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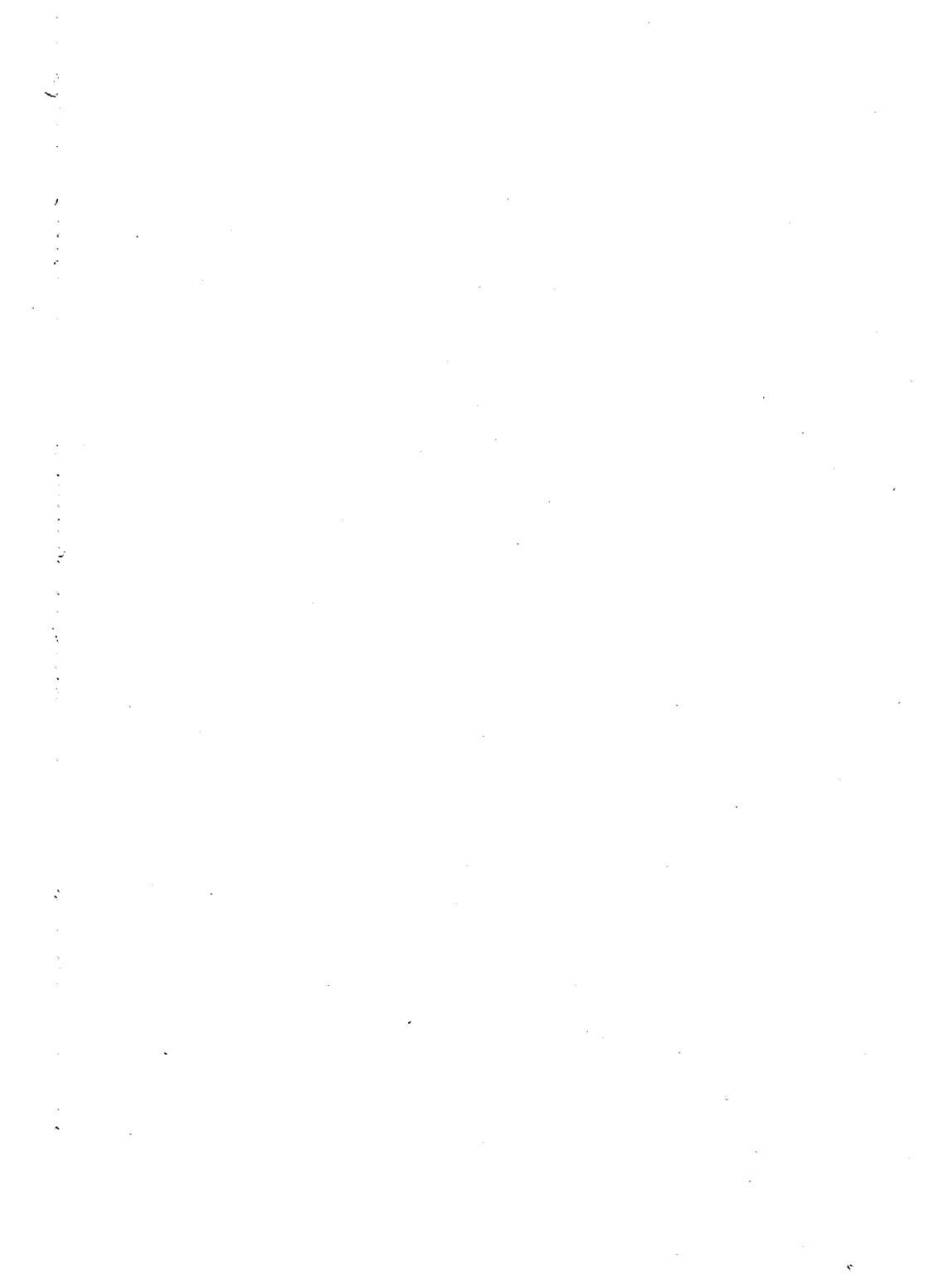
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## CIVILIAN HOSPITALS AND THEIR PERSONNEL<sup>1</sup>

Commentary on Articles 18 to 20 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

### ARTICLE 18. — PROTECTION OF CIVILIAN HOSPITALS

*Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.*

*States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.*

*Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorized by the State.*

*The parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.*

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<sup>1</sup> See *Revue internationale de la Croix-Rouge*, August 1953, page 610.

*In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.*

## GENERAL AND HISTORICAL

Article 18 is the first of a group of three Articles on the protection of civilian hospitals and their personnel. There were two reasons why it was found necessary to lay down precise rules in the matter. In the first place the Geneva Conventions did not previously protect civilian hospitals, but only military hospitals.

In the second place experience, especially in the last World War, showed how difficult, and often impossible, it was in view of modern technical developments of warfare to ensure respect for civilian hospitals on the sole ground of the abstract principle that anything "civilian" should be sheltered from hostilities. The few general rules of Article 27 of the Regulations concerning the Laws and Customs of War on Land, which were annexed to the Fourth Hague Convention of 1907, and again Article 5 of the Ninth Hague Convention on bombardment by naval forces of the same date, both of which covered civilian hospitals, no longer conformed to the conditions of modern war.

Article 27 of the Hague Regulations merely cites in summary fashion the problem of the protection of hospitals, as well as buildings dedicated to religion, art, science or charitable objects, and provides that they should be marked by "distinctive and visible signs" without specifying what signs. Article 5 of the Ninth Hague Convention stipulates that "hospitals, and places where the sick or wounded are collected" should be protected and indicated "by visible signs, which shall consist of large, stiff, rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white". Here therefore there is specification of the marking; but it is only to afford protection against bombardment by naval forces that any particular sign is proposed.

It was in order to remedy the notorious inadequacy of these provisions that the attempt was made immediately after the First World War to take steps to adapt the law to the new material circumstances, on the lines of the solution embodied in the Convention of 1864 concerning the Sick and Wounded for Army Medical establishments, by the provision of a distinctive sign to indicate the presence of hospitals, on the ground that the practical value of a principle depends on its application.

Certain countries accordingly had recourse to a system for giving civilian hospitals the benefit of the Geneva Convention. The idea was to "militarise" civilian hospitals by placing them under military authority, management and discipline. But, if this system is to be recognised as valid by the enemy, there is a second condition which must at the same time be realised; and that is that the "militarised" hospitals must be effectively, or at any rate partially, used for military sick and wounded. The militarisation of civilian hospitals in wartime would not therefore bring them *ipso facto* under the benefits of the Fourth Convention. A hospital would have therefore to fulfil both the conditions above indicated, before it could make an undisputed claim to protection under the Convention, and obtain from the military authority the right to display the white flag with the red cross.

Certain belligerents (including Germany and Italy) towards the end of the Second World War marked civilian hospitals by a red square on a white circle; and the sign was recognised by the enemy Powers. The Singhalese authorities also took similar action in regard to their civilian hospitals by the adoption of a sign consisting of a red square in a white square covering a ninth part of the latter.<sup>1</sup>

But these systems, though they may have rendered service, were no more than palliatives, occasional solutions which did not meet the need for a general rule affording effectual protection to civilian hospitals, based on provisions under a Convention of universal application.

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<sup>1</sup> *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pages 708-709.

There were three possibilities open in such case :

1. The Geneva Convention might be extended to cover all civilian sick and wounded (including the protection of civilian hospitals),
2. The establishment of a quite separate Convention dealing with the protection of all civilian sick and wounded (as a corollary to a Geneva Convention relating exclusively to military sick and wounded),
3. The establishment of special provisions by Convention for the protection of civilian hospitals, the existing Convention itself in part covering civilians, who are victims of an act of war and sick persons in military hospitals.

The preliminary Conference of National Societies of the Red Cross, to which the International Committee in resumption of its enquiries, which had been abruptly interrupted by the war, submitted the question in 1946, was definitely in favour of the first of the above three solutions, on the ground that it was desirable for civilian hospitals to be protected on the same footing as military hospitals by the Geneva Convention. That was only logical, inasmuch as the Conference had recommended the extension of the Convention to civilian sick and wounded, as well as to the personnel, buildings and equipment dealing with them.

In addition to this question of principle the Committee had submitted to the Red Cross Conference two subsidiary questions.

The first of these questions was whether purely civilian hospitals should be entitled to use the sign of the red cross on a white background for their protection, or whether a special distinctive sign should be adopted to mark them, as certain belligerents had done in the Second World War.

The Conference was of opinion that civilian hospitals should be given the right to use the Geneva Convention emblem and that the idea of creating a new emblem should be dropped as liable to lead to confusion.

The second subsidiary question was that of the extent of the protection to be accorded to the different buildings concerned.

What buildings should be protected? Should the term "civilian hospitals" include dispensaries, maternity homes, clinics, orphanages, refuges and so on?

The Conference was of opinion that "civilian hospitals" should mean hospitals giving treatment to wounded and sick civilians under authorisation by the State to do so: so that it would be these buildings alone, which would come under the Geneva Convention, and be entitled to display the Red Cross emblem<sup>1</sup>.

In the following year the Conference of Government Experts, differing from the Conference of Red Cross Societies, took the view that the Geneva Convention should retain its traditional field of application and be confined to the protection of armed forces. It was accordingly in favour of applying certain main principles of the Convention to sick and wounded civilians by the introduction of special Articles in the draft of the Convention for the general protection of civilians. In regard to civilian hospitals the Experts agreed with the Conference of Red Cross Societies that the hospitals should have special protection, if (a) recognised by the State and (b) organised for the permanent purpose of treatment of sick and wounded civilians. The problem of marking hospital establishments was thus solved by the Experts in accordance with the proposal of the Preliminary Conference of Red Cross Societies, that is to say, by the adoption of the red cross emblem on a white background, its use being left subject to the consent of the military authority<sup>2</sup>.

The provisions, which the International Committee of the Red Cross proposed to the XVII International Red Cross Conference of 1948, were closely based on the ideas of the Experts, and were approved by the Conference without marked change. The Conference adopted the statement of the qualifications of a civilian hospital, and made the joint consent of the

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<sup>1</sup> See *Report on the Work of the Preliminary Conference of National Red Cross Societies*, Geneva, 1947, pages 63-64.

<sup>2</sup> See *Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims*, Geneva, 1947, pages 69 ff.

State and of the National Red Cross Society a condition for its use of the emblem<sup>1</sup>.

The Diplomatic Conference of 1949, being called upon to take the final decision on the Draft Convention, was unanimous in recognising the need for better protection of civilian hospitals and for provision for their marking. There were however very marked differences of opinion on the restrictions to their marking and the way it should be done. The difficulties arose at first chiefly in connection with the definition of "civilian hospitals", and the conditions to be laid down with regard to their marking; and it was not until after prolonged and animated discussions<sup>2</sup> that the opposing views were reconciled in the wording which the Conference finally adopted — a wording which as we shall shortly see, has all the characteristics of a compromise.

## PARAGRAPH I. — DEFINITION AND PROTECTION

### I. *Object of Protection*

A. *General Principles.* — The principal object of Article 18 is to protect "civilian hospitals organised to give care to the wounded and sick, the infirm and maternity cases". Indirectly it at the same time protects the patients (wounded, sick, infirm and maternity cases) in these hospitals. The enumeration of patients, which except for the case specified in the second paragraph of Article 19<sup>3</sup> is exhaustive, does not provide a precise definition of civilian hospitals.

The wording of paragraph 1 appears to repeat itself. In ordinary language civilian hospitals are precisely establishments organised to give care to the wounded and sick, the infirm and maternity cases. No establishments, which were not organised

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<sup>1</sup> See *XVII International Red Cross Conference: Revised and New Draft Conventions for the Protection of War Victims*, Geneva, 1948, page 120.

<sup>2</sup> See *Final Record of the Diplomatic Conference of Geneva 1949*, II-A, pages 701-703, II-B, pages 392-395 and 469-472.

<sup>3</sup> See below, page 49.

for these purposes, would be civilian hospitals. The repetition would to some extent be eliminated, if the clause "organised to..." were between commas, thus becoming an attribute in opposition to the words "civilian hospitals". This would seem to be the proper interpretation of the definition. Logically therefore the opening words of the paragraph should read as follows: "Civilian hospitals, *that is to say, establishments* organised to give care to the wounded and sick, the infirm and maternity cases..."

Why was this assuredly not very satisfactory definition inserted in the Convention? The answer is to be found in the preparatory work for the Diplomatic Conference, and especially in the discussions in the Conference itself. The text, which emerged from the XVII International Red Cross Conference, provided for "Civilian hospitals, recognised as such by the State and organised on a permanent basis to give care to..." That was a clear definition, inasmuch as it made the civilian hospitals subject to two restrictive conditions, namely (1) official recognition and (2) permanence in the exercise of their functions as hospitals. As however agreement could not be reached on this wording, the Conference appointed a Working Party *ad hoc* to study the Article. The Working Party succeeded, after the elimination of very numerous difficulties, in finding a wording which all accepted. It was their primary anxiety not to upset the fragile and painful measure of accomplishment attained, which led the Plenary Assembly to pass without objection this definition of civilian hospitals.

Careful study of Article 18 nevertheless makes it possible to disengage the serviceable elements of a definition of civilian hospitals in accordance with the intentions of the Diplomatic Conference and at the same time in harmony with the spirit and general structure of the Convention.

In the first place, the enumeration of the different types of patients (wounded, sick, infirm and maternity cases) in paragraph 1 is not to be taken as cumulative in character. It is not therefore necessary for a civilian hospital, in order to conform to the definition in Article 18, to be prepared to treat all the different types of patients specified in the enumeration. It is

sufficient that a hospital should handle one of these types, as e.g. maternity homes do with maternity cases.

The main emphasis is on the fact that, to conform to the definition in Article 18, a civilian hospital must have an organisation to enable it to give care to one or more of the types of patients enumerated. A civilian hospital must therefore have at its disposal the staff, buildings and equipment required to enable it to fulfil its functions, such as doctors, pharmacists, medical personnel, administrative personnel, operation rooms, medical departments, kitchens, drugs and surgical instruments.

A civilian hospital need not be a permanent hospital. A provision to that effect, which was contained in the Stockholm text, was cut out in Geneva, the Diplomatic Conference taking the view that establishments equipped in an emergency in war as auxiliary hospitals ought not to be excluded from the protection of the Convention<sup>1</sup>. In recent conflicts it was a frequent occurrence for schools, hotels, churches etc. to be converted into civilian hospitals to meet the requirements of the population. Such improvised hospitals work more often than not with improvised resources and buildings. But the fact that they are provisional hospitals, and that their equipment is sometimes rudimentary, cannot deprive them of the benefit of Article 18. On the contrary, it is often in regions which are the scene of military operations that such auxiliary hospitals are established, so that the hospitals are in special need of protection. The decisive factor is whether they are effectively in a position to give hospital treatment and care, which necessarily implies a minimum of organisation.

The capacity of the establishment cannot constitute a criterion in determining what a "civilian hospital" is. Article 18 makes no allusion to capacity; and it is clear from the preparatory work for the Conference that any such criterion was deliberately abandoned. The Conference of Government Experts of 1947 considered the possibility of limiting the application of the provision to hospitals with at least 20 beds, but finally abandoned any such condition. There is however

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<sup>1</sup> See *Final Record*, II-A, page 702.

nothing to prevent States in their national legislation in application of the Convention from retaining a quantitative criterion, and making State recognition depend on a minimum number of beds. The number of 20 beds contemplated by the Government Experts appears to be a reasonable minimum limit.

Civilian hospitals are entitled to the protection of the Convention, whether occupied or empty. That is plain from the text itself with its sole mention of the factor of "organisation" and of the types of cases entitled to the hospital's care. The whole spirit of the paragraph also points to such an interpretation, because it is the specific property of hospitals to appear worthy of protection, even in the very hypothetical event of their not yet containing sick or wounded, or having ceased for the moment to do so. It is however clearly understood that, if it is to have the special protection of the Convention, a civilian hospital may not in any case be used for other than hospital purposes. For example, if a school is converted provisionally into an auxiliary hospital, classes may not continue to be held there, even if the building ceases for the time being to house wounded or sick.

Lastly, it should be noted that the legal status of hospitals under national law does not affect the application of Article 18. Whether hospitals are private or State-owned, or belong to a commune or community, they are entitled to the special protection of the Convention, provided they observe the prescribed conditions.

B. *Practical Application.* — How do the above general criteria, which are the basis of Article 18, apply in practice?

There is no difficulty in the case of establishments coming under the generally accepted definition of "civilian hospitals" —that is to say, primarily establishments devoted to the treatment of all or some of the typical cases enumerated. It does not matter what such establishments are called. They may have a large variety of names such as "hospitals", "clinics", "sanatoria", "policlinics", "eye-hospitals", "psychiatric clinics", "children's clinics" and so on. But in all these cases there can be no question that the establishments are civilian

hospitals within the meaning of Article 18, and there is no necessity to labour the point.

The problem is more complicated in the case of establishments housing people who, without being actually ill, are nevertheless not in perfect health. There are limits in practice in such cases, e.g. in the case of Children's Homes, crèches, Old People's Homes, Preventoria, Homes for Disabled Persons, spas etc.

It is plain that the Convention does not anywhere contain a definition of a sick or disabled person. But it should nevertheless be possible to determine the effect of the Article, on the basis of general principles and the objects the Article has in view, in such a way as to draw a line of distinction between establishments which do, and establishments which do not, exercise genuinely hospital functions.

*Old People's Homes* are not civilian hospitals. Their purpose is to allow elderly people and people without relatives, who are not sick persons, to pass the remaining years of their lives without having to take thought for their lodging or upkeep. Such homes are not however there for the purpose of giving hospital treatment to the persons they house, and are more in the nature of pensions or Homes than hospitals. They are so considered both in everyday language and in the dictionary; and to seek to treat them as hospitals would be to go contrary to what is commonly understood by that term. Old People's Homes cannot therefore be covered by Article 18.

On the other hand, establishments whose sole purpose is to house sick, infirm or incurable old people, must be treated as civilian hospitals within the meaning of Article 18.

Homes for the sole purpose of housing infirm persons, such as *Homes for the Blind* or *Homes for Deaf-Mutes* should come within the category of civilian hospitals within the meaning of Article 18, in so far as they give treatment to their occupants.

*Disabled persons* are not included in the enumeration in Article 18. But establishments where they are treated may be regarded as civilian hospitals, since the disabled persons are also wounded or sick persons, so long as they require hospital

treatment. But Article 18 does *not* cover establishments, which merely house the disabled, when their health is no longer such as to require hospital treatment.

*Crèches and Children's Homes* are like Old People's Homes insofar as they house weak beings, to whom care is given, though their health is not affected. They cannot therefore be regarded as civilian hospitals.

*Preventoria*, or a good many of them, may reasonably (it would seem) be treated as on the same footing as sanatoria and hospitals. The line of distinction between preventoria and sanatoria will often be difficult to draw. No doubt, their name would indicate that they do not in principle house persons suffering from a declared disease, but only persons with a predisposition to such a disease. In so far however as they are organised on lines similar to civilian hospitals, and the persons they house are subject to medical discipline and to preventive treatment, it appears justifiable to assimilate them to civilian hospitals. Moreover, preventoria frequently take persons who are already sick, if only slightly so, so that the name "preventoria" is in many cases a euphemism.

The great majority of *spas* are not frequented solely by sick and infirm persons, but also (for a number of very different reasons) by persons who are in good health, or at any rate are not sick in the strict sense of the term. Moreover the persons who frequent these spas live for the most part in hotels or pensions: they are not subject to medical supervision outside the actual thermal establishments, and are consequently not hospital patients. It may therefore be concluded that spas are not in the ordinary way covered by Article 18. One can however conceive of cases where a spa might be organised on the lines of a civilian hospital with occupants who are sick in the strict sense of the word. In such cases assimilation to civilian hospitals might be contemplated.

It follows from the above observations that, in view of the diversity of cases which may arise in practice, it is difficult to give *a priori* a general definition of the civilian hospitals to which Article 18 relates. It is therefore very desirable that national legislation in application of the Convention should

determine as precisely as possible the conditions required for the recognition of a civilian hospital. Such legislation might well be based on the principles disengaged above. The question whether these different definitions should take the form of Law or Regulations is a matter for the legislative practice of the different countries.

If, in the consideration of the various types of establishment which can be considered to be civilian hospitals within the meaning of the Convention, a number of institutions have been excluded, that does not mean that these institutions are not protected under other provisions of the Law of Nations. It is certain for instance that many of the establishments excluded in the foregoing remarks are devoted to "charitable objects", and are entitled on that account to claim the benefit of the provisions of The Hague Conventions cited above<sup>1</sup>.

## 2. *Respect and Protection*

Having dealt with the subject of protection, paragraph 1 specifies what the protection is directed against. It gives two indications on this point. The first, which is negative, says that hospitals may not be the object of attack. The second, which is positive, imposes certain obligations on belligerents.

If the text, instead of saying "may not be attacked", uses the words "may in no circumstances be the object of attack", that is for a good reason. This wording forbids any intentional attack on hospitals, without excluding cases where a hospital undergoes accessory and accidental effects owing to its being too close to a military objective, against which the attack is directed.

The words "in no circumstances" show clearly that the prohibition is absolute, and admits of no exceptions. It does not signify whether the aggression comes from the air by bombing or by directed missiles, or from the land by long-distance artillery for example, or again from the sea. The hospitals are protected wherever they are, whether in the national territory

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<sup>1</sup> See above, page 28.

of the belligerent, or in a zone of military operations, or in an occupied territory.

This negative principle is followed by the classical wording, borrowed from the First Geneva Convention, which orders the Parties to a conflict to respect and protect civilian hospitals at all times. Whereas the word "respect" expresses in positive terms the idea which is at the basis of the prohibition of attacks—that is to say the prohibition either to attack hospitals or to injure them in any way—the expression "protect" strengthens this obligation by ensuring respect and imposing it on third parties. Moreover the term implies the idea of giving assistance and coming to the aid of the hospitals<sup>1</sup>. Like the prohibition to attack, the obligation of respect and protection is absolute and applies to all places. Notwithstanding which, civilian hospitals in occupied territory are subject to the right of requisition within the limits laid down by Article 57 of the Convention.

#### PARAGRAPH 2. — OFFICIAL RECOGNITION

In order to benefit by the protection of the Convention, civilian hospitals must have been recognised by the State. Only recognised establishments can claim the right to marking. The recognition is conveyed in a certificate showing that they are civilian hospitals and that "the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19".

It is easy enough to understand that the recognition is to be given in a certificate ; but it is difficult to see what the second stipulation, which was added by the Diplomatic Conference, for an assurance that the hospital is not used for acts harmful to the enemy can mean in practice. The value of such an assurance will be very doubtful, for it is not possible for a State to give a binding assurance at the beginning of a war, or even in peacetime

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<sup>1</sup> See *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva 1952, page 135.

(when it is much more likely to be required), that a hospital will effectively abstain in the future from acts harmful to the enemy. All that can reasonably be done is to state that at the moment of issue of the certificate the hospital is strictly reserved for humanitarian purposes, and does not contain anything which can be used for military purposes. The addition of the clause in question is therefore useless and illusory.

What form should the recognition take? In the first place it should be an act of Public Law by the State concerned. It is not specified what competent authority is to issue the certificate of recognition. The States are therefore free to designate the authority themselves in accordance with their internal legislation. They may delegate their powers to a governmental or non-governmental organisation (e.g. the national Red Cross Society). There is nothing in the Convention to prevent such delegation of powers. The possibility of such a step was even explicitly confirmed in the course of the discussions in the Plenary Assembly of the Diplomatic Conference<sup>1</sup>.

The wording of paragraph 2 shows clearly that belligerents have the duty, and not merely the option, of issuing the certificate of recognition. The provision is imperative in character. Whenever a hospital fulfils the conditions of paragraph 1, it has a right to official recognition.

The corollary to this State guarantee of a hospital is the responsibility of the guaranteeing State; and the responsibility is not affected by the State delegating its powers of recognition to a non-governmental organisation. The State accordingly retains its responsibility vis-à-vis other Contracting Powers for any consequences of abuses committed by the organisation entrusted with the administrative functions in question.

### PARAGRAPH 3. — MARKING

#### I. *State Authorisation*

This provision is important as entitling civilian hospitals to be marked by the emblem of the Red Cross defined in

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<sup>1</sup> See *Final Record*, II-B, page 469.

Article 38 of the First Geneva Convention of 1949, which enacts that "As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces". The second paragraph of the Article provides for the exceptional emblems (red crescent and red lion and sun) used by certain Mohamedan countries<sup>1</sup>.

The present paragraph begins with a general provision to the effect that "Civilian hospitals *shall* be marked..." But this provision is subject to authorisation by the State; and the authorisation is optional. Consequently, while the marking of civilian hospitals is obligatory in principle, the application of the principle depends on authorisation by the State.

The marking of civilian hospitals is therefore distinct from their recognition, and does not necessarily follow on the latter. All civilian hospitals marked by the protective emblem must necessarily have been officially recognised; but not all recognised civilian hospitals need necessarily be marked. It is true that in practice the official recognition will usually be accompanied by the authorisation to display the distinctive emblem; but it is also possible that a belligerent will authorise particular hospital establishments to be marked by the protective emblem because of their situation or importance, while refusing the right to other recognised hospitals, in the case of which he may consider such marking for one reason or another undesirable. It may for example happen that a State wishes to keep marking for the bigger civilian hospitals, and lays down standards to be observed in that connection.

This system of leaving the States to form their own judgment undoubtedly reflects the solicitude of the Diplomatic Conference in the matter, its consciousness of the dangers involved in any extension of the emblem, and its consequent preference for the prudent course of making marking optional. Marking is thus to depend on State authorisation, leaving the Powers free to make use of this facility in accordance with circumstances and

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<sup>1</sup> See *Commentary*, pages 297 ff.

experience. Where their practice has had good results, it will be applied extensively. On the other hand it will be carefully restricted, if experience shows that extension of the use of the red cross leads to abuses, which harm its prestige and consequently the cause of the very persons it is there to protect. The States, conscious of their responsibility, will thus be in a position to take regulatory action in this novel field of their activities.

Like the preceding paragraph, paragraph 3 does not say what authority is competent to authorise marking. It merely says that the power to do so rests with "the State". This provision is therefore as elastic as could be desired; and it will be for the legislation of the different countries to designate the responsible authority.

The system of joint authorisation by the State and the national Red Cross Society, which had been approved at Stockholm, was not taken over by the Diplomatic Conference. Nor was the system of military consent, proposed in the draft by the Government Experts, which certain Delegations at the Diplomatic Conference would have liked to see reinstated in the Convention.

There is nothing however in the present wording to prevent States from delegating their powers to the military authorities, or to the national Red Cross, or to any other qualified organisation. The important thing is that, however the national legislation of the country may settle the question, the responsibility of the State is clearly laid down by the Convention.

The marking of hospitals is essentially a wartime measure, for it is in wartime that its true significance becomes apparent. But this rule may admit of relaxations in application as indicated by practical considerations in connection with the full effectiveness of marking. There is no reason why a State, which has to take every possibility into consideration, should not be able to mark its civilian hospitals in peacetime, running the risk thereby in the event of attack of being less well equipped from the humanitarian than it is from the military standpoint. The aims of the Convention would clearly be stultified, if any of its provisions could have such consequences as that.

As to the most opportune moment for displaying the emblem, it is desirable, in view of the numerous intangible factors which have to be taken into account, to leave a large power of judgment to the Governments concerned. A State would appear for example to be justified in marking its hospitals with the emblem in peacetime, when the circumstances are such that war may be considered imminent, and the State is taking other preparatory measures with a view to facing a conflict (such as preparations for mobilisation, partial mobilisation, general mobilisation or the like).

But it appears to be plainly indicated in such cases to do no more than display such fixed emblems as take a certain amount of time and effort to fix (e.g. emblems painted on the roofs of buildings). Removable emblems such as flags can very well be left for display until the outbreak of the war.

The useless multiplication of red cross emblems in peacetime on buildings which do not belong to the Red Cross Society is liable to give rise to confusion in the minds of the public<sup>1</sup>. It will not only affect the Society, whose own establishments will be confused with the buildings thus marked, but will also lower the prestige and the symbolic force of the emblem.

## 2. *Scrutiny*

It would appear indispensable that the organisation, to which the national legislation entrusts the task of issuing the certificates of recognition and the authorisations to mark hospitals with the red cross emblem, should also have the necessary powers of scrutiny. The exercise of strict and permanent scrutiny of *all* establishments having State recognition is important: and in the case of hospitals, to which the right to display the emblem has been accorded, it is essential. This rigorous scrutiny is an inevitable consequence of the expansion of the applicability of the red cross emblem, which would otherwise be in danger of wrongful use, and thereby of loss

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<sup>1</sup> To avoid confusion, the national Society will find it useful to show its name distinctly by the side of the emblem which it displays for the indication of its own establishments and properties.

of its high significance and authority. Hence the need for the right to mark a civilian hospital being always accompanied by the obligation to submit to such scrutiny.

#### PARAGRAPH 4. — VISIBILITY OF MARKING

The protective sign is of no practical use except in so far as it is visible. Accordingly the Convention recommends the Parties to the conflict to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces.

To be recognisable from a distance, especially from high altitudes, but also from all sides, the emblems must be sufficiently large.

Experiments made by one Government at the request of the International Committee of the Red Cross have shown for example that a red cross on a white ground five metres square, displayed on top of a building, is hardly visible at a height of over 2,500 metres<sup>1</sup>.

To be seen from a distance and from all sides, rigid panels horizontal, vertical or oblique may be used: large red crosses on white backgrounds may be painted on the roofs and walls of hospitals, or may be traced on the ground with suitable materials.

It is of course desirable that civilian hospitals should be marked at night, for example by means of a string of lights to outline the crosses. As however total black-out is the most effective and practical safeguard against air attack, the military command is not likely to assent. Civilian hospitals lit up after their site is located during the day will give enemy aircraft useful landmarks. Lighting might conceivably be used only in case of an attack on a military objective. As will be noted under the next paragraph, the safety of civilian hospitals is best assured by keeping them away from military objectives.

The risk of favouring the operations of the enemy by marking exists not only by night but also by day, though the risk is very

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<sup>1</sup> See *Revue internationale de la Croix-Rouge*, May 1936, page 409 (inset).

much less by day. Accordingly the obligation to ensure complete visibility for the protective emblem is made subject to military considerations, like the corresponding provision in Article 42, paragraph 4, of the First Geneva Convention. This qualification, though of less practical importance here than it is in the First Convention, is nevertheless justified, since the marking of a hospital might for one reason or another assist the enemy forces. The military authorities will then have a word to say in the matter. It is with a view to this eventuality, i.e. to a conflict between humanitarian exigencies and military necessities, that the qualification was inserted.

#### PARAGRAPH 5. — REMOTENESS OF MILITARY OBJECTIVES

Paragraph 5 requires the competent authorities to see that hospitals are situated as far as possible from military objectives. The idea was clearly to provide against the dispersed effects of projectiles. A similar wording was introduced in Article 19, paragraph 2, of the First Geneva Convention for the benefit of establishments and medical units of armed forces<sup>1</sup>.

The meaning of "military objectives" is not defined any more than it is in the corresponding provision of the First Convention. All the attempts made outside the framework of the Geneva Conventions to arrive at a precise and legally determined definition of this vacillating conception have come to nothing. But there does not appear to be any doubt that the expression "military objective" should be understood in the strict sense of the words as a defined and clearly delimited point of actual or potential military importance<sup>2</sup>. Never, let it be said, can a civilian population be regarded as a military objective. That is a verity constituting the very foundation of all the law of war.

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<sup>1</sup> See *Commentary*, pages 198-9.

<sup>2</sup> See on this subject R.-J. WILHELM, *Les Conventions de Genève et la guerre aérienne*, in the *Revue internationale de la Croix-Rouge*, January 1952, page 32. M. Wilhelm points out that the conception of "military objective" in those terms is first legally employed in an international convention in force in the Geneva Convention of 1949.

We have seen in our consideration of paragraph 1 that the words " may not be... the object of attack " mean that civilian hospitals as such may not be the object of attack, and that no aggressive action may be directed against them<sup>1</sup>. On the other hand, the turn of the phrase, which was deliberately chosen, indicates clearly that the right to attack military objectives is in no way restricted thereby. The immunity of hospitals cannot be spread (so to say) round about them, in such a way as to cover indirectly the military objectives situated in their periphery. A belligerent is therefore entitled to attack a military objective (for example a concentration of troops or a dépôt of arms), even when such an objective is in the immediate vicinity of a hospital. It is to be hoped however that in such cases a reasonable proportion will be observed between the military advantage to be obtained and the harm done. Hence the practical necessity of attaching material safeguards as an adjunct to legal protection by situating civilian hospitals as far distant as possible from military objectives, so as to save them from the accidental effects of attacks on the latter. Otherwise there is a great risk of the protection being illusory in spite of clearly recognisable marking.

Many civilian hospitals cannot be moved ; and it is for this reason that the provision of the paragraph is not imperative in character, but is merely a recommendation. In such cases the precautions to be taken are, first, to see that no military objective is established in the vicinity and, secondly, where such a military objective is already so established, to have it moved, if possible, to a distance. Close co-operation between the responsible civilian and military authorities is (it need hardly be said) eminently desirable.

#### ARTICLE 19. — CESSATION OF PROTECTION

*The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humani-*

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<sup>1</sup> See above, page 38.

*tarian duties, acts harmful to the enemy. Protection may, however, 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 fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.*

Article 19 deals with the contingencies which may deprive a civilian hospital of the protection to which it is entitled. It is reproduced *mutatis mutandis* from the First Geneva Convention of 1949, Articles 21 and 22, Nos. 3 and 5<sup>1</sup>.

#### PARAGRAPH I. — CONDITIONS FOR THE SUSPENSION OF PROTECTION

Paragraph 1 is an exception to the principle of respect and protection for civilian hospitals embodied in the preceding Article<sup>2</sup>.

##### I. *Substantial condition: Acts harmful to the enemy*

The immunity conferred on civilian hospitals can only be suspended where it is used to commit acts harmful to the enemy. By the wording, which it used, the Diplomatic Conference of 1949 was anxious to emphasise the exceptional character of this provision, and to make it clear that the protection could not cease except in the single case exceptionally specified.

It did not prove possible, in spite of the attempts made by the Diplomatic Conference of 1949<sup>3</sup>, to give more concrete form to the conception of "acts harmful to the enemy" (French text: "actes nuisibles à l'ennemi"), which was already embodied in the 1929 version of the First Geneva Convention. The Diplomatic Conference finally took the view that there

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<sup>1</sup> See *Commentary*, pages 200-202, 204-205.

<sup>2</sup> See above, page 38.

<sup>3</sup> See *Final Record*, II-A, pages 632, 702.

was no need to define the expression on the ground that its meaning was self-evident, and that it must be left very general. A useful point of definition was however made by the insertion of the reference to "humanitarian duties".

The International Committee of the Red Cross had drawn up a form of words in case the Conference desired to be more explicit<sup>1</sup>. This form of words is equally relevant to the present Convention; and it is proposed accordingly to quote it here in the belief that it may throw light on the words "acts harmful to the enemy". It would have been possible to say: "acts the purpose or the effect of which is to harm the adverse Party, by facilitating or impeding military operations".

The following are examples of harmful acts—sheltering in a hospital combatants or healthy deserters, using it as a deposit for arms or munitions, establishing an observation post in it or a post of liaison with combatant troops. The idea will be still clearer, when we come to consider paragraph 2 below<sup>2</sup>, in which two acts are specified which are not to be considered harmful acts. It is quite certain that civilian hospitals ought to observe the same neutrality in relation to the adverse belligerent as they claim for themselves and are accorded by the Convention. Situated as they are *au-dessus de la mêlée*, they ought to abstain loyally from any intervention, direct or indirect, in military operations. An act harmful to the enemy is not merely culpable because of its treacherous character: it may involve the most serious consequences for the lives and safety of the hospital patients, and generally weaken the protective value of the Conventions in other cases.

The performance of a humanitarian duty may conceivably be harmful to the enemy, or may—wrongly—be so interpreted by an adversary lacking in understanding. In this way the presence or the activities of a hospital may impede tactical operations.

The Diplomatic Conference by the insertion of the words "outside their humanitarian duties" has explicitly emphasised

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<sup>1</sup> See *Final Record*, II-A, page 59.

<sup>2</sup> See page 49.

the fact that in no circumstances can the performance of a humanitarian duty ever be said to be an act harmful to the enemy.

2. *Formal condition: Warning and time-limit*

The second sentence of paragraph 1 has the effect of mitigating the rigour of the steps which may result from the application of the principle embodied in the first sentence. It was necessary to provide humanitarian safeguards for the hospital patients, who cannot be made responsible for any illegal acts which may have been committed.

It is accordingly stipulated 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 will accordingly warn the hospital to put a stop to the harmful acts, and will name a time limit, on the expiry of which he will be entitled to attack, if the warning has remained unheeded. The period of the time limit is not specified. It is only stated that it must be reasonable. How is the length of the period to be fixed? Obviously it will depend on the particular case. But it may be said that it should be fixed in such a way as to allow both of the cessation of the illegal acts and of the evacuation of the hospital patients to a safe place. Such a time limit will enable the hospital to answer an unfounded reproach and to clear itself of the charge.

It follows that in principle the suspension of a civilian hospital's immunity cannot take place *ipso facto*, but is subject to the formal condition of previous warning. But the warning is obligatory only in "appropriate cases". There may well be cases where a warning cannot be given. If for example troops approaching a hospital are greeted by steady fire from every window, there will be an immediate response.

PARAGRAPH 2. — ACTS WHICH DO NOT SUSPEND PROTECTION

Paragraph 2 specifies two particular contingencies, which are not such as to deprive a civilian hospital of protection,

and are not therefore to be regarded as acts harmful to the enemy. The first of these contingencies is where sick and wounded members of the armed forces are taken in by civilian hospitals—by which the right of the sick and wounded in question to respect and protection is not affected. Civilian hospitals within the meaning of the Fourth Geneva Convention are accordingly authorised to include amongst their patients combatants whose health is impaired. This provision corresponds to Article 22, No. 5, of the First Geneva Convention, which allows units or establishments of Military Medical Service to collect and care for civilian wounded and sick<sup>1</sup>, and to Article 35, No. 4, of the Second Geneva Convention, which has an identical provision for hospital ships and sick-bays.

This provision merely embodies the principle that all wounded and sick, whether civilian or combatant, are on the same footing for purposes of receiving relief. This conception became essential in view of the character assumed by modern war, and especially by war from the air, in which a single warlike act may affect both civilians and combatants, friends and enemies. This being so, they must be relieved by the same nursing staff, and treated in the same buildings.

Secondly, combatant sick and wounded entering a civilian hospital may still have about them small arms and ammunition. These will be taken from them, and subsequently handed over to the competent Service. But the handing over may take time. If the enemy visits the hospital before the latter has been able to get rid of these arms, it must not be open to the enemy to make a charge out of this. Hence the latter part of paragraph 2.

*(To be continued).*

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<sup>1</sup> See *Commentary*, page 205.