UNIT 19 WHAT ARE THE PROTECTIVE EMBLEMS?

Structure

19.1 Introduction
19.2 Objectives
19.3 The Origins and Development of the Distinctive Emblems
   19.3.1 Historical Overview of the Origins of the Emblems
   19.3.2 Additional Protocol III and the Introduction of the Red Crystal
19.4 The Geneva Conventions and the Protection of Distinctive Emblems
   19.4.1 Protective use of the Emblems
   19.4.2 Nature of Protection Accorded
   19.4.3 Misuse of the Emblems
19.5 Summary
19.6 Terminal Questions
19.7 Answers and Hints

19.1 INTRODUCTION

The provisions of International Humanitarian Law establish which persons and institutions are entitled to use the red cross and red crescent emblems, under what conditions they may do so and the measures that may be taken to punish any misuse of the emblems. Distinctive emblems other than the Red Cross, Red Crescent, or Red Crystal include the UN emblem, the emblem of the CultPropConv, and the emblems marking hospital and safety zones, internment camps, civil defence, and prisoner of war camps.

The misuse of the emblem of the Red Cross, the Red Crescent, or the Red Crystal or of the heraldic emblem of Switzerland should constitute an offence under national penal law, liable to a fine. States must prevent and repress any misuse of the emblem of the Red Cross, Red Crescent, or Red Crystal (Article 53 GC I; Article 45 GC II; Article 6 AP III). This obligation includes the Swiss coat of arms by reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours and of the confusion which may arise between the arms of Switzerland and the distinctive emblems under the Geneva Conventions (Article 53, para. 2, GC I).

The proper use of the distinctive emblems is regulated by state parties to the Geneva Conventions together with the Red Cross and Red Crescent Movement in their International Conferences. It is punishable as a grave breach, if willfully committed and causing death or serious injury. An administrative offence is committed whenever the Red Cross or Red Crescent are used without authorization. The abuse of distinctive emblems and names which, according to the rules of international law, are equal in status to the Red Cross should also be prosecuted.

In 1859 Henry Dunant, a Swiss businessman traveling in Italy, witnessed the grim aftermath of the battle of Solferino. On his return to Geneva, he wrote an account
What are the Rules of Protection of the Different Categories of Protected Persons?

of what he had seen, *A Memory of Solferino*, in which he put forward two proposals aimed at improving assistance for war victims.

One of the proposals was the adoption of a single distinctive sign that would confer legal protection on army medical services, volunteer aid workers and victims of armed conflict was one of the main objectives of the five-member committee that met on 17 February 1863 to study Dunant's proposals. This committee was later to become the International Committee of the Red Cross (ICRC). The sign – or emblem as it was eventually called – had to be simple, identifiable from a distance, known to everyone and identical for friend and foe alike.

### 19.2 OBJECTIVES

After reading this unit, you should be able to:

- trace out the historical development of the Protective Emblems; and

- discuss how the emblem of the ICRC came into being.

### 19.3 THE ORIGINS AND DEVELOPMENT OF THE DISTINCTIVE EMBLEMS

#### 19.3.1 Historical Overview of the Origins of the Emblems

A diplomatic conference that met in Geneva in August 1864 adopted a red cross on a white background, the colours of the Swiss flag in reverse. However, during the 1876-1878 war between Russia and Turkey, the Ottoman empire declared that it would use a red crescent instead of a red cross as its emblem, although it agreed to respect the red cross used by the other side. Persia also opted for a different sign: the red lion and sun. Both emblems were recognized by a diplomatic conference held in 1929. In 1980, the Islamic Republic of Iran decided to use the red crescent instead of the red lion and sun.

The red cross and red crescent emblems are entitled to full respect under international law. However, they are sometimes perceived as having cultural, religious or political connotations, and this jeopardizes the protection they confer on victims of armed conflicts, medical services of the armed forces and humanitarian personnel. To overcome these problems, the idea of introducing an additional emblem that would be acceptable to all National Societies and States was put forward. This idea, which was strongly supported by the Movement, became a reality in December 2005 when a diplomatic conference recognized the red crystal as a distinctive emblem alongside the Red Cross and Red Crescent.

Another notable development has been with regards to the 'Magen David Adom', the national society of Israel, which has used the Red Shield of David as its organization emblem since its foundation. As the Red Shield of David is not a recognized protection symbol under the Geneva Conventions, Magen David Adom's recognition as a national society by the ICRC was long delayed. It was not until 2006 that the ICRC officially recognized Magen David Adom. The adoption of the third protocol emblem paved the way for the recognition and admission of Magen David Adom as a full member of the International Federation, as the rules of the third protocol allow it to continue using the Red Shield of David when operating within Israel and provide a solution for its missions abroad. Though the organization only recently gained official
recognition, it has had an excellent reputation within the Movement for many years and took part in many international activities, in cooperation with both the ICRC and the Federation, prior to its official recognition.

19.3.2 Additional Protocol III and the Introduction of the Red Crystal

The Red Cross and Red Crescent emblems are universally recognized symbols of assistance for the victims of armed conflicts and natural disasters. In use since the nineteenth century, these emblems unfortunately do not always enjoy the respect to which they are entitled as visible signs of the strict neutrality of humanitarian work. Moreover, certain States find it difficult to identify with one or the other.

To resolve these issues, the States party to the Geneva Conventions adopted a Third Additional Protocol to the Conventions, Protocol Additional to The Geneva Conventions of 12 August 1949, and relating to the adoption of an Additional Distinctive Emblem, at the diplomatic conference in December 2005 establishing the red crystal. The International Red Cross and Red Crescent Movement now has three emblems in use following the decision of the diplomatic conference held in Switzerland in December 2005 to create the red crystal emblem, alongside the red cross and red crescent.

Additional Protocol III recognizes an additional emblem that:

i) is free from any religious, cultural or political connotations

ii) enjoys the same legal status as the red cross and red crescent and may be used in the same way or under the same conditions

iii) may be used (like the red cross and crescent) on a temporary basis by medical services attached to armed forces in place of their own emblems when needed and to enhance their protection

iv) may be used in exceptional circumstances to facilitate the work of the ICRC, the International Federation of Red Cross and Red Crescent Societies (International Federation) and National Societies

The Protocol gives States and National Societies greater flexibility in using the emblems and allows National Societies that are unable to use the red cross or red crescent to become full members of the Movement, provided they meet the other conditions of recognition. National Societies that choose to adopt the red crystal as their sign of identification may incorporate within it any one of the recognized emblems or a combination thereof. They may also incorporate within it another distinctive sign, which has been in effective use and was communicated to the other States party to the Geneva Conventions and the ICRC prior to the adoption of Protocol III.

Protocol III further stipulates that, for enhanced protection, the medical services and religious personnel of a State’s armed forces may, without prejudice to their current emblems, make temporary use of any recognized emblem. The ICRC, the International Federation and their duly authorized personnel will retain their current names and emblems. However, in exceptional circumstances and to facilitate their work, they may use the red crystal.
What are the Rules of Protection of the Different Categories of Protected Persons?

The Red Crystal
- does not replace the red cross or red crescent
- broadens the choice of emblems
- contributes to the universality of the Movement
- strengthens the protective value of the emblems
- provides more flexibility in the use of the emblems
- puts an end to the proliferation of emblems

19.4 THE GENEVA CONVENTIONS AND THE PROTECTION OF DISTINCTIVE EMBLEMS

19.4.1 Protective use of the Emblems

The various distinctive emblems of the Geneva Conventions may be accorded two distinctively different meanings. On one hand, the visual symbols of the Red Cross, the Red Crescent, the Red Lion with Sun and the Red Crystal serve as protection markings in armed conflicts, a denotation which is derived from and defined in the Geneva Conventions. This is called the protective use of the symbols. On the other hand, these symbols are used as distinctive logos by those organizations which are part of the International Red Cross and Red Crescent Movement. This is the indicative use of the emblems, a meaning which is defined in the statutes of the International Movement and partly in the third Additional Protocol.

As Protective Devices, in armed conflicts, they are the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on relief workers and on medical personnel, facilities and means of transport. In such cases, the emblems should be as large as possible and should be displayed with no other information.

As Indicative Devices, they show the link that a person or an object has with the Movement. In such cases, the emblems should bear additional information (e.g. the name or the initials of the National Society). The emblems must be of small dimensions and may not be placed on armlets or on the roofs of buildings, in order to avoid any confusion with the emblems used as protective devices.

In addition to that, the Red Shield of David can be used by the Israel society Magen David Adom for indicative purposes within Israel, and, pending the approval of the respective host country, in combination with the Red Crystal when working abroad.

Thus, in the context of its Protective Use, the following can use the emblems, in situations of armed conflict, and in times of peace:

[A] In times of armed conflict

i) medical services and religious personnel of the armed forces

ii) medical personnel and medical units and transports of National Societies when placed at the disposal of the medical services of the armed forces and subject to military laws and regulations
iii) with the express authorization of the government and under its control: civilian hospitals, all civilian medical units and other voluntary relief societies and medical facilities, their staff and civilian medical means of transport assigned to the treatment and transport of the wounded, sick and shipwrecked

[B] In times of peace
i) medical services and religious personnel of the armed forces
ii) National Society medical facilities and means of transport that are to function as such in the event of armed conflict, with the authorities’ consent

Furthermore, the ICRC and the International Federation may use the emblems at all times (in peacetime as well as in times of armed conflict) and without restriction.

In the context of its Indicative Use, the following can use the emblems, in situations of armed conflict, and in times of peace:

A] In times of armed conflict
i) the National Societies
ii) the International Federation
iii) the ICRC

B] In times of peace
i) the bodies, persons and objects connected with one of the components of the Movement: the National Societies, the ICRC, the International Federation
ii) ambulances and first-aid stations exclusively assigned to providing free treatment to the wounded and sick, as an exceptional measure, in conformity with national legislation and with the express authorization of the National Society

In compliance with domestic legislation, National Societies may use one of these emblems, both on national and foreign territory. A National Society that uses the Red Cross or Red Crescent emblem as its sign of identification, may, for indicative purposes, temporarily use the red crystal in exceptional circumstances and to facilitate its work, both on national and foreign territory.

Self Assessment Question
1) What are the ‘Distinctive Emblems’ recognized in International Humanitarian Law? What is their significance?

19.4.2 Nature of Protection Accorded

The emblem is defined in Article 38 of the First Convention. It consists of a red cross, a red crescent or a red lion and sun, respectively on a white ground.
Furthermore, Article 38 prohibits *inter alia* the improper use of the Red Cross or Red Crescent, of the flag of truce (being a white flag, indicating a readiness to negotiate) and of the emblem of the United Nations.

Then, while Article 39 (1) prohibits 'to make use in an armed conflict of the flags or military emblems, insignia or uniforms of neutral or other States not Parties to the conflict', Article 39(2) does not prohibit the use of the enemy uniform outright but spells out in which situations the use is prohibited:

It is prohibited to make use of the flags or military emblems, insignia or uniforms of adverse Parties while engaging in attacks or in order to shield, favour, protect or impede military operations.

Article 37 of Additional Protocol I criminalizes the "feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict."

Further, Article 85 of A.P.I regards the improper use of distinctive emblems among the grave breaches of this Protocol, when committed willfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

In addition to the Geneva Conventions, the Rome Statute also criminalizes the improper use of Distinctive emblems. Subparagraph 2(e) of Article 8 applies customary law to armed conflicts not of an international character. What follows is an extensive list that includes most of the provisions of Protocol II and overlaps in part with common Article 3. It also adds several specifics that Protocol II does not contain, but which have come to be recognized as part of customary law. This includes 'intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva conventions in conformity with international law'. Furthermore, the Rome Statute also prohibits 'making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury'. Although this prohibition is slightly broader than Article 85 of AP I, it is also significantly narrower than Article 37.

**19.4.3 Misuse of the Emblems**

Only the misuse of internationally recognized emblems, signs or signals violates IHL.

Improper Use of the Emblems includes any use of a distinctive emblem inconsistent with the relevant rules of international humanitarian law. The use of an emblem by unauthorized people or bodies (commercial enterprises, pharmacists, private doctors, NGOs, ordinary individuals, etc.) or for purposes that are inconsistent with the Movement’s Fundamental Principles are considered ‘Improper Use’.

Furthermore the use of the distinctive emblem during an armed conflict in order to protect combatants and military equipment and with intent to mislead the adversary amounts to the crime of perfidy. Perfidious use of the emblem, when causing death or serious personal injury, is considered a war crime.
In order to ensure universal respect for and protection of the emblems, each State party to the 1949 Geneva Conventions has the obligation to enact national legislation with the aim of regulating the use of the emblems and preventing and punishing their unauthorized use both in times of armed conflict and in peacetime. The prevention and repression of misuse of the emblems cannot be accomplished solely by the adoption of regulatory or penal measures. National authorities must also undertake to inform the public, businesses and the medical community of the proper use of the emblems. National Societies also cooperate with public authorities to ensure proper use of the emblems.

Self Assessment Question
2) What constitutes misuse of the distinct emblems?

19.5 SUMMARY

The Red Cross and the equivalent signs of the Red Crescent, the Red Lion with Sun and the Red Crystal to be used to mark all persons and objects under the protection of the four Geneva Conventions of 1949 and their additional protocols of 1977:

- A blue triangle on orange ground as the international distinctive sign of civil defence; to be used to mark the personnel and objects of civil defence organizations

- The letters ‘PG’ or ‘PW’ to mark a prisoner of war camp and the letters ‘IC’ to mark an internment camp for civilians

- An oblique red band on a white ground to mark Hospital and safety zones

- The white flag; used to mark an unarmed negotiator asking for a truce or ceasefire, or to symbolise surrender

- The emblem of the United Nations as well as the letters ‘UN’; to be used to mark the personnel and material of UN Peacekeeping missions

- The distinctive flag of the Roerich Pact for the identification of historic monuments, museums, scientific, artistic, educational and cultural institutions

- The distinctive marking of cultural property, to be used to mark ‘movable or immovable property of great importance to the cultural heritage of every people’; and the triple use of that sign to mark cultural property under special protection, including ‘refuges intended to shelter movable cultural property’ and ‘immovable cultural property of very great importance’

- The special sign used to facilitate the identification of ‘works and installations containing dangerous forces’ (dams, dikes and nuclear electrical generating stations), consisting of three bright orange circles placed on the same axis.

[ Refer to the Annex]
19.6 TERMINAL QUESTIONS

1) Give a brief descriptions the Origins and development of the distinctive emblems.

2) What are the provisions of the Geneva conventions relating to the protection of distinctive emblems.

19.7 ANSWERS AND HINTS

Self Assessment Questions

1) The various distinctive emblems of the Geneva Conventions may be accorded two distinctively different meanings. On one hand, the visual symbols of the Red Cross, the Red Crescent, the Red Lion with Sun and the Red Crystal serve as protection markings in armed conflicts, a denotation which is derived from and defined in the Geneva Conventions. This is called the protective use of the symbols. On the other hand, these symbols are used as distinctive logos by those organizations which are part of the International Red Cross and Red Crescent Movement. This is the indicative use of the emblems, a meaning which is defined in the statutes of the International Movement and partly in the third Additional Protocol.

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2) Only the misuse of internationally recognized emblems, signs or signals violates IHL.

Improper Use of the Emblems includes any use of a distinctive emblem inconsistent with the relevant rules of international humanitarian law. The use of an emblem by unauthorized people or bodies (commercial enterprises, pharmacists, private doctors, NGOs, ordinary individuals, etc.) or for purposes that are inconsistent with the Movement's Fundamental Principles are considered 'Improper Use'.

Terminal Questions

1) Refer to Section 19.3

2) Refer to Section 19.4