

BRIEF PRIMER ON THE RED CROSS AND OTHER EMBLEMS BILL

(HB#s 307 and 440; and SB#s 62 and 2045, as filed in the 15th Congress)

What is this bill? :

This bill is "An Act Defining the Use and Protection of the Red Cross, Red Crescent and Red Crystal Emblems".

How did the bill come about? :

This bill was drafted as a result of the collaboration between the Philippine Red Cross (PRC) – International Humanitarian Law (IHL) Committee and International Committee of the Red Cross (ICRC) Manila Delegation, which provided technical assistance. Likewise, inputs from several IHL conferences, attended by various stakeholders and legal experts from the government, NGOs and the academe were incorporated into the bill.

What is rationale behind this bill? :

Despite having the obligation to take measures to prevent and repress at all times any misuse of the emblems, prosecution of offenders will only be possible with the passage of a domestic penal legislation. In this regard, the Philippines' adherence to the Geneva Conventions and its protocol (which already makes them part of Philippine law) does not bar the adoption of their provisions on the use and protection of the emblems as national legislation.

To date, only section 10 of the Republic Act 10072 penalizes the unlawful of any person or entity, aside from the medical services of the AFP and the PRC, of the words "Red Cross" or use of the emblem or any designation, design, sign or insignia constituting an imitation thereof for any purpose whatsoever. Further, there is no law penalizing the unlawful use of the Red Crescent and Red Crystal emblems and words "Red Crystal" and "Red Crescent"; hence this bill is proposed.

How was the new Red Crystal symbol adopted? :

The red cross and red crescent emblems are sometimes perceived as having cultural, religious or political connotations which jeopardizes the protection they confer on victims of armed conflicts, medical services of the armed forces and humanitarian personnel. National Societies that did not wish to use either of the emblem could not be recognized as a full members of the International Red Cross and Red Crescent Movement (Movement); thus, the idea of introducing an additional emblem that is acceptable to all National Society (NS) was adopted in a diplomatic conference in 2005 when the Red Crystal was recognized as a distinctive emblem. This achieved universality which is one of the Movement's Fundamental Principles while giving States and NS the freedom and flexibility to choose their emblem. This likewise put an end to the proliferation of other emblems.

Who can use the emblems under the Bill? :

As a protective device during armed conflict the following can use the emblems: medical services and religious personnel of the Armed Forces of the Philippines (AFP); medical personnel and medical units and transports of the Philippine Red Cross (PRC); and civilian hospitals, civilian units and other voluntary relief societies and medical facilities, their staff and transports assigned to the treatment and transport of the wounded, sick and shipwrecked, authorized and under the control of the Departments of Interior and local Government (DILG) and Health (DOH). During times of peace, the medical services and religious personnel of the AFP and the PRC medical facilities and transports that are to function as such in the event of armed conflict. The ICRC and the International Federation may use the emblems at all times without restriction. (Emblems of Humanity, ICRC)

As an indicative device during armed conflict, the PRC, other NS, the International Federation and the ICRC can use the emblems. In times of peace, persons and objects connected with either the PRC, other NS the International Federation and the ICRC; and ambulance and first-aid stations exclusively assigned to providing free treatment to the wounded and sick, as an exceptional measure, in conformity with national legislation and with the express authorization of the PRC.

What is the particular role of the PRC? :

The PRC shall cooperate with the Department of National Defense (DND), DOH, DILG and Department of Trade and Industry (DTI) in their efforts to prevent and repress any misuse and assist them in adopting the implementing Rules and Regulations of this bill. The PRC shall be entitled to inform these agencies of such misuse and to participate in criminal, civil or administrative proceedings.

What are the offences and corresponding penalties? :

For misuse of the emblem as an indicative device in peace time and during armed conflict, the penalty is imprisonment of not more than one (1) year and/or a fine of not less than twenty Thousand Pesos as the discretion of the court.

For misuse of the emblem as a protective device during armed conflict, the penalty is *reclusion perpetua* or imprisonment of (20) years and one (1) day to forty (40) years and a fine of not less than One Hundred thousand Pesos (P100,000.00) at the discretion of the court if it results in the death of an adversary; and *reclusion temporal* or imprisonment of twelve (12) years and one (1) day to twenty (20) years and/or a fine of not less than One Hundred Thousand Pesos (P100,000.00) if it results in serious harm to the body or health of an adversary.

For perfidious use of the emblem resulting in the death or serious harm to the body or health of an adversary, the penalty is *prison correccional* in its minimum and medium periods or imprisonment of not less than six (6) years and one (1) day to ten (10) years and a fine of not less than One Hundred Thousand Pesos (P100,000.00) at the discretion of the court.

For misuse of the emblem of any person during armed conflict without entitlement or as an imitation or which might lead to confusion, the penalty is imprisonment of not more than (1) year and/or a fine of not less than Twenty Thousand Pesos (P20,000.00) as the discretion of the court.

For misuse of the white cross on a red background or an imitation thereof as a trademark or commercial mark or as a component of such marks, for purpose contrary to fair trade or in circumstances likely to wound Swiss national sentiment shall be punished by a fine of not less than Twenty Thousand Pesos (P20,000.00).

What is the unique role of the IPO, SEC and DTI in protecting the symbols? :

These national agencies shall refuse registration of associations and trade names and filing of trademarks, commercial marks and Industrial models and designs making use of the emblem and the words, except making use of the Red Crescent and Red Crystal emblem and words prior to the adoption of the Additional Protocol III; provided, that the use would not appear as conferring protection during armed conflict; and provided further, such rights were acquired before the entry into force of this bill. Otherwise, persons making use of the emblem and words shall voluntarily cease and desist from using the same and withdraw from the market their products within two (2) months of promulgation of this bill.

What are the other salient features of the bill? :

It covers translations of the words "Red Cross", "Red Crescent" and "Red Crystal" in the official language and dialects, like Spanish, Tagalog or Cebuano.

The DND, DILG, DOH and DTI shall exercise strict control over their respective personnel authorized to use the emblems, names and signals; disseminate rules and instructions among the armed forces, police forces, government instrumentalities and civilians; and provide sanctions for violations.

In the interim, these agencies shall order the seizures of objects and materials in violation of this bill; the removal of the Red Cross and Red Crescent emblems and words or their translations in any official language and dialect; and forfeiture or destruction of the instruments used for reproduction. Upon promulgation of this bill, these agencies shall adopt Implementing Rules and Regulations with the assistance of the PRC.