

# Commercial Use of the Emblems of International Bodies: The Case of the International Committee of the Red Cross

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## L'utilisation commerciale des emblèmes d'organismes internationaux: étude de cas du Comité international de la Croix-Rouge

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### *Abstract*

The International Committee of the Red Cross (ICRC) is an international non-governmental organization (NGO) with a functional organization based on a structure of national societies and committees that independently represent it and carry out its work in numerous countries around the world. An essential element of this NGO's functions, which are indeed very special, is the emblem that marks all of the activities the organization carries out, a symbol that is truly known in every corner of the globe. Given the organization's prestige and everything its emblem represents, the need to protect this symbol arises in all contexts where it might be used, whether by the ICRC itself or by third parties, with or without authorization. This article reviews the numerous international, national, and internal rules that seek to regulate this emblem and its protection in all such models of its potential use.

### *Résumé*

Le Comité international de la Croix-Rouge (CICR) est un organisme non gouvernemental international (ONG) doté d'une organisation fonctionnelle basée sur une structure de sociétés et de comités nationaux qui le représentent de manière indépendante et qui poursuivent leurs activités dans de nombreux pays à travers le monde. Un élément essentiel des fonctions de cet ONG, qui sont en effet très spéciales, est l'emblème qui marque toutes ses activités, un symbole véritablement connu aux quatre coins du monde. Compte tenu du prestige de l'organisation et de tout ce que son emblème représente, la nécessité de protéger ce dernier se pose dans tous les contextes où il pourrait être utilisé, que ce soit par le CICR lui-même ou par des tiers, avec ou sans autorisation. Cet article passe en revue les nombreuses règles internationales, nationales et internes qui cherchent à réglementer ledit emblème et sa protection dans tous ces modèles de son éventuelle utilisation.

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## INTRODUCTION

It is a common practice for international non-governmental organizations (NGOs) to register their symbols and emblems as trademarks in order to obtain precise protection and secure their rights in certain areas where they use them to mark certain products or services that may or may not be related to the mission of the organization. This circumstance requires differentiation, when analyzing such an emblem's use within the scope of third-party relationships, between cases in which the use of the emblem as such is the subject matter of a contract and those in which the emblem has been registered as a trademark. In the latter situation, the subject matter of the contractual relationship would be the emblem's new nature (a trademark), with the new sphere of protection thereby conferred on it. This practice, however, is ultimately non-existent when the NGO in question is the International Committee of the Red Cross (ICRC).

Before carrying out a specific analysis of the case of the ICRC's emblem, we must briefly explain the kinds of relationships to which we will be referring as well as the motivations and purposes that have made collaborations with the ICRC and other NGOs proliferate in recent times. Models of collaboration with the business sector may be of numerous types, among which may be mentioned financial sponsorships,<sup>1</sup> patronages,<sup>2</sup> economic

<sup>1</sup> The non-governmental organization (NGO) receives certain economic resources from the company, and, in return, the latter is allowed to associate its image with that of the NGO, through the use of its symbol or emblem. Examples include sponsorships of the Canon company regarding different projects of the national Red Cross societies of Austria (Connecting People), Belgium (Challenge of Youth), Denmark (Study Cafes), Finland (Emergency Shelters for Young People), France (Holidays for Vulnerable Children), Germany (Where Is My Home?), Italy (Casa di Teddy), The Netherlands (Holidays for Young People with Disabilities), Spain (World AIDS Day Campaign), Sweden (Responsible Person), Switzerland (Fund for Youth), and the United Kingdom (Positive Images).

<sup>2</sup> The NGO obtains the one-time support of the company to carry out a certain activity, which is usually related to the NGO's goals, and, in return, the image of the patron is associated with that of the NGO. Examples include collaboration in 1987 between the International Committee of the Red Cross (ICRC) and the Evian water company in which the latter donated two francs to the former each time a consumer sent in thirty labels from the brand's products, or the collaboration between Sotel Information Technology Solutions and the Spanish Red Cross Society.

contributions,<sup>3</sup> event sponsorships,<sup>4</sup> as well as product, service, and infrastructure concessions.<sup>5</sup> What is more complicated is the answer to the following question: what are the purposes that underlie all of these collaborative models? It is difficult to answer this question in the abstract since only through a careful analysis of each specific relationship between a NGO and a third party can one clarify or highlight the distinct motivations behind such relationships. That being said, we could say that there are multiple interests at play; above all, those of the third party are noteworthy, as they are related to the reputational advantage that each company gains upon joining its image to that of a non-profit organization and the special impact this conjunction has on the business's brand. It is evident that this type of collaboration will generate connections with interest groups, customers, human resources, governments, suppliers, and distributors, among others. In any case, the relationship between the NGO and third-party companies should be understood as one that provides the basic means of survival for the former while, at the same time, allowing the latter to become involved in their communities and develop their social "presence." Third parties can also obtain indirect benefits related to their advertising and their image; in many cases, they may receive favourable fiscal treatment.<sup>6</sup> All relationships of this type require a series of criteria and some minimum of mandatory compliance to be established, all of which allow, per the contract or collaboration agreement, each actor's identity and degree of participation in the activity for which they have united their images to be maintained and clearly manifested before the public.

When it comes to relationships between distinct NGOs themselves, we must emphasize that this type of collaboration has not been as frequent as others given that certain factors, such as, for example, the abundance of international cooperation funds, have decreased the need to carry out common activities that combine efforts and, above all, finances. This is

<sup>3</sup> The NGO receives a contribution from the company, which will normally have some type of publicity that will benefit the image of the company's business brand.

<sup>4</sup> The NGO exhibits, in exchange for economic resources, the brand image of the company in all media in which it advertises an event that it is organizing. For example, Flightcare has sponsored, at the Manises Airport in Valencia, Spain, an initiative organized by the Dutch Red Cross pursuant to which, thanks to support from the KLM Company, seventy chronically ill and disabled people, including twenty in wheelchairs, were able to spend a special day in Valencia.

<sup>5</sup> The company gives the NGO a series of products, distribution channels, premises, equipment, and so on, which is advertised so that the company's corporate brand again enjoys a benefit. For example, in Spain, the company Alcampo provides space in the entrances to its commercial centres so that the Red Cross Territorial Offices can sell lottery tickets.

<sup>6</sup> For example, the possibility of deductions from taxable revenue for donations made to NGOs.

the reason for which the tendency among these organizations to carry out their own activities prevails. But this is only to say that establishing such relationships, in which NGOs share means and resources to achieve common objectives, is not very common. Common action, such as the coordination of parallel and complementary activities or the subcontracting carried out by some international NGOs to pursue certain projects in the territorial field of action of local NGOs, is an entirely different case.

Thus, both types of collaboration are frequent. Cases of the first type — that is, collaborations with companies — have generated what is commonly called “marketing with a cause.”<sup>7</sup> Regarding this field of action of NGOs, by way of example, the NGO coordinator for development in Spain developed a code of conduct in 1998 that outlines the limitations<sup>8</sup> and parameters to be taken into account by these organizations once a collaborative relationship is established with companies<sup>9</sup> that could materialize into contracts.<sup>10</sup> Nevertheless, at present, NGO collaborations with other NGOs, international organizations (IOs), or even companies are rarely subject to streamlined regulatory processes. As such, such collaborations

<sup>7</sup> Such marketing influences the targets of the campaigns and determines, to a large extent and in many cases, the credibility of the company and the quality of the products or services it promotes or develops. See e.g. the British Red Cross’s description of sponsorship opportunities at *Red Cross*, online: <[www.redcross.org.uk/en/Get-involved/Corporate-support/Ways-of-working-with-us/Working-together-in-business/Sponsorship](http://www.redcross.org.uk/en/Get-involved/Corporate-support/Ways-of-working-with-us/Working-together-in-business/Sponsorship)>: “Sponsoring a British Red Cross event will help your company build positive brand awareness, engage with a mass audience and drive customer and employee loyalty. We have a wealth of experience in developing integrated and bespoke sponsorship packages. From our regional Red Shoe Walks to our national youth dance event ‘Dance: Make Your Move’, we can offer sponsorship opportunities to suit your objectives. By partnering with us your company will align itself with one of the UK’s most recognised and trusted brands. Our award-winning PR, marketing and events teams will work with your company to create a successful event. We can deliver bespoke sponsorship packages that meet your marketing objectives and values, while raising money for people in crisis in the UK and overseas.”

<sup>8</sup> These limitations may include the need to know, prior collaboration with companies, and whether these companies meet certain requirements including respect for human rights, adhering to the International Labour Organization’s conventions, and respect for the environment and public health.

<sup>9</sup> The elaboration of this code of conduct has as its origin collaborations that some NGOs had established with third parties in which the image inherent in the emblem was used in advertising campaigns whose object or product was inconsistent with the principles of the former, thereby degrading the NGO’s public image. Many critical articles arose at that time. See e.g. David Álvarez Rivas, “El gancho comercial de la solidaridad,” online: <[www.fuhem.es/media/cdv/file/biblioteca/Educaci%C3%B3n/El%20gancho%20comercial%20de%20la%20solidaridad.pdf](http://www.fuhem.es/media/cdv/file/biblioteca/Educaci%C3%B3n/El%20gancho%20comercial%20de%20la%20solidaridad.pdf)>.

<sup>10</sup> Coordinadora de ONG para el Desarrollo-España, *Código de conducta de las ONG de Desarrollo*, 28 March 1998, online: <[https://coordinadoraongd.org/wp-content/uploads/2016/01/Codigo\\_Conducta.pdf](https://coordinadoraongd.org/wp-content/uploads/2016/01/Codigo_Conducta.pdf)>.

require timely assessment, by the relevant NGO, of certain factors related to the third party itself and to the collaboration agreement or contract in question, the intention of which is to extend the NGO's image through the use of its symbol or emblem.

## THE ICRC AND ITS EMBLEM: A PARTICULAR CASE

### INTRODUCTION

This section highlights the specific case of the ICRC, a NGO whose emblem, given its importance and the impact of its use, has been the subject of international standards, model laws, and regulations of use.<sup>11</sup> These rules have had only one aim: to standardize the use and protection of the symbol or emblem of the NGO it represents. We must take into account the ICRC's peculiar status, which stems from a series of recognized immunities and privileges that it enjoys in the states where its work is carried out. This status has also caused it to appear before the international community on some occasions not as a NGO but, rather, as an IO. However, we must remember that the ICRC's structure is based on national committees or societies, acting independently in each state yet remaining interrelated among themselves through an internationally recognized common forum, which gives the organization a privileged status over other NGOs. It is also necessary to keep in mind that "ownership" of the symbol or emblem to be employed and protected belongs to the ICRC itself; this means that the national committees and societies have the right to use it within the limits and norms of use established by the former. In this sense, we must take into account, on the one hand, the existence of the original symbol of the organization in question, of which it is "proprietor" and, on the other hand, that of the symbols of the respective national committees and societies, which are composed, in both cases, of the ICRC's emblem plus the badge insignia or denomination of the corresponding national committee or society.

### THE ICRC: A NGO WITH IO TRAITS

The emblem of the ICRC is perhaps a unique and particular example of the subject matter of this article. The first qualifier refers to the unique interests of the NGO that it represents as well as its reputation and international stature.<sup>12</sup> The second qualifier refers to the status that it holds compared to

<sup>11</sup> "Emblem" is used in the singular here for ease of reference, whereas, in reality, the ICRC is represented by several emblems. See [note 13](#) below.

<sup>12</sup> Regarding the origins and structure of the ICRC, see Eugène Borel, "L'Organisation internationale de la Croix-Rouge" (1923) 1 *Rec des Cours* 573.

that of the symbols and emblems of other NGOs. This emblem, whose creation dates back to 1863,<sup>13</sup> has been subject to different national and international standards that have sought to protect and maintain the integrity of the values it represents at all times.<sup>14</sup> For this reason, the ICRC and the emblem that represents it truly enjoy international recognition as a flagship organization whose activities of protecting the wounded in times of war, providing humanitarian aid in catastrophes, fighting against hunger and epidemics, and collaborating within the field of development cooperation, among others, are world-renowned.

We must remember that, as noted in the previous section, the structure of the organization requires us to differentiate between the ICRC,<sup>15</sup> the International Federation of Red Cross and Red Crescent Societies (Federation of

<sup>13</sup> At the first session of the International Committee, on 17 February 1853, the need arose to create a symbol that would unify the services provided by the so-called Relief Societies. But this intention did not materialize until ten years later. The reasons for adopting the symbol of a red cross on a white background are not reflected in the proceedings of the conference, and, therefore, the various explanations that have been put forward do not go beyond mere conjecture. It is true that selection of that symbol brought as a consequence much controversy regarding the symbolism of the cross and its identification with religious issues. This is the reason why later, for the purposes of conciliation at the Diplomatic Conference of 1929 and following several representations made by countries of the Middle East, the emblems of the Red Crescent and the Red Lion and Sun were also admitted and recognized. Since the latter can only be used by the countries that used them at the time of their recognition, it has not been used since 1980 and has thus fallen into disuse. In 2005, an additional emblem was adopted by a Diplomatic Conference of States Parties to the *Geneva Conventions* with the adoption of *Additional Protocol III to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem*, 8 December 2005, 2404 UNTS 261 (entered into force 14 January 2007) [*Additional Protocol III*]. *Additional Protocol III* establishes a new distinctive emblem, the Red Crystal, with the same legal recognition and protection from misuse that the Red Cross, the Red Crescent, and the Red Lion and Sun enjoy under the *Geneva Conventions* framework. See François Bugnion, “L’emblème de la croix rouge et celui du croissant rouge” (1989) 779 RICR 424 at 430–41; François Bugnion, *Red Cross, Red Crescent, Red Crystal* (Geneva: ICRC, 2007) [Bugnion, *Red Cross*]; Maurice Dunant, “Les origines du drapeau et du brassard de la Croix-Rouge” (1922) 30:1 *La Croix-Rouge Suisse* 2; Jean S Pictet, “Le signe de la croix rouge” (1949) 31:363 RICR 167; Jean S Pictet, “La Croix-Rouge et les conventions de Genève” (1950) 76 *Rec des Cours* 1 at 63 [Pictet, “La Croix-Rouge”]; Percival Frutiger, “L’origine du signe de la croix rouge” (1954) 36:426 RICR 456; Pierre Boissier, *Histoire du Comité international de la Croix-Rouge: De Solferino à Tsoushima* (Paris: Plon, 1963) at 105–06.

<sup>14</sup> The emblem was created as a distinctive sign of health services linked at the present time to the idea of impartial humanitarian assistance that is provided to all those human beings who suffer for different reasons, such as war, natural disasters, and so on.

<sup>15</sup> The ICRC was founded in Geneva in 1863 and was endorsed by the *Geneva Conventions* and by the International Conferences of the Red Cross. It is an independent humanitarian institution with its own statute that recruits its members, by cooptation, from among Swiss citizens.

Societies),<sup>16</sup> and the different national societies.<sup>17</sup> Grouped all together, these distinct organizations constitute what is called the International Red Cross and Red Crescent Movement (International Movement).<sup>18</sup> The emblem of all of these organizations is identical, distinguished only by the graphic-denominative designation that is included beneath each iteration of the same. The ICRC and the Federation of Societies are independent bodies that act according to their own statutes. Only these two organizations can be considered NGOs of an international character, and, in this sense, it would be plausible to think that the only emblem relevant to this article would be that used by these two organizations. However, again, it is impossible to discuss protection of the latter independently from the emblems used by the national societies. We must remember that most of the International Movement's activities are carried out by the national societies in accordance with the independence that has been granted them by the ICRC, a body that coordinates their international activities, guides their local activities within their own territories, and which therefore exercises, in reality, a moral authority over such activities.<sup>19</sup> This model of organization and functioning sometimes complicates the distinction between situations in which the emblem is being used by the ICRC or by a national society. That said, the majority of cases in which the emblem is used is in connection with activities undertaken by a national society.

<sup>16</sup> The International Federation of Red Cross and Red Crescent Societies is an independent humanitarian organization that is not governmental, political, cultural, or confessional, is endowed with its own legal personality, and acts in accordance with its own statutes. See *International Federation of Red Cross and Red Crescent Societies*, online: <[www.ifrc.org/en/who-we-are/the-movement/ifrc/](http://www.ifrc.org/en/who-we-are/the-movement/ifrc/)>.

<sup>17</sup> See Paul Ruegger, "L'Organisation de la Croix-Rouge internationale envisagée sous ses aspects juridiques" (1953) 82 *Rec des Cours* 373 at 386, on the legal reasoning behind the organic structure of the International Movement of the Red Cross.

<sup>18</sup> See, in the preamble to the *Statutes and Regulations of the Red Cross and Red Crescent*, adopted by the twenty-fifth International Conference of the Red Cross and Red Crescent in Geneva in October 1986 and amended by the twenty-sixth International Conference of the Red Cross and Red Crescent in Geneva in December 1995 (online: <[www.icrc.org/en/doc/assets/files/other/statutes-en-a5.pdf](http://www.icrc.org/en/doc/assets/files/other/statutes-en-a5.pdf)>), the definition of the International Red Cross and Red Crescent Movement (International Movement) as "a worldwide humanitarian movement, whose mission is to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance."

<sup>19</sup> On the relationship between the ICRC and national societies, see Pictet, "La Croix-Rouge," *supra* note 13 at 15.

## NORMATIVE FRAMEWORK OF PROTECTION OF THE ICRC'S EMBLEM

Since its inception, the peculiarity of the ICRC's emblem has required the development of international standards, emitted by different ICRC conferences, national committees, and the organization itself at the internal level, in order to ensure the protection of an asset that could easily become the object of abuse and irregular usage that would damage, in most cases, the spirit that the emblem represents. These standards have arisen in a context otherwise generally lacking in legal regulation that would ensure the emblem's correct usage, and, therefore, the ICRC and the national societies have developed a framework of concrete protection for this asset. For this reason, any analysis of this NGO's protection of this asset requires a specific examination of the texts that regulate the emblem's use as well as the various postulates that flow from these.

In this sense, and as a preview of their content, it should be noted that what is highlighted in all of these rules is the difference between two characteristic uses of the emblem: the protective and the indicative. In this article, and by the very definition of the adjectives that qualify each use, our interest is focused on those cases in which protection is necessary for the emblem's use as an indication, since the other case, its use for protection, relates to situations of armed conflict. The symbol's utilization and protection in the modality of its indicative use, and not its use in periods of armed conflict, is therefore the focus of the present article.

*Inapplicability of Article 6ter(1)(b) of the Paris Convention for the Protection of Industrial Property*

Before proceeding with an analysis of the legal texts that protect, in one way or another, the ICRC's emblem in different areas, a question arises: is Article 6ter(1)(b) of the *Paris Convention for the Protection of Industrial Property* (*Paris Convention*) applicable to the protection of the emblem of a NGO such as the ICRC?<sup>20</sup> To determine whether this symbol or emblem is protected by the *Paris Convention*, we have to determine, in principle, whether this organization and its emblem are included within the protection model established by Article 6ter; if not, the rule does not apply to them. There are arguments on both sides. On the one hand, the nuances of the organization's non-intergovernmental nature complicate the emblem's inclusion within the scope of Article 6ter's protection; this is all the more so when considered alongside the existence of other international norms that regulate the issue (as we shall see). But, on the other hand, the character of the activities carried out by the organization as well as the recognition and adherence it has attained, through the development of its mission, from the international

<sup>20</sup> *Paris Convention for the Protection of Industrial Property*, 20 March 1883, 828 UNTS 305 (entered into force 7 July 1884) [*Paris Convention*].



community, states, and organizations of all kinds have led some to consider the ICRC as a true IO in some circumstances; in turn, this has resulted in certain cases in which the emblem has been found to benefit from protection under the *Paris Convention*.

From our point of view, the law is very clear in this regard. Even though some authors<sup>21</sup> and jurisprudence<sup>22</sup> do recognize that the protection of this emblem may be based, in some circumstances, on the application of Article 6ter of the *Paris Convention*, we must understand that, when the ICRC is considered to be an NGO, its nature does not fulfil the “intergovernmental” requirement established by this article. And while some authors do not consider it necessary to comply with this requirement in order for the symbols or emblems of certain international bodies to benefit from this model of protection, to understand it in this way would be to broadly over-interpret the law in a way that does not align with its spirit. In addition, the *Paris Convention* itself, in Article 6ter(1)(b) *in fine*, excludes all those emblems that are already specifically protected by other international texts from its scope of application. This is the specific case that concerns us. If we take into

<sup>21</sup> See e.g. Manuel Lobato, *Comentario a la Ley 17/2001 de marcas*, 2nd ed (Madrid: Civitas, 2007) at 269. This author states that among the symbols and emblems protected by art 5(1)(j) of the Spanish *Trademark Law 17/2001*, application of Article 6ter of the *Paris Convention*, *supra* note 20, would include the emblem of the ICRC, arguing that “such protection has deep roots in our system of brands.” The same author supports his thesis with reference to *Judgment no 950/1997* (18 October 1997) (Superior Court of Justice of Madrid [TSJ Madrid]), in which the court considered an administrative appeal filed by the Spanish Red Cross (SRC) against a resolution of the Spanish Patent and Trademark Office (OEPM) that rejected the SRC’s objection to a registration application. The SRC’s objection was based on the possibility of appropriation of the SRC’s emblem and sought revocation, therefore, of the trademark granted by the OEPM. While I fully agree with the reasoning in this judgment, the Court does not say at any time that resolution of the case was linked to the application of the predecessor to Article 5(1)(j) of the current *Trademark Law*. Therefore, one cannot interpret this decision as presupposing the inclusion of the emblem of the ICRC within the scope of protection of Article 6ter of the *Paris Convention* or, therefore, art 5(1)(j) of *Trademark Law 17/2001*. In addition, we would say that this decision rightly revoked the trademark, not in application of the aforementioned rules but, rather, in accordance with the predecessor to art 5(1)(g) of *Trademark Law 17/2001*, which is not related to the prohibition of registration of protected symbols or emblems in application of Article 6ter of the *Paris Convention* but, rather, of marks whose use could mislead the public.

<sup>22</sup> In this connection, there are several Spanish decisions that “indirectly” admit, in cases in which the emblem sought to be protected is that of the ICRC, the possibility that said emblem enters within the material scope of application of Article 6ter of the *Paris Convention*. See e.g. *Judgment no 5638/2002* (12 April 2005) (Supreme Court of Spain) [*Judgment no 5638/2002*], *Judgment no 871/1998* (23 October 1998) (TSJ Madrid); *Judgment no 3105/1997* (5 April 2001) (TSJ Madrid).

account that this proviso was included in Article 6*ter* explicitly to address the case of the ICRC emblem,<sup>23</sup> there is no doubt that the drafters' intention was none other than to exclude the ICRC emblem from the scope of Article 6*ter*'s protection, particularly in light of the certainty that the emblem's protection is indeed guaranteed by different international norms.

For either of the two reasons just stated, the inapplicability of Article 6*ter* of the *Paris Convention* to the protection of this emblem becomes evident. However, the first reason serves not only as the basis for such an assertion but also as the basis for the existence of the second. That is to say, when the drafters of the *Paris Convention* incorporated the exclusionary rule into the text of Article 6*ter*(1)(b), fully aware of the fact that the ICRC's emblem was, up until that moment, the only one of such characteristics protected by an international norm, they not only intended to avoid the overlap of several international norms that some authors had proposed, but they also intended to avoid the problem of pronouncing on the ICRC's debatable characterization as an IO.

If intergovernmental character serves as the basis for protection under Article 6*ter*, and had paragraph (1)(b) not been included in that article, would it have been possible to postulate the application of Article 6*ter*'s protections to the ICRC's emblem? In other words, would it have been possible to elaborate a rule of similar characteristics that would have left the ICRC's emblem outside the scope of protection? The reality is that it was much easier for the drafters to exclude this emblem from the scope of the precept by arguing that there is another international standard that protects it, rather than asserting that such exclusion comes from not considering the ICRC to be an international, intergovernmental organization, since, although it is not, the status and recognition that it has attained is the same as that of such an organization. Indeed, then, the answer to the question before us regarding the application of Article 6*ter* to the protection of this emblem is negative.

Having highlighted the *Paris Convention*'s inapplicability in protecting the ICRC's emblem, we now move on to an analysis of a group of norms whose nature is very specific, comprising the 1949 *Geneva Conventions* and their *Additional Protocols*, the *Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies (Regulations)*,<sup>24</sup> the *Model Law Concerning*

<sup>23</sup> With regard to this specific issue, see GHC Bodenhausen, *Guide d'application de la Convention de Paris pour la protection de la propriété industrielle* (Geneva: Bureaux internationaux réunis pour la protection de la propriété intellectuelle, 1969) at 100.

<sup>24</sup> *Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies*, adopted by the twentieth International Conference (Vienna, 1965) and revised by the Council of Delegates (Budapest, 1991), (1992) 32:289 Intl Rev Red Cross 339 (entered into force 31 July 1992) [*Regulations*].

the Use and Protection of the Emblem of the Red Cross, Red Crescent and Red Crystal (Model Law),<sup>25</sup> internal rules and regulations of the different national societies, and, finally, regulations on the use and protection of the ICRC's emblem in national systems.

*1949 Geneva Conventions and Their Additional Protocols: A Specific Universal Protection*

The title of this section refers to *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I)*,<sup>26</sup> *Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II)*,<sup>27</sup> and *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV)*.<sup>28</sup> These conventions are the basis for the obligation of states parties to regulate the ICRC emblem's use in accordance with the provisions therein, thus ensuring its proper use and protection.<sup>29</sup> The drafters, as early as 1949, were already aware of the possibility of abuse and misuse that weighed on the emblem. Thus, and even though the conventions have nothing to do with the protection of intangible property, the drafters included precepts regarding the use of the distinctive sign that would identify the humanitarian actions regulated by the texts.

In Articles 38–44 of *Geneva Convention I*, the different modalities of the emblem's use are defined. Article 44 establishes limitations on the emblem's employment, enumerating certain exceptions under which the relevant national society, or those with explicit authorization of the same, may make use of the emblem, particularly in times of peace. The rule expressly states that the emblem of the Red Cross and Red Crescent cannot be used in time of either peace or war in any way other than to designate or protect the units and health facilities, personnel and equipment protected by the convention, except as provided in the article itself or others in which similar issues are regulated.

In this sense, the national societies of the ICRC and the other societies (Red Crescent and Red Lion and Sun) are entitled to use the distinctive sign that confers the protections of the convention only in the situations

<sup>25</sup> *Model Law Concerning the Use and Protection of the Emblem of the Red Cross, Red Crescent and Red Crystal*, online: ICRC <[www.icrc.org/en/document/national-legislation-use-and-protection-emblem-model-law](http://www.icrc.org/en/document/national-legislation-use-and-protection-emblem-model-law)> [*Model Law*].

<sup>26</sup> 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) [*Geneva Convention I*].

<sup>27</sup> 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950).

<sup>28</sup> 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) [*Geneva Convention IV*].

<sup>29</sup> Regarding the *Geneva Conventions*, see generally Pictet, "La Croix-Rouge," *supra* note 13 at 27–48.

admitted by the same. Thus, national societies of the ICRC may make use, in time of peace and in accordance with national legislation, of the name and emblem of the ICRC for their activities, provided that they abide by the principles formulated by the international conferences of the ICRC. If such activities continue in time of war, the conditions of employment of the emblem must be such that it cannot be considered as tending to confer the protections of the convention; therefore, the emblem must have relatively small dimensions and cannot be placed on armbands or on roofs. On the other hand, the emblem may be used, at any time, by the international organizations of the International Movement and their duly authorized personnel. The rules also provide that the emblem may be used in exceptional cases, in times of peace, to indicate emergency vehicles and to mark the location of aid posts exclusively reserved for free assistance to the wounded or sick, provided that the requirements established by national legislation are met and there is express authorization by the relevant national society.

Finally, in Title IX, Articles 53 and 54 establish, respectively, prohibition of abuses of the emblem and the obligation of states parties to promulgate all norms necessary in each state to combat and repress such abuses.<sup>30</sup> Specifically, Article 53 prohibits the use of the emblem by individuals, societies, firms, and public or private companies who have no right to use it in accordance with the provisions of *Geneva Convention I*, regardless of their purpose in doing so. It also prohibits the use of any other sign or designation that imitates the emblem. In order to avoid confusion that could be generated by the similarity of the ICRC's emblem and the emblem of the Swiss Confederation (given that the two use the same colours, albeit inverted), Article 53 also prohibits the use by private individuals, societies, or firms of the coat of arms of the Swiss Confederation as well as any sign that constitutes an imitation thereof, whether as a trademark or as an element of said trademark, for a purpose that goes against good commercial practice or in conditions that could injure the Swiss national sentiment. The third paragraph of Article 53 further establishes a period of derogation for states parties to *Geneva Convention I* that were not parties to the *Geneva Convention* of 27 July 1929 that would last a maximum of three years counting from *Geneva Convention I*'s coming into force; after this period, such states parties would have to abandon their use of the emblem, it being understood that such use would not be considered, during that term and in time of war, as tending to confer protection under *Geneva Convention I*. Finally, these prohibitions extend to the emblems of the Media Luna, the Red Lion and Sun,

<sup>30</sup> *Geneva Convention I*, *supra* note 26, art 54: "The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53."

which are recognized in Article 38 of *Geneva Convention I*; and, from 2005, this protection has also extended to the Red Crystal emblem.<sup>31</sup>

In *Geneva Conventions II* and *IV*, there are similar provisions. Articles 41–43 of *Geneva Convention II* include the conditions of the symbol's use, and Article 45 entrusts states with the task of suppressing and preventing abuses of the emblem. In *Geneva Convention IV*, reference is made to the rules of *Geneva Convention I*.<sup>32</sup> Likewise, in the context of the conference that saw these three conventions come into being, *Resolution 5* recommends that states combat abuse of the emblem in order to maintain the special significance that it represents.<sup>33</sup> All of these rules contain a detailed list of both the conditions that must coincide for use of the emblem as well as the possible users of it. Dealing with the issue in this way has the clear objective of minimizing the circumstances in which the emblem can be used as well as its authorized users in order to make the protection's scope clearer.

The legal instruments developed at the 1949 conference also established the distinction between the emblem's protective and indicative uses. The former is understood as the emblem's representation of activities performed in accordance with the conventions. The second case, the emblem's indicative use, serves to relate an institution, person, or thing to the ICRC.<sup>34</sup> Both uses have distinct backgrounds and respond to different situations. Therefore, protection will depend, in each case, on the type of use being given to the emblem; at all times, the type of use will determine the application of certain standards over others. In all cases where abuse or irregular use of the emblem occurs in its protective capacity, the rules set out in the conventions are applicable. However, when it is used as an indication, the emblem's protection will depend on an assessment of the elements that constitute each specific case in order to determine whether protection is based on the application of the rules contained in the conventions or, rather, on other, more appropriate rules.

In any case, protection of the emblem against abusive and undue uses has become a difficult task for both the ICRC and states over the years. Following the elaboration of the norms set out in the conventions, which form the basis of all subsequent norms generated in the last half of the last century, the ICRC and the international community have elaborated other norms that either complete or complement those that already exist. Among those that complete previously existing norms are the *Additional Protocols*, while the

<sup>31</sup> See note 13 above and text accompanying notes 36–39 below.

<sup>32</sup> *Geneva Convention IV*, *supra* note 28, arts 21–22.

<sup>33</sup> *Resolution 5* of the *Resolutions of the Diplomatic Conference*, 12 August 1949, 75 UNTS 21.

<sup>34</sup> Antoine Bouvier, "Aspects particuliers de l'utilisation de l'emblème de la Croix Rouge ou du Croissant Rouge" (1989) 71:779 *RICR* 456 at 466: "En règle générale, l'emblème utilisé à titre indicatif devra donc être de petites dimensions, en temps de paix comme en temps de guerre."

*Regulations* and *Model Law* are among those that complement them. Given the independence the latter two sets of norms have in relation to the *Geneva Conventions*, we will enter into greater detail about them in the next section. Regarding the *Additional Protocols*, however, it is necessary to point out that *Additional Protocol I* extends the protective use of the emblem to other users and other situations.<sup>35</sup>

In this context, we must also highlight *Additional Protocol III*, which established the Red Crystal as a new distinctive emblem in 2005.<sup>36</sup> This additional emblem has the same legal recognition and protection from misuse as the other emblems of the ICRC under the *Geneva Conventions*.<sup>37</sup> The Red Crystal emblem provides an alternative to the Red Cross and Red Crescent emblems and is intended to be free from any national, religious, cultural, or political connotations. Thus, *Additional Protocol III* offers a solution to a problem that some national societies have had with using either the Red Cross or Red Crescent symbols. Its adoption has allowed, for example, the Israeli National Society and the Palestinian Red Crescent Society to be admitted to the International Federation of Red Cross and Red Crescent Societies. The adoption of *Additional Protocol III* creates a more flexible environment by allowing the indicative use of a combination of recognized emblems or the Red Shield of David within the home territory of a national society, not otherwise permitted under previous rules, as long as the emblem or combination of emblems is incorporated within the frame of the Red Crystal. Finally, the twenty-ninth International Conference of the Red Cross and Red Crescent adopted a resolution on 22 June 2006 that adapted the statutes of the International Movement to *Additional Protocol III*.<sup>38</sup> In particular, a national society is no longer required to use a name and emblem in conformity with the *Geneva Conventions* in order to be recognized but, rather,

<sup>35</sup> *Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3, art 38 (entered into force 7 December 1978). See generally, regarding the *Additional Protocols*, Yves Sandoz, Christophe Swinarski & Bruno Zimmermann, eds, *Commentaire des Protocoles additionnels du 8 juin 1977 aux Conventions de Genève du 12 août 1949* (Geneva: Comité international de la Croix-Rouge (CICR), 1986).

<sup>36</sup> See Bugnion, *Red Cross*, *supra* note 13; Jean-François Quéguiner, "Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III)" (2007) 89:865 *Intl Rev Red Cross* 175.

<sup>37</sup> *Additional Protocol III*, *supra* note 13, art 2(3): "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." See further Quéguiner, *supra* note 36 at 188–89.

<sup>38</sup> Annex to *Resolution 1*, International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 20–21 June 2006.

is now required to “use a name and distinctive emblem in conformity with the *Geneva Conventions* and their *Additional Protocols*.”<sup>39</sup>

The importance of all of these norms is manifested, above all, in protecting the emblem when it is used as a protective device. What is also clear is that all of them are the baseline for states’ commitment to elaborate internal norms that serve the same function in cases where the emblem is used as an indication by national societies, by third parties with relevant authorization, or even by third parties without such authorization. In any case, it seems clear that the effectiveness of protection will depend, fundamentally, on the intervention of states since it is these entities that must give force and application, within both legislative and legal spheres, to the international provisions.

### *The Regulations and the Model Law*

To further clarify the issue of the emblem’s protection and to bring together its use and protection under a single standard, the ICRC decided to draw up the *Regulations*, which were first adopted at the twentieth Conference of Vienna in 1965 and which, after successive revisions,<sup>40</sup> were approved in their current version by the Council of Delegates in Budapest in 1991.<sup>41</sup> The *Regulations*, as their prologue indicates, aim to point out certain issues regarding the emblem’s use and users. In this sense, the *Regulations* not only specify, but also broaden and diversify, the cases in which the emblem may be used by national societies, clearly with the purpose that they might increase their financial resources. In some ways, this increases the possibility of the emblem being used by, or in conjunction with, third parties. This enlargement supposes, in any case, that the rules allow for situations in which the emblem may be used for lucrative purposes, subject always to the limits set by the *Regulations* and national legislation and while keeping intact the respect due to the emblem. We must not forget that this expansion increases the possibilities for misuse and abuse of the symbol.

In relation to the emblem’s use, the text of the *Regulations* reiterates the distinction that we have already noted between protective and indicative use. Articles 1–7 make up Chapter I of the *Regulations* and include a series of general rules that relate to both of these uses; Articles 8–15 make up Chapter II and regulate the emblem’s protective use; and, finally, Articles 16–27 make up Chapter III and regulate its indicative use. As already mentioned, regulation of this last modality of use is what most interests us here.

<sup>39</sup> *Ibid.*

<sup>40</sup> See “Revision of the *Regulations for the Use of the Emblem of the Red Cross, the Red Crescent and the Red Lion and Sun by the National Societies*,” Doc CII/3/1 (July 1986). This revision to the *Regulations* was provisionally approved by the Council of Delegates (*Resolution 6*) at its meeting on 27 November 1987 in Rio de Janeiro. See also the *Minutes of the Manila Conference* (November 1981), online: <[https://library.icrc.org/library/docs/DIGITAL/CI\\_1981\\_RAPPORT\\_SPA.pdf](https://library.icrc.org/library/docs/DIGITAL/CI_1981_RAPPORT_SPA.pdf)> and the draft revision of the *Regulations* (at 165).

<sup>41</sup> *Regulations*, *supra* note 24.

The first section of Chapter III establishes who can use the emblem (members or employees of the ICRC and authorized third parties); the second section regulates which property can be marked with the emblem (buildings and premises of national societies, hospitals, relief stations, and vehicles used by national societies); and the third section, which is the most interesting for this study, deals with the dissemination and collection of funds.

It is this last section — specifically, Article 23 — which regulates the possibility that the emblem be used, pursuant to contractual relations, for a purpose that is, ultimately, to earn a profit. This use contemplates two models: collaborative contracts between national societies and commercial companies and contracts regulating the use of the emblem by commercial companies in certain campaigns. This is where we find the “breeding ground” for situations of irregular use by third parties and, sometimes, even by national societies themselves. Indeed, Article 23 opens the door to the possibility of confusion of third parties in situations in which the emblem is used legally or illegally. The possibility that the emblem can be used by national societies to obtain a monetary benefit produces situations that would, effectively, not exist if the emblem could not be used for this purpose. It is evident that the interest of the ICRC is not to make a profit, in the commercial sense of the word, but, rather, to obtain funds for the development of activities of an organization of its character and to finance its operations. However, it would have been easier to create another distinctive sign, along with rules for its use, that would identify the organization in all activities in which it uses the symbol as an indication.<sup>42</sup>

Article 23, considered along with the possibility that the organization itself might reproduce a brand, logo, or company name alongside the emblem — always according to contractual stipulations — on materials, printed literature, and other objects in collaborative campaigns, enables national societies to authorize use of the emblem by a commercial company or other organization. In both cases, the use would be subject to compliance with several requirements: the impossibility of public confusion between the company and the organization;<sup>43</sup> limits on the scope of

<sup>42</sup> Pierre Gaillard, *Proceedings of the Beirut Congress* (Geneva: ICRC 1971) at 12.

<sup>43</sup> In the clarifications to section 3 of the *Regulations* — in particular, to subparagraphs (a) and (b) of art 23(3) — the need is stressed for national societies to take care in all cases of the possibility that the public may confuse the national society with the collaborating company or the entity that has been authorized to use the emblem. In this sense, the national society is obliged to specify what kind of collaboration or use has been established contractually with the commercial company, avoiding, in any case, the possibility that the emblem is related to the quality of the products. Likewise, the national society must examine the proportions of the emblem with respect to those of the brand of the company with which it collaborates or which it has authorized to use the emblem.



the campaign in terms of time and space;<sup>44</sup> the prohibition of activities on the part of the collaborating company that are contrary to the principles of the organization;<sup>45</sup> a right for the national society to nullify the contract in certain cases;<sup>46</sup> the advantageousness of the campaign for the organization;<sup>47</sup> and written contractual terms approved by the national society's directors.<sup>48</sup> All of these requirements, other than those of Article 23(3)(b), apply both to cases of collaborative campaigns and to use by third parties.<sup>49</sup> The *Regulations* themselves clarify the scope of each of these requirements by examining a series of circumstances and elements that clarify the terms of the clauses.

The second internally produced text to which we have referred is the *Model Law* on the use and protection of the ICRC's emblem.<sup>50</sup> This should be understood as an attempt to establish homogeneous regulation of the emblem's protection within each state. A product of the 1993 International Conference and based on the texts reviewed in the above analysis, the *Model Law* intends to be a model to be used by the drafters, in each state, of specific national standards of use and protection.<sup>51</sup> Of course, each country must adapt the structure and content of the model text to its

<sup>44</sup> In the case of art 23(3)(c), the need for the collaborations or authorizations to be one-time and not perpetually binding on the national society and company is specified. Indeed, quite the opposite is required: this type of collaboration or authorization must be punctual. A period of three years is established as their maximum duration, and they are spatially limited to the territory of the state whose national society has established the collaborative relationship or authorized the use. Agreements with other national societies, in whose state the same campaign could be developed in parallel, is an exception to this last requirement.

<sup>45</sup> The clarification that is made to this requirement in art 23(3)(d) is interesting, in that it prohibits national societies from establishing collaborations or granting authorizations to companies that pursue activities such as the manufacturing of weapons or products that are harmful to health, the environment, and so on.

<sup>46</sup> Art 23(3)(e) establishes the possibility of cancelling the collaboration or authorization contract due to circumstances that might occur and which were unknown at the time of concluding the contract.

<sup>47</sup> Art 23(3)(f) establishes the need for the national society to obtain advantages and benefits from the contractual relationship, although in no case do these requirements imply that the organization must create a link of dependency with the commercial company.

<sup>48</sup> The contract must be written and authorized by the competent bodies of the corresponding national society.

<sup>49</sup> Art 23(3)(b): "[T]he National Society must retain control over the entire campaign, in particular the choice of articles on which the company's trademark, logo or name is displayed and the placement, form and size of such markings."

<sup>50</sup> *Model Law*, *supra* note 25.

<sup>51</sup> Jean-Philippe Lavoyer, "Législation nationale concernant l'utilisation et la protection de l'emblème de la croix rouge ou du croissant rouge" (1996) 78:820 RICR 522 at 524: "Le but de la loi-type est de mettre à disposition des États un outil de travail facilement compréhensible qui indique les sujets devant être traités."

own legal system and norms. It is clear that the budgets allocated for the elaboration of national norms vary from one state to another, and, therefore, the text is only a guide, and it must be interpreted as such.

The *Model Law* is accompanied by certain recommendations, such as, for example, the creation of a national committee in each country, in which all affected political bodies participate, to draw up a domestic set of rules for use and protection of the emblem. In relation to the indicative use of the emblem by national societies and by third parties within the framework of a contractual relationship, the *Model Law*, in Article 6(3), refers to and requires application of the *Regulations*. Article 12, entitled provisional measures, provides that the competent national authority shall carry out measures necessary to end the abuse and illegal use of the emblem. Finally, Article 13 of the *Model Law* expressly prohibits the registration of trademarks, trade names, industrial drawings or designs, and so on that make use of the emblem. In this regard, as already explained, some states have developed a specific law for the emblem's protection;<sup>52</sup> however, it is much more common to find that such protection has been expressly included in the relevant state's legislation on intellectual property.<sup>53</sup>

#### *Internal Regulations of Different National Societies*

The rules established by the internal regulations of the national society in each state usually differentiate between the protective use of the emblem, which is to mark the persons, establishments, and goods that must be respected when armed conflicts take place, and the indicative use, which serves to identify the persons, establishments, and assets that are related to the International Movement.<sup>54</sup> These rules also typically provide that the

<sup>52</sup> For example, as already highlighted, Switzerland has a specific law for the protection of this emblem due, in large part, to the fact that the seat of the ICRC is located in this state: *Loi fédérale concernant la protection de l'emblème et du nom de la Croix-Rouge*, 25 March 1954, RO 1954 1327, online: <[www.admin.ch/opc/fr/classified-compilation/19540047/index.html#:~:text=L'embl%C3%A8me%20de%20la%20croix,a.](http://www.admin.ch/opc/fr/classified-compilation/19540047/index.html#:~:text=L'embl%C3%A8me%20de%20la%20croix,a.)> [*Loi suisse*].

<sup>53</sup> See e.g. *Trademarks Act*, RSC 1985, c T-13, s 9(1)(f) [Canadian *Trademarks Act*]; *Trademark Act*, Act no 121 of 1959, art 4(1)(iv), online: <[www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=02&dn=1&yo=trademark+act&x=58&y=10&ia=03&ja=04&ph=&ky=&page=1](http://www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=02&dn=1&yo=trademark+act&x=58&y=10&ia=03&ja=04&ph=&ky=&page=1)> [Japanese *Trademark Act*].

<sup>54</sup> In the case of the *Regulations of the Spanish Red Cross*, for example, Article 3.4 establishes that "the emblem used for indicative purposes will be accompanied by the legend 'Spanish Red Cross', without any drawing, emblem or inscription appearing on the red cross itself, which, otherwise, will always be the dominant element of the emblem" and emphasizes that "the Committees of Autonomous Communities that have another official language besides Castilian, will be able to use it in the denomination and labels of the Institution, always next to that of "Spanish Red Cross," online: <[www.cruzroja.es/mpe/docs/Reglamento\\_General\\_Organico\\_de\\_Cruz\\_Roja\\_Espanola.pdf](http://www.cruzroja.es/mpe/docs/Reglamento_General_Organico_de_Cruz_Roja_Espanola.pdf)>.

emblem can be used to indicate the buildings, establishments, vehicles, boats, and other similar belongings of, for example, the Spanish Red Cross and foresee the elaboration of an internal manual that more specifically refers to the emblem and details its characteristics and use as well as the distinctive denomination of the national society in question. Such internal regulations must be applied by all members, organs, and managerial positions of or within the national society.

More interesting for our purposes are internal regulations that refer to possible uses of the emblem in business collaborations, patronages, sponsorships, and any other activities in which the ICRC's emblem or denomination is authorized for use by third parties, whether alone or next to the logo, trademark, or company name of collaborating companies. Sometimes nothing in this respect is stated in a national society's internal operating regulations, while others are more explicit, such as in the case of the Spanish National Society of the Red Cross. This national organization requires prior authorization from the president, governing bodies, or management positions for such uses to be permitted.<sup>55</sup> In any case, these internal regulations invariably provide that any use of the emblem must comply with the provisions of the *Geneva Conventions*, the *Additional Protocols*, the *Regulations*, and other current provisions relating to this issue. In this sense, these internal regulations only establish guidelines of conduct in relation to the emblem's usage to be taken into account by the different organs of the relevant national society, allowing each state's national society to adapt what is already established by other, hierarchically superior norms.

*Regulation of the Use and Protection of the ICRC's Emblem in National Systems:  
A Diversity of Models*

The special characteristics of the ICRC's emblem have led to the development of different national standards of varying scopes. The purpose of these standards has been, in any case, to expressly establish the protection of this emblem. Faced with a model that is based on the development of specific texts, some legal systems maintain the application of international standards, taken together with national standards, as a protection mechanism that generally protects NGOs' symbols and emblems within the scope of generally applicable intellectual property law. We must point out, however, that it is not difficult to find national legal systems that have provided for specific rules referring to the protection of the ICRC's emblem. These are either inserted in more

<sup>55</sup> *Ibid*, art 3(7).

generally applicable intellectual property legislation<sup>56</sup> or in free-standing laws, assuming, in any case, the establishment of specific rules of protection for this property in certain uses.<sup>57</sup>

## THE ICRC'S EMBLEM AND THE DIFFERENT MODELS OF USE

### INTRODUCTION

This part of the analysis must start from the distinction, on the one hand, between two types of use and, on the other, of two situations. Regarding the former, as already mentioned, we refer to the protective use and the indicative use. In terms of situations, we differentiate between times of war and times of peace. Our study is only interested in one of the possible combinations of the former and latter: the emblem's use by the ICRC or national societies as an indication in times of peace. The exclusion of the other combinations is motivated by the need to base our study of the emblem's protection on a "standard" situation that does not involve additional circumstantial factors such as war. In this sense, we exclude, in all cases, the protective use since it finds its origin in armed conflicts,<sup>58</sup> and we also exclude the indicative use of the emblem in times of armed conflict since, in this period and as we have mentioned earlier, situations often converge that provoke instability among the elements surrounding the case, and such convergence prevents us from establishing a clear path of protection.<sup>59</sup>

Leaving aside the aforementioned differentiation between the protective and the indicative use of the emblem and focusing only on the indicative use, the rules referring to the protection of the ICRC's emblem raise different models of use, depending on the combination of two factors — that is, by

<sup>56</sup> See e.g. in Canada, *Canadian Trademarks Act*, *supra* note 53, s 9(1)(f)-(g); in Japan, *Japanese Trademark Act*, *supra* note 53, art 4(1)(iv); in Uruguay, *Law 17.011*, art 4.3, online: <<https://legislativo.parlamento.gub.uy/temporales/leytemp9126941.htm>>.

<sup>57</sup> See, here, in Switzerland, *Loi suisse*, *supra* note 52; in Colombia, *Law 875 of 2004*, regulating the use of the emblem of the Red Cross and Red Crescent and other emblems protected by the *Geneva Conventions* and their *Additional Protocols*; in Guinea, *Law 95/019/CTR/N* on the use and protection of the emblem of the Red Cross; Nicaragua, *Law no 418 of 26 February 2002* on protection and use of the name and emblem of the Red Cross; in Panama, *Law no 32 of 4 July 2001*, establishing provisions for the protection and use of the emblem of the Red Cross and the Red Crescent; in Paraguay, *Law no 2365 of 29 April 2004*, amending *Law no 993 of 6 August 1928*, and prohibiting use of the name, badges, and emblems of the Red Cross; in El Salvador, *Law of Protection of the Emblem of the Red Cross* (26 January 1994); and in Venezuela, *Law of Protection of the Name and Emblem of the Red Cross* (10 June 1965).

<sup>58</sup> On the protective use of the emblem in different cases, see Bouvier, *supra* note 34 at 466ff.

<sup>59</sup> Among these circumstances, we can mention that the authority and rights that the national societies have over the use of the emblem in times of peace inevitably vary when compared to times in which there are disturbances and armed conflicts.

whom and how the emblem is to be used. Different scenarios can be drawn from consideration of different international, national, and internal regulations: uses that can be made of the emblem by the ICRC or the Federation of Societies; uses by national societies in, or independent of, collaboration with third parties; and uses by third parties with or without the authorization of national societies.

#### USE OF THE EMBLEM BY THE ICRC AND THE FEDERATION OF SOCIETIES

This type of use is addressed in Article 44(3) of *Geneva Convention I*: “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 background.” This precept is the basis of Article 7 of the *Model Law*, which reproduces the international rule while also specifying the authorized international organizations — namely, the ICRC and the Federation of Societies.<sup>60</sup> It is curious that both *Geneva Convention I* and the *Regulations*, when addressing other models of use (as we shall see), specify permissible uses and exceptions; yet there is no such specification in the case where the use in question is made by the international institutions of the organization. We must interpret this to mean that concern for proper use of the emblem does not arise in cases of use of the emblem by either the ICRC or the Federation of Societies. However, such concern does indeed arise in connection with the emblem’s use in activities carried out by national societies.

In any case, the protection of the emblem in the case of its use by either of the two international bodies, both of which are members of the International Movement, would be linked to application of the *Geneva Conventions*. On the other hand, if, as stated in the *Regulations*, the various modes of use established therein are based on the fundamental principles of the International Movement, and these principles affect the actions of the national societies, it would be logical to think that both the ICRC’s and the Federation of Societies’s use of the emblem should respect those same principles.

#### USE OF THE EMBLEM BY A NATIONAL SOCIETY

The national societies are responsible for administering the use of the ICRC’s emblem in each state. Of course, they do not only manage such use, but they are also potential users of it (other than, of course, in exceptional cases). As has already been stated, our interest is in establishing the protections applicable to this emblem in the case of its indicative use by national societies in times of peace. Article 44 of *Geneva Convention I* is the

<sup>60</sup> ICRC, *Study on the Use of the Emblems: Operational and Commercial and Other Non-Operational Issues* (Geneva: ICRC, 2011) at 149–60.

legal basis for this mode of use. Its terms admit the possibility that national societies may use the ICRC's emblem in periods of peace, provided that this use does not contradict the internal legislation of the state of the national society that intends to use it. The permissibility of such use must be ascertained, however, in light of the circumstances of each case. From the *Geneva Conventions* and their *Additional Protocols*, it can be deduced that national societies may use the emblem in peacetime to develop activities directly related to the objectives of the organization: when such activities do not pursue the aims and objectives that arise from the nature of the organization, these national societies must refrain from using the emblem. However, it is clear that today the ICRC pursues activities of many types and that these activities, in many cases, do not maintain a "true" relationship with the objectives of the organization. It is in the development of such activities that situations can arise in which there is a certain neglect of the emblem. Such situations, because the user is the institution responsible for the emblem's proper use, could be considered more as an "abuse" than an "illegal" use. The problem that such activities pose for those who have the responsibility of protecting the asset is that they may create a great deal of confusion regarding, or even bring great discredit on, what the emblem represents. In this sense, the harm caused by misuse of the emblem may have repercussions for the national societies themselves as well as for the organization in general.

The activities that might incur improper use of the emblem are, at times, those that can bring important financial support to the International Movement since this lies outside the principles of the organization, as we have said. We therefore wonder whether the organization has an obligation to renounce pursuit of such income so as not to harm or damage the image of the emblem, and whether the use of the emblem in the course of such activities is contrary to the rules laid out in the *Geneva Conventions* and the *Regulations* for its protection. In reality, both issues are not easily addressed since this would require detailed assessment of the factors that arise each time the emblem is used by national societies. We could say, with caution, that certain uses of the emblem may harm the image of the ICRC in some circumstances, whereas, in others, its use would be justified not by the means employed but, rather, by the end sought. Protection of the emblem in these cases depends on governments since the rules of the International Movement clearly establish that suppression of abuses of the emblem is within their competence. Furthermore, even having granted national societies the right to use, and administer use of, the emblem, these same governments are ultimately the guardians who assure that national societies carry out their responsibilities while respecting national and international standards.

On the other hand, we have the case of the emblem's use through cooperation between a national society and a third party, which is becoming more and more frequent. The ICRC is a NGO with very special

characteristics that needs to find ways to sustain and finance its activities. We observe how national societies have developed advertising campaigns, in collaboration with IOs and commercial companies, that allow them to raise funds in pursuit of this objective. When a national society enters into a partnership with an IO, for example as the implementing partner of a special project on behalf of the ICRC, the IO may want the national society to acknowledge its contribution in some way. This acknowledgement could take the form of the joint use of emblems — that is, the emblem of the national society jointly with the emblem of the IO. In this model of use, such an arrangement would have to be included in the agreement between the national society and the IO. The joint use of emblems in this way is potentially hazardous for the image of the national society, as it may blur the distinction between the national society and the IO. For this reason, given the wider risks for the entire International Movement, the joint use of emblems should be avoided as far as possible, but this suggestion assumes that such an arrangement is never a commercial relationship. However, if the relationship is with a commercial company, the cooperation is an exchange: the national society allows the company to place its brand, logo, and so on next to its emblem in certain campaigns that are related to the organizational mission, allowing the company to benefit from the publicity that this entails, while, in return, the national society receives financial support for that campaign as well as for the development of its other activities.

The possibility of carrying out this type of activity appears, as we said, from the text of Article 23(3) of the *Regulations*, which states: “When the National Society obtains the collaboration of commercial companies or other organizations, with the purpose of obtaining funds or dissemination, it may print the brand, logo or corporate name of those companies in the material that it uses, in advertising literature or in objects for sale.” As I have said, this possibility remains subject to the fulfilment of certain conditions when analyzing the *Regulations*: the avoidance of confusion among the public, the national society’s control of the campaign, temporal and spatial limits to the activity, the avoidance of activities by the collaborating company that are contrary to the aims of the organization, the possibility of unilateral cancellation of the contract by the national society, the requirement that the campaign bring an important benefit to the organization, and the requirement that the contract be in written form and approved by national society directors.<sup>61</sup>

The case described above fits the model of a collaboration contract in which one of the parties has special characteristics. The conditions of such a contract, and those on which the corresponding national society will base its

<sup>61</sup> Baptiste Rolle & Edith Lafontaine, “The Emblem That Cried Wolf: ICRC Study on the Use of the Emblems” (2009) 91:876 *Intl Rev Red Cross* 759 at 771–78; ICRC, *supra* note 60 at 87–148.

activities, must in all cases be those laid out for such situations by the *Regulations*. The inclusion of rules that refer to this question in the *Regulations* imposes limits on the emblem's use for both parties. The breach of any of these conditions, which tend to favour the proper use of the emblem and its protection, may arise from the acts of either the national society itself, which has not acted as expected, or from those of the collaborating company, which may have tried to exploit circumstances such as neglect, lack of attention, ignorance, or lack of information on the national society's part. It is logical, then, that what is stipulated in the *Regulations* should be included in the terms of the collaborative contract itself. Acting in this way, many problems could be avoided in the event that the emblem is used, contrary to its interests, within the scope of a contractually defined collaboration.

In this type of relationship, and in reference to private international law questions, national societies, upon formalizing a collaboration, should stipulate by means of inclusion of a contractual clause to such effect that the national courts of their state shall be the competent authorities to resolve any disputes related to the relationship and that the laws applicable to both the interpretation of the contract and the resolution of any dispute that may arise thereunder will be those of the state of the relevant national society. Given that national societies cannot authorize the use of the emblem outside the territory for which the ICRC has recognized their competence, the usual practice should therefore be to apply the law of the state where the emblem's use is going to take place to the contract and the protection of the emblem.<sup>62</sup>

#### USE OF THE EMBLEM BY A THIRD PARTY WITH AUTHORIZATION

The third possibility is that in which the emblem is used by a third party with authorization from the corresponding national society. In this case, whoever uses the symbol does so on the basis of a relationship with the national society, a relationship that grants the third party the right to use the emblem. The difference from the preceding scenario, in which a national society uses its emblem next to the brand of a company, is that now the use is not carried out within the context of a common activity or collaboration that is related to the aims and objectives of the ICRC; rather, the third party uses the emblem on its own in accordance with the corresponding authorization to develop an activity.<sup>63</sup> This type of

<sup>62</sup> This practice is the usual one in the contracts carried out by the Spanish Red Cross according to the information obtained by the author from the legal department of the national society of this NGO.

<sup>63</sup> As an example of this model of use, see *Judgment no 285/2000* (2 June 2000) (Provincial Court of Jaén, Spain), in which the Spanish Red Cross had authorized the use of its emblem by the owner of a medical recognition centre in exchange for the latter taking over the rental expenses of the premises where the organization had its headquarters.



employment has, as its purpose, the financing of the national society itself. Indeed, any protection of the emblem in this case will come from the terms regulating use of the emblem that are included by the national society in the contract.

When the ICRC's emblem is used in the context of a contractual relationship, again, a distinction must be made between cases in which use of the emblem as such is the subject matter of the contract and those in which the emblem has been registered as a trademark and thereby benefits from a different sphere of protection.<sup>64</sup> When one's interest in a symbol is specifically safeguarded by registration as a trademark, and use of such symbol is an express consideration of a contractual relationship with a third party, one cannot think of such third-party use according to the model of an assignment agreement. To do so would exceed the nature of the consideration granted to the third party, and, therefore, it is impossible that this type of intangible property be the subject of such a contract. However, the possibility of establishing a license is not entirely unlikely but actually feasible, as is demonstrated in practice by national societies' relations with third parties. In these cases, if there is a problem with the use specified in the contract, and if an international dispute resolution mechanism has not been selected by the parties through express or tacit consent, designation of the competent judicial authority for purposes of protection against misuse will fall to the forums that are competent in the matter within the state where protection is intended. The law applicable to such a contract will usually be that which the parties have determined in the contract per the freedom of choice principle. In the absence of such designation, the parties will have to resort to the rules of private international law of the state whose courts have jurisdiction over the matter.

## THE PROTECTION OF THE ICRC'S EMBLEM AGAINST THIRD PARTIES

### INTRODUCTION

When it comes to NGOs, the scheme of protection for the symbols and emblems that represent these organizations differs from that for protection of this type of asset in the case of IOs. The organizational model of the former and their requirement to obtain financial resources to carry out their activities has led to the need to resort, in almost all cases and despite their

<sup>64</sup> Although it is not usual, some national societies have registered their emblem in certain categories of brands for use in their own programs or those developed jointly with third parties. For example, the national societies of Spain (trademark: Cruz Roja Española 150 Aniversario), France (trademark: Chez Henry par la Croix-Rouge française), or Canada (trademarks: Help Canadian Red Cross/Croix Rouge canadienne or Red Cross/Croix-Rouge Swim Kids/Natation Junior).

non-profit nature, to registration of their symbols and emblems as trademarks.<sup>65</sup> Although these assets do not fit the commercial connotation generally associated with trademarks, they do have important parallels with the latter. Unlike the symbols and emblems of IOs, which are subject to their own rules of protection, those of NGOs do not find any express protection in trademark law when they have not been registered.<sup>66</sup> For this reason, NGOs seek to protect these assets, for all intents and purposes, by registering them and thereby guaranteeing their own, defined protection status, which allows such symbols and emblems to be used commercially with the guarantee that there is a specific legal framework to protect them. It is this need to register where the greatest difference between the symbols and emblems of NGOs and those of IOs is to be found. Following this model, many NGO symbols and emblems are registered as national, regional, or international trademarks.<sup>67</sup> This situation raises a plurality of protection regimes and requires us, in each case, to ask whether or not the symbol or emblem is registered and, if the answer is positive, to ask in which categories it has been placed.

In the case of the ICRC, it is evident that it is an organization with a very peculiar status that is different from that of other NGOs, as it is linked to a series of immunities and privileges that have been recognized in the states where it operates. In addition, given its importance and the impact of its use, the ICRC's emblems have been given special consideration and, as seen above, are the subject of international standards (the *Geneva Conventions* and their *Additional Protocols*) as well as national and internal laws and regulations (the *Regulations*, the *Model Law* and, for example, the *General Organic Regulations of the Spanish Red Cross*<sup>68</sup>) that both determine its use and safeguard it.

<sup>65</sup> There are many NGOs that register their symbol or emblem as a trademark in states where they carry out their activities. For example, in Spain, several NGOs have done so: Doctors of the World, Save the Children, SOS Children's Villages, ANESVAD (A Nuestros Enfermos Servimos Viendo A Dios), MPDL (Movimiento por la Paz), Oxfam Intermón, Amnesty International, and COE (Comité olímpico español). This practice is similar to other countries. In France, for example, there is Save the Children, Oxfam, Greenpeace, or Doctors of the World and, in the United Kingdom, there is Save the Children or Greenpeace.

<sup>66</sup> In some specific cases, an international organization (IO) has registered its emblem as a trademark for the development of a specific activity. For example, the United Nations Children's Fund (UNICEF) has registered its emblem in Spain, France, and Belgium.

<sup>67</sup> In Spain, Save the Children has registered its emblem as a national, European Union (EU), and international trademark; MPDL as a national and EU trademark; and Oxfam Intermón as a national and EU trademark. In France, Oxfam has registered its emblem as a EU and international trademark; Save the Children as a national, EU, and international trademark; and Doctors of the World as a national and EU trademark. In the United Kingdom, Save the Children is registered as a national and international trademark and Oxfam as a national and EU trademark.

<sup>68</sup> See *Order SCB/801/2019 of 11 July 2019, by Which the Consolidated Text of the Statutes of the Spanish Red Cross Is Published*, online: <[www.boe.es/eli/es/o/2019/07/11/scb801/dof/spa/pdf](http://www.boe.es/eli/es/o/2019/07/11/scb801/dof/spa/pdf)>.

## USE BY A THIRD PARTY WITHOUT AUTHORIZATION

The possibility of use by a third party without authorization refers to the situation in which the emblem is used by those who have not been authorized to mark a certain activity or product with it. Here, we are confronted with a situation where the organization's burden will be the establishment of a prohibition of use. If there is no specific national standard that contemplates the infringement in question, we must resort to application of the international legal rules contained in the *Geneva Conventions*. Thus, anyone who intends to establish a prohibition against a certain third-party use must do so by urging the application of international law, specifically Article 53 of *Geneva Convention I*, which states:

The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross", or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.<sup>69</sup>

This standard is the core of the emblem's international protection in this type of situation, guaranteeing its uniform treatment in all legal systems.

## APPLICATION FOR, OR REGISTRATION AS, A TRADEMARK BY A THIRD PARTY

Unlike other NGOs, the ICRC has not generally opted to register its emblem as a trademark for the purpose of promoting specific protection of it, which means that, in most cases, protection of this asset is limited to applications for denial or cancellation of registration pursuant to trademark and industrial design law. In this regard, we should point out that such protection is not normally limited to applications or registrations of an emblem identical to that of the ICRC. Case law and the usual practice of national trademark registration offices show us that protection in this field usually only requires an application or registration of a trademark that in some way imitates the ICRC's emblem.<sup>70</sup> However, it is not only imitation of the emblem that determines such protection, but the category under the Nice Classification for which the application has been filed or the trademark has been registered.<sup>71</sup> In other words, protection by denial or cancellation of registration is

<sup>69</sup> The prohibition of this type of use, when it comes to an IO, comes from the application of Article 6ter(1) of the *Paris Convention*, *supra* note 20, but, as already explained, this rule does not apply when dealing with the emblem of the ICRC since it has its own protection due to application of the *Geneva Conventions*.

<sup>70</sup> In this sense and for Spain, see *Judgment no 950/1997*, *supra* note 21.

<sup>71</sup> In this sense and for Spain, see *Judgment no 5638/2002*, *supra* note 22.

not only conditioned by the fact of imitation but also by the possible link between the activity in connection with which the trademark is to be used and the activities carried out by the ICRC.

Such denials of registration on the part of national registry offices are common, and their justification is the infringement of international, regional, or national norms that prohibit registration of certain symbols and emblems as trademarks due to the public interest they represent. However, this does not prevent the occurrence of cases in which registration offices permit registration of a trademark that may, in some cases and in some way, imitate or be similar to the ICRC's emblem. There is a diversity of jurisprudence in this regard, stemming from cases in which the ICRC has petitioned for cancellation of a registered trademark.<sup>72</sup> The legal foundation for such petitions is usually the failure of the relevant registration office to apply the rules contained in the *Geneva Conventions*, specifically Article 53 of *Geneva Convention I*, as well as certain criteria invoked at the organization's discretion. This shows how the ICRC's emblem is treated as a trademark, forgetting that this asset does not possess such a nature. Therefore, the determination of issues such as the similarity between the trademark and the emblem and the risk of confusion must be assessed while taking the emblem's special character into account. Regarding this issue, the competent national courts have shown a certain reluctance to cancel trademarks as requested by the organization. Indeed, in some cases, national courts have rejected the ICRC's claim on the basis that imitation must be verifiable, both in the mind of the registrant and as a matter of design,<sup>73</sup> and that confusion between the trademark and the emblem must be the product of a true association between the two in the public's eye.<sup>74</sup>

<sup>72</sup> In this sense, see the decisions of the Supreme Court of Spain in *Judgment no 4801/2000* (4 May 2004); *Judgment no 5239/2001* (18 October 2004); *Judgment no 5638/2002* (12 April 2005); and of the TSJ Madrid in *Judgment no 2114/1994* (18 October 1997); *Judgment no 871/1998* (23 October 1998); *Judgment no 3105/1997* (5 April 2001), in all of which the ICRC requested cancellation of the trademarks.

<sup>73</sup> See *Judgment no 5638/2002*, *supra* note 22 at 4 [author's translation]: "In the present case, as can be deduced from a mere visual comparison of the intended trademark and the Red Cross emblem, the position cannot be reached, which the appellant pleads, that the Red Cross emblem is being used; it is true that within the intended graphic design, a cross devoid of color is inserted, but it does not respond to the characteristics of the distinctive emblem of the Red Cross, nor can it be said to be the predominant design. That cross could have been, as we said in the judgment whose reasoning we follow in essence, of any other color, but in no way does it allow us to attribute to the whole any pretension of imitation of or approach to the Red Cross emblem; and such attempt or intent to imitate the emblem of the Red Cross is essential."

<sup>74</sup> See *ibid* at 4 [author's translation]: "[B]etween the intended trademark and the opposing emblem considered as a whole, sufficient disparities are appreciated that allow their differentiation and non-association of the requested trademark and the Red Cross badge, which allows ... the conclusion that the requested trademark does not reproduce the Red Cross emblem."

## CONCLUSION

When the symbol or emblem of a NGO is not registered as a trademark, and in the absence of a uniform system as formulated by Article 6ter(1) (b) of the *Paris Convention* (which only protects the symbols and emblems of IOs and which is not applicable in this case), each national system presents different and independent methods of protection that can only be exercised through denial or cancellation of registration in accordance with the rules of the state where protection is required. In the European Union (EU), however, when it is a matter of denying or cancelling the registration of a European trademark that reproduces or mimics the symbol or emblem of a NGO, there is also a single protection system applicable throughout the territory of the EU. But, otherwise, when symbols and emblems retain their original legal nature (as in the case of the emblem of the ICRC), protection is reduced to seeking denial or cancellation of registration through national protection models based on the application of the *Geneva Conventions*.

If, however, we refer to protection of a NGO's symbols and emblems that have been registered as trademarks, we must distinguish between protection of this category of intangible assets when there is no applicable international standard, when such a standard exists, or when the registration is regional in nature — for example, an EU trademark. In the first case, in the absence of international standards, protection will be based on the application of the national trademark laws of the relevant country; this law will also determine the appropriate, or competent, forum, and the related rules of private international law will determine which law is available and applicable for purposes of protection. In the second case, protection derives from the application of the relevant international standards, such as the *Paris Convention*, the *Agreement on Trade-Related Aspects of Intellectual Property Rights*,<sup>75</sup> the *Madrid Agreement Concerning the International Registration of Marks* and its *Protocol*,<sup>76</sup> the *Nice Agreement*,<sup>77</sup> and the

<sup>75</sup> *Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization*, 15 April 1994, 1869 UNTS 299 (entered into force 1 January 1995).

<sup>76</sup> *Madrid Agreement Concerning the International Registration of Marks (as amended on September 28, 1979)*, 27 September 1979, online: <<https://wipolex.wipo.int/en/treaties/textdetails/12599>> (entered into force 22 October 1983); *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (as amended on November 12, 2007)*, 11 November 2007, online: <<https://wipolex.wipo.int/en/treaties/textdetails/12603>> (entered into force 31 August 2008).

<sup>77</sup> *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (as amended on September 28, 1979)*, 27 September 1979, online: <<https://wipolex.wipo.int/en/treaties/textdetails/12617>> (entered into force 5 September 1982).

*Trademark Law Treaty*.<sup>78</sup> In such cases, one must take into account all of the principles included in these sources that contribute to the protection of the NGO's symbols or emblems — for example, those assimilating unionist and national rules or those providing for priority. Finally, in the case of a regional title — for example, a European trademark registered as such in the EU — the owner of the trademark owns a right that can be enforced throughout the EU pursuant to a legal regime found in the rules of EU law that are applicable according to each situation.<sup>79</sup>

In relation to the emblem of the ICRC, it must be noted that application of Article 6*ter* of the *Paris Convention* to its protection is impossible since the ICRC is considered to be a NGO and its nature does not meet the “inter-governmental” requirement established by this norm. To understand it in any other way would be an overly broad interpretation of the norm that does not align with its spirit. In addition, the *Paris Convention* itself specifically excludes all those emblems that are already protected by other international texts from the scope of Article 6*ter*(1)(b) *in fine*. This is the case with the ICRC's emblem. Since we must also consider that this rule was expressly made with the emblem of the ICRC in mind, there is no doubt that the intention of the drafters of the *Paris Convention* was to leave this emblem outside its scope, with the certainty that its protection was ensured through application of the *Geneva Conventions*.

Finally, regarding issues of private international law, when protection is required outside the use that the member organizations of the International Movement are allowed to make of the emblem, such protection must be understood in the terms set forth in the previous paragraph since, unlike the symbols and emblems of other NGOs (such as that of the International Olympic Committee), that of the ICRC is not usually registered as a trademark and, therefore, is always protected on the basis of its inherent nature. The different ways in which this symbol is protected against use by third parties, when compared to other symbols and emblems, can be explained, on the one hand, by the fact that the *Geneva Conventions* offer universal protection with a concrete and secure framework and, on the other hand, by the fact that the national societies, unlike other NGOs, do not routinely use their emblem in commercial relations as an instrument of exchange and, therefore, its registration as a trademark is unnecessary.

<sup>78</sup> *Trademark Law Treaty*, 27 October 1994, online: <<https://wipo.lex.wipo.int/en/treaties/textdetails/12678>> (entered into force 31 July 1996).

<sup>79</sup> *Council Regulation (EU) 2017/1001 on the European Union Trade Mark*, [2017] OJ L154/1.