

WHAT'S IN AN EMBLEM? HUMANITARIAN ASSISTANCE UNDER ANY OTHER BANNER WOULD BE AS COMFORTING

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With all due deference to the literary genius of William Shakespeare, this note is not about the Montague Clan but about the Red Cross emblem. Mind you, if Juliet had been a Ms Cross and Henri Dunant¹ and his mates had chosen a Red Monty instead, things would have been much happier for everybody! The story of the choice of the Red Cross emblem is one of excruciating frustration — some would suggest that the tragic level of Romeo and Juliet's frustration simply pales in comparison.

The Red Cross emblem is the distinctive sign of protection in the context of armed conflict. As one now famous piece of New Zealand graffiti next to a Red Cross emblem read: 'How to say "don't shoot me" in 350 languages'.² The four *Geneva Conventions* of 1949³ and the two *Additional Protocols* of 1977⁴ all obligate parties to armed conflict to respect hospitals, medical facilities, medical transport vehicles, ships, aircraft and medical personnel under the protection of the emblem. Perfidious use of the emblem is a war crime.⁵ People within the Red Cross Movement speak of the *protective* use of the Red Cross emblem in armed conflict to distinguish this primary function of the emblem from other authorised use. The sanctity of the Red Cross emblem is reflected in the Australian *Geneva Conventions Act 1957* (Cth) (and in other similar legislation around the world). It

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¹ Henri Dunant was one of the Founders of the Red Cross Movement.

² The graffiti, painted onto a wall in New Zealand alongside a painted red cross on a white background, was photographed and used extensively in Red Cross promotional material; it appears on the cover of the Australian Red Cross, *IHL Newsletter* (September 1998) No 1.

³ *Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31; *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, opened for signature 12 August 1949, 75 UNTS 85; *Geneva Convention Relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135; *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (all of these conventions entered into force on 21 October 1950). As at 5 May 1999 there were 188 states parties.

⁴ *Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict*, opened for signature 8 June 1977, 1125 UNTS 3; 16 ILM 1391 (entered into force 7 December 1978) ('*Additional Protocol I*'). As at 28 October 1998, there were 152 states parties; *Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*, opened for signature 8 June 1977, 1125 UNTS 609; 16 ILM 1442 (entered into force 7 December 1978). As at 5 May 1999, there were 144 states parties.

⁵ See, eg. *Additional Protocol I*, above n 4, art 85(3)(f).

is a criminal offence in Australia to use the Red Cross emblem without the authorisation of the Minister of Defence.⁶ The Minister has authorised the Australian Red Cross to use the emblem in its work and its promotional activity. However, the Australian Red Cross must always qualify its use of the emblem with the words ‘Australian Red Cross’. Within the Movement, this type of use of the emblem is described as *indicative* use to distinguish the unqualified use of the emblem for its *protective* function in armed conflict.

According to international advertising experts, the emblem of the Red Cross is one of the two most easily recognisable symbols throughout the entire world — in every country, every city and even in many of the remotest places of human habitation. Alongside the Coca-Cola sign, people everywhere know the Red Cross. The golden arches of McDonald’s, the ‘swoosh’ of Nike and the bitten apple of Macintosh are all rapidly attaining global recognition, but none of them are everywhere. The Red Cross, of course, is not a commercial symbol, but how much would some global corporations pay for the level of universal recognition that the Red Cross emblem enjoys? How much would many other international aid agencies love to have an emblem so highly recognised and regarded? And yet — and here is the irony — controversy about the emblem is the one issue that truly haunts the Red Cross Movement. It is the skeleton in the cupboard that never goes away, the monster that regularly rears its ugly head, threatening the very fabric of worldwide commitment to the agreed Fundamental Principles⁷ and core values of all the Red Cross stands for. The tragedy is that the simple, distinctive, even beautiful red cross on a white background has never been universally accepted within the Red Cross Movement itself. The emblem, which enjoys a level of external recognition only dreamed of by aspirants for global recognition status, is contemporaneously a poisonous source of internal bickering, distraction and emotive dissent. There is a further painful twist in the irony: the Red Cross emblem, which speaks so eloquently for the alleviation of human suffering, is itself a source of pain and anguish within the Red Cross world.

Most people think of the Red Cross as a monolithic organisation operating under a single emblem; but the reality is more complicated. The global Red Cross Movement has three constituent parts: the International Committee of the Red Cross (‘ICRC’); the National Red Cross and Red Crescent Societies; and the International Federation of Red Cross and Red Crescent Societies. All states that are party to the *Geneva Conventions* are entitled to have a single national society — either a Red Cross Society or a Red Crescent Society — officially recognised and admitted to membership of the Movement. Approximately every four years, the three constituent parts of the Movement meet with governments of states party to the Conventions for the International Red Cross Conference.⁸ This inter-

⁶ *Geneva Conventions Act 1957* (Cth), s 15(4).

⁷ The Fundamental Principles of the Red Cross Movement are: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.

⁸ The most recent International Red Cross Conference, the 27th International Conference, was held in Geneva in November 1999.

governmental forum furnishes the Red Cross Movement with a unique status among international humanitarian aid organisations.

The ICRC was established in 1863 by four Swiss nationals who selected the emblem of their new, independent humanitarian aid agency by reversing the colours of the Swiss national flag. The choice of a readily visible, easily identifiable and supposedly unique emblem⁹ also had the fortuitous benefit of complimenting Switzerland on the establishment of the organisation and of ensuring a demonstrative Swiss connection with the new organisation in perpetuity. That stark symbol of Swiss influence is indicative of the substantive and pervasive Swiss control of the organisation. Despite the amazing multicultural spread of the Red Cross Movement, with 125 million volunteers worldwide, the ICRC is as Swiss as cowbells, mountain horns and cuckoo clocks. I am not suggesting this as a negative — rather, this is simply an observation of the reality. It is impossible to be in Switzerland, particularly in Geneva on or near the anniversary of the Geneva Conventions in August, to see the Swiss national flag and the Red Cross flag fluttering side by side and to miss the synergistic message.

There is no evidence of an intentional religious connotation in the decision to reverse the Swiss national flag. While Dunant and his colleagues all came from established and respected families in the city, influenced by the Christian ministry of Jean Calvin, any reference to Christianity in the choice of the cross was overwhelmingly subservient to expressions of nationalism. Whether or not the Swiss national flag incorporates an intentional Christian connection, the connotation for many is unambiguous when the cross is the same colour as the blood which flowed at Calvary. The ICRC has consistently claimed that there was never an intention for the Red Cross to carry that connotation.¹⁰ This official position is not without political support. In China, for example, the authorities maintain that the emblem of the Chinese Red Cross is not a religious one. Of possibly even greater significance is the choice of emblem for the most populous Muslim country on earth. The Indonesian Red Cross steadfastly maintains that the cross lacks a religious connotation and have prevailed with that argument to date despite arguments in favour of adoption of the Red Crescent from Islamic groups in Indonesia.¹¹

However, attempts to argue that the Christian cross is a crucifix with a longer vertical axis than the cross of the Red Cross, which is constituted by axes of equal length, have never been taken seriously in the Middle East. In that particular region of the world people know and hate the red cross on a white background because it constituted the uniform of the Crusades — a religious

⁹ Apparently the Swiss had no idea that Tonga, so effectively evangelised by Wesleyan missionaries, had begun to use a national flag with the same red cross on a white background in the top left hand corner in the early 1860s. King Taufa'ahau Tupou George I's express intention was for the cross to be red to signify Christ's blood shed on the cross, and for it to remain on the national flag as an unalterable expression of the devotion of the Tongan People to Christianity.

¹⁰ See, eg, François Bugnion, 'The Emblem of the Red Cross: A Brief History' (1977) 193 *International Review of the Red Cross* 167.

¹¹ Based on discussions between the author and officers of the Indonesian Red Cross.

emblem emblazoned across the breastplates of those who claimed to be representing Christ in a murderous purge of ‘pagan Muslims’ from the Holy Land. Try telling a Turk or a Jordanian or a Palestinian that the Red Cross is not intended to have a religious connotation because it is a slightly different shape to the Christian crucifix. Lebanon alone maintains the Lebanese Red Cross in a sea of national Red Crescent Societies throughout the Middle East.

Shortly after the creation of the ICRC in 1863, states began to establish their own national Red Cross Societies in affiliation with the new international organisation. In 1876 Turkey was the first Islamic state to establish its own national society and it did so by using an alternative emblem — the Red Crescent. For all intents and purposes, the Ottoman Red Crescent Society operated in exactly the same way as any other Red Cross national society — providing humanitarian assistance and relief. The only problem was that it could not be recognised by other national societies because the emblem of the Red Cross was the only legitimate emblem at the time. Here was the first serious challenge to the unity of the Red Cross Movement expressed through the single emblem. Throughout World War I, the Ottoman Red Crescent Society provided medical treatment and assistance to wounded soldiers on both sides of the conflict, just as other national Red Cross societies did.¹² Despite efforts by many purists within the Red Cross Movement to oppose any alternative emblem to the Red Cross and so, in their eyes, dilute the protective power of the founding emblem, the desire for universality triumphed over the unity of the emblem. At a conference held in 1929 (‘the 1929 Conference’), the world Red Cross Movement agreed to recognise the legitimacy of the Red Crescent as an alternative emblem to the Cross.¹³ The Turkish and the Egyptian Red Crescent Societies, which clearly espoused all the core values of the Red Cross Movement, were admitted to membership and the path was opened for other Islamic nations to follow suit.¹⁴

Interestingly, it was not only the Red Crescent which was recognised as a legitimate emblem in this crucial year of 1929. Once the exclusive legitimacy of the Red Cross emblem was successfully challenged, arguments for the recognition of other emblems were inevitable. Iran was able to convince enough members of the Red Cross Movement at the 1929 Conference of the need to also recognise the Persian Red Lion and Sun as a third legitimate emblem.¹⁵ The Red Cross Movement was clearly in an accommodating frame of mind. At least the Ottoman Red Crescent Society could argue that many Islamic states would only join the growing international Movement in the future if the Red Crescent could be adopted as their national emblem. But Iran could not make that argument. The recognition of the Red Lion and Sun was unambiguously for the accommodation

¹² Bugnion refers to the fact that both Australia and New Zealand explicitly referred to the work of the Ottoman Red Crescent Society during World War I in voicing their support for the recognition of the Red Crescent emblem: Bugnion, ‘The Emblem of the Red Cross’, above n 10, 230.

¹³ *Ibid* 229–36.

¹⁴ *Ibid* 234.

¹⁵ *Ibid*.

of a lone national society. This somewhat unusual display of inclusive attitudes has bedevilled all subsequent discussions on the emblem. The 1929 Conference compromised on the recognition of alternate emblems and then tried to ensure that the issue would never be raised again.

What the decision did achieve was a guarantee that the issue of the emblem(s) would continue to haunt the Movement. In 1935, for example, Afghanistan applied for recognition of the Red Archway Society.¹⁶ Some within the world Red Cross Movement breathed sighs of relief when the Shah of Iran was overthrown¹⁷ and the Iranian Red Lion and Sun Society became the Iranian Red Crescent Society. At least now the use of emblems was reduced from three to a more manageable two. Never again would one national society be allowed to fight for the recognition of an additional emblem. However, the Iranians, despite the continuous rule of fundamentalist Islamic clerics since 1979, have argued against the removal of the Red Lion and Sun from the list of approved emblems, and continue to reserve the right to again use the Red Lion and Sun. While Iranian resuscitation of the Red Lion and Sun emblem is unlikely in present circumstances, technically the emblem is still a legitimate third alternative and could be taken up and used by any national society which chose to do so.¹⁸

Furthermore, and of far greater contemporary consequence, the Society of the Red Shield of David (or Magen David Adom) applied for recognition in 1952 after it had already achieved at least 22 years of operational experience in the British Mandated Territory of Palestine and Transjordan.¹⁹ Prior to 1948, the Movement was able to reject recognition on the grounds that the Society was not constituted on the territory of an independent state. However, from 1948, following the proclamation of the State of Israel, that argument was no longer valid. Since that time, the Israeli Society has not been admitted to membership on the sole ground that it does not use one of the three recognised emblems.²⁰ If the majority of the Arab states had their own reasons to reject the Red Cross emblem, the Israelis had their reasons to reject both the Red Cross and the Red Crescent emblems, and they did so emphatically, adopting instead the Red Shield of David. For more than 70 years, Magen David Adom has provided humanitarian assistance to Israelis, Palestinians, Egyptians and Jordanians alike. I have never heard a single criticism of the professional levels of competence or the impartiality of Magen David Adom's service to those in need, particularly in the context of armed conflict. In more than 70 years of operation, very few national societies have encountered anything like the level of war-time operational experience of Magen David Adom. However, the *Statutes of the*

¹⁶ Ibid 287.

¹⁷ The Shah of Iran was overthrown by Islamic fundamentalist clerics in 1979. After the Ayatollah Khomeini was appointed President of Iran, there was little chance that the Iranian National Society would adopt anything other than the Red Crescent emblem — particularly an emblem representative of the Shah's discredited regime.

¹⁸ The *Geneva Conventions* of 1949 and the *Additional Protocols* of 1977 all recognise the legitimacy of the three emblems — the Red Cross, the Red Crescent, and the Red Lion and Sun.

¹⁹ Bugnion, 'The Emblem of the Red Cross', above n 10, 289.

²⁰ Ibid.

International Red Cross and Crescent Movement ('Statutes')²¹ have never been changed to allow the admission to membership of any national society which uses an emblem other than the Red Cross, the Red Crescent or the Red Lion and Sun. For more than 50 years, senior representatives of Magen David Adom have been forced to sit as observers of the proceedings of International Red Cross Conferences, while virtually all other national societies participate as full members of the Movement.

It is incorrect to portray the current agitation on the emblem as purely involving Israel. The reality is that at least two other national societies are currently excluded from participation in the global Red Cross Movement, because of their refusal to adopt either the Red Cross or the Red Crescent as their emblem. Both Kazakhstan and Eritrea have Muslim and Christian communities and both states prefer to use both emblems. So the Kazakhstani Red Cross and Red Crescent Societies, and the Eritrean Red Cross and Red Crescent Societies, remain officially unrecognised. This lack of recognition can only be rectified following alteration of the *Statutes* to allow the use of both emblems by one national society.

Despite relentless lobbying by the Israeli Government and Magen David Adom for recognition of the Israeli emblem, the international Red Cross Movement has never been prepared to accept an additional emblem following the 1929 Conference. There are many within the Movement who believe that three emblems are too many, that the concessions made at the 1929 Conference were a mistake and that any further proliferation of emblems must be avoided. Israel's relative isolation in international affairs has, of course, never helped its emblem cause. The Arab and other Red Crescent states and national societies have consistently argued against any special consideration for the Israeli emblem. However, the issue has never faded far from international prominence and the Movement has been regularly confronted with the embarrassment of the exclusion of the Israeli, Kazakhstani and Eritrean National Societies — not on the basis of lack of professional competence or commitment to the Fundamental Principles of the Movement, but on the sole basis of the choice of emblem.

In recent years a working group of experts has been involved in extensive discussions aimed at negotiating a final resolution of the emblem issue.²² The group's task has not been easy. Despite all the principled arguments for attempting to do so, the Movement cannot simply wind back the clock of history and start again. It is impossible to return to 1863 and replace the Red Cross with some other emblem: there is simply too much at stake for the Movement to contemplate abandoning the Red Cross for any other alternative emblem. That possibility has been canvassed several times before in Red Cross history and rejected each time for the same reasons.²³ The working group did raise this

²¹ Reproduced in International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, *Handbook of the International Red Cross and Red Crescent Movement* (13th ed, 1994) 415.

²² See generally François Bugnion, 'Vers une solution globale de la question de l'emblème' (2000) 82 *International Review of the Red Cross* 427, 457–60.

²³ *Ibid* 456.

possibility again, and the level of outrage expressed around the world caught many by surprise. The reactions of Australian Red Cross volunteer members is illustrative — from Broome to Bendigo and from Bourke to Burnie, members were incensed at the mere suggestion that their beloved Red Cross might be swapped for some other emblem. It is also impossible to return to 1929 and terminate the recognition of the Red Crescent. Any suggestion of such a move would fracture the current unity of the worldwide Red Cross Movement — most existing Red Crescent states and national societies would not participate in the Movement.

At the same time, however, the Movement also will not contemplate an unlimited proliferation of emblems. Even though the Red Shield of David has enjoyed more than 70 years of continuous use, once it too is accepted as a legitimate emblem in its own right, what is to stop other national societies in the future claiming their own emblem as an alternative to the existing emblems at the time: a Red Rising Sun or a Red Bhudda or a Red Hindu God of Comfort or a Red Boxing Kangaroo? At least the Kazakhstanis and the Eritreans are arguing for the use of existing emblems.

Is there a solution compatible with these ‘non-negotiables’ which allows Israel to continue to use the Magen David Adom, while also being accepted as a full member of the global Red Cross Movement? The pressure for a solution has increased recently with the American Red Cross deciding to ‘place in escrow its annual dues payment for the overhead expenses of the ICRC and Federation’,²⁴ and possibly even withdraw from the Movement, unless the Israeli Magen David Adom Society is accommodated within the Movement. Early in 2000 a compromise proposal was distributed to states and to national societies for comment and discussion ahead of a vote on possible adoption.²⁵

The compromise proposal envisages the adoption of a *Third Protocol Additional to the Geneva Conventions* to approve another emblem — in effect a fourth emblem. This new emblem is intended to be the emblem to end the proliferation of emblems by reason of its generic status. The emblem will be devoid of religious connotation and will appear differently for protective use and for indicative use. For protective use the emblem will stand alone without qualification. For indicative use, the Magen David Adom, or the Red Cross and the Red Crescent together, or another emblem approved at some future stage, will be superimposed on a designated part of the generic emblem. It is not intended that the new generic emblem will replace either the Red Cross or the Red Crescent — just that it will be capable of accommodating other emblems, so that a ceiling can be placed on future proliferation.

Initially the proposed generic emblem was a solid red diamond for protective use, and the same diamond with the bottom portion left white for the Magen

²⁴ The American National Red Cross, ‘American Red Cross Continues to Work for Recognition of Magen David Adom’, (2000) <<http://www.redcross.org/intl/mda/>> at 8 December 2000.

²⁵ See generally Bugnion, ‘Vers une solution globale de la question de l’emblème’, above n 22, 462–3. A copy of the draft protocol text for the adoption of the additional emblem is on file with the author.

David Adom or other emblem to be superimposed within the white portion for indicative use. The problems associated with the determination of a new generic emblem are already evident. Some African states have objected to the diamond because of economic oppression and slavery perpetrated in the pursuit of the diamond industry in their countries. Cyber-squatters had apparently already registered 'www.reddiamond.org' (or similar name) presumably in the hope of receiving a large payment from the Red Cross Movement to be able to use that internet address. The solid red diamond is used in maritime semaphore and solid red diamonds are used in the corporate logos of several companies in different states around the world.²⁶

Once the solid red diamond was discounted, two red chevrons pointing away from each other were proposed as the generic emblem. This too created problems — not the least of which was the United States petro-chemical giant Chevron, which uses two chevrons as its corporate logo, and was not particularly amused by the proposal. Research continues to find an appropriate emblem which embodies the positive attributes of the current Red Cross emblem and removes the negative connotations that have persistently plagued its existence.

The original plan was for the Swiss Government, as depository for the *Geneva Conventions* and *Additional Protocols*, to host a 'Diplomatic Conference of States Parties to the Geneva Conventions' in Geneva in late October 2000. This Diplomatic Conference was convened to gain sufficient approval for the proposal to then call an extraordinary International Red Cross Conference for the Movement in mid-November 2000. Prior to the Diplomatic Conference, extensive lobbying had taken place around the world to gather support for the new proposal as a final compromise on the emblem issue. Lobbying had been particularly intense in Israel and in the United States, and there was a great deal of optimism about the prospects for adoption of the proposal. Despite hardline Arab opposition to the proposal, many thought that the level of support around the world would be sufficiently high to carry the proposal.

One must never underestimate the vagaries of international relations to frustrate the making of international law. What no-one counted on was the unravelling of the Middle East Peace Process following the failure of the July 2000 Camp David Summit.²⁷ The inability of Yasser Arafat and Ehud Barak to reach a final agreement on the outstanding issues, and the consequent outbreak of violence across much of the West Bank and in the Gaza Strip, put paid to any prospect of agreement in Geneva on the new emblem. Any chance of Arab compromise to allow the Israeli Magen David Adom Society to be admitted to membership of the global Red Cross Movement evaporated with the throwing of stones, the lynching of soldiers, the destruction of historic monuments, the killing of children, the rocketing of more and more buildings and the ever increasing death toll from the clashes. Quite apart from the merits of the actions

²⁶ These various objections were raised in the context of a preparatory meeting of states parties to the *Geneva Conventions* on the new emblem in Geneva in September 2000.

²⁷ The Camp David Summit of July 2000 was hosted by United States President Bill Clinton and attended by Israeli Prime Minister Ehud Barak and Palestinian Leader Yasser Arafat.

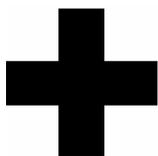
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of either the Israelis or the Palestinians in the latest escalation of the violence, the international atmosphere has been so poisoned by the resumption of the cycle of death that constructive negotiations, on even a peripheral issue such as the emblem, is out of the question for now.

The ICRC and the Swiss Government optimistically talk of a postponement of negotiations until early 2001. That timing is, of course, dependent upon events in the Middle East. If some semblance of order is restored and a new dialogue recommenced, agreement in Geneva may still be possible. However, just when the Red Cross Movement was tantalised by the prospect of a final resolution of the emblem issue — not a perfect resolution by any means, but at least a resolution of a protracted and often painful process — that hope has been extinguished. It may well be that the emblem issue continues to be a festering sore for the Movement for several more years yet, if Middle East peace continues to prove such an elusive quarry.

EXISTING EMBLEMS



Red Cross



Red Crescent



Red Lion and Sun
(in use 1929–79)

PROPOSED EMBLEMS

Proposed red diamond emblems for protective use by national societies in armed conflicts



Red Diamond for protective use in armed conflict



Red Cross for indicative use by national societies



Red Crescent for indicative use by national societies



Red Cross and Crescent for use by Kazakhstani and Eritrean societies



Magen David Adom for use by Israeli society

Proposed red chevron emblems for protective use by national societies in armed conflicts



Red Chevron for protective use in armed conflict



Red Cross for indicative use by national societies



Red Crescent for indicative use by national societies



Red Cross and Crescent for use by Kazakhstani and Eritrean societies



Magen David Adom for use by Israeli society