sufficient control and supervision to avoid misuse. In present circumstances, the use of the protective emblem by a National Society without the agreement of the said authority is thus *forbidden by law*.

It may however be asked whether the present regulations should not be made broader so as to adapt IHL more closely to certain new kinds of conflict situations. Incidentally, throughout the history of IHL a consistent attempt has always been made to adapt it, and its rules for the use of the emblem, to new situations of this kind. When the

assembled plenipotentiaries decided in 1864 that “a distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties”, they certainly could not imagine that less than a century and a quarter later that flag could perfectly legally and with small detriment to its protective value be used to distinguish highway first-aid stations, decorate medals or promote fund-raising campaigns for National Societies.<sup>9</sup>

Whether the protective use of the emblem should be allowed without the permission of the authorities, and indeed whether any other extension of its use should be allowed, has to be considered with scrupulous regard to two not easily reconcilable factors. The first is that strict opposition to any such use might put a stop to the effective relief of victims by some National Societies and gratuitously endanger the lives of their first-aid workers. The second is that to allow it might promote misuse of the emblem and so lessen the protection of persons legitimately entitled to use the emblem.

There are however cases in which use of the emblem without permission from the competent state authority might be permissible. Two such cases spring to mind. The *first case* is that in which a complicated and acute conflict so undermines government administration that the government can no longer take and enforce the decisions normally falling to it. The National Society 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 National Society gradually becomes a main provider of such services. It is thus no longer subject to supervision which circumstances have made impossible.

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

Before going into the pros and cons of use without permission or regulation of such use, three general observations are necessary:

- (a) the common factor in all the cases being discussed here is that the authorities are *de facto* unable to *supervise* the use of the emblem, not that the National Society is the *only* body carrying out medical activities;

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<sup>9</sup> To mention only a few examples authorized by the *Regulations on the Use of the Emblem*.

- (b) members of National Societies working in an ICRC or League operation are not covered by these remarks;
- (c) unlike many other questions concerning the application of IHL, the questions raised by the use of 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 National Societies without the express permission of the authorities**

***(a) Arguments for its use without permission***

- (1) Extending the use of the emblem (and accordingly the number of first-aiders protected by it) means that many more victims are saved;
- (2) by authorizing the National Societies to decide for themselves on the use of the emblem they are given responsibility and can manoeuvre more freely. The latter point appears to be particularly important in non-international conflicts, in which it is vitally important for the National Society to be independent of the government;
- (3) where government administration has become so weak that it can no longer authorize or supervise the National Society's activities, use of the emblem without governmental permission may enable the National Society to continue its activities, which would otherwise be paralysed;
- (4) increasing a National Society's freedom of manoeuvre lessens the danger in time of non-international conflict that "dissident" Societies will be set up. Protective use of the emblem without permission may therefore make for respect of the fundamental principle of *unity*.

***(b) Arguments against use of the emblem without permission***

- (1) Any extension of the right to use the emblem entails misuse thereof and harms the persons already entitled to its protection;
- (2) the conditions for the use of the emblem that are laid down by applicable law (Articles 44 and 53 of the First Geneva Convention, the Regulations on the Use of the Emblem, etc.), have been arrived

at only after long negotiation. Only by respecting these conditions is any real power of protection conferred on the emblem;

- (3) to agree to the use of the emblem without permission in some circumstances could relieve States in general of responsibility. They might henceforth rely entirely on the services of the National Society, give up any supervision and take no further action against misuse of the emblem;
- (4) if National Societies are authorized to use the emblem without permission there is a danger that other organizations (which unlike the Red Cross 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, because it makes for better protection of victims and facilitates the work of National Societies.

### **Should use of the protective emblem without permission be subject to regulation?**

If it is agreed that the use by National Societies of the emblem without permission should be allowed under strict conditions in which the authorities are no longer able to carry out their functions, it may be asked whether it is necessary to put this flexibility on a formal basis by amending the law or obtaining recognition of the practice in a resolution of the International Conference of the Red Cross and Red Crescent.

For the following reasons, this does not appear to be necessary:

- (1) it is unlikely that in framing such regulations governments would include any reference to their own potential inability to govern;
- (2) even if they were to do so, it would be extremely difficult to apply the regulations, for the same reason (the government would not admit that it was unable to govern);
- (3) if any such regulation were drafted jointly, it might give organizations that were not even members of the Movement an excuse for using the emblem without the necessary conscientious stringency, with the inevitable result that its protective value would quickly be reduced;

(4) lastly, and more importantly, the law as it stands justifies that use:

- as stated above, the Additional Protocols enable the authorities to give National Societies wide permission (without prejudice to the said authorities' supervisory responsibility) to use the emblem in armed conflicts as a protective device for their medical activities. This innovation has not been disputed from any quarter and it has to be accepted that even States that are not Parties to the Protocol are empowered to give such permission;
- where circumstances make it impossible for the authorities to give permission and there are obvious humanitarian needs, the National Society may *assume* that the authorities give it their permission. Firstly, within the Movement the principle of humanity impels it to act in this way, and secondly it need not fear any penalty from international law; international law, like any other legal principle, exists essentially to serve mankind, and wherever there is an urgent and obvious humanitarian need it would be unthinkable for any formal obstacle to prevent action that is so clearly in the spirit of the law.

## Conclusions

- (1) Protective use of the emblem by a National Society in time of armed conflict, without special permission from the authorities, should be accepted when those authorities are no longer able to discharge their responsibilities.
- (2) This concession is limited to medical activities.
- (3) In such circumstances it is especially important that the National Society should strictly respect the Fundamental Principles of the Movement.
- (4) The above conclusions are based on existing law, and their formal specification is neither necessary nor advisable.

Examination of present practice appears to confirm these conclusions. Experience shows that where efficient Societies (that is, Societies 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 victims have been saved.

## II.2 Use of the emblem as a protective device in time of internal disturbances and tension

Many National Societies are concerned to improve protection of their personnel and of the material resources they have deployed to help victims of acts of violence committed at a time of internal disturbances and tension. The National Societies believe that their present means of protection are insufficient; they would like to be able to use the emblem as a protective device in such situations.

Internal disturbances and tension have already been very precisely defined.<sup>10</sup> Those definitions will not be repeated here, other than to remind that situations of this kind cannot be treated as armed conflicts and that the only applicable rules of IHL are those intended for peacetime.

However, IHL makes no provision at all for the protective use of the emblem outside armed conflicts.

In view of the very real problems facing National Societies in such situations, it should be considered whether the regulations governing the use of the emblem should be relaxed, or whether those problems can be solved by using the existing regulations.

### A major concern of National Societies

It is worth while examining more closely a major concern of National Societies: these Societies usually find that their medical personnel are not sufficiently *identifiable* as such when on active service and that their activities may therefore be prevented; if they nevertheless intervene, they may be molested by rioters or the police.

The National Societies have no wish to imply or invoke “protection under the Convention”<sup>11</sup> for their personnel and accordingly see them formally authorized to use the emblem as a protective device (anyway, as stated above, the Conventions do not apply to internal disturbances). What the National Societies are pressing for is much more down-to-earth: for their personnel to be clearly *identifiable* and thus

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<sup>10</sup> See, e.g., *International Review of the Red Cross*, No. 262, January-February 1988, “ICRC protection and assistance activities in situations not covered by international humanitarian law”, p. 11 et seq.

<sup>11</sup> *The Geneva Conventions of 12 August 1949—Commentary*. ICRC, Geneva, 1952—Article 44 of the First Convention, p. 330.

receive maximum protection, they want them simply to be allowed to use emblems of large dimensions.

### **The situation under existing law**

Many of the National Societies' problems of this kind appear to arise from unduly restrictive interpretation of the regulations.

The regulations stipulate that the "indicative emblem" shall be "comparatively small in size"<sup>12</sup> or "usually of small dimensions"<sup>13</sup>. The National Societies have accordingly become convinced that when used indicatively the emblem must *always* be small and may only be of a large size when used as a protective device. It is apparently this erroneous interpretation of the law that leads National Societies to demand that they be allowed to use the emblem as a protective device in time of internal disturbances and tension.

The argument that the rules on the protective use of the emblem should be made broader may accordingly be dropped; what calls for examination is how the regulations on the *indicative* use of the emblem are to be interpreted and applied. To be more precise, what needs to be further examined here is the *indicative use of large-size emblems*.

"National Societies are requested to use as an indicative device an emblem of relatively small dimensions already in peacetime."<sup>14</sup> The reason for this *request* (it is not, be it noted, an obligation) is plain; it is that when the emblem may also be used as a protective device, that is, solely in time of international or non-international armed conflict, there should be no confusion between its protective and indicative use. The only reason why IHL recommends that in peacetime "indicative" emblems should be small in size is to avoid confusion and spare National Societies from having to waste time and money on work such as removing large "indicative" emblems painted on roofs.

In the great majority of cases this principle is perfectly justified; an indicative emblem of small size is generally sufficient and the distinction certainly increases the prestige and protective power of the emblem when it is used for its most important purpose, that is, as a protective device.

The principle that when the emblem is used as an indicative device it must be of small size is not, however, absolute. It has to be admitted that in certain clearly defined circumstances the advantages of large

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<sup>12</sup> See Article 44 of the First Convention.

<sup>13</sup> See *Regulations on the Use of the Emblem*, Article 16.

<sup>14</sup> *Ibid.*, Article 4, commentary.

“indicative” emblems in terms of aid to victims and improved protection of first-aiders, the *rationes legis* of any humanitarian principle, outweigh the above-mentioned risk of confusion or misuse. *The Regulations on the Use of the Emblem*, provisionally adopted in 1987,<sup>15</sup> therefore stipulate that: “however, the use of a large-size emblem is not excluded in certain cases, such as events where it is important for first-aid workers to be easily identifiable”.<sup>16</sup> The Regulations have refrained from spelling out the cases referred to in this commentary, but it seems plain that they include help by first-aiders from a National Society to persons injured in internal disturbances.

Incidentally, in this case the red cross or red crescent does have a *de facto* protective value, though whether because of respect for the emblem itself or for the National Society’s activities is unclear. It is however clear that this respect will depend on the image that the National Society has earned for itself by the quality of its service to the public, and on the efforts made to disseminate knowledge of humanitarian law.

Lastly, it is as well to recall that for large-size emblems to be used in peacetime, such use must be *authorized*, or at least *not forbidden*, by national legislation; on this point the Conventions leave the door open.

## Conclusions

- (1) International law does not envisage the use of the emblem as a protective device in time of internal disturbances and tension;
- (2) When the emblem is used as an indicative device, it should usually be of small size, but only to avoid confusion in time of armed conflict and so avoid the inconvenience of having to make alterations to the emblems if fighting breaks out;
- (3) In peacetime, large-size emblems may nevertheless be used as indicative devices without infringing the law, unless national legislation expressly forbids this;
- (4) The impartial aid given by a National Society to victims of acts of violence committed in time of internal disturbances and tension may accordingly be given, in principle, under the protection of large-size emblems;

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<sup>15</sup> To this effect the Regulations differ from the Conventions and appear to have relaxed the conditions of Article 44 by no longer forbidding the indicative use of armlets.

<sup>16</sup> See *Regulations on the Use of the Emblem*, Article 4, commentary.

- (5) There is no need to take exception to the fact that the emblem may assume a *de facto* protective value in such circumstances.

### III. THE USE OF THE PROTECTIVE EMBLEM BY BODIES OTHER THAN THE RED CROSS

A brief mention of some historical facts is necessary as an introduction to this section.

In the early 1970s a number of medical organizations of a completely new kind were formed, and worked both in international and (especially) non-international conflicts. As their activities increased these organizations were soon faced with operational problems well-known to the ICRC, including safety and free access to victims.

These voluntary organizations were not protected to any significant extent by international humanitarian law, as they did not exist in 1949 and the law-makers of 1977 were extremely hesitant about considering their demands. They were consequently not slow to adopt the *red cross emblem*—probably the most effective protective device—for their protection, and to use it more and more, conveniently “forgetting” that its use is strictly regulated by IHL.

This use of the emblem caused serious concern in and outside the ICRC, not in any legalistic spirit, but for the simple reason that the emblem *itself* offers no guarantee of safety. Only if the legal conditions regulating its use are very strictly observed can the Parties to a conflict be required to respect the emblem; only then can it give effective protection.

The purpose of the following remarks is to reconcile two objectives that appear to contradict each other. The first is to limit misuse of the emblem as a protective device. The second is to provide the greatest degree of protection possible under IHL to organizations which are usually perfectly honourable and efficient.

For the sake of clarity and brevity, the study that follows does not deal at all with some allied questions (such as protected buildings, protected transports, or indicative use of the emblem) and only briefly with others (such as use of the emblem by traditional medical organizations like the armed forces’ medical services and National Societies). Instead it concentrates on the highly complicated question of the right of bodies other than the Red Cross to use the emblem.

## **Protection of medical duties by IHL: a legal viewpoint**

As well as the additional protection conferred by the emblem on certain specified bodies, IHL contains provisions for general protection of medical duties. These general provisions will now be examined. A more detailed examination of the provisions regarding the right to display the emblem will follow, always bearing in mind that medical personnel is protected, as *civilians*, against the effects of hostilities.

### **General protection of medical duties**

In pursuance of its primary purpose, that of relieving victims, IHL has progressively extended the range of protected categories of personnel engaged in medical duties. As modern conflicts increasingly affect the civilian population, States have found it necessary to extend legal protection to all personnel engaged in medical duties.

Three provisions (Articles 18 sub-paragraph 3 of the First Convention, 16 of Protocol I and 10 of Protocol II) establishing general protection of medical duties were accordingly adopted in 1949 and 1977. They stipulate that no person may be molested or convicted for carrying out medical activities compatible with medical ethics.

The general character of these provisions applies to medical personnel of a Party to a conflict, where that personnel is engaged in medical duties, and also to doctors acting on their own initiative.

The non-Red-Cross organizations concerned are entitled to this basic protection, but regard it as insufficient, and as stated above have increasingly decided to use the additional protection offered by IHL, namely that conferred by the red cross or red crescent emblem.

### **Special protection conferred by the emblem**

#### ***1. In time of international armed conflict***

##### **(a) Bodies empowered to display the emblem**

The Conventions of 1949 (Convention I, Articles 24 to 27, and Convention IV, Articles 18 to 20) and Protocol I (Articles 12, 15, 62 and 64) of 1977 authorize the following categories to display the protective emblem:

- military personnel exclusively engaged in medical duties;
- military personnel temporarily engaged in medical duties;
- medical personnel of the National Red Cross and Red Crescent Societies of a Party to the conflict, and medical personnel of other voluntary relief associations recognized by their

Governments as auxiliaries to the armed forces' medical services and working under the supervision of the authorities (see section II above);

- personnel of the international bodies of the Red Cross;
- personnel of National Red Cross and Red Crescent Societies of neutral States and other States not Parties to the conflict and personnel of *other voluntary aid societies* recognized by such States as auxiliaries to armed forces' medical services and working under the supervision of the authorities of a Party to the conflict (*our italics*);
- medical personnel of civil defence organizations;
- duly recognized and authorized personnel of civilian hospitals.

(b) Conditions for the use by non-Red-Cross bodies of the emblem as a protective device

It will be seen from the above that national sections of non-Red-Cross bodies may be authorized to use the emblem in time of *international* armed conflict. They are, however, entitled to use it only on the following conditions:

- that they are recognized as auxiliaries to the medical services of their States of origin;
- that they carry out only *medical* activities compatible with medical ethics;
- that they are duly *authorized* to act by their countries of origin and by a Party to the conflict;
- that they act under the *supervision* of the authorities of a Party to the conflict.

N.B. In time of international armed conflict there is accordingly one way in which non-Red-Cross bodies may be given the protection of the emblem. However, they have repeatedly stated that they want to be completely independent in their work. This implies that they are unwilling to be supervised by anybody. It is therefore highly debatable whether they could be granted the right to use the red cross emblem, especially as, so far as the present author is aware, *not one* of these bodies has yet been recognized as auxiliary to the medical services of its State of origin.

## 2. *In time of non-international armed conflict*

These are the conflicts that generate the most thorny questions. The majority of contemporary conflicts are non-international, and it is therefore in these that humanitarian organizations are usually active.

Furthermore, legal regulations on such conflicts are much less clear and less complete than those applicable to international armed conflicts.

### (a) Bodies empowered to display the emblem

States have defined fairly clearly the conditions for protective use of the emblem in international conflicts, but have barely touched on its use in non-international conflicts.

Thus the principal legal basis as regards the latter, Article 3 common to the four Geneva Conventions of 1949, makes no mention of any right to the protective use of the emblem. As a result there have been great difficulties in interpretation.

The ICRC and the States have however agreed, in the light of legal opinions and constant practice, that the protective use of the emblem should be authorized in non-international conflicts.<sup>17</sup>

Protocol II clarified this point by fixing regulations for the use of the emblem. It will be agreed that these regulations are at present binding on all States (whether or not they are Parties to Protocol II) and applicable to all non-international conflicts, because they clarify the law previously applicable but do not extend it.

The two most relevant provisions of Protocol II are Articles 9 and 12. Article 9 states the basic principle that military and religious personnel are protected in time of non-international armed conflict. Article 12 affirms the right to use the emblem in such situations and lays down the conditions for its use.

The main difficulty of interpreting these provisions is that, unlike the Conventions of 1949 and Protocol I,<sup>18</sup> Protocol II *contains no explicit definition of protected medical personnel*.

As a result, only the writings of experts, the Official Records of the Diplomatic Conference on Humanitarian Law (CDDH), and draft articles not accepted for the definitive version of Protocol II provide

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<sup>17</sup> See *Conference of Government Experts*, Documentation presented by the ICRC, 1971, CE/5b, p. 53 et seq.

<sup>18</sup> See, e.g., First Convention, Chapter IV; Fourth Convention, Article 20; and Protocol I, Article 8.

any indication of the categories of medical personnel that it was desired to protect in 1977.

As regards the medical personnel under consideration here, namely medical personnel of non-Red-Cross bodies, it would appear that the States taking part in the CDDH intended to distinguish *local* from *foreign* non-Red-Cross bodies.

Under this interpretation, which is the ICRC's and that of the authors of the Commentary on Articles 9 and 12 of Protocol II,<sup>19</sup> *only local relief organizations may be authorized to use the emblem.*

Foreign non-Red-Cross bodies *are not authorized to use the emblem in time of non-international conflict.* An important reason for this decision was given by a governmental delegate at the Diplomatic Conference; it was to avoid "private groups from outside the country establishing themselves by claiming the status of a relief Society and then being recognized by the insurgents".<sup>20</sup>

(b) Conditions under which local non-Red-Cross bodies may display the emblem

A local non-Red-Cross body is authorized to use the emblem as a protective device on the following three conditions:

- that it is a "voluntary aid Society" as defined in IHL, that is, recognized as an auxiliary to the medical services of the governmental or "dissident" party;
- that it carries on its activities and displays the emblem with the agreement and under the supervision of a Party to the conflict;
- that its activity is strictly in accordance with the conditions imposed by IHL for the use of the emblem as a protective device; that is, that those activities are *exclusively medical*.<sup>21</sup>

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<sup>19</sup> For further details regarding the basis of this interpretation see *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ed. Y. Sandoz, C. Swinarski, and B. Zimmermann, ICRC, Martinus Nijhoff Publishers, Geneva, 1986—Commentary on Articles 9 and 12 of Protocol II, especially para. 4660, p. 1418, paras. 4664-66, **4667**, pp. 1419-1420, and paras. 4739 and 4740, p. 1440.

<sup>20</sup> 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/II/SR. 80., para. 16, quoted in the Commentary on the Protocols, para. 4667, p. 1420.

<sup>21</sup> Only the ICRC and the League are authorized to use the emblem as a protective device for their relief activities.

(c) Problems peculiar to non-international armed conflicts. Supervision by the “dissident” authorities

As stated above, protective use of the emblem is subject to the authorization and supervision of the competent authority concerned.

Generally speaking, there is no difficulty in identifying the competent authority on the government side, but this difficulty often does exist with the “*dissident*” forces. The Commentary on Article 12 of Protocol II states that “it is up to each responsible authority to take the measures necessary to ensure that such control be effective (i.e. to ensure correct use of the emblem). The competent authority may be military or civilian. For those who are fighting against the legal government, this will be the *de facto authority in charge (our italics)*.”<sup>22</sup>

The competence thus granted the dissident party naturally entails obligations: by analogy, and *mutatis mutandis*, the regulations concerning international armed conflicts (such as Articles 53 and 54 of the First Convention and the relevant provisions in national legislations) are applicable. There is no need to spell out here the extent and nature of the supervision of the use of the emblem to be exercised by the competent authority, but it must be close and constant.

It would normally be unrealistic to expect dissident authorities to apply all the relevant provisions in full, but they must nevertheless devise and apply, at the very least, a simplified procedure for supervision. The requirement of supervision to ensure the correct use of the emblem is of the highest importance, and failure to observe it, whether voluntary or through inefficiency on the part of the authorities, must accordingly be regarded as a breach of IHL.

(d) Remaining risks in lawful use of the emblem

The question whether the use of the emblem is lawful or not has no effect on the question whether a medical organization may work in territory controlled by a rebel Party without being authorized to do so by the legal government as well.

Article 3 common to the four Geneva Conventions of 1949 may be considered as allowing this, but this interpretation is probably not accepted by all States.

The danger should not be underestimated that if the established government captures a member of the medical personnel authorized to

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<sup>22</sup> See the *Commentary on the Protocols*, Article 12 of Protocol II, para. 4746, p. 1441.

work for the “dissident” Party, but who has entered the country without the said government’s agreement, it may condemn that person for illegal entry into the country, invoking the law of the land as its justification.

(e) Legal protection for a non-Red-Cross organization working without authorization

A non-Red-Cross organization working without authorization is not entitled to any protection other than the general protection of medical duties enjoined by Articles 18 of the First Convention, 16 of Protocol I and 10 of Protocol II.

Members of an organization of this kind may not be prosecuted merely for carrying out medical activities compatible with medical ethics; but as experience has unfortunately shown, they are in danger of prosecution by the governmental party for illegal entry into the country, and may even be accused of spying by either party.

(f) Final remarks

To conclude this paragraph on the use of the emblem in non-international conflicts, and especially on the legal position of non-Red-Cross organizations working in such conflicts, the following is a recapitulation of the answers given by IHL to the main questions arising on this subject:

(1) Is the organization entitled to work?

Provided the organization conforms to the above-mentioned characteristics, IHL answers:

- (a) definitely yes, if it works with the agreement of the established government, and, in territory controlled by the “dissident” authorities, with their agreement;
- (b) yes, in territory controlled by the “dissident” authorities, with their agreement and even without the agreement of the established government, but with the danger that the latter does not accept this interpretation and considers that there has been illegal entry into its territory;
- (c) no, if without the agreement of the authorities controlling the territory in which it works.

(2) Even when illegal or judged to be so, the work of organizations *compatible with medical ethics* cannot be condemned in itself. Only unauthorized entry into the territory could be condemned.

- (3) Except for the ICRC, protective use of the emblem in non-international armed conflicts is reserved for *medical activities* carried out—under the supervision of a Party to the conflict—by its own medical personnel or by *local* medical organizations, and in no circumstances by foreign organizations. These conditions are therefore *additional* to those required merely for entitlement to work.

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***PROTECTING THE EMBLEMS IN PEACETIME:***

The experiences  
of the British Red Cross Society

by Michael A. Meyer

The special significance of the red cross and red crescent emblems as internationally agreed symbols of protection and neutrality in armed conflict will be diluted if these emblems, or signs closely resembling them, are used randomly or for diffuse purposes in time of peace. In countries like the United Kingdom which for the most part have been spared armed conflict for the past 40 years, the red cross emblem has frequently become closely identified with first aid and with general health or medical care, its primary and unique meaning during armed conflict often being forgotten or unknown. For this reason it is perhaps particularly important for National Societies in such countries to help the authorities monitor unauthorised uses or misuses of the emblems, and the role of National Societies in this respect has been recognised under the 1986 International Statutes of the International Red Cross and Red Crescent Movement (Article 3[2] thereof). In addition, dissemination activities can help to enhance understanding of the purpose of the emblems. This short article will discuss practical aspects of the monitoring role of the British Red Cross Society.

**Basis of action: the responsibility of privilege**

The British Red Cross has had an official role, recognised by Governments of all political persuasions, in co-operating with the authorities in monitoring use of the emblems or symbols resembling the

emblems for more than 30 years.<sup>1</sup> This special responsibility arises from the Society's own privileged authorisation from the Government to use the red cross name and emblem, and until the adoption of the International Statutes of the Movement in 1986, this duty was based entirely on custom or practice. The emblem does not belong to the Society and for the privilege to use it for certain limited purposes, the British Red Cross helps the Government control usage by other individuals and organisations, save for the armed forces' medical services, for whose personnel and property the emblem is of course primarily intended. This monitoring role does not help to make the Society popular; indeed, at times it might be considered a burden. But such work is essential. It might be considered part of the price the Movement pays for its unique position.

## **Practical action**

Use of the red cross and red crescent emblems and symbols within the United Kingdom is governed by the Geneva Conventions Act 1957 (Section 6 thereof). Unlike in many countries where a single Government Department or official is responsible for all such matters, use of the emblems is controlled by the Ministry of Defence whilst the use of symbols so closely resembling the emblems so as to be capable of being mistaken for them is regulated by the Department of Trade and Industry. The latter Government Department also is responsible for trademarks and use of the heraldic emblem of the Swiss Confederation. The British Red Cross co-operates with both Government Departments.

Most unauthorised uses of the emblem or symbol occur in connection with commercial applications. The types of offending peoples and firms vary considerably. Over the years they have included the following: commercial firms of diverse kinds and sizes; advertising agencies; chemists (pharmacies); doctors' surgeries; paramedical groups; other voluntary organisations; film producers; supermarket chains and local public authorities.<sup>2</sup>

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<sup>1</sup> Since the United Kingdom Geneva Conventions Act was enacted in 1957, on a conservative estimate, the Society has taken up approximately 900 actual cases of unauthorised use or misuse of the emblem. In recent years there have been on average 60 such cases per annum. As a preventive measure, the British Red Cross recently sent a circular to UK Publishers, distributed through their central body, explaining the restrictions on use of the emblems and their significance. It is planned to send a similar note to other target groups, such as pharmacists and advertising agencies, through their central co-ordinating bodies.

The usual scenario in a case of unauthorised use of an emblem or symbol is as follows. A member of the British Red Cross<sup>3</sup> sends to our National Headquarters offices a report of an alleged unauthorised use or misuse, together (if possible) with the name and address of the organisation or individual responsible and an example or photograph of the offending article. NHQ staff then write a polite and diplomatic letter, drawing attention to the restrictions on use of the emblem or symbol, explaining the true significance of the emblem, and the harm unrestricted use may cause, suggesting an alternative sign(s) they might consider using instead, explaining the special role of the British Red Cross in helping to monitor use of the emblem or symbol, and asking how the individual or firm may be able to rectify the situation. A copy of the relevant section of the legislative Act is enclosed and, if appropriate, a copy of the proposed alternative sign, such as the symbol of a white cross on a green ground approved by the European Economic Community (EEC) for first aid use.<sup>4</sup> No letter is exactly the same so as to make the approach to the alleged offender more personal or individual.

In most cases the offending party writes back immediately, apologising for their unauthorised use, explaining that they had not known of the restrictions on the use of the emblem or symbol, proposing measures to remedy the situation and expressing the hope that their response will be acceptable, which normally it is. In most cases reasonable time is allowed to an offender to dispose of items bearing the unauthorised sign, including by continued sale, provided a written undertaking is given not to use the emblem or symbol without authorisation in future.

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<sup>2</sup> Special problems in relation to the red cross symbol arise from the use of the St George's Cross, which is the heraldic sign of England and consists of a red cross on a white ground, with the arms extending to the edges of the white background. "Plus signs" and crosses with different shadings of red also sometimes constitute borderline cases. Generally if a symbol resembling a protective emblem is used in a health care context, an approach is made to the person or body concerned.

<sup>3</sup> It is the policy of the British Red Cross Society that its Branches throughout the United Kingdom report possible unauthorised uses or misuses of the red cross and red crescent emblems and designations to National Headquarters (see BRCS Operating Manual, Part 1, Section 7, paragraph 5.4).

<sup>4</sup> British Standard Institution 5378, implementing EEC Directive 77/576/EEC relating to the provision of safety signs at work. Since 1977 the number of unauthorised uses of the emblem appears to have increased since it is no longer generally acceptable for the red cross to be used as a symbol of first aid within the United Kingdom.

## **Problem cases**

On an average of perhaps once or twice each year, one of the recipients of our delicate letters of admonishment does not wish to alter their logo or other offending article, or to cease distribution of the offending object. In these unfortunate instances, the Society may at first try to reason with the alleged offender, courteously answering any points made in defence and politely asking again for the matter to be rectified. If the answer to this second communication is unhelpful, or if the case is particularly serious initially, our Society will ask the Government Department concerned to consider writing a letter to the offender. If such a letter is written, the official might explain that it is a criminal offence to use the emblem or symbol without prior authorisation by the Government Department concerned and that no permission having been given, the matter is being referred to the Director of Public Prosecutions. The official might also request that until an application for authorisation has been submitted and permission given by the Government, no further use should be made of the emblem or symbol.<sup>5</sup>

The Director of Public Prosecutions (DPP) will then ask the Police to obtain evidence, which may entail the interviewing of witnesses. Once the evidence is collected, the DPP will decide whether to prosecute on the basis of the following criteria: the commission of an offence, the likelihood of obtaining a conviction and whether a prosecution is in the public interest.

## **Recent cases**

In the past two years there have been three important cases of unauthorised use of the red cross emblem and symbol, concerning the James Bond film “The Living Daylights”, the health service campaign by the Labour Party, which at present is the leading opposition political party, and by the newspaper “Tribune”, which supports the left-wing of the Labour Party but is not subject to its control. In each case, repeated representations to the offenders or their representatives by the Society and its representatives did not succeed in resolving the matter.

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<sup>5</sup> An exception is made in practice in the case of toys, provided the emblem is less than two inches across, the toy does not misrepresent the use of the emblem and the use of the emblem is not emphasised in advertising.

In the United Kingdom context, the matter of the James Bond film was unsuccessful. Although the Society acted swiftly and at substantial expense, the film's run had nearly finished before the matter was referred by the Ministry of Defence to the prosecuting authorities. It was nearly one year later that the DPP decided not to prosecute, because the time limit within which to bring an action had elapsed.<sup>6</sup>

The cases of the Labour Party and "Tribune" were successful in that prosecutions were brought and the defendants were duly convicted. However these two cases, the first prosecutions under the 1957 legislation, also showed the weaknesses in the existing law. The main difficulty is that there is no provision for initiating immediate legal action to prevent a misuse or to halt a continuing misuse of the emblem or symbol. This has the effect of whittling away respect for the emblem, possibly weakens the force of the law, and permits misuse to take place.

The legislation also suffers from ambiguous or unclear wording, an inadequate penalty and an ineffective remedy. The British Red Cross also lacks express legal standing under the statute to bring an action.<sup>7</sup>

These three cases also illustrated that when serious or continuing unauthorised uses occur, the British Red Cross must rely on the civil servants in the two Government Departments concerned and on the political will of their respective Ministers. For political or other considerations, the Government Departments may be inhibited from taking the necessary first steps to set the legal process in motion. The Attorney General, on behalf of the two Government Departments, has a right of action to apply for an Injunction to restrain breaches of statutory duty, such as unauthorised use of the emblem, and to obtain

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<sup>6</sup> The point was then made to the authorities that the date to determine the time period could properly have been the last showing, rather than the first, and in that instance, the time period for prosecution would not have expired. This is on the basis that the offence could be considered to be the public exhibition of the film incorporating a representation of the emblem, and this would be a continuing offence, repeated with each exhibition.

<sup>7</sup> The French Red Cross is not so inhibited as shown by their swift action in the James Bond film case. However the French Society appears to be the controlling authority for use of the emblem in their country, whereas the British Society is not. A number of other European National Societies are the controlling authorities for use of the emblem in their respective States. The argument might be put that the British Red Cross Society, and perhaps National Societies in other countries with a common law tradition, has sufficient standing to bring a civil court action on grounds such as breach of statutory duty, defamation or libel (where the misuse damages the Society's reputation) or passing off (where the defendant is involved in a trading activity). However, there is no guarantee that a Judge would recognise *locus standi* on such bases.

the withdrawal of objects from circulation. However, the Attorney General has not yet acted in this way with respect to contraventions of the legislation governing use of the emblem and symbol.

Finally, in explaining his decision to convict the editor of the "Tribune" newspaper for unauthorised use of the red cross emblem, the Magistrate showed some misunderstanding of the true position of the emblem. He stated that to some extent the main purpose of the prosecution and of the British Red Cross pursuing the matter, was to protect the Society from future violations of the Geneva Conventions Act 1957 which was designed, at least indirectly, to protect the Society's independence and impartiality. Earlier the Magistrate had referred to the emblem as the Society's. In fact, the statute protects the emblem which as already mentioned, does not belong to the British Red Cross, which only has a privilege to use it.<sup>8</sup>

There are other important areas where the emblems require protection, such as in fund-raising. However, I shall leave that for another article.

**Michael A. Meyer**

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<sup>8</sup> Misuses of the emblem may of course occur within a National Society. To try to achieve uniformity of correct usage, the British Red Cross has issued guidelines on use of the emblem, and a National Headquarters officer is charged with giving advice on the subject. There is also an Emblem Panel, chaired by this NHQ official and containing a few representatives of Branches from different areas of the country, which considers proposed new uses within the Society and, if agreed, makes recommendations on the same to the Society's governing body for its approval. The Regulations governing the Use of the Emblem approved by the International Conference in 1965 (the "Vienna Rules") remain fixed as the overall parameters, although the proposed Revised Regulations approved by the Council of Delegates in 1987 are also used for guidance. Close and co-operative liaison with the officials in the two Government Departments is essential for cases of misuse outside the Society and for cases of new usage within the Society which are not covered by the existing or proposed emblem regulations.

## MARKING THE 125th ANNIVERSARY OF THE 1864 GENEVA CONVENTION

On 22 August, the Swiss Confederation, the depositary State for the Geneva Conventions, celebrated the 125th anniversary of the *Geneva Convention of 22 August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field*. The focus of the celebrations, which were organized by the Swiss Federal Department of Foreign Affairs in co-operation with the International Committee of the Red Cross and the Swiss Red Cross, was a solemn and dignified ceremony in Bern attended by representatives of the States party to the Geneva Conventions, Swiss federal and cantonal authorities and the ICRC, the League and National Societies.

In their addresses, Mr. Jean-Pascal Delamuraz, President of the Swiss Confederation, Mr. Cornelio Sommaruga, President of the ICRC, and Mr. Karl Kennel, President of the Swiss Red Cross, all stressed the importance in today's world of international humanitarian law.

Some key passages of their speeches are given below.

- ***Mr. Jean-Pascal Delamuraz, President of the Swiss Confederation***

After welcoming the representatives of the States and the Movement, Mr. Delamuraz spoke of the profound significance of the adoption of the original Geneva Convention and paid tribute to the “pioneers” who had brought it about:

*In becoming parties to the Conventions of international humanitarian law, the States guarantee that the law will be implemented and respected. The idea which gave rise to the Convention which we are commemorating today and the initiatives taken to make it a reality did not, however, come from the States; the idea took shape in the minds of a few individuals who were as different from each other as they were enterprising.*

*The leading members of the group were Henry Dunant, General Guillaume-Henri Dufour and Gustave Moynier. The first was Dunant, the great humanitarian and idealist who had been shocked into action*

*by the indescribable suffering he had witnessed at the battle of Solferino. Then there were Dufour, the great soldier and statesman, who has become for our country a model of generosity, moderation and humble patriotism, and Gustave Moynier, the lawyer and pragmatist, who was for many years President of the International Committee of the Red Cross.*

As a result of the unflagging efforts of these men, the Swiss Federal Council convened the diplomatic conference which adopted the original Geneva Convention.

*... The Swiss Federal Council, which is the depositary for the Geneva Conventions and their Additional Protocols, wishes to mark this 125th anniversary of the 1864 Convention by calling on States and all parties to armed conflicts to respect international humanitarian law unequivocally and with all the means at their disposal. In particular, the Federal Council appeals to those States which have not yet done so to ratify the two 1977 Protocols additional to the Geneva Conventions (See below).*

*This landmark event in 1864, whose far-reaching consequences not even the most committed participant could have foreseen, resulted from the initiative of a few individuals who were driven by noble fervour to reach their indisputably just objective.*

The present law of Geneva is the work of all the States and they are all bound by it. Speaking for Switzerland, the President of the Swiss Confederation said:

*Our active commitment to the cause of international humanitarian law and the Red Cross idea has become part and parcel of national policy. I therefore call on my compatriots to work today more than ever before, to preserve our heritage.*

*... As I said earlier, Switzerland is proud of its traditional role in the development and promotion of international humanitarian law. At the same time, this tradition obliges us to be unswerving in our commitment to the Red Cross idea. Our solidarity with the rest of the world—one of the pillars of our foreign policy—must go further. We must ensure that our country assumes all its responsibilities as a fully-fledged member of the international community by doing all it can to promote the rights of the individual and combat the under-development and hunger which affect vast regions of our planet.*

*Only joint action by all the members of the community of nations can realize our legitimate hope of seeing wisdom and peace prevail*

*throughout the world. Here the Geneva Conventions make a solid contribution.*

● **Mr. Cornelio Sommaruga, President of the ICRC**

Mr. Sommaruga outlined the development of international humanitarian law from Henry Dunant's celebrated idea to the adoption of the 1977 Additional Protocols:

*What spectacular progress has been achieved between the modest text of 1864 and the 600 articles which make up today's law of Geneva!*

*This body of law, together with the "spirit of Geneva", has made Switzerland renowned throughout the world. And rightly so, for the Confederation has done much over the past 125 years to strengthen protection for the victims of war by promoting the adoption of law in their favour. At the same time—and this merits special mention—Switzerland provides considerable support for the humanitarian work of the International Committee of the Red Cross, whose activities are based primarily on the Geneva Conventions. In 1989, the Federal Council and the Federal Assembly have once again committed themselves financially and diplomatically to helping the victims of armed conflict. On behalf of the International Committee of the Red Cross, I should like to thank the Swiss people, the Confederation and the cantonal authorities for their generosity. In expressing our gratitude I speak also in the name of all the victims whom the ICRC's delegates have been able to assist.*

After reviewing the ICRC's role in the development of humanitarian law and recalling the fruitful co-operation between diplomats and lawyers during this long process, Mr. Sommaruga continued:

*Today, their content and field of application make the 1949 Conventions universal. Practically all the States of the world are bound by the Conventions (166 States at this time) and almost half of them have undertaken to implement the Additional Protocols. The adoption of the law of Geneva by the Third World States, although by no means easy, did come about without constraint and this has brought new legitimacy to the humanitarian idea. The Additional Protocols of 1977 are the first instruments of humanitarian law to have been formulated with the full participation of North and South, East and West. By providing modern ways of dealing with modern threats, the Protocols pursue the same objective as the 1864 Convention: to provide*

*protection and assistance for the victims of armed conflict. It is by working together that the States of the world have brought about this achievement and together they have confirmed the universal mandate of the ICRC in the area of international law.*

*Our joy and our gratitude for these achievements must not, however, divert our attention from the fact that the law of Geneva often remains little-known and is sometimes grossly violated. On this very day, tens of thousands of prisoners of war are still waiting in the camps; thousands of them, some after many long years of internment, are sick or wounded. They are, in fact, hostages, bargaining chips in international negotiations. Then there are the children who are dying because war has brought famine or denied them the medical care that could have saved them. Elsewhere, people who have lost everything to war search through the wreckage of their homes for signs of life from their loved ones. The suffering inflicted on man by man is immeasurable.*

*Yet laws exist which, if observed, would prevent all this. That is why I am today earnestly appealing to all the States in the world to take their obligations seriously, not to overlook the plight of individuals, and to attach greater importance to humanitarian considerations than is so often the case. I call on all States to hear the message of Henry Dunant and to fulfil in all circumstances the duties which our common humanity imposes on us. Never yet has a battle been lost because one side has obeyed the law of Geneva. But many States have lost much more than a battle when they trampled humanitarian principles underfoot.*

*Let us mobilize all people of good will. We must instil in our governments a conditioned humanitarian reflex. We must show society at large that even in wartime a surge of humanity is possible. When all mankind is convinced of this and able to put its trust in it, the rights of the defenceless will no longer be flouted. The ICRC is working towards that goal. We receive active support in our work from the 148 National Red Cross and Red Crescent Societies and their federation the League, united as we are by the fundamental principles of the Red Cross, in particular the principle of humanity which requires us to prevent and alleviate human suffering.*

● ***Mr. Karl Kennel, President of the Swiss Red Cross***

In his address Mr. Kennel pointed out that during its 125 years of existence, the International Red Cross and Red Crescent Movement,

inspired by the principle of humanity embodied in the original Geneva Convention, had at all times and in all places endeavoured to bring assistance and protection to the suffering. He went on to mention the mandate of National Red Cross and Red Crescent Societies to promote knowledge of humanitarian law:

*Like the International Committee of the Red Cross and the League of Red Cross and Red Crescent Societies, the 148 National Societies have the task of promoting knowledge of international humanitarian law and the fundamental principles of the Red Cross. But the laws and Conventions remain dead letters if no one takes action to bring them to life. And this is precisely the mission of National Societies: to bring to life, in their daily work, the principles and ideals of the Red Cross and the instruments of international humanitarian law. Perhaps more than any other National Society, the Swiss Red Cross feels that it has a special mission here. There are a number of reasons for this: the red cross on a white background is an inversion of the Swiss national colours; Switzerland, Henry Dunant's homeland, is the birthplace of the Movement; and Geneva is the seat of both ICRC and League headquarters. All these factors give the Swiss Red Cross a sense of particular responsibility within the Movement.*

Greatly concerned by the “apocalyptic situation in which we find ourselves as this century draws to a close”, Mr. Kennel emphasized the responsibility incumbent on the Movement as a whole “to devote all its energy to ensuring that good triumphs over evil:

*If the International Red Cross and Red Crescent Movement succeeds, come what may, in holding high the banner of its seven principles, and if the rest of the world recognizes that its interests are served by the principles of solidarity and justice enshrined in these treaties, if it is prepared truly to live by them, mankind will have a chance. Then, I am convinced, the time will come when every man, woman and child on earth can live free from danger and fear (...).*

*Today we are commemorating a glorious and decisive step forward for humanity and I appeal from the bottom of my heart to my fellow countrymen, in particular young people, to accompany the Red Cross on its journey and give it their unreserved support. The only effective way to honour the memory of our Movement's founder is not to talk about him but to follow in his footsteps.*

In conclusion, we should add that all those attending the ceremony were able to visit an exhibition of the original texts of the Geneva Conventions which are kept in the Federal Archives in Bern.

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## **Appeal from the Swiss Federal Council on the 125th anniversary of the 1864 Geneva Convention**

*On this 125th anniversary of the adoption of the 1864 Geneva Convention, the Swiss Federal Council appeals to all States to respect all the provisions of international humanitarian law as developed since 1864.*

*On 22 August of that year a diplomatic conference convened in Geneva by the Federal Council adopted the original Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The initiative for the Conference had come from Henry Dunant and what was to become the International Committee of the Red Cross. Under the chairmanship of General Dufour, the Conference laid the foundations of present-day humanitarian law, whose purpose is to ensure that basic humanitarian principles are observed in war.*

*On four subsequent occasions, the community of States has adapted the provisions of that initial instrument to modern warfare and in particular to the need to protect civilians and prisoners of war. The scope of international humanitarian law has also been widened. The Geneva Conventions of 1949 are today universally recognized and their two Additional Protocols of 1977 have already been ratified by half the States party to the Geneva Conventions.*

*The international situation today shows hopeful signs of a new resolve on the part of the States to co-operate in seeking a peaceful settlement of their differences. But people in many parts of the world continue to suffer the consequences of armed conflict. Today as in the past, therefore, it remains vitally important that all the provisions of international humanitarian law should be implemented and scrupulously respected by all.*

*The Swiss Confederation is party to the Geneva Conventions and to their Additional Protocols. The Swiss Federal Council is the depositary for these instruments. In keeping with the humanitarian orientation of Swiss foreign policy, the Federal Council wishes to mark this 125th anniversary of the 1864 Convention by calling on all States and all parties to armed conflicts to respect international humanitarian law unequivocally and with all the means at their disposal.*

*In particular, the Federal Council appeals to States which have not yet done so to ratify the two 1977 Protocols additional to the Geneva Conventions.*

## **President of the Swiss Confederation visits ICRC**

**Mr. Jean-Pascal Delamuraz**, President of the Swiss Confederation, visited the International Committee of the Red Cross on 21 August 1989.

He was received by Mr. Cornelio Sommaruga, ICRC President, together with members of the Committee, senior staff of the institution, and Mr. Pär Stenbäck, Secretary General of the League of Red Cross and Red Crescent Societies. The Swiss President was accompanied by Mrs. Delamuraz, for whom a tour of the Central Tracing Agency had been arranged.

In his welcoming address, Mr. Sommaruga drew attention, on the eve of the 125th anniversary of the original Geneva Convention, to the remarkable similarity of views between the Federal authorities and the ICRC. The Swiss Confederation, depositary State of the Geneva Conventions, had in several ways been instrumental in enabling the ICRC to discharge its mandate worldwide. The ICRC President stressed, however, that the principles of independence and neutrality were vital to the institution's humanitarian work. Indeed, Switzerland's longstanding tradition of neutrality had favoured the development of the ICRC's activities the world over. Here Mr. Sommaruga took the opportunity to thank the Swiss people and the country's authorities for their generous contribution to those activities.

In his reply, Mr. Delamuraz declared that it would be a proud and moving moment for him on 22 August 1989 to celebrate, in his capacity as President of the Confederation, 125 years of humanitarian commitment and in so doing demonstrate his regard for international humanitarian law. His visit to ICRC headquarters and to the International Museum of the Red Cross and Red Crescent had increased his admiration and gratitude for the battles fought daily by the ICRC in favour of humanity, history and peace. On behalf of his government, Mr. Delamuraz then paid eloquent tribute to the institution's record of noble and often unrecognized dedication and to the completely independent vocation of the ICRC.

The visit ended with the signing of the Visitors' Book.

## Federal Councillor Flavio Cotti visits ICRC

On 22 September 1989 **Mr. Flavio Cotti**, Head of the Federal Department of the Interior, visited the International Committee of the Red Cross, where he was received by the institution's President, Cornelio Sommaruga. Mr. Cotti also met members of the Committee and senior ICRC staff.

The President took this opportunity to thank the Federal Council once again for the substantial support given by the Swiss Confederation to the ICRC. He and Mr. Cotti went on to review the whole range of the ICRC's humanitarian activities. The Federal Councillor, accompanied by Mrs. Cotti, then visited the ICRC Central Tracing Agency.

Mr. and Mrs. Cotti later toured the International Museum of the Red Cross and Red Crescent.

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## News from Headquarters

- **ICRC appoints a Director-General**

At its ordinary session of 24 August 1989, the International Committee of the Red Cross decided to appoint **Mr. Guy Deluz** as its Director-General.

As planned in September 1988, the International Committee took stock of how its new administrative structures had functioned during their first year. It decided to strengthen the Directorate established at the time by appointing a Director-General at its head.

During the '70s Mr. Guy Deluz served on a number of occasions as ICRC delegate and head of delegation, then as head of the institution's Logistics Division. Mr. Deluz is currently Chairman and Managing Director of Pathé Marconi EMI France. He will take up his post as member of the Directorate and Director-General of the ICRC on 1 January 1990.

The Committee also examined a series of measures designed to improve the functioning of the institution and strengthen its internal cohesion.

- **ICRC Director of Operations asks to be relieved of duties**

The ICRC regrets to announce that **Mr. André Pasquier** has asked to be relieved of his duties as ICRC Director of Operations, with effect from October 1989.

Mr. Pasquier decided to step down following the International Committee's adoption on 24 August last of a plan to reorganize the Institution's Directorate.

The ICRC wishes to express its gratitude for Mr. Pasquier's commitment and dedication during his four years in the key post of Director of Operations. Mr. Pasquier will continue to work with the Committee; from 15 October next he will be attached to the Executive Board as the ICRC President's special representative for negotiations in humanitarian matters.

- **ICRC Head of Communication leaves the Institution**

On 30 June 1989 **Mr. Alain Modoux** stepped down from his position as member of the ICRC Directorate and Head of the ICRC Communication Department to take up the post of Director of Information at UNESCO in Paris, starting from 3 July 1989.

Mr. Alain Modoux holds a degree in political science and began his career with the ICRC in 1965. He served as a delegate on several occasions in the Middle East, the Far East and Africa. He subsequently held several posts at ICRC headquarters in Geneva and in 1982 was appointed Head of the then ICRC Information Department.

The ICRC has conveyed to him its gratitude for the dedication and talent with which he served the ICRC for almost 25 years.

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*EXTERNAL ACTIVITIES**July-August 1989***Africa****Sudan**

ICRC activities continued under the new government following President Omer Hassan el-Beshir's coup d'état on 30 June. Contact was immediately established with the new authorities who gave their permission to the ICRC to pursue its activities.

Prisoners in government hands were visited by the ICRC on 23 August in Wau and the following day in Juba. The three and five prisoners seen respectively wrote Red Cross messages. The 105 government soldiers held by rebel forces and visited in June were seen again on 24 August.

In addition, assistance activities including distributions of food, seed and farming implements or fishing tackle, as well as vaccination programmes for the local population and their livestock went on, with relative regularity in spite of the rains.

**Somalia**

The ICRC set up a surgical hospital in Berbera in order to assist people wounded by fighting in the north west of the country, which has been affected by disturbances since May 1988. The hospital, which has an initial capacity of 33 beds but can be enlarged to accommodate some 100 patients, opened its doors on 19 August and started work immediately.

**Uganda**

In spite of the precarious security situation, ICRC delegates continued their work providing food, material and medical assistance in the Soroti and Gulu regions. They also continued visiting the detention

centres in Kampala and the rest of the country and provided 1,076 detainees released on 19 August with the essentials needed to enable them to return to their homes and resume their lives.

### **Senegal/Mauritania**

With the initial emergency over the ICRC concentrated on its traditional protection and tracing activities. Delegates in both countries worked to trace missing persons, reunite families and visit prisons. In Mauritania, the latter activity took the form of a series of visits to the places of detention in the country. The visits, which were carried out in accordance with the institution's customary criteria, ended on 15 August. Work to assist people who went to Senegal from Mauritania was resumed by the UNHCR during July.

### **Mozambique**

The military situation somewhat impeded the ICRC's ability to move from place to place in the field. Delegates were nevertheless able to maintain a certain continuity in food distributions and medical activities.

The second series of visits to places of detention run by the Ministry of Security continued during the two months under review.

### **South Africa**

From 10 to 14 July, delegates visited two prisons in Transkei where they saw, in accordance with the ICRC's customary criteria, 28 prisoners and security detainees.

## **Latin America**

### **Peru**

The authorization granted to the ICRC during its President's mission to Peru in early June enabled delegates to resume their visits to places of detention administered by the Ministry of Justice in regions under a state of emergency. Since late June, delegates have therefore resumed their visits to security detainees in the departments of Apurímac, San Martín, Huánuco and Junín.

The delegation has also been working to develop its other activities (mostly medical assistance and dissemination programmes) in regions under a state of emergency, where it has a sub-delegation in Ayacucho, an office in Abancay (department of Apurímac) and, as of 1 September, an office in Tingo María.

Finally, on 14 July, Peru ratified the Protocols additional to the Geneva Conventions. These instruments will enter into force for Peru on 14 January 1990.

## **Nicaragua**

On 26 August, the ICRC delegation carried out a general census of persons detained in the places of detention administered by the National Penitentiary System (SPN), which it visits regularly. There were a total of 1,349 prisoners in nine detention centres. In the previous census carried out in SPN prisons in late February 1988, the ICRC counted 3,398 people held for security reasons. Delegates continue to make regular visits to people held in those places in Managua and other parts of the country.

## **Asia**

### **Afghan conflict**

Fighting in Afghanistan intensified during the period under review, mainly affecting the cities, especially Kabul, where rocket attacks caused a record number of civilian victims in July. This situation was a major concern for the ICRC, which discretely approached the various parties to the conflict to make them aware that such indiscriminate attacks are a violation of fundamental humanitarian principles. There was a considerable increase in the work of the ICRC hospital in Kabul, which admitted over 200 wounded people in July. Each of its surgical teams had to work in particularly difficult conditions; within an hour after each attack, the hospital would be thronged with dozens of casualties, some very serious. The ICRC hospitals in Peshawar and Quetta, in Pakistan, also had to step up their activities.

In order to extend its activities in connection with the Afghan conflict, the ICRC opened sub-delegations in Herat and Mazar-i-Sharif in August to engage in medical, protection and tracing work. A team also left Kabul in August to carry out an initial visit to the Qalai Naw prison in the province of Bagdhis north of Herat.

At the same time, delegates based in Pakistan continued their work in various Afghan provinces. In late June, for example, a team from Peshawar spent six weeks in the Panjshir valley, north of Kabul, on the ICRC's first mission there. Their mission not only provided the delegates with new contacts but enabled them to visit prisoners in the hands of the opposition and assess medical needs related to the conflict.

### **Cambodian conflict**

While media attention was centred on talks to resolve the Cambodian conflict, acute tensions directly affecting the civilians living in camps along the border once again demonstrated how necessary the humanitarian work carried out on the spot by the ICRC and other organizations is for those people. In early July, a number of camps under the control of Democratic Kampuchea in the southern sector of the border were hit by heavy shelling. Over 10,000 people fled the camps, to which the humanitarian organizations do not have access, and gathered in a camp which had just been opened following the ICRC's request that civilians be grouped at an accessible site. Conversely, negotiations by delegates to evacuate wounded people from the area of the fighting were unsuccessful.

At the end of the month Site 8, which is also administered by Democratic Kampuchea but regularly visited by humanitarian organizations, was hit by shelling which killed or wounded several members of the civilian population. While the inhabitants fled to an evacuation site near the camp, the ICRC took the wounded to its hospital in Khao-I-Dang and the more vulnerable members of the camp's population to the Khao-I-Dang camp to await a return to normal which would allow them to go back to Site 8.

The ICRC also continued in its endeavour to provide protection for persons deprived of their freedom in connection with the conflict. Delegates recorded the identity of people—military and civilian—who had been captured in Cambodia by one or the other faction of the anti-government coalition. They were then released and took refuge in various camps along the border. ICRC representatives interviewed them individually to ask them about their wishes regarding possible repatriation or resettlement and endeavoured to fulfil those wishes. The ICRC likewise continued to be concerned about civilians who had escaped from Democratic Kampuchea camps in the southern sector of the border region and sought refuge in the Sok-Sann camp administered by the Kampuchean People's National Liberation Front (KPNLF).

Finally, the ICRC succeeded in August in organizing the reunification of a second family in Cambodia when it arranged the return there of a resident of Site 2 who wished to join her family in Phnom Penh. Though the ICRC had reunited a young man with his family in December 1988, this was the first family reunification involving someone from a camp on the border.

In addition to its activities in the field, the ICRC took advantage of the Cambodian peace conference being held in Paris to make known its position and concerns. Though not officially associated with the work of the Conference, an ICRC delegation closely followed that of its Third Commission dealing *inter alia* with the repatriation of displaced Cambodians on the border. In lobby discussions, ICRC representatives made known the institution's concern about the effects of the conflict and their humanitarian implications, and stressed the need for the Conference, in adopting a resolution, to take the humanitarian considerations entailed by a prospective repatriation of the displaced civilians into due account. The ICRC representatives spoke to this effect with a number of eminent participants, including, in chronological order, Mr. Hun Sen, Prime Minister of the State of Cambodia, Prince Sihanouk, head of the Coalition Government of Democratic Kampuchea, and Mr. Son Sann, head of the KPNLF.

## **Indonesia**

In July, ICRC delegates completed a fresh series of visits begun in June 1989 to detainees arrested following the attempted coup of 30 September 1965. They saw 52 held in 13 places of detention throughout Indonesia. During this series of visits, the ICRC was for the first time able to visit seven detainees arrested in relation to the situation in Irian Jaya.

## **Maldives**

The regional delegate based in New Delhi went to the Maldives in August to take up contact with the government of that State, which has been independent since 1968. It was the first mission by an ICRC representative to the archipelago.

## **Middle East**

### **Lebanon**

Beginning on 14 March, the civilian population of Beirut and area were subjected to indiscriminate shelling of ever-increasing violence. These clashes intensified in July and August, resulting in hundreds of civilian casualties and preventing the medical services from working properly. Deeply alarmed by the situation, the ICRC issued repeated appeals both in Beirut and in Geneva and made every possible approach, urging the belligerents to do their utmost to ensure that the basic rules of humanitarian law protecting the civilian population, the wounded and hospital establishments were respected.

The delegation in Lebanon continued its programme to assist displaced Beirut families in southern Lebanon. In addition to distributions of material assistance, work was carried out to improve sanitary facilities in public places (schools, empty warehouses, camping grounds, etc.) where these families had taken refuge. Working together with UNICEF, delegates in Beirut began distributing first-aid kits and disinfectant in mid-August to people living in bunkers which were becoming increasingly inhospitable as the days passed with no let-up in the fighting.

Medical assistance also continued. Delegates went on providing emergency medical supplies to hospitals and dispensaries throughout the country which were inundated with casualties. In addition, on 26 June and 26 July, the ICRC repatriated wounded and sick Lebanese civilians who had been transferred to France by the French authorities for medical treatment.

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## SUPERCAMP 1989

*Last event to mark the Movement's 125th anniversary*

“Supercamp 1989” was the final celebration of the Movement’s 125th anniversary. It was held from 1 to 10 September 1989 in Castiglione and Solferino in Italy and continued in Geneva from 11 to 14 September. Organized jointly by the League, the ICRC, the Italian Red Cross and the Swiss Red Cross, Supercamp brought together 511 young people from 132 National Societies around the world. Activities were directed by Mrs. Joanna MacLean, head of the League’s Youth Department assisted by Mr. Serge Caccia, head of the ICRC’s Public Relations Service, as well as Mrs. Clotilde Manuelli, head of the General Affairs Service, and Mrs. Manuela Lavagnino, head of the International Affairs Service, of the Italian Red Cross.

Supercamp’s purpose was threefold:

- to attract world attention to the important role played by the young people in the Movement’s humanitarian work;
- to demonstrate and strengthen young people’s commitment to the Movement’s seven Fundamental Principles;
- to allow young people more direct participation in running the Movement and implementing the Principles in the 21st century.

At the invitation of Professor Luigi Giannico, *Commissario Straordinario* of the Italian Red Cross, the opening ceremony took place on 2 September in Castiglione. It was attended by the young people themselves and many leading officials from the Movement and government including Mr. Lattanzio, the Italian Minister for Civil Defence, Mr. Cardamone, the Prefect of Mantua, Mr. Mario Villaroel, President of the League, Mr. Cornelio Sommaruga, President of the ICRC, Mrs. Mariapia Fanfani, Vice-President of the League and head of the Red Cross Museum in Castiglione, and Mr. Hubert Bucher, Secretary General of the Swiss Red Cross. Speaking to the assembled group, Mr. Villaroel said, “We are here to listen to new ideas and to feel the

dynamism of young people, since you are the ones who will keep this federation strong and dynamic in the future”.

The delegations taking part in Supercamp consisted of one to five members aged between 18 and 22. They were divided into seven sub-camps, each having as its name and its theme one of the Movement’s seven Fundamental Principles.

Each Principle gave rise to a stimulating exchange of views between the delegates who, depending on their abilities and cultural background, used dance, mime and artwork to convey their ideas. These “workshops” all joined in formulating a **message from the Movement’s youth**, which was the purpose of Supercamp.

All observers were struck by the strong motivation and keen interest shown by the participants in humanitarian work and by their spirit of solidarity and co-operation both at work and at leisure.

On 9 September, the closing ceremony took place on the *Piazza della Repubblica* in Castiglione. At the ceremony, the delegates presented the Fundamental Principles before giving a colourful cultural concert. To ensure that the memory of Supercamp 89 lives on, a tree was planted on a small hill in Castiglione which will henceforth be named “Red Cross and Red Crescent Hill”.

On 11 September, the participants retraced the footsteps of Henry Dunant to Geneva and assembled in front of the United Nations building in Geneva to hand over Supercamp’s message to leading officials of the Movement and UN representatives in Geneva. They were welcomed there by Mr. Guy-Olivier Segond, Administrative Councillor of the City of Geneva, ICRC President Sommaruga, Mr. Karl Kennel, President of the Swiss Red Cross, Mr. Pär Stenbäck, Secretary General of the League, and Mr. Luigi Giannico, *Commissario Straordinario* of the Italian Red Cross. The young people’s message (*see below*) affirms their commitment to humanitarian ideals and action in today’s world and is intended to lay the foundations for the future of the world’s biggest youth organization (90 million members).

The ceremony was graced by the presence of Federal Councillor Kaspar Villiger, representing the Swiss Federal Council, and Mr. Jan Martenson, Director-General of the Office of the United Nations in Geneva, who both addressed the gathering. The ceremony ended with the presentation by the participants of a series of tableaux portraying the seven Principles and an appeal from film actress Nastassia Kinski to young people in the Movement to continue universal fight for peace and the relief of suffering.

## MESSAGE FROM THE MOVEMENT'S YOUTH

*Conflict, Destruction, Pain, Pollution, Famine, Oppression — even at this very moment.*

*Does it have to continue?*

*Look at us, we are the living proof of peaceful co-existence, united by our common commitment to alleviating human suffering.*

*We are the young members of the Red Cross and Red Crescent, representing 131 nationalities. We live by the seven fundamental principles and we rejoice in our differences.*

*Let us stop playing with human lives.*

*Let us stop destroying the earth.*

*Let us break down the barriers of prejudice.*

*Let us work together to achieve equality and respect for human dignity.*

*Our world needs both the experience of older generations and the energy, idealism, and hope of the young.*

*Listen to us as we call upon you, Nations of the World, to build with us a better future for humanity.*

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## Death of Mr. Eustasio Villanueva Vadillo

**Mr. Eustasio Villanueva Vadillo**, former Treasurer General of the League of Red Cross and Red Crescent Societies and former member of the Standing Commission of the International Red Cross, died on 11 September 1989 in Madrid at the age of 72.

Mr. Villanueva, who obtained a doctorate in law from the University of Valladolid, taught political economy and practised law. He was the founder of the Bank of Madrid and Vice-President of its Board of Directors.

In 1967 he was appointed Vice-President of the Supreme Assembly of the Spanish Red Cross and in 1969 he became a member of the Standing Commission of the International Red Cross and of the League's Permanent Scale of Contributions Commission. In September 1972 he was elected Treasurer General of the League at the 89th session of its Executive Committee in Geneva, a post which he held until 1981.

The ICRC will remember with continuing gratitude Mr. Villanueva's profound dedication to the Red Cross.

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### Tribute to Gustave Moynier

*On the initiative of the Geneva Public Welfare Society, a bust in memory of Gustave Moynier, co-founder of the Red Cross and ICRC President from 1864 to 1910, has been set up in Geneva. The bust, created by the sculptor Otto Bindschedler, was unveiled on 21 August 1989.*

*During the unveiling ceremony various dignitaries took the floor, namely Jean de Senarclens, President of the Geneva Public Welfare Society, Cornelio Sommaruga, ICRC President, René Emmenegger, Mayor of the City of Geneva, and Bernard Ziegler, Head of the Department of Justice and Police of the Republic and Canton of Geneva.*

*The Review is pleased to publish the following address, delivered on that occasion by the ICRC President and entitled "Gustave Moynier", builder of the Red Cross".*

### GUSTAVE MOYNIER, BUILDER OF THE RED CROSS

**by Cornelio Sommaruga**  
*President of  
the International Committee  
of the Red Cross*

The International Committee of the Red Cross is particularly happy to join with you here today in paying tribute to Gustave Moynier and honouring the man who not only guided the institution's destiny for 46 years, but also and above all built the Red Cross and shaped the law of armed conflict alongside the Movement's brilliant architect Henry Dunant.

It should be recalled that Gustave Moynier discovered his true vocation in the Geneva Public Welfare Society over which he

repeatedly presided, a path which, as we know, led him to Henry Dunant and to the Red Cross.

We therefore particularly appreciate the initiative taken by the Geneva Public Welfare Society and supported by the Republic and Canton of Geneva, a gesture which is in keeping with the Society's outstanding contribution, now and in the past, to enhancing material and moral conditions in the Canton.

\* \* \*

Moynier belonged to the race of builders in whom action and determination engender thought and reflection. He was not a man of lofty imagination or original insight, but one who was able to recognize the value of certain incipient ideas and strive with uncommon perseverance to give them life.

In setting the agenda and topics of discussion for the October 1863 Conference, he translated into principles and rules the ideas contained in *A Memory of Solferino*, while buttressing them with his own common sense. At the same time he paid tribute to Henry Dunant, the man who inspired or, as Moynier was to write himself, "whose imagination gave rise to the Red Cross".

Throughout his life, Moynier strove to develop a body of principles to serve the Red Cross as its *raison d'être* and source of inspiration. Although he believed, as Dunant and the other co-founders did, that the Red Cross must be guided by benevolence and charity, to justify the Movement's universality he set as its foremost precept the unity of humankind. "The dream of the Red Cross", he wrote, "was the worldwide adoption of humane and uniform rules of conduct towards the enemy". And, since he believed in human progress, he saw political evolution in the world as one of the ways of attaining brotherhood among men, which "spreads compassion and should rule the world".

In the same spirit, Moynier saw neutrality as applying mainly to ambulances, hospitals and medical personnel, but he also encouraged National Societies to achieve ideological neutrality through the incorporation in their ranks of representatives of various political opinions and religious beliefs.

To these fundamental principles, which were later to become known as humanity, impartiality, non-discrimination, universality and neutrality, Moynier added specific Red Cross rules of action. These were that National Societies should become prepared, in time of peace, to cope with natural disasters and that in order to ensure unity, only one National Society should exist in each country, covering the entire

territory and open to all people of good will. Moreover, though Moynier was one of the staunchest defenders of National Society autonomy, he also called for solidarity, to foster unity.

A realist and a positive thinker, Moynier mastered the art, which was the source of his quiet assurance and authority, of setting a goal, then assessing and duly adapting the means available to achieve it. Thus he advised that to spread the Red Cross principles, National Societies should give themselves a structure, increase their number of local branches and build up their membership. It is to Moynier, too, that we owe the clear distinction drawn between the responsibilities of the Geneva Committee and those of the National Societies, whose conditions for recognition he himself established. He encouraged contacts between National Societies and even had the idea of grouping them into a federation. However, he also agreed to play the thankless role of watch-dog, to ensure that they did not stray from the spirit of 1863.

To his death, Moynier continued to construct the framework of the Red Cross by establishing the Movement's organizational rules, but among the many achievements which have brought him lasting renown, perhaps the finest is to have given the Red Cross its motto: *Inter Arma Caritas*.

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The *Geneva Convention of 22 August 1864 for the Amelioration of the Condition of the Wounded in Armed Forces in the Field*, the 125th anniversary of which we shall be celebrating on 22 August 1989, was a truly revolutionary step in that, for the first time, "war was governed by the rule of law". This event, and subsequent advances in humanitarian law, owe much to Gustave Moynier, who was their "practical theoretician". As stated by an eminent member of the Institute of International Law, "Mr. Moynier accomplished an exemplary feat. He demonstrated the existence of international law not through laborious scientific reasoning, as we seek to do, but in the manner of a philosopher of antiquity demonstrating motion. He took the lead and everyone followed him. He was able to see, with exceptional acuity, how law could be introduced into the practice of war so as to relieve the suffering of the wounded and sick".

In this monumental venture to create a body of humanitarian law, Moynier, the builder, avoided undue haste, resisted pressure, advanced prudently step by step, displayed little emotion and unostentatiously laid his bricks one by one. By the time he had put the finishing touches

to the 1864 Convention, he was already aware of its shortcomings, yet he resisted any abrupt revision in the belief that emphasis should be placed on **what had been achieved**. For Moynier, the Convention was a revolutionary milestone marking the recognition of the law of war and its inclusion in positive law. But it was also much more than this. It was a sort of declaration of faith that States were called upon to make, binding upon them even in time of civil war.

To be properly applied, this precious achievement had to be made known, above all to the armed forces, officers and soldiers whose duty it would be to respect humanitarian rules and the Red Cross emblem. It was also important that “public opinion should be positively informed as to what must be tolerated and what should be chastised”.

Whereas dissemination was important, it was also necessary to consolidate and further develop the law. It had to be extended in particular to war at sea. Moynier’s efforts were not always rewarded, but he was able to lay the groundwork, like Henry Dunant and sometimes even after him, for instance in the treatment of prisoners of war.

The problem of breaches of the law and of sanctions caused him constant concern. His attitude was above all one of caution, emphasizing State responsibility. However, he was careful to add that the ICRC “might be emboldened to raise its voice if the charges bore on general and undeniably notorious facts”. A strangely premonitory comment!

Events later compelled Moynier to change his position and to urge that offenders be punished, not by the ordinary courts of the belligerent nations but by an international tribunal. This surprisingly bold position foreshadowed the Nuremberg Tribunal.

Few men of Moynier’s time were as able as he was to fully understand the many aspects of the law of war and deal equally successfully with *jus in bello* and the conduct of belligerents.

As he reached the end of his crusade, his moral and legal outlooks merged in the belief that the laws of war “cast a mirror image of humanity’s soul ... when the existence of that soul was acknowledged and its requirements deemed imperative in one particular respect, a precedent was set for similarly based claims. It should therefore come as no surprise that other reforms, as far-reaching as they are salutary, should slip into the world through the door left ajar to admit the laws of war”.

Moynier, the builder, was also a prophet.

## **The Principality of Liechtenstein ratifies the Protocols**

On 10 August 1989, the Principality of Liechtenstein ratified the Protocols additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts, adopted in Geneva on 8 June 1977.

The instrument of ratification contained the following declaration:

*In accordance with Article 90, paragraph 2 (a) of Protocol I the Principality of Liechtenstein declares that it recognizes ipso facto and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission.*

The Principality of Liechtenstein is the **fourteenth** State to make this declaration concerning the International Fact-Finding Commission. The Commission will be set up when twenty States have made such a declaration.

Liechtenstein's instrument of ratification was accompanied by the following reservations:

### ***Reservation concerning Article 75 of Protocol I***

*Article 75 of Protocol I will be implemented provided that*

- a) *paragraph 4 (e) is not incompatible with legislation under which any accused who causes a disturbance in court or whose presence could impede the questioning of another accused, a witness or expert may be excluded from the courtroom;*
- b) *paragraph 4 (h) is not incompatible with legislation providing for the reopening of a trial which has already led to a person's conviction or acquittal;*
- c) *paragraph 4 (i) is not incompatible with legislation relating to the public nature of hearings and of the pronouncement of judgement.*

### ***Reservation concerning Article 6 of Protocol II***

*Article 6, paragraph 2 (e), of Protocol II will be implemented provided that it is not incompatible with legislation under which any accused who causes a disturbance in court or whose presence could*

*impede the questioning of another accused or of a witness or expert may be excluded from the court room.*

In accordance with their provisions, the Protocols will enter into force for the Principality of Liechtenstein on 10 February 1990.

The Principality of Liechtenstein is the **86th** State to become party to Protocol I and the **76th** to Protocol II.

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## **The People's Democratic Republic of Algeria accedes to the Protocols**

On 16 August 1989, the People's Democratic Republic of Algeria acceded to the Protocols additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts, adopted in Geneva on 8 June 1977.

The instrument of accession contained the following declaration:

### ***Declaration concerning Protocol I additional to the Geneva Conventions of 12 August 1949***

*The Algerian Government declares, in accordance with Article 90, that it recognizes the competence of the International Fact-Finding Commission in relation to any other High Contracting Party accepting the same obligation.*

The People's Democratic Republic of Algeria is the **fifteenth** State to make the declaration regarding the International Fact-Finding Commission, which will be set up once twenty States have made such declarations.

The instrument of accession was accompanied by **three interpretative declarations** concerning Protocol I:

- 1. The Government of the People's Democratic Republic of Algeria declares that the expressions "feasible precautions" (Art. 41, para. 3), "everything feasible" (Art. 57, para. 2), and "to the maximum extent feasible" (Art. 58) are to be interpreted as referring to precautions and measures which are feasible in view of*

*the circumstances and the information and means available at the time.*

2. *As concerns the repression of breaches of the Conventions and the present Protocol as defined in Articles 85 and 86 of Section II of Protocol I, the Government of the People's Democratic Republic of Algeria considers that to judge any decision, the circumstances, the means and the information available at the time the decision was made are determinant factors and elements in assessing the nature of the said decision.*
3. *The Government of the People's Democratic Republic of Algeria reserves judgement on the definition of mercenarism as set out in Article 47, para. 2 of the present Protocol, this definition being deemed restrictive.*

In accordance with their provisions, the Protocols will come into force for the People's Democratic Republic of Algeria on 16 February 1990.

This ratification brings to **87** the number of States party to Protocol I and to **77** those party to Protocol II.

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## **The Grand Duchy of Luxembourg ratifies the Protocols**

On 29 August 1989, the Grand Duchy of Luxembourg ratified the Protocols additional to the Geneva Conventions of 12 August 1949 and relating to the protection of the victims of international (Protocol I) and non-international (Protocol II) armed conflicts, which were adopted in Geneva on 8 June 1977.

In accordance with their provisions, the Protocols will come into force for the Grand Duchy of Luxembourg on 28 February 1990.

The Grand Duchy of Luxembourg is the **88th** State to become party to Protocol I and the **78th** to Protocol II.

## BOOKS AND REVIEWS

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### ARMED CONFLICT AND THE NEW LAW: ASPECTS OF THE 1977 GENEVA PROTOCOLS AND THE 1981 WEAPONS CONVENTION\*

This work, edited by Mr. Michael A. Meyer, Head of the Legal and Committee Services of the British Red Cross, consists of eleven essays on the contribution to international humanitarian law (IHL) made by the 1977 Additional Protocols and the Convention on the use of conventional weapons that was adopted in 1980. These essays were initially presented in a Discussion Group held under the auspices of the British Institute of International and Comparative Law.

Following a preface by *Professor G. Best* and an introduction by the editor, Part I covers general aspects. It begins with a study by the late *Colonel G.I.A.D. Draper* on the major stages of development and fundamental aim of IHL. *Mr. H. McCoubrey* then explains the basic distinction between *jus ad bellum* and *jus in bello*, and to his mind perceives a renaissance of "just war" thinking in Protocol I, particularly in Articles 1 (4), 44 (3) and 47, despite the safeguard clause provided in paragraph 5 of its Preamble. *Miss F. Hampson* explores the relationship between human rights and humanitarian law in internal conflicts, with particular emphasis on the practices of the bodies responsible for applying the European Convention on Human Rights (ECHR). Lastly, *Dr. H.-P. Gasser* examines the main controversies arising from the Protocols and shows that they are generally the result of misinterpretation.

In Part II, which addresses the situation of persons who enjoy increased protection under the Protocols, three British Army lawyers, *Brigadier M.H.F. Clarke*, *Lt. Colonel T. Glynn* and *Lt. Colonel A.P.V. Rogers*, discuss the changes in combatant status brought about by Protocol I. *Mrs. L. Doswald-Beck* examines the rules in Protocol I which are designed to protect the civilian population against the effects of hostilities. She shows that the provisions contained in the Protocols, although often no more than the natural outcome of earlier developments, are nevertheless important in that they do away with the uncertainty and controversy inherent in all customary law, an uncertainty exacerbated in this case by the experience of the Second World

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\* Michael A. Meyer (ed.), *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention*, British Institute of International and Comparative Law, London, 1989, 298 + XIV p.

War and the pessimistic conclusions drawn by legal scholars in the post-war period.

In the part dealing with humanitarian assistance, *Professor A. Roberts* delineates the first *international regime of civil defence*, which is contained in Protocol I and is an important yet little discussed innovation. *Mr. M. Meyer* describes how a balance between humanitarian interests and State sovereignty is achieved by the provisions of both Protocols pertaining to relief operations.

In the last part, which concerns the use of weapons, *Mr. C. J. Greenwood* refers to Part IV of Protocol I, arguing that its prohibitions against reprisals go too far and are unrealistic in the face of massive enemy violations of its provisions. *Professor F. Kalshoven* describes and comments on the legislative history of the 1980 Convention on conventional weapons and *Major General R. Scott* demonstrates the relativity from the medical and military point of view, of any distinction between unnecessary and "necessary" suffering.

This collection constitutes a highly useful and interesting contribution to the study of IHL and its dissemination. Its only flaw is the occasional lack of accuracy that has slipped into some of the essays. For example, p. 15 contains three errors. It is incorrect to say that no one has yet been brought to trial for a grave breach of the Geneva Conventions (for instance, the United States in connection with the Vietnam War) or that it was at the UN's request that Switzerland convened the 1974-77 Diplomatic Conference. Furthermore, national liberation movements, to which the text refers, have signed not the Protocols, but merely the Final Act of the Diplomatic Conference. Lastly, pages 39 to 41 of *Mr. McCoubrey's* essay refer erroneously and almost invariably to Articles 45 (1) and 44 (5) of Protocol I instead of the pertinent Articles 43 (1) and 44 (3). However, these minor imperfections in no way detract from the merit of the editor and the British Institute of International and Comparative Law for having provided us with a collection of essays which, although highly diverse and sometimes critical, prove that the Protocols additional to the Geneva Conventions have become an integral part of IHL.

*Marco Sassòli*

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## THE LAW OF NAVAL WARFARE

This book has been published as part of a reflective process begun in recent years on the need to update the law of naval warfare\*. Although Protocol I of

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\* Natalino Ronzitti (ed.), *The Law of Naval Warfare*, Martinus Nijhoff Publishers, Dordrecht, 1988.

1977 additional to the Geneva Conventions of 1949 has updated the law relating to land warfare, especially that part regulating the conduct of hostilities, there has been so far no similar international treaty in recent years regulating the conduct of hostilities at sea. Parts of Protocol I apply to naval warfare, but operations against vessels or aircraft at sea are not covered, and the written law in relation to this remains as it was at the beginning of this century. Practice has shown that the old law no longer responds to modern conditions, in particular as a result of changes in technology since that time and also because of changes in other parts of international law, notably, the United Nations Charter and the law of the sea.

In a substantial introductory chapter, Professor Ronzitti outlines the elements which have rendered parts of the old law of naval warfare obsolete or impracticable and studies recent State practice in relation to each of these problems. The rest of the book comprises a collection of instruments on the law of naval warfare, each document being accompanied by a commentary and such information as its entry into force (if relevant), list of parties, reservations, etc. The instruments include not only treaties, but also influential non-binding documents such as the Oxford Manual of 1913. Of the former are included not only those specially applicable to naval warfare, but also others of application to all types of warfare including therefore naval warfare, such as the 1925 Geneva Gas Protocol.

The commentary to each document is generally short, being on average about ten pages in length, and covers the background to the document question, the purpose of its provisions and its significance in modern times. The commentaries have been written by a number of different scholars, they are generally well written and provide useful information and insights, although the authors have not always indicated the extent to which their views are shared or otherwise.

The collection of documents is comprehensive and after a first glance it will be obvious that the majority of instruments were adopted before the First World War, and the few recent ones only regulate a few aspects of naval warfare. As the book does not attempt a comprehensive survey of State practice (other than that in the introduction) the instruments do not in themselves indicate the present state of the law, as new customary law has emerged to some extent since. The reader would therefore be advised to additionally refer to new State manuals on naval warfare being presently compiled or recently adopted.

In conclusion, this book would be too complex for a total newcomer to this subject, but it is undoubtedly a very valuable collection of documents and supplementary information for those working with the subject.

*Louise Doswald-Beck*

## NECESSITÀ E PROPORZIONALITÀ NELL'USO DELLA FORZA MILITARE IN DIRITTO INTERNAZIONALE\*

In the first two chapters of her work, Gabriella Venturini, professor at Milan University, retraces the development of the principles of necessity and proportionality in *jus ad bellum* prior to and after the prohibition of the use of force. Her well-chosen arguments, drawn in particular from international practice, show that even from the perspective of *jus ad bellum* (not only of *jus in bello*) the exercise of self-defence continues to be governed by these two restrictive principles.

*Review* readers will be especially interested in the other two chapters, which concern *jus in bello*. After recalling, in the third chapter, that international humanitarian law (IHL) applies to any recourse to force among States, even outside of a war in the traditional sense, the author turns, in the fourth chapter, to the principles of necessity and proportionality in humanitarian law. Professor Venturini shows that the principle of military necessity, in its connotation as a rule which precludes the illicitness of an act, henceforth plays but a minor role and is applicable only in cases where a rule of humanitarian law explicitly provides for its own waiver in the event of military necessity. Conversely, as a means of restricting acts of violence, the principle of military necessity and that of proportionality deriving therefrom still play a paramount part in humanitarian law. These two principles, already recognized in the Hague Conventions, not only underlie many of the provisions of Protocol I on the conduct of hostilities and on the protection of the civilian population, but also were further developed and defined by these same provisions which, in turn, are better understood in the light of the aforesaid principles.

In dealing with various problems in relation to these principles, the author puts forward a particularly interesting thesis on reprisals, holding that even in cases where the latter are not prohibited under IHL, they are legitimate only when a party to the conflict, confronted with an enemy breach of humanitarian law, is faced with the military necessity of committing an analogous violation (of equal proportions) to avoid being defeated as a result of the military advantage derived by the enemy from that breach.

Lastly, the work deals with a familiar objection, namely that in situations of self-defence, respect for the principles of necessity and proportionality in both *jus ad bellum* and *jus in bello* would place the victim of an aggression at a disadvantage. The author convincingly shows that this disadvantage is only apparent and that, in both cases, respect for the two principles is essential,

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\* Gabriella Venturini, *Necessità e proporzionalità nell'uso della forza militare in diritto internazionale* (Necessity and proportionality in the use of military force under international law), Milano, Giuffrè, 1988, 193 pp. [Italian, with English and French summaries.]

particularly in limited conflicts. However, here too, a clear distinction must always be drawn between *jus ad bellum* and *jus in bello*.

In conclusion, this meticulously researched work, supported by numerous references to legal texts and State military manuals, enables us to discover or rediscover two principles of *jus ad bellum* and *jus in bello* which have often—and rightly—been contested when they have been advanced as justificatory principles. However, as shown by the author, they retain their full importance as restrictive principles. It is a pity that this work of interest is currently available only to readers familiar with Italian, particularly since the brief English and French summaries naturally fall short of conveying its full scope.

Marco Sassòli

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- SENEGAL — Senegalese Red Cross Society, Bd Franklin-Roosevelt, P.O.B. 299, *Dakar*.
- SIERRA LEONE — Sierra Leone Red Cross Society, 6, Liverpool Street, P.O.B. 427, *Freetown*.
- SINGAPORE — Singapore Red Cross Society, Red Cross House 15, Penang Lane, *Singapore 0923*.
- SOMALIA (Democratic Republic) — Somali Red Crescent Society, P.O. Box 937, *Mogadishu*.

- SOUTH AFRICA — The South African Red Cross Society, Essanby House 6th Floor, 175 Jeppe Street, P.O.B. 8726, *Johannesburg 2000*.
- SPAIN — Spanish Red Cross, Eduardo Dato, 16, *Madrid 28010*.
- SRI LANKA (Dem. Soc. Rep. of) — The Sri Lanka Red Cross Society, 106, Dharmapala Mawatha, *Colombo 7*.
- SUDAN (The Republic of the) — The Sudanese Red Crescent, P.O. Box 235, *Khartoum*.
- SURINAME — Suriname Red Cross, Gravenberchstraat 2, Postbus 2919, *Paramaribo*.
- SWAZILAND — Baphalali Swaziland Red Cross Society, P.O. Box 377, *Mbabane*.
- SWEDEN — Swedish Red Cross, Box 27 316, *102-54 Stockholm*.
- SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, *3001 Berne*.
- SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, *Damascus*.
- TANZANIA — Tanzania Red Cross National Society, Upanga Road, P.O.B. 1133, *Dar es Salaam*.
- THAILAND — The Thai Red Cross Society, Paribatra Building, Central Bureau, Rama IV Road, *Bangkok 10330*.
- TOGO — Togolese Red Cross, 51, rue Boko Soga, P.O. Box 655, *Lomé*.
- TONGA — Tonga Red Cross Society, P.O. Box 456, *Nuku'Alofa, South West Pacific*.
- TRINIDAD AND TOBAGO — The Trinidad and Tobago Red Cross Society, P.O. Box 357, *Port of Spain, Trinidad, West Indies*.
- TUNISIA — Tunisian Red Crescent, 19, rue d'Angleterre, *Tunis 1000*.
- TURKEY — The Turkish Red Crescent Society, Genel Baskanligi, Karanfil Sokak No. 7, 06650 Kizilay-*Ankara*.
- UGANDA — The Uganda Red Cross Society, Plot 97, Buganda Road, P.O. Box 494, *Kampala*.
- UNITED ARAB EMIRATES — The Red Crescent Society of the United Arab Emirates, P.O. Box No. 3324, *Abu Dhabi*.
- UNITED KINGDOM — The British Red Cross Society, 9, Grosvenor Crescent, *London, S.W.1X. 7EF*.
- USA — American Red Cross, 17th and D. Streets, N.W., *Washington, D.C. 20006*.
- URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, *Montevideo*.
- U.R.S.S — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., I. Tcheremushkinskii proezd 5, *Moscow, 117036*.
- VENEZUELA — Venezuelan Red Cross, Avenida Andrés Bello, N.º 4, Apartado, 3185, *Caracas 1010*.
- VIET NAM (Socialist Republic of) — Red Cross of Viet Nam, 68, rue Ba-Trìu, *Hanoi*.
- WESTERN SAMOA — Western Samoa Red Cross Society, P.O. Box 1616, *Apia*.
- YEMEN ARAB REPUBLIC — Red Crescent Society of the Yemen Arab Republic, P.O. Box 1257, *Sana'a*.
- YEMEN (People's Democratic Republic of) — Red Crescent Society of the People's Democratic Republic of Yemen, P. O. Box 455, Crater, *Aden*.
- YUGOSLAVIA — Red Cross of Yugoslavia, Simina ulica broj 19, *11000 Belgrade*.
- ZAIRE — Red Cross Society of the Republic of Zaire, 41, av. de la Justice, Zone de la Gombe, B.P. 1712, *Kinshasa*.
- ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Saddam Hussein Boulevard, Longacres, *Lusaka*.
- ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, *Harare*.

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