

The emblem that cried wolf: ICRC study on the use of the emblems

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Abstract

The ICRC Study on Operational and Commercial and Other Non-operational Issues Involving the Use of the Emblems ('the Emblem Study') is an efficient and user-friendly tool to tackle issues regarding the use of the emblems of the red cross, red crescent, and red crystal. This article presents the Emblem Study's origin and objectives, and explains the structure and the methodology followed in its preparation. Recurrent questions regarding joint use of emblems and other signs are also examined, in order to demonstrate the Emblem Study's potential as an analytical and practical tool. Particular emphasis is placed on the need to avoid diluting the protective value of the emblems by maintaining a distinction between those entitled to use the emblems, their partners, and other players in the humanitarian field.



* This article is partly based on excerpts from the *ICRC Study on Operational and Commercial and Other Non-operational Issues Involving the Use of the Emblems* ('the Emblem Study') submitted for information to the Council of Delegates, Nairobi, 23–25 November 2009. The Emblem Study, which was welcomed by the 2009 Council of Delegates, is currently available in English, French, Spanish, and Arabic, and is to be published on the ICRC's website (<http://www.icrc.org>) under the section 'The emblems of the International Red Cross and Red Crescent Movement'.

The year 2009 marked the 150th anniversary of the Battle of Solferino. The horrifying aftermath of that battle inspired Henry Dunant, in his *Memory of Solferino*, to make two proposals for improving assistance to war victims. The first was to set up in peacetime, in every country, groups of volunteers ready to take care of casualties in wartime. The second was to persuade countries to accept the idea of protecting aid workers and the wounded on the battlefield. These proposals led to the gradual establishment of relief societies throughout the world (today's National Societies),¹ and paved the way for the drafting of the Geneva Convention of 1864, precursor of the four Geneva Conventions of 1949, which are now accepted by all states and form the core of international humanitarian law.

Adopting international conventions to protect the wounded and aid workers in war was only the first step; there was still a need to make them clearly distinguishable on the battlefield. The adoption of a single distinctive sign – which would be recognized by all and indicate the protection granted – was one of the main objectives of the five-member committee (which would later evolve into the International Committee of the Red Cross (ICRC)) that met on 17 February 1863 to study Dunant's proposals.

The need to distinguish aid workers providing relief to the wounded and sick on the battlefield, thereby facilitating their protection, had also been stressed by Inspector Lucien Baudens,

A doctor who witness[ed] the interminable siege of Sebastopol, [and who] noted on several occasions that doctors and stretcher-bearers trying to come to the aid of the wounded were caught in fire from one belligerent or the other. He was doubtless the first to propose a simple and practical means of avoiding such incidents, in an article published in the *Revue des Deux Mondes* in February 1857, recommending the adoption of a single distinctive sign for the medical personnel of all countries: 'Such mistakes would not be possible if, by common accord among nations, doctors and nursing staff wore a distinctive sign – the same for all armies and all countries – that made them easily recognizable by the two sides'.²

The emblem³ has now existed for more than a century as the visible sign of the protection afforded under international humanitarian law to certain categories of people affected by armed conflicts and to those providing them with humanitarian aid. It also symbolizes the neutrality, independence, and impartiality of the International Red Cross and Red Crescent Movement ('the Movement') and its components. The emblem serves two very different purposes: first, it is 'meant to

1 As of August 2009, there were 186 National Societies recognized by the ICRC and thereby members of the International Red Cross and Red Crescent Movement.

2 Cited in François Bugnion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, 2007, p. 111.

3 The term 'emblem' in this article refers to either the red cross, the red crescent, the red crystal, or the red lion and sun (the latter has not been used, however, since the Islamic Republic of Iran's declaration on 4 September 1980 expressing the wish to use the red crescent as its distinctive emblem instead of the red lion and sun).

mark medical and religious personnel and equipment which must be respected and protected in armed conflicts' and, second, it 'serves to show that persons or objects are linked to the Movement'.⁴ It may therefore be used as either a protective device or an indicative device.

The idea of an emblem to protect people providing help to the wounded and sick is not new, but it has never been so widely and universally endorsed. As the emblem draws its power from its universal recognition, one may conclude that it has never been so strong. Unfortunately, it may also be a victim of its own success – the emblem is being misused and abused every day, whether in good faith or not. This practice is not new either. As explained in the *Commentary* on the First Geneva Convention of 1949:

The 1864 Convention has no provision dealing with the repression of infractions, and is silent too on the subject of abuses of the distinctive sign. Abuses occurred during the war of 1866, and still more so in 1870–71, but they affected the protective sign only. By 1880, however, the indicative sign was being unlawfully used in many ways. Chemists, manufacturers of medical apparatus, invalid nurses, and even barbers had adopted the red cross as their sign, and it was being used on boxes of pills and mineral water advertisements.⁵

Articles 23 and 27 of the 1906 Geneva Convention remedied this lack of express prohibition of emblem misuse. However, very soon after such misuse was prohibited, commercial companies started using imitations: that is, signs that could not be said to be the red cross but that gave the impression that they were. Such companies believed that they would thereby be able to claim with impunity some of the prestige attached to the emblem.

Why is this a problem? Naturally, the tragic damage done by perfidious abuse of the emblem in armed conflict clearly shows the need for regulation of its use in such a situation. Misuse in 'good faith' in armed conflict also has grave and easily imagined consequences, for it blurs the lines between those entitled by international humanitarian law to signify their protection by displaying the emblem, and those who are not entitled to do so. It consequently affects, in particular, the perception of neutrality and impartiality associated with the emblem. But what about 'softer' misuses of the emblem? If the abuse causes no physical harm, or if the misuse occurs in a country where no hostilities are taking place, does it really matter? Are the consequences too negligible to bother with it? The answer is simply no. Whether or not deadly consequences follow from abuses or misuses of the emblem, and whether or not they take place in an environment of armed conflict

4 Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies ('1991 Emblem Regulations'), 20th International Conference of the Red Cross and Red Crescent, Vienna, 1965, as revised by the Council of Delegates, Budapest, 1991, Art. 1.

5 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. I, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952 (hereafter *Commentary on GC I*), p. 380, Art. 53.

or other situation of violence, they all detract from the protective value of the emblem.

Improper use of the emblem creates confusion about its purpose in public opinion and in people's minds. This confusion diminishes the reputation of the emblem by the very fact of creating the belief that anyone can make use of it. It can thereby lose its value, in particular its connotation of neutrality and impartiality. Even if misuse occurs in a country that is not the scene of an armed conflict, it still impairs the emblem's image and reputation. That effect will be felt locally but will also transcend borders in today's globalized world. An accumulation of such abuses and misuses would make inappropriate use of the emblem commonplace, leading to a decline in respect for it and eroding its protective value. Put simply, the consequence of abuses and misuses of the emblem is illustrated by the moral of the well-known fable 'The little boy who cried wolf'.⁶

To strengthen protection of and respect for the emblem, and to reinforce its protective value, the ICRC – in consultation with the other components of the Movement and with the states parties to the Geneva Conventions – conducted a study on the use of the red cross, red crescent, and red crystal in light of the aforesaid considerations. In presenting the *ICRC Study on Operational and Commercial and Other Non-operational Issues Involving the Use of the Emblems* (hereafter 'Emblem Study' or 'Study'), this article aims to promote it as an efficient tool to tackle issues and difficulties involving their use. A brief account of the origin and objective of the Study will be followed by an explanation of the methodology followed in its preparation and an outline of its structure. Finally, the joint use of emblems and other signs – a subject developed in a number of questions in the Study – will be examined to demonstrate its potential as a tool and the type of analysis for which it can be used.

Origin and objectives of the Study

Origin

The International Red Cross and Red Crescent Movement is composed of the ICRC, the International Federation of Red Cross and Red Crescent Societies ('the Federation'), and the National Societies. Every second year, all components send representatives to 'meet to discuss matters which concern the Movement as a whole' at the Council of Delegates.⁷ Its decisions, which take the form of resolutions, are binding on all components of the Movement.

6 In the fable, a little shepherd boy who was tired of watching the village sheep alone on the hill cried out 'Wolf! Wolf! There's a wolf!' All the villagers ran to help him but soon realized that it was just a trick. Though warned not to cry out if there was no wolf, the boy repeated his trick. Finally, when a wolf really did come to attack the sheep, the boy's cries were ignored, demonstrating that 'nobody believes a liar, even when he is telling the truth'.

In 2001, the Council of Delegates adopted an overall Strategy for the Movement,⁸ which was updated at the 2005 Council of Delegates.⁹ The Strategy aims to strengthen the cohesion of the Movement through a number of approaches influencing humanitarian action and access. The third strategic objective of the Strategy is entitled ‘Improving the Movement’s image and the components’ visibility and relations with governments and external partners’. Action 10, included under this heading, calls for harmonization of the components of the Movement in their approach to private sector relationships, in order to safeguard their integrity and strengthen their capacity to ensure respect for the emblem. To achieve this, the Strategy for the Movement requested ‘[t]he ICRC, in consultation with the International Federation Secretariat and National Societies, [to] initiate a comprehensive study of operational and commercial issues involving the use of the emblems’.

Objectives

The ultimate objective of the Emblem Study was to ensure greater respect for the emblem at all times, and in particular to reinforce its protective value.¹⁰ Improving understanding of and respect for the emblem and the rules governing its use will translate into greater protection for people affected by armed conflicts or disasters. There can be no doubt that misuse of the emblem, whenever committed, creates confusion and distrust in the public mind in general, and especially in the parties to an armed conflict. This undermines confidence in the entities entitled to use the emblem, such as the components of the Movement or the armed forces’ medical services, which in turn threatens their access to victims and even their own security. Greater respect for the rules will lead to greater confidence in the emblem among the public, the authorities, and the parties to conflicts or other situations of violence, as well as safer access to beneficiaries. Maintaining the trust of parties to a conflict is crucial for the users of the emblem, as it is the only form of protection offered to those who risk their lives to help save others. By adding to people’s understanding of the emblem and providing recommendations for tackling its misuse, the Study thus also serves the general mission of the Movement, which is to prevent and alleviate human suffering.

How does the Emblem Study seek to attain its objective? It addresses those specific questions on use of the emblem that are identified as being the most difficult and/or recur with the greatest regularity. Intended to harmonize current practice in light of existing rules, it aims in particular to strengthen the capacity of

7 Statutes of the Movement, adopted by the 25th International Conference of the Red Cross in Geneva in 1986, amended in 1995 and 2006, Art. 12.

8 Council of Delegates, Geneva, 2001, Resolution 3.

9 Council of Delegates, Seoul, 2005, Resolution 6.

10 It is important to bear in mind that international humanitarian law – and not the emblem itself – grants protection to the persons or objects displaying the emblem. Yet the emblem is the visible manifestation of such protection, which explains why the present article refers to its ‘protective value’.

the Movement's components to give their own members and employees, as well as private entities and the public, clear guidance on the proper use of the emblem. Indeed, to avoid misuse of the emblem, users must know and agree on what is or is not permissible. The Study likewise sets out to provide state authorities with a tool to enhance their understanding of the rules governing the use of the emblem and their obligations in this regard. It accordingly contains recommendations on the contents of those rules and the procedure to be followed when faced with misuse.

Methodology of the Study

As mentioned above, the Emblem Study aims to promote a common and harmonized approach to issues concerning the use of the emblems within the Movement and by states. To achieve such harmonization, or at least a more unified approach, it was important to consult the components of the Movement in order to assess the differing interpretation, practices, and/or uses of the emblems. It was also important to include in the process the states parties to the 1949 Geneva Conventions, as numerous questions dealt with in the Study are directly concerned with use of the emblem by states. It is in fact states that define and adopt the rules governing the use of the emblem, and the medical services of their armed forces are its main users in armed conflict. Furthermore, states are primarily responsible for ensuring respect for the emblem, and have an obligation to disseminate international humanitarian law, including the aforesaid rules.

In March 2006, a group of experts from the Federation and from some thirty National Societies was formed. During 2006–2007, the group was able to provide very valuable and insightful comments and recommendations both on identifying the questions to be discussed and at subsequent stages of the drafting process. The experts themselves also drew up some of the preliminary analyses and recommendations contained in the Study. During the same period, further advantage was taken of every available channel and opportunity for obtaining feedback and input from National Societies.¹¹ Informal consultations with states were also carried out in 2007.¹²

A first version of the Emblem Study was submitted for information to the Council of Delegates in November 2007. In its Resolution 7 on the Strategy for the Movement, the Council *request[ed]* the ICRC to continue its work on the Study, taking into account feedback received from the components of the Movement and

11 E.g. the annual meeting of National Societies' legal advisers organized by the ICRC, meetings of the European Legal Support Group and of the European Public Support Group, etc.

12 E.g. through the national inter-ministerial committees for the implementation of international humanitarian law (IHL), which are competent to promote, advise on, and co-ordinate all matters relating to the implementation of IHL at national level and to compliance with and development of the law. Such bodies are usually composed of representatives of all government departments concerned with IHL, the judicial and legislative branches, and the National Societies.

further extending its consultations to States, and to inform the Council on progress made'.¹³ On this basis, the ICRC conducted further consultations in 2008 and 2009. In particular, a consolidated version of the Emblem Study was circulated for comments to all states, to all National Societies, and to the Federation in May 2008.

The feedback received from National Societies touched upon a wide variety of issues and questions relating to the Study. However, the main comments received concerned the use of the emblem by them in their fundraising activities (e.g. use of a National Society's logo in partnerships with the private sector) and for promotional activities (e.g. use of a National Society's logo on materials or premises of the National Society). This prompted the ICRC to organize a workshop in Geneva in February 2009 to discuss these matters. Attended by high-level representatives of the National Societies, together with Federation and ICRC representatives, the workshop offered a very fruitful opportunity for dialogue on the Emblem Study, and on the promotion and fundraising carried out by the Movement's components – activities that are vital in enabling the latter to discharge their mandate efficiently.

Lastly, the Emblem Study benefited from the feedback on various aspects received from states. This was first discussed bilaterally with states and then presented in an information session that took place in Geneva in June 2009.

Through all these consultations, components of the Movement and the states had a chance to express their opinions and to work towards reaching a shared understanding of the rules governing the use of the emblem.

The finalised Emblem Study was submitted for information to the Council of Delegates in November 2009. In its Resolution 2, the Council welcomed the Study and 'call[ed] upon components of the Movement to implement and promote the recommendations of the Study to enhance the implementation of the rules governing the use of the emblems'.¹⁴

Structure of the Study

The Emblem Study consists of fifty-one questions that represent the most recurrent issues as identified by the ICRC and the group of Movement experts. They include those faced by the ICRC both in the field and at headquarters, as well as common queries from National Societies. To make the Study user-friendly, each question has the same structure. First, the relevant legal or statutory basis is stated. Second, recommendations are made on how to answer the question or, when required, on how to deal with a particular misuse of the emblem. Third, the analysis underlying the recommendation(s) is described in detail.

13 Council of Delegates, Geneva, 2007, Resolution 7, para. 8, emphasis in original.

14 Council of Delegates, Nairobi, 2009, Resolution 2, preamble and para. 9.

The Study is divided into three main parts. The first part seeks to identify what is legal, permissible or recommended when using the emblem in operational contexts. The second part concentrates on commercial (and other non-operational) issues involving the use of the emblem. Each of the first two parts contains four chapters, each of which focuses on the specific questions raised according to the entity that is using the emblem – state authorities, National Societies, the ICRC, and others. The third part of the Study sets out the obligations and roles of the various entities mentioned above in preventing or stopping misuse of the emblem. Its chief aim is to provide some step-by-step guidelines on what to do when faced with misuses of the emblem and how to forestall them.

The Study, which is a large document, is not meant to be read from cover to cover but to be used as a reference tool. The Table of Contents serves as an index to search for the relevant questions that address the problem confronting the user. As the questions are all grouped thematically in the Table of Contents, the practice pertaining to a specific topic can easily be found. However, for an overview of the circumstances in which a particular practice is permitted, it is recommended that users read the relevant subsection pertaining to each entity.

Example: joint use of emblems

To demonstrate the type of analysis and recommendation contained in the Emblem Study, the following section concentrates on one area that often leads to abuse or misuse: the joint use of emblems. Whether it is the joint use of two recognized emblems (e.g. a red cross and a red crescent) or the use of one recognized emblem next to another logo or sign (e.g. a red crescent and the letters 'UN' as the acronym identifying the United Nations), by a state or by a National Society, it is usually prohibited. When it is permitted, it must comply with a series of cumulative conditions. For efficient use of the Emblem Study, a previous qualification of the situation is necessary to determine whether the use of the emblem in such a situation is correct. This assessment is made by determining the context (whether the emblem is used in an operational situation or not) and the entity in question (by whom the emblem is being used).

The joint use of emblems in operational situations by states, international organizations, and National Societies will now be examined. Consideration will then be given to joint use in commercial situations, focusing on the emblem's use on items sold or distributed by a National Society or its corporate partners, as well as on websites of National Societies or their corporate partners.

Use of the emblem in operational activities

The following sub-sections deal with the use of the emblem by the medical services of states' armed forces or by National Societies conducting operations in time of armed conflict or other operational situations. In the cases discussed, the emblem is consequently used most of the time as a protective device, which means that it

must ‘always retain its original form, i.e. nothing shall be added either to the cross, the crescent or the white ground’.¹⁵

*Use of double emblem by a state*¹⁶

The terminology ‘double emblem’ designates the use of two recognized emblems – that is, a combination of a red cross, red crescent, or red crystal – side by side. Such a combination of emblems is inadmissible, as this would amount to using an altered form of the emblem, which is not permitted by the 1949 Geneva Conventions or their Additional Protocols. The *Commentary* on the First Geneva Convention states that ‘The protective sign, consisting of a red cross on a white ground, as prescribed by the Geneva Convention, should always be displayed in its original form, without alteration or addition’.¹⁷

On a more practical level, the use of two emblems side by side would reduce the emblem’s visual effectiveness. Indeed, the purpose of the emblem is to clearly mark persons and objects protected under the 1949 Geneva Conventions – the juxtaposition of two emblems decreases their visibility, which mostly comes from their simplicity of shape and colour. Thus, two emblems would transform what is usually instantly recognizable into something more complicated for the eye to distinguish. Furthermore, all emblems – whether the red cross, red crescent, or red crystal – provide equal protection and must be considered neutral. Accordingly, there should be no opposition to the use of any of them. In areas where either the red cross or red crescent is regarded unfavourably, use of both emblems together is unlikely to create greater acceptance and increased protection. This practice may even be perceived as evidence that the emblem has a religious connotation, and thus diminish respect for it.

*Use of emblems by states acting in the same coalition*¹⁸

The use of two emblems on the same premises (e.g. hospitals) and/or means of transport (e.g. ambulances) shared by the medical services of the armed forces of different states participating in the same coalition should be avoided, because it may very well amount to – or appear to be – the use of a prohibited double emblem, as noted above. If two different emblems are nevertheless used on shared property of the coalition’s medical services, the emblems should be placed sufficiently far away from one another to avoid amounting to a ‘double emblem’.

States working under a coalition now have another option under Additional Protocol III to the 1949 Geneva Conventions to avoid any risk of

15 1991 Emblem Regulations, above note 4, Art. 5.

16 This topic is dealt with in Question 2 of the Emblem Study in particular.

17 *Commentary on GC I*, above note 5, p. 334, Art. 44. The same rule emphasized in this quotation applies, of course, to all recognized emblems.

18 This topic is dealt with in Question 3 of the Emblem Study in particular.

being perceived as using a double emblem. Article 2(4) of Protocol III provides that:

The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection.

States acting in a coalition may therefore temporarily display a different emblem from that which they normally use (e.g. a state normally using a red cross may use the crescent, or vice versa). As a compromise, states in a coalition could alternatively use the red crystal.¹⁹ However, while Protocol III permits the emblem of medical services of states to be temporarily changed, Article 2(4) thereof does not permit use of the double emblem (e.g. the red cross displayed together with the red crescent).²⁰

*Joint use of emblems by international organizations*²¹

The ‘armed forces’ of an international organization²² are composed of national military contingents, which merely function under the command and/or control of that organization. So as long as the ‘armed forces’ of the international organization are drawn from the national armed forces of member states, the applicable rights and obligations laid down in the Geneva Conventions and their Additional Protocols remain in force. Medical personnel, units, and means of transport of

19 The possibility of a temporary change of emblem must nevertheless be approached with the utmost seriousness. The competent military authority should always bear the following in mind:

1. The gain in terms of security (for the medical services that are considering temporarily changing emblems and for the other medical services and National Society present in the given situation) must be extremely carefully assessed.
2. The protection of those who are allowed to display the emblem should be the only appropriate motive for changing it temporarily.
3. The temporary change of emblem by foreign armed forces (or a coalition of such forces) and their use of the emblem customary in the state where they are operating might create confusion, in the minds of opposing combatants and the population, between the foreign/coalition forces, the ‘host’ state’s military medical services, and the host National Society.
4. Directly invoking the provisions of Protocol III may be legally difficult for states that have not ratified/acceded to it.
5. The decision to change the emblem may contravene the domestic legislation of the states taking that decision, and may have an effect on public opinion in those states.

This topic is dealt with in Question 1 of the Emblem Study in particular.

20 See Jean-François Quéguiner, ‘Commentary on the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)’, *International Review of the Red Cross*, Vol. 89, No. 865, March 2007, p. 190. The commentary on Article 2(4) of Protocol III states: ‘It remains to be said that this paragraph authorizes the replacement of the usual emblem by only one other; it does not permit the substitution of the usual emblem by a combination of several other emblems side by side’.

21 This topic is dealt with in Question 27 of the Emblem Study in particular.

22 The term ‘international organization’ also encompasses regional organizations (NATO, African Union, etc.).

the national military contingents placed at the disposal of an international organization may thus employ the emblem used by the medical services of their respective national armed forces within the framework of the said Conventions and Protocols.²³

With specific reference to missions under UN auspices, Article 5 of Protocol III provides that:

The medical services and religious personnel participating in operations under the auspices of the United Nations may, with the agreement of participating States, use one of the distinctive emblems mentioned in Articles 1 and 2 [the red cross, red crescent, or red crystal; the red lion and sun is no longer in use].

Medical services of states' armed forces operating under an international organization's command and/or control should generally display the emblem chosen by their respective states, but always in a way that does not amount to the use of a double emblem. However, if an agreement is reached among the states taking part in such an operation, the international organization's command may decide, in accordance with Protocol III, that all the medical services and religious personnel under its authority shall use only one of the recognized emblems.

The armed forces acting under the command and/or control of an international organization, such as the UN or NATO, may display its logo or acronym. It is not generally advisable for such forces to display the emblem together with the logo of the organization on the latter's medical facilities and means of transport. If both are, however, displayed at the same time, the logo or name of the international organization (e.g. the acronym 'UN' or 'ISAF') would have to be displayed separately from the protective emblem so as not to constitute an alteration of or addition to it. The best way to avoid the problem would therefore be to avoid placing the emblem and the organization's sign on the same side of a vehicle or building.

On a practical level, juxtaposition of the emblem with the international organization's sign could also cause the Movement to be wrongly associated with other organizations and thereby affect the perception of its independence and neutrality. Such confusion could have repercussions for components of the Movement working in that particular context and beyond. Any resultant erosion of the emblem's protective value could jeopardize access by the Movement's components and the armed forces' medical services, and their own security. The clear distinction between the emblem and the international organization's logo or name is consequently of prime importance.

23 For instance, with regard to UN forces see UN Secretary-General (UNSG), *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, 6 August 1999, UN Doc. ST/SGB/1999/13, available at: <http://www.unhcr.org/refworld/docid/451bb5724.html> (last visited 16 March 2010). Article 9.7 of the Secretary-General's Bulletin states that: 'The United Nations force shall in all circumstances respect the Red Cross and the Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited'.

*Joint use of emblems by National Societies for protective purposes*²⁴

There are various situations in which National Societies may be authorized – subject to certain conditions²⁵ – to use the emblem for protective purposes (i.e. ‘to mark medical and religious personnel and equipment which must be respected and protected in armed conflicts’²⁶). In an international armed conflict, the National Society may use the protective emblem when it acts as an auxiliary to the medical services of the armed forces of its own state,²⁷ or assists those of another state party to the conflict.²⁸ A National Society may also use the emblem as a protective device to identify its hospitals.²⁹ Lastly, National Society medical personnel, units, and transports may be entitled to display the emblem as a protective device in accordance with Additional Protocol I to the 1949 Geneva Conventions (in times of international armed conflict) and with Additional Protocol II thereto (in times of non-international armed conflict).³⁰

In such situations, whether or not the National Society medical personnel, units, and transports are under the control of the military medical services, the conclusions on the use of the double emblem by states’ armed forces are applicable *mutatis mutandis*; that is, the emblems used in such manner must not give the

24 This topic is dealt with in Questions 12 and 13 of the Emblem Study in particular. The general question of the conditions under which a National Society may use the emblem as a protective device is dealt with in full detail in Question 4.

25 For an in-depth analysis, see the Emblem Study, Question 14.

26 1991 Emblem Regulations, above note 4, Art. 1.

27 Such use is in accordance with Articles 26 and 44 of the First Geneva Convention of 1949. It is subject to the following conditions: the National Society must have been recognized by its own government authorities and authorized by them to assist the medical services of the armed forces of its own state; the emblem is to be used only by those National Society personnel, units, and equipment that are assisting the medical services of the armed forces, and are employed exclusively for the same purposes as the latter; and such National Society personnel, units, and equipment must have been placed under the authority of their own armed forces and be subject to their military laws and regulations. For an in-depth analysis, see the Emblem Study, Question 14.

28 Such use is in accordance with Articles 27, 40, and 42–44 of the First Geneva Convention of 1949. It is subject to the following conditions: the National Society must have obtained authorization to do so from that particular party to the conflict; the adversary of the state accepting the assistance of the National Society must have been notified of the consent of the state of origin (the state not party to the conflict); and the party to the conflict that is accepting such assistance must have notified its adverse party that it is doing so. For an in-depth analysis, see the Emblem Study, Question 14.

29 Such use is in accordance with Article 18 of the Fourth Geneva Convention of 1949. It is subject to the following conditions: the hospital must have been recognized as a civilian hospital within the meaning of the Fourth Geneva Convention by the state party to the armed conflict in which the hospital is situated; and the hospital must have been authorized to use the emblem as a protective device by that state. For an in-depth analysis, see the Emblem Study, Question 14.

30 Such use is in accordance with Articles 8(c), (e), and (g), and 18 of Protocol I, and Articles 9, 11, and 12 of Protocol II. It is subject to the following conditions: the said personnel must be protected under international humanitarian law, i.e. they must correspond to the definition of ‘medical personnel’, ‘medical units’, or ‘medical transports’ contained in Article 8(c), (e), and (g) of Protocol I; they must be authorized to use the emblem as a protective device by the competent authority of a party to the conflict – in a non-international armed conflict, this may be the governmental authority (civilian or military) or the authority of the armed groups (civilian or military); and they must make use of the protective emblem under the control of the competent authority of a party to the conflict. For an in-depth analysis, see the Emblem Study, Question 14.

impression of a double emblem.³¹ This includes operations where the medical personnel, units, and transports of two or more National Societies (Red Cross and Red Crescent) work together. These National Societies would not be allowed to make use of the protective emblems in a manner amounting to or giving the impression of a double emblem, for reasons stated above.

Lastly, it must be emphasized that the use by a National Society of the emblem in its protective form together with the logo of an external partner is prohibited at all times. The juxtaposition of the emblem with the sign of an international organization (such as ‘UN’) would constitute a prohibited alteration of or addition to the protective emblem. It might affect the perception of the independence and neutrality of the National Society and consequently of the Movement. This may result in an erosion of the protective value of the emblem.³²

Joint use of emblems for indicative purposes

The rules on joint use of emblems are quite different where the emblem is to serve as an indicative device – that is, ‘to show that persons or objects are linked to the Movement’.³³

*Use of the double emblem by National Societies for indicative purposes*³⁴

Article 3(1) of Protocol III gives National Societies the option of displaying a double emblem within the red crystal for indicative purposes.³⁵ Furthermore, under Article 3(2) of Protocol III, the emblem (or a combination of emblems) that a National Society has chosen to incorporate within the red crystal may, within the National Society national territory and in conformity with national legislation, be used without the red crystal. Thus, the double emblem may in principle be used by a National Society on its national territory, exclusively for indicative purposes, even if it is not incorporated into the red crystal. However, it must be emphasized that when used as an indicative device, the emblem must be relatively small in size and accompanied by the National Society name or initials.³⁶ The 1991 Regulations on

31 See the section ‘Use of double emblem by a state’ above.

32 See also the section ‘Joint use of emblems by international organizations’ above.

33 1991 Emblem Regulations, above note 4, Art. 1. The legal basis for the distinction between protective and indicative uses of the emblem is to be found in Article 44 of the First Geneva Convention. This distinction is further defined in the 1991 Emblem Regulations, Art. 1.

34 This topic is dealt with in Questions 12 and 13 of the Emblem Study in particular.

35 Article 3(1) of Protocol III provides that: ‘National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes: a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems’.

36 1991 Emblem Regulations, above note 4, Arts. 4 and 5.

the Use of the Emblem furthermore require that ‘Any confusion between the protective use and the indicative use of the emblem must be avoided’.³⁷

Lastly, it is worth mentioning that National Societies working in coordination with the Federation under a service agreement establishing the terms and conditions for running the operations may, with the authorization of the Federation, use the Federation logo for indicative purposes. This logo is composed of a red cross and a red crescent side by side, set on a white ground within a red rectangle, and accompanied by the name of the Federation. The Federation logo cannot, however, be used for protective purposes.

*Joint use of National Society’s emblem (indicative device) and international organization’s logo (such as the ‘UN’ logo)*³⁸

When a National Society enters into a partnership with an international organization, for example as the implementing partner of a special project with an international organization, the organization may want the National Society to acknowledge its contribution in some way. If this acknowledgement takes the form of joint use of emblems/logos – that is, the logo of the National Society (as an indicative device) jointly with the logo of the external partner – it must be included in the agreement between the National Society and the external partner. The joint use of logos is potentially hazardous for perception of the National Societies, as it may blur the distinction between the National Societies and the international organization. Given the wider risks for the entire Movement, the use of joint logos should be avoided as far as possible. In certain contexts, a National Society association with external organizations such as the UN could jeopardize the access of the National Society (and potentially that of the other components of the Movement present in those contexts) to people in need and endanger the security of the National Society and Movement staff and volunteers. Of course, the more violent and tense the situation, the more such a blurring of identities should be avoided.

When the National Society negotiates such an agreement, it must bear in mind that it is the equal of its external partner. This is very important. Both must know and understand their respective constraints and obligations, especially the obligations of the components of the Movement to abide by the rules governing the use of the emblem. To provide for agreements that respect the emblem, in 2003 the Council of Delegates adopted a number of ‘Minimum Elements to be included in operational agreements between Movement components and their external operational partners’. Read in conjunction with

³⁷ *Ibid.*, Art. 4.

³⁸ This topic is dealt with in Question 20 of the Emblem Study in particular. As already pointed out above (see the section ‘Joint use of emblems by National Societies for protective purposes’), the use of the protective emblem together with the logo or acronym of an international organization is prohibited.

the 1991 Emblem Regulations, in particular Article 25,³⁹ they set the following conditions for the joint use of logos. Such use may be possible only if all those conditions are met, thus:

- i. In exceptional circumstances, i.e., if no way of avoiding such joint use exists, in connection with humanitarian activities or dissemination campaigns;
- ii. For a specific undertaking, i.e., for a specific project of limited duration;
- iii. If the external partner is a humanitarian organization;
- iv. If the joint use is discreet and does not give rise to confusion in the public mind between the NS [National Society] and the external partner. In practice, the potential for confusion may often be avoided by a short written explanation of the relationship between the NS and its external partner;
- v. If it is not displayed on buildings and equipment, including vehicles and other means of transport; and
- vi. Where it does not compromise the NS identity as a neutral, impartial and independent actor.⁴⁰

Use of the emblem in commercial activities

Promotion and fundraising have an impact on the Movement's ability to accomplish its mandate, so the importance of all the Movement's components being able to carry out these activities in an efficient manner must not be underestimated. To help them in their promotion campaigns, National Societies often engage in partnership with corporations.

Whenever entering into partnership with the corporate sector, National Societies must respect the provisions of the 'Movement policy for corporate sector partnerships' adopted at the 2005 Council of Delegates. This applies with particular force to the selection criteria for the company with which the National Society enters into partnership and to the mandatory and recommended requirements for partnership contracts of Movement components.⁴¹

It is clear that in such circumstances the emblem would not be used for protective purposes. The use of the emblem on its own is therefore prohibited. Consequently, the analysis below will address only the use of the National Society

39 1991 Emblem Regulations, above note 4, Article 25 stipulates that: 'In addition to the cases mentioned in Articles 23 and 24, the National Society may in exceptional circumstances use the emblem jointly with that of another humanitarian organization, in the event of a specific undertaking and provided that such use is discreet and does not give rise to confusion in the public mind between the National Society and the other organization.'

40 Emblem Study, Recommendations of Question 20.

41 Council of Delegates, Seoul, 2005, Annex to Resolution 10, 'Substantive provisions of the International Red Cross and Red Crescent Movement policy for corporate sector partnerships', available at [http://www.icrc.ch/Web/eng/siteeng0.nsf/htmlall/council-of-delegates-resolutions-181105/\\$File/CoD-Resolutions_2005_EN.pdf](http://www.icrc.ch/Web/eng/siteeng0.nsf/htmlall/council-of-delegates-resolutions-181105/$File/CoD-Resolutions_2005_EN.pdf) (last visited 16 March 2010).

logo, that is, ‘the emblem ... accompanied by the name or initials of the National Society’.⁴²

Articles 3 to 5 of the 1991 Emblem Regulations define the general restrictions on the use of the emblem that apply to all the following contexts. They are designed to safeguard the prestige of and respect for the emblem, and to avoid confusion between the two uses of the emblem by drawing a clear distinction between protective and indicative uses.

*On items sold or distributed by the National Societies*⁴³

The general principle is defined under Article 3 of the Regulations, which enjoins National Societies to ensure that nothing tarnishes the prestige of or the respect due to the emblem. Thus the National Society must be careful of what it sells.

In this connection the main specific stipulation, contained in Article 23, paragraph 2 of the 1991 Emblem Regulations, is that the emblem displayed on the items distributed or sold by the National Society to the public ‘shall in no way suggest the protection of international humanitarian law or membership of the Movement’. To avoid any suggestion of protective use of the emblem, the items sold shall be of ‘reduced dimensions’.⁴⁴ To avoid any suggestion of indicative use of the emblem, it is preferable that the National Society logo be accompanied by a text or a graphic design identifying the campaign,⁴⁵ unless the items are intended to be sold or distributed by the National Society to its staff, members, or volunteers only. The sale or distribution of items or services should not become more important than the humanitarian activities of the National Society. It should therefore not last for too long a period of time and should preferably take place within campaigns or events.

According to the commentary on Article 23, the items sold ‘can consist of printed matter and objects of all kinds: leaflets, publications, posters, philatelic souvenirs, films, pencils, etc.’.⁴⁶ Displaying a National Society logo on certain items (such as clothing) is very likely to suggest an association between the user of the items and the National Society and/or the Movement. Accordingly, it is recommended that the National Society logo not be displayed on items such as baseball caps, T-shirts, or bags.⁴⁷

42 1991 Emblem Regulations, above note 4, Art. 5.

43 This topic is dealt with in Question 33 of the Emblem Study in particular.

44 1991 Emblem Regulations, above note 4, Art. 23, para. 2.

45 *Ibid.*, commentary on Art. 23, para. 2.

46 *Ibid.*

47 *Ibid.* The commentary indicates that ‘With regard to clothing, flags or banners – given the risk of confusion which such objects could create, in the event of armed conflict, with the emblem used as a protective device – it is essential to ensure that the emblem is accompanied by the name of the National Society, or a text or a publicity drawing’.

*On items sold or distributed by the corporate partner of the National Society*⁴⁸

The 1991 Emblem Regulations prohibit the National Society from authorizing its corporate partner to display the National Society logo on items sold or distributed by the partner ‘since they are often designed to last and the National Society has no control over their use’.⁴⁹ The packaging or label is to be considered as part of the item for sale (or distribution). Indeed, allowing corporate partners to display the emblem on an item’s label while prohibiting them from doing so on the item itself would defeat the purpose of the latter prohibition.

However, where the proceeds from an item’s sale are to be donated in full or in part to the National Society, the Society in question may authorize a company to mention its donation or other contribution to that Society’s work, for example, on the label of the item. In this case, in order to avoid any confusion between the company and its product on the one hand and the National Society on the other, and to avoid any potential abuses, compliance with Article 23, paragraph 3, sub-paragraphs (a), (c), (d), (e), (f), (g), and (h), of the 1991 Emblem Regulations is required.⁵⁰ For example, the company may mention that part of the price of a specific product will be donated to the National Society (or to one specific National Society programme), but always without any display in doing so of the emblem or the National Society logo. In addition, National Societies ‘must ensure that such mention remains discreet and not give rise to confusion’.⁵¹

The National Society may, however, authorize the display of its logo on advertising material of the corporate partner, but only ‘with the utmost restraint and on condition that the emblem be of small dimensions and accompanied by a

48 This topic is dealt with in Question 34 of the Emblem Study in particular. As indicated above (see the section ‘Use of the emblem in commercial activities’), whenever entering into partnership with the corporate sector, National Societies must respect the provisions of the ‘Movement policy for corporate sector partnerships’, which defines partnership selection criteria and contract requirements.

49 1991 Emblem Regulations, above note 4, Art. 23, para. 4, and commentary thereon.

50 The conditions defined under *ibid.*, Art. 23, para. 3 are as follows:

- (a) no confusion must be created in the mind of the public between the company’s activities or the quality of its products and the emblem or the National Society itself;
- (b) ...
- (c) the campaign must be linked to one particular activity and, as a general rule, be limited in time and geographical area;
- (d) the company concerned must in no way be engaged in activities running counter to the Movement’s objectives and Principles or which might be regarded by the public as controversial;
- (e) the National Society must reserve the right to cancel its contract with the company concerned at any time and to do so at very short notice, should the company’s activities undermine the respect for or the prestige of the emblem;
- (f) the material or financial advantage which the National Society gains from the campaign must be substantial without, however, jeopardizing the Society’s independence;
- (g) the contract between the National Society and its partner must be in writing;
- (h) the contract must be approved by the National Society’s central leadership.

For a more detailed explanation of these conditions, see *ibid.*, commentary on Art. 23, para. 3.

51 *Ibid.*, commentary on Art. 23, para. 4.

clear explanation of the assistance received by the Society'.⁵² The advertising material must meet the conditions of the said sub-paragraphs of Article 23, paragraph 3, of the 1991 Emblem Regulations,⁵³ such as not being designed to be permanent, remaining discreet, and not giving rise to confusion about the relationship between the National Society and its partner.

*On websites of the National Society or of its corporate partner*⁵⁴

Because of the reach of electronic media, National Societies (and the components of the Movement in general) must be particularly careful when using the emblem/ National Society logo on websites and on the Internet in general, so as not to create confusion in the public mind about the Movement and its activities or give rise to misinterpretations of its principles. Yet the National Society should be able to acknowledge the assistance received from corporate supporters, since it could be difficult to find or retain donors if they are to remain totally anonymous. This is recognized in the 1991 Emblem Regulations that apply to the use by a National Society, whether on its website or on other media, of its logo together with the name/logo of a corporate supporter.⁵⁵

With regard to use of the National Society logo together with that of a corporate supporter or partner organization, the Emblem Regulations applicable to advertising material and sale of items (detailed above) apply *mutatis mutandis*. Hence the company's 'trademark, logo or name' may be displayed on the National Society's 'advertising material' – including a website – for fundraising or dissemination purposes, provided that the National Society 'closely monitor[s] the manner in which the assistance is publicized so as to avoid any abuse or risk of confusion in the mind of the public'.⁵⁶ However, the possibility for a National Society to display its corporate supporters' names and logos on its website is subject to a series of cumulative conditions.⁵⁷ Adapted for the Internet, they are to be understood as follows:

1. No confusion must be created between the identities of the National Society and its corporate supporter (or the supporter's activities or products): it must be clear to a reasonable person why the name and logo of the corporate supporter are displayed on the National Society's website (e.g. the corporate supporter's logo could be accompanied by a descriptive statement such as 'the XYZ Company is proud to support the National Society's Measles Initiative').

52 *Ibid.*, Art. 23, para. 4.

53 See note 54 below.

54 This topic is dealt with in Question 35 of the Emblem Study in particular. As indicated above (see the section 'Use of the emblem in commercial activities'), whenever entering into partnership with the corporate sector, even through the Internet, National Societies must respect the provisions of the 'Movement policy for corporate sector partnerships', which defines partnership selection criteria and contract requirements.

55 See 1991 Emblem Regulations, above note 4, Art. 23, para. 3, and commentary.

56 *Ibid.*, Art. 23, para. 3. See also above note 53.

57 *Ibid.*

- The name/logo of the corporate supporter must not be perceived as a guarantee for the quality of the corporate supporter's products.
2. The National Society must retain control over the display of the logo and name of the corporate supporter on its website; in particular, the said name/logo must be of a reasonable size.
 3. The display of the corporate supporter's logo and name must be linked to one particular activity and be limited in duration.
 4. The corporate supporter must not be engaged in any way in activities running counter to the Movement's objectives and Fundamental Principles or in any activity that might be regarded by the public as controversial, such as the manufacture or sale of arms and ammunition; the manufacture or sale of products publicly recognized as deleterious to health; business practices materially contributing to armed conflicts or natural disasters; or activities that would undermine the reputation, image or emblems of the Movement.⁵⁸
 5. The material or financial advantage that the National Society gains from the support must be substantial; however, the independence of the National Society must not be jeopardized due to the high level of support from the corporate supporter.
 6. The display of the logo and name of the corporate supporter must be included in a written contract/agreement with the National Society, which must have the formal approval of the National Society's central leadership. The National Society must reserve the right to cancel such a contract or agreement at any time and at very short notice, should the supporter's activities undermine respect for or the prestige of the emblem.⁵⁹

Authorizing a corporate partner to display the National Society logo/name on its own website is more delicate. Given the worldwide reach of the Internet and the 'considerable risk of abuse',⁶⁰ a high level of caution is certainly required. This means that a National Society should authorize such display of its logo/name only with the utmost restraint. The authorization must be clearly for the corporate supporter's advertising purposes (as opposed to the sale of items)⁶¹ and must be subject to strict compliance with conditions similar to those defined for use of the corporate supporter's logo or name on the National Society website. As it may be hard for the National Society to retain control over the display of its logo and name, and as an additional safeguard against abuse by the corporate supporter, the

58 See in particular the examples given in *ibid.*, commentary on Art. 23, para. 3, such as serious pollution by the company concerned, and the criteria defined under section 3.3 of the 'Movement's policy for corporate sector partnerships', above note 46, p. 75.

59 1991 Emblem Regulations, above note 4, commentary on Art. 23, para. 3(e) gives the example of an activity of the corporate supporter that could prove embarrassing for reasons not known to the National Society when signing the agreement, such as serious pollution caused by the company concerned.

60 As stated in *ibid.*, commentary on Art. 23, para. 4.

61 If most of what is included on a website is of an advertising nature, there could conceivably be web pages dedicated to the online sale of products that would come close, for our purposes, to being regarded as 'items for sale'.

following two conditions must be added: first, a statement on the corporate supporter's website must make clear the nature of the assistance received by the National Society. This is to ensure that the display of the National Society logo cannot be understood to mean that the National Society endorses the corporate supporter, its products, services, opinions, or political positions.⁶² Second, the written contract/agreement between the National Society and the corporate supporter must stipulate that the corporate supporter must obtain the approval of the National Society before any and every use of the National Society logo on the corporate supporter's website, and that the National Society logo must be removed immediately from the corporate website at the request of the National Society.

Conclusion

The use of the emblem is subject to many rules and conditions, depending on the context and purpose of its display. In situations of armed conflict, the protective emblem (a red cross, red crescent, or red crystal on a white ground) must be used without alteration or addition: a 'double red cross/red crescent emblem' is therefore prohibited, as is use of the emblem jointly with the logo of another organization, regardless of the user of the emblem. The adoption and entry into force of Protocol III provides for new opportunities, such as temporary change of a protective emblem, 'where this may enhance protection'.

The situation is more complex with regard to the use of the emblem for indicative purposes: the use of a double emblem by National Societies is possible, in accordance with the provisions of Protocol III; use of the emblem together with the logo of another organization in an operational context, or use of the National Society logo together with the logo of a corporate partner in commercial activities, is not entirely excluded by the rules governing the use of the emblem. These uses are, however, strictly subject to the obligation to avoid creating confusion in the mind of the public. This is essential to preserve the image of the Movement's components as neutral and impartial humanitarian actors, and the ability of those entitled to use the emblem to safely access people in need.

By giving guidance and answers to a number of possible issues, by making the logic of the rules on the use of the emblem more accessible, and by emphasizing the responsibilities of all concerned, the Emblem Study seeks to facilitate compliance with that obligation and serve its underlying purpose.

62 This condition derives from the 'Mandatory elements for Movement components' partnership contracts', Council of Delegates, Seoul, 2005, Annex to Resolution 10, para. 5.3.6.