

REPORTS AND DOCUMENTS

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)

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I hope that ... we shall bear in mind the fact that the emblem worn by each of us is not the privilege of any one State, people or religion, but a sign of respect for wounded and defenceless victims and a token of solidarity with human beings in distress. (Alexandre Hay, President of the ICRC, during a speech before the International Conference in Manila)¹

Introduction

The emblems of the red cross and red crescent on a white ground have been used since the nineteenth century as universal symbols of assistance to victims of armed conflicts and natural disasters. While a detailed account of their long history is beyond the scope of this commentary,² it is useful to recall some significant

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1 Report of the 24th International Conference of the Red Cross, Manila, 7–14 November 1981, p. 50.

2 For a detailed history of the issue of the emblem, see François Bugnion, *Towards a Comprehensive Solution to the Question of the Emblem*, updated 4th edn, ICRC, Geneva, April 2006, 105 pp.

moments in an effort to understand the reasons behind the adoption on 8 December 2005 of an additional emblem – the red crystal.

The original Geneva Convention of 22 August 1864 established the red cross as the sole emblem designated to identify medical services of armed forces as well as voluntary relief societies.³ The idea was to substitute the various flags and distinctive signs sometimes used on battlefields with a single emblem that is identifiable from a great distance and easy to recognize and reproduce.⁴ But the exact reasons for choosing a red cross from among the various potential symbols fulfilling these criteria remain unknown.⁵

Quite soon, the emblem sparked objections because of the religious connotation that certain states attributed to it. In 1876, the Ottoman Empire – during a conflict with Russia – unilaterally declared that from then on it would use the red crescent on a white ground to distinguish the medical services of its armed forces, saying that the nature of the distinctive sign of the Convention “has so far prevented Turkey from exercising its rights under the Convention, because it gave offence to Muslim soldiers”.⁶ The protests of Switzerland – the depositary state of the Geneva Convention – as well as those of other states party to the convention led to a compromise to accept use of the red crescent on a strictly temporary basis limited to the duration of the conflict. A first break was nonetheless made with the principle of a single distinctive sign.

Other emblems subsequently appeared, most of them ephemeral;⁷ only a small number were the subject of official requests for recognition. In particular, during the Conference for the Revision of the Geneva Convention (1906), in addition to the reiterated request by the Ottoman Empire for recognition of the

3 The Geneva International Conference of 1863 had already adopted Resolution 8 stipulating that voluntary medical personnel “shall wear in all countries, as a uniform distinctive sign, a white armband with a red cross”, but lacking the authority to impose this distinctive emblem on the medical personnel of the armed forces, it settled for a recommendation to that effect. This recommendation was the basis for the work of the Diplomatic Conference convened by the Swiss government that led to the adoption of the original Geneva Convention in August 1864.

4 “Long before the Red Cross was founded, hospitals and ambulances were sometimes marked on the battlefield by a flag of a single colour, which varied according to the occasion and the country. From the beginning, those responsible for the Red Cross and the Geneva Convention recognized the need for a uniform international emblem as the visible sign of the immunity to which medical personnel and the wounded should be entitled”. Commentary on Article 38 of the First Geneva Convention, in Jean Pictet (ed.), *The Geneva Conventions, Commentary*, Vol. 1, *Geneva Convention for the Amelioration of the Wounded and Sick in Armies in the Field*, ICRC, Geneva, 1952, p. 297.

5 In the words of François Bugnion, above note 2, p. 8: “For reasons which it was not considered necessary to record in the minutes of the October 1863 Conference, the emblem chosen was the red cross on a white ground. Contemporary Conference documents – at least those available to us – shed no light on the reasons for the choice. We are therefore reduced to conjecture.”

6 Dispatch from the Sublime Porte to the Federal Council, 16 November 1876, *Bulletin international des Sociétés de Secours aux Militaires blessés*, No. 29, January 1877, p. 36.

7 For example, in 1877, the National Society of Japan used a red strip beneath a red sun on a white ground. Numerous other emblems subsequently appeared, such as the red archway of Afghanistan in the interwar period, the red wheel on a white ground in India after the Second World War, the swastika in Sri Lanka and the red palm in Syria. The governments of these countries in the end decided to discontinue the use of these emblems, opting instead for one of those recognized by the Geneva Conventions. For a list of these various emblems and a brief description of their histories, see François Bugnion, *The Emblem of the Red Cross: A Brief History*, ICRC, Geneva, 1977, pp. 61–8.

red crescent, Persia and Siam demanded the right to use the red lion and sun and the red flame respectively.⁸ The Conference refused to formally recognize the three signs, solemnly reaffirming the non-religious character of the heraldic sign of the red cross on a white ground, which had been adopted as a tribute to Switzerland by inverting the federal colours.⁹ The Conference nonetheless authorized the states to formulate reservations to the Geneva Convention's provisions on the emblem. The Ottoman Empire, like Persia, took advantage of this opportunity, while Siam declined and adopted the red cross.

The red crescent and the red lion and sun on a white ground were finally recognized by the Geneva Convention of 27 July 1929 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, albeit with a restriction – only the states that already used one of these two emblems before the adoption of the 1929 Convention could continue to use it.¹⁰ This solution responded to a dual necessity: it acknowledged and gave legal effect to the *fait accompli* of the deviation from a single emblem, and it prevented any future proliferation of new distinctive emblems that would risk weakening protection by blurring the ability to quickly identify protected personnel, goods and means of transport.

The solution laid down by the 1929 Convention was later confirmed by the First Geneva Convention of 12 August 1949.¹¹ The plenipotentiaries at the 1949 Conference rejected alternative proposals, which included adopting an entirely new emblem replacing the red cross, red crescent and red lion and sun; reverting to use of the red cross alone; or admitting an additional emblem – the red shield of David. While the first two proposals were quickly dismissed, the third – submitted by the Israeli delegation – resulted in heated debates. Its rejection was ultimately justified not only by the desire to avoid any further proliferation of emblems, but also by the concern that admission of this emblem in particular would discredit the argument that the recognized distinctive signs had no religious significance. Israel's later attempt to obtain international recognition for the red shield of David during the Diplomatic Conference of 1974–7 also met with failure for the same reasons.

The 1929 compromise thus endured for decades. Yet this solution gave rise to certain difficulties. The first is evident: the coexistence of the two signs,¹² easily associated with two of the principal monotheistic religions, is conducive in

8 Such requests were also formulated during the Hague Conferences of 1899 and 1907. They suffered the same fate as that reserved for them at the 1906 Conference.

9 Article 18 of the Geneva Convention of 6 July 1906. This declaration was reaffirmed in Article 38(1) of the First Geneva Convention of 12 August 1949.

10 Article 19 of the Geneva Convention of 27 July 1929 indicates that “*in the case of countries which already use, in place of the red cross, the red crescent or the red lion and sun on a white ground as a distinctive sign, these emblems are also recognized by the terms of the present Convention*” (emphasis added).

11 Article 38 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949.

12 Per a diplomatic note, dated 4 September 1980, the Islamic Republic of Iran declined to exercise its right to use the red lion and sun and opted instead for the red crescent, while reserving the right to return to the red lion and sun should new emblems be recognized. In this light, the text will – depending on the context – sometimes only refer to the two recognized emblems – the red cross and the red crescent.

certain contexts to the erroneous perception that these emblems have a religious or political connotation.¹³ These perceptions could prove especially problematic during conflicts between two or more adversaries using different emblems. Furthermore, they could cast doubt on the fundamental principles of neutrality and impartiality on which the work of the components of the International Red Cross and Red Crescent Movement (“the Movement”) is based. This could deprive the emblems of the respect to which they are entitled and jeopardize the protection of the persons who bear them.

The second difficulty results from the refusal of certain states and National Societies to adopt one of the emblems recognized by the 1949 Geneva Conventions because they do not identify with either of them. This refusal is a hindrance to the universality of the Movement, the Statutes of which until 2006 required the use of the red cross or red crescent as a necessary condition for the recognition of a National Society.¹⁴ The Israeli voluntary relief society Magen David Adom was faced with this problem, as was the Eritrean relief society, which sought to use the double emblem of the red cross and red crescent placed side by side.¹⁵

It was with the intention of overcoming these difficulties and comprehensively resolving the question of the emblem that the states party to the Geneva Conventions adopted Additional Protocol III thereto during a Diplomatic Conference held in Geneva from 5 to 8 December 2005. A brief commentary on the title, preamble and each article of this new instrument of international humanitarian law is provided below.

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)

The title of Additional Protocol III is based on those of Additional Protocols I and II, adopted on 8 June 1977 and relating to international and non-international armed conflicts. Specific legal consequences flow from this wording.

Like its two predecessors of 1977, Additional Protocol III is no more than an “additional” instrument and cannot be regarded as an independent document. It is formally linked to the four Geneva Conventions of 12 August 1949 for the

13 In addition, this continuously repeated message concerning the non-religious character of the distinctive emblems is proving more and more difficult to convey in a world increasingly structured around an alleged divide between the Christian West and the Muslim sphere.

14 Entitled “Conditions for recognition of National Societies,” Article 4 of the Statutes of the Movement did indeed stipulate (before the 2006 amendment) that “In order to be recognized in terms of Article 5, paragraph 2 b) as a National Society, the Society shall meet the following conditions ... 5. Use the name and emblem of the Red Cross or Red Crescent in conformity with the Geneva Conventions.”

15 On the question of the double emblem, see Bugnion, above note 2, pp. 18–21. As he points out, the National Society of Kazakhstan had initially opted for the double emblem before abandoning it for the red crescent alone through a law that came into effect on 20 December 2001.

protection of victims of war,¹⁶ making it impossible to become party to the Protocol without already being party to the Conventions (or becoming party to them simultaneously¹⁷). The connection to the substantive rules of the Geneva Conventions is equally strong. Additional Protocol III supplements their substantive rules and implementation mechanisms, but it is in turn governed by relevant provisions in the 1949 Conventions that it has not amended – in particular their general and final provisions as well as the general principles of international humanitarian law that the Conventions cover.¹⁸

The subject matter of Additional Protocol III, however, is relatively restricted compared with that of the two Additional Protocols of 1977: it supplements the Geneva Conventions by permitting the use of an additional distinctive sign. The reiteration of the term “additional” clearly indicates that the distinctive emblem established by Protocol III is not intended to replace the emblems recognized by the 1949 Geneva Conventions, but to offer the High Contracting Parties – as well as the other components of the Movement, and potentially other authorized actors – the possibility of using an additional emblem subject to the conditions set forth in the body of the text.

Preamble

A preamble – the introductory part of an international convention – usually seeks to explain the rationale behind the text as well as clearly state its object and purpose. But the preamble may also contain additional provisions designed to bridge gaps in the treaty, especially by recalling the general principles that inspired its creation.¹⁹ Leaving aside the complex issue of the legal significance of a preamble to an international treaty (which will often depend on the nature of the treaty itself), we would simply point out as a reminder that a preamble forms part of the context in which the treaty has been adopted and is therefore an important tool for its interpretation.²⁰

The High Contracting Parties, *Reaffirming the provisions of the Geneva Conventions of 12 August 1949 (in particular Articles 26, 38, 42 and 44 of the First Geneva Convention) and, where*

16 First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Third Geneva Convention relative to the Treatment of Prisoners of War, Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

17 On this point see the *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff Publishers, 1987, pp. 1069 (§ 3693) and 1076 (§ 3715).

18 *Ibid.*, p. 20 (§§ 4–6).

19 See *Dictionnaire de droit international public*, Bruylant, Brussels, 2001, p. 865 (“des dispositions supplétives destinées à combler les lacunes du traité, notamment sous forme de rappel des principes généraux qui l’ont inspirés”).

20 See Article 31(2) of the 1969 Vienna Convention on the Law of Treaties.

applicable, their Additional Protocols of 8 June 1977 (in particular Articles 18 and 38 of Additional Protocol I and Article 12 of Additional Protocol II), concerning the use of distinctive emblems,

The first paragraph of the preamble defines the legal framework into which the subject matter of Additional Protocol III fits. As already mentioned, the latter must be interpreted according to the spirit and relevant rules of the Geneva Conventions of 12 August 1949, as well as those of the two Additional Protocols of 8 June 1977 where applicable.

Many of the provisions of the Geneva Conventions and their Additional Protocols I and II explicitly refer to the distinctive emblems.²¹ An exhaustive list could have been drawn up in this paragraph, but besides being of limited use it would have made the text unnecessarily heavy. A draft version of Additional Protocol III²² took the opposite approach, simply making a general reference to the relevant Conventions without identifying any particular provisions. The final text is the result of a compromise: as indicated by the expression “in particular”, it only enumerates certain articles of the First Geneva Convention and of Additional Protocols I and II which it seemed useful to highlight due to their particular relevance to emblem usage and display.

Desiring to supplement the aforementioned provisions so as to enhance their protective value and universal character,

As explained in the introduction, even though the red cross and red crescent are universal symbols of assistance to victims of armed conflicts and disasters, they do not always enjoy, in certain limited geographical contexts, the respect to which they are entitled. Furthermore, certain states do not identify with either of these two emblems, or wish to be entitled to use both of them simultaneously.

The second paragraph of the preamble therefore explicitly states the main objectives pursued by Additional Protocol III. It is designed to supplement the Geneva Conventions and the first two Additional Protocols by adopting an additional emblem that will enhance the value of the distinctive emblem, especially in operational contexts where the existing emblems might be erroneously perceived as having political or religious connotations. Additional Protocol III also authorizes the use of the additional emblem by National Societies for indicative purposes to signal their membership in the International Red Cross and Red Crescent

21 However, the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 are not the only international humanitarian law treaties to refer to these distinctive emblems; see also Article 23(f) of the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land and the Regulations concerning the Laws and Customs of War on Land annexed thereto.

22 This refers to the Draft Third Additional Protocol transmitted by the ICRC to the Swiss government which, in its capacity as depositary, sent it to all the states Parties to the Geneva Conventions on 5 July 2000 (hereinafter referred to as previous draft of Additional Protocol III). A second draft, dated 12 October 2000 and taking into account the negotiations held during summer 2000, was circulated by the depositary and formed the basis for discussions held during the Diplomatic Conference of 5–8 December 2006 (see, on this point, paragraph 5 of the Final Act of the Diplomatic Conference). On the various stages of the negotiating process in 2000 of Additional Protocol III see Bugnion, above note 2, pp. 32–6.

Movement. Adoption of this instrument would thus further reinforce the universality of the Movement by authorizing the integration within it of National Societies that refuse to adopt, solely and exclusively, the red cross or red crescent emblem.

Noting that this Protocol is without prejudice to the recognized right of High Contracting Parties to continue to use the emblems they are using in conformity with their obligations under the Geneva Conventions and, where applicable, the Protocols additional thereto,

It has already been explained that the emblem of Protocol III (due to its purely “additional” nature) is not intended to replace the emblems recognized by the Geneva Conventions of 1949 (i.e. the red cross, red crescent, and red lion and sun). The third paragraph of the preamble merely reiterates that it is possible for states to continue to use one of the emblems provided for by the Geneva Conventions.

A saving clause has nevertheless been included as a reminder that the lawful use of these emblems is obviously subject to conformity with the relevant rules of the Geneva Conventions and, where applicable, their Additional Protocols. Thus, if persons, units or means of transport that are not authorized to display these distinctive emblems were to do so, or if persons, units or means of transport normally authorized to use them were to employ them for purposes other than those for which they have been created, such use would be considered unwarranted or improper (and sometimes perfidy).

Recalling that the obligation to respect persons and objects protected by the Geneva Conventions and the Protocols additional thereto derives from their protected status under international law and is not dependent on use of the distinctive emblems, signs or signals,

The fourth paragraph of the preamble recalls the fundamental principle of international humanitarian law that signalling protected status is not an essential condition for protection. Certainly, the distinctive emblems, signs or signals recognized by international humanitarian law greatly facilitate protection by giving it a concrete form of expression; that is where their practical value lies. However, an enemy who should have recognized the protected status of a person or object cannot ignore that right to protection by claiming the absence of these emblems, signs or signals.²³ Indeed, an attempt to justify an attack solely on the grounds that no distinctive sign was displayed could, depending on the circumstances, be considered a war crime.

Here the term “emblems” refers to the red cross, red crescent and red lion and sun on a white ground. The term “signs” has been added in order to indicate that this principle also applies to other distinctive signs recognized by the Geneva

23 “[T]he red cross and red crescent are simply a useful tool, a practical means of seeking to ensure respect for a pre-existing international legal right of protection”. Michael Meyer, “The proposed new neutral protective emblem: a long-term solution to a long-standing problem”, in *International Conflict and Security Law: Essays in Memory of Hilaire McCoubrey*, Cambridge University Press, Cambridge, 2005, p. 88. Edited by Richard Burchill, Nigel D. White and Justin Morris.

Conventions, their Additional Protocols, or any other international humanitarian law instruments; it is understood to mean, for example, signs related to civil defence,²⁴ works and installations containing dangerous forces²⁵ or cultural objects.²⁶ Lastly, the words “distinctive signals” refer to signals exclusively designed to enable the identification of medical units and transports, as provided for in Chapter III of Annex I to Additional Protocol I.²⁷

Stressing that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance,

In the words of the commentary on Article 38 of the First Geneva Convention, “the red cross emblem is intended to signify one thing only – something which is, however, of immense importance: respect for the individual who suffers and is defenceless, who must be aided, whether friend or enemy, without distinction of nationality, race, religion, class or opinion”.²⁸ The distinctive emblems must, as a matter of principle, be solely perceived as symbols of aid – visible indications of the protection that must be given to the wounded, sick and shipwrecked as well as to medical personnel, units and transports in the event of an armed conflict. They must necessarily be neutral and devoid of any other connotation.

This is the principle unequivocally reaffirmed by the fifth paragraph of the preamble. It lists some of the meanings (religious, ethnic, racial, regional or political) which are sometimes wrongly attributed to the distinctive emblems and which the High Contracting Parties never intended to confer upon them. Although the text does not explicitly make this point, it seems clear that the list offers only some examples and is not exhaustive.

Emphasizing the importance of ensuring full respect for the obligations relating to the distinctive emblems recognized in the Geneva Conventions and, where applicable, the Protocols additional thereto,

Considering that, during an armed conflict, one purpose of these distinctive emblems is to indicate that the persons or objects bearing them enjoy a special international protection and therefore must not be attacked, any unwarranted or improper use risks undermining the credibility of the entire protective regime.

24 Article 66(4) of Additional Protocol I describes the international distinctive sign of civil defence as an equilateral blue triangle on an orange ground used for the protection of civil defence organizations, their personnel, buildings and *matériel* and for civilian shelters.

25 Article 56(7) of Additional Protocol I states that to facilitate the identification of objects and installations containing dangerous forces, the parties to the conflict may mark them with a special sign consisting of a group of three bright orange circles placed on the same axis.

26 The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 specifies, in Article 16, that the distinctive emblem of the Convention takes the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal blue square, one of the angles of which forms the point of the shield, and of a royal blue triangle above the square, the space on either side being taken up by a white triangle).

27 For a definition of the expression “distinctive signal,” see Article 8(m) of Additional Protocol I.

28 Above note 4, p. 305.

Even in a non-conflict situation, any improper use of the emblem tarnishes its image in the public's mind and, hence, weakens its protective value in wartime.

For this reason, the sixth paragraph of the preamble rightly recalls the importance of ensuring respect for the legal obligations relating to the emblem. In this regard, it should be noted that the states party to the Geneva Conventions have undertaken to enact penal legislation (that may also take the form of administrative, regulatory or disciplinary measures) making it possible to prevent and punish improper use of the emblem both in times of peace and war.

Recalling that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems,

The seventh paragraph of the preamble is a reminder that the distinctive emblems may serve two essentially different purposes. The first – protective use – is to give visible expression to the protection accorded by the Geneva Conventions to medical personnel, units or transports of the armed forces as well as to other duly authorized organizations, objects and persons. In view of the distinctive emblem's intended specific function in this case, it must be as large as necessary under the circumstances, in order to be identifiable even from a distance.²⁹ The second – indicative use – shows that the person or object has a link with the Movement; in this context, the emblem must be comparatively small in size and used in a way that precludes any risk of it being confused with the emblem used as a protective device.³⁰

It is important to remember this distinction because the conditions for use of the additional emblem proposed by Additional Protocol III vary according to whether its use is protective or indicative.

Recalling further that National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use within the framework of such activities may be used in the country where the activity takes place and in the country or countries of transit,

Paragraph eight of the preamble merely reaffirms, though using different language, the applicable rules of the Movement as stated in Resolution XI adopted by the 10th International Conference held in Geneva in 1921. The resolution stipulates that “No Red Cross Society shall set up a Section, Delegation, Committee or Organization, or have any activity in a foreign country without the consent of the Central Committee of the National Society of that country and of

29 The rule that the emblem when used as a protective device must be identifiable from as far away as possible is reflected in Article 6 of the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, adopted by the 20th International Conference of the Red Cross in Vienna, 1965, and revised by the Council of Delegates in Budapest, 1991. The Regulations furthermore indicate that the emblem may be lighted or illuminated at night or when visibility is reduced. It shall as far as possible be made of materials rendering it recognizable by technical means of detection and displayed on flags or flat surfaces visible from as many directions as possible, including from the air.

30 *Commentary on the First Geneva Convention*, above note 4, Article 44, p. 325; *Commentary on Protocol I*, above note 17, Article 38, p. 450 (§§ 1538–1539). See also Article 4 of the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies.

its own Central Committee, especially as far as the use of the name and emblem of the Red Cross is concerned". This point was confirmed by Resolution VII adopted at the 16th International Conference held in London in 1938.³¹

The question arises as to how a National Society operating on foreign territory, and thus outside its "jurisdiction", can ensure that the emblem it intends to use is legally authorized in the area of its activity. Three elements can be taken into consideration. First, if the said emblem is recognized by the 1949 Geneva Conventions and the host state is party to them, there is a presumption that the emblem is legally acceptable. Second, if it is an emblem other than those recognized by the 1949 Geneva Conventions (such as the red shield of David incorporated within the red crystal), an analysis of the national legislation will help determine whether it may be displayed. Finally, especially where national legislation is silent, the decisive criterion will be the authorization (or non-authorization) of the host National Society.

Recognizing the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems,

Brief reference to these difficulties has already been made in the introduction and commentary on the second paragraph of the preamble. They mainly arise because of the erroneous view sometimes held that the red cross and the red crescent have a religious or political significance or because some National Societies find it hard to choose between the emblems recognized by the Geneva Conventions. The ninth preambular paragraph simply notes this fact without making any sort of value judgement.

Noting the determination of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems,

The last paragraph of the preamble acknowledges that the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (the International Federation) and the Movement had decided, at the time it was drafted, to change neither their names nor their respective distinctive signs. This statement does not, however, prevent the ICRC and the International Federation as international components of the Movement from using the emblem of Additional Protocol III in certain exceptional circumstances (see especially Article 4 thereof).

Potential modifications to names and emblems will therefore be limited to National Societies that choose to use the red crystal. It should be noted that the adoption of Additional Protocol III has led to modification of the Statutes of the Movement in order to allow National Societies to use the designation and distinctive emblem established by this instrument or a combination of emblems

31 For the text of these two resolutions, see *Handbook of the International Red Cross and Red Crescent Movement*, 13th edn, ICRC, Geneva, March 1994, pp. 729–30.

(for indicative purposes) according to the conditions set forth in Article 3.³² Other documents, such as the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, must also be amended as a result of Additional Protocol III.

Have agreed on the following:

Unlike the Conventions of 1949 and their Additional Protocols of 1977, the 17 articles forming the body of the text are not divided into parts, sections or chapters. The first seven articles deal with the substance, while the last ten are devoted to that which, traditionally in the law of treaties, falls under the heading of “final provisions”. The latter are largely inspired by (if not identical to) the text of the Conventions and Additional Protocols I and II. They will therefore be covered only by very brief commentaries pointing out and explaining any divergences from the 1949 and 1977 texts. The commentaries on the substantive provisions, by contrast, will be more detailed.

Article 1 – Respect for and scope of application of this Protocol

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

This subparagraph is taken verbatim from Article 1 common to the four Geneva Conventions and from Article 1(1) of Additional Protocol I. No specific comments are called for in the context of Additional Protocol III; the reader may simply refer to the relevant commentaries on the Conventions and Additional Protocol I.³³

2. This Protocol reaffirms and supplements the provisions of the four Geneva Conventions of 12 August 1949 (“the Geneva Conventions”) and, where applicable, of their two Additional Protocols of 8 June 1977 (“the 1977 Additional Protocols”) relating to the distinctive emblems, namely the red cross, the red crescent and the red lion and sun, and shall apply in the same situations as those referred to in these provisions.

Much of the second paragraph of Article 1 echoes the first paragraph of the preamble. It reiterates the objectives of Additional Protocol III – to reaffirm the relevance of the provisions of the four Geneva Conventions and their Additional Protocols of 1977 concerning the distinctive emblems while further developing the

32 The 29th International Conference of the Red Cross and Red Crescent adopted Resolution 1 on 22 June 2006, adapting the Statutes of the Movement to Additional Protocol III. In particular, a National Society is no longer required to use the name and the emblem of the red cross or red crescent in conformity with the Geneva Conventions in order to be recognized; under Article 4(5) it is now required to “use a name and distinctive emblem in conformity with the Geneva Conventions and their Additional Protocols”.

33 See especially *Commentary on Protocol I*, above note 17, pp. 34–9 (§§ 36–51).

law on the subject. The paragraph also makes it clear that the Additional Protocol supplements the other instruments, and does not replace any of their provisions.

The main interest of this paragraph lies in the definition (particularly in temporal terms) of the scope of application of Additional Protocol III by referring to the relevant provisions of the Conventions and the two Additional Protocols of 1977. Additional Protocol III applies in situations of armed conflict, whether international or non-international. It should be noted, however, that the rules relating to the emblem form part of those “provisions which shall be implemented in peacetime”, to quote the wording of Article 2 common to the Geneva Conventions. Their application therefore does not depend on the existence of an armed conflict.

Article 2 – Distinctive emblems

The expression “distinctive emblem” is drawn from the reference to the red cross in Article 38 of the 1949 Geneva Convention (I) as “the emblem and distinctive sign of the Medical Service of the armed forces”. Article 8(1)(f) of Additional Protocol I uses the same expression and defines it as “the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies”. Even though Article 8 limits the scope of this term for the purposes of Additional Protocol I, nothing indicates that Additional Protocol III has understood the wording differently. It follows that the provision under consideration here is devoted to the protective use of the emblems.

1. This Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. The distinctive emblems shall enjoy equal status.

The first paragraph of Article 2 establishes an additional distinctive emblem alongside those already recognized by the Geneva Conventions of 1949 and clearly states that this additional emblem will have a purpose identical to that of its precursors. It is merely a repetition of the purpose of Additional Protocol III as stated in its title.

The second sentence of this paragraph marks a development in treaty law. Article 38 of the First Geneva Convention established a certain hierarchy among the recognized emblems – the sign of the red cross was to be the rule, with the red crescent and the red lion and sun being accepted only as exceptions. As mentioned above in the introduction, the negotiators allowed the use of the latter two signs only by those states that already used them (therefore excluding any other states from subsequently doing so).³⁴ The particular status given to the red cross explains why the title of Chapter VII of the First Geneva Convention of 1949 refers to the distinctive emblem in the singular. Yet practice has gradually led to the de facto

³⁴ See above, p. 177.

placing of these distinctive emblems on an equal footing. This paragraph explicitly acknowledges this development by declaring the equal legal status of the various emblems (including the one provided for in this Protocol), and logically employs the plural “distinctive emblems”.

2. This additional distinctive emblem, composed of a red frame in the shape of a square on edge on a white ground, shall conform to the illustration in the Annex to this Protocol. This distinctive emblem is referred to in this Protocol as the “third Protocol emblem”.

Article 2(2) provides the official description of the form chosen for the additional emblem. In order to guide the High Contracting Parties wishing to use the new distinctive emblem, reference is made to an illustration of it in the Annex. The choice of this design is the outcome of a long process of research and reflection including visibility tests conducted by the Swiss armed forces. The main criteria that governed its selection were its simplicity, its ease of recognition from a distance (especially from the air)³⁵ and its lack of any religious, ethnic, racial, regional or political connotation.

Although broad consensus on the shape of the additional emblem had been reached at the time the Protocol was adopted, its name had not been definitively decided, giving rise to the provisional designation of the “third Protocol emblem”. The name of the additional emblem must meet very precise criteria. It must of course be devoid of any religious or political significance. It must also be linguistically neutral and, if possible, easy to pronounce in at least the three statutory languages of the Movement (English, Spanish and French) and in numerous other languages, including the official languages of the United Nations (especially Arabic, Chinese and Russian).³⁶ Another factor that had to be taken into account is the possibility of easily adding it to the names of the existing emblems. Lastly, it must be short, easy to memorize and convey a dynamic but serious image.

On this basis, agreement was reached on the term “red crystal” (“cristal rouge” in French and “cristal rojo” in Spanish). The crystal is a sign of purity, frequently associated with water, an essential component of all human life.³⁷ This agreement is embodied in Resolution 1 adopted on 22 June 2006 by the 29th International Conference of the Red Cross and Red Crescent.³⁸

35 The initially envisaged design was a simple red square on edge. But tests carried out from 21 to 23 August 2000 by the Swiss Army, with the support of the ICRC, demonstrated that the visibility of the red square was slightly inferior to that of the red cross and red crescent under certain circumstances (particularly when observed through a thermal imaging camera). The introduction of a white square in the centre of the red square was recommended, along with more visibility tests, which were carried out from 21 to 27 August 2001 and led to the conclusion that this new emblem would, in all cases, be as easily identifiable as those recognized by the Geneva Conventions of 1949.

36 Article 17 indicates, moreover, that Additional Protocol III was adopted in six languages (English, Arabic, Chinese, Spanish, French and Russian) and that the six texts are equally authentic.

37 See Meyer, above note 23, p. 98.

38 In the second paragraph of that resolution, the 29th International Conference of the Red Cross and Red Crescent “decides that the Third Protocol emblem will henceforth be designated as the “red crystal””.

3. The conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblem established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols.

Like the first paragraph, which drew attention to the fact that the third Protocol emblem and the existing emblems serve the same purpose and have equal status, the third paragraph stipulates that the conditions for their use and respect are identical. In other words, this Protocol does not seek to alter the current terms and conditions for using the distinctive emblems by permitting additional categories of persons to use them, or by extending their protection to additional categories of persons or objects, or by modifying the conditions for their respect or protection.

Without reproducing in detail the rules governing the use of and respect for the emblem, the point to be noted here is simply that the red crystal may be used for protective purposes during armed conflict only to identify a limited number of persons and objects. These are first and foremost the medical services of the armed forces. The notion of medical services is not precisely defined, even though it appears several times in the Geneva Conventions and Additional Protocol I.³⁹ One may generally consider this term to mean the following:

- medical personnel, meaning those persons permanently or temporarily assigned exclusively to medical purposes or to the administration of medical units or to the operation or administration of medical transports;
- medical units, fixed or mobile, permanent or temporary, of a party to the conflict or placed at the disposal of a party to the conflict;
- means of transportation, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a party to the conflict;
- medical equipment of medical units, transportation and personnel.⁴⁰

Religious personnel attached to the armed forces may also bear the emblem for protective purposes. The term “religious personnel” includes persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached permanently or temporarily to the armed forces or to medical units of a party to the conflict or placed at the disposal of a party to the conflict.⁴¹

Protective use of the emblem is not, however, restricted to medical and religious services of armed forces. Indeed, the Fourth Geneva Convention mentions that, under certain strictly defined conditions, civilian hospitals and

39 The term is also found in Additional Protocol III in the next paragraph of this article, as well as in Article 5.

40 This list defining the notion of medical services is drawn from Pietro Verri, *Dictionary of the International Law of Armed Conflict*, ICRC, Geneva, 1992, pp. 70–1, and Françoise Bouchet-Saulnier, *Dictionnaire pratique du droit humanitaire*, 3rd edn, La découverte, Paris, p. 497. For definitions of medical personnel, units and means of transport, see Additional Protocol I, Article 8 (c), (e) and (g) respectively.

41 See the First Geneva Convention, Article 40, and Additional Protocol I, Article 18(1). For the definition of religious personnel, see Additional Protocol I, Article 8(d), specifying that religious personnel can also be attached to civil defence organizations of a party to a conflict.

persons regularly and solely engaged in the operation and administration of these hospitals⁴² may also use the distinctive emblems. Additional Protocol I extends this list of civilian entities permitted to bear the emblem by granting the right – also under certain strictly defined conditions – to civilian medical and religious personnel, medical units and medical transportation.⁴³

The Geneva Conventions also accord the international organizations of the Movement and their duly authorized personnel the right to use the emblems for protective purposes (but see Article 4 of Additional Protocol III). They further specify that members of relief societies (such as the National Red Cross or Red Crescent Societies) are also authorized, in an emergency, to use the emblem on their own initiative while they are engaged in recovering and caring for the wounded, sick or shipwrecked. The Convention requires, however, that the societies be duly recognized and authorized by their government and limits the protective use of the emblem to personnel employed in the same role as the medical personnel of the armed forces and subject to military laws and regulations.⁴⁴ In this case, the state must continue to ensure that relief societies do not misuse the emblems.

Finally, the Geneva Conventions complete the list of persons and entities authorized to use the emblem for protective purposes by including hospital zones and localities created on the territory of a party to the conflict to protect the wounded and sick from the effects of war. The draft agreement found in Annex I to the First Geneva Convention provides for the outer precincts and buildings of such areas to be marked by means of the emblems.

4. 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.

This provision fills a gap in treaty law, which did not make clear whether the medical services of the armed forces of High Contracting Parties may use a distinctive emblem other than that which they normally use (for example the red cross instead of the red crescent or vice versa). Paragraph 4 affirms that this is possible when such use is likely to enhance protection. This flexibility of use, which applies as much to the emblems recognized in 1949 as to the additional

42 Article 18(3) of the Fourth Geneva Convention stipulates, however, that the authorization of the state is required before a civilian hospital (recognized as such by the authorities) may be marked by means of the emblem. Article 20(2) of the same convention geographically restricts the ability of medical and religious personnel to identify themselves by means of the emblem to “occupied territory and in zones of military operations”.

43 Additional Protocol I in large part echoes the conditions already imposed by the Fourth Geneva Convention. Article 18(4) stipulates that the consent of the competent authority is needed for medical units and transportation, whether civil or military, to be marked with the distinctive emblem. Article 18(3) authorizes the identification of civilian medical and religious personnel by means of the emblem only “in occupied territory and in areas where fighting is taking place or is likely to take place”.

44 See the First Geneva Convention, Article 40.

emblem of this Protocol, should further consolidate the equal status of the various distinctive emblems.

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. This conclusion logically flows from the use of the singular when authorizing the temporary use of “any distinctive emblem.” Moreover, a reading of this paragraph as temporarily accepting a cumulative use of the recognized emblems would constitute a significant departure from prior law. Such a departure would be incompatible with paragraph 3, according to which Additional Protocol III does not seek to modify the recognized conditions for use of and respect for the emblems.

Article 3 – Indicative use of the third Protocol emblem

1. 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, or**
 - b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol.**
- Incorporation shall conform to the illustration in the Annex to this Protocol.**

A National Society is free to decide to use the third Protocol emblem for indicative use.⁴⁵ A state party to Additional Protocol III would simply need to amend its national law governing the use of the emblem so as to implement the provisions of Protocol III.



Article 3(1) offers two new possibilities as well. First, National Societies may decide to use this additional emblem with one or a combination of the

⁴⁵ The option to use the red crystal by itself (without incorporating other emblems within it) for indicative purposes flows only implicitly from the wording of Article 3(1) of Additional Protocol III. It is explicitly affirmed, however, by Article 2 of the Annex to this Protocol.

existing 1949 emblems incorporated within it.⁴⁶ Such incorporation, provided for in paragraph 1(a), is not subject to any particular conditions. Though these illustrations are not intended to be exhaustive, the main incorporation options are as follows:⁴⁷



Second, paragraph 1(b) grants a specific place to “another emblem” that may be incorporated within the third Protocol emblem, provided that it meets two cumulative conditions – one substantive, the other a formality. The substantive condition is that a High Contracting Party must already have been using that other emblem as its regular emblem for a period long enough for it to have become known as the emblem of the Society – this is the meaning of the phrase “effective use”; the formality requires that it must have been the subject of a communication to the High Contracting Parties to the Geneva Conventions and the ICRC through the depositary prior to the adoption of Additional Protocol III. The only emblem that can meet both of these conditions is the red shield of David, which has been used by the Israeli National Society (Magen David Adom in Israel) since the 1930s; it was also the subject of a communication through the depositary to the High Contracting Parties and the ICRC in Israel’s reservation to its ratification of the Geneva Conventions on 6 July 1951.⁴⁸ The outcome of this provision is that the red shield of David is the only other emblem which qualifies for inclusion in the third Protocol emblem.



46 A previous draft of Additional Protocol III detailed the size of the emblem (or emblems) to be incorporated within the red crystal. But this provision was ultimately considered superfluous and removed from the treaty. A brochure entitled “Red cross, red crescent, red crystal emblems – Design guidelines” (June 2006), (available at: <http://www.ifrc.org/who/emblem.asp>), written under the aegis of the International Federation, gives precise specifications for the design of the emblems recognized by the Geneva Conventions, including the third Protocol emblem. The use of emblem designs that are different from those recommended in the brochure will not alter the protective or indicative value of the emblem, and can never justify an attack.

47 The design options incorporating the red lion and the sun within the crystal are not reproduced here.

48 This reservation stated that while respecting the inviolability of the distinctive signs and emblems of the Convention, Israel would use the Red Shield of David as the emblem and distinctive sign of the medical services of her armed forces.

The title of Article 3 indicates clearly that the option of incorporation is restricted to use of the emblem for indicative purposes. For protective purposes, by contrast, Article 2 of Additional Protocol III requires use of the red crystal alone and without incorporation, a requirement easily explained by the fact that the red crystal – and no other sign – is recognized as an additional emblem. The reason is also practical, as tests revealed that the blank space within the crystal was important in ensuring good visibility from a distance and, consequently, greater protection.⁴⁹

2. A National Society which chooses to incorporate within the third Protocol emblem another emblem in accordance with paragraph 1 above, may, in conformity with national legislation, use the designation of that emblem and display it within its national territory.

Under certain conditions, a National Society that has chosen to incorporate within the third Protocol emblem one or more of the emblems defined in paragraph 1 is enabled, by paragraph 2, to use only the name of this/these other emblems and to display it/them without incorporation inside the red crystal. For example, a National Society which chooses to incorporate the red cross and the red crescent in the third Protocol emblem could, under certain conditions, use both these emblems side by side without having to place them within the frame formed by the red crystal.

The wording employed by Article 3(2) dissociates use of the name of these emblems – which is apparently authorized without restriction – from the possibility of displaying them, which can be done solely in the national territory of the state. As a result, no objection may be raised to the use by a National Society of the name of the emblems referred to in paragraph 1(a) or (b), either in the territory of the state or abroad. Similarly, no objection may be raised to the use of these emblems – even if they are not incorporated within the third Protocol emblem – in the territory of the state of origin of the National Society in question. By contrast, no provision is made for the use of these other emblems outside the national territory. In other words, once the said National Society engages in activities beyond its borders, it should incorporate the other emblem(s) within the third Protocol emblem.

In practice, this means that the red cross, the red crescent and the red lion and sun – emblems recognized by the Geneva Conventions – may as before be used in foreign territory by a National Society that has chosen one of them as its emblem. However, once a National Society has decided to incorporate one or a combination of these emblems or “another emblem” (within the meaning of Article 3(1)(b)) within the third Protocol emblem, it may engage in an activity outside its territory only when showing that emblem incorporated within the third

⁴⁹ It should be noted that Article 5 of the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies stipulates that the emblem used as a protective device shall always retain its original form; that is, nothing shall be added either to the cross, the crescent or the white ground.

Protocol emblem. In all these cases, it is useful to remember that the emblems, even when incorporated within the third Protocol emblem, may only be used according to the rules of the Movement as mentioned in the commentary on paragraph 8 of the preamble.

Lastly, it should be noted that “national territory” – a constituent element of a state – corresponds to an established notion in public international law.⁵⁰ Article 3(2) of Additional Protocol III does not depart from the traditional understanding of this basic notion, nor is it its aim or purpose to recall its content.

3. National Societies may, in accordance with national legislation and in exceptional circumstances and to facilitate their work, make temporary use of the distinctive emblem referred to in Article 2 of this Protocol.

This paragraph is the counterpart to Article 2(4) concerning protective use. It authorizes a National Society to temporarily use the third Protocol emblem for indicative purposes, no matter what emblem it has adopted. It is interesting to note, however, that this provision grants National Societies the option of using only the red crystal, while Article 2(4) provides more broadly for the state to resort to one of the emblems recognized by the Geneva Conventions other than the one traditionally used by the medical services and religious personnel of its armed forces.

Another difference from Article 2(4) is that Article 3(3) imposes relatively strict conditions on opting for this solution. First, use of the red crystal must conform with national legislation. Next, this option is available only in exceptional circumstances; accordingly, the red crystal may be used only on a temporary basis and the National Society must return to its customary emblem as soon as the exceptional circumstances have passed.⁵¹ Last, the decision to use a temporary emblem must facilitate the National Society’s work. These conditions are cumulative. It is difficult to determine in advance which situations would meet these criteria. It should simply be emphasized that there apparently was no wish on the part of the drafters to restrict unnecessarily the applicability of this provision; they were careful, however, to ensure that Article 3(3) does not become a basis for the permanent substitution of the red crystal for the traditional emblem of the National Society.

Although this latter option does not appear explicitly in Additional Protocol III, it is reasonable to imagine that a National Society may be led to temporarily use the red crystal for protective purposes when called upon to put its personnel, its units and/or its means of transport at the disposal of states’ armed forces. Given that the medical services of the armed forces have the right to use this emblem by virtue of Article 2(4) it is difficult to imagine that National

50 The notion of “territory” is also referred to in the Red Cross and Red Crescent context in Article 4 of the Statutes of the Movement.

51 The question arises as to what is covered by the concept of exceptional circumstances (which is also found in Additional Protocol III, Article 4). In this regard, a parallel could be traced with Article 2(4), which, although without using this term, refers to the need to enhance protection. Absent a more precise definition, the terms used imply application in restrictive circumstances.

Societies cannot be authorized to use the same distinctive sign in order to mark and identify their personnel placed at the disposal of the armed forces.

4. This Article does not affect the legal status of the distinctive emblems recognized in the Geneva Conventions and in this Protocol, nor does it affect the legal status of any particular emblem when incorporated for indicative purposes in accordance with paragraph 1 of this Article.

Article 3(4) is a saving clause preserving the legal status of the distinctive emblems recognized by the Geneva Conventions and Additional Protocol III. Their status can thus never be affected by the contents of this article. This provision also makes it plain that other emblems – the use of which without incorporation is authorized solely in the national territory – incorporated into the red crystal in conformity with paragraph 1 do not acquire any separate international legal status as a result thereof. This clarification was included in response to concerns that the provision would be interpreted as granting the double emblem described in Article 3(1) or the red shield of David a recognition beyond this limited context.

Article 4 – International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, and their duly authorized personnel, may use, in exceptional circumstances and to facilitate their work, the distinctive emblem referred to in Article 2 of this Protocol.

Article 44(3) of the First Geneva Convention permits the international Red Cross organizations and their duly authorized personnel to make use, at all times, of the emblem of the red cross. A similarly worded previous draft of Additional Protocol III authorized the international components of the Movement to avail themselves of the third Protocol emblem whenever it seemed necessary.

However, Article 4 as it now stands follows a different logic. It must be read in conjunction with the last paragraph of the preamble (which did not appear in previous versions) expressing the determination of the ICRC, the International Federation and the Movement to retain their current names and distinctive emblems. In this context, Article 4 nevertheless authorizes these components to use the red crystal subject to two of the cumulative conditions already spelled out in Article 3(3) namely that the circumstances must be exceptional and that such use must facilitate their work.⁵²

52 There are, however, differences in the conditions for the exceptional use of the Third Protocol emblem by National Societies (in Article 3(3)) and by the ICRC and the International Federation (in Article 4). Indeed, Article 3(3) refers to a “temporary use” by National Societies, a condition which the ICRC and the Federation do not have to meet, according to Article 4. In addition, Article 4 does not stipulate the obligation to respect the national legislation.

Article 5 – Missions under United Nations auspices

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.

Article 5 of Draft Additional Protocol III of 5 July 2000 had as its title, “Peace operations”. This phrase prompted objections on the grounds that it could be interpreted as excluding the applicability of this provision to certain operations headed by or authorized by the United Nations Security Council under Chapter VII of the Charter. Some states thus proposed renaming Article 5 using the classic formulation of “peacekeeping operations”, while others preferred operations placed “under United Nations auspices”. The latter formulation was ultimately adopted.

Admittedly, the expression “missions under United Nations auspices” is not legally recognized; however, the *travaux préparatoires* tend to demonstrate that it is meant to cover the different generations of peacekeeping operations. It includes, therefore, operations that conform to the traditionally accepted meaning of peacekeeping, which essentially consists of the separation of parties to a conflict along a ceasefire line and follows three important basic principles: impartiality, consent of the parties to the conflict and minimal recourse to force. It also comprises, however, the more complex operations that have been emerging since the end of the Cold War and involve a combination of activities of a military and a civil nature (for example, promoting reconstruction and the creation of institutions in societies devastated by war). Under these circumstances, it is not excluded that both peacemaking and peace enforcement operations are also covered.

It should be noted, however, that the scope of application of Article 5 remains limited to forces acting under the auspices of the United Nations. Contrary to the Draft Additional Protocol III of July 2000, this provision does not apply to missions conducted by, or under the auspices of, other universal or regional international organizations (such as NATO or ECOMOG).⁵³

With regard to the substance, the United Nations, which is not formally party to the Geneva Conventions, is not authorized to use the emblems recognized by those Conventions and their Additional Protocols. However, when the Organization acts through the national armed forces of its member states, there is no doubt that the medical services and religious personnel of those forces have the right to use the distinctive emblems – and also the obligation to respect them. These rules, which seek to improve the protection of victims of armed conflicts, are moreover explicitly acknowledged in Article 9(7) of the UN Secretary-General’s Bulletin entitled “Observance by United Nations forces of international humanitarian law”.⁵⁴

53 This comment does not prevent armed forces participating in operations not under the auspices of the United Nations from using the red crystal as a national contingent.

54 Section 9.7 of the Bulletin reads, “The United Nations force shall in all circumstances respect the Red Cross and 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” (ST/SGB/1999/13, 6 August 1999).

Article 5 does not seek to alter the general practice that medical and religious personnel of each contingent of an operation carried out under the auspices of the United Nations are free to use their customary emblem – the red cross for some, the red crescent for others.⁵⁵ The formulation of this provision leaves no doubt that it is purely permissive; it simply acknowledges the option to choose, for identification and protection purposes, either a single emblem from among those recognized by the 1949 Conventions or the red crystal.⁵⁶ The choice of this single emblem, however, remains subject to the approval of the states participating in the multinational force.

Article 5 does not specify the reasons that might prompt those responsible for a force placed under the auspices of the UN to opt for a common emblem for the entirety of its medical and religious personnel. This decision might result, for example, from considerations relating to the zone of operations, leading the force to use the traditional emblem of the host country – the one that is most familiar to the civilian population and *a priori* ensures greater respect from the parties to the conflict. The decision might also be affected by factors related to the composition of the multinational force, the choice depending on the emblem used by the majority of the troops that form the contingent.

In such situations, certain states accept that their medical and religious services – in a particular context – operate under an emblem other than the one they traditionally use. Where this involves the use of the red cross in place of the crescent (or vice versa), few problems, if any, are likely to arise, these emblems being recognized by the universally accepted Geneva Conventions. It is conceivable, however, that the force might decide to use the red crystal where one or several troop-contributing states are not party to Additional Protocol III. Yet such a situation would not pose any legal difficulties because the consent of the troop-contributing states is required for the unification of their medical and religious services under the same distinctive emblem. Moreover, nothing prohibits a state from accepting, through a specific agreement with the United Nations, the use of the red crystal and considering itself bound by Additional Protocol III in a particular context.

Article 6 – Prevention and repression of misuse

1. The provisions of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, governing prevention and repression of misuse of the distinctive emblems shall apply equally to the third Protocol emblem. In particular, the High Contracting Parties shall take measures necessary for the

55 Any other solution would moreover contradict Article 2(3), which unambiguously indicates that Additional Protocol III does not intend to modify the conditions for use of the emblem.

56 In fact, Article 5 refers to the distinctive emblems mentioned in Articles 1 and 2. While the reference to one of the distinctive emblems mentioned in Article 2 is perfectly logical, the reference to Article 1 could appear redundant. The reason for this reference is the didactic purpose served by the fact that Article 1(2) lists the emblems recognized by the Geneva Conventions of 1949.

prevention and repression, at all times, of any misuse of the distinctive emblems mentioned in Articles 1 and 2 and their designations, including the perfidious use and the use of any sign or designation constituting an imitation thereof.

Article 6(1) reflects the desire to ensure that the regime covering the red crystal is identical to that governing the existing emblems, for this provision transposes to the third Protocol emblem the same rules on the prevention and repression of misuse found in the 1949 Geneva Conventions and their Additional Protocols of 1977. In particular, High Contracting Parties must adopt adequate national laws to prevent improper use of the distinctive emblems and of their denomination and to deter and punish perpetrators.⁵⁷ The relevant provisions are Articles 49, 53 and 54 of the First Geneva Convention, Article 50 of the Second Geneva Convention and Articles 18 and 85 of Additional Protocol I.

It should be borne in mind that any use not expressly authorized by international humanitarian law is considered a misuse of the emblem. The text of Article 6(1) explicitly mentions two particular kinds of misuse to be prevented or repressed. The first is perfidy, where, for the purpose of killing, injuring or capturing, an appeal is made to the good faith of the adversary with the intention of deceiving him/her through the use of a distinctive emblem in order to feign protected status.⁵⁸ The second is imitation, or using a sign that because of its form and/or colour is likely to be mistaken for a distinctive emblem. The term “including” indicates, however, that these are merely examples. Thus, usurpation is also considered to be misuse of the emblem. Usurpation is defined as the use of a distinctive emblem by entities or persons not entitled to do so (commercial enterprises, pharmacists, private doctors, non-governmental organizations, ordinary individuals, etc.) or, in the case of persons normally authorized to use the emblem, of their doing so without respecting the rules of the Conventions and their Protocols or the Fundamental Principles of the Movement.

2. Notwithstanding paragraph 1 above, High Contracting Parties may permit prior users of the third Protocol emblem, or of any sign constituting an imitation thereof, to continue such use, provided that the said use shall not be such as would appear, in time of armed conflict, to confer the protection of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, and provided that the rights to such use were acquired before the adoption of this Protocol.

57 In order to facilitate and support the task of states in elaborating national legislation, the ICRC' Advisory Service has developed a model law on the use and protection of the emblems of the red cross, red crescent and red crystal. This model law is available on the ICRC website at <http://www.gva.icrc.priv/Web/fire/sitefre0.nsf/html/5FZG8V>. See also the Advisory Service's National Implementation Database for information on various legislative and other national measures relating to use and protection of the emblem, available at <http://www.gva.icrc.org/ihl-nat>.

58 Under certain conditions, the perfidious use of the emblem may even constitute a war crime. See in this respect Article 85(3)(f) of Additional Protocol I whereby the perfidious use of the red cross, red crescent and red lion and sun, in violation of Article 37, qualifies as a grave breach when the act is committed wilfully and results in death or serious injury to body or health. See also Article 8(2)(b)(vii) of the Rome Statute of the International Criminal Court.

Article 6(2) settles the delicate issue of the temporal scope of the prohibition on misuse of the third Protocol emblem. For a better understanding of the solution established by Additional Protocol III, it is useful to review the relevant provisions of the First Geneva Convention.

The First Geneva Convention establishes separate sets of rules for the red cross on one hand and for the two other distinctive emblems (formulated in terms of exceptions) on the other. With regard to the red cross, Article 53(1) of the Convention prohibits misuse of the emblem in absolute terms, stressing that any use by individuals (other than those entitled thereto under the Convention) of the emblem or its designation, “whatever the object of such use, and irrespective of the date of its adoption”, shall be prohibited at all times. The Commentary points out that “[t]rade-marks and commercial marks incorporating the red cross must disappear, even if they have been in use for a century or more. Commercial interests, however legitimate, must give way to the higher interests of humanity, whatever the cost may be.”⁵⁹ Nevertheless, the Convention authorized states – at least those that were not party to the Geneva Convention of 1929 – to grant prior users of the distinctive emblem a grace period of three years to discontinue its use. This saving clause, however, only covered emblems that were purely indicative in nature and not those that could appear to confer, in time of armed conflict, protection under international humanitarian law.

On the other hand, the fourth subparagraph of Article 53 provides a more flexible legal protection for the red crescent and the red lion and sun. The ban on use of these emblems only applies to persons who claim the right to use them after the entry into force of the Convention and not to prior users, who are considered to be enjoying a vested right. The Commentary explains that this difference of treatment exists because it would have been impossible to eliminate throughout the entire world signs that are used as symbols of neutrality in only few countries.

A previous draft of Additional Protocol III applied the First Convention’s rules for the red cross to the new emblem, granting a grace period of three years to any prior users of the emblem or of its name followed by a complete obligation to abandon it. This approach was ruled out, however, after some states invoked its potential incompatibility with national, regional or international intellectual property regimes. The solution ultimately adopted in Article 6(2) of Additional Protocol III is similar to that of Article 53(4) of the First Convention of 1949 dealing with the red crescent and the red lion and sun.

Lastly, it should be noted that the second paragraph of Article 6 refers only to protection of the vested rights of the prior users of the third Protocol emblem, without mentioning (unlike paragraph 1) the users of its name. Too literal an interpretation of this paragraph, should, however, be avoided; there is no logical reason justifying the establishment of different legal regimes for the prior use of the emblem and that of its designation, which is equally protected.

⁵⁹ *Commentary on the First Geneva Convention*, Article 53, above note 4, p. 387.

Article 7 – Dissemination

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that this instrument may become known to the armed forces and to the civilian population.

Although with some modifications, Article 7 of Additional Protocol III borrows the language of Article 83(1) of Additional Protocol I.⁶⁰ The obligation of dissemination contained in these provisions is considered a necessary measure to ensure awareness of the Conventions and their Protocols: it fundamentally contributes to their respect as well as to their concrete implementation.

The emblem's role in the protection of medical personnel, units and transports explains the responsibility of the High Contracting Parties to disseminate the rules of Additional Protocol III in order to ensure that the red crystal is recognized and identified, as much as the red cross and the red crescent, as a protective sign in time of armed conflict. The dissemination of these rules must be as widespread as possible. Additional Protocol III explicitly reminds the parties that dissemination-related activities must be carried out in times of peace for members of the armed forces, who are the first to be involved in the conduct of hostilities and in the protection of civilian objects and persons not or no longer taking part in hostilities. However, the Protocol also obliges states "to encourage" the study of these rules by the entire civilian population.⁶¹

Article 8 – Signature

This Protocol shall be open for signature by the Parties to the Geneva Conventions on the day of its adoption and will remain open for a period of twelve months.

Article 8 of Additional Protocol III is based on Articles 92 and 20 of 1977 Additional Protocols I and II respectively. Like those articles, it precedes a provision related to ratification and formally indicates that even though signature marks the end of negotiations and the authentication of a text that will not be

60 As the *Commentary on Protocol I* (above note 17, pp. 960–1, § 3369) points out, Article 83(1) essentially reaffirms the Conventions' previous rules on that subject (see in particular Articles 47/48/127/144 of the four Geneva Conventions respectively). Additional Protocol II also contains an obligation related to dissemination, but its wording is more cursory; Article 19 reads, "This Protocol shall be disseminated as widely as possible."

61 On the meaning of the obligation to "encourage" study of the rules of international humanitarian law by the civilian population, see the *Commentary on Protocol I*, above note 17, pp. 965–7, §§ 3377–3381, for examples of practical measures that may be adopted in this respect.

subject to further modification, it is not intended to have a legally binding effect on the signatory party.⁶²

It should be noted that the period for signature of Additional Protocol III was moved forward compared with the corresponding provisions of the two 1977 Additional Protocols, which provided for a waiting period of six months between signature of the Final Act and the opening for signature of the Additional Protocols. However, as stated in the Commentary on Additional Protocol I, “[t]he six month waiting period before the Protocol is open for signature is a rather exceptional feature: in general a treaty is open for signature from the moment it is adopted”.⁶³ Indeed, this latter solution is the one adopted by Additional Protocol III. The argument most often used to justify the procedure established for the two 1977 Protocols – namely that the interval allowed time for domestic examination of the acceptability of such a complex treaty before opening it for signature – is not relevant in the current case.

The period provided under Article 8 for states to sign Additional Protocol III closed on 8 December 2006. At this closing date, 84 states had signed the instrument.

Article 9 – Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Geneva Conventions and the 1977 Additional Protocols.

Article 9 of Additional Protocol III reproduces verbatim Articles 93 and 21 of 1977 Additional Protocols I and II respectively. This provision requires that ratification, a procedural act that is complementary to signature and expresses consent to be bound by a treaty, must be accomplished “as soon as possible”. The commentary on Article 93 states very simply that this formulation “is not very common. It has been taken from the corresponding article of the Conventions (57/56/137/152) and represents an exhortation without laying down a precise period”.⁶⁴

The expression “depositary” means one or more state(s), an international organization or the chief administrative officer of the organization, chosen by the signatories of an international treaty to keep custody of the text and to centralize transmission of the various instruments relating to the treaty concerned.⁶⁵

62 Article 14(1) of the 1969 Vienna Convention on the Law of Treaties clearly indicates that “The consent of a State to be bound by a treaty is expressed by ratification when: (a) the treaty provides for such consent to be expressed by means of ratification”. In this case, the legal effect of the signature is to recognize the negotiated text as authentic and final. The signature furthermore obliges the state to refrain from any acts which would defeat the object and purpose of the treaty, at least as long as the state has not made clear its intention not to become a party to the treaty (Article 18 of the Vienna Convention).

63 *Commentary on Protocol I*, above note 17, p. 1069 (§ 3694).

64 *Ibid.*, p. 1073 (§ 3709).

65 For more on the designation and role of the depositary, see especially Part VII (Articles 76–80) of the 1969 Vienna Convention on the Law of Treaties.

Additional Protocol III assigns this task to the Swiss Federal Council, as did the Geneva Conventions and their 1977 Additional Protocols.

Article 10 – Accession

This Protocol shall be open for accession by any Party to the Geneva Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Accession is a way of expressing consent to be bound by the treaty if the state concerned either did not take part in the negotiations of Additional Protocol III or did take part but did not sign the treaty within the twelve-month period specified in Article 8. Article 10 of Additional Protocol III repeats verbatim Article 94 of Additional Protocol I and Article 22 of Additional Protocol II. It is sufficient, therefore, to refer to their Commentaries.⁶⁶

It is important to recall that accession to Additional Protocol III as well as signature and ratification under Articles 8 and 9 are limited to states already party to the 1949 Geneva Conventions. On the other hand, it is not necessary to be a state party to the first two Additional Protocols to be bound by Additional Protocol III.

Article 11 – Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

Entry into force is the starting point in the implementation of a legal instrument; it is the moment from which the text takes full legal effect as a result of meeting the conditions laid down in the instrument concerned.⁶⁷ Article 11(1) (which repeats verbatim the text of Article 95(1) of Additional Protocol I and Article 23(1) of Additional Protocol II), requires the deposit of two instruments of ratification or accession as a *sine qua non* for the entry into force of Additional Protocol III. This small number – which also applies for the Conventions – facilitates the text's entry into force among the contracting parties.

Furthermore, for the first two contracting parties there is an interval of six months between the deposit of the second instrument of ratification or accession and the entry into force of Additional Protocol III. Such an interval was also provided for by the Geneva Conventions of 1949. The objective of this interval is twofold. First, it gives the states concerned time to prepare the legislative or administrative measures necessary to fulfil their new obligations. Second, it

⁶⁶ See the respective commentaries (above note 17) on Additional Protocol I, pp. 1075–78 (§§ 3713–3725) and Additional Protocol II, p. 1495 (§ 4916).

⁶⁷ *Dictionnaire*, above note 19, p. 433.

enables the depositary to proceed with the required notifications.⁶⁸ Such steps are also necessary with respect to Additional Protocol III. Certain states raised objections to a previous version of the text, which sought to speed up the entry into force of Additional Protocol III to the day after the deposit of the first two instruments of ratification or accession. The traditional interval of six months, as already established by the provisions of Additional Protocols I and II and the Geneva Conventions, is therefore retained.

Norway was the first state to ratify Additional Protocol III on 6 June 2006; the second, Switzerland, ratified it on 14 July 2006. Additional Protocol III accordingly entered into force on 14 January 2007.

2. For each Party to the Geneva Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Copied from the parallel provisions of Additional Protocols I and II,⁶⁹ this subparagraph concerns states other than the first two contracting parties. With respect to the relationship between the latter and the subsequent contracting parties, it provides for an interval of six months (identical to that laid down in paragraph 1) between the deposit by a state of its instrument of ratification or accession and the Protocol's entry into force for that state. The reasons for inserting this interval are exactly the same as for paragraph 1. The previous version of the draft, which also recommended entry into force the day after the deposit of the instrument of ratification or accession, was thus modified to revert to the classic rule.

Nevertheless, there is an exception to the six-month interval. The emergence of a conflict situation gives immediate effect to the ratifications and accessions of the parties to that conflict. This point is not mentioned explicitly in the text of Additional Protocol III (nor does it appear in Additional Protocols I or II); however, it is derived from the Conventions, and, considering the "additional" character of the Protocol, it can be transposed without necessarily being repeated.⁷⁰

Article 12 – Treaty relations upon entry into force of this Protocol

1. When the Parties to the Geneva Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.

The Protocols are instruments "additional" to the Geneva Conventions. As a result, their entry into force does not call into question the applicability of the

68 *Commentary on Protocol I*, above note 17, p. 1080 (§ 3731).

69 See the second paragraph of Additional Protocol I, Article 95, and Additional Protocol II, Article 23 respectively.

70 *Commentary on Protocol I*, above note 17, p. 1081 (§§ 3737–3739).

Conventions – the Protocols supplement the Conventions, and do not subtract anything from them.

Article 12(1) clarifies the rule on conflicts of applicable law in case of potential incompatibility between the Geneva Conventions and Additional Protocol III. Protocol III does not take a novel approach to the matter in question. Instead, it borrows the solution already recommended by Article 96(1) of Additional Protocol I, which itself stems from a classic rule of the law of treaties already spelled out by the Vienna Convention of 1969, according to which the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.⁷¹

2. When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.

Article 12(2) is derived *mutatis mutandis* from the third paragraph of Article 2 common to the Geneva Conventions (already replicated by Article 96(2) of Additional Protocol I). The first sentence rejects the *clausula si omnes* or the clause of universal participation. Thus a party to a conflict bound by Additional Protocol III remains obliged to apply it in its relations with an adverse party that is also bound by the Protocol, even if one or more parties (adversary or ally) are not bound by this instrument.

While the first sentence of Article 12(2) (like the first paragraph), deals with the relations between parties having resorted to the classic methods of establishing treaty-based relationships (such as signature and then ratification, or accession), the second sentence provides for a particular means of entry into force of Additional Protocol III with respect to an ongoing conflict. This sentence entitles a state to consider the Protocol legally applicable between itself and the other parties to the conflict already bound by that instrument, even if that state was not able – at the time the armed conflict broke out – to complete the internal procedure to be bound by the Protocol. This provision is identical to Article 2(3) of the Geneva Conventions. The conditions for this kind of undertaking are already set forth in the Commentaries on the Conventions and on Additional Protocol I⁷² and will therefore not be discussed in detail here.

71 Article 30(3) of the Vienna Convention on the Law of Treaties states that “[w]hen all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated . . . , the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.” In fact this is a modern reformulation of a general principle derived from Latin law, according to which the later law overrules the earlier law (*lex posterior derogat lege priori*). Article 30(4) provides for cases in which the parties to the earlier treaty are not all parties to the later treaty and rules that in this particular case, “(a) as between States parties to both treaties the same rule applies as in paragraph 3; (b) as between a state party to both treaties and a state party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations”.

72 See *Commentary on the First Geneva Convention*, above note 4, pp. 33–7.

Finally, while the two paragraphs of this provision are in all respects similar to Article 96, paragraphs 1 and 2 of Additional Protocol I, paragraph (3) of Article 96 establishes a special procedure allowing for such an undertaking by the authority representing a people engaged in armed conflict for self-determination against a High Contracting Party. This aspect was not considered relevant in the context of Additional Protocol III and was therefore not included in it.

Article 13 – Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, whether a conference should be convened to consider the proposed amendment.

This provision is taken verbatim from Article 97(1) of Additional Protocol I and Article 24(1) of Additional Protocol II, though with one exception: the latter provisions mention only the ICRC (in addition to the High Contracting Parties) for consultation on a proposed amendment. The Commentary indicates that the consultation with the ICRC is meant to be a recognition of its role in the codification and development of humanitarian law.⁷³ The fact that the particular subject of the emblem concerns the other components of the Movement, and the role played by the International Federation in the elaboration of Additional Protocol III, easily explain why the Federation should also be consulted in all proceedings related to potential amendments.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol.

This provision is identical to Article 97(2) of Additional Protocol I and Article 24(2) of Additional Protocol II. It is sufficient, therefore, to refer to the commentary on those provisions.⁷⁴

Article 14 – Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in a situation of armed conflict or occupation, the denunciation shall not take effect before the end of the armed conflict or occupation.

⁷³ See *Commentary on Protocol I*, above note 17, p. 1095 (§ 3783).

⁷⁴ *Ibid.*, pp. 1096–7 (§§ 3786–3790).

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict or occupation, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

The text of Article 14 is similar to that of Article 99 of Additional Protocol I.⁷⁵ The sole difference is the greater precision of Article 99(1) in fine, which states that the effect of the denunciation will be deferred until the end of the armed conflict or occupation, “and ... in any case, [until] operations connected with the final release, repatriation or re-establishment of the persons protected by the Conventions or this Protocol have been terminated”. This wording was not used in Additional Protocol III, as it did not appear to be relevant in this case.

Article 15 – Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol, of:

- a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 8, 9 and 10;**
- b) the date of entry into force of this Protocol under Article 11 within 10 days of said entry into force;**
- c) communications received under Article 13;**
- d) denunciations under Article 14.**

Article 15 of Additional Protocol III is largely inspired by Article 100 of Additional Protocol I, although some differences from the 1977 text are worth underlining. First of all, subparagraph (b) requires the depositary to inform the High Contracting Parties of the date of the entry into force of Additional Protocol III within ten days thereof, an obligation that does not appear in the Geneva Conventions and Additional Protocols I and II. Second, the communications envisaged by subparagraph (c) are limited to proposals for amendments, whereas Article 100 (c) of Additional Protocol I also requires communication of official translations of the Protocol as well as the laws and regulations adopted to ensure its application. Given that these obligations were not included in Additional Protocol III, Article 15 logically does not refer to them.⁷⁶ The same applies to communications under Article 96(3) of Additional Protocol I allowing an authority fighting for self-determination to declare itself bound by that Protocol.

⁷⁵ Article 25 of Additional Protocol II also contains a provision concerning denunciation, though using language slightly different from that of Additional Protocol I.

⁷⁶ Clearly, the same applies to communications related to the International Fact-Finding Commission of Article 90 of Additional Protocol I.

Article 16 – Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

This article is identical to Article 101 of Additional Protocol I and Article 27 of Additional Protocol II. It is therefore sufficient to refer to the commentary on those provisions.⁷⁷

Article 17 – Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Geneva Conventions.

This article is identical to Article 102 of Additional Protocol I and to Article 28 of Additional Protocol II. It is therefore sufficient to refer to the commentary on those provisions.⁷⁸

Conclusion

In an article published well before the adoption of Additional Protocol III, Cornelio Sommaruga – then president of the ICRC – emphasized that “the plurality of signs gives evidence of division and of an inability to overcome certain divergences and to transcend religious or cultural differences” even though “in the public view the unity of the Movement should be reflected in a single emblem”.⁷⁹ Unfortunately, the solution of a single emblem, though ideal in theory, was politically unattainable during the negotiations on Additional Protocol III. Not only was it difficult to imagine that the various components of the Movement would agree to revert to use of the red cross as a single emblem, it also quickly proved impossible to reach a consensus to abandon the existing emblems – to which millions of people have a profound attachment – for a new emblem common to all.

Under these circumstances, the only available option for a comprehensive solution to the question of the emblem was to recognize an additional distinctive

77 See *Commentary on Protocol I*, above note 17, pp. 1117–18 (§§ 3872–3876).

78 *Ibid.*, pp. 1119–22 (§§ 3877–3892).

79 Cornelio Sommaruga, “Unity and plurality of the emblems”, *International Review of the Red Cross*, No. 796, July–August 1992.

emblem devoid of any religious, political or other connotation. While preserving the historical emblems, this solution offered an alternative to components of the Movement that could not (or could no longer) use their traditional emblem in particular operational contexts. It also opened the door of the Movement to relief societies that persistently objected to the use of the red cross or red crescent, as they could henceforth adopt the red crystal. At the same time, the recognition of this additional emblem puts an end to any further demands for a new emblem.

Besides accomplishing its main objective – to adopt an additional emblem with the same status as the red cross and red crescent – Additional Protocol III provides some flexibility in the use of the emblem. Indeed, even if the ICRC and the International Federation are currently determined to keep their current names and emblems, Additional Protocol III nevertheless allows them to use the red crystal in exceptional circumstances. It also gives the medical services and religious personnel participating in operations under the auspices of the United Nations – upon approval of participating states – the option of using a common emblem, which can be either the red crystal or another emblem recognized by the 1949 Conventions.

Additional Protocol III also gives National Societies that choose the red crystal a flexibility that did not exist for the emblems recognized by the 1949 Geneva Conventions. Indeed, this instrument increases the available options by authorizing – albeit strictly for indicative use – the incorporation within the red crystal of one or a combination of emblems recognized in 1949 or even of another emblem that complies with certain conditions.

The possibility of incorporation may prove to be extremely advantageous, especially for National Societies in countries with diverse religious communities. Indeed, where one part of the population identifies with one of the emblems of the 1949 Geneva Conventions and another with a second emblem, requiring that a choice be made between them could create difficulties in terms of recruitment of volunteers, private donor contributions and above all the credibility of neutral action. While before Additional Protocol III the National Society had to choose one of those two emblems, it may now decide to use the red crystal alone or incorporate within it both the red cross and red crescent.

This flexibility also enables National Societies to adopt the additional emblem without having to totally renounce the traditional red cross or red crescent, which they can incorporate within the red crystal. Without reverting to a single emblem, Additional Protocol III allows for the possibility of an eventual return to uniformity within a Movement composed of National Societies all having the red crystal as a common emblem, even if they incorporate different emblems within the crystal.