

A. ICRC, Diplomatic Conference on the Additional Emblem is postponed

[Source: ICRC, *Information on the emblem* No. 5, 13 October 2000, <http://www.icrc.org>]

13-10-2000 Diplomatic conference on additional emblem postponed

On 12 October the Swiss government informed the ICRC and the International Federation that it had decided to postpone the diplomatic conference on the emblem until early 2001. The prospects for a successful diplomatic conference were good until a change occurred in the international climate as a result of events in the Middle East. The priority for both the Movement and the Swiss authorities is to make sure the conditions are right for the states party to the Geneva Conventions to adopt the draft 3rd protocol creating an additional emblem.

Despite the delay in holding the conference, confidence remains high in Geneva that a successful outcome will be achieved when the conference is convened early next year. This optimism is based on the substantial progress that has already been made on the text of the draft protocol. The text reflects wide consensus on essential principles, including the creation of an additional emblem and the importance of the universality of the Movement.

The clear commitment of the Movement's leadership to find a solution as quickly as possible remains as strong as ever. The progress in discussions with governments made during 2000 encouraged the conviction that a solution to emblem problems could be found by the end of this year. With the Swiss government's firm commitment to continue active consultations with the States party to the Geneva Conventions, there is confidence that the draft protocol will now be adopted in 2001.

Meanwhile the revised version of the draft 3rd protocol will be sent to states and National Societies. It will form the basis for the ongoing consultations, particularly on the use and form of the additional emblem.

The postponement of the diplomatic conference will also probably mean the postponement of the 28th International Conference planned for 14 November. This had been called to revise the statutes of the Movement in the light of the 3rd additional protocol to the Geneva Conventions. A decision on this will be taken by the Standing Commission in the coming days.

B. 28th International Conference of the Red Cross and Red Crescent, Resolution 3, Adoption of resolution 5 of the Council of Delegates 2003

[Source: 28th International Conference of the Red Cross and Red Crescent, Resolution 3, Adoption of the Resolution 5 of the Council of Delegates 2003; available on <http://www.icrc.org/ihl>]

The 28th International Conference of the Red Cross and Red Crescent,

recalling Resolution 3 (27th International Conference) adopted on 6 November 1999,

adopts Resolution 5 adopted by the Council of Delegates on 1st December 2003 (see annex).

RESOLUTION 5 OF THE COUNCIL OF DELEGATES 2003

The Council of Delegates,

taking note of the report submitted by the Standing Commission as requested by the 27th International Conference of the Red Cross and Red Crescent, held in Geneva in 1999, and Resolution 6 of the Council of Delegates in 2001,

reiterating the commitment of the International Red Cross and Red Crescent Movement to achieve, with the support of the States Parties to the 1949 Geneva Conventions, a comprehensive and lasting solution to the question of the emblem, on the basis of the proposed draft Third Protocol Additional to the Geneva Conventions, once it is adopted, as soon as circumstances permit,

recalling the legal and protective value of the emblems used by the International Red Cross and Red Crescent Movement, which, by virtue of their inclusion in the Geneva Conventions and continuous practice for over a century, have become universally recognised symbols of impartial and neutral aid and protection to the victims of war, natural disasters and other catastrophes,

1. *welcomes* the work of the Standing Commission, its Special Representative on the Emblem and its ad hoc Working Group, the ICRC and the International Federation to develop the basis for a comprehensive and lasting solution to the question of the emblem;

2. *further welcomes* the progress made since the 27th International Conference, in particular the drafting of the proposed Third Protocol Additional to the Geneva Conventions on the Emblem (12 October 2000) as well as the adoption of Resolution 6 of the 2001 Council of Delegates;

3. *deeply regrets* developments which have made it impossible to bring the process to its expected outcome

with the adoption of the draft Third Additional Protocol;

4. *recalls* the Fundamental Principles of the Red Cross and Red Crescent, in particular the principle of universality;

5. *underlines* the urgency of reinforcing measures for the protection of war victims, medical personnel and humanitarian workers in all circumstances, and the significance in this context of the proposed Third Additional Protocol;

6. *requests* the Standing Commission to continue to give high priority to securing, as soon as circumstances permit, a comprehensive and lasting solution to the question of the emblem, in cooperation with the Swiss government as depositary of the Geneva Conventions and with other concerned governments and components of the Movement, on the basis of the proposed draft Third Additional Protocol;

7. *requests* the Special Representative of the Standing Commission on the Emblem to bring this resolution to the attention of the 28th International Conference of the Red Cross and Red Crescent.

C. Final Act of the Diplomatic Conference on the adoption of the Third Protocol additional to the Geneva Conventions

[Source: Final Act of the Diplomatic Conference on the adoption of the Third Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an Additional Distinctive Emblem (Protocol III), in "Adoption of an Additional Distinctive Emblem", *IRRC*, Vol. 88, No. 186 (March 2006), available on <http://www.icrc.org>. Footnotes omitted]

FINAL ACT OF THE DIPLOMATIC CONFERENCE ON THE ADOPTION OF THE THIRD PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE ADOPTION OF AN ADDITIONAL DISTINCTIVE EMBLEM (PROTOCOL III)

1. The Diplomatic Conference convened by the Swiss Federal Council, as the depositary of the Geneva Conventions of 1949 and their Additional Protocols of 1977, with a view to adopting the Third Protocol Additional to the Geneva Conventions, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), was held in Geneva, Switzerland, from 5 to 8 December 2005.

2. The delegations of 144 High Contracting Parties to the Geneva Conventions participated in the Conference. [...]

4. The International Committee of the Red Cross (ICRC), the International Federation of the Red Cross and Red Crescent Societies (IFRC), and the Standing Commission of the Red Cross and Red Crescent participated in the work of the Conference as experts.

[...]

15. The President informed the Conference that, following the Informal Discussions among High Contracting Parties on 12-13 September 2005, Switzerland, as the depositary of the Geneva Conventions, had conducted intensive consultations. These latter led to the signing of a Memorandum of Understanding (MoU) and an Agreement on Operational Arrangements (AoA) between Magen David Adom in Israel (MDA) and the Palestine Red Crescent Society (PRCS) on 28 November 2005 in Geneva, which were concluded in an effort to facilitate the adoption of Protocol III and to pave the way for the admission of both societies to the International Red Cross and Red Crescent Movement at the next International Conference of the Red Cross and the Red Crescent.

[...]

18. In accordance with agenda item 10, the Conference proceeded to the adoption of Protocol III. [...]

23. Having [...] obtained the necessary two-thirds majority in accordance with Article 37 para. 1 of the rules of procedure, the Conference adopted on 8 December 2005 the Third Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem whose certified true copies of the English, French and Spanish texts are annexed to this Final Act [...].

D. The Third Additional Protocol

[Source: Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005; available at <http://www.icrc.org>]

[See The Third Protocol Additional to the Geneva Conventions]

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

8 December 2005

Preamble

The High Contracting Parties,

[PP1] *Reaffirming* the provisions of the Geneva Conventions of 12 August 1949 (in particular Articles 26, 38, 42 and 44 of the First Geneva Convention) and, where applicable, their Additional Protocols of 8 June 1977 (in particular Articles 18 and 38 of Additional Protocol I and Article 12 of Additional Protocol II), concerning the use of distinctive emblems,

[PP2] *Desiring* to supplement the aforementioned provisions so as to enhance their protective value and universal character,

[PP3] *Noting* that this Protocol is without prejudice to the recognized right of High Contracting Parties to continue to use the emblems they are using in conformity with their obligations under the Geneva Conventions and, where applicable, the Protocols additional thereto,

[...]

[PP5] *Stressing* that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance,

[...]

[PP7] *Recalling* that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems,

[...]

[PP9] *Recognizing* the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems,

[...]

Have agreed on the following:

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

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

Article 2 – Distinctive emblems

1. This Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. The distinctive emblems shall enjoy equal status.
2. This additional distinctive emblem, composed of a red frame in the shape of a square on edge on a white

ground, shall conform to the illustration in the Annex to this Protocol. This distinctive emblem is referred to in this Protocol as the “third Protocol emblem”.

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.

4. The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection.

Article 3 – Indicative use of the third Protocol emblem

1. National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes:

- a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems; or
- b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol. [...]

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

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

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

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

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

Article 5 – Missions under United Nations auspices

The medical services and religious personnel participating in operations under the auspices of the United

Nations may, with the agreement of participating States, use one of the distinctive emblems mentioned in Articles 1 and 2.

Article 6 – Prevention and repression of misuse

1. The provisions of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, governing prevention and repression of misuse of the distinctive emblems shall apply equally to the third Protocol emblem. In particular, the High Contracting Parties shall take measures necessary for the prevention and repression, at all times, of any misuse of the distinctive emblems mentioned in Articles 1 and 2 and their designations, including the perfidious use and the use of any sign or designation constituting an imitation thereof.

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

Article 7 – Dissemination

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

[...]

Discussion

[See The Third Protocol Additional to the Geneva Conventions]

1. a. Why has the International Red Cross and Red Crescent Movement encountered problems arising from a plurality of protective emblems? Do you think there are more demands for additional emblems, or more demands for a single emblem? Who makes such demands? Which of these demands are more influential?
- b. Do the problems have something to do with the statement made in the Preamble to Protocol III regarding the absence of any religious connotation in the red cross emblem [PP5] ? Has this claim been harder to make since the acceptance of the second emblem, the red crescent? What impact does this have on the principle of universality? Did the adoption of Additional Protocol III put an end to the religious connotations that some see in the emblem? In the context of Art. 2 and/or Art. 3 thereof?
- c. What dangers to the emblem's authority does the use of additional emblems entail? Does the addition of an emblem, as set out in Protocol III, undermine one of its Fundamental Principles, i.e.

- neutrality? Does Protocol III serve to increase the protection of war victims?
- d. Why does the International Red Cross and Red Crescent Movement refuse to abandon the existing emblems in favour of a new single emblem? For whom would such a change have created the most problems: the ICRC, the National Societies, the Federation, the States, or the victims of armed conflicts? What kind of problems would it/they have had?
 - e. Do the Conventions and the Protocols protect emblems other than the red cross? If yes, which ones? Who may use these other emblems? (GC I, Art. 38; GC II, Art. 41; P I, Arts 8(1) and 18; P I, Annex I, Arts 4-5; P II, Art. 12)
 - f. Before the adoption of Protocol III, were there emblems used by the National Societies and medical units that were not protected by the Conventions and the Protocols? If yes, which ones? Why were they not protected? Why did some States want emblems other than the red cross or crescent to be used by their National Societies and medical units?
2.
 - a. Which mechanisms were available to adopt the new emblem? Was a diplomatic conference the only possibility?
 - b. Was a new separate treaty necessary? Couldn't a new emblem have been introduced by revising Annex I of Protocol I? Doesn't Protocol I provide a procedure for amendments (P I, Arts 97-98; P II, Art. 24) Yet how likely was it that all of the 192 States Parties (to the Conventions) would have agreed on such a revision? Particularly if a whole new treaty had to be approved?
 - c. Mustn't the Statutes of the Movement also be amended? [See Statutes of the International Red Cross and Red Crescent Movement, Art. 20] Would it not have proved easier to amend the Statutes than to amend the Conventions?
 - d. Would amending the Statutes without amending the Conventions be a violation of the Conventions? If not, what practical effects would only amending the Statutes have?
 3. Who may use the emblem? In which circumstances and subject to which conditions? When may it or must it be used as a protective device? For indicative purposes? What is the objective of the emblem in these two cases? How can it be ensured that this objective is achieved? (GC I, Arts 39-43; P I, Art. 18; P III, Arts 2-5)
 4. For which reasons do you think the Council of Delegates decided to exclude the possibility of abandoning the current emblems as one of the solutions to the problems arising from a plurality of emblems?
 5.
 - a. Why was the negotiation process for the adoption of draft Protocol III suspended after violence resumed in the Middle East as from the end of 2000?
 - b. Why was this conflict more likely than any other to stop the process of adopting the new emblem?
 - c. What is the status of the Palestine Red Crescent? And of the Israeli Magen David Adom (red shield of David)? Why were these two National Societies not part of the Movement? Was the reason for this in both cases a problem linked to the emblem? [See Statutes of the International Red Cross and Red Crescent Movement, Art. 4]
 - d. Was the question of the emblem the only obstacle to the admission of these two National Societies into the Movement? What other obstacles, if any, had to be overcome for the "Palestine Red Crescent" to become a member of the Movement? Do you know of other National Societies in a situation similar to that of the "Palestine Red Crescent" before its admission as a member? Which ones?
 - e. Do you know of other National Societies that are in the same situation as was Israel's Magen David Adom? Which ones? Will the adoption of Protocol III lead to a solution for these other National

Societies too?

- f. Under Protocol III, may the medical services of the Israeli armed forces now use the red shield of David as a protective emblem? May the National Society, the Magen David Adom, use the red shield of David as an indicative emblem?

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