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COMITÉ INTERNATIONAL
DE LA
CROIX-ROUGE

INFORMATION NOTE

- 3 -

Reply of the International Committee of the Red Cross to requests for information on the Geneva Conventions and cognate questions.

May 1953

C O N T E N T S

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I N T R O D U C T I O N

The present Information Note No 3 is a sequel to those which were sent to all National Red Cross Societies in May and November 1952.

As stated by the International Committee of the Red Cross (ICRC) in its introduction to the previous Notes, the purpose of this periodical publication is to let National Societies know of such replies by the ICRC to applications for information on the Geneva Conventions or cognate questions as it thinks may be of interest to Red Cross Societies, and of service to them in connection with their own particular problems (1). It should also enable the Societies to inform the Government services concerned with the implementation of the Conventions as to some of the problems thereby raised and the suggestions made to settle them.

The International Committee hopes that this new issue, the practical character of which it has endeavoured to maintain, will meet with the same favourable reception as the previous issues. Suggestions or observations by National Societies on the present Note will again be most welcome, and will be highly appreciated.

The Committee has further to repeat that the viwes expressed in these Information Notes are of a provisional nature in so far as they relate to questions which will be dealt with in the Commentaries on the Geneva Conventions of 1949, which the Committee has in preparation, the first volume of which the National Societies received in Autumn 1952. Nor should the views expressed be regarded as authentic interpretations of the provisions of the Conventions, the interpretation of which is a matter resting exclusively with the States parties to these instruments in mutual consultation.

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(1) The replies are arranged under general and well established headings. Explanatory notes are inserted at the beginning in brackets, where necessary, and are accompanied by references to the Articles of the Conventions concerned.

USE OF THE DISTINCTIVE EMBLEM

(Previous Information Notes have drawn attention to the interest shown by national Red Cross Societies and by the volunteer Societies in all questions relating to the conditions for the use of the red cross sign. The "Commentaire de la Ie Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne", pages 330-378, has already devoted considerable attention to this important matter.

There will be found below two new Opinions on the subject, relating essentially to the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea).

USE OF THE RED CROSS EMBLEM ON SMALL CRAFT FOR COASTAL RESCUES AS ALSO ON OTHER MOBILE RELIEF POSTS. (Second Convention, Articles 27, 41, 43 and 44, First Convention, Article 44)

(Red Cross relief posts on coasts sometimes make use of boats for the rescue of exhausted swimmers or bathers carried away by the current. A national Red Cross Society has asked the International Committee whether, and to what extent, the use of the red cross emblem on these boats is allowable.

The International Committee's opinion has further been asked on the subject of vehicles used by certain tourist organisations to check the operation of fixed relief post stations, or to give free relief from medicaments supplied by the Red Cross in cases of road accidents. In other cases it is the Red Cross relief workers, who are requested by the sport organisations in question to follow cycle races with a view to accidents. Can the red cross emblem, it is asked, be displayed on the motor-cycles or automobiles employed for these different purposes ?).

The small craft used by national Red Cross Societies for the rescue at seaside resorts of exhausted swimmers or bathers carried away by the current appear to be beyond all manner of doubt "small craft ... for coastal rescue operations" within the meaning of Article 27 of the Second Geneva Convention of 1949.

Article 43 of the same Convention provides that craft of this kind, in order to be entitled in time of war to the immunity conferred by the Convention, must be painted white with dark red crosses, and in general comply with the identification system prescribed for hospital ships.

The Convention makes no explicit pronouncement on the question whether this marking of coastal craft is allowable in time of peace, or only in time of war. It is even possible to make the following points in favour of the view that in principle it is only allowable in time of war. We find namely that :

(a) Article 27 speaks of protection being accorded "so far as operational requirements permit"; and such operational requirements are clearly military operational requirements.

(b) The relief Societies, to which Article 27 relates, unlike those to which the First Geneva Convention (Articles 26 and 44) relates, do not as such receive the right to display the emblem. It is only their rescue craft which is allowed to show it. Why ? Simply in order to ensure that the latter are respected by the enemy, and not to enable them to display the marking of the emblem in peacetime, as that would give a false impression of their belonging to the Medical Service of their country or to their national Red Cross Society.

(c) Article 43, fourth paragraph, states that the night marking of these craft is to take place "subject to the assent of the Party to the conflict under whose power they are". Similar provisions occur in the second, sixth and eighth paragraphs.

(d) Article 41, where (as in the First Convention, Article 39) it is the military authority which decides as to the emblem, is to the same effect.

On the other hand Article 44 speaks of the use of the emblem "whether in time of peace or war". The object of this provision is to permit the authority to decide with regard to the marking of certain vessels - it is obvious that it is mainly hospital ships which the Article has in mind - in peacetime.

The conclusion would appear to be that small craft for coastal rescues of the kinds specified in Article 27, belonging to recognised relief societies (whether Red Cross Societies or others), may not display the protective emblem in peacetime except with the express consent of the authorities. The point would however be clearer, if it was specified in national legislation.

Should moreover one of the Societies in question be authorised to effect the said display, the marking of its vessels would have to be complete - that is to say, would have to be in accordance with the forms of identification prescribed in Article 43, paragraphs 1, 2 and 3, of the Second Convention.

On the other hand - but this only concerns the national Red Cross Societies - if one of them decided not to give its craft the markings in question except in the event of war, or even if it abandoned all idea of their protection in time of war, it might confine itself to marking them by a red cross of small size. The use of such a cross is legitimate; for these craft, since they belong to a Red Cross Society, are entitled to carry its emblem under Article 44, paragraph 2, of the First 1949 Convention. But this emblem will only mark the fact of the craft belonging to the Red Cross Society, and consequently must be of small size so that "it cannot be considered as conferring the protection of the Conventions" (Article 44, paragraph 2). It is also desirable that it should show at the same time the name of the Society to which it belongs. But this practice, it must be repeated, is only authorised in the case of Red Cross Societies, other officially recognised relief Societies not being entitled to protective marking except within the framework of the Second Convention.

It is no doubt this last solution that Red Cross Societies will prefer for the rescue craft they employ in seaside resorts. Such small boats can hardly go far from the coasts, and are almost always incapable of high sea navigation, especially in rough weather, in which respect they differ from lifeboats proper, whose seafaring qualities will no doubt ensure their preference as vessels to be protected in time of war. Moreover the presence of even a small red cross with the name of the Society to which the boat belongs will, we feel sure, be quite enough to protect such craft from depredations, and to draw the attention of bathers in distress or persons wanting to come to their aid.

As regards the other mobile rescue posts, Article 44 of the First 1949 Convention provides in its last paragraph for the circumstances in which the emblem may be used in time of peace to indicate (a) vehicles used as ambulances and (b) the position of roadside aid stations. Automobiles and motor cycles, whose sole purpose is to circulate on the roads and give free first aid to victims of accidents by means of drugs and dressings furnished for the purpose by the national Red Cross Society, would appear to be mobile relief posts; and as such, if authorised by the legislation of the country and the national Red Cross Society, such vehicles would appear to be entitled - though only in peacetime - to be marked with the emblem in the same way as the fixed relief posts, to which they may be said to be similar. There is an obvious humanitarian interest in these mobile relief posts being marked with the red cross emblem in order to attract the attention of the public and to show where they are to be found.

USE OF THE EMBLEM ON FIXED COASTAL INSTALLATIONS AND PROTECTION FOR LIFEBOAT PERSONNEL. (Second Convention, Articles 27, 37 and 42)

(The International Committee was asked by a Government to give its Opinion on two questions relating to the use of the emblem, first on fixed coastal installations and secondly for the protection of lifeboat personnel. The two questions may be summarised as follows :

(a) May the fixed coastal installations referred to in the second paragraph of Article 27, which under the first paragraph of the same Article are to be respected and protected so far as operational requirements permit, display the red cross emblem ? If so, should the emblem be on a white ground, where the building may be in some other colour ?

(b) Lifeboat personnel are protected in the performance of their duties in the same way as the personnel of hospital ships under Article 36 of the Second Convention. But such protection, being limited to the times when they are at sea, appears inadequate and incompatible with the permanent readiness which a satisfactory rescue organisation requires. May not lifeboat personnel accordingly have permanent distinctive emblems and identity papers in accordance with Article 42 of the Second Convention ?)

Distinctive emblems of fixed coastal installations.

The Second Geneva Convention of 1949 contains no explicit provision allowing fixed coastal installations, which are used by rescue craft, to be marked by the Convention emblem. Article 43, which deals with marking, speaks only of ships and small craft. It refers to the rescue craft to which Article 27 relates, but does not mention the coastal installations, to which Article 27 accords protection.

This is an obvious omission on the part of the Convention. But, as a matter of sound law and reasonable interpretation of the texts, one cannot but admit that these coastal installations are entitled in wartime to display the red cross emblem. How otherwise would the enemy be in a position to respect them, as the Convention says he is to do ? To respect them, he must be able to recognise them at a distance.

What form of marking ought coastal installations to adopt ? Is it sufficient for them to display red cross emblems on a white ground, or ought the whole buildings to be painted white ? In view of the silence of the Convention on the point, it appears to us sufficient for them to show red cross emblems on a white ground. It is only in the case of ships that the Convention prescribes that the whole is to be painted white. Nothing is said about buildings on land, though there is nothing to prevent their being painted white.

Protection of lifeboat personnel.

Coastal rescue craft and their installations on land are protected under Article 27 of the Second Geneva Convention of 1949. Their personnel is therefore immune from attack, so long as it is on board its boats or in its buildings.

Otherwise it does not appear that the Convention gives such personnel any special protection.

The condition of the medical personnel is the subject of a special chapter of the Convention; and there is no mention in this chapter of coastal craft personnel.

The persons, to whom Articles 36 and 37 relate, belong to the Military Medical Service or to auxiliary relief Societies in aid of the Medical Service (including relief Societies in aid of the Medical Service of the Mercantile Marine). Such persons moreover must be exclusively and permanently employed on their medical duties.

It is no part of the purposes of the Second Convention to protect civilian personnel temporarily engaged in the search for shipwrecked civilians; and there can be no question of such personnel being authorised to wear the red cross armlet or to carry the identity papers for which Article 42 provides.

It may be pointed out however that the Fourth Convention contains certain provisions (Articles 16 and 63) in favour of rescue work; so that the personnel of rescue organisations should receive certain facilities in connection with its work.

CIVILIAN HOSPITAL

THE NOTION OF CIVILIAN HOSPITALS IN THE SENSE OF ARTICLE 18 OF THE FOURTH CONVENTION.

> (Article 18 has for its principal object to protect "civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases". This enumeration is no doubt indicatory; but it is not sufficient to give a precise definition of civilian hospitals.
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> A National Red Cross Society which, with its Government's approval, was anxious to find the means of applying the said Article, consulted the International Committee on this important point, and asked for a definition of civilian hospitals within the meaning of Article 18 of the Fourth Convention).

The article appears to contain a tautology. In common language civilian hospitals are by definition establishments organised to give care to the wounded and sick, to the infirm and maternity cases. Establishments not possessing these

characteristics are not civilian hospitals; and Article 18 should therefore logically read as follows : "Civilian hospitals that is to say establishments organised to give care to the wounded and sick, the infirm and maternity cases ..."

The reasons why so unsatisfactory a definition came to be inserted in the Convention should apparently be sought in the preparatory work preceding the Diplomatic Conference in Geneva, and especially the discussions which then took place. The text approved by the XVII International Red Cross Conference, held in Stockholm in 1948, provided in the first paragraph of Article 15 that "civilian hospitals, recognised as such by the State and organised on a permanent basis to give care ... shall at all times be respected ....". The meaning of this definition was clear, inasmuch as the term "civilian hospitals" was accompanied by two restrictive conditions, i.e. official recognition and permanent use for hospital purposes. The text adopted at Stockholm was again taken up by the Third Committee of the Geneva Conference and submitted by it to the Plenary Session. The latter however decided to refer it to an ad hoc Working Group, for a study of the Article, which had been the object of very marked difference of opinion and of numerous amendments. The Working Group succeeded in adjusting the differences of opinion and in finding a common formula which, with an alteration in paragraph 3, was adopted by the Plenary Session. The spokesman for the Working Group stated that agreement within the group had only been reached after eliminating a great many difficult points, and he urged that the compromise thus secured should not be called in question once more by the submission of amendments liable to raise lengthy discussions. This primordial anxiety to avoid compromising a fragile and difficult achievement caused the Plenary Session to adopt the definition of civilian hospitals without objections or opposition.

A careful study of Article 18 however suggests useful elements for a definition of civilian hospitals which responds

to the intention of the Diplomatic Conference, and is in harmony with the spirit and general policy of the Convention.

In the first instance, the enumeration of the various types of patients - wounded, sick, infirm, maternity cases - given in Article 18, is not of a cumulative nature. In order to comply with the definition of Article 18, it is not necessary therefore that a civilian hospital should be able to give treatment to every type of patient. It will suffice if a hospital only deals with one type of patient, as in the case of maternity hospitals, which may be exclusively reserved for confinements.

In Article 18 emphasis is principally laid upon the fact that, in order to meet the definition of the said Article, civilian hospitals should be so organised as to allow for the treatment of one or more of the types of patients mentioned. A civilian hospital should have the staff, equipment and articles which are necessary for its purpose, and in particular doctors, chemists, medical personnel, administrative staff, operating theatres, sanitary installations, kitchens, medical supplies and surgical instruments. It is not necessary for the civilian hospital to have been in constant use as a hospital establishment. As we have seen above, this provision of the Stockholm text was omitted in Geneva, the Diplomatic Conference taking the view that establishments set up in an emergency as auxiliary hospitals on account of the events of war should not be excluded from the protection of the Convention. In recent hostilities it was a frequent occurrence for schools, hotels, churches, etc. to be transformed into civilian hospitals to meet the needs of the population. In general such improvised hospitals carry out their work with relatively limited means and equipment. Nevertheless, the fact that these hospitals are temporary and their equipment sometimes limited would not be a sufficient reason to deny them the benefit of Article 18. On the contrary, as such auxiliary hospitals are often temporarily set up in an area of military operations, they have special need of protection. The determinant factor is the

effective possibility of giving treatment and nursing, which naturally implies a minimum of organisation.

The capacity of the establishment should not serve as a standard for the appellation of "civilian hospital". Articel 18 makes no actual reference to such a standard; and the preparatory work showed that any idea of a standard was deliberately dropped. The Government Experts Conference in 1947 did in fact examine the possibility of limiting the application of the provision to hospitals with at least 20 beds, but finally dispensed with this condition. States are not however excluded in their national legislation from retaining a quantitative standard, and making State recognition dependent upon a minimum number of beds. The figure of 20 beds considered by the Government Experts would seem to be a reasonable lowest limit.

Civilian hospitals have a right to the protection of the Convention, wether occupied or not. This emerges from the actual wording of the provision, which only specifies the hospital's organisation and the type of patients who can be given treatment. The spirit of this provision calls for similar interpretation; for hospitals as such appear to be deserving of protection even in the purely hypothetical case of their not having at the moment any wounded or sick. It is nevertheless clearly understood that, in order to have the special protection of the Convention, a civilian hospital may not in any case be put to other uses. For instance, if a school house has been temporarily transformed into a hospital, classes may not continue to be held therein, even if the establishment is not for the time being accommodating wounded or sick.

Finally, it should be noted that the legal status of hospitals according to national legislation does not affect the application of Article 18. Whether they are private hospitals or State hospitals, or hospitals of a municipality or community, the special protection of the Convention is due to all, provided they comply with the conditions laid down.

How will the standards briefly indicated above as forming the basis of Article 18 be applied in practice ? In the case of establishments complying with the definition of a civilian hospital as generally admitted there is no difficulty. The point is whether they treat all the types of patients stated in Article 18, or some of them only. The names by which the establishments are known do not matter. They may be hospitals, clinics, convalescent homes, polyclinics, eye clinics, mental establishments, children's hospitals, etc. But there can be no doubt that they are all civilian hospitals in the sense of Article 18; and there is no need to enlarge upon the subject.

The question is more complicated in regard to establishments intended to accommodate persons who, though not actually ill, are nevertheless not in perfect health. These border cases exist in practice : there are for instance institutions for alcoholic patients, children's homes, nursery centres, old people's homes, preventoria, homes for the disabled, hydropathic establishments, etc.

It is obvious that neither Article 18 nor the other articles of the Convention give a legal definition of a sick or infirm person. Nevertheless the fundamental meaning and scope of the idea, which is the basis of the enumeration of the various types of patients in Article 18, become more explicit, if this enumeration is considered in close connection with the term "civilian hospitals". As this term corresponds to a relatively well-defined conception, it should not be impossible to trace a dividing line, which will eliminate establishments lacking the true functions of hospitals.

Old people's homes do not rank as civilian hospitals. Such homes are intended for old and lonely people to spend their last years in without having to provide for their housing and maintenance. They are not however intended for hospital treatment to their inmates, and they are more akin to boarding houses or homes than to hospitals. This is the meaning given to them

both in current language and in the dictionary. To try and assimilate them to hospitals would be contrary to the common interpretation of the term "old people's homes". These therefore are not covered by Article 18.

If these establishments had for their sole object to give shelter to sick, infirm or incurable aged persons, they might no doubt qualify as civilian hospitals in the sense of Article 18; but there are practically no such establishments.

As regards homes for the sole object of giving shelter to the infirm, for instance homes for the blind or the deaf and dumb, it should be possible to place them in the category of civilian hospitals in the sense of Article 18, in so far as the infirm receive treatment there.

The disabled are not included in the enumeration in Article 18. But the establishments where they are given treatment may be considered as civilian hospitals; for the disabled also rank among the wounded and sick, so long as their state of health calls for hospital treatment. Establishments exclusively intended for the accommodation of the disabled, whose state of health no longer calls for hospital treatment, are naturally not covered by Article 18.

Children's homes and nursery centres, like old people's homes, give shelter to helpless creatures to whom care is given, but who are not in bad health. For this reason these establishments cannot be considered as civilian hospitals.

As to preventoria, the assimilation to sanatoria and hospitals appears to be justified, at least in many cases. The boundary line between sanatoria and preventoria will often be difficult to define. No doubt, in so far as they are "preventive", preventoria only give shelter in principle to persons predisposed to disease and not to those actually suffering from disease; nevertheless, where these establishments are organised on similar lines to civilian hospitals, and the persons housed in them are subject to medical discipline and preventive treatment, their

assimilation to civilian hospitals appears to be justified. It may be added that preventoria frequently shelter persons who are already ill, at least to a slight degree, and the title "preventorium" is in many cases a euphenism.

In most cases hydropathic establishments are not visited by the sick and infirm only, but also (for a variety of reasons) by persons who are in good health or at least are not sick in the strict sense of the word. Moreover, the persons who visit these establishments generally live in hotels or boarding-houses: they are not under medical care outside the hydropathic establishment, and are not therefore in the care of hospitals. Generally speaking it may therefore be concluded that hydropathic establishments are not covered by Article 18. It is however possible to imagine a hydro organised on civilian hospital lines and only admitting persons who are sick in the true sense of the word. In such a case assimilation to a civilian hospital might be considered.

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This survey of the question shows how difficult it is, in view of the variety of cases concerned, to define a priori and in general terms the civilian hospitals referred to by Article 18. It is therefore highly desirable that implementary national legislation should stipulate in the most precise terms the conditions required for an establishment to be recognised as a civilian hospital; and such legislation could not do better than take pattern by the principles indicated above. Whether such definition should take the form of laws or regulations is a matter for the legal practice of each country.

National legislation might also make a distinction between the recognition of an establishment as a civilian hospital and its marking by means of the emblem. The issue of a document

certifying the recognition of the establishment as a hospital is compulsory under paragraph 2 of Article 18, provided the establishment fulfils the condition stipulated; but authority to make use of the protective emblem is left to the free choice of the State. In issuing to an establishment a certificate recognising it as a civilian hospital, a State might quite well refuse to grant the right of marking it with the emblem, where such marking for one reason or another is considered inadvisable. The State might for instance wish to reserve marking for large civilian hospitals and impose standards of application in this connection.

It also seems essential that the body entrusted by national legislation with the issue of certificates and authority to make use of the emblem should have the power to carry out the necessary supervision. The close and constant supervision of all establishments enjoying State recognition is important: it is in fact absolutely necessary for hospitals which have been granted the right to make use of the emblem. Close supervision is an inevitable consequence of the extension of the use of the Red Cross emblem, if the latter is not to be abused, losing thereby its high significance and power. For this reason the right granted to a civilian hospital to make use of the emblem should always be linked with the obligation to submit to supervision.

In studying the various types of establishments which may be considered as civilian hospitals within the meaning of the Convention, we have omitted several types of institutions. This does not signify that these establishments do not benefit by special protection under other provisions of international law. For instance, Article 27 of the Regulations annexed to the Fourth Hague Convention (1907) provides that in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected. Under the second paragraph of the same Article it is the duty of the besieged to indicate the presence

of such buildings or places by distinctive and visible signs, which are to be notified to the enemy beforehand. The Ninth Hague Convention (1907) concerning bombardments by naval forces further particularises in Article 5 the marking: it is to consist of rectangular panels divided into triangular portions in black and white.

It is evident that many of the establishments referred to above as being excluded have a beneficent object, and can therefore claim the benefits of the Hague provisions in their favour.

Moreover, in occupied territory the property of buildings dedicated to charity is, according to Article 56 of the Hague Regulations of 1907, to be treated as private property, of which the seizure, destruction or wilful damage are forbidden and would entail legal proceedings.

FORMS FOR WHICH THE CONVENTION PROVIDE

IDENTITY CARDS FOR MEMBERS OF THE MEDICAL PERSONNEL. (First Convention, Article 40 and Annex II, Third Convention, Article 17)

(One of the provisions of the First Convention (Article 40) for the identification of medical and religious personnel is for the distribution of identity cards, a specimen model of which is shown in Annex II. Article 17 of the Third Convention for its part provides (in its third paragraph) that "Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card".

> But the particulars required are not the same for these two types of cards. Over and above the conditions laid down by the Third Convention for persons liable to become prisoners of war, the medical card properly so-called has to show the distinctive emblem, to be drawn up in the national language, to specify the qualifications of the holder entitling him to protection, and to carry his signature.
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> For this reason a Government, which is anxious to make provision for the distribution of identity cards, enquired of the International Committee whether, in the latter's opinion, the members of the medical personnel, who receive the identity card for which the First Convention provides, should also receive the card, which under the terms of the Third Convention is to be supplied to the combatant personnel of the armed forces).

The medical personnel of an army, as defined by Articles 24, 26 and 27 of the First Convention - that is to say, the permanent personnel of the Medical Service and the personnel of the Red Cross national or neutral Societies employed for the same purposes - should not, it would seem, be the bearers of two identity cards, the one indicating their Medical Service qualifications in accordance with Article 40 of the First Convention, and the other recording their membership of the army in accordance with Article 17 of the Third Convention. The medical card properly so-called contains, amongst other things, the same indications as the card given to all members of the forces (surname, first names, rank, regimental, serial or personal number, date of birth and signature or finger-print); and these particulars should be quite enough to certify to the enemy that they belong to the army. Incidentally the First Convention does not specify that the Military Medical personnel is to be provided with any instruments of identification other than the identity disk and this special card.

There is moreover what would seem to be the decisive consideration that the Third Convention lays down (Article 17,

third paragraph) that the ordinary identity card is to be given to all persons placed under the jurisdiction of a Party to the conflict "who are are liable to become prisoners of war". But members of the military medical personnel of an army, if they fall into the hands of the enemy, do not become prisoners of war. The fact of carrying such a card, which has the same purport as a combatant's card, in addition to the special medical card cannot fail to cause confusion and may ultimately prove harmful.

On the other hand the position is different in the case of members of the temporary medical personnel, that is to say, persons who under the terms of Article 25 of the First Convention are members of the forces specially trained for employment, as required, on medical duties. In the event of capture members of such temporary personnel are prisoners of war. They should therefore receive the card provided by the Third Convention for all military personnel, but with this difference that the card should specify in their case the medical training they have received, the temporary nature of their duties, and the right they have to wear the armlet (First Convention, Article 41, second paragraph). If the military authorities subsequently decide to alter the wartime status of these men, e.g. by attaching them permanently to the Medical Service, they should then withdraw the ordinary military card, which the men hold, and replace it by the special card for the medical personnel properly so-called.

The sole purpose of the above considerations is of course to provide the medical personnel with the most effective and most expeditious possible means of identification to meet the case of contacts with the enemy. The military authorities on the other hand can of course provide the members of armed forces nationally with any instruments of identification they think necessary or proper.

PREPARATION OF IDENTITY DISCS. (First Convention, Article 16, paragraph 3, Article 17, paragraph 1: Second Convention, Article 19, paragraph 3, and Article 20, paragraph 1 and 2)

(The provisions with regard to identity discs reveal certain differences between the First and Second Conventions on the subject of the attitude to be adopted in cases of decease. In reply to an enquiry by a national Red Cross Society, the International Committee sent the following explanations).

Under the terms of the First Convention (Article 16, paragraph 3, and Article 17, paragraph 1) the identity disc is always to be left on the bodies of deceased combatants - that is to say, the disc itself, if simple, or the half of it, if it is double (the other half being sent to the authorities of the country of origin. The purpose of this arrangement is to allow of identification at all times in the event of future exhumation.

On the other hand under the Second Convention (Article 19, paragraph 3, and Article 20, paragraph 1) the bodies of persons deceased at sea, who are to be thrown overboard, should not in principle retain their identity disc. It is only where the disc is double that the half of it will remain with the body. If it is a simple disc, it will be retruned to the Power of origin of the departed person. This difference from the First Convention was introduced at this point after request of the United Kingdom delegation to the Diplomatic Conference, which pointed out that, as the bodies of persons thrown overboard could no longer be recovered, it was useless to attach to them a mark of identity.

On the other hand, if the bodies of the deceased at sea are brought to land for burial, the provisions of the Second Convention cease to apply to them. Paragraph 2 of Article 20 of the Convention says that, once on shore, the dead bodies come under the provisions of the Convention - which covers the question of the identity discs.

But generalisation of the use of the double disc is none the less desirable.

PROPERTY OF AID SOCIETIES

INTERPRETATION OF THE ENGLISH TEXT OF ARTICLE 34, PARAGRAPH 1 OF THE FIRST CONVENTION.

(Article 34, paragraph 1, of the "Wounded and Sick" Convention provides that "les biens mobiliers et immobiliers des Sociétés de Secours admises au bénéfice de la Convention seront considérés comme propriété privée". The corresponding English text states : "The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property".

There is therefore a difference in the form, which seems to affect the question fundamentally, if we are to believe that the word "biens" in the French text only implies the idea of possession, i.e. mere actual occupancy, excluding any idea of property, which on the other hand seems expressly contained in the English version.

This difference in meaning should therefore be exactly defined; and, once this has been done, it should be decided which version is to be retained. The International Committee of the Red Cross would be especially grateful if English-speaking Red Cross Societies would,

when they have read the following lines, kindly give their opinion on the point). (1)

By referring only to "biens mobiliers et immobiliers des sociétés de secours", the French version of Article 34 does not make clear the title under which these "biens" are supposed to be possessed by aid societies, and does not therefore postulate any sort of ownership.

The same terms were used in the 1929 Convention; and they were legally taken to mean all the possessions of aid societies which ranked as private property, whatever the title of the possession (loan, rent. etc.).

The English text, on the other hand, which speaks of "real and personal property", only confers the benefit of Article 34 on real and personal property owned by aid societies.

The practical consequences of the second deduction are evident. Any building or equipment, the temporary use of which is transferred by the State to a Red Cross Society to enable it to carry out its humanitarian tasks, will benefit by Article 34 according to the French text, but not according to the English text. Under the terms of the latter text any public property placed at the disposal of a Red Cross Society may be seized by the enemy, even when the use made of it is in no way distinguishable from that of property owned by the Society.

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(1) It might again be argued that the word "property is used with two different meanings - the first to denote all property assigned to aid societies, whether they are the owners or not, whilst the second is to be taken "stricto sensu", i.e. in its legal sense. In this case there would only be a slight difference in form between the two versions, which would not be of fundamental importance. This argument has been rejected because of the inconvenience of giving the word "property" a meaning not in keeping with the legal acceptance of the term.

The problem is less acute in the case of property placed at the disposal of a Red Cross Society by private persons, for there can be no argument as to its being private property. To settle the problem, it is necessary therefore to ascertain the "intention of the legislator", that is, the will of the Parties represented at the Diplomatic Conference of 1949, which simultaneously adopted the two different versions.

The activity of relief societies depends to a considerable extent on the material means placed at their disposal, and Article 34 is expressly designed to ensure for these Societies the preservation of the means indispensable for the accomplishment of their tasks. It is therefore the function to which these means are devoted by the Societies, and not the legal relations between them, which should logically determine the application of Article 34. From the moment when anything is placed at the service of a relief society in order to permit or facilitate the performance of its duties under the Conventions the thing in question should be regarded as private property, and should no longer be liable to requisition.

These considerations have also their practical side. Any discrimination between the property and possessions of a relief society will at once entail, in case of challenge, an obligation to show proof, which can only give rise to difficulties.

Careful perusal of the texts also appears to show that it is the French version of Article 34 which complies best with the requirements of the Convention. The pleonasm of the English stipulation that "the ... property of aid societies ... shall be regarded as private property" leaps to the eye. Though Article 26 of the Conventions, to which Article 34 refers tacitly, contains no provision as to the legal form of aid societies admitted to the benefits of the Convention, and it would in consequence be theoretically possible for them to have the form of a corporation or public law institution (établissement de droit public), it is none the less a fact that these societies

are generally legal persons in private law (de droit privé). Their resources and the real and personal property belonging to them are therefore necessarily private property; and the assertion in the English version of Article 34 has nothing novel in it, since all it says is approximately : "private property will be considered as private property". It should however be noted that Article 26 of the Convention contains no provision on the subject, and that there is nothing to prevent the Red Cross Societies from becoming public law institutions (institutions de droit public).

The origin of Article 34 reproduces textually Article 27 of the draft submitted to the XVII International Red Cross Conference at Stockholm, and this draft was itself a reproduction of Article 16 of the 1929 Convention. The two first paragraphs of the Article were combined at Stockholm into a single paragraph, and the general formula "biens mobiliers et immobiliers" was substituted for the terms "bâtiments" and "matériel". The minutes of the discussions at Stockholm are too scanty to make it possible to ascertain whether it was really an American amendment, which was the origin of the terms "personal and real property"; but the statements made by the American delegate in the First Committee of the Diplomatic Conference show that its authors meant the expression to cover the whole of the first two paragraphs of the 1929 text. But the 1929 text had nothing to do with any question of property, and referred equally to the buildings and equipment attached to the sick and wounded dealt with by the aid societies. The form "personal and real property" is therefore more limited than that of Article 16 of the 1929 Convention, which tallies more closely with the French version. This is confirmed by the French stenographic record of the discussions of the First Committee of the Diplomatic Conference of 1949, in which we find "qu'il n'y a pas de doute sur l'interprétation de ce texte. Le matériel, quel qu'il soit, qu'il soit fixe, mobile, qu'il s'agisse de bâtiments, d'objets appartenant aux Sociétés

de secours ou même mis à leur disposition, dont les Sociétés de secours sont détentrices, est propriété privée" (1). This interpretation gave rise to no objections, and was tacitly approved by all the members of the Committee.

It may therefore be said in conclusion that it does not appear to have been the intention of the authors of Article 34 to exclude from its benefits possessions of aid Societies used in the performance of their duties under the Conventions, though they are not the property of the Societies.

Moreover, the difference found to existe between the two versions of Article 34 ceases to be of importance, if the problem is viewed against the background of the general corpus of the laws and customs of war. The possessions of aid Societies can always be treated as equivalent to private property under Article 56 of the Hague Regulations which provides that the possessions of establishments devoted to charitable purposes are to be treated as private property. Under this rule therefore the possessions of an aid Society rank as private property.

A further point is that, if an aid Society is legally and formally the owner under Civil Law (droit civil) of its possessions, its proprietary rights are none the less subject to a servitude, inasmuch as the property can only be used for relief purposes and no others. It is inconceivable that it would be distributed among the members of the aid Society in the event of the latter's dissolution. It would be handed over to some other Society engaged on similar objects, or would be taken over by the State.

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(1) This record, taken in French, was never translated into English, or included in the Final Records of the Conference.