

National legislation on the use and protection of the emblem of the red cross or red crescent

The emblem of the red cross or red crescent occupies a very important place in international humanitarian law. In time of war, the emblem is the visible sign of the protection conferred by the Geneva Conventions of 1949 and their Additional Protocols of 1977 on medical personnel and medical units and transports.

For this protection to be effective in time of war, the relevant rules of international law must be strictly respected in peacetime. This is why it is necessary for States to take practical measures to that end and to adopt national legislation governing the use and protection of the emblem. State authorities should further take all requisite steps to ensure that these rules are applied throughout their national territory. They must thus establish a system for strict control of the use of the emblem and must make their armed forces and the general public aware of the pertinent rules. This is the only way to ensure that, in the event of armed conflict, the wounded and sick will be respected and protected from hostilities and that the care to which they are entitled will be effectively administered to them.

By virtue of Article 54 of the First Geneva Convention of 1949, States are under the obligation to take the measures required to prevent and repress at all times any misuse of the emblem. This provision is worded as follows : *“The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53”*.

Insofar as the Geneva Conventions and their Additional Protocols protect, in addition to the emblem, the name of the Red Cross or the Red Crescent, the distinctive identification signals and the white cross on a red ground, these must also be protected by national legislation.

Under the Geneva Conventions and their Additional Protocols, the circle of users of the emblem is strictly limited. The use of the emblem as a protective device, which aims to confer the protection stipulated by international humanitarian law in situations of armed conflict, is reserved primarily for the medical services of armed forces and, with the express agreement of the State authorities, for hospitals and other civilian medical units. As regards the use of the emblem as an indicative device, its principal purpose is to demonstrate a link with National Red Cross or Red Crescent Societies.

This means that third parties, such as individuals, charity associations and organizations or commercial firms are not entitled to use the emblem, even for medical or paramedical activities (doctors, private clinics, pharmacies, non-governmental organizations, factories manufacturing medicines or health-related objects, etc.).

As part of their fund-raising activities, however, National Red Cross or Red Crescent Societies may, within strict limits and in a controlled manner, give their consent for third parties to use the emblem, provided that such use does not contravene national legislation. National Societies must also actively support the efforts of the State authorities to implement national legislation.

Applicable rules

The principal rules covering the emblem of the red cross or red crescent, the designation “Red Cross” or “Red Crescent” and the signals to be used for the identification of medical units and transports are set out in the following international treaties:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 (First Convention) : Articles 38 to 44, 53 and 54;
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949 (Second Convention) : Articles 41 to 45;
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Convention) : Articles 18 to 22;
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977 (Protocol I) : Articles 8, 18, 38 and 85, para. 3,

subpara. f), and Annex I: Regulations concerning the identification of medical units and transports;

- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977 (Protocol II): Article 12.

For further explanations, it may be useful to refer to the Commentaries on the Geneva Conventions (edited by Jean Pictet, published by the ICRC, Geneva, 1952-1960) and the Additional Protocols (edited by Y. Sandoz, Ch. Swinarski, B. Zimmermann, published by the ICRC, Geneva, 1987).

The *Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies* should also be mentioned. These regulations were adopted by the 20th International Conference of the Red Cross in 1965 and revised in 1991 (published in the *International Review of the Red Cross (IRRC)*, No. 289, July-August 1992, pp. 339-362).

A model law for the protection of the emblem

In order to facilitate and support the work of States in drafting national legislation, the ICRC has drawn up a model law concerning the use and protection of the emblem of the red cross or red crescent.

The model law is based on the Geneva Conventions of 1949 and their Additional Protocols of 1977. The ICRC is aware that some States are not yet party to the 1977 Additional Protocols. As regards the use of the emblem, it should be noted that the Protocols reinforce the rules contained in the Geneva Conventions and extend protection of the emblem in time of armed conflict to all medical personnel and medical units taking care of the wounded and sick, whether military or civilian; Annex I to Additional Protocol I further provides for new means of identifying medical units and transports, the use of which is recommended. Therefore, even if a State is not bound by the 1977 Additional Protocols, it is advised to pass a law taking account of these developments.

Even if most of the rules governing the use of the emblem are formally applicable only during periods of international armed conflict, it is recommended that no distinction be made between international armed conflicts and internal conflicts, since in both cases there is an obligation to respect and protect the wounded and sick.

Legal systems, and legislative drafting techniques, differ widely from country to country. In some States, the protection of the emblem may be covered in legislation which also implements other provisions of the

Geneva Conventions and their Additional Protocols. The model law is intended to provide States with a working instrument which is readily comprehensible and illustrates the range of subjects which need to be covered. It should of course be adapted, modified or supplemented as appropriate to suit the legal system and requirements of each particular State. In order to make the law easier to read, comments and legal references appear as footnotes. Some of this information might be incorporated in the actual text of the law.

To facilitate the adoption of national measures for implementing international humanitarian law and the coordination thereof, each State is advised to set up a National Committee bringing together the Ministries directly involved. Such a Committee could, in particular, be responsible for drafting a law on the use and protection of the red cross or red crescent emblem.

The ICRC is proposing this model law to States in pursuance of the Final Declaration of the International Conference for the Protection of War Victims (Geneva, 30 August to 1 September 1993) and of the Recommendations of the Intergovernmental Group of Experts (Geneva, 23 to 27 January 1995). The 26th International Conference of the Red Cross and Red Crescent (Geneva, 3 to 7 December 1995), in its Resolution 1, endorsed this Final Declaration and these Recommendations and strongly urged States to implement the Recommendations addressed to them, especially by adopting appropriate measures at the national and international level and supporting international organizations working in this field (see the *IRRC*, No. 310, January-February 1996, pp. 58, 79 and 83).

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The ICRC remains at the disposal of the States should they require more detailed information concerning the adoption of national legislation aimed at ensuring respect for international humanitarian law and to give advice in particular on preparing legislation relative to the use of the emblem.

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