

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.¹ 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.²

¹ 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 Cross³ 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.⁴ 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.

² 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.

³ 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).

⁴ 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.⁵

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.

⁵ 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.⁶

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.⁷

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

⁶ 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.

⁷ 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.⁸

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

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⁸ 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.