THE GENEVA CONVENTIONS OF AUGUST 12, 1949

Analysis for the use of National Red Cross Societies

VOL. I

GENEVA CONVENTION NO. I FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD

GENEVA CONVENTION NO. II FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA

INTERNATIONAL COMMITTEE OF THE RED CROSS
GENEVA

1950

Colonel Howard S. Levie Collection

The Judge Advocate General's
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Charlottesville, Virginia

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INTRODUCTION

The National Societies of the Red Cross received, some months ago, a volume published by the International Committee and containing the text of the four Geneva Conventions of August 12, 1949, preceded by an Introduction which was intended to explain their general outline.

The International Committee is preparing a detailed commentary on the Conventions. This is a task involving intensive and extended study, and will take a comparatively long time.

At the request of several National Societies, the Committee decided to publish a preliminary Analysis dealing with those provisions of the Conventions which have a direct interest for these Societies. The present volumes are the result.

The Analysis has been made by legal experts on the International Committee's staff, but is not to be taken as officially representing the views of the Committee. When the Committee is asked for an opinion on the sense of a clause in a Convention, it invariably points out that only States party to the Convention are qualified, after consultation amongst themselves, to give an official interpretation and one which may to some extent be considered as authorised. Accordingly, and in view of the complexity of the subject matter of the Conventions and their recent date of adoption, the reader is asked to consider the opinions stated in the Analysis as provisional only.

The first volume deals with the First and Second Geneva Conventions. Most of the provisions of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field are examined, if in somewhat summary fashion. This Convention is in fact the traditional charter of the National Red Cross Societies.

The second volume deals with the Third (Prisoners of War) and Fourth (Civilian) Conventions and the general provisions

common to all four. Of Conventions III and IV, a certain number only of the Articles are reviewed.

This preliminary Analysis can therefore not be considered as a substitute for the detailed work which is in progress. It is hoped, however, that the National Red Cross Societies, who no doubt are now studying how best to prepare and adapt their services to the new Conventions, will find the following pages helpful.

We may remark in concluding, that it was not considered necessary to reproduce the text of the Articles under review; the National Societies will find these texts in the volume which has been referred to and which forms an indispensable complement to the present work.

GENEVA CONVENTION No. I OF AUGUST 12, 1949, FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD

CHAPTER I

GENERAL PROVISIONS

An analysis of the provisions of this Chapter, which are common to the four Geneva Conventions, will be found at the beginning of Volume II.

CHAPTER II

WOUNDED AND SICK

This Chapter is one of the most important in the whole First Geneva Convention. The Convention may even be said to rest upon it, since it contains the essence of the idea which was championed by the founders of the Red Cross : the person of the soldier who has been wounded or who is sick, and who in consequence gives up his arms or is placed *hors de combat*

is inviolable [1]. He must be tended with the same care, whether he be friend or foe.

All provisions dealing with the care of the wounded and sick from the moment they fall until their discharge, are grouped in this Chapter, as well as the provisions relating to the dead. Only the last Article of the Chapter, dealing with the role of the population in regard to the wounded and sick, might be considered as loosely bound up with the rest, and might very well be placed, for example, at the end of Chapter III (Medical Personnel).

On the whole, the 1949 Diplomatic Conference did not introduce far-reaching changes in this Chapter; it did, however, make many additions and clarifications which, without altering the general lay-out of the clauses as they stood in 1929 (or, some of them, even in 1906), considerably improved the text by making it more clear and, above all, by strengthening it. We should notice that the 1949 Conference was particularly careful to extend still further the safeguards which ensure humane treatment to the wounded.

Article 12. — Protection, Treatment and Care.

This Article, as the commentator of the 1929 Geneva Convention, Paul Des Gouttes, very properly emphasised, is the keystone of the whole Convention. The principle of the inviolability of the wounded and sick, which figured as Article 6 in 1864, had from 1906 been brought to the beginning of the Convention as Article 1. In 1949, however, the necessity of commencing the four Geneva Conventions with the common provisions caused it to become Article 12. It is none the less true that the Article opens the Convention proper and dominates it throughout. From the principle it states flow all the other obligations imposed upon Parties to a conflict.

The 1864 Convention confined itself to stating the principle, in its unadorned simplicity : " The military wounded and sick

[1] It is obvious that the combatant who continues to fight despite his wounds is not entitled to this protection.

shall be collected and cared for, to whatever nation they may belong." At the time of the first revision in 1906, the idea of respect for the wounded—implicit until then—was expressly added. In 1929, the formula was further extended by speaking of "protection" and "humanity".

Already, it should be remarked, in 1906 the idea of "neutrality"—a term which in the 1864 text expressed the immunity which ambulances, medical personnel, and indirectly, the wounded themselves should enjoy, had been dropped. The initial formula was considered unsuitable, and it was replaced by the more general concept of respect and protection in all circumstances [1].

The 1949 Conference very rightly considered that this principle, the corner-stone of the Convention, must not be touched. It decided, however, to make the Article more precise in two respects: firstly, certain ways in which the Powers may not discriminate against the wounded and sick they hold are stated; secondly, the Article enumerates, as examples, a series of particularly grave attacks—which, naturally, are strictly prohibited—against the life and person of the wounded. That it was found necessary to introduce these particulars would be surprising, were it not for the experiences of the last War.

The Convention, in its successive versions until 1929, named only nationality as a distinction which it would be forbidden to make between the wounded or sick collected on battle-fields. The 1949 text goes further.

Article 12 firstly prohibits "adverse distinctions". It is

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[1] There is a distinction in French between "*respecter*" and "*protéger*" which is not borne out in English by the two words which apparently correspond to them. Thus "*respecter*" means "to spare, not to attack further" ("*épargner, ne point attaquer*") while "*protéger*" means "to come to some one's defence, to lend help and support" ("*prendre la défense de quelqu'un, prêter secours et appui*"). In French, therefore, the use of these words implies two things: (a) it is forbidden to attack an enemy who has been wounded, to kill, maltreat, or harm him in any way; (b) the duty is imposed of coming to the assistance of the wounded.

The difficulty is one of detail in the translation; in actual fact, there is no difference of interpretation possible between the French and English texts of the Articles, taken as a whole. — *(Translator).*

natural and even desirable that a distinction, whatever it may be, should be permitted if it benefits the wounded enemy. Thus, for example, a native of a tropical country and therefore more subject than another to chills, should be allowed extra blankets or be cared for in premises which are better heated. Similarly, the Article states in Paragraph 3 that " only urgent medical reasons will authorise priority in the order of treatment to be administered ". Therefore, a surgeon would have the right to treat one of his own wounded before an enemy, only if medical reasons so demand.

The Article then enumerates the adverse distinctions which are forbidden : those founded on sex, race, nationality, religion, political opinions, or other similar criteria. A belligerent has no justification for making distinctions between the wounded and sick who need treatment, whether they be friend or foe, and henceforth, both have an equal right to protection, respect and care. Moreover, there is one prescriptive clause which makes a favourable distinction : it states that women shall be treated with all the consideration due to their sex. The fact that women take part, to an increasing extent, in military operations made the clause necessary. As a matter of fact, it did already occur in the 1929 Prisoner of War Convention.

As we have seen above, the second way in which the Article is made more explicit is by enumerating a series of violations considered as being the gravest a belligerent can commit in regard to the wounded and sick in his power. The injunction is absolute and imperative : " Any attempts upon their lives, or violence to their persons, shall be strictly prohibited ". The word " persons " here means the physical as well as the moral person. The enumeration proper follows after the general prohibition, and is not limitative : " In particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments ; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created ".

This enumeration calls for some remarks. The clause " they shall not be murdered or exterminated... " covers also

the case where a doctor might, for humanitarian reasons, consider taking the life of a patient whose condition was hopeless.

Biological experiments include all which are not justified by medical reasons and dictated solely by the desire of improving the patient's condition. Actually, such experiments cannot always be called biological. The prohibition aims at preventing every experiment on a human being which is not therapeutic in intention. This interpretation is confirmed by the corresponding provisions of the three other Conventions, particularly the more explicit Article 13 of the Third Convention, which reads : " No prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical treatment of the prisoner concerned and carried out in his interest ". To this prohibition is related the other : " Nor shall conditions exposing them to contagion or infection be created ".

Paragraph 5.

A Party to the conflict may rightly expect his wounded to be cared for by the enemy, but he must nevertheless continue to assist in their treatment, and must accordingly leave part of his medical personnel and material with them. This provision is so obviously necessary that it has not been affected by the recasting of 1929 and 1949, with the single change that in 1949 the term " belligerent " has been replaced—as indeed throughout the four Conventions—by " the Parties to the conflict " [1].

It should be noted, in this Paragraph, that the rule is not

[1] The term " belligerent " means " legally at war ", in speaking of a nation. But the four Conventions henceforth apply also when a state of war is not recognised (Article 2), and, at least for certain provisions, where the conflict is not international (Article 3). Therefore the term " belligerent " does not, because of its limitative sense, cover all possible cases, and it had to be replaced by a more general expression.

In this *Analysis*, the term " belligerent " is used from time to time for the sake of brevity. In all cases it has the wider meaning.

absolute, but is modified by the phrase : ííAs far as military considerations permit ". A military commander should not have a duty imposed upon him which circumstances may render impossible to fulfil. But there is, in any case, as the Secretary-General of the 1906 Diplomatic Conference pointed out, "an injunction to the belligerents to ensure in advance that they have sufficient medical personnel and material to meet their obligations ", bearing in mind the duty which is, for all practical purposes, imposed on them of not abandoning their wounded to the enemy without medical personnel and material.

Article 13. — Protected Persons.

Once the principle that the wounded and sick of the armed forces must be respected and protected in all circumstances has been acknowledged, it naturally follows that we must say who these sick and wounded actually are.

The 1929 text grouped in a single Article (Art. 1) both the principle of respect for the wounded and sick and the definition of those included : " Officers and soldiers and other persons officially attached to the armed forces who are wounded or sick shall be respected..." This definition was apparently inadequate, and insufficiently precise. The reason why the categories of wounded and sick who are entitled to the protection of the Convention should be duly established, is not to limit protection to these categories only—in actual fact, as we shall see later, all wounded and sick persons, whoever they may be, have a right to respect and protection—but because these wounded and sick are, if taken by the enemy, to become prisoners of war under the terms of Article 14.

It is as seen from this angle that the new definition is important ; for that matter, the 1949 Convention has simply taken the list of categories as they stand in Article 4 of the Third Convention. The persons named in that Article and who, if captured, would have the right to be treated as prisoners

of war, are the same as those who, if wounded or sick, would have the protection of the First Convention [1].

But here a distinction of vital importance must be made. If an individual not entitled to prisoner of war status should commit hostile acts and be captured, he would be considered as a *franc-tireur* and liable to treatment as such. Article 4 of the Third Convention is comprehensive, whereas Article 13 of the First Convention is not ; if a wounded or sick person not belonging to one of the categories enumerated in Article 13 should be taken by the enemy, he must nevertheless be respected, protected and cared for, in virtue of stipulations of International Law which are now universally recognized, in virtue particularly of Part II of the Fourth (Civilian) Convention, which expresses the same guiding humanitarian principles as the First Convention, and is absolutely general in character. The two Conventions are thus complementary and cover all conceivable cases.

The preceding remarks might lead us to conclude that Article 13 is superfluous, and that a simple reference to the corresponding Article 3 in the Third Convention would have sufficed. Nevertheless, Article 13, analogous to the corresponding Articles of the Third (and incidentally of the Second) Convention, has a logical justification and contributes, as a reference could not have done, to the structure of the Convention. It also covers the possibility that a Power might be signatory to the First Convention, but not to the Third.

Article 14. — Status.

This Article defines the status of a person who is wounded and then captured. The wounded combatant who falls into enemy hands is at the same time both a man who requires treatment and an enemy who is made a prisoner of war. A

[1] For more details on these categories, see Vol. II, Part II, Introduction. It is to be noted that Article 13 does not reproduce the categories given in Art. 4, sub-section B, of the Third Convention, since the latter do not include persons who may be wounded or fall sick in the fighting zone.

wound entitles to the necessary treatment, but one cannot imagine it changing the status of the person wounded, should he be captured. This principle is universally admitted by International Law and had been already proclaimed in the Regulations annexed to the IVth Hague Convention of 1907. For this reason, it is stated that " the provisions of International Law "—that is to say, customary law, as well as the principles of the Conventions relating to prisoners—shall be applicable to the wounded who fall into enemy hands. These rules may vary ; they were first laid down in Chapter II of the Regulations on the Laws and Customs of War on Land annexed to the Hague Conventions of 1899 and 1907, and made explicit and developed in the 1929 Prisoners of War Convention, amended in 1949. They are applicable, *ipso facto*, to wounded prisoners. Therefore, it is the provisions of the Third (1949) Convention which will usually apply, and if this Convention is not explicitly mentioned in the Article, it is in order to make it more adaptable, especially to the case where signatories to the First Convention are not party to the Third.

In 1929, there was, furthermore, an additional Paragraph leaving belligerents the option of making such arrangements for wounded or sick prisoners as they might think fit, over and above their obligations. This provision has been maintained and is now stated at greater length in the " General Provisions " (Article 6) of the First Convention. (See Vol. II.)

The 1929 text began with the words " Except as regards the treatment to be provided for them in virtue of the present Article... ". This has been replaced by the words " Subject to the provisions of the foregoing Article " [1]. The sense is the same, except that the present wording is perhaps more general in character ; treatment shall have priority over any other measure consequent upon the capture of the wounded, but provision is also made for the special protection to which

[1] The reference made to the " foregoing " Article 13 is due to a clerical error. The reference occurred in the Draft Convention before the introduction of Article 13, adopted at the end of the Conference. The provision should therefore read : " Subject to the provisions of Article 12... ".

every injured person is entitled. This provision ensures that the First Geneva Convention shall take precedence. The Third (Prisoner of War) Convention shall be applicable to the wounded and sick who are prisoners, only when all relevant obligations under the First Convention have been fulfilled.

Article 15. — Search for Casualties. Evacuation.

Articles 15 and 16 open new ground and constitute more or less a unit, dealing with the search for casualties and for the dead, their removal, and the recording and forwarding of information about them. The 1929 Convention had attempted, for the sake of clarity, to draw a distinction between these different operations. By dealing first with those which take place at the front, then those in the rear, where it is possible to set up more permanent apparatus, the 1949 Convention still further emphasises the separation, and at the same time makes the whole more precise.

Article 15 applies exclusively to operations which take place at the front—search for the wounded and the dead, and their removal.

Paragraph 1. — Search and Protection.

The wounded and the dead who lie on a field of battle or between the lines must be sought out, collected and protected. This is an obvious necessity, but if stated too categorically, it may appear needlessly rigorous ; it must often be unfeasible, because of the way in which military operations develop. Hence, the formula : " Parties to the conflict shall without delay take all possible measures to..." Moreover, it should be made possible to fulfil this duty as soon as circumstances require. While the 1929 Convention imposed the obligation only " after each encounter ", it must henceforth be fulfilled, or at least the attempt made, *at all times*. The Paragraph actually begins with the words : "At all times, and particularly after an engagement ". This wording is better adapted to the conditions of modern war, where there now are rarely pitched

battles, but most often an uninterrupted series of engagements. These circumstances make the search for the wounded and their removal infinitely more difficult than before. Hence the heightened importance of the second Paragraph (examined in more detail below), providing for a suspension of fire.

It may not always be easy to remove the wounded and the dead once they have been found ; consequently, there is a need to protect the wounded against ill-treatment and pillage, and the dead against being despoiled. Moreover, a new and valuable idea, which was not embodied in the 1929 text, is that the wounded must be given at once the emergency treatment (ligatures, injections, etc.) they may require. The addition is welcome. Many lives can be saved by immediate care, and this also implies a greater degree of training and efficiency of front-line personnel in the Army Medical Services.

Paragraph 2. — Local Arrangements.

It is here provided that, whenever circumstances allow, an armistice, a suspension of fire, or other local arrangements shall permit the removal, exchange and transport of the wounded left on the battlefield.

The principle dates from 1929, when it had apparently but little chance of being accepted : it was retained only because of its humanitarian implications. Nevertheless, experience during the recent War showed that the idea was not so impracticable as had been feared, and it was consequently reproduced with two additions in 1949. The first addition is the reference to "local arrangements", which makes it possible to arrange for suspension of fire without having recourse to the ordinary diplomatic channels, or even without the prior authorisation of the Higher Commands. This unquestionably represents a great saving of time and may often be vital for the success of the operation.

The second addition is likewise important. Where the 1929 text visualised the suspension of fire only to permit removal of the wounded, there is now the possibility of exchanging them. The idea is not new. The 1864 Convention (Article 6, Para-

graph 2) had boldly provided that " Commanders-in-Chief shall have the option of handing over immediately to the enemy combatants wounded during an engagement...". The 1906 Convention in turn reproduced the clause in Article 2, Paragraph 3, but it was deleted in 1929, the commentator emphasising the fact that " the immediate exchange of the wounded on the battle-field appears Utopian in the conditions of modern war ". The fact that such exchanges, rare it is true, could nevertheless take place during the recent War shows clearly the progress, from a humanitarian point of view, represented by the 1949 text.

We may note that the word " exchange " should not be taken in a narrow sense : it does not in any way imply exchange in equal numbers, nor preclude unilateral cession of the wounded to the adverse Party.

Paragraph 3. — Evacuation of a Besieged Zone.

The provision in this Paragraph, even if it occurs here for the first time in a Geneva Convention, is not new. It was put forward at the Conference of Experts in 1947 by a National Red Cross Society, and was made the object of Resolutions at several International Red Cross Conferences (Resolution XII of 1921, IX of 1926, and XXII of 1930). The ICRC thought it advisable to reproduce the provision in the draft submitted to the Diplomatic Conference, pointing out at the same time that during the second World War certain localities or zones held out for months, or even years, and that in many cases the Committee's Delegates had been able to enter such areas, bringing relief and rendering other useful service.

Therefore, the wounded and sick in a zone under attack may for the future not only receive the care they need, but may also be passed between the lines, or even exchanged. Some comment is here called for.

In providing that medical and religious personnel may be authorised to enter the zone, the clause fortunately omits to define what the nationality of such personnel shall be. Thus the attacking Power may either permit the passage between the lines of enemy personnel of the same nationality as the

wounded, or send its own personnel into the besieged area. These provisions are entirely in the spirit of the general principles of the Conventions. Moreover, in providing that the passage of medical personnel may be authorised, the clause merely extends the principle stated in Article 12, Paragraph 5, that the belligerent shall leave medical personnel with the wounded he is forced to abandon. Under this new provision, the belligerent may, on this particular occasion, equally send personnel to the wounded.

We may note, in conclusion, that this Paragraph also provides for the exchange of the wounded. In practice such exchange will probably not take place, as it might when there is a suspension of fire at the front. While enemy wounded in the hands of the besieged will straightway be handed over to the attackers, it is scarcely conceivable that the latter should send back enemy wounded into a zone under attack, since the very reason for this exchange is most often the paucity of medical personnel and material in the place attacked. Such wounded can, however, be sent back to their home country, subject to the appropriate agreement between the Parties.

Articles 16 and 17. — General Remarks.

Article 15 deals with the fate of military who are wounded in a combat zone ; Articles 16 and 17 are corollary to it. They state a number of rules which define the duties of Parties to the conflict, once the enemy wounded and the dead have been brought to the rear.

As we have said with reference to Article 14, the wounded enemy, from his capture until his discharge from hospital, has the benefit both of the First and Third Geneva Conventions [1].

There is consequently an overlapping between the provisions of Articles 16 and 17 of the First Convention, dealing with the recording and transmission of information concerning the wounded and the dead on the field of battle, and Articles 17, 120 and 122 of the Third Convention, which refer to the recording

[1] On the other hand, only the Third Convention applies to the military who are injured or fall sick after capture.

and communication of information concerning prisoners of war who are well, wounded or sick, or dead. With the exception of a few details, the provisions are the same in both Conventions and the clauses of the existing Articles 16 and 17 might, for example, have been replaced by a simple reference to the corresponding Articles of the Third Convention. This was not done, however ; wisely, no doubt, since in practice able-bodied combatants will be sent to a camp, whilst the wounded will go to a field or base hospital, or may (see Article 18) be cared for in private hands. The medical authorities who take care of them may well be ignorant of the provisions of the Third Convention, or at least be unable to apply it, whereas they will be familiar with the First Convention, which interests them directly. Moreover, the Geneva Conference at all times aimed at making each Convention full and complete in itself.

The examination of Articles 16 and 17 must therefore take account of what is said later about the corresponding provisions of the Third Convention, especially those dealing with the creation and working of the Prisoners of War Information Bureaux [1] mentioned in Article 16.

Before passing to a more detailed examination of Articles 16 and 17, we may note also that their clauses were grouped in a single Article (No. 4) of the 1929 Convention, in a more summary form. The 1949 Conference preferred not only to make these clauses more precise, but also to break up the subject matter by devoting a separate Article to the provisions dealing with the dead and the Graves Registration Service.

Article 16. — Recording and Forwarding of Information.

Paragraph 1. — Recording.

The Article opens by stating that the " Parties to the conflict shall record as soon as possible in respect of each wounded, sick, or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification ". The

[1] See Vol. II, Part 2, Section II.

obligation is imperative and the Powers must take, even in time of peace, all steps to ensure that the competent authorities and services are informed and that they make all due preparations.

A detailed list is then given, and is an important innovation. The 1929 text merely required the transmission of the names and any indications which might assist in the identification of the wounded, the sick or the dead. But the new list is not limitative and is to be considered as a minimum. It is in any case less complete than the list of particulars required about prisoners of war (Third Convention, Article 122). What is above all important is that the first information should be at once sent to the home Government of the wounded or dead; the rest can follow later, when the wounded have recovered sufficiently to join the other prisoners.

The list has eight headings:

(a) — Designation of the Power on which the prisoner depends.
(b) — Army, regimental, personal or serial number.
(c) — Surname.
(d) — First name or names.
(e) — Date of birth.
(f) — Any other particulars shown on the identity card or disc.
(g) — Date and place of capture or death.
(h) — Particulars concerning wounds or illness, or cause of death.

We may remark that this information can all be obtained without interrogating the wounded or sick, but this is not the case when it is required of other prisoners of war [1]. The details are be found on the identity card, insofar as it is complete. If the wounded person has no such card and must therefore be questioned, the provision given in Article 17 of the Third Convention, but not reproduced in the First [2], should also in

[1] See Vol. II, Part 2, Section II, Information Bureaux.
[2] This appears to be a hiatus.

this case be applied. Under this provision the prisoner may refuse, if he is questioned, to supply more than his surname and first names, rank, date of birth, and his army, regimental, personal or serial number, to avoid giving the Detaining Power any information of military importance. Such cases should, however, be exceptional. As a general rule, there would be an advantage in instructing members of the armed forces to give, in case of capture, besides the information listed in Article 16, the details named in Article 122 of the Third Convention, in order to facilitate the work of the Information Bureau. This shows the importance of the identity card, especially in case of death, or where the bearer is seriously wounded and unconscious. Attention is here drawn to the model identity card in Annex IV of the Third Convention, designed for persons who accompany the armed forces without directly forming part of them.

Paragraph 2. — Forwarding of Information.

This Paragraph fills an important gap in the 1929 text, which did not specify how and to whom the information mentioned should be transmitted. The provision is now quite clear : the details shall be forwarded by the persons who have collected them to the Information Bureau which the belligerent is required to open ; the said Bureau will send the data both to the Protecting Power and to the Central Prisoners of War Agency —there is thus a double transmission—which will in turn inform the country concerned.

As the provisions for the creation and operation of these Information Bureaux are set out in the Third Convention, relevant observations will be found in Vol. II, Part 2, Section II.

Paragraph 3. — Provisions regarding the Dead.

This paragraph is devoted entirely to the transmission of death certificates, personal effects and any other available information concerning the dead collected on the battle-field.

The corresponding provisions of 1929 were notoriously inadequate on this point. The new clauses codify the practice adopted by several belligerents and by the Central Prisoners of War Agency during the last War, and introduce the precision which was lacking.

The Paragraph provides that everything concerning the deceased shall be transmitted to the adverse Party by the same means as the information about the wounded and sick, that is to say, through (1) the Information Bureau, and (2) the Protecting Power or the Central Agency. It then classifies the objects which, if found on the dead, should be in any case forwarded with the official death certificate :

(a) — One half of the double identity disc.
(b) — Last will or other documents of importance.
(c) — Money.
(d) — Articles of intrinsic or sentimental value.
(e) — Unidentified articles.

This list calls for some remarks. The documents which certify decease are " certificates of death ", or " duly authenticated lists of the dead ". The 1929 text spoke only of " certificates of death ", without laying down the procedure of their establishment. In actual fact, belligerents adopted different systems during the last War, but a number of them used the uniform, detailed form proposed by the International Committee. Nevertheless, the 1949 text is no more precise as to what these certificates or lists of the dead should be. Details can be found in Article 120 of the Third Convention, which gives them in relation to prisoners dying in captivity. As there is no valid reason for making any distinction between the enemy dead collected on the battlefield and prisoners who die in captivity, the provisions of Article 120 should apply also to the first-named, at least in so far as circumstances on the battlefield allow. The attention of responsible authorities should be drawn to this important point.

The provisions are as follows : death certificates, preferably in the form annexed to the Third Convention (Annex IV D)

or lists certified by a responsible officer, shall be forwarded as rapidly as possible to the Information Bureau. They should include *(a)* particulars of identity : surname, first names, rank, date of birth, and army, regimental, personal or serial number and *(b)* the date, place and cause of death, the date and place of burial, and all particulars necessary to identify the grave. The model certificate annexed to the Convention was established by the ICRC on the basis of Agency experience during the War. It includes, in addition to the above details, two headings of the greatest interest to the relatives of the deceased : mention of any personal effects, and details on the last moments of the deceased [1].

The mention of a double identity disc calls for some explanation. The practice of providing all members of forces with identity discs became widespread during the first World War, and now appears to be universally adopted. But the need of standardising the disc became also very soon apparent. The ICRC therefore, in 1928, asked the International Commission for the Standardisation of Medical Equipment to take up the question. The Commission produced a model identity disc which could be divided in two, one-half to remain with the body, the other to be detached and sent to the State on which the deceased depended. The model was approved, at least in principle, by the XIIIth International Red Cross Conference (The Hague, 1928), and the 1929 Convention accepted it, mentioning that " one-half of the identity disc shall be transmitted, the other half to remain attached to the body ". This wording was not, however, clear, and the 1949 text speaks of " one-half of the double identity disc ", to show that the disc should be composed of two separable parts, each bearing the same indications. We need hardly stress the importance of a disc of this sort, nor the desirability of having it adopted in all countries and made familiar to combatants.

It should also be noted that the next Paragraph provides for the case where the disc is single. In such case the whole disc must remain with the body, for future identification. But

[1] See Vol. II, Part 2, Section II.

the use of a single disc will deprive the home Government of an additional, and often very valuable, clue to identity.

In collecting objects which form estate, the sorting of documents and the preservation of those which have legal value (particularly wills) are both important. Of equal importance perhaps are objects or documents having an intrinsic or sentimental value. Selection is often a very difficult matter; it must be borne in mind that things which have little or no apparent worth, may, for sentimental reasons, be highly prized by near relations.

The mention of " unidentified articles " is probably more important than first appears. It often happened during the last War—especially in the case of aircraft—that no trace was left after an explosion or accident except some stray objects, usually of metal, scattered around. Such objects would mean nothing to the enemy, but sent to the home country, will often permit identification. Sometimes even one such object might constitute the only proof of the total disappearence of an entire aircrew.

Paragraph 3 ends by saying that these objects shall be sent in sealed packets, accompanied by a statement on the identity of the deceased, as well as by a complete list of contents. Precautions must obviously be taken that such valuable parcels are not lost or opened *en route*; wartime communications are slow and precarious and risks are correspondingly increased.

Article 17. — Prescriptions regarding the Dead. Graves Registration Service.

This Article deals exclusively with the dead. It lays down conditions for burial or cremation, and for the operation of a Graves Registration Service. While not making any fundamental change in the corresponding 1929 provisions it does add to them and usefully sharpens their meaning.

The burial or cremation of the dead shall be carried out individually, as far as circumstances permit. The idea of the common grave conflicts with the sentiment of respect due to the dead, and the Convention rightly aims at eliminating it.

No absolute obligation is imposed, however, because circumstances, the climate, or military considerations may force an Army Commander to resort to common burial. But even in such cases the bodies should first be carefully examined, preferably by a doctor, because the primary object is to be sure that death has taken place. The examination should also allow identity to be established and a report made ; this implies drawing up a statement which will include mention of objects and identity papers found on the body, and the date and place of burial. These first measures will make it possible to notify the adverse Party of the death, and will also facilitate at a later stage the work of the Graves Registration Service, one of whose principal tasks is to regroup the graves and draw up lists of them.

Finally, it is required, as we have seen above, that half of the double identity disc, or the identity disc itself if it be single, should remain on the body. Consequently, no member of the armed forces, living or dead, may henceforth be deprived of his identity disc. The certitude thus given of being always able to find their own personnel again, unless in very exceptional circumstances, ought to induce military authorities to make universal use of the identity disc, preferably double.

Article 17, Paragraph 2, presents a new idea, proposed for the first time by religious and educative Associations that worked for prisoners during the war, and met in Geneva in March 1947. The idea was approved by the preparatory meetings of experts, under the following form : bodies shall not be cremated except for imperative reasons of hygiene or for religious motives ; in case of cremation, the circumstances and reasons for it shall be stated in detail in the death certificate, or on the authenticated list of the dead. Apart from reasons of sentiment which may be opposed to cremation, and the fear of seeing a repetition of some of the revolting crimes which occurred during the last War and had their traces effaced by cremation, certain peoples, because of their customs or religion, are very strongly opposed to the practice. This led to the provision in question.

When the medical confirmation of death, identification of bodies, and proper burial or cremation have taken place, the

Parties are under the further obligation of having the graves themselves respected and marked in a permanent fashion, so that they may always be found. These matters are dealt with in Paragraph 3.

The dead must have proper burial and—a new notion which does not occur in the 1929 text—"if possible, according to the rites of the religion to which they belonged". This is not an obligation; certain religions prescribe rites which it may be impossible to observe, such, for example, as the sacrifice of an animal or the use of certain rare substances. Another new idea, also introduced in Paragraph 3, is that in addition to being decently maintained and marked so that they may always be found, the graves should also be "grouped if possible according to the nationality of the deceased and properly maintained". This new provision arises out of the experience of the last War, and like those which precede, is perfectly clear; it requires no comment.

The ways and means of fulfilling all these obligations are not fixed; each Commander shall decide as circumstances and possibilities dictate. On the other hand, everything which has at any time to do with the supervision, control and marking of graves is entrusted to the Graves Registration Service, which the parties in conflict are bound to organise from the commencement of hostilities. It is the duty of this Service to keep a list of all graves of the enemy dead, to mark clearly any which are not already indicated, to provide for their upkeep, to group them if possible according to nationalities, to keep track of every change and transfer so that exhumation will always remain feasible, to ensure the identification of bodies, whatever the site of the graves, and "the possible transportation to the home country". We may note here that certain Delegations at the Diplomatic Conferences asked that the phrase "possible transportation to the home country" should be made imperative; others wanted to have it deleted. It is the custom in some countries to bring the dead home at the end of hostilities, while others prefer to have them buried in the places where they fall. To satisfy both requirements the clause was left optional.

The Graves Registration Service shall also deal with ashes, "which shall be kept by (it) until proper disposal thereof in

accordance with the wishes of the home country ". Of course, although the Article does not expressly say so, the ashes should also be identifiable at all times.

The Service is not limited to caring for the graves of those fallen in battle, but extends also, under Article 120 of the Third Convention, to prisoners of war who die in captivity. Article 120 reproduces all the provisions of the present Article 17, and adds an additional and important idea which does not figure in the First Convention : should a country be occupied, the Graves Registration Service of the Occupying Power is obliged to take over and continue the work of the national Service.

Finally, Article 17, Paragraph 4, provides that " as soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves together with particulars of the dead interred therein ". The 1929 text provided that this exchange should take place only at the end of hostilities ; the new text, in ordering it " as soon as circumstances permit ", takes notice of the fact that such exchanges occurred actually during hostilities. The practice is desirable and deserved to be officially recognised.

Article 18. — Assistance by the Population.

The principle of this Article is, with those which pose the inviolability of the wounded, the sick, and the medical personnel, one of the great advances made by the Geneva Convention of 1864, and was directly inspired by the events of Solferino. Not alone must the wounded soldier be respected ; he must also be treated without delay, regardless of his nationality. This task is so urgent that if the Army Medical Service is not available, an appeal is to be made to civilians, to the inhabitants of the country in which the fighting takes place. The civilians who respond shall be protected as long as they give their services.

The generous spirit in which this principle was stated in 1864 (Article 5), was unfortunately attenuated somewhat in

1906 and in 1929. It was given back its full scope, and even more, in 1949.

The Article in 1929 read : " The military authorities may appeal to the charitable zeal of the inhabitants to collect and afford medical assistance, under their direction, to the wounded or sick of armies, and may accord to persons who have responded to this appeal special protection and certain facilities." There were several gaps in this Article and the last War showed that it was far from being adequate. Accordingly, all the meetings preliminary to the 1949 Conference showed themselves anxious to extend the Article and make it more specific. We need not trace here the background of the problem or show its evolution ; it will suffice to study the Article as it now stands.

In the first sentence, the word " voluntarily " has been added to the 1929 text, to show that the inhabitants may not be compelled to care for the wounded. The optional character of the assistance is also borne out by the initial words of the clause : " The military authorities may appeal... ". The Article also provides that persons who respond to the appeal shall be placed under the control of the said military authorities.

One of the chief omissions in the 1929 Convention was that no mention was made of similar action by other military authorrities, especially the enemy. This lacuna has been dealt with. The last sentence of Paragraph 1 specifies : " Should the adverse party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities ".

What precisely are " the same protection and the same facilities " ?

The expression is left purposely vague so that it may adapt itself to circumstances. The phrase cannot in principle give the right of using the red cross emblem, either on the houses where the wounded are sheltered, nor on the armlets which the inhabitants who receive them might wear. In fact, the houses could not be given the status of military hospitals or ambulances, or of civilian hospitals, nor could the inhabitants be compared with members of the Medical Service, or even with the auxiliary personnel. The situation might be different, if regular medical personnel are present and responsible for the patients.

As a corollary to the principle that military commanders may call upon the charity of the inhabitants, the latter are authorised " spontaneously to collect and care for wounded or sick of whatever nationality ". This principle is stated in Paragraph 2, which adds that the permission should be given even to inhabitants of invaded or occupied areas, as well as to Relief Societies. The addition is important. The civilian population should in all cases be enabled to help the wounded, including paratroops and " partisans ", whatever the nation to which they may belong. Unfortunately, during the last War, such action was sometimes forbidden and penalised by the occupants, or even by the home authorities. Paragraph 3, also new, forbids this and stipulates that : " No one may ever be molested or convicted for having nursed the wounded or sick."

The Diplomatic Conference refused to link the permission to give spontaneous help with the acceptance of military control or compulsory declaration ; the latter would, in fact, have amounted to a denunciation, and in particular, might imply breaches of professional etiquette. In actual fact, a military authority could doubtless issue certain regulations of this order, but as the Rapporteur of the First Commission remarked : " Such things should not be mentioned in humanitarian Conventions ".

Moreover, the " charitable zeal " of the inhabitants should not give way to hostility. Thus the second sentence of Paragraph 2 underlines the fact that " the civilian population shall respect these wounded and sick, and in particular abstain from offering them violence ". The Geneva Convention here leaves its own peculiar domain and for the first time addresses itself directly to the civilian population.

Whereas Paragraph 1 specifies that the inhabitants caring for the wounded shall work " under the direction " of the military authorities of the country, Paragraph 4 provides that spontaneous assistance to the wounded by the inhabitants of an occupied country in no way relieves " the Occupying Power of its obligation to give both physical and moral care to wounded and sick ". Though apparently self-evident, this principle had to be stated ; it will eliminate the risk of abuse and encourage the inhabitants to act with humanity.

CHAPTER III

MEDICAL UNITS AND ESTABLISHMENTS

Except for the introduction of a new Article dealing with Hospital Zones and Localities (Article 23), this Chapter has not been changed in any important respect from the 1929 text. Since the wounded, medical personnel and material are protected in virtue of special Chapters of the Conventions, the same protection had to be provided for the buildings which shelter them and the units of which they form part.

Article 19. — Protection.

Medical units may be either mobile, or in fixed establishments.

Fixed establishments are, as their name indicates, buildings used as hospitals or depots for material.

Mobile units are defined as those which can move as the need arises, following the movement of the Forces. Field hospitals and ambulances are particularly referred to, but it is not necessary that they should be in a shelter or under canvas ; a group in the open, however small, may be a medical unit.

Naturally, fixed establishments and mobile units should belong, in the same way as medical personnel, to the Army Medical Service or the Red Cross Society, and be exclusively devoted to the care of the wounded and sick of the armed forces. There can be no question of claiming protection for military units occasionally detailed for medical duty.

Paragraph 1 maintains the respect and protection accorded to mobile units and fixed establishments by Article 6 of the 1929 Convention.

For the sense in which the words " respect " and " protect " are traditionally used we refer back to the commentary on Article 12 [1]. " Respect " in this connexion means not to

[1] See above, p. 5.

attack and not to take possession of; " protect " means to ensure proper working, or prevent hindrances being put in the way. It may, therefore, appear superfluous to have added that they " may in no circumstances be attacked ", but at the least, the repetition can no no harm.

On the other hand, it certainly was worth while to extend the Paragraph by stipulating that fixed establishments and mobile medical units falling into enemy hands should be free to continue as such, so long as the capturing Power had not itself ensured the care of their wounded and sick.

This provision may appear self-evident and derives obviously from one of the basic principles of the Convention, but the changes made in 1949 in the provisions dealing with medical personnel and material justify the express confirmation at this particular point. As a matter of fact, Article 14 of the 1929 Convention provided that mobile units falling into enemy hands should retain their material and transport, together with their drivers. This clause has disappeared in the new text.

Paragraph 2 makes the authorities responsible for ensuring that medical establishments and units are, as far as possible, so situated that attacks against military objectives cannot imperil their safety.

Obligations imposed by the Geneva Conventions are almost exclusively those which a belligerent is called upon to assume with respect to the enemy, and only rarely do they lay down measures to be taken in favour of the wounded on his own side. We have seen one example at Article 12, Paragraph 5; the above Paragraph is another. It is obviously of vital importance that hospitals shall not be situated in the immediate neighbourhood of military objectives. If legal protection is valuable, it is the more so when the material elements of the safeguard are also provided for.

Article 21. — Discontinuance of Protection.

The protection to which fixed establishments and mobile medical units are entitled shall cease only in one case : if they are used to commit acts harmful to the enemy. The 1949

Diplomatic Conference as that of 1929, did not consider it necessary to define " acts harmful to the enemy "—an expression the interpretation of which is self-evident and which must remain quite general.

While the ICRC shared this view, it had prepared an equivalent phrase, should the Conference have wished to adopt a more explicit wording. The following periphrasis might have been used : " acts having the detriment of the adverse Party for their object or as their effect, by either helping or hindering military operations ".

Such harmful acts would, for example, include the use of a hospital as a shelter for able-bodied combatants, as an ammunition dump, or as a military observation post. The sense becomes still more clear in the light of the following Article 22, which quotes a series of acts that are not to be considered as being harmful to the enemy.

It is evident that fixed establishments and mobile units must observe, with regard to the enemy belligerent, the neutrality they claim for their own benefit and which the Convention accords to them. They are considered as completely apart and must accordingly refrain conscientiously from any interference, direct or indirect, in military operations.

The 1949 Diplomatic Conference stipulated that protection should not cease, except in the case of acts harmful to the enemy committed by the units " outside their humanitarian duties ". The accomplishment of a humane act could be regarded as harmful to the enemy and could be wrongly interpreted in this sense by an adversary who lacked generosity. Thus, the activity, or even the actual presence, of a medical unit might hinder tactical operations, as might also the illumination it would need by night. It was stated, for example, at the Conference, that an X-ray apparatus could disturb the sending or reception of wireless messages from a military post, or the working of a radar unit.

The corresponding Article of the 1929 Convention simply provided that the protection to which medical units and establishments are entitled would cease, if it served to commit acts harmful to the enemy. The 1949 Conference extended the

principle by inserting a phrase with the object of tempering the possible consequences of a too strict application. Safeguards had to be provided for the humane treatment of the wounded themselves, who could not be rendered liable for the illicit acts committed.

It is therefore now provided that protection may cease only after due warning has been given—naming, in all appropriate cases a reasonable time-limit—and after such warning has remained unheeded.

The enemy shall therefore summon the unit to put an end to the harmful acts and shall fix a time-limit, at the expiration of which he shall be entitled to pass to the attack, if the injunction has not been complied with. No definite period of respite is fixed ; it is simply said that it should be reasonable. What shall be considered as reasonable can only be decided by the particular circumstances. It can, however, be said that it must be long enough either to allow the illicit acts to be stopped, or to remove the wounded and sick of the unit to a place of safety. The respite would also allow the unit to answer an unjustified charge and to clear itself of the accusation.

We have seen that a reasonable time-limit shall be named " in all appropriate cases ". Obviously, there could be cases which would not be " appropriate ". For example, a body of troops who are received by sustained fire from the windows of a hospital can only return it without further ado.

Article 22. — Conditions not depriving of Protection.

This Article, remaining almost unchanged, sets out five conditions not depriving a medical unit or establishment of protection ; in other words, not to be considered as being " acts harmful to the enemy ". They are particular cases in which the right of immunity is retained, despite certain details that might give rise to a contrary interpretation. The object of the provision was to avoid the sort of disputes which can arise too easily between belligerents. The list is not to be considered as comprehensive.

Discussion of these provisions can be brief. The most important of them refers to the right of the medical personnel to bear arms, and to use them in their own defence and that of the wounded assigned to their care. The others deal with the existence in a medical unit of arms taken from the wounded, and the presence of a guard and of veterinary staff.

The fifth provision was added in 1949 and is very important. It states that medical units and establishments shall not be deprived of protection when their humanitarian activities or those of their personnel extend to the care of the civilian wounded or sick. This clause authorises establishments protected by the First Geneva Convention and devoted to the care of the military sick and wounded, to receive also civilians in need of treatment. Article 19, Paragraph 2, of the Fourth Convention is its corollary, as in return it authorises civilian hospitals to treat the military sick and wounded.

This innovation was unavoidable, because of the character which modern warfare—especially aerial warfare—has taken on : military and civilians are now struck down in the same spot and by the same act of war ; it is therefore natural that they should be treated by the same personnel and cared for in the same buildings.

Article 23. — Hospital Zones and Localities.

From the year 1934, the ICRC has been pressing for the establishment of a Convention on Hospital Zones and Localities. For this purpose, it called together in 1936 and 1938 two Expert Commissions of National Red Cross Societies and Governments. The result was a Draft Convention, intended for submission to the Diplomatic Conference which should have taken place in 1940, but could not be held.

Preliminary study undertaken from 1945 for the revision of the Geneva Conventions showed that the Governments were hardly in favour of a Convention with prescriptive force in this sphere. At the very most, the Experts agreed that provision should be made in the Geneva Convention for the possibility of setting up hospital zones, recognition of which

by the enemy would be subject to the conclusion of special agreements.

Such is the sense of Article 23. It also states that the interested parties may implement the provisions of the draft agreement annexed to the Convention, with the amendments they may consider necessary. The draft agreement was approved by the 1949 Diplomatic Conference ; it reproduces, in simplified form, the Draft Convention of 1938.

The creation of Hospital Zones, that is, of zones intended to shelter the sick and wounded of the armed forces, does not bring anything essentially new to the Convention. It was possible under former Conventions, by simple juxtaposition of medical establishments or units ; as each of them was protected, the whole was protected also. Nevertheless, Article 23 and the Draft Agreement annexed to the Convention make it possible to constitute zones or localities on a larger scale, and to include in them the local civilian population. The agreement contains also a series of regulations to govern the constitution, operation and supervision of these zones.

In dealing with Articles 14 of the Fourth Convention we shall study the problem, analogous but much more complicated, of Safety Zones and Localities intended for the protection of certain categories of the civil population.

CHAPTER IV

MEDICAL PERSONNEL

The present Convention confers protection upon the medical personnel and chaplains [1], insofar as they form part of the armed forces in time of war on land. This personnel does not include civilian staff, or medical personnel of naval forces, for whom provision is made by the Second and Fourth Conventions, which will be examined later.

Personnel protected by the present Convention comprises the six following categories :

(1) — Medical personnel of the armed forces exclusively engaged in the search for, or the collection, transport or treatment of the wounded and sick, or in the prevention of disease (Article 24).

(2) — Army staff exclusively engaged in the administration of medical units and establishments (Article 24).

(3) — Chaplains attached to the armed forces (Article 24).

(4) — Personnel of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognised and engaged on work as mentioned under Nos. 1, 2 and 3, and subject to military laws and regulations (Article 26).

(5) — Personnel of Relief Societies of neutral countries, who assist belligerents and are duly authorised to do so (Article 27).

(6) — Members of the armed forces trained for employment, in case of emergency, as hospital orderlies or auxiliary stretcher-bearers (Article 25).

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[1] For the sake of brevity, the term " medical personnel " used hereafter is understood to include the chaplains.

For the last-named the term "auxiliary personnel" is used, as opposed to "permanent personnel", applicable to the first categories. (See marginal note on Article 24.)

Article 24. — Protection of Permanent Personnel.

This Article covers personnel described under Categories 1, 2 and 3 above, i.e. regular army personnel, who, to be entitled to immunity, must be *exclusively* on medical or religious duties. Their identity will be established under Article 40.

The personnel of Categories 1 and 2 forms the Army Medical Service; it includes (Category 1) medical personnel proper (doctors, surgeons, dentists, orderlies, nurses, stretcher-bearers, etc.), and (Category 2) the administrative staff of medical units and establishments (office staff, ambulance drivers, quartermasters, cooks, cleaners, etc.). It naturally is the business of each Power to decide the composition of its Medical Service and to say who shall be employed exclusively in it.

In setting out the functions of the medical personnel proper (Category 1), the 1949 Conference added the prevention of disease. It is generally agreed that prevention of disease now forms an important part of the work of the army medical personnel: hygienic and prophylactic measures, such as vaccination, delousing, disinfection of water supply, and so on. It was consequently necessary to include such measures among the duties of the medical personnel.

Enumeration of duties of the medical personnel proper (search, collection, transport, treatment of the wounded and sick, and prevention of disease) by no means implies that they should be affected to several of these, or in a general way, to all; it only debars from duties not included in the list.

The Article stipulates that medical personnel shall be "respected and protected in all circumstances"—the formula used in 1906 and 1929, and still perfectly adequate [1].

The words "in all circumstances" clearly signify that

[1] Cf. the remarks on the terms "respected" and "protected" on page 5.

medical personnel are to be respected and protected at all times and in all places, whether on the battle-field or in the rear, and whether retained temporarily by the enemy, or for the duration of hostilities.

Nevertheless, to enjoy immunity, they must naturally abstain from acts termed " harmful to the enemy ", which we referred to in dealing with Article 21 [1].

The corresponding Article of the 1929 Convention specified that medical personnel should not be treated as prisoners of war if they fell into enemy hands. This idea has been omitted here. The retention of medical personnel by the enemy is dealt with in Articles 28 and 32, which we shall examine later.

Article 25. — Protection of Auxiliary Personnel.

The provision dealing with what is called " Auxiliary Medical Personnel " now forms a separate Article ; in 1929 it was part of the preceding one.

The distinguishing feature of medical personnel properly so-called, i.e. permanent staff, is to be on medical duty exclusively. We are now concerned with a special military category, partly affected to such duty. Having been trained as orderlies or auxiliary stretcher-bearers, their officers may, when necessary —or in other words, occasionally—order them to search for the wounded or look after them. Otherwise, they may be assigned by their commanding officers to any other military duties.

This category, up to the present not very numerous in practice, included, in some armed forces, the members of regimental bands, who also receive ambulance training. Nevertheless, there is no reason why it should not include military personnel who are, strictly speaking, combatants.

Such auxiliary personnel must, however, be attached only to the armed forces and not to a Red Cross or other Relief Society. Further, it includes only stretcher-bearers and orderlies but not chaplains, doctors and administrative staff.

[1] See above, p. 27.

The 1929 Conference made the innovation (adopted by a majority of one) of placing auxiliary personnel, if captured while on medical duty, on the same footing as the permanent staff. Similarly, such personnel had, in principle, the same right to repatriation. The Conference had to abandon the idea of giving them special protection on the battle-field before capture, not considering it possible to authorise them to wear the armlet [1].

Draft revisions of the Convention, prior to the text adopted by the 1949 Conference, no longer made special provision for auxiliary personnel. The experts were of the opinion that the protection would be enhanced if applied only to permanent personnel. It was also pointed out that the conditions of modern warfare, and the capture of prisoners in vast numbers, made it impossible to decide whether some amongst them were, or were not engaged in medical duties at the time.

The 1949 Convention has maintained the category of auxiliary personnel, but with a complete reversal in measures for their protection. They will now be protected on the battle-field, " if they are carrying out these duties at the time they come into contact with the enemy or fall into his hands ". For this reason they are entitled to wear white armlets bearing a red cross of reduced size (see Article 41). On the other hand, once in enemy hands they will, as we shall see when discussing Article 29, become simply prisoners of war without any special right to repatriation.

If the 1949 Conference maintained the category of auxiliary personnel who are partly combatant [2] and partly medical, it did not, any more than did previous Conferences, attempt to provide protection for rank and file of the armed forces who

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[1] This does not imply that the enemy had the right to fire deliberately upon auxiliary personnel collecting the wounded. If, by chance, the enemy recognised them for what they were, he was bound to respect their status.

[2] For convenience, the term " combatants ", signifying the rank and file of the armed forces, is used to denote all who do not belong to the categories of permanent or auxiliary medical personnel. In good usage " armed forces " include " combatants " (i.e. soldiers bearing arms) and " non-combatants " (who comprise both medical personnel and various army services not called upon to carry arms).

may, in exceptional circumstances, be called upon to collect or look after the wounded. It is difficult to imagine how it could have been otherwise.

To have immunity even on the battle-field, military personnel caring for the wounded had to occupy a distinct category —that of medical personnel—and enjoy a separate status, recognisable by the distinctive emblem and an identity card. If recourse was had to such safeguards, it was because military considerations demanded them. Otherwise, the risk of abuse would be too great. It is not straining the imagination to picture combatants approaching an enemy position, ostensibly to assist the wounded, and then opening fire in order to seize it ; similarly, a fighting unit might suddenly turn into a medical formation, to avoid attack by the enemy.

Therefore, if a military command should, without previous arrangement, send ordinary combatants to collect the wounded, it would be at their own risk. The letter of the Convention offers them no protection, even if its spirit would. Those who fire on them would break no written law, and their safety depends only upon the goodwill of the adversary.

Article 26. — Personnel of National Red Cross Societies and other recognised Relief Societies.

The two preceding Articles concern only the regular medical personnel of the armed forces. Article 26 and 27 refer to the personnel of private, or so-called " voluntary " Aid Societies [1].

Confirming long-established practice, the protection of the Geneva Convention was in 1906 extended to the personnel of National Red Cross Societies and other recognised Relief Societies that assist Army Medical Services.

Until 1929, reference was made only to " recognised Relief Societies ", a term naturally including the National Red Cross Societies, by far the most important of the Aid Societies. They were not, however, specifically named, and the 1949 Diplomatic

[1] The term " voluntary " does not mean that they are necessarily unpaid.

Conference rightly put an end to this anomaly. The Rapporteur of the appropriate Committee emphasised that this body, in making direct reference in Article 26 to National Red Cross Societies, wished to pay tribute to the reputation they had won on battle-fields throughout the world. It is very gratifying that the Article, by granting National Red Cross Societies a recognised status in International Law, places them on a still firmer foundation than in the past.

Although National Red Cross Societies are thus the chief auxiliary aids to the Medical Service, they are not the only ones. A number of other recognised Societies give services of a similar nature ; the best known are the Knights of Malta and the Order of St. John of Jerusalem. Governments could scarcely give the Red Cross a monopoly of voluntary relief to the wounded, thereby refusing in advance all other co-operation ; such help is never in excess in time of war and should therefore not be discouraged. Consequently, Article 26 names " other Voluntary Aid Societies " in addition to National Red Cross Societies, and places them both on the same footing.

The new Convention, as did its predecessors, grants the personnel of Red Cross and other Societies the same legal status as the permanent Army medical personnel. To afford them the same immunities, this extension had to be attended by the safeguards necessary to prevent misapprehension and abuse :

(a) *Recognition.* — The Red Cross or other Society must be duly recognised 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 of only one Red Cross Society in any one country.

(b) *Authorisation.* — Recognition alone is not sufficient. The Government must authorise the Society to act as an auxiliary

to the Army Medical Service in time of war, and thus provide in advance for automatic incorporation into the armed forces. 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) *Notification.* — At the latest before actually employing auxiliary personnel, a Government which has authorized one or several Societies to serve with the Medical Corps must notify all other signatories of the fact in peace-time, and the adversary in time of war. This safeguard lies in the interest of the personnel itself.

(d) *Incorporation.* — The personnel of Voluntary Societies must, in time of war, be incorporated into the Army Medical Service. The Convention does not use the word incorporation ; it is employed here for clarity, as it is in fact what Article 26 means, in stating that the personnel shall be " subject to military laws and regulations " (Paragraph 1) and under the " responsibility " of the State concerned (Paragraph 2). As will be seen below, the personnel of Voluntary Societies shall be employed on the same duties as the Medical Service, and it is from the State that they receive their badges and identity cards. They are under military command and do not differ in any important respect from regular personnel.

(e) *Duties.* — The personnel of Voluntary Aid Societies shall 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 thought that, having been recognised and authorised to assist the Medical Service, their entire personnel was entitled to immunity in time of war.

The fact must be stressed, 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 so arise that in a country at war, the whole personnel of the Red Cross Society will pass into the Medical Service. But, as a general rule, only 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 absorbed into 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, for persons following the armed forces, those of the Third (Prisoner of War) Convention, Article 4, Paragraph 4.

Article 27. — Societies of Neutral Countries.

This Article applies, as does the preceding one, to National Red Cross Societies and other Societies auxiliary to the Medical Service, but belonging in this instance to neutral and not to belligerent countries. Such Societies of neutral countries may, in the spirit of the Geneva Convention, be called upon to aid the Medical Service of a belligerent. By 1906, the necessity of regulating such assistance had already become apparent.

Such voluntary personnel will enjoy the same protection as the medical personnel of the belligerent.

The Society to which they belong obviously must fulfil the same conditions as the Society of a belligerent which assists the Medical Service of its own country, although Article 27 does not specifically say so. Thus, the Society must be recognised by its Government, and authorised to assist the Medical Service of a belligerent [1]. The Power which accepts such

[1] In practice, this would doubtless be a Society already authorised to assist the Medical Service of the home country.

assistance must notify the fact to its adversary or adversaries; the neutral personnel is absorbed into the Medical Service of the belligerent[1], and its personnel will be employed on the same duties as the Medical Service of the belligerent.

Two additional conditions are peculiar to this particular case: *(a)* the authorisation of the belligerent to whom assistance is offered, and *(b)* the notification of its consent by the neutral Government itself, to the other belligerent. The second condition is new, the said notification being in addition to that which should be made by the belligerent assisted; it is an additional safeguard. The two notifications are not in fact identical; that of the belligerent concerns only the assistance given and the personnel employed, but is no guarantee of the approval of the neutral State. The notification of the neutral State is thus necessary on this point. Moreover, should the belligerent who accepts assistance omit the notification he is required to make, the neutral personnel should not have to suffer for it, and notification by the neutral State could, to a certain extent, compensate for the omission. There would therefore be advantage in having the notification as detailed as possible.

The 1949 Diplomatic Conference inserted two further new provisions into this Article (Paragraphs 3 and 4).

Paragraph 3 stipulates that in no circumstances shall the assistance of a neutral Society to a belligerent be considered as interference in a conflict—that is to say, participation in hostilities—or a breach of neutrality. Moreover, assistance can be afforded to one only of the two adversaries. This was obviously implied already in the spirit of the Geneva Convention and in the role of the medical personnel—knowing neither friend nor foe, they are to care for the wounded and sick, without discrimination of nationality—but still, even " among things which go without saying there are some which are better said ".

Paragraph 4 rules that neutral medical personnel who assist a belligerent shall, before leaving their own neutral

[1] The 1949 text specifies that such neutral personnel shall be placed under the belligerent's control.

country, be duly provided with identity cards as specified in Article 40, Paragraph 2, bearing *inter alia* the embossed stamp of the military authority of the belligerent country, the photograph of the bearer and his signature or finger-prints. This formality is likely to meet with many practical difficulties and cause much loss of time, but the Conference, mindful of what had happened in the last War, considered that the requirement was called for in the interests of the personnel themselves.

The following would appear to be the least complicated procedure : the neutral medical personnel would send their photographs to the belligerent country, where the military authorities would affix them on identity cards and emboss the stamp, sending the cards back to the owners for the addition of finger-prints or signature.

Article 28. — Retained Personnel.

The question of the retention of medical personnel and chaplains who fall into enemy hands was the most important which the Diplomatic Conference had to settle when dealing with the First Geneva Convention [1].

In 1864 and 1906 the Convention stated, as a matter of principle, that medical personnel must be unconditionally repatriated ; the principle, however, was indifferently applied during the first World War. The 1929 Convention maintained the rule of immediate repatriation, with a proviso allowing for " agreements to the contrary " between belligerents ; it did not concern itself with conditions of retention, or the status of personnel retained. During the recent War, repatriation of medical personnel occurred on a relatively small scale, the Powers having agreed to retain a certain percentage to help in caring for the prisoners of war.

When preliminary study, preparatory to the revision of the Geneva Convention, started in 1945, there was a clash of opinion

[1] See "Retention of Members of the Army Medical Services fallen into Enemy Hands ". Reprinted from the English Supplement to the *Revue internationale de la Croix-Rouge*, Dec. 1949-March 1950. Geneva, 1950, pp. 51.

and much controversy. In 1946, during the Red Cross Conference in Geneva, there was a suggestion to provide explicitly in the Convention for the retention of a part of the medical personnel, proportional to the number and state of health of the prisoners held. However, those in favour of unconditional repatriation prevailed once again.

In 1947, at the Government Experts Conference, the proposal to provide for the retention of part of the medical personnel was not opposed, but a new thesis was propounded : medical personnel falling into enemy hands should be considered and treated as prisoners of war. It then seemed likely that this would be the line adopted.

During the year which elapsed between this Conference and the Stockholm meeting, the Committee, supported by the National Societies and other opinion, was led to propose an arrangement which, while allowing for the retention of part of the medical personnel, provided for the repatriation of those in excess, and ensured to those retained at least all the rights of prisoners of war, and certain facilities which would enable them to carry out their duties to the best advantage.

The Stockholm Conference adopted this system and further decided to stipulate expressly that retained personnel should not be treated as prisoners of war. The same conception prevailed at the 1949 Conference, where practically all the Delegates were of opinion that medical personnel should not be treated as prisoners of war, but were prepared to make all possible concessions to reach agreement.

Paragraph 1. — Retention.

This provision authorizes the retention of medical personnel, but in terms which stress that retention should be the exception and be subordinate to the principle of repatriation. (See also Article 30.)

Under the 1929 Convention, retention was possible only by special arrangement. In the 1949 text it has full legal sanction, but a belligerent may retain some of the captured medical personnel and chaplains only if he also holds prisoners

whose state of health and spiritual needs " require " the retention of this personnel, or make it " indispensable " (Article 30). Retention must be justified by real and pressing need.

The text of the Convention cannot be taken as saying that retention is allowed only when the Detaining Power holds prisoners of the same nationality. Paragraph 2 stipulates that retained medical personnel shall carry out their duties " on behalf of prisoners of war, *preferably* those of the armed forces to which they themselves belong ". But a belligerent who holds excess personnel of any one nationality may be justified, if circumstances so demand, in retaining them to care for prisoners of another nationality. This solution, obviously unusual, can only be exceptional and should be regarded as a stop-gap only.

In speaking of the medical and spiritual needs of prisoners, reference is also made to their number—a necessary element in fixing the percentage of personnel to be retained. Article 31, Paragraph 2 will show that Governments may fix by agreement the percentage of personnel which may be retained proportionally to the number of prisoners.

If no agreement has been concluded, the Detaining Power shall determine the percentage in the light of common sense, equity and experience. The maximum would be the number required to meet the actual needs of a camp, without calling upon personnel of the Detaining Power.

The drafting of the Paragraph under survey suggests that capture of medical personnel must be fortuitous ; it is not to be supposed that a belligerent would deliberately seek to capture them.

Paragraph 2. — Status and Treatment of Retained Medical Personnel.

(A) — *First and second sentences. — Status.*

The Convention provides that retained personnel " shall not be deemed prisoners of war ", and adds : " Nevertheless, they shall at least benefit by all the provisions of the Geneva

Convention of August 12, 1949, relative to the Treatment of Prisoners of War ". This clause is hardly a model of clarity. There is no doubt, however, that the word " benefit " is meant to specify that not all provisions relative to prisoners of war are applicable to retained medical personnel, but only those which are to their advantage. This view is confirmed by the corresponding Article 33 of the Prisoners of War Convention, which says that retained medical personnel shall " receive as a minimum *the benefits and protection* of the present Convention ". Moreover, the Conference Records show the clear intention to specify that the Detaining Power might apply to retained medical personnel only such provisions of the Prisoners of War Convention as could be considered advantageous to them.

The Diplomatic Conference did not, therefore, try to assimilate retained medical personnel and chaplains with prisoners of war, but was anxious to ensure to them the benefits and protection of the Prisoners of War Convention ; thus giving both the most favourable conditions for their medical or spiritual work for prisoners.

The Conference thought it advisable to affirm the " universal " and " neutral " status, as it were, of personnel whose duties place them outside the conflict. This personnel would normally be repatriated, and if they are retained, it is in exceptional circumstances and for a work of relief, done with the consent of their home country and to some extent on its behalf.

On the other hand, the Conference recognised that the safeguards afforded to prisoners of war by International Law are adequate—a fact proved by experience—and that, generally speaking, they constitute the best protection for persons in enemy hands. There was also the practical advantage of referring to an existing Convention, which eliminated the need to establish entirely new regulations.

Whereas the Convention lays down that medical personnel shall not be regarded as prisoners of war—a privilege that the wounded themselves do not enjoy—there is no mention of " exemption from capture ". This expression had been rejected in 1929, because such capture exists *de facto*, if not *de jure*.

Similarly, while they remain with the enemy, medical

personnel, who from a strictly legal point of view are not in captivity insofar as they are not prisoners of war, find in fact that their liberty is to a certain extent restricted. This is inherent in their status of " retained personnel ", their enemy nationality, and the necessity for the Detaining Power of ensuring its own military and political security. It is besides stated in Article 28 that they shall be subject to camp discipline. Their liberty will be more or less restricted according to circumstances, and it may be hoped that here belligerents will be especially lenient, in having recourse, whenever possible, to supervision and assigned residence rather than actual internment. We can, of course, scarcely imagine any Power granting full liberty to retained medical personnel, allowing them to move about freely in a country at war, and remaining blind to the inevitable risk of espionage.

(B) — *Third sentence. — Exercise of functions.*

Retained medical personnel and chaplains " shall continue to carry out their medical and spiritual duties on behalf of prisoners ". The words " *shall continue* " show that if capture and retention of medical personnel places them in different conditions and under different control, the duty of caring for sick and wounded combatants—which justifies their special status—suffers no change, and the work should continue without hindrance, and practically without a break.

From now on, these duties will be carried out under the laws and military regulations of the Detaining Power, and under the control of its competent services. This provision is dictated both by common sense and the demands of efficient administration. The Detaining Power, being responsible for the health of all prisoners in its hands, and indeed of the entire population, is entitled to keep all necessary powers of control. Retained personnel supply their share ; they are therefore absorbed into the larger organisation of the Detaining Power and are subject in their work to the same conditions as the national staff. It is difficult to see how, in practice, it could be otherwise. The medical personnel come naturally under the authority of the

Army Medical Service of the Detaining Power, while chaplains will come under the appropriate service—doubtless the same as that to which chaplains of the national forces are attached.

The Convention nevertheless tempers the force of this rule by stipulating that medical and religious personnel shall carry out their duties " in accordance with their professional ethics ". Even if they are subject, administratively speaking, to their captors, their subordination has definite limits. The powers of the detaining authority must end at the point where, for the priest as for the doctor, the conduct proper to his vocation and the dictates of his own conscience are imperative. Thus, there is no authority given, for example, which could prevent a doctor nursing the sick, or oblige him to apply treatment detrimental to a patient's health.

The text provides furthermore that retained personnel shall care for prisoners of war, " preferably those of the armed forces to which they themselves belong ".

(C) — *Fourth sentence and sub-paragraphs (a), (b) and (c). Facilities.*

The sentence sets out the additional facilities to which retained personnel are entitled. It is stated quite clearly—and is repeated in the clause which deal with details—that the facilities accorded are " for carrying out their medical or spiritual duties ". The authors of the 1949 Convention wished to emphasise here that if medical and religious personnel were to have a particular status, it was to enable them to do their special work under the best conditions, and not in order to give them privileges as individuals. The real explanation of their exceptional status is the good of the combatants for whose benefit they work.

It should be noticed that these facilities, expressly specified, are consequently imperative, and should always take precedence over similar provisions of the Prisoners of War Convention, whenever the latter might also be invoked.

(a) — The first facility accorded, under sub-paragraph *(a)*, to the personnel is the right to make periodic visits to prisoners

of war in labour detachments or hospitals outside the camp itself, and to have the necessary transport for this purpose.

Prisoners need medical and spiritual aid, wherever they may be, and those whose duty it is to bring them such aid should be able to leave camp and make whatever journeys may be required. The Detaining Power is free to impose suitable supervision, if it so wishes, on such journeys, and will decide if the circumstances call for an escort, or not. An obvious occasion for dispensing with such escort is the case of medical personnel on parole, or under promise not to abandon their posts. It should also be noted that detained personnel cannot misuse the right so conferred on them : they can only leave the camp and travel in order to visit prisoners confined to their care, or having need of their attendance.

(b) — The Convention next provides, under sub-paragraph *(b)*, that " the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel ". The duty so imposed has a striking analogy to that of the " prisoners' representative " in prisoner of war camps. In fact, the said medical officer will fulfil all the representative's duties for the retained medical personnel, so that the presence amongst the medical personnel of a representative, side by side with the responsible medical officer, is hardly conceivable. In other words, the medical officer is the personnel's representative.

His sphere of competence is, however, greater. While the prisoners' representative will " represent " the prisoners with the military authorities, the senior medical officer " shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel ". The responsible officer will therefore be really the professional head of the retained medical personnel in the camp, insofar as this is compatible with the fact that the personnel is, in principle, under the authority of the competent services of the Detaining Power.

It was in order to make it possible to decide upon the rightful nominee that the mention was retained of an agreement to be concluded between the Parties to the conflict, to determine

the precedence of rank of their personnel—including the members of Red Cross and other Societies authorised to collaborate with the Army Medical Services. Under the 1929 Convention, this agreement also decided their conditions of pay and maintenance ; this is no longer necessary under the new text.

Article 28 gives the responsible medical officer two prerogatives : he shall have direct access to the camp authorities in all matters affecting his office, and he shall be allowed such facilities for correspondence as are necessary for the satisfactory discharge of his duties. Thus, the number of letters and cards which it may be necessary for him, as responsible medical officer, to write and receive shall never be limited, as it may be, in certain circumstances, in the case of prisoners of war. It is indeed desirable that he should remain in close touch with medical practitioners in his own country, with the Protecting Power, the ICRC, relief organisations, the families of captured personnel, and so forth. In general, the facilities for correspondence accorded to the responsible doctors should clearly be as generous as those given to the prisoners' representatives.

We should add that the appointment of a " responsible " officer affects the medical personnel only, and not the chaplains. It is already provided that chaplains shall, in the same way as the responsible medical officer himself, have direct access to the camp authorities and the same facilities for correspondence.

The 1929 Convention accorded to medical personnel in enemy hands the same conditions of maintenance, housing, allowances and pay as to corresponding members of the captor forces. The 1949 Conference did not consider it possible to continue this system. The retained personnel are now to have the same maintenance, housing and pay as prisoners of war, with the proviso that these conditions should be considered as a minimum which the Detaining Power is invited to exceed.

(c) — In sub-paragraph *(c)* it is provided that retained personnel shall not be required to perform any work outside their medical or religious duties. This was implied in the 1929 text, but regrettable experiences in the recent War proved the need for putting it down in black and white.

The rule is now absolute, so much so that the retained personnel cannot be obliged to do work connected with the administration and upkeep of the camp, even if they happen to be, for the time being, without work. Nevertheless, the expression " medical duties " must be understood in the widest sense. It must be remembered that the " medical " personnel includes men who are engaged in the administration of units and hospitals. Although such work is not, strictly speaking, " medical ", these men will continue to carry out the duties assigned to them in their own forces.

The same sentence also provides that retained personnel shall be subject to the internal discipline of their camp. Common sense demands this important provision, and it should be taken in conjunction with the clause examined above, which states that the personnel, in the exercise of their duties, shall be subject to the competent services of the Detaining Power. Therefore, except in the actual exercise of their duties, the personnel shall be placed under the authority of the camp commandant. Every military unit is subject to military discipline, and this rule applies with still greater force to prisoner of war camps. Enemy medical personnel will often be detained in prisoner camps and share in their daily life, and cannot conceivably escape the discipline common to all : nothing but disorder could ensue.

We may note that Article 35 of the Prisoners of War Convention is devoted entirely to chaplains who are retained. This Article to a large extent duplicates Article 28 under review, which in turn is reproduced as Article 33 in the Prisoners of War Convention. Some of its provisions are, however, more detailed.

(D) — *Provisions of the Prisoners of War Convention which are applicable to Retained Personnel.*

We must now decide to what extent the provisions of the Prisoners of War Convention of 1949 are applicable to retained personnel.

We have seen above [1] that retained personnel " shall at least benefit by all provisions " of the 1949 Prisoners of War Convention. By this we understand, as the latter Convention specifies, that they shall " receive as a minimum the benefits and protection " of that Convention.

The idea of " benefits " should not be considered in respect of prisoners of war, but of medical and religious personnel who are not prisoners. In other words, we must determine what " benefits " accrue from the application of the Prisoners of War Convention to persons who are not prisoners of war and who have the privilege of exceptional immunity.

The idea of " benefits " is not the only point to be considered. The special status of retained medical personnel has other aspects which must be examined and can be summarised as follows :

(1) — In matters to which special provisions relating to retained personnel and similar provisions relating to prisoners of war both apply, the first-named always take precedence.

(2) — In matters regulated only by provisions designed for prisoners of war, certain consequences of the special position and duties of retained personnel must be considered. They may be stated as follows :

(a) — The effective carrying out of the medical and spiritual duties for the benefit of prisoners should be the determining factor. In case of doubt, the solution chosen should be the one which will most favour it.

(b) — The retained personnel is in fact, within inevitable limits, at liberty ;

(c) — The retained personnel is subject to military discipline in camp.

This much being said, the provisions of the Prisoners of War Convention are, in their great majority, immediately applicable to retained medical and religious personnel. It is

[1] See p. 43.

to be hoped that Governments will clarify by treaty points whose interpretation is not quite clear. We can confine ourselves here to the following. :

Article 21, Paragraph, 1. — This Article, providing in its first paragraph that prisoners of war may be interned, does not legally apply to medical and religious personnel, since these are not prisoners of war ; it is none the less true that, as shown above, their liberty will be restricted [1].

Article 49 to 57. — These refer to the labour of prisoners of war. As a general rule, the procedure laid down in the Articles referring to the work to which prisoners may be assigned (Articles 49, 50, 52, 56 and 57) does not apply to retained personnel. Other provisions dealing with working conditions, rest, and so forth, should be considered as applying, insofar as they are compatible with the carrying out of medical or spiritual duties.

Articles 82 to 108 deal with safeguards for prisoners prosecuted for alleged offences. As these safeguards could only be to the advantage of retained personnel, they may be considered as being applicable.

Articles 109 to 117, dealing with the repatriation of seriously ill and wounded prisoners, should be made to apply to retained personnel. On the other hand, it is not easy to see how, except in special circumstances, the provisions for accommodation in neutral countries could refer to medical personnel ; they should have the right to be returned to their home country as soon as their state of health prevents them from active duty.

(E) — *Conclusions.*

It may be useful at the end of this study of Article 28, Paragraph 2, to summarise the various elements which go to make up the special status of medical and religious personnel

[1] See above, p. 45.

fallen into enemy hands and retained to care for their countrymen who are prisoners :

(1) — They are not prisoners of war, but enjoy an immunity which attaches to their status.

(2) — Because of their position as " retained persons ", their enemy nationality and the necessity for the Detaining Power to ensure its security, their liberty is, in fact, restricted.

(3) — In the performance of their duties they are subject to the laws and regulations of the Detaining Power, and to its responsible services.

(4) — Even apart from the question of their duties, they are subject to camp discipline.

(5) — Their work is done in harmony with their professional ethics.

(6) — They may not be compelled to do any work foreign to their proper sphere of duty.

(7) — They may visit labour detachments and hospitals.

(8) — The responsible medical officer and the chaplains have direct access to the authorities, and have special facilities for correspondence.

(9) — They shall have, as a minimum, the benefit of the protection and advantages of the Prisoners of War Convention, insofar as that Convention concerns matters not already dealt with in a special manner for them (see Nos. 3 to 8 above).

Paragraph 3. — Relieving of Medical Personnel.

During the recent War, certain belligerents contemplated the " relief " of doctors held by the enemy, by personnel from the home country, the former being then repatriated. A beginning was made in the case of some Jugoslav doctors and of a larger number of French medical officers held in Germany.

The 1949 Diplomatic Conference did not consider it possible to introduce a binding arrangement on these lines, but confined itself to leaving belligerents free to conclude an agreement.

The Conference, in its Third Resolution, invited the ICRC to draw up a Model Agreement for use in such cases.

Paragraph 4. — General Obligations of the Detaining Power.

The Article ends by stating that none of its provisions shall relieve the Detaining Power of the obligations imposed on it with regard to the medical and spiritual welfare of prisoners of war.

It should not be possible for a Detaining Power to avail itself of the fact that medical and religious personnel are retained, to avoid obligations, or to justify a dereliction on its part ; it might not, for example, make their presence an excuse for refusing to fill vacancies with its own personnel.

Retention, as the new Convention regards it, should remain a supplementary measure taken for the good of the prisoners themselves and to assist the Detaining Power, which, however, will continue to be fully responsible for the prisoners of war in its hands.

It follows, also, that the Detaining Power is, in the last analysis, responsible for the activities of retained medical personnel, and that it may take the measures of direction and supervision it considers necessary—as Paragraph 2 of Article 28 expressly provides.

Article 29. — Status of Auxiliary Personnel.

As we have seen in dealing with Article 25, which gives a definition, auxiliary personnel are henceforth protected on the field of battle and when they fall into enemy hands, but as opposed to the 1929 text, they are no longer entitled to repatriation.

The solution adopted by the Conference is justified on several grounds. First of all, the affinity of status between auxiliary personnel and permanent medical and religious personnel is

superficial. For one thing, it is as much "combatant" as medical, and therefore repatriation would help to increase military strength in the home country; in addition, since its medical functions are subsidiary only, the necessary instruction can quickly be given to other troops who can be detailed to replace those captured.

Finally, as we have said above, experience has shown that troops are most often captured nowadays in large groups, following encircling operations. When a body of troops is surrounded and disarmed, it is sent behind the lines, where sorting-out begins. In most such cases it will be impossible for the commanding officer to establish with any degree of certainty whether or not certain prisoners were engaged on medical work at the time of capture—the more so as he himself would find difficulty in saying when precisely that moment was. It seems to have been this last argument especially which led the Delegates in 1949 to reverse the former system.

Does it follow that the special training of these men will become useless from the moment they lose their liberty? It would appear not. The Conference was careful to provide that auxiliary personnel who become prisoners of war "shall be employed on their medical duties in so far as the need arises". The Detaining Power would therefore call upon them as far as it may be necessary, and may occasionally, or even permanently, assign them the duty of caring for their own comrades.

Shall the proportion of corresponding medical personnel retained under the terms of Article 28 be decreased as a result of the presence of auxiliary personnel (orderlies and stretcher-bearers) in the camps?

The Convention here makes no specific provision. The matter is left to agreements which belligerents are invited to conclude, or in default, to the judgment of the Detaining Power which, under the terms of Article 45, is bound always to interpret in the light of general principles, cases not provided for expressly in the Convention.

If auxiliary personnel can satisfactorily and regularly carry out the work, there are grounds for discharging a corresponding number of the permanent orderlies and stretcher-bearers; this

would be to act in accordance with the spirit and the general principles of the Convention.

What is then the status of auxiliary personnel in captivity ? If they are not doing medical work, their treatment is the same as for ordinary prisoners of war. If they are called upon to act professionally, it seems reasonable that they should have the benefit of the provisions of Article 32 of the Prisoners of War Convention, which applies to prisoners who, without having been attached to the Army Medical Service, are doctors, nurses, and so on, and who have been called upon by the Detaining Power for professional duty. According to Article 32, " they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power ".

Article 30. — Return of Medical and Religious Personnel.

Paragraph 1. — Repatriation of Medical Personnel.

Repatriation, a basic principle of the Geneva Convention, remains the essential rule [1] ; retention is secondary only. Consequently, all permanent medical and religious personnel whose retention is not indispensable under the provisions of Article 28, which we have examined, should be sent back to the Power on which they depend. All medical personnel and chaplains beyond the number fixed by agreement and proportional to the number of prisoners, or, in default of such agreement, all who are not indispensable by reason of the physical condition or spiritual needs of the prisoners, shall be repatriated. This is, for the Detaining Power, an absolute obligation. It springs not only from the letter of the Convention but from its spirit, which the 1949 revision has not altered : the medical personnel, as a matter of principle, should always be enabled to carry on their special work. To hinder them by, for example, holding doctors idle while they might be attending to the sick in their

[1] The Diplomatic Conference rejected a proposal that only doctors, dentists and orderlies should be repatriated.

own country, would be gravely at variance with the Geneva Convention and the very idea of the Red Cross.

The return of surplus medical personnel should take place, in the words of this paragraph, " as soon as a road is open for their return and military requirements permit ".

Therefore, only physical impossibility or military necessity can be invoked as reasons for delaying their return. Passage across a fighting front is not always possible ; similarly, transport overseas or across a neutral country cannot be organised from one moment to the next. Repatriation may, however, be delayed if there are good grounds for believing that medical personnel, at the time of capture, have managed to collect information of value on tactical or strategic matters which they could communicate to their own Army Command.

The two conditions stated in Paragraph 1 are the only admissible ones ; they should really be reasons, not pretexts. These conditions apart, repatriation should be immediate. The system of retention will not have the good results expected of it, unless the principle of repatriation is also scrupulously observed. It is at this price that the new provisions will take on their full value and that the Convention as a whole will retain its high moral significance.

The Convention stipulates that the medical personnel shall be returned " to the Party to the conflict to whom they belong ". These are also the words of the 1929 Convention, and were preferred to the 1906 text, which spoke of the return of medical personnel " to their own army or country ". It was necessary to ensure that the belligerent could not meet his obligation by transferring medical personnel to a part of their country which he himself had occupied. Further, medical personnel might have served in forces other than those of their home country, and it is to these forces that they should be returned.

Paragraph 2. — Medical Personnel awaiting Repatriation.

We have seen above that a certain interval—which should be as short as possible—will elapse between the capture of medical personnel and their return. It was necessary to decide

their status and living conditions during this period, and this is done in the Paragraph under review.

The essential provisions laid down for the benefit of medical personnel retained permanently shall also be valid for those awaiting repatriation : they shall not be considered as prisoners of war, but shall at least benefit by all the provisions of the Prisoners of War Convention. They shall continue to fulfil their duties under the orders of the adverse Party, and shall preferably be engaged in the care of the wounded and sick of their own nationality. We refer the reader to what is said above in this connection on Article 28.

If the Diplomatic Conference reproduced here only the more striking provisions established for the benefit of retained personnel, this does not mean that personnel awaiting repatriation cannot claim also the benefit of the latter provisions and of the general spirit of Article 28, as, for example, the right to have professional scruples in the exercise of their duties respected.

The real reason for so simplifying the Article is that such personnel should normally have to remain only a short period with the enemy, and therefore would in most cases have no need of more detailed provisions.

But if repatriation is delayed and their actual work justifies it, they certainly have every right to demand fuller application of the provisions. Indeed, they should be considered in such cases as having passed, by force of circumstances, into the category of retained personnel, at least in so far as their prerogatives are concerned.

Paragraph 3. — Personal Belongings.

Provision is here made for the principle of respect for private property, already recognised as being equally valid in the case of prisoners of war (Prisoners of War Convention, Article 18), as in the case of civilians.

Amongst the objects to which medical personnel shall retain their rights and which they may take with them on repatriation, the Convention mentions " instruments "—articles

proper to the medical profession, especially to surgeons. All articles, including instruments taken with them, must be their personal belongings. If only entrusted to them by their home country, such articles cannot be taken away, and come under the provisions dealing with Army medical equipment.

Amongst the personal belongings which medical personnel could, under the 1929 Convention, take with them on departure were their arms and vehicles. The 1949 Conference dropped this provision, as its application seemed difficult in practice. It is obvious also that such material could be used for combat purposes.

Therefore, even if the arms and vehicles are the private property of the medical personnel, they shall for the future be subject to capture.

Lastly, medical personnel designated from the beginning for return to their own fighting forces, shall not be alone empowered to invoke Article 30. Retained medical personnel shall obviously be entitled to the benefit of this Article, as soon as they also are nominated for repatriation ; this shall be the case when their help is no longer required, or when their state of health so demands.

Article 31. — Selection of Personnel for Return.

Paragraph 1. — Priorities.

As the Convention provides for the retention of certain medical personnel whose presence is necessary to the prisoners of war, and repatriation of the rest, it had to lay down the rules according to which the Detaining Power would make this choice. But if the Convention fixes certain standards, the main question is who shall remain, this selection logically preceding the other. It is clear that it is only after choosing those who must be retained that the Detaining Power can determine who actually can be returned.

The first element to be taken into account is not contained in this Article, but arises from Article 28, and is self-evident : the priority of needs.

The agreements which belligerents are invited to conclude, or in their absence, a reasonable estimation of the needs of prisoners, will make it possible to decide how many doctors, chaplains, dentists, orderlies, administrative staff, and so on it will be necessary to retain.

The Detaining Power should therefore always classify medical and religious personnel according to the duties they are called upon to fulfil—it could hardly hold back a doctor, for example, to act as a stretcher-bearer or a hospital cook.

After this question of appreciation, we turn to the two distinct provisions in the Paragraph under review which, as we have seen, should apply to the personnel after they have been classified.

(1) — The first prohibits any discrimination founded on race, religion or political opinion. Born out of the painful experiences of the recent War, it uses a formula repeatedly found in the new Conventions, to stress the equal rights of the human beings protected. It is in the form of a categorical prohibition.

(2) — The second provision is different in character. Its effect is, that in the absence of detail which might be expected in an *ad hoc* agreement, the medical personnel shall be repatriated preferably according to date of capture and state of health : those who have been held a long time and those whose health has worsened shall have priority. Equity demands that the Detaining Power should, so far as possible, base itself on these two considerations.

Thus, if successive additions to captured medical personnel occur and their number is too great, rotation shall be introduced, to allow the last arrivals to replace their comrades, who would then go home.

Paragraph 2. — Special Agreements.

Under this provision belligerents can determine by special agreement, as from the outbreak of hostilities, the percentage of personnel to be retained in proportion to the number of prisoners, and the distribution of the said personnel in the camps.

Reference has been repeatedly made to these agreements,

and the desirability has been shown of the Powers accepting the invitation made to them. The retention of medical personnel is so complicated a matter that it calls for more detailed provision, apart from what is actually in the Convention, if the new system is to work satisfactorily and without giving rise to disputes. Such agreements should not be limited to deciding the percentage of personnel to be retained and their distribution in the camps, but should decide also, as already mentioned: (1) if medical personnel can be retained only in proportion to the number of prisoners of their own nationality; (2) the extent to which certain Articles of the Prisoners of War Convention shall be applicable to retained personnel; (3) if the presence in the camps of auxiliary personnel should lead to a reduction in the number of permanent personnel to be retained; (4) to what extent the need for medical specialists in the home forces of the retained personnel is to be taken into account.

Fully conscious of the importance of concluding a special agreement of this nature, the 1949 Diplomatic Conference, in its Third Resolution, requested the ICRC to draft a Model Agreement for submission to the Powers for their approval.

Article 32. — Return of Personnel belonging to Neutral Countries.

We have seen, in dealing with Article 27, the conditions under which a Relief Society of a neutral country can allow its personnel to aid the medical services of a belligerent.

Article 32 is designed to cover cases in which such personnel fall into the hands of a Power at war with the belligerent whom they are assisting.

The Diplomatic Conference profoundly modified the position of medical personnel of belligerent countries by instituting a legalised power of retention. It is clear, however, that the general rules of International Law concerning neutrals preclude any similar change in the status of the medical personnel of neutral countries; the latter may in no circumstances be retained against their will. They remain neutral as much in the new country as they were in the other. In offering medical

help to a belligerent, neutral volunteers, who by definition are not members of forces in their own country but of a private Relief Society, are not incorporated into the belligerent forces, as would be men who enlisted in them as combatants. Article 27, as we have seen, provides expressly that in no circumstances shall the medical assistance of neutrals be considered as interference in a conflict.

The Article dealing with these persons has therefore remained almost identical with the corresponding Article 12 of the 1929 Convention. Nevertheless, while it applied then to the whole of the medical personnel belonging to belligerent forces as well as those from a neutral country, it now covers only neutral volunteers.

Paragraph 1 states that neutral medical personnel may not be retained.

Paragraph 2 provides that they shall have permission to return to their country "as soon as a route for their return is open and military considerations permit". We refer in this connection to what has been said concerning Article 30, Paragraph 1. It is provided that they shall preferably return to their own country or, if this is not possible, to the country in whose service they were.

The Paragraph begins, however, as did the 1929 text, with the words "unless otherwise agreed", by which it is to be understood that the rule of immediate repatriation need not necessarily be followed. In fact, it is possible that the personnel may wish to continue its relief work, and in such case the Convention should not appear to discourage them.

With whom should the Detaining Power come to an understanding? In the first place with the personnel themselves, who shall continue their voluntary work as before, and possibly also with the Relief Society to which they belong. The neutral Power which has given its consent to their passage to the first belligerent country, should perhaps also be consulted. In any case, the terms of an agreement would not have power to alter the rights which every citizen of a neutral country possesses on the territory of any foreign State in which he may happen to be.

Obviously, there is no question of neutral volunteers being

retained, as may be the medical personnel of a belligerent. Neutrals enjoy a special status, and no compulsion may be exercised on them.

Paragraph 3. — This provides that " pending their release, they shall continue their work under the direction of the adverse Party ; they shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were ".

This does not call for commentary, except to point out that " under the direction of ", as used here, has not the same significance as when used in connection with the medical personnel of belligerents, but that it means, so to speak, authority freely consented to.

Paragraph 4. — This is similar to Article 30, Paragraph 3, examined above. Its scope is somewhat wider, however, since it mentions arms and means of transport as amongst the articles of personal property which neutral volunteers may take with them on leaving. The return of means of transport is, however, conditioned by the words " if possible ", since it is evident that cases of physical impossibility may arise.

Paragraph 5. — This provides certain advantages for neutral volunteers, which the 1929 Convention gave also to the medical personnel of belligerents, but which the 1949 Conference did not find possible to maintain in the case of the latter.

Thus the " food, lodging, allowances and pay " of neutral volunteers awaiting repatriation shall not be decided by the Prisoners of War Convention, as will be the case in future for the medical personnel of belligerents, but by the provisions for the corresponding medical personnel of the forces in whose power the neutrals have fallen. This solution is logical, and in conformity with the special status of neutral volunteers.

The Conference took care to add that their food shall be sufficient as regards quantity, quality and variety to keep the personnel in a normal state of health. This formula is derived from the one used in the Third Geneva Convention, dealing with the food of prisoners of war.

CHAPTER V

BUILDINGS AND MATERIAL

Article 33. — Buildings and Material.

Paragraph 1. — Mobile Medical Units.

Under Article 14 of the 1929 Convention, mobile medical units falling into enemy hands kept their equipment and vehicles, and were to be released, together with the said equipment and vehicles, in the same manner as medical personnel and, as far as possible, at the same time. A single exception had been provided for : the captor was empowered to use the material for the care of the wounded and sick. This faculty existed admittedly only in cases of immediate need, namely, in the absence of the equipment required for the care of wounded and sick in the captured formation ; furthermore, the material had to be later restored or replaced. A medical formation was thus considered as a unit and was in principle to be given back as a complete formation.

The far-reaching changes introduced in the 1949 Convention in regard to medical personnel who have fallen into enemy hands and who may in future be rightfully retained, has necessarily led to a radical change as regards the equipment of mobile medical units, which need no longer be restored to the country of origin. The practical obstacles to the restoring of equipment under modern war conditions also influenced the decision of the Diplomatic Conference. It will be seen below that the decision affects only the material belonging to the Army Medical Service, and not that of Red Cross Societies, which, as hitherto, must be regarded as private property.

Contrary to the policy outlined in previous Conventions as regards the material of fixed medical establishments, the equipment of mobile units will not be subject to the laws of

war, but shall be devoted to the care of the wounded and sick. By " wounded and sick " must be understood those who are cared for in the captured unit. If there are no patients in the unit, or if the present ones are discharged, the material shall be devoted to the care of other patients. Fairness demands, however, that the said material should preferably benefit the wounded and sick of the same nationality as the unit from which it was taken.

Paragraph 2. — Fixed Medical Establishments.

The buildings, material and stores of fixed medical establishments shall be " subject to the laws of war ". The sense of this euphemism is that the enemy may regard them as booty and use them for whatever purpose he thinks fit, that is, even for military purposes. As already stated, this course was generally approved by former Conventions, including that of 1929. Nevertheless, an exception, named in the 1906 and 1929 texts, is allowed to this principle, insofar as the said buildings " may not be diverted from that purpose as long as they are required for the care of the wounded and sick ". In other words, the captor may not make use of them, so long as the wounded and sick nursed in such buildings are in need of treatment.

This humanitarian ruling in its turn is subject to the exception of urgent military necessity. If military considerations call for the requisitioning, or even the destruction, of a medical establishment, they will be imperative. A further exception has now been made : before resorting to such extremity, the belligerent must make prior arrangements for the safety and welfare of the wounded and sick who are nursed in the captured establishment.

The Paragraph therefore lays down a principle, derived from the circumstances of war, and then quotes an exception based on humanitarian considerations ; this exception is once more subservient to military grounds, which again are overridden by humanitarian motives. Thus, by alternate compromises between military needs and the dictates of humanity, a *via media* has been found. It may even be affirmed that the

entire Geneva Convention is the outcome of similar compromises between two opposing tendencies. It was due to the founders of the Red Cross, who grasped this fact, and to their successors, who continued to appreciate its importance, that the Geneva Convention gained its prestige and has become a living force.

Paragraph 3. — Safety of Material.

This provision is new; material and stores—not including the buildings—shall not be intentionally destroyed. This ruling is a consequence of experience gained during the recent War, when stocks of medical material are alleged to have been destroyed to prevent them falling into enemy hands. Such practice is wholly contrary to the spirit of the Geneva Convention, the essential aim of which is to " neutralize ", as it were, all persons or objects potentially useful for the wounded and sick, whatever their nationality. The introduction of this new paragraph is therefore most fortunate.

Article 34. — Property of Relief Societies.

As in the 1929 Convention, the real estate and personal property of National Red Cross and other Voluntary Aid Societies, duly recognised and authorised to lend their services to the Army Medical Services (see Article 26), are declared to be private property, and may not therefore be regarded as war booty, or even confiscated (see Regulations annexed to the Fourth Hague Convention of 1907, Article 46).

This provision of course applies only to the property of the Societies engaged in caring for the wounded and sick of the armed forces, and coming within the scope of the assistance lent by these Societies to the Army Medical Service. Property in other use, especially for aid to civilians, is not thereby deprived of protection, but is governed by other clauses of International Law, in particular the Fourth (Civilian) Convention.

However, the property of the Red Cross and other Societies named, insofar as it falls under the present Convention, is

fully protected, whatever its nature and wherever it may be. Protection thus extends to fixed establishments and mobile units, separate objects and vehicles, apparatus and pharmaceutical products, and no distinction is drawn between property in a building belonging to the Society, and in army premises. In the latter case, proof of ownership will have to be produced. National Red Cross Societies will therefore be well advised to mark their stores with the distinctive emblem to indicate their property, as proposed by the ICRC to the Stockholm Conference.

The Convention does not require that ownership of material should be vested in Red Cross Societies ; it will suffice that they are custodians, and that the material (which may include buildings) has been placed at their free disposal by the State, or by private persons.

Red Cross and other Aid Societies are thus, with regard to medical material, in a very advantageous position as compared with the Army Medical Service.

Whilst in 1949 the above solution was not questioned, opinions were greatly at variance in 1906 and 1929. At that time, some held that as the Aid Societies were merged into the Army Medical Service, their material should be placed on the same footing as that of the Forces ; any difference in treatment might, it was said, induce the State to turn its hospitals into Red Cross establishments, to avoid capture of their material.

This view was not endorsed, and humanitarian considerations once again prevailed. It was admitted that Aid Societies, even though strictly dependent on the State in time of war, retained their own personality and their status as voluntary and private institutions. The Rapporteur to the 1906 Conference, Louis Renault, remarked : " To admit that the material of Aid Societies shall be treated as war booty would seriously affect the development of these Societies and make it far more difficult for them to find the resources they require. Private subscribers would hesitate to make the financial sacrifices needed for the purchase of material, if it was likely to be confiscated out of hand."

The material of the Red Cross and of other Societies, though placed everywhere and in all circumstances on the same footing

as private property, is not, however, intangible—such is the sense of Paragraph 2 of Article 34. As in the case of private property in general, the said material is subject to the right of requisition—a right which the belligerent acquires through temporary occupation of territory. Therefore, if the material is necessary to the belligerent forces, it may be requisitioned.

The right to requisition is, however, subject to a twofold limitation : it presupposes firstly, an urgent medical—and not military—need, and secondly, that proper arrangements are made for the care of the wounded and sick concerned. This latter rule is nothing more than a consequence of the undertaking of every belligerent to assist the wounded and to provide for their treatment. The Conference thought fit to stress this fundamental duty once more.

The right to requisition the medical material of a National Red Cross Society must therefore remain an exception ; it must only be exercised with discretion, and in the absence of all other means to assist the wounded and sick. The 1929 Conference had rejected, on the ground of difficulty of application, the proposal that material thus requisitioned should be used only on the spot and restored as soon as it was no longer indispensable. This idea was not put forward again in 1949.

The consequences of such requisition are governed in occupied territory by Article 52 of the Hague Regulations. If the requisitioned material cannot be restored or replaced, fair compensation shall be paid, and receipts shall be given for all material handed over. The Occupying Power must likewise bear in mind the obligations imposed on it by Articles 55, 56, and 63, of the Fourth Convention.

CHAPTER VI

MEDICAL TRANSPORTS

Article 35. — Road Vehicles.

This Article is much simplified as compared with the corresponding Article 17 of 1929. Since the principle of restoring the material of medical units has been abandoned, the same distinctions were no longer required.

The term " medical transport " may signify either convoys or isolated vehicles, and they may carry the sick and wounded, medical personnel, or material. The rules laid down in previous Chapters for each of these three categories remain applicable.

It was sufficient to specify here (Paragraph 1) that medical transport shall be respected and protected in the same way as mobile medical units. The case of the vehicles themselves falling into the hands of the enemy had then to be considered ; this is done in Paragraph 2.

In the absence of specific provision, the rule governing the material of mobile medical units would be applied : the vehicles should have continued to serve for the transport of the sick and wounded.

The 1949 Conference, however, adopted a less liberal solution, because it took into account the importance of vehicles in modern war. Vehicles, as well as the material of fixed medical establishments, are made subject to the laws of war. The captor may therefore take them, and even use them as military transport. In the latter case the Red Cross emblem must obviously be removed beforehand.

There is, however, the usual exception to this principle : the captor is entitled to the vehicles only on the condition that he takes charge of the sick and wounded they contain. The words " take charge of " must be interpreted as safeguarding

the inalienable rights of the wounded : they must be treated as their state of health requires and receive adequate care ; the impounding of the vehicle must not lead to a worsening of their situation.

The 1929 Convention made a distinction between vehicles " equipped " or " specially organized " for the transport of the wounded, and other military vehicles detailed temporarily for this purpose. The first had to be restored, whilst the others could be treated as captured material. This distinction has disappeared in the new text, which makes no provision for restoring medical vehicles.

Thus, all vehicles detailed, whether permanently or temporarily, for the transport of the sick are protected on the field of battle [1]. It was indeed already the case under the 1929 text, at least for vehicles temporarily employed in a medical convoy.

There were clearly good reasons for making this provision. The wounded must be transported as quickly as possible to a hospital. There will not always be an Army motor ambulance available and, as has often happened, whatever vehicle is available will be used. This circumstance should obviously not give any right to open fire on the wounded.

The distinctive emblem must naturally appear on these vehicles for as long as they are detailed for medical duty ; on the other hand, they may display the sign only during such periods. The military authorities must take strict care to ensure that the Red Cross sign will be removed as soon as the vehicle is no longer employed for medical transport. It is

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[1] Certain Delegations at the 1949 Conference feared abuses and would have liked protection to be confined to vehicles detailed exclusively for medical work ; they proposed to delete from the draft a sentence to the effect that vehicles temporarily assigned for medical work would be protected while detailed for this work. The sentence was removed, but—as was underlined at the Conference—the effect is by no means to deprive these vehicles of protection. In actual fact, Paragraph 1 has a very wide application. The sentence to which objection was made was therefore superfluous. To obtain the desired result, it would have been necessary to stipulate in the Paragraph that it referred only to vehicles employed exclusively for medical transport.

important that the serious abuses which occurred during the second World War should not be repeated [1].

In making it thus possible to remove the distinctive emblem —for well-justified reasons—the risk of abuse has certainly been increased. After taking the wounded to the rear under Red Cross protection, there would be a great temptation to load the empty vehicles with war material on their return to the front. If the emblem is kept from negligence, or because there is not time to remove it, there is none the less a grave breach of the Convention. Constant vigilance is therefore essential.

Lastly, the provisions of this Article do not affect medical vehicles belonging to National Red Cross Societies or other recognised Relief Societies. Under the provisions of Article 34, examined above, they shall, in common with all the material of these Societies, be considered as private property and exempted from capture.

Article 36. — Medical Aircraft.

The use of aviation for medical purposes received legal recognition in 1929, when the Diplomatic Conference adopted the new Article 18. As the provision made in that Article was summary, the Conference in its Final Act recommended that regulations should be made at a later stage, in all the detail necessary, to govern the use of medical aircraft in time of war. The ICRC accordingly presented to the XIVth International Red Cross Conference (London, 1930) a separate draft Convention, which was placed on the Agenda of the Diplomatic Conference fixed for 1940, but which the war postponed.

In 1945, when the Committee resumed study with a view to the revision and extension of the Geneva Conventions, it placed the above draft Convention again before the experts. They underlined the fact that Article 18 of the 1929 Convention received only very limited application during the second World War, and that the technical progress of fighter aircraft and

[1] See *General Report of the ICRC, 1939-1947*, Vol. I, p. 210.

anti-aircraft artillery made it illusory to believe that medical aircraft could possibly be given immunity [1]. The most the experts could admit was that the substance of Article 18 might be retained, adapting it particularly to flights over neutral countries. The same opinion prevailed in the 1949 Diplomatic Conference, despite certain proposals to give a wider importance to medical aviation.

Medical aircraft under the 1949 Convention are treated in the same way as in the past : they may serve both for the transport of the wounded and sick, and for medical personnel and material. As in 1929, it was not considered possible to give aircraft searching for the wounded the benefit of immunity.

The type of protection remains the same : the aircraft are treated as mobile medical units, as are likewise medical transport vehicles. Nevertheless—and this is the important difference—they shall be respected only " while flying at heights, times and on routes specifically agreed upon between the belligerents concerned ". It appears in practice that under modern conditions, systems of identification based only on the painting of machines are useless. Aircraft are fired upon from the ground, or from other planes even before they come into sight. Only previous agreement as to routes, heights and times of flight can assure effective security to medical aircraft and give belligerents sufficient guarantee against abuse.

Medical aircraft shall continue to display red crosses on a white ground, but they no longer need to be entirely painted white ; this is considered outdated and superfluous. A sentence provides that they may bear other marks or means of identification agreed upon between the belligerents. Mention was made, for example, of radar and other systems which may be perfected in the future.

Today, as in 1929, an aeroplane, to be protected, need not be specially equipped or definitely detailed for medical work. It may therefore be used temporarily on a relief mission. It

[1] As a matter of fact, it is now a common practice to remove the wounded in militarily protected aircraft.

should, of course, bear the distinctive sign only while on the mission and will be respected only for its duration.

We may note that the Article speaks of " medical aircraft ", and not of aeroplanes. An airship, if it should still happen to be used, could therefore receive the benefit of the Convention ; similarly, any new type of flying machine.

Paragraph 3, which has been simplified, maintains the principle that, unless otherwise agreed, flights over enemy or enemy-occupied territory are prohibited. Military security demands this prohibition ; the risks of espionage would be otherwise too great. If, as a result of an error, a medical aeroplane should infringe this rule, it would evidently lose its immunity and be exposed to the accompanying risks. Nevertheless, every belligerent conscious of his duty would, if at all possible, order the offending plane to land, before resorting to extreme measures. Once the machine was on the ground, it is clear that the protection to which the wounded and medical personnel are entitled in all circumstances should remain, fully and entirely.

Paragraph 4 deals with the summons to land which constitutes a guarantee for the adverse Party and its safeguard against abuse. This very important provision dates from 1929 ; it states explicitly that medical aircraft must obey every summons to land. It applies firstly to aircraft flying over enemy or enemy-occupied territory, whether or not authorised to do so. It applies also to an aircraft which is over its own territory, but close to enemy lines.

If the aircraft refuses to obey, it does so at its own risk, and it is legal to open fire on it. If the machine is already out of range, the summons obviously becomes a mere formality. It should not be forgotten, however, that if the plane refuses to obey the summons and is pursued, it loses the protection of the Convention through its disregard.

The Convention does not state how the summons is to be given : this is a technical question, into the details of which there was no need to enter.

What shall happen to a plane after it has answered the summons to land ? The enemy will make his examination

and, normally, be able to assure himself that the machine serves exclusively medical purposes.

The 1929 Convention, putting this case on the same level as a chance landing, decided that the wounded and sick in the plane, the medical personnel and material, including the machine itself, would continue to have the protection of the Convention. This means that the wounded and sick become prisoners of war, as happens when a belligerent intercepts an enemy medical convoy on the ground. The medical personnel and material, including the aircraft, were treated in accordance with the general rules of the Convention, that is to say, restored, according to the usual procedure. The crew was allowed to return, on condition that its members took no part in operations until the end of hostilities, medical service excepted.

The 1949 Convention at this point adopted a more liberal formula : the aircraft, with its occupants, may resume its flight. This appears just : the object of medical aviation is to allow rapid transport of the wounded and sick. They should not have to suffer from the fact that the enemy exercises his right of examination—all the more so (always presuming that the crew of the plane are guilty of no irregularities) because the summons has, so to speak, been wrongly made. Finally, the plane has actually obeyed the summons to land, and this should be put to the credit of its occupants.

What should happen—it is to be hoped that such cases will be the rarest of exceptions—if examination reveals that an act " harmful to the enemy ", in the sense of Article 21, has been committed ? if the plane is carrying munitions, or has been used for military observation ? The machine loses the benefit of the Convention ; the enemy may seize it, take the wounded prisoner, and treat the medical staff and material according to the general rules of the Convention.

Paragraph 5 deals with forced landings. A forced landing occurs when a medical aircraft, without receiving a summons, is obliged by weather conditions, engine trouble or any other cause, to land on enemy, or enemy-controlled territory.

In spite of the proposal of certain Delegations, the Diplomatic Conference did not consider feasible the solution adopted

for landings made on summons. The view upheld was that considerations of military security had priority. The enemy may therefore take prisoner the wounded and sick, and the members of the crew. The medical personnel shall be treated in accordance with the general rules of the Convention (Article 24 et seq.). Even though Article 36 does not specifically so provide, the material shall be governed by the provisions of Articles 33 and 34. The machine itself will become war booty, as would a medical vehicle on the ground in similar circumstances. If, however, it belonged to a Relief Society recognised by the Convention, it would be considered as private property.

In this Article, the word " territory " should be taken (in the sense of Article 2 of the Chicago Civil Aviation Convention of December 7, 1944) as including the land and adjoining territorial waters over which the State exercises sovereignty, suzerainty, protection, or a mandate. This distinction did not appear necessary in the text of the Article.

Article 37. — Flight over Neutral Countries.

This Article is new and represents an advance in humanitarian legislation.

For several years the ICRC, faced with certain specific cases, had felt the necessity of making such provision. Two interests had to be reconciled : humane considerations on the one hand, and on the other, the rights of neutral States. This double concern was already a dominant factor in the discussions which took place on the wording of Article 14 of the Fifth and Article 15 of the Tenth Hague Conventions, during the Peace Conference of 1907.

It did not seem possible to impose on a neutral State the duty of allowing the unconditional flight of aircraft over its territory. But it did not seem feasible either to leave neutral States at liberty to accord or refuse at will the access of medical aircraft to their territory. It was accordingly decided to adopt the general rule that medical aircraft of belligerents may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call, and at the same time to reserve to neutral Powers the right of placing conditions or restrictions

on the passage or landing of medical aircraft on their territory, making these conditions equally applicable to all belligerents.

The Convention itself gives rise to three express conditions and restrictions which are based on the provisions made in the preceding Article, relative to the rights of the belligerents. Medical aircraft must give neutral Powers previous notice of their passage over their territory ; they must obey summons to alight on land or water ; and they shall be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the belligerents and the neutral Power concerned.

When a medical plane lands in a neutral country, either of its own accord or in response to summons, it may leave again with its occupants [1] after, if necessary, an examination made by the neutral Power. It may be retained only if it is discovered that there have been acts committed which are incompatible with the role of medical aircraft.

The officer in charge may, however, be anxious—for example, because of their state of health—to land in neutral territory the wounded or sick he is transporting, not for the duration only of a brief call, but to leave them there. This operation is allowed, if the local authority of the neutral country agrees. In such a case, and unless there is an agreement to the contrary between the neutral State and the Parties to the conflict, care must be taken by the neutral State that the wounded and sick are not allowed to take any further part in the war. Hospital charges and internment costs shall be borne by the Power on which the wounded and sick depend.

The obligation imposed on the neutral Power to intern wounded and sick landed by a medical plane of a belligerent, is qualified by the words " where so required by International Law ". In fact, International Law makes this requirement for the members of armed forces. But if the wounded on board the plane happen to be prisoners of war, they shall be released. Moreover, certain categories, such as seamen of the Merchant Navy, may be entitled to the benefit of more favourable treatment.

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[1] If there should happen to be wounded prisoners of war on board, they shall be released

CHAPTER VII

THE DISTINCTIVE EMBLEM

Article 38. — Emblem of the Convention.

Except for slight amendments in the wording, no alterations were made in this Article. It gave rise, however, to prolonged discussion during the Conference, and three currents of opinion became apparent :

(1) — A desire to revert to a single red cross sign. The Conference hoped that all countries would at some future time adopt the red cross on a white ground as the sole distinctive emblem, but had to admit that this solution was for the moment ruled out.

(2) — A contrary tendency to press for a greater number of recognised alternative emblems. A proposal was made to admit the Shield of David, in red. It was also suggested that each country should be free to adopt whatever red emblem on a white ground it might prefer.

These suggestions were rejected by the Conference. The risks they present are obvious : the danger of substituting national symbols for an emblem of charity which must necessarily be neutral, and the risk of opening the way for a multiplicity of emblems— which could not fail to detract from the universality of the red cross and lessen its protective value.

(3) — A movement to abolish not only the alternative emblems, but the red cross itself, and to substitute a new emblem, arbitrarily chosen. This radical proposal did not survive examination ; it was at once felt that to abandon the use of an emblem so

universally known and respected, with its accumulated moral significance, would be to endanger what it was intended to protect.

The *status quo* was therefore maintained. The red cross remains the accepted sign, and present exceptions—the red crescent and the red lion and sun—are retained. Moreover, the use of the alternative signs is sanctioned not only for countries using them in 1929, but for States by which they were adopted between 1929 and 1949; from 1949 onwards, however, the Convention is opposed to their adoption by any further countries.

We need not enter here into a discussion of a highly controversial question; it may suffice to recall that the red cross emblem was instituted and maintained by the Diplomatic Conferences with the object of devising an emblem equally international and neutral as the world-wide institution it was to protect. In paying tribute to the country where the Red Cross was born, the founders did not choose the heraldic bearings of Switzerland; by reversing the colours of the bearings they created a new emblem, bereft of any significance the national flag by which it was inspired might carry. Neutrality in regard to race and creed is a fundamental principle of the Red Cross, and the emblem must necessarily have the same character. It has no implication beyond its own, but that is immense in its own right: respect, without distinction of nationality, race, religion, class or opinion, for humanity in its suffering, and for the defenceless, whether friend or foe, who are in need of help.

The clause of the Geneva Convention specifying that the emblem of a red cross on a white ground is formed " by reversing the Federal colours ", has sometimes been thought to signify that the red cross must have the same form as the Swiss cross [1]. This is an obvious misconception. The word " colours " should be taken to refer simply to the red and white (" gules " and " argent ") of the flag [2]. The Minutes of the 1906 Diplomatic

[1] This is defined as having arms equal in size, but greater in length than in breadth by one-sixth.

[2] Had the bearings themselves been alluded to, the word " reversing " could not have been used.

Conference are, moreover, explicit : it was decided not to define the form of the cross, because definition might have allowed dangerous abuses [1].

Neither, for the same reasons, did the Convention define the shape of the white ground, or the shade of red in the cross, as Switzerland has done for its own flag.

Certain National Red Cross Societies, as they are entitled to do, have, for their own use, laid down dimensions for the red cross : the majority seem to have chosen, as the most easy to make, a cross consisting of five equal squares.

Article 39. — Use of the Emblem.

Slight alterations only were introduced into this Article.

The emblem of the red cross (red crescent, red lion and sun for the countries which use them) on a white ground should, wherever practicable, be worn by the personnel and appear on buildings and equipment, when the Convention enjoins respect for them [2]. This condition is clearly necessary if protection by the opposing forces is to have reality.

Another very important point is contained in this Article : the emblem shall be displayed " under the direction of the competent military authority ". The 1929 text read : " With the consent of the responsible military authority ". The new wording is clearly preferable. Firstly, it states quite as strongly as before, that the military commander has control of the emblem, and may accord or withold its use. Often, medical units are camouflaged (at their own risk, let it be said) in front-line positions, in order to conceal the presence of military forces, or their number.

The new text further shows that the military authority is permanently responsible for the use made of the distinctive emblem, and must keep a constant check on it.

Finally, the older wording could give rise to the mistaken idea that " permission " would have to be granted separately

[1] E.g. a belligerent refusing to respect an ambulance because the dimensions of the emblem displayed were not as prescribed.

[2] It could obviously not appear, for example, on all surgical instruments.

for each use of the emblem, whereas in practice, a general permission is most usually given once for all.

Article 40. — Identification of Permaneut Medical and Religious Personnel.

No change was made in regard to the armlet, the badge which allows medical personnel to be easily identified at a distance, except that it should now be " water-resistant ".

As specified in 1929, the armlet should be " affixed " to the left arm : " affixed ", since it must not taken off or put on, and " on the left arm ", as its position must be determined. Like the red cross itself, and for the same good reasons, its form and dimensions are not defined. An armlet can have no value, nor be lawfully worn, unless it is issued by, and bears the stamp of, the military authority.

The ruling of the 1929 text on identity cards has, however, been radically altered.

The former system lacked simplicity and was not uniform ; official personnel could prove their identity either from an entry in their pay-book, or by a separate document ; only the personnel of the Red Cross Societies and Relief Societies who assisted the Army Medical Services had to carry an identity card with photograph. During the recent War, these regulations were perfunctorily observed. Captured medical personnel were often unable to produce evidence of their status and their consequent right to repatriation.

To eliminate these drawbacks, the 1949 Conference adopted the proposal in the draft revised texts, making the identity card uniform throughout the armed forces. All permanent personnel therefore, whether medical staff or chaplains, whether members of the forces or of the Red Cross, must carry the same type of identity card.

It is also recommended that the cards should be standardized in the various armies. A model card is annexed to the Convention, for the guidance of the authorities.

Furthermore, identity cards should, if possible, be made out in duplicate, one for issue, the other to be retained in the

home country. Thus, the status of medical personnel in enemy hands who had lost their identity cards could now be proved beyond doubt by reference to the duplicates.

The identity card created by the Conference is both practical and useful. It should be waterproof ; pocket size should remove the temptation to leave it in the army-pack or at headquarters. The bearer's photograph and his finger-prints or signature provide adequate proof of identity.

The Conference maintained and made more specific the 1929 provisions, whereby medical personnel are entitled to keep their identity cards and armlets in all circumstances, even when in enemy hands. In case of loss, they are entitled to have a duplicate.

In a final Resolution (No. 4), the Conference recommended that States and National Red Cross Societies issue identity cards and armlets to medical personnel in peace-time.

Article 41. — Identification of Auxiliary Medical Personnel.

As observed in dealing with Article 25, auxiliary personnel were not specially protected in the field under the 1929 Convention. If they fell into enemy hands, however, they were entitled to be repatriated.

The position is now wholly altered. Auxiliary personnel on medical duty in the field are protected ; they are not entitled to repatriation after capture.

The need therefore arose of altering the clauses dealing with identification, and, in order to ensure protection, of providing for the wearing of armlets. The Conference rejected the idea of a separate marking, fearing its might lead to confusion. On the other hand, in view of the risk of misuse, it declined to provide personnel who are sometimes military, sometimes medical, with the ordinary permanent armlet, since this would thus have become removable. Auxiliary personnel will therefore have white armlets, with the distinctive sign, of smaller dimensions, in the centre. Although fairly satisfactory, this solution unfortunately makes the red cross less visible at a distance.

Once in enemy hands, auxiliary personnel will, as seen above, be prisoners of war and cannot claim repatriation. It was not therefore necessary to provide them with a separate identity card. But as they may be put on medical duty by the Detaining Power, their usual identity documents (in most cases the pay-book) will specify the training they have received, the temporary character of their functions and the fact that they are entitled to wear the armlet.

Article 44. — Restrictions in the use of the Emblem. Exceptions.

The corresponding provision in the 1929 Convention was most unsatisfactory, inasmuch as it made no distinction between the two different uses of the red cross emblem.

The first—in which it has its essential significance—is when the emblem itself virtually confers protection under the Convention. For brevity, we shall call it the *protective* sign ; it is used in this sense when displayed on premises, persons and things for which the Convention demands respect.

In its second use, the sign is purely *indicatory*, i.e. it merely shows that a person or thing is connected with the Red Cross, but does not necessarily enjoy the protection of the Geneva Convention. This use is customary, for instance, when drawing public attention to buildings or publications.

Failure to bring out this distinction led the 1929 Diplomatic Conference to allow the use of the emblem by National Red Cross Societies in peace-time only, apart, that is, from their work with Army Medical Services. This amounts to saying that, on the outbreak of war, the Red Cross Society should prevent the use of the emblem by all persons, and on all premises or things not devoted to the military wounded, or not attached to the Army Medical Service. Most often, the provision remained a dead letter.

Article 44 of the 1949 Convention draws a clear distinction between the protective and the purely indicatory use of the emblem. It succeeds in satisfying both the needs which were apparent : to safeguard effectively the use of the protective emblem, while at the same time allowing Red Cross Societies

to use widely, as an indicatory sign, an emblem which has become popular and to which they have an obvious right.

Paragraph 1. — The Protective Sign.

It is when it has protective value that the emblem assumes its primary importance; it then becomes the sign usually associated with the Convention.

Paragraph 1 states that the distinctive emblem, as also the title "Red Cross", may not—with the exceptions mentioned in the following Paragraphs dealing with the indicatory sign—be employed in time of peace or war, except to mark premises, persons or things protected by the Convention, or by other international agreements dealing with similar matters. The same provisions naturally apply to the red crescent and the red lion and sun, in countries using these emblems.

The *First Convention* covers the following cases:

Mobile medical units and medical establishments of the Armed Forces (Articles 19 and 42).
Neutral medical units aiding a belligerent (Articles 27 and 43);
Medical personnel (Articles 24 to 27, 40 and 41);
Medical equipment (Articles 33, 34 and 39);
Medical transport (Article 35);
Medical aircraft (Articles 36 and 37);

In addition, the Draft Agreement relating to Hospital Zones and Localities, annexed to the Conventions, provides in Article 6 that these areas shall be marked by the red cross on a white ground. This Draft is, however, not binding until implemented by the Powers concerned.

The other Geneva Conventions cover the following instances:

Second Convention:

Hospital ships and other rescue craft (Article 43);
Medical personnel on duty at sea (Article 42);
Medical aircraft (Articles 39 and 40);
Medical equipment (Article 41).

Fourth Convention:

Civilian hospitals (Article 18);
Staff of civilian hospitals (Article 20);
Civilian medical transport (Article 21);
Civilian medical aircraft (Article 22).

In addition, the Draft Agreement relating to Hospital and Safety Zones and Localities annexed to the Fourth Convention provides (Article 6) that zones reserved exclusively for the wounded and sick may be marked with the red cross. Previous remarks on the Draft annexed to the First Convention apply also here.

The following are the organisations entitled, within the scope of the First Convention, to use the protective sign.

(1) — Army Medical Services. Before the red cross on a white ground became the emblem of the voluntary organisation, the Convention made it the international sign for these Services.

(2) — Voluntary Aid Societies which assist the Army Medical Services, namely *(a)* National Red Cross Societies; *(b)* other Relief Societies, duly recognised and authorized by their Governments.

Let us emphasise, however, as does the text of the Convention itself, that Red Cross and other recognised Societies may employ the protective sign only for the part of their personnel and their equipment which, in war-time, is engaged with the regular Army Medical Service, exclusively employed on the same tasks as the said Service, and, in other words, for practical purposes incorporated into it. Even then the protective sign may be employed only with the consent of the military authorities.

Paragraph 2. — The purely Indicatory Sign.

As already stated, the red cross emblem has a purely indicatory value when used to show that a person or a thing is connected with the Red Cross, without the protection of the

Geneva Convention being thereby conferred or implied. The two purposes of the emblem are so widely different that it may well be asked whether, at the outset, it would not have been better to have adopted two distinct emblems—one to be the visible symbol of the protection conferred by the Convention, the other for use as the flag of the National Red Cross Societies, to cover all their activities. It is obviously no longer possible now to consider the introduction of a new symbol, so care must be taken that the distinction between the two uses of the red cross is unequivocally maintained.

The purely *indicatory* sign may itself be used in three different ways. It serves as an *appertinent* emblem, to indicate membership or property of a National Red Cross Society. On a flag, door-plate or number-plate, it designates Red Cross buildings or vehicles ; as a badge, it identifies staff of a Society. It is used as a stamp or printed mark on publications, letter-paper and parcels. Generally speaking, the emblem will be coupled with the name of the organisation using it.

The *decorative* emblem is the red cross as shown on medals and similar distinctions awarded by Red Cross Societies, on their posters and printed matter, and in the interior of halls and premises. The emblem may, in the last instance and despite the general rule, be large-scale ; as it is displayed inside a building, no one is likely to think that its purpose is to ensure protection against enemy action.

There remains the *associative* emblem, the red cross which may be displayed on first-aid posts and ambulances, even if they have no connexion with a National Red Cross Society, but have that Society's consent. This case will be dealt with when examining Paragraph 4.

A distinction having at last been made in the Convention itself between the protective sign and the purely indicatory marking, the extension of use allowed by the Convention, as compared with the strict law of 1929, could follow without harmful consequences.

National Red Cross (Red Crescent, Red Lion and Sun) Societies may in peace-time, and under municipal legislation,

use the name and emblem of the red cross for their other activities, other, that is, than duty with the Army Medical Service.

A most significant innovation is that the Societies may continue to use the emblem for such activities in time of war, but only in a manner that avoids creating the impression that it confers the protection of the Convention. No misapprehension must be created in the mind of the enemy, who must not be led to attribute protective value to a marking which is indicatory only. To prevent confusion between persons wearing the indicatory emblem and the members of the Army Medical Service, or between buildings which are not protected by the Red Cross and medical establishments to which the Convention gives immunity, the emblem must be of relatively small dimensions, and may not be displayed on an armlet or on buildings.

These restrictions on the use of the emblem are stipulated only for war-time. We cannot, however, over-emphasise the advisability of National Red Cross Societies in time of peace adopting emblems of reduced dimensions for activities other than relief to the military sick and wounded. Should war break out, they would thus be spared the task of reducing the emblems, always a costly process, difficult to carry out at short notice, and which, if not properly done, may lead to serious incidents.

Because of practical difficulties, the Conference did not, as had been proposed, define maximum dimensions for the indicatory emblem. It merely provided that it should be comparatively small in size, that is, small in comparison with the protective sign prescribed for a given category of persons or things. Common sense will decide what is the appropriate size in any particular case. For instance, a flag some three feet square over the entry to a building would not be out of place as an indicatory sign. A flag of the same size displayed on a vehicle would appear to be a protective sign, and should therefore be reduced to about one-fifth. A badge of this size would in turn be too large for personal wear, and should be still further reduced (half an inch to one inch).

But even though recognised Relief Societies other than

the National Red Cross have the right to employ the protective sign, the emblem, when used as an indicatory sign, characterises membership of the Red Cross and is therefore reserved exclusively to the Red Cross Societies.

The Convention, in allowing the Societies to use the emblem otherwise than for their aid to Army Medical Services, specifies that they shall do so " in conformity with the principles laid down by the International Red Cross Conferences ". These words are a useful addition and represent an agreed solution for a problem which was discussed at length during the preparatory study.

Since their inception, the activities of National Red Cross Societies, limited at first to caring for the sick and wounded of land armies, have continued to expand, until they now apply to all, or nearly all forms of human suffering. They always referred, however, to direct assistance to the victims of war or national disaster. During the last War, the Red Cross in certain countries entered a new field, by devoting itself to work of a social or patriotic character, e.g. dispatch of parcels to soldiers at the front, organising welfare schemes and recreation for combat troops, teaching army personnel to swim, providing social assistance for the families of enlisted men, and so on. For the first time, the Red Cross was concerned with persons who were not, in the strict sense, victims of war.

The ICRC, without in any way wishing to deprecate these eminently useful activities, drew attention to this new development. In its view, a progressive extension on these lines carried the risk of leading the Red Cross, by slow degrees, to lend its name and emblem to activities which, in the last analysis, are only remotely related to its real character and its essential function.

It soon became clear that it would not be possible to classify Red Cross activities in two categories, those permitted and those forbidden. What was needed was a criterion which could be applied to each case ; in other words, to measure each against fixed standards. The fundamental principles of the Red Cross, as formulated by the International Red Cross Conferences, offer the desired touchstone.

Paragraph 3. — International Red Cross Organs.

Under the 1929 text, the International Committee was not accorded the right to use the emblem which it had itself devised and which it was the first to employ. No one, however, seeing the important work the Committee is called upon to do in time of war, ever contested this right. The League of Red Cross Societies was similarly affected.

The 1949 Conference dealt with this peculiar oversight : the International Red Cross bodies are now officially authorised to use the red cross sign without restriction. In other words, the emblem becomes protective when circumstances and the nature of the work require ; for the rest — that is, in the majority of cases—it shall be purely indicatory.

Paragraph 4. — Ambulances and First-Aid Stations.

The 1929 Convention named an instance where, quite apart from any connection with the National Red Cross Society but under its authority, the purely indicatory sign might be used : to mark, in peace time, the position of First-Aid Posts intended exclusively for the free treatment of sick or injured civilians. At public meetings and wherever crowds are assembled, Aid Posts are thus indicated. Highway aid posts, which serve in case of motor accidents, are a familiar sight. That recourse was had to the red cross sign shows how real is its power of suggestion—the red cross on a white ground automatically evokes the idea of aid.

The 1949 Conference maintained this exceptional use of the sign and extended it, under the same conditions, to motor-ambulances. Since police regulations in many countries grant right of way to ambulances, as to fire engines, it is essential that they should be clearly and uniformly marked. In any case, this new provision did no more than bring the law into line with actual practice.

It should here be emphasised that such exceptional uses depend on the express authorisation of the National Red Cross Society. The latter, in giving its consent, would be well advised to keep a strict check on the use made of the sign, so that

misuses may not occur, which would lessen the respect due to the red cross emblem in all circumstances.

Article 53. — Misuse of the Emblem [1].

The 1949 Convention marks a further stage in the campaign undertaken in 1906 and renewed in 1929 against misuse, still so regrettably frequent, of the red cross sign.

Article 53, as likewise Article 28 of 1929, prohibits not only misuse of the purely indicatory sign, as for example, its use for commercial purposes, but also the infinitely more serious abuse of the protective sign in time of war. This latter point was unfortunately ignored by most of the legislatures which passed laws giving effect to the provision in the 1929 Convention. This unfortunate state of affairs was due, no doubt, to the fact that the fundamental distinction now established between the two aspects of the emblem had been too long ignored.

It might even have been desirable that the profound difference in kind between the two sorts of possible abuse should have been more clearly marked than is done in the new Convention. Abuse of the protective sign in time of war might have been made liable to severer penalties than is the illegal use of the indicatory sign in manufacturing or trade marks. The fact that buildings in the war zone display the red cross sign, although not entitled to do so, may compromise the security of buildings which legally bear it, and consequently undermine the respect due to the Convention. The responsible Sub-Committee, which might have introduced the improvement, overlooked the question.

In any case, even though the 1949 text might have been more precise, it is still complete and adequate in itself. The States themselves are now responsible for giving effect to the new clauses, and adapting their legislation so as to forbid and punish both sorts of abuse. The National Red Cross Societies,

[1] This Article does not occur in the relevant Chapter dealing with the Distinctive Emblem, but in Chapter IX (Repression of Abuses and Infractions).

to whose heritage the emblem largely belongs, would therefore be well advised to use their influence to that end.

If the protective sign must, as a first care, be safeguarded against any form of misuse, it is no less true that misuse of the purely indicatory sign should also be relentlessly put down. Such abuses are apt to lower the standing of the emblem, and therefore to compromise the good name of the Red Cross. One could even say that, indirectly, they may weaken the value of the protective sign. It should never be forgotten that the emblem, whatever its legal significance in the circumstances attending its employment, is always the identical red cross on a white ground. Each representation of the sign will necessarily participate, to some extent, in the aura which attaches to the emblem in its highest significance. The public, seeing the red cross on objects which have nothing to do with any charitable action, may fail to recognize it for the protective sign it is in other circumstances of the most vital importance.

Article 53 is much improved as compared with the earlier text. It states, first of all, an absolute prohibition : misuse is forbidden at all times. Article 28 of the 1929 Convention provided only that " the Governments of the High Contracting Parties... shall take or shall propose to their legislatures " the measures necessary to prevent abuse.

A further improvement is the express provision that all red cross signs not authorised by the Convention shall be abolished, irrespective of the date of introduction. This interdiction was, without the slightest doubt, already provided for in the 1929 text [1]. Nevertheless, certain States, in obedience to constitutional principles, allowed in their consequential legislation the continuance of rights previously acquired. It is therefore most satisfactory that the wording is now clear and unequivocal.

If this precision has been brought into Paragraph 1 dealing with the red cross sign, it does not occur in Paragraph 2 (Swiss

[1] On this point we cannot agree with the opinion expressed by Paul Des Gouttes in his *Commentaire de la Convention de Genève de 1929.* (Geneva, 1930, pp. 206-207).

armorial bearings), but this does not signify that acquired rights could be here invoked. The use of the Swiss colours was actually prohibited by the 1929 Convention and, like the colours of all foreign States, by municipal law as well as by established international custom. What was needed was to reinforce the latest defences set up for the protection of the red cross sign.

Still on the subject of the prohibition to display the Swiss colours, the new text stipulates that it is not only " by reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours ", but also, and above all, because " of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention ". When the 1906 Geneva Convention prohibited misuse of the red cross sign, the Swiss flag became popular as a distinctive sign for chemists' shops and as a trade-mark on medical products. Public confusion between the two emblems was thus exploited.

The double prohibition of the improper use of the red cross sign and of the Swiss arms has immediate binding force for all States party to the 1929 Geneva Convention which had already introduced the prohibition.

The few States not party to the 1929 Convention may, under Paragraph 3, grant to prior users of the red cross emblem a time-limit, not to exceed three years, to discontinue such use. A further happy innovation is that, during the above period, the said use shall not be such as would appear, in time of war, to confer the protection of the Convention. Therefore, only purely indicatory signs may still continue for a limited period to be employed.

No such period of grace can be allowed in these States, however, for improper use of the flag of the Swiss Confederation. This is only common sense because, as seen above, the flags of States have for centuries been thus respected.

Paragraph 4 introduces a completely new provision. Illegal use, not only of the red cross sign, but also of the alternative emblems which replace it in certain countries (red crescent, red lion and sun) are henceforth prohibited in all States party

to the Convention. This prohibition shall not, however, have effect on rights acquired, but shall apply only in the future.

Article 54 provides that the signatories shall, if their legislation it not already adequate, take steps to prevent and repress, at all times, the abuses referred to under Article 53. The provision thus has the prescriptive force it lacked in the 1929 Convention, which spoke only of proposals to be made by Governments to their legislatures.

Article 53 has, in addition to very welcome improvements, the advantage also of following the general lines of the corresponding provision of 1929. There will, therefore, be no need to repeal or amend profoundly the many laws enacted in several countries as a result of the previous Convention. Existing laws may be easily adapted to accord with the new Convention. Municipal legislation is still, however, very inadequate in many countries, even in respect of the provisions of 1929. It is therefore to be hoped that States, faced with the formal obligation of the new text, will take the opportunity to give better legal protection to the emblem of the Convention against every kind of abuse, and will intensify a relentless campaign against the unscrupulous and too frequent misuse which undermines the authority of the emblem and its high significance.

GENEVA CONVENTION No. II FOR THE AMELIORATION OF THE CONDITION OF WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES OF AUGUST 12, 1949

The Second Convention, known as the Maritime Convention, is an extension of the First Geneva Convention (Wounded and Sick), the provisions of which it adapts to naval warfare. It has the same object and the same general arrangement as the First Geneva Convention and protects the same persons, adding however a further category : the shipwrecked.

It may be noted that Article 13, which determines the categories of persons who benefit under the Convention, extends its provisions to include the crews of merchant vessels, in so far as they do not benefit by more favourable treatment under any other provision of International Law.

In view of this close correspondence, we shall limit our study here to the provisions which differ notably from those of the First Convention.

CHAPTER III

HOSPITAL SHIPS

Article 22. — Notification and Protection of Military Hospital Ships.

This Article shows no fundamental changes as compared with the corresponding text of the Tenth Hague Convention of 1907.

Hospital ships are vessels that have been built or equipped specially and solely with a view to assisting the wounded, sick and shipwrecked, and for their care and transport. Article 33 further stipulates that merchant vessels which have been transformed into hospital ships cannot be put to any other use throughout the duration of hostilities. These ships are thus absolutely and definitively devoted to their special purpose ; because of this, they can be granted complete immunity without risk of abuse.

The 1949 Conference laid down the procedure for their notification to the adverse Party, this being indispensable to their protection and exemption from capture. Thus, the names and characteristic features of hospital ships must be communicated at least ten days before they go into service. Details to be notified include the gross registered tonnage, the length from stem to stern, and the number of masts and funnels.

Certain Delegations to the Geneva Conference proposed that only hospital ships of more than 2,000 tons should be protected, as recognition of ships smaller than this would be difficult. This proposition was not accepted ; it would have made countries which are not great maritime Powers incapable of putting hospital ships into service. Under Article 26, hospital ships and their life-boats shall be respected and protected whatever their displacement. Nevertheless, the same Article provides that to ensure maximum comfort and security, belligerents shall preferably utilise for long-distance transport

of the wounded only hospital ships over 2,000 tons gross. This is simply a recommendation, with the object of giving hospital ships the additional safeguards of material security which result from better visibility. It in no way affects the legal protection to which all hospital ships are entitled, whatever their tonnage and wherever they may be.

We postpone to our examination below of Article 43 the question of the marking of hospital ships—indispensable in ensuring to them the protection to which they are entitled.

Article 24. — Hospital Ships of Red Cross Societies and private individuals.

Under the First Convention, the medical units, the personnel and the material of the Red Cross and other Relief Societies who assist the Army Medical Services, are protected equally with the latter. The same rule also applies at sea. Moreover, the Convention has provided for the possibility of private individuals putting hospital ships into service.

Hospital ships of such Societies or individuals are treated in exactly the same way as military hospital ships, and the provisions of Article 22, examined above, are applicable to them in their entirety. Procedure for their notification to the adverse Party is precisely the same. It is noteworthy that the Convention does not say that the ships should be the property of the Societies or individuals ; it is enough that they are utilised by them.

Two special provisions are added for these ships : they must have an official commission from the Party to the conflict on which they depend, and they must also be provided with a certificate of the responsible authorities, stating that the vessels were under their control while fitting out and on departure. These requirements show clearly that hospital ships of Relief Societies and individuals form part, like medical units on land, of the Medical Service of the country they serve, and are placed under the responsibility of its military authorities.

Article 25. — Hospital Ships of Neutral Countries.

What we have referred to, in commenting the First Geneva Convention, as the humanitarian assistance of neutrals, finds its corollary here in war at sea. National Red Cross Societies, other officially recognised Relief Societies, or even private citizens of neutral countries, may assist the Medical Services of one of the belligerents by making a hospital ship available, provided the consent of the neutral Government and the authorisation of the belligerent himself are obtained. Such hospital ships must be placed under the control of the belligerent, and their notification to the adversary must be made in conformity with the procedure described in Article 22. They are then, insofar as the protection to which they are entitled is concerned, treated in the same way as the military hospital ships of a belligerent.

Article 27. — Coastal Rescue Craft.

The Tenth Hague Convention accorded protection to " small craft which may be used for hospital work ". But such protection arises only from a provision of Article 5 referring to the distinctive sign—which is, to say the least of it, surprising.

The 1949 Conference devoted a separate Article to coastal rescue craft. In many countries where coastal fishing is highly developed, these craft, often of appreciable tonnage, play an important part as rescue boats.

They will be protected in the same way as hospital ships, wherever they may operate. Nevertheless, this protection is not absolute, but applies " so far as operational requirements permit ". It is clear that in narrow seas, which hamper naval manœuvres, belligerents cannot be expected to tolerate the traffic of a large number of speedy enemy coastal craft.

To enjoy immunity, coastal craft must fulfil certain conditions. They must be employed by the State or by officially recognised Relief Societies. The idea of extending protection to craft utilised by private individuals was abandoned because, in the absence of adequate control, it would leave the way open to abuse. It is not difficult to imagine owners calling their craft " life-boats ", in order to safeguard them. The

utilisation of such craft by the State, however, or by Relief Societies, seems to afford the necessary guarantees.

A further requirement is that the conditions laid down for hospital ships in Articles 22 and 24 must be observed. This means that the names and description of such craft must have been communicated to the Parties to the conflict at least ten days before their use in time of war ; in addition, craft utilised by Relief Societies must also have received an official commission and bear a certificate of the responsible authority, stating that they have been placed under its control.

The reference made in Article 27 to Article 22 does not signify that coastal rescue craft should in time of war be devoted exclusively, or even mainly, to assisting shipwrecked military personnel. Article 27 speaks of " small craft employed... for coastal rescue operations ", in general. Moreover, the object of this provision is to allow Relief Societies, even in time of war, to continue their rescue work, even if it usually operates for the benefit of civilians.

Several Delegations proposed that the Conference should limit the protection of the Convention to low-speed craft. This was to avoid the possibility, for instance, of these craft being misused for military reconnaissance. The Conference did not accept this point of view, considering it to be in the interest of the wounded and the shipwrecked to be brought to land as quickly as possible.

Finally, coastal rescue craft should have markings ; these will be referred to in our treatment of Article 43.

Article 27 has a second paragraph which is new : fixed coastal installations used exclusively by coastal craft for their rescue work shall be respected and protected as far as possible.

Even though such installations are on land, they are mentioned, and rightly so, in the Maritime Convention, because they are closely related to the use of coastal rescue craft. This indeed was the reason why it seemed proper to grant them a certain degree of protection. The services expected from lifeboats would be seriously compromised, if it was permissible to deprive them of their coastal installations.

CHAPTER IV

PERSONNEL

Article 36. — Protection of the Personnel of Hospital Ships.

Despite the fact that the 1907 Convention did not devote any provision to the personnel of hospital ships, they were obviously protected and exempt from capture. Article 36 of the 1949 Convention is only the statement of a self-evident rule.

We have pointed out, in dealing with the provisions which relate to medical personnel of the land forces, the radical change which they new First Convention made in their regard, if they should fall into enemy hands : it is made fully legal to retain some of them in order to assist in the treatment of prisoners of war.

At sea, the solution adopted is completely different, especially in regard to the personnel of hospital ships. The liberal conception of 1864 and 1907 is retained in its entirety. Thus, the religious, medical and hospital personnel of the hospital ship and its crew may neither be captured, nor retained. This difference of treatment is fully justified : without its personnel and crew, both equally indispensable, the hospital ship could no longer fulfil its purpose, and as was remarked, would be simply a derelict.

Two further stipulations reinforce still further the protection of the personnel and crew, for the complete period of their service : they may not be detained, if they have had to leave their ship temporarily or disembark ; and secondly, the fact that there are no sick or wounded on board at a given moment does not cause the protection to cease. The ship must be free to sail, even if empty, and to put to sea at any moment.

Article 36 covers only the personnel who are necessary to work the ship. It does not cover medical personnel over and above that which the ship is authorised to transport in virtue of Article 35, sub-paragraph 5. The treatment of such persons is dealt with in the following Article.

Article 37. — Medical and Religious Personnel of other Ships.

This Article deals with the religious, medical and hospital personnel, other than those of hospital ships, who may fall into enemy hands. The scope of the Article is wide, but in practice it refers most often to the medical personnel of captured ships. Such ships may belong both to the Navy and to the Mercantile Marine.

For the moment, let us examine the position of the medical and religious personnel of warships, who belong to the Naval Medical Service or the Chaplains Service, and are to be protected in the same way as corresponding personnel of the land forces; and furthermore, what shall happen to them if they fall into enemy hands.

For the reasons explained above (Article 36), the Diplomatic Conference did not adopt in their regard the same solution as for personnel of the land forces. They shall have the benefit of a more liberal treatment, which, however, will be less favourable than that of the personnel and crews of hospital ships.

Thus, the Convention provides that the personnel to whom we refer may " continue to carry out their duties as long as this is necessary for the care of the wounded and sick ". This does not mean—as the following sentence of the Article clearly shows—that they may refuse this duty, but that they may not be prevented from carrying it out. The context also shows that the wounded and sick above-mentioned are those only who happen to be on board the same ship—capturing or captured—as the personnel referred to.

When the presence of the medical personnel is no longer indispensable on board, they shall " be sent back as soon as the Commander-in-Chief, under whose authority they are,

considers it practicable ". " Sent back " means return to their country, or to the forces on which they depend. They may take their personal property with them on leaving the ship.

Such is the rule, different from what has been adopted for the land forces, but conforming to the traditional conception of 1864 and 1907. It is, however, no longer absolute, but subject to an exception : the right to detain some of the personnel, if the health or the spiritual needs of the prisoners of war so demand. The expression " prisoners of war " cannot, in our view, refer only to prisoners who are on board the ship. Without doubt, this will be most often the case ; nevertheless, the wording of the Article seems to allow the capturing Power to retain medical and religious personnel to assist in caring for prisoners of war already on land.

The medical personnel should be disembarked as quickly as possible, and on landing they become subject to the provisions of the First Convention (Articles 24 to 30), examined above.

There still remains the religious, medical and hospital personnel of the Merchant Navy who fall into enemy hands. According to Articles 12 and 13, the Convention also applies to members of Merchant Navy crews who are wounded, sick or shipwrecked, unless they benefit by more favourable treatment under any other provision of International Law.

Article 37 under review will therefore apply to the medical and religious personnel detailed to assist these persons, in so far as they themselves have not the benefit of more favourable treatment. With this reservation, what we have said about the medical personnel of warships is equally valid with respect to medical personnel of the Merchant Navy.

Nevertheless, one could not imagine that medical personnel belonging to the Merchant Navy should be detained under the terms of Article 37, Paragraph 2, to assist in treating prisoners of war. On the other hand, their retention could be justified for the purpose of caring for merchant seamen in enemy hands.

CHAPTER V

MEDICAL TRANSPORTS

Article 38. — Ships used for the Conveyance of Medical Equipment.

In Article 38, the Diplomatic Conference introduced into the Convention a new provision of very real humanitarian importance. It is fully in accord with the spirit of the Conventions and their fundamental principle of placing the wounded and sick outside the struggle, and assuring them of treatment irrespective of nationality.

Apart from hospital ships, a new category of ships is granted immunity. Free sea passage of medical equipment for the use of the military sick and wounded (even when they are in their own countries) shall be allowed.

To be eligible for protection, such ships must fulfil several conditions. They must, for example, have been " chartered (it would perhaps be more correct to say " detailed ") for that purpose ". They may transport only material intended for the treatment of the wounded and sick of the armed forces, or for the prevention of diseases to which they are exposed. Finally, particulars of the voyage must have been notified to the adverse Party and agreed to. When these conditions are fulfilled, the adverse Party has still the right of boarding these ships for control purposes, but not of seizing the equipment carried.

The adverse Party may not dispute the principle of transport —which the Convention authorises as of right—but only the " particulars regarding their voyage " : route, date, speed, markings, etc. ; any objections it may make must be well-founded and not mere pretexts.

Article 38, Paragraph 2, provides that belligerents may agree to place neutral observers on board such ships to keep a check on the material carried. This is similar to the provision made in Article 31, Paragraph 4, for having neutral observers on board hospital ships to ensure the strict observance of the Convention.

CHAPTER VI

THE DISTINCTIVE EMBLEM

Article 43. — Marking of Hospital Ships and Small Craft.

The complete inadequacy of the system of markings adopted for hospital ships in 1907, before military aviation existed, had long been generally recognised. Under the Hague Convention the outside surfaces of the ship were painted white with a green or red band, and it wore the Red Cross flag. From 1937, the experts recommended placing large red crosses on a white ground, on the hulls and bridges of hospital ships. During the recent War, the belligerents did in fact adopt this mode of identification. There is evidence that the lack of a modern system of marking which would identify a ship at long range was the cause of most of the attack against hospital ships.

Therefore, the Diplomatic Conference substantially altered the 1907 text, while rejecting the radical innovations which some Delegations proposed, such for example, as painting the entire ship orange and black. In its anxiety to find a simple and practical solution, the Conference likewise did not agree to an arrangement of signs in the superstructure.

The marking of hospital ships, whether they belong to a State or a Relief Society, has been made uniform. As formerly, all external surfaces of the vessel shall be white. The use of green or red bands is abandoned, but one or more crosses painted dark red, and as large as possible, must be displayed on each side of the hull and on the horizontal surfaces, so as to ensure maximum visibility from air and sea.

If " dark red " is spoken of, this evidently does not mean that the ship which does not display crosses of this particular colour would not be protected ; the reference is simply a recommendation, the purpose of which is to increase the security of the vessel.

Hospital ships shall continue to fly the white flag with a red cross. The Conference indicated its exact positions : it

shall be flown from the mainmast, and at the highest point possible.

At night, and in time of reduced visibility, hospital ships must take measures to render their painting and the distinctive signs apparent. The Conference preferred, however, not to specify any particular system of lighting.

Lifeboats of hospital ships, coastal lifeboats and other craft protected by the Convention must adopt a system of marking similar to that of hospital ships.

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