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COMITÉ INTERNATIONAL
DE LA
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I N F O R M A T I O N N O T E

Replies of the International Committee
of the Red Cross to requests for infor-
mation on the Geneva Conventions or pro-
blems connected therewith.

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

For a long time past a number of National Red Cross Societies have put questions to the International Committee of the Red Cross (ICRC) as to the interpretation of particular clauses of the Geneva Conventions, or as to the best way of dealing with particular cases in accordance with the provisions of the Conventions. Questions of this kind, the frequency of which has increased since the drawing up of the new Conventions of 12 August 1949, also reach the Committee from Governments, international organizations, private undertakings, or even individuals.

Such questions show the importance which the questioners attach to the Geneva Conventions; and they are a proof, which is highly appreciated, of the confidence they have in the opinions of the ICRC, both because of its experience in these matters and also in view of the part played by it in the preparation of the texts of the Conventions. The ICRC is accordingly anxious to reply as fully as possible to these questions, but must at the same time make clear - here and at all times - that it is not qualified to give authentic interpretations of the Conventions, since that rests only with the States parties to the Conventions acting in mutual consultation.

Some of the questions submitted to the ICRC are of general interest, and may concern more Red Cross Societies than one. The ICRC thinks that National Societies would be glad to be informed in future of the replies which the Committee gives

to those questions which have this general character. The Committee has accordingly decided to inform them from time to time as to the contents of its replies (after eliminating all individual features of the questions out of respect for the implied wish of the questioners) in the form of "Information Notes" (1).

The present Note contains replies given by the ICRC to certain recent questions.

The opinions expressed are provisional in character, where they relate to questions which the ICRC will have occasion to consider in further detail in the Commentaries on the 1949 Conventions which it has in preparation. It is to be hoped that the present publication, the first of its kind, will be welcomed by the National Societies. The CICR will be grateful to them for any observations or suggestions they may desire to make on the subject.

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(1) The replies are grouped under general, well recognized headings. They are preceded, where thought fit, by a few words of explanation in brackets, and are accompanied by references to the Articles of the Conventions to which they may refer.

USE OF THE DISTINCTIVE EMBLEM

[Most of the questions put by the Red Cross Societies deal with the use of the distinctive emblem under the new Geneva Conventions. These enquiries reflect the anxiety of the National Societies, both in regard to the regular use of the emblem and in regard to its protection. The ICRC cannot but be delighted at the anxieties of the National Societies, on which it can only congratulate them. To meet their wishes in this connection, the ICRC has already had occasion to offer them certain general and extensive indications on the problems concerned by means of various recent publications. (1)]

It seemed desirable however, in order to illustrate these general indications by practical examples, to include below a certain number of replies given in particular cases on which the opinion of the Committee was requested.]

USE OF THE EMBLEM ON FIRST-AID CHESTS AND KITS. (First Convention, Article 44).

Article 24, paragraph 4, of the Geneva Convention of 1929 (Wounded and Sick) and Article 44, paragraph 4, of the First Geneva Convention of 1949, which corresponds to it, contemplate a single instance where, quite apart from a connection with the National Red Cross Societies but under its authority, the purely indicatory sign might be used - to mark, namely, the position of First-Aid stations, intended only for the free treatment of sick or injured civilians.

(1) Analysis for the use of National Red Cross Societies, Vol. I, pages 76 ff., The Sign of the Red Cross and the Repression of abuses of the Red Cross Emblem, by J.S.Pictet, 1951, Model Law for the Protection of the Emblem and Name of the Red Cross, 1951.

The following are two very widespread and well-known cases of such use. In public demonstrations, where there is a large crowd, aid-stations are thus indicated. Similarly highway aid-posts are a familiar sight on main roads, where they serve in case of motor accidents.

A number of National Red Cross Societies have asked the International Committee of the Red Cross as to the possibilities of also using the Red Cross emblem on First-Aid chests in public places, and on boxes or kits sold to individuals. A distinction has to be made between these two cases.

I. First-Aid chests in Public Places.

In certain countries a Red Cross emblem is shown on chests containing First-Aid remedies for persons who are the victims of accidents or are taken ill. Such chests or cabinets are placed in conspicuous positions in public buildings such as large stores, factories, railway carriages and aircraft.

Such use is contrary neither to the spirit nor the letter of the Convention, so long as the provisions of the Geneva Conventions are duly observed. The following are the conditions resulting from paragraph 4 of Article 44 of the First Geneva Convention of 1949 :

- (a) The use must conform to municipal law.
States have thus the possibility of restricting it or subjecting it to such additional safeguards as they may consider desirable (consent of an official authority, supervision and so on).
- (b) Use of the emblem is subject to express authorization. Tacit agreement is not therefore enough. Subject to what we have said under (a), such authorization can be given only by the National Societies of the Red Cross (Red Crescent, Red Lion and Sun). This right of giving permission does not belong to any other Society or even to the State; nor can the Red Cross Societies delegate it.
- (c) First-Aid posts must be used exclusively for the sick and wounded, and their aid must be given free. In this way the idea which attaches to the emblem is safeguarded. From the moment a charge is made or medicines sold, the authorization should be withdrawn.

- (d) This use is permissible only in peacetime. As soon as a country becomes party to a conflict, such emblems must disappear throughout its territory. This may appear harsh, when it is considered that the purposes for which permission is given do not lose their raison d'être in wartime. The stipulation is however quite definite. It must be remembered that the essential value of the Red Cross is in wartime, when it represents immunity. Everything else must be subordinated to this consideration.

If we take the view that these chests in public places may be regarded as equivalent to aid-posts within the meaning of the Convention, and may accordingly be provided with the Red Cross emblem subject to the necessary authorizations, we must at the same time make it clear that such use of the emblem is an important extension of its purpose; and, each time its use is extended, the risks that its prestige will suffer are increased, and disproportionally increased.

Red Cross Societies before giving their authorization to any such new use of the emblem will be well advised to make certain that no prejudice will result from it, and might even refrain from giving such authorization, unless satisfied that they can exercise an effective and permanent supervision.

II. Boxes or Kits sold to Individuals.

The question has also been asked in certain countries whether the Red Cross sign may appear on First-Aid boxes or kits sold commercially for household use and for motorists. Although such marking might make it easier to identify the kit in case of accident or illness, we feel the practice should be discouraged.

Such a practice will exceed the limits sent by the Convention. The use of the emblem would increase and its value diminish; and the element of commercial advertisement would come into the picture. But the greatest objection of all, which seems to us to involve a negative attitude to the proposal, is the absence of supervision. There is no guarantee that these boxes will always be used for the original purpose. Once they are empty, one may be afraid to find them change for example into tool-boxes, and still continue to flaunt their Red Cross! Surely these articles might just as easily be distinguished by such words as "First-Aid" or "Dressings".

MEASUREMENTS OF SPECIAL ARMLET FOR TEMPORARY MEDICAL PERSONNEL.
(First Convention, Article 41)

Article 41 of the First Convention of 1949 provides that the emblem to figure on the armlet is to be of reduced size. That means that it will be smaller than the emblem appearing on the armlet of permanent medical personnel.

Although ingenious, the solution adopted does not avoid the very real drawback of decreased visibility of the red cross. The ordinary armlet is already unsatisfactory in this respect; and it would seem that to reduce the size of the emblem is inconsistent with the desire to give effective protection to the temporary medical personnel. There is likewise the considerable risk of confusion between the two.

In other words, if the cross on the special armlet is very small, it is to be feared it may be difficult to see; if it is large, the distinction between the special and the ordinary armlet will tend to disappear. A compromise has therefore to be found, and will probably be most easily arrived at by practical experiment. In any case, it is desirable that the ordinary armlet reserved to the permanent medical personnel should be large, and its red cross as large as possible. In that case the special armlet could have a cross considerably reduced but still sufficiently visible. It would seem that, if the cross on the special armlet had limbs half the length of those on the ordinary armlets, it would still be recognizable.

USE OF THE EMBLEM ON CIVILIAN AMBULANCES IN TIME OF CONFLICT.
(First Convention, Article 44. Fourth Convention, Article 21)

- I. (a) Ambulances, which have been authorized to show the emblem in accordance with the last paragraph of Article 44, must do away with it when their country goes to war.
- (b) If these ambulances belong to the National Red Cross Society, and are used by the latter for "other activities which are in conformity with the principles laid down by the International Red Cross Conferences" (Article 44, paragraph 2), the Society may show the emblem on them, in peace as in war. But the emblem,

the sole purpose of which is to show that the vehicle belongs to the Society, must be of small dimensions, and should in principle show in addition the name of the Society.

- (c) These provisions do not of course apply to ambulances of the army medical service, which are "medical transports" within the meaning of Article 35 and, as such, protected by the Red Cross.

- II. Article 21 of the Fourth Convention of 1949 lays down that medical transports of civilians may not show the Red Cross emblem, unless they move in convoys. Consequently isolated vehicles have no right to the protection of the emblem.

USE OF THE EMBLEM FOR CIVILIAN HOSPITALS AND THEIR EQUIPMENT.
(Fourth Convention, Articles 57 and 18).

- I. Only the building which shelters or constitutes the hospital may show the emblem: its equipment may not. Article 18 refers only to the use of the emblem on the hospitals themselves. The equipment will in any case benefit by the protection given it in Article 57 of the Fourth Convention, which says that "the material and stores of civilian hospitals cannot be requisitioned as long as they are necessary for the needs of the civilian population".
- II. To be entitled to the protection of the emblem in wartime, a civilian hospital establishment must fulfil the following conditions :
 - (a) It must be organized to give care to the wounded and sick, the infirm and maternity cases (Article 18, paragraph 1).
 - (b) Its character as a "civilian hospital" must be recognized by the State, which must give it a certificate in that sense (paragraph 2).
 - (c) It must not be used for any purpose which might deprive it of protection, and this must be specified in the certificate accorded by the State (paragraph 2).
 - (d) It must be explicitly authorized for the purpose by the State.

MEDICAL PERSONNEL

CONDITIONS OF THE PROTECTION OF VOLUNTARY PERSONNEL, AND EFFECT
ON THE STATUS OF THE LATTER OF THEIR SUBMISSION TO MILITARY LAW.
(First Convention, Article 26)

[Article 26 of the Convention is not very explicit as to the conditions to be fulfilled by the personnel of relief societies in order to have the benefit of the same guarantees and protection as Army Medical Personnel; and a number of National Red Cross Societies have questioned the ICRC on the point.

One Society in particular asked whether the submission of voluntary medical personnel to Military law (which is one of the conditions imposed) did, or did not, deprive them of their character as civilians.]

In order to give the voluntary medical personnel the benefit of the same immunities as the military personnel, every kind of safeguard was needed to prevent uncertainties and abuses. It is proposed to consider successively the five conditions to be observed, all of them obligatory :

(a) The Red Cross or other Society must be duly recognized by the Government of its home country. This must not be confused with the recognition conferred by the ICRC upon each new Society which becomes a member of the International Red Cross. The latter recognition is peculiar to the Red Cross and implies in fact prior recognition of the Society by its Government. As already noted, a Government may admit several Societies as auxiliaries to the Army Medical Service, whilst the ICRC may admit only one Red Cross Society in any one country.

(b) Recognition alone is not sufficient. The Government must authorize the Society to act as an auxiliary to the Army Medical Service in time of war. In practice, authorization is often simultaneous with recognition, as both may appear in the same official decree. It may logically follow from the Statutes of the Society, if they have been approved by the Government.

(c) At the latest before actually employing auxiliary personnel, a Government which has authorized one or more Societies to serve with the Medical Corps must notify all other signatories of the fact in peace-time, and the adversary or adversaries in time of war. This safeguard lies in the interest of the personnel itself.

(d) The personnel of Voluntary Societies must in time of war be "subject to military laws and regulations", and (as we shall see from the following paragraph) must be employed on the same duties as the Medical Service. Under Article 26, paragraph 2 they operate under the "responsibility" of the State, and it is from the military authority that they receive their badges and identity cards.

From all this it follows in practice that the personnel of Voluntary Societies become temporarily part of the Medical Service, and are under its orders. But such assimilation does not mean loss of identity. There is nothing in the Conventions which implies that they become members of the Medical Service and consequently part of the armed forces. If such were to be the case, the Voluntary Societies would lose the fundamental character which is by tradition theirs.

The conditions under which voluntary personnel aid the Medical Service and, in the last analysis, their status, will depend on municipal law and on the decisions taken in each country. Unless other provision is made, the personnel continue to be civilians. They will be in a position similar to that of the other members of the Medical Service, but do not become members of the armed forces. It seems to us very desirable that it should be so; it has, in general practice, always been so (1). In many countries the Red Cross recruits its personnel mainly from persons exempted from military service.

(1) The Portuguese Regulations of 9 March 1923 in connection with the active members of the Red Cross, give some interesting details. Inter alia, the active members "form a special unit which has the same guarantees as if it were part of the armed forces". See Recueil de textes relatifs à l'application de la Convention de Genève, published by the International Committee in 1934, page 621.

In the absence of stipulations in the Convention, the question of uniform for voluntary personnel remains also a matter for national arrangement. It is not difficult to imagine a State refusing the aid of a Society unless the members wear a Medical Service uniform, with (possibly) some special marking. Most often they will probably wear their Society's own uniform. Civilian clothing is not excluded in theory, but for practical reasons is unlikely to be employed.

(e) The personnel of Voluntary Aid Societies are to be employed on the same duties as the personnel of the Medical Service. The essential point of this provision has not always been fully grasped, and errors and confusion have resulted. Some Societies have thought that, having been recognized and authorized to assist the Medical Service, their entire personnel was entitled to immunity in time of war.

It must be pointed out, on the contrary, that protection is conferred only on personnel exclusively engaged in the duties set forth in Article 24, namely, the collection, transport or treatment of the wounded and sick of the armed forces, the prevention of disease in the forces, the administration of army medical units and establishments, and on chaplains attached to the forces.

Circumstances may be such that in a country at war the whole personnel of the Red Cross Society will work for the Medical Service. But as a general rule only a part of the personnel will be thus affected, and the remainder will continue medical or social relief work for the general population. Similarly, members and officers of National Red Cross Societies will not enjoy protection, unless they have been attached to the Medical Service and are exclusively engaged in the duties mentioned above.

The personnel of Relief Societies who do not fulfil these conditions would, if they fall into enemy hands, be covered by the provisions of the Fourth (Civilian) Convention or, in the case of persons following the armed forces, those of the Third (Prisoners of War) Convention, Article 4, paragraph 4 (1).

(1) See Article 4, A (4), of the Third Geneva Convention of 1949.

CIVILIAN DEFENCE PERSONNEL

STATUS AND PROTECTION OF CIVILIAN DEFENCE PERSONNEL FALLEN
INTO ENEMY HANDS.

(Third Convention, Article 4, A (1)).

[In a number of countries there are so-called civilian defence units, the functions of which vary in the different countries, but comprise in general the protection of the population against the effects of war and of aerial weapons in particular. Some of these units are also entrusted with local supervisory duties and the maintenance of order; and it was in connection with civilian defence personnel engaged on these two duties that the ICRC was approached by a certain Government.

The Government in question was anxious for it to be possible to employ such voluntary personnel to a certain extent against enemy armed forces (e.g. parachutists and commandos). On the other hand it did not for various reasons wish to include them within the armed forces of the country or in the regular Police forces. It enquired accordingly as to the conditions under which this personnel in its efforts against the enemy could benefit by the protection of the laws of war, and in particular of the 1949 Geneva Convention relative to the Treatment of Prisoners of War.]

According to the information supplied by the Government putting the question, the principal functions of the personnel in question would be as follows: local supervisory duties and maintenance of order (i.e. police functions) and, as a subsidiary form of activity, struggle against the enemy and against parachutists in particular (i.e. functions of armed forces).

I - A police force confining itself strictly to its police functions is in the same position in case of a conflict as the peace population. Under the laws of war it may not be the

object of attack on the part of the enemy, nor is it subject to capture. Its position in these respects is not affected by its having certain external features which the Hague Regulations impose on militias and volunteer corps (responsible command, fixed sign, and arms carried openly). After occupation of the territory the Occupying Power may either dissolve such a force, or continue to employ it in its usual functions, under Article 43 of the Hague Regulations and 54 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

II - On the other hand, if a police force is also intended to take part in military operations, and to "struggle against the enemy", it becomes a part of a belligerent's armed forces in the wider sense of the words. It has therefore to comply with certain conditions, if it wishes its members in the event of immediate or subsequent capture to have the status of prisoners of war, and not to be treated by the enemy as franc-tireurs liable to penalties for breaches of the laws of war. This view of the position holds good, even if the use of the force for these purposes is purely subsidiary. It is enough that such use should be based on internal legal rules of the force, or even on oral instructions issued to it.

The conditions to which such a force must accordingly conform are as follows :

- (a) Either it must belong to the regular army forces, though possibly remaining a separate body within those forces (Hague Regulations, Article 1, paragraph 2, Geneva Convention of 1949 relative to the Treatment of Prisoners of War, Article 4, A 1).
- (b) Or it must comply with the four conditions laid down for Parties to a conflict in the Hague Regulations, Article 1, paragraph 1), and belong to a Party to the conflict. (Hague Regulations, Article 1, paragraph 1, Geneva Convention of 1949 relative to the Treatment of Prisoners of War, Article 4, A 2). It will be noted that the question of what body the force in question belongs to is not explicitly defined except in the Geneva Convention of 1949).

III - It may be pointed out that the members of a police force with purely police functions may nevertheless be called upon to struggle against the enemy, either in legitimate self-defence, or as participants in a levée en masse within the

meaning of Article 4, A 6), of the 1949 Convention relative to the Treatment of Prisoners of War. They are protected by the law of nations in either case; and in the latter case, i.e. in the case of the levée en masse, they are to be treated as prisoners of war, if they fall into the enemy's hands.

Participation in the struggle against the enemy in these two cases would be occasional only; and the point with which the Government putting the question was concerned was as to the regular, permanent position of civilian defence forces. Further comment on the two occasional cases above-mentioned is not therefore necessary.

- IV - In the light of the above considerations it would seem, that, if it is desired to treat civilian defence personnel as distinct from the army, though at the same time capable of taking part in the struggle against the enemy (and in particular against parachuted troops), while at the same time claiming prisoner of war status in case of capture, it would be best to create a body complying with the conditions set forth above in paragraph II b), that is to say, with the four conditions laid down in Article 1 of the Hague Regulations, and belonging to a Party to the conflict. If given such a legal status, the personnel in question would be entitled to prisoner of war treatment under Article 4, A 2) of the Geneva Convention of 1949 relative to the Treatment of Prisoners of War.

LEGAL STATUTS OF MEDICAL PERSONNEL ATTACHED TO CIVILIAN DEFENCE
(Fourth Convention, Articles 20 and 63).

[The preceding Opinion is closely connected with a question put by a National Red Cross Society on the subject of a special section of Civilian Defence performing medical duties. The question was : are the members of this medical service, whose function it is to search for the wounded and sick and bring them to the hospitals, entitled to wear the distinctive emblem ?

It was also asked whether such personnel had the benefit of the protection conferred by Article 63 of the Fourth Convention.]

In the absence of more detailed precisions as to the status of this medical personnel, it is not possible to give a single reply to the question asked. The position of this personnel may differ in different circumstances; and the answer must therefore also differ.

- I - In principle the status of this personnel may be either military or civilian according to the status of the Civilian Defence, to which the personnel belongs. The particulars indicated by the questioner appear to show that the organization is civilian in character, and has purely civilian functions.

If however that is not the case, that is to say, if the organization has also functions (even though these are purely accessory functions) which would involve it in certain eventualities in the struggle against the enemy (e.g. against commandos or parachutists), so that it would have to be considered as forming a part of the armed forces, even though in a purely auxiliary capacity, the position of the members of the organization would not be covered by the Fourth Convention, but by the First and Third Conventions. In that case the medical personnel would be protected under the First Convention, and Article 24 of the latter would entitle them to wear the armlet.

- II - We have now to consider the case where the Civilian Defence Organization is purely civilian.

In such a case it would be well in the first place to word the question somewhat differently, and to say : "Are the medical personnel of Civilian Defence, according to the system of the country concerned, entitled to wear the armlet with the Red Cross emblem within the meaning of Article 20 of the Fourth Convention?" It is desirable in this way to make it clear at the outset that this personnel, as an element of the civilian population, is entitled to benefit by the general and traditional immunity which the fundamental principle at the basis of the laws of war and the structure of the Convention gives to all those who are not members of the armed forces. The point in which the questioner is chiefly interested, is whether this personnel is entitled to wear the Red Cross emblem.

(a) Can Article 20, paragraph 1, apply to the medical personnel in question ?

Persons enjoying this special protection are according to the provisions in the paragraph "persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians ... infirm and maternity cases". The two legal conditions governing the use of the emblem are therefore "regularity" and "exclusivity" in the functions of the personnel concerned. There must be a close association between the civilian hospital and its staff. That association concerns, not only the staff at work permanently in the hospital, but also staff whose activities are equally indispensable to the operation of the hospital - namely, the staff entrusted with the search for, removal and transporting of and caring for the hospital patients.

The element of "regularity" excludes occasional personnel, attached to hospitals only on a temporary basis, and not forming an integral part of the operation or administration of the hospitals. The element of "exclusivity" for its part excludes the protection of Article 20, paragraph 1, in the case of all persons having other occupation outside their work in the hospitals. In both these cases the connection is not sufficient.

It follows from what has been said in these particular cases that the medical personnel of Civilian Defence does not depend on the civilian hospitals in the sense which we described above. It is something outside the unit which a hospital constitutes with its different services, if only for the reason that it takes its orders from authorities other than the administration of the hospital. It is not therefore formally attached to the civilian hospitals.

Is it possible to say that the two classes of personnel are in practice similar ? It would seem again that this is not the case. Although the medical personnel of Civilian Defence frequently engages in activities which are identical with those of the personnel regularly and solely attached to the hospitals, it has other functions which do not necessarily represent a close connection with the hospitals.

The interpretation here given of paragraph 1 of Article 20 is moreover in conformity with the intentions of the authors of the Convention. The use of the Red Cross emblem by civilians has been strictly regulated of set purpose. It must be reserved to clearly defined classes of civilians, whose activities are easily controlled by the hospitals.

Moreover this interpretation is confirmed by the labours of the Diplomatic Conference. When the Third Committee omitted the element of "exclusivity", as contained in the Stockholm text (Article 18, paragraph 1), the Plenary Assembly decided to reintroduce it in such a way as to ensure that personnel owing all their time to hospitals cannot take part in activities incompatible with their duties to the hospitals. Again we see the importance which the authors of the Convention sought to attach to the existence of a very close connection between the hospitals and their personnel (1).

(b) Having thus eliminated the possibility of applying paragraph 1 of Article 20 to the medical personnel of Civilian Defence, it remains to consider whether this personnel can be covered by paragraph 3 of the Article.

The purpose of paragraph 3 is to mitigate the possible effect of a rigorous and restrictive conception of the applicability of paragraph 1 to individuals.

It leaves on one side the elements of "regularity" and "exclusivity", in order to give temporary protection to persons attached occasionally to hospitals, while they are effectively engaged on one of the different forms of hospital activities enumerated in paragraph 1.

It should not be concluded, in our opinion, from the absence in paragraph 3 of the words "including the personnel engaged in" which appear in paragraph 1, that the protection of paragraph 3 extends only to personnel in service within the hospital. The words in paragraph 1 merely add precision to the definition contained in the expression "operation and administration of civilian hospitals".

As to the service relation between the hospital and the personnel to whom paragraph 3 relates, it is difficult to define exactly. At least there must be some form of subordination of this personnel to the hospital, or (to be more precise) the

(1) For the work of the Conference, see Final Record of the Diplomatic Conference of Geneva 1949, Vol. II/A, pages 631-632, 705-706 and 819-820, and Vol. II/B, pages 395-397. (The extension of the use of the red cross to personnel of civilian relief organizations, and to passive defence agents, which was urged by the Delegate of Denmark and other Delegates, was rejected).

management of the hospital. The management of the hospital must be in a position to give orders to this personnel of an administrative character.

The particulars given by the questioner as to the relations existing between the medical personnel of Civilian Defence and the hospitals of his country are not sufficiently detailed to make it possible to say for certain whether this relation corresponds with the conditions of paragraph 3, as interpreted above.

(1) If this personnel, as would appear to be the case from certain particulars which have been supplied, is attached in batches to civilian hospitals, each batch being attached to a particular hospital in order to engage under the direction and responsibility of the hospital in one or other of the activities for which paragraph 1 provides, it may be concluded that such medical personnel has the benefit of paragraph 3. In that case it is clear that the management of the hospital must have a list of the members of the batch attached to it, under paragraph 4 of Article 20.

It is understood that in such circumstances the wearing of the armlet is subject to the prescriptions for which paragraphs 2 and 3 provide (in occupied territory and in zones of military operations during the exercise of hospital duties).

(2) If on the other hand the medical personnel of Civilian Defence is not attached administratively to the hospitals, and if it acts directly in its medical functions under the direction and responsibility of its superiors in the Civilian Defence and in accordance with their orders, the answer must be in the negative : for in such a case there is no "attachment", even of a temporary character. Consequently this personnel is not covered by paragraph 3, and has not accordingly the right to wear the armlet with the Red Cross emblem.

III - Lastly, as regards the final question put, there can be no doubt that Article 63, paragraph 2, applies to the Civilian Defence services, in so far as they do not form part of the armed forces, even in an auxiliary capacity. The provision of this paragraph, which was based on a Belgian proposal put forward at Geneva, relates to all kinds of services of non-military security, which are not covered by the expression "Relief Societies" in the first paragraph.

ENEMY - OCCUPIED TERRITORIES

OFFENCES AGAINST THE OCCUPYING POWER : THE DEATH PENALTY.
(Fourth Convention, Article 68, paragraph 2)

[Although the English and French texts of the Conventions are both authentic, they are not always equally clear. Sometimes a comparison of the two languages helps to bring out the exact sense of a provision. Employing this method the ICRC replied to the question of a student, who had been led by the English text to believe that the condition laid down at the end of Article 68, paragraph 2 (existence of the death penalty in the penal law of the occupied country) applied only to offences involving the death of a man.]

It would not seem that the English text of this paragraph is open to misunderstanding. The three forms of crime have to be covered by the law of the State occupied, if their authors are to be punished by the Occupying Power. If however there should remain any doubt on the point, the French text of the paragraph - the English and French texts of this Convention being equally authentic - should be sufficient to remove it. The French text is as follows :

"Les dispositions d'ordre pénal promulguées par la Puissance occupante conformément aux articles 64 et 65 ne peuvent prévoir la peine de mort à l'égard des personnes protégées que dans les cas où celles-ci sont coupables d'espionnage, d'actes graves de sabotage des installations militaires de la Puissance occupante ou d'infractions intentionnelles qui ont causé la mort d'une ou plusieurs personnes et à condition que la législation du territoire occupé, en vigueur avant le début de l'occupation, prévoie la peine de mort dans de tels cas".

There are therefore two conditions to be fulfilled before the death penalty can become applicable.

In the English text the absence of the word "and", and the repetition of the term "offences", may cause some misapprehension. But the intention of the authors of the Convention remains quite clear.

This view is confirmed by a passage from the Report of the Committee appointed to draw up the text of the Convention at the Diplomatic Conference. The Committee writes in connection with Article 59 as follows :

English

"The Committee have, however decided to adopt a text which provides that the death penalty shall be admissible only for espionage, serious acts of sabotage against the military installations of the Occupying Power and intentional offences which have caused the death of one or more persons, and only on condition that such cases were punishable by death under the law of the occupied territory in force before the occupation began. They have thus restricted the imposition of the death penalty in many circumstances to fewer cases than those provided for in the Stockholm text.

Final Record of the Diplomatic Conference of Geneva 1949,
Vol. II - A, page 834.

French

"La Commission a décidé toutefois d'adopter un texte stipulant que la peine de mort ne pourra être prononcée que dans les cas d'espionnage, d'actes graves de sabotage contre les installations militaires de la Puissance occupante ou d'infractions graves intentionnelles ayant entraîné la mort d'une ou plusieurs personnes et seulement à la condition que ces cas soient passibles de la peine de mort aux termes de la législation en vigueur dans le territoire occupé, avant l'occupation. Elle a ainsi limité la stipulation de la peine de mort dans bien des circonstances à un plus petit nombre de cas que ceux que prévoyait le texte de Stockholm".

Actes de la Conférence diplomatique de Genève 1949,
Tome II - A, page 817.

These few considerations should be sufficient to make it clear that there is no difficulty about the meaning of the provision. It might be more difficult to decide what is meant by the words "the law of the occupied territory in force before the occupation began". In our opinion the reference is to all the laws of the Occupying Power, including laws adopted especially for wartime or having effect only in case of war. For example in certain countries the death penalty does not exist in peacetime, but provision is made for it in wartime in the military penal code.
