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INTERNATIONAL HUMANITARIAN LAW

Introductory Text



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Chapter 11

EMBLEMS AND SYMBOLS OF DISTINCTION
AND PROTECTION*Idorenyin Eyo**

INTRODUCTION

International Humanitarian Law (IHL), also known as the 'Laws of War' or the 'Law of Armed Conflict', is the legal framework applicable to situations of armed conflict and occupation. As a set of rules and principles it aims, for humanitarian reasons, to limit the effects of armed conflict. Fundamental to IHL are the following two imperatives. These imperatives are that persons who are not, or are no longer, participating in hostilities must be protected; and the right of parties to an armed conflict to choose methods and means of warfare is not unlimited. It is a part of public international law. IHL is notable in this regard, as it recognizes obligations for both States and non-State armed groups that are parties to an armed conflict.¹

IHL applies in situations of International armed conflicts and non-international armed conflicts. An armed conflict can be defined as any difference arising between two States and leading to the intervention of armed forces even if one of the Parties denies the existence of a state of

war.² According to this definition, "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."³ IHL has some Principles and they include the Principle of Distinction,⁴ Principle of Humanity,⁵ Principle of Military Necessity,⁶ The Principle of Proportionality,⁷ amongst others.

For the attainment of its objectives, IHL relies on the use of certain emblems and symbols to identify and/or protect civilians and civilian objects, medical personnel, medical services, equipment and buildings etc. The two main uses of the emblems and symbols are their "protective" and "indicative" uses.⁸ Used protectively, the emblems serve as visible signs in armed conflict of the protection accorded to certain persons, civilians, objects, places, medical units and their means of transportation, cultural properties; and used indicatively, the emblems and symbols are employed by humanitarian organisations, including the International Red Cross and Red Crescent.⁹ This work will examine the distinctive and protective emblems and symbols, their history, the laws that govern them, their use and misuse. It will also make recommendations for better use and respect for these emblems and symbols by all relevant parties both in times of armed conflict and in times of peace.

² Jean S. Pictet, *Commentary of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Geneva: ICRC, 1952): 32. Available from: <<https://ihl-databases.icrc.org/ihl/COM/365-570005?OpenDocument>>.

³ 27) Sassrli, Bouvier, and Quintin, "ICTY, *The Prosecutor v. Tadić*, Jurisdiction", in HDLPiW Vol. 3, 7. See: ICTY, *ICTY Prosecutor v. Dusko Tadić*, IT-94-1-AR72 (1995).

⁴ Basic principles of IHL available at <https://www.diakonia.se/en/ihl/the-law/international-humanitarian-law-1/introduction-to-ihl/principles-of-international-law/>

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ How The Law Protects: Emblems (Red Cross, Red Crescent & Red Crystal) available at <https://casebook.icrc.org/glossary/emblems-red-cross-red-crescent-red-crystal> accessed on 26/12/2020.

⁹ Ibid.. The International Red Cross and Red Crescent Movement is the largest humanitarian network in the world. status It has an observer status in the United Nations and has its mandate as the custodian of IHL to ensure its compliance. Its mission is to alleviate human suffering, protect life and health, and uphold human dignity, especially during armed conflicts and other emergencies.

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¹ International Humanitarian Law available at <https://ijrcenter.org/international-humanitarian-law/> accessed on 20/12/2020. The International Committee of the Red Cross (ICRC) has elaborated on the definition of "humanitarian law". The international community has generally accepted this definition. ICRC, *Commentary on the Additional Protocols of 8 June 1977* (Geneva: ICRC, 1987): xxvii. Available from: <<https://ihl-databases.icrc.org/ihl/INTRO/470>>.

BRIEF SUMMARY OF DEVELOPMENT OF MODERN INTERNATIONAL HUMANITARIAN LAW¹⁰

Scholars agree that the adoption of the First Geneva Convention of 1864 marked the birth of modern International Humanitarian Law. However, it is important to note that the rules contained in that Convention were not entirely new, as most of those rules emanated from existing international customary law, and these rules which have existed since 1000 BC, provided protection for victims in armed conflicts, and rules that govern the means and methods of warfare etc.,¹¹ amongst other reasons for their existence.¹² It is evident that in Africa, there were several rules that governed the conduct of hostilities;¹³ in Europe there was the European obligatory way of declaring war; in India we have rules concerning the conduct of hostilities and an example of this is the *Code of Manu*¹⁴ written in 200 BC, one finds rules relating to behaviour in combat. It prohibited use of barbed or poisoned weapons, stipulated how wounded soldiers should be treated, stipulated that combatants who have surrendered should be spared, stipulated that wounded soldiers had to be cared for and that surrendering combatants must be spared.¹⁵ This continued for so many years. However, these rules and customs were geographically limited and had no international or universal applicability.¹⁶

It was much later, after the Geneva Convention of 22 August 1864 for the Amelioration of the Condition of the Wounded in Armies in the

¹⁰ Sassrli, Bouvier, and Quintin, "Historical Development of International Humanitarian Law", https://assets.cambridge.org/9781107116177/frontmatter/9781107116177_frontmatter.pdf accessed on 27/12/20.

¹¹ Harvey J. Langholtz, International Humanitarian Law and The Law of Armed Conflicts, available at https://cdn.peaceopstraining.org/course_promos/international_humanitarian_law/international_humanitarian_law_english.pdf. Earlier on, in a treatise called *The Art of War*, written in 500 BCE, the Chinese warrior Sun Tzu expressed the idea that wars must be limited to military necessity, and that prisoners of war, the wounded, the sick, and civilians should be spared - 3) Sun Tzu, *The Art of War* (New York: Penguin Classics, 2003).

¹² Some scholars have argued that they were established for economic reasons.

¹³ Harvey Langholtz Ibid. : Marco Sassrli, Antoine A. Bouvier, and Anne Quintin, "Historical Development of International Humanitarian Law", in *How Does Law Protect in War? Vol. 1* (HDLPIW) (Geneva: ICRC, 3rd edition).

¹⁴ The Law Code of Manu (New York: Oxford University Press, Inc, 2009).

¹⁵ Amongst other provisions.

¹⁶ Sassrli, Bouvier, and Quintin, "Historical Development of International Humanitarian Law".

Field came into being,¹⁷ that we indeed had the first universal treaty on International Humanitarian Law.¹⁸ This First Geneva Convention contained to a very large extent, Henry Dunant's proposals.¹⁹ It also established general protection for military wounded and a special status for medical personnel. The Red Cross on a white background a sign of identification of all military medical services.

After this, there has been a steady progression of enactment laws on IHL and they include but are but not limited to the Declaration of St. Petersburg of 1868, the 1899 Hague Conventions of 1899, the Review of the First Geneva Convention of 1868, The Hague Conventions of 1907, the Geneva Protocol on Chemical Weapons of 1925, the First, Second, Third and Fourth Geneva Conventions of 1949, Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, the Additional Protocols to the 1949 Geneva Conventions of 1977, the Convention on Certain Conventional Weapons of 1980, the Chemical Weapons Convention of 1993, the Protocol on Blinding Laser Weapons of 1995, The Revision of the 1980 Convention on Certain Conventional Weapons of 1996, The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Treaty) of 1997, The Rome of the Statute of the International Criminal Court 1998, The Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict of 1999, The Optional Protocol on the Involvement of Children in Armed Conflict of 2000, The Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention) 2003, The Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (the

¹⁷ Available at <https://ihl-databases.icrc.org> accessed on 27/12/20.

¹⁸ Further reading is available "A Brief History of International Law available at <https://ihl-databases.icrc.org/ihl/InTRO/470>

¹⁹ Henry Dunant, was a Swiss Business man saw the carnage and horrors of the Battle of Solferino between France, Sardinia, and Austria, and wrote the aforementioned book available at www.amazon.com Memory-Solferino-Henry-Dunant. He emphasized that war must not be as bloody and savage-like as the Battle was, but should be governed by strict rules. He proposed two ideas for, alleviating the suffering of wounded soldiers by the creation of relief societies in each country that would act as auxiliaries to the army medical services; and a legal basis that would oblige armies to care for all wounded, whichever side they were on, amongst other proposals.

“Red Crystal”) 2005, The Convention on Cluster Munitions 2008, ; The Arms Trade Treaty (ATT) 2013, Treaty on the Prohibition of Nuclear Weapons (TPNW) 2017, amongst others.²⁰

BASIC RULES OF INTERNATIONAL HUMANITARIAN LAW²¹

The International Committee of The Red Cross²² has drawn up a Summary of Basic Rules of International Humanitarian Law. However these rules are just summaries and do not on their own have any force of Law. The Rules are seven, garnered from The Geneva Conventions and the Additional Protocols.²³ They are:

1. persons *hors de combat*²⁴ and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction;
2. it is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*;
3. the wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment. The

²⁰ List of these is available at <https://www.icrc.org/en/doc/resources/documents/misc/5kzge6.htm>

²¹ These rules, drawn up by the ICRC, summarize the essence of international humanitarian law. They do not have the authority of a legal instrument and in no way seek to replace the treaties in force. They were drafted with a view to facilitating the promotion of IHL. “Basic rules of international humanitarian law in armed conflicts”, ICRC, 31 December 1988. Available from: <https://www.icrc.org>. Also available at www.icrc.org/resources/misc/basic-rules-ihl

²² Red Cross and Red Crescent, in full International Movement of the Red Cross and Red Crescent, formerly (until 1986) International Red Cross, humanitarian agency with national affiliates in almost every country in the world. The Red Cross movement began with the founding of the International Committee for the Relief of the Wounded (now the *International Committee of the Red Cross*) in 1863. It was established to care for victims of battle in time of war, but later national Red Cross societies were created to aid in the prevention and relief of human suffering generally. Its peacetime activities include first aid, accident prevention, water safety, training of nurses’ aids and mothers’ assistants, and maintenance of maternal and *child welfare* centres and medical clinics, blood banks, and numerous other services. The Red Cross is the name used in countries under nominally Christian sponsorship; Red Crescent (adopted on the insistence of the Ottoman Empire in 1906) is the name used in Muslim countries available at <https://www.britannica.com/topic/Red-Cross-and-Red-Crescent> accessed on 3/01/20

²³ Available at www.icrc.org/document/geneva-conventions-1949-; www.icrc.org/download > file > additional-protocols accessed on 30/12/20.

²⁴ Out of combat: disabled.

emblem of the Red Cross or the Red Crescent is the sign of such protection and must be respected;

4. captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief;
5. everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment;
6. parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering;
7. parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.²⁵

THE EMBLEMS AND SYMBOLS OF DISTINCTION AND PROTECTION

The first rule governing armed conflict is the strict distinction between *civilians and combatants*. IHL provides *special protection to certain persons, civilians, certain objects and places, objects* which are medical units and their means of transport, cultural properties, the natural environment and works and installations containing dangerous forces, “namely dams, dykes and nuclear electrical generating stations”.²⁶ Part of how this is done is through the use of distinctive and protective emblems and symbols. The word ‘Emblem’ means a picture of an object

²⁵ Basic rules of international humanitarian law in armed conflicts available at <https://www.icrc.org/en/doc/resources/documents/misc/basic-rules-ihl-311288.htm>, accessed on 18/1/2021.

²⁶ Adriano Iaria, E-Emblems: Protective Emblems and the Legal Challenges of Cyber Warfare available at <https://www.iai.it/en/pubblicazioni/e-emblems-protective-emblems-and-legal-challenges-cyber-warfare>

that is used to represent a particular person, group, or idea²⁷ while the word 'Symbol' means a sign, shape, or object that is used to represent something.²⁸ The word 'Distinction' means the act of perceiving someone or something as being not the same and often treating as separate or different²⁹, while the word 'Protection' means supervision or support of one that is smaller and weaker.³⁰

Article 8(1) of Additional Protocol I to the Geneva Conventions defines "distinctive emblem" 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." Later the Red Crystal has come to being in 2005.

In Annex I to the First 1977 Additional Protocol to the Geneva Conventions, it provides a list of the distinctive emblems and they include but are not limited to:³¹

- a. *The Red Cross*: This is a Cross on a white background. It acts as a protective and indicative emblem on all medical services, such as medical and religious personnel, medical units, and means of transportation. The Red Cross emblem is universally recognized and respected throughout the world as a trusted symbol of protection, neutrality and humanitarian aid in the face of armed conflict and disaster. The design of the Red Cross originated from the First Geneva Convention in 1864. The symbol represents an inverted Swiss flag which is a tribute to Henry Dunant, the Swiss businessman, whose proposals eventually led to IHL and also later became the founder of the International Committee of the Red Cross.³² The Red Cross is perceived by many to depict the crucifixion cross of Jesus Christ of Christians;

²⁷ Available at <https://dictionary.cambridge.org/dictionary/english/emblem>

²⁸ Ibid.

²⁹ Available at <https://www.merriam-webster.com/dictionary/distinction>

³⁰ Ibid.

³¹ Albert Camus, *The Practical Guide To Humanitarian Law* available at <https://guide-humanitarian-law.org/content/article/3/distinctive-or-protective-emblems-signs-and-signals/> accessed on 30/12/2020.

³² Philip F Stahel, *Swiss flag or Red Cross emblem: why the confusion?* Available at <https://pssjournal.biomedcentral.com/articles/10.1186/1754-9493-7-13> accessed on 02/02/21.

- b. *The Red Crescent*: This is a Red Crescent on a white background. It is also used as a protective and indicative emblem on all medical services, medical and religious personnel, medical units, and means of transportation. The Red Crescent (adopted on the insistence of the Ottoman Empire in 1906) is mainly used in Muslim countries.³³ It is perceived to be an Islamic protective emblem;
- c. *The Red Crystal*: The Red Crystal was adopted in December 2005, at a Diplomatic Conference, where The Movement of the Red Crescent and the Red Cross adopted it as it is deemed to have no religious or political connotation: the Red Crystal. The Third Additional Protocol to the Geneva Conventions in Article 2, clearly provides for the use of the Red Crystal;
- d. *The Red Lion and Sun*: The Red Lion and Sun used to be an emblem of protection and indication. However, it has not been in use since 1980, when the Islamic Republic of Iran declared that it wished to use the Red Crescent as the distinctive emblem of the medical services of its armed forces.³⁴

There are also signs of protection and distinction. They include but are not limited to the following:³⁵

- a. Oblique red stripes on a white background which designate medical and safety zones and localities;
- b. The Shield which consist of a royal blue square and triangle, and two white triangles, which designates cultural objects and property;
- c. An equilateral blue triangle on an orange background which protects civil defence personnel, installations, and material;
- d. A group of three bright orange circles of equal size, placed along the same axis and with the distance between each circle being one radius, and it protects works and installations containing dangerous gases;

³³ Ibid.

³⁴ Ibid.

³⁵ Peter Ten Hove, *Protective Emblems, Signs and Symbols* available at <https://gather4humanity.com/knowledge-base/protection/protective-emblems-signs-signals/> accessed on 02/02/21.

- e. A white flag which is the flag of truce and is reserved for *parlementaires* (persons authorised to negotiate directly with the adverse party);
- f. The letters *IC* (for internment camp) and *PW* or *PG* (for prisoners of war or (*prisonniers de guerre*) designate internment camps for civilian internees and for prisoners of war.

THE HISTORY OF THE DISTINCTIVE AND PROTECTIVE EMBLEMS³⁶

It was in 1859, that a Swiss Business man, named Henry Dunant, was travelling through northern Italy, where the Battle of Solferino was taking place. He actually witnessed the horrifying aftermath of the battle of Solferino. When he returned to Geneva, he wrote a book called *A Memory of Solferino*,³⁷ restating the horrific treatment of both civilians and military persons, amongst other ills, in that battle. In this book, he also wrote thus,

When the sun came up on the twenty-fifth June 1859 it disclosed the most dreadful sights imaginable. Bodies of men and horses covered the battlefield: corpses were strewn over roads, ditches, ravines, thickets and fields...The poor wounded men that were being picked up all day long were ghastly pale and exhausted. Some, who had been the most badly hurt, had a stupefied look as though they could not grasp what was said to them... Others were anxious and excited by nervous strain and shaken by spasmodic trembling. Some, who had gaping wounds already beginning to show infection, were almost crazed with suffering. They begged to be put out of their misery, and writhed with faces distorted in the grip of the death struggle.³⁸

In his book aforementioned, Henry Dunant also made some proposals. These proposals were to improve assistance to war victims; to set up in peacetime, in every country, groups of volunteers ready to

³⁶ Study on the Use of the Emblems Operational and Commercial and Other Non-Operational Issues available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-001-4057.pdf> p. 27 and 28 accessed on 10/11/20.

³⁷ Ibid.

³⁸ Antoine A. Bouvier available at https://cdn.peaceopstraining.org/course_promos/international_humanitarian_law/international_humanitarian_law_english.pdf accessed on 12/01/20.

take care of casualties in wartime; and, to persuade countries to accept the idea of protecting aid workers and the wounded on the battlefield.³⁹ This first Proposal eventually led to the establishment of ICRC and other humanitarian groups.⁴⁰ It is important to note that this Second Proposal of Henry Dunant after much deliberations by Representatives of negotiating states and other stakeholders, eventually led to the existence of the Geneva Convention of 1864,⁴¹ same which is a harbinger of the Four Geneva Conventions of 1949.

In the five-member committee that met on 17 February 1863 to study Dunant's Proposals, it was obvious that a single distinctive sign that would indicate protection granted under IHL for the medical services of armed forces, volunteer aid workers and victims of armed conflict, was of paramount importance. Eventually, the Diplomatic Conference that met in Geneva in 1864 adopted the emblem of the Red Cross on a white ground, which are the colours of the Swiss flag in reverse.⁴² It is important to state that this aforementioned five-member committee, eventually evolved into the ICRC.⁴³

Over the years, particularly between the 1876-1878 war which took place between Russia and Turkey, the Ottoman Empire declared that rather than use the Red Cross as its emblem, as it was perceived that the Red Cross signified the Cross of Jesus Christ in Christianity, it would rather use a red crescent as its emblem. It however agreed to recognise and respect the Red Cross as an emblem. Later on, Persia also came up with its own different emblem same which was the red lion and sun.⁴⁴ These two later emblems were also recognised by a Diplomatic Conference held in 1929. Both emblems were recognized under Article 19 of the 1929 Geneva Convention for the Amelioration of the

³⁹ Study On The Use Of The Emblems Operational And Commercial And Other Non-Operational Issues, *ibid.*

⁴⁰ National Societies

⁴¹ Study On The Use Of The Emblems Operational And Commercial And Other Non-Operational Issues, *ibid.*

⁴² Also it is clearly stated thus in Article 53, 2nd para. of GC I that Switzerland got paid a tribute for the adoption of its reversed colours of its flag. More information is available on "Study On The Use Of The Emblems Operational And Commercial And Other Non-Operational", *ibid.*

⁴³ International Committee of the Red Cross (ICRC).

⁴⁴ Study On the Use of the Emblems Operational and Commercial and Other Non-Operational Issues, *ibid.*

Condition of the Wounded and Sick in Armed Forces in the Field, and subsequently confirmed under Article 38, 2nd para., of GC I. However, the red lion and sun has not been in use since 1980, when the Islamic Republic of Iran declared that it wished to use the Red Crescent as the distinctive emblem of the medical services of its armed forces.⁴⁵

In addition, in 2005, an additional distinctive emblem was recognized by the Diplomatic Conference that adopted AP III. It is a red frame in the shape of a square on edge on a white ground and this is clearly provided for in Article 2 of Additional Protocol III. This is the Red Crystal.

THE PROTECTIVE AND DISTINCTIVE/ INDICATIVE USE OF THE EMBLEMS AND SYMBOLS

Broadly, the use of the Emblems and Symbols are classified into Protective Use of the Emblems and Indicative Use of the Emblems. It is pertinent to state that in times of armed conflict, the Protection use comes into effect and during peace times the Indicative use comes into effect.⁴⁶

Protective Use of the Emblems and Symbols

During armed conflict, these emblems and symbols are used for protective purposes on Medical services (personnel and units, such as hospitals, means of transport, etc.) and religious personnel of States' armed forces;⁴⁷ Medical personnel units and transports of Humanitarian organizations that have been duly recognized and authorized by their governments to assist the medical services of the armed forces, when they are employed exclusively for the same

⁴⁵ Ibid.

⁴⁶ Study On the Use of the Emblems Operational and Commercial and Other Non-Operational Issues, *ibid.*

⁴⁷ Articles 39-44 of GC I; Articles 22-23, 26-28, 34-37, 39 and 41-44 of GC II; Article 18(1) and (4) of AP I; and Article 12 of AP II. The protected medical services and religious personnel of States' armed forces are defined under Articles 19-25 and 35-36 of GC I, Articles 22-23, 26-28, 34-37 and 39 of GC II, Articles 8(c)-(m), 9(2), 12, 13, 15, 21-31 of AP I, and Articles 9 and 11 of AP II. Although the Questions of the Study refer only to the medical services of States' armed forces, the same rules and recommendations apply to the religious personnel of those armed forces.

purposes as the latter and are subject to military laws and regulations;⁴⁸ Civilian hospitals (public or private) that are recognized as such by the State authorities and authorised to display the emblem;⁴⁹ and, in occupied territory and in zones of military operations, persons engaged in the operation and administration of such civilian hospitals (and also in the search for, removal and transport of and provision of care for wounded and sick civilians, the infirm and maternity cases);⁵⁰ All civilian medical and religious personnel in occupied territory and in areas where fighting is taking place or is likely to take place.⁵¹ All civilian medical units and transports, as defined under API, recognized by the competent authorities and authorized by them to display the emblem.⁵² Once used, no form of attack should be carried out on them by any of the parties to the armed conflict.⁵³

Since the use of these emblems and symbols is to ensure its visibility and give maximum protection to the authorised person using them, it must therefore be as bold and large as possible, and should not carry any text at all. Furthermore, in order to prevent the inordinate use of the emblems for protective use, it is important that the users must be *authorised* by the State to make use of it; they must be placed *under State control*. The State must ensure that it is used correctly and will be held responsible for its misuse; the emblem may be used for *medical purposes only*.⁵⁴

⁴⁸ Articles 40 and 42-44 of GC I. Protected NS medical personnel, units and transports are defined under Articles 24 and 26-27 and 34 of GC I, Articles 24-25, 27 of GC II, and Articles 8(c), (e) and (g)-(j) and Article 9(2) of AP I.

⁴⁹ Article 18, 3rd para. of GC IV. GC IV extends the right to use the emblem to land, sea and air transports as defined under its Articles 21 and 22. Annex 1, Article 6, of GC IV provides as well that "zones reserved exclusively for the wounded and sick may be marked by means of the Red Cross (Red Crescent, Red Lion and Sun) emblem on a white ground." On the use of the emblem by civilian hospitals and medical units.

⁵⁰ Article 20, 1st, 2nd and 3rd paras, of GC IV.

⁵¹ 18 Article 18(3) of AP I. Protected civilian medical and religious personnel are defined under Articles 8(c)-(d) and 15(1) of AP I. This category may include the medical personnel of NS provided that they correspond to the definition of AP I.

⁵² Article 18(4) of AP I. Protected civilian medical units and transports are defined under Articles 8(e) and (g), 12 and 13 of AP I. These categories may include medical units and transports of NS provided that they correspond to the definitions of AP I.

⁵³ Ibid.

⁵⁴ Ibid.

Indicative Use of the Emblems and Symbols

On the Indicative Use of the Emblems, this means that the emblems are used to indicate and identify medical teams, buildings, facilities, equipment, etc., to identify humanitarian organisations who are working with the armed forces and other participants, in rendering services to wounded persons, civilians and prisoners of war etc., both in the times of armed conflicts and in peace time.⁵⁵

THE RULES THAT GOVERN THE USE OF THE EMBLEMS IN INTERNATIONAL HUMANITARIAN LAW⁵⁶

There are several Rules that govern the use of the emblems and these rules are mainly codified in the Geneva Conventions of 1949, the Additional Protocols of 1977, and with a lot of emphasis on Additional Protocol 111 of 2005.

The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, in Article 38 states that:

As a compliment to Switzerland, the heraldic emblem of the Red Cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces. Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.

Based on Articles 39 and 40, under the direction of the competent military authority, the emblem shall be displayed on the flags, armbands and on all equipment employed in the Medical Service, under the direction of a competent military authority and authorized personnel

shall also wear, affixed to the left arm, a water-resistant armband bearing the distinctive emblem, issued and stamped by the military authority, with special identity cards with relevant details of the wearer.

Based on Articles 42, the distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities. In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs. Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention. Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action.

Article 44 clearly states that, except in special circumstances the emblem of the Red Cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph. Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively

⁵⁵ Ibid.

⁵⁶ "The Geneva Conventions and Additional Protocols legal provisions on the Distinctive emblems are available at <https://www.icrc.org/en/doc/resources/documents/misc/emblem-ihl-011108.htm>, accessed on 20th January 2020.

small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground. As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick, with Article 53 prohibiting the illegal use of the emblems. Article 54 places a duty on the High Contracting Parties to take measures necessary for the prevention and repression, at all times, of the abuses concerning the use of the emblems and symbols, referred to under Article 53.

In the Second 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, in Article 41 states that under the direction of the competent military authority, the emblem of the Red Cross on a white ground shall be displayed on the flags, armlets and on all equipment employed in the Medical Service, and that of the Red Crescent or the red lion and sun on a white ground, shall be used in countries who already use them too, as armlets too, with identity cards concerning their details; while Article 43 provides for designated ships to be so marked well and boldly for visibility, and with distinguishing signs, while Article 45 stipulates that the High Contracting Parties shall, if their legislation is not already adequate, take the measures necessary for the prevention and repression, at all times, of any abuse of the distinctive signs.

In the Fourth Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War, Article 18 stipulates that Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict,

and all Civilian hospitals shall be visibly marked by means of the emblems provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, so authorized by the State; while Article 20 clearly states that Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected and are to wear the distinctive emblem armlet, while Article 22 provides that the distinctive emblems shall be placed on aircrafts exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or for the transport of medical personnel and equipment, and they must not be subject to any attack.

In the Additional Protocol I of 1977, Articles 18, and 19 state that shipwrecked persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility, use of the distinctive emblem for protective purposes and shall be protected from any attack and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals. "Misuse of these emblems is prohibited in Article 38, and its perfidious use is seen as a war crime.

The Annex I (to the Protocol I) on Regulations concerning identification (as amended on 30 November 1993): in its Articles 1-14 also contains instructive provisions on the use of the emblems.

In Additional Protocol II's Article 12, under the direction of the competent authority concerned, the distinctive emblem of the Red Cross, Red Crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

Furthermore, the Additional Protocol III has some rules on the use of the Emblems. Article 2 clearly describes the Red Crystal⁵⁷ which is composed of a red frame in the shape of a square on edge on a white ground, known as the “third Protocol emblem”. It also clearly states that the conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblems established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols. Articles 3 and 4 state that the medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make the Red Crystal or any other distinctive emblem that had been earlier authorized, for both protective and indicative purposes.

It is important to also state that we also have the 1991 Emblem Regulations which greatly guide the use of the Emblems too. These Regulations (hereinafter “the Regulations”) stipulate the various ways the emblem of the red cross or the red crescent on a white ground may be used by the National Societies, in keeping with the provisions of international humanitarian law and the Fundamental Principles of the International Red Cross and Red Crescent Movement (hereinafter “the Movement”).⁵⁸

The Rome Statute of the International Criminal Court clearly states in Article 8(2)(b)(xxiv) and (e)(ii), states that “[i]ntentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law” constitutes a war crime in both international and non-international armed conflicts. Both the National

⁵⁷ Not called this name though.

⁵⁸ Further reading can be done in “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 (Vienna, 1965) and revised by the Council of Delegates (Budapest, 1991)” available at <https://www.cambridge.org/core/journals/international-review-of-the-red-cross-1961-1997/article/abs/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-vienna-1965-and-revised-by-the-council-of-delegates-budapest-1991/8A4E237F18226C5F495227EF8349D63F> accessed on 12 December, 2020.

courts of States and the International Criminal Court have jurisdiction to try offenders based on the Principle of Complementarity.⁵⁹

There are other relevant Laws and Rules governing the protective and indicative emblems.⁶⁰

THE MISUSE OF THE EMBLEMS⁶¹

When we talk about the misuse of the Emblems or Symbols, we are referring to all improper use of these emblems or symbols, which is not allowed by extant laws and rules, either during armed conflicts or in times of peace. The following are the situations where these emblems or symbols can be misused:

1. where the signs or symbols are used in such a way that either by the shape or by the colour, may be confused with the emblems/symbols, either by active imitation or by passive imitation;⁶²
2. the improper use of the emblems or symbols by any persons or organisations;
3. the Improper Use of the Emblems or Symbols by Persons who actually have the authority to use them, they are actually using them in a manner that International Humanitarian Law does not permit the emblems of the symbols to be used;
4. the actual use of the Emblems or Symbols by persons or organisations who are not entitled to use them. This may include Non-Governmental Organisations, individuals, unauthorized medical personnel, etc.;
5. perfidious use of the emblem/symbols, which is the use of the emblem/symbol during an armed conflict to protect combatants or military equipment when carrying out hostile acts;

⁵⁹ Available at <https://ihl-databases.icrc.org> accessed on 27/12/20.

⁶⁰ These include The Hague Convention for the Protection of Cultural Property of ... Military Manuals of various Countries etc. in “Practice Relating to Rule 61. Improper Use of Other Internationally Recognized Emblems’ Practice Relating to Rule 61. Improper Use of Other Internationally Recognized Emblems available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule61.

⁶¹ See *Commentary on GC I*, Article 44, p. 325, and the commentary on Article 5 of the 1991 Emblem, available at [ihl-databases.icrc.org > ihl > full > GC-commentary](https://ihl-databases.icrc.org/ihl/full/GC-commentary) accessed on 21st December 2020. See also Peter Ten Hove, *Protective Emblems, Signs and Symbols* available at <https://gather4humanity.com/knowledge-base/protection/protective-emblems-signs-signals/> accessed on 02/02/21.

⁶² *Ibid.*

6. feign intent to negotiate under a flag of truce or of surrender (API Art. 37). Customary international humanitarian law recalls that in situation of international and non-international armed conflicts, it is prohibited to use unduly the white flag (Rule 58 of ICRC customary IHL study published in 2005);⁶³
7. it is prohibited to make improper use of the distinctive emblem of the Red Cross, Red Crescent, Red Lion and Sun, or any other emblems, signs, or signals provided for by the Conventions or by Additional Protocol I (API Art. 38 and Rule 59);⁶⁴
8. it is also prohibited to misuse deliberately other internationally recognized protective emblems, signs, or signals in an armed conflict, including the flag of truce and the protective emblem of cultural property (API Art. 38 and Rule 59);⁶⁵
9. it is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that organization (API Art. 38 and Rule 60);⁶⁶
10. it is prohibited, in an armed conflict, to use the flags or military emblems, insignia, or uniforms of neutral or other States not party to the conflict (API Art. 39 and Rule 63);⁶⁷
11. it is prohibited to make use of the flags or military emblems, insignia, or uniforms of adverse parties, whether during attacks or in order to shield, favour, protect, or impede military operations (API Art. 39 and Rule 62);⁶⁸
12. it is prohibited to direct attacks against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law (Rule 30 of the customary IHL study).⁶⁹

⁶³ Available at <https://guide-humanitarian-law.org/content/article/3/distinctive-or-protective-emblems-signs-and-signals/> accessed on 14/1/21

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

RECOMMENDATIONS TO ENHANCE THE USE OF THE EMBLEMS AND SYMBOLS

1. The indicative and protective uses of the Emblems and Symbols cannot be overemphasized, whether in times of armed conflict or in peace time. Based on the provisions of Article 1, common to the four 1949 Geneva Conventions and to the Additional Protocol I of 1977), all State parties have committed themselves to mandatorily implement bona fide provisions of these laws and other relevant laws. It is therefore recommended that where there are instances of such disrespect by any State party, such state party should be sufficiently punished and sanctioned so as to act as deterrence to others.
2. Lack of knowledge of the extant laws and legal provisions as it concerns IHL is still a global issue, among armed forces of State Parties and other participants in armed conflict, including the citizenry. This also affects the respect/regard for the Distinctive Emblems and Symbols and their use. There is need for comprehensive and widespread enlightenment and training of both the military and civilians on this, and the dire consequences of the attendant negative actions of disobeying these laws.
3. Since all State parties to the relevant treaties on IHL have a primary responsibility and have committed to “respect and ensure respect” of IHL more efforts should be put in place, even during armed conflict, in translating the provisions of the relevant laws of IHL, particularly the ones on the distinctive emblems and symbols into diverse languages, and ensuring the full distribution of same, especially to the conflicting side, so as to limit the risk of attack on protected persons and objects bearing the distinctive emblems and symbols, and so as to ensure too that such protected persons and objects are clearly marked with the right emblems and symbols too. Good manuals on humanitarian law play a decisive part in effectively spreading knowledge of that law among military personnel. Rules

which are not understood by or remain unknown to those who have to respect them will not have much effect.⁷⁰

4. Domestic legislations on implementation of the provisions of IHL Laws is very important in ensuring respect and regard for the Emblems and Symbols. Many provisions of the Geneva Conventions and of their Additional Protocols imperatively require each State Party to enact laws and issue other regulations to guarantee full implementation of its international obligations. State parties must fully enact domestic legislation for this implementation and also ensure that any misuse of these emblems and symbols are prosecuted under domestic law. This is very important so that offenders do not evade the wrath of justice.⁷¹
5. The full cooperation of all nations with the International Criminal Court, Humanitarian Organizations and other relevant organizations who take part in making armed conflicts tolerable and render services and who also make use of the protective and the distinctive emblems, is recommended. All hands must be on deck to ensure the proper compliance and respect for the distinctive and protective emblems and International Humanitarian Law.
6. We recommend the full prosecution of persons who have committed grave breaches of international humanitarian law, especially as it concerns compliance and respect for emblems and symbols. Such persons must be prosecuted by any State party under whose authority they find themselves. Also, any unwilling state should extradite the suspect to another State Party which is willing to prosecute him. Individuals accused of violating humanitarian law can also be tried by the International Criminal Court in the Hague. Indeed for the first time in history, a permanent international court established in 1998, has jurisdiction over crimes committed not only in the course of international armed conflicts but also during non-international armed conflicts, same which is located in the Hague, Netherlands. The Court's jurisdiction does not affect the obligation

⁷⁰ Ibid.

⁷¹ Ibid.

of States Parties to prosecute war criminals in their own domestic courts.⁷²

7. It is recommended that International Humanitarian law should be taught in the first year of University education, and it should be taught in all faculties, rather than in selected faculties. Armed conflicts will always occur, and there is need for better preparation for same.

CONCLUSION

It is important to note that the use of the Red Cross, the Red Crescent and the Red Crystal Emblems, and other emblems/symbols differ in times of war and of peace, with the attendant conditions. When the emblems are used as Indicative purposes, they are used in their small sizes, by persons and organizations allowed by International Humanitarian Law to so use them e.g the Red Cross Societies etc. On the other hand, when the emblems are used for Protective purposes, they are used in large sizes, and these are used usually in times of armed conflicts. Their use indicates that the medical personnel, services, installations, or material wearing the emblem enjoy protection provided to medical services by humanitarian law (GCI Arts. 38–44, 53–54; GCII Arts. 41–43; API Art. 18). Any deliberate attack on persons or objects carrying the protective emblems is a war crime under the Geneva Conventions and under the Statute of the International Criminal Court.⁷³

It is also important to state that States parties to the aforementioned Geneva Conventions and Additional Protocols have the obligation to adopt laws and sanctions to be enforced before national courts that prevent and punish the disrespect for, refusal to recognize, and perfidious use of these emblems in times of peace or of war. To implement such measures, domestic laws must be adapted to integrate the protection of these emblems.

⁷² Ibid.

⁷³ Study On The Use Of The Emblems Operational And Commercial And Other Non-Operational Issues
Ibid.

There is the urgent need for very comprehensive public enlightenment programmes for the military and the citizenry on the use and misuse of the Emblems and Symbols, in order to ensure compliance and respect, be it in time of peace or during armed conflict. Since there are several incidents of flagrant disrespect, misuse and disregard for these emblems and symbols. This indeed is a matter of international concern, for which this clarion call is made.

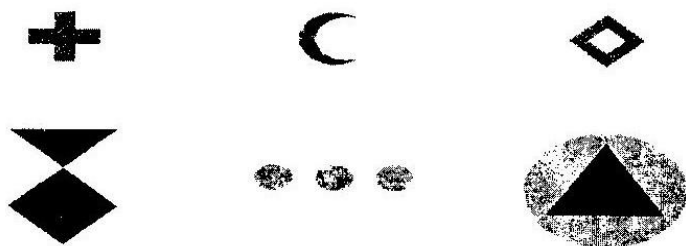


Figure 1 | Internationally Recognized Protective/Indicative and Symbols⁷⁴

RESOURCES FOR FURTHER READING

1. International Humanitarian Law available at <https://ijrcenter.org/international-humanitarian-law/> accessed on 20/12/2020. *Commentary on the Additional Protocols of 8 June 1977* (Geneva: ICRC, 1987): xxvii. Available from: <<https://ihl.databases.icrc.org/ihl/INTRO/470>>.
2. *Commentary of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Geneva: ICRC, 1952): 32. Available from: <<https://ihl-databases.icrc.org/ihl/COM/365-570005?OpenDocument>>.
3. Basic principles of IHL available at <https://www.diakonia.se/en/ihl/the-law/international-humanitarian-law-1/introduction-to-ihl/principles-of-international-law/>

4. How The Law Protects: Emblems (Red Cross, Red Crescent & Red Crystal) available at <https://casebook.icrc.org/glossary/emblems-red-cross-red-crescent-red-crystal> accessed on 26/12/2020.
5. Sassrli, Bouvier, and Quintin, “Historical Development of International Humanitarian Law”. https://assets.cambridge.org/97811071/16177/frontmatter/9781107116177_frontmatter.pdf accessed on 27/12/20.
6. Harvey J. Langholtz, *International Humanitarian Law and The Law of Armed Conflicts*, available at https://cdn.peaceopstraining.org/course-promos/international_humanitarian_law/international_humanitarian_law_english.pdf.
7. Sun Tzu, *The Art of War* (New York: Penguin Classics, 2003).
8. Harvey Langholtz Ibid.: Marco Sassrli, Antoine A. Bouvier, and Anne Quintin, “Historical Development of International Humanitarian Law”, in *How Does Law Protect in War? Vol. 1* (HDLPIW) (Geneva: ICRC, 3rd edition).
9. *The Law Code of Manu* (New York: Oxford University Press, Inc, 2009).
12. Henry Dunant, *Memory-Solferino-Henry-Dunant* available at www.amazon.com ›
13. *The Geneva Conventions and Additional Protocols* available at www.icrc.org › document › geneva-conventions-1949-; www.icrc.org › download › file › additional-protocols.
14. Basic rules of international humanitarian law in armed conflicts available at <https://www.icrc.org/en/doc/resources/documents/misc/basic-rules-ihl-311288.htm>
15. Albert Camus, *The Practical Guide To Humanitarian Law* available at <https://guide-humanitarian-law.org/content/article/3/distinctive-or-protective-emblems-signs-and-signals/>
16. Melzer, Nils. *International Humanitarian Law: A Comprehensive Introduction*. Geneva, Switzerland: ICRC, 2016.
17. Clapham, Andrew, and Paola Gaeta, eds. *The Oxford Handbook of International Law in Armed Conflict*. Oxford: Oxford University Press, 2014.
18. Blank, Laurie, and Gregory Noone. *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War*. New York: Wolters Kluwer, 2013. 19. Fleck, Dieter, ed. *The Handbook of International Humanitarian Law*. 3d ed. Oxford: Oxford University Press, 2013.

⁷⁴ Adriano Iaria, E-Emblems: Protective Emblems and the Legal Challenges of Cyber Warfare available at <https://www.iai.it/en/pubblicazioni/e-emblems-protective-emblems-and-legal-challenges-cyber-warfare>, accessed on 19th December, 2020.