

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

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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.¹

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

¹ 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*.²

Many studies and detailed explanatory commentaries have been made of these rules.³

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.

² 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.

³ 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.⁴

(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.

⁴ 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”.⁵

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”.⁶

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”.⁷ 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 war⁸

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.

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

⁶ *Ibid.*

⁷ *Ibid.*, Article 13.

⁸ 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.⁹

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;

⁹ 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.¹⁰ 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”¹¹ 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

¹⁰ 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.

¹¹ *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"¹² or "usually of small dimensions"¹³. 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."¹⁴ 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

¹² See Article 44 of the First Convention.

¹³ See *Regulations on the Use of the Emblem*, Article 16.

¹⁴ *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 1987,¹⁵ 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”.¹⁶ 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;

¹⁵ 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.

¹⁶ 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.¹⁷

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,¹⁸ 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

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

¹⁸ 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,¹⁹ *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".²⁰

(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*.²¹

¹⁹ 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.

²⁰ 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.

²¹ 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).”²²

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

²² 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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