

# 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 armet). 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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