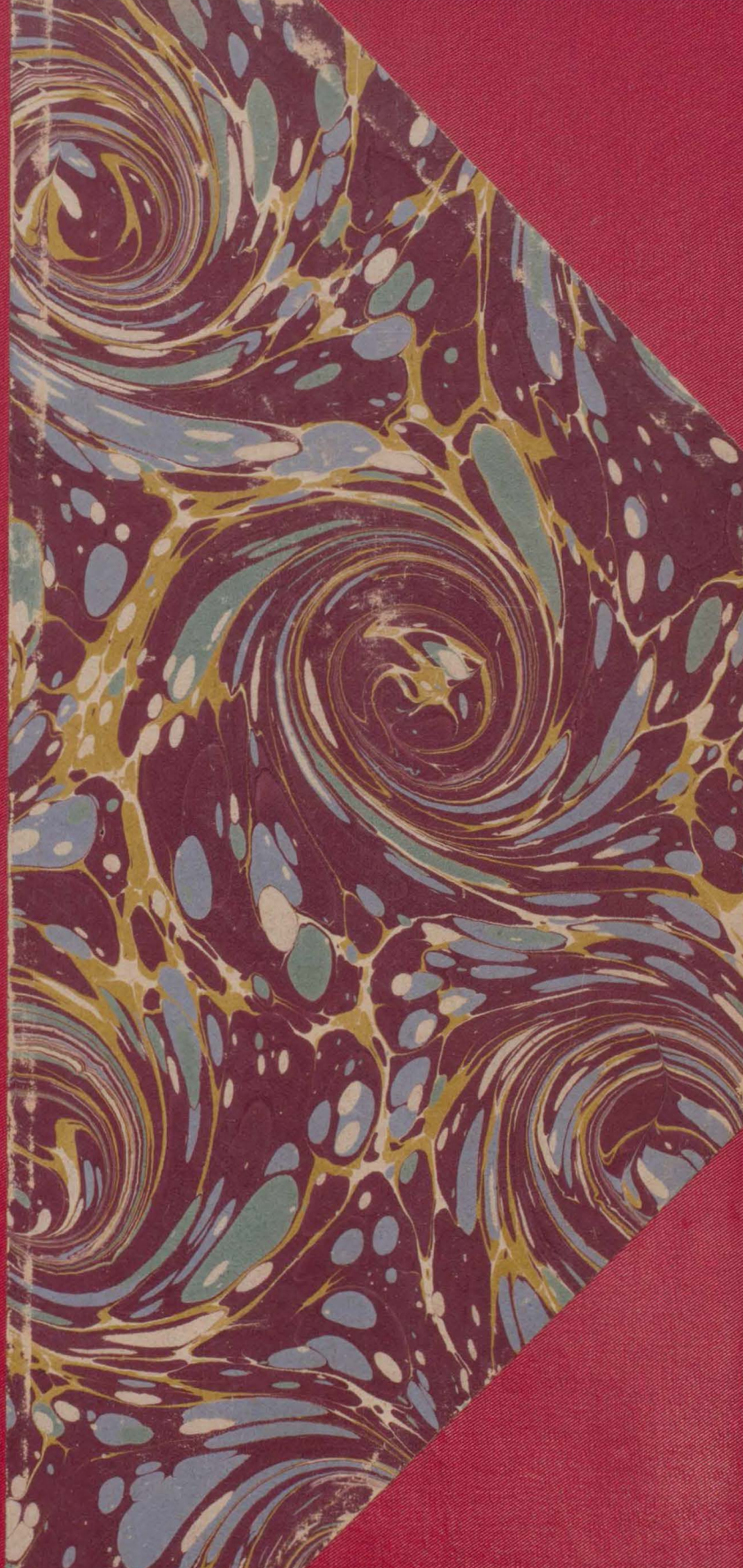

SUPPLEMENT

VOL. V

REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL DES SOCIÉTÉS
DE LA CROIX-ROUGE

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INFORMATION NOTE OF FEBRUARY 5, 1952

On January 12, 1952, M. Paul Ruegger, President of the International Committee of the Red Cross addressed to the Commanders Kim Il Sung and Peng Teh-Huai the following message :

" From Paul Ruegger President of the International Committee of the Red Cross to the Commanders in Chief Kim Il Sung and Peng Teh-Huai. On behalf of the International Committee of the Red Cross in Geneva I have instructed our Chief delegate in the Far-East Dr. Otto Lehner to ask for a meeting with you or with your representatives. Such a meeting is all the more necessary as the International Committee of the Red Cross in spite of repeated efforts has up to now never been afforded the opportunity of getting directly in touch with you or your representatives. It is recalled that the International Committee of the Red Cross being the founder organisation of the world movement of the Red Cross in 1863 is a neutral institution composed exclusively of Swiss nationals which carries out its international and humanitarian activities in complete independence of all Governments and inter-governmental bodies but in close cooperation with the national Red Cross Societies and with Governments. Its only concern lies in the interest of the victims of war, civil war and strife. It acts in accordance with the Geneva Conventions relative to the treatment of prisoners of war—Conventions which the Government of the People's Democratic Republic of Korea has officially declared it recognises and is willing to observe. To achieve this purpose the International Committee of the Red Cross has been given during the two world wars specific mandates and facilities by all States bound by the Geneva Conventions so that it could assist all prisoners of war particularly by visiting prisoners

of war camps and by cooperating for their exchange and repatriation. Our Swiss Delegates stationed in Korea, Hongkong and Geneva are ready to carry out this work in complete neutrality and independence in the Korean conflict. Our Chief Delegate Dr. Lehner will explain the details of such work to you and the lines on which it would be carried out for the benefit of all war victims in Korea. I therefore must earnestly request that you agree to such a meeting without delay thus enabling our representative to put forward practical proposals in order to bring impartial and effective help to those in need. The International Committee of the Red Cross in Geneva must once more insist on being allowed to fulfil its traditional humanitarian duties. Paul Ruegger."

This message was handed on January 17, 1952, at Pan Mum Jom to General Kim Il Sung and General Peng Teh-Huai by Dr. Lehner, chief Delegate for the Far East, and M. de Cocatrix, Delegate.

The ICRC at Geneva has now received the reply, as follows, from Generals Kin Il Sung and Peng Teh-Huai :

" Monsieur Paul Ruegger
President of the ICRC

Your letter dated January 12, addressed to Supreme Commander Kim Il Sung and to Commander Peng Teh-Huai, has been transmitted by me.

I have been instructed to reply to you as follows :

In regard to the question of the visiting of prisoner of war camps by the ICRC, the Supreme Commander Kim Il Sung and Commander Peng Teh-Huai have already replied in a letter dated December 24, 1951, to the Supreme Commander of the United Nations Army, General Ridgway. Please find below the full text of this reply :

" Ridgway, Supreme Commander
of the United Nations Army

We acknowledge your letter of December 21.

We believe that what is most important in the interests of prisoners of war on both sides and of their families is that measures should be taken to deal as rapidly as possible with the points under discussion and to succeed, as quickly as possible in concluding an armistice. Shortly after the time at which the conclusion of an armistice becomes effective, all prisoners held on either side should return to their countries and to their families from whom they have been long separated, and so go back to their peaceful life.

Although certain important problems have approached solution, it was not possible to conclude the armistice because, without reason, you have caused the negotiations to be dragged out by insisting on unreasonable conditions; accordingly thousands of prisoners could not be released and the suspense of their anxious families has continued. On our side, the treatment of prisoners of war is absolutely humane in all respects, namely in regard to food, clothing, housing, recreation, etc. In this, we act with the idea and on the principle that prisoners of war should be well treated.

Sick or wounded prisoners of war are given, with success, the care which is due to them, thanks to the medical staff and the medical installations specially set up for their benefit.

The decision we have taken to provide precisely, and in full detail, for the good treatment of prisoners of war is a sufficient indication of our intentions and humanitarian preoccupations and we accordingly do not see what purpose could be served by the ICRC visiting prisoner of war camps.

Nevertheless, after the signature of the armistice, and as soon as it comes into operation, and to allow for the accompanying under protection of prisoners of war on both sides, we propose that a mixed delegation be set up, composed of delegates of the Red Cross Societies of the People's Democratic Republic of Korea and of the People's Republic of China, and of the ICRC. This delegation would be divided into different groups and visit prisoner of war camps on both sides, and at the same time co-operate in arranging for repatriation at the ex-

change centres. If you agree to our proposal, we ask you to transmit it to the ICRC."

Kim Il Sung, Supreme Commander of
the Korean People's Army

Peng Teh-Huai, Commander of the People's
Army of Chinese Volunteers

December 24, 1951

(Signed) Lee San Jo"

Representative of the Delegation of the
People's Army of Korea and of the
People's Army of Chinese Volunteers.
January 20, 1952

The International Committee naturally intends to persevere in its efforts to carry out its traditional work.

Germany. — A Delegate has again been authorized to visit three Allied prisons where there are German prisoners serving sentences for war crimes: Werl Prison in the British Zone (November 27), Landsberg Prison, American Zone (December 13), and Wittlich Prison in the French Zone (December 20). Conditions were satisfactory in all three. The Delegate spoke freely with the prisoners, who had no complaints to make in regard to their treatment.

Greece. — In the fourth quarter of 1951, Delegates at Athens visited political exiles, to whom they distributed relief, at Aghios Efstratios, Trikkeri, Ghioura, Averof, Amphissa and Larissa.

The Delegation has obtained permission for Greek political detainees to use the Committee's civilian message forms for correspondence with persons living in countries which have no regular postal communications with Greece. From gifts received from abroad and the Committee's own supplies, the Athens Delegation distributed almost 80 tons of clothing, food and medicines in 1951, to an approximate value of 220,000 Swiss francs.

Greek children. — At the request of the United Nations Special Political Commission, the President of the General Assembly and the Secretary-General, at the end of November, asked the countries in which there are displaced Greek children to send representatives to Paris for an exchange of views between them and the UN Permanent Commission for the Greek Children. Czechoslovakia replied to the invitation. The ICRC and the League were also invited, and their delegates attended a meeting of the Commission on January 22. Reference was made to 138 children identified by the Czechoslovak Red Cross.

The Czechoslovak delegate said his Government believed it would be useful to have discussions on the problem between the Czechoslovak Red Cross, the ICRC and the League. Visas have been requested in view of the meeting to be held at Prague.

Korea. — The most important event during the month was the handing to General Lee San Jo, head of the North Korean Delegation to the Armistice sub-Commission on prisoners of war at Pan Mun Jom, of the message which the President of the ICRC addressed on January 12 to the Commanders Kim Il Sung and Peng Teh-Huai, and the reply which was given. Both texts are reproduced in full in this Supplement. Dr. Lehner, head of the Committee's Delegation in the Far East, and M. de Cocatrix, Delegate, succeeded in handing over the message on January 17, after unsuccessfully trying to do so the day before. The reply of the Commanders of the People's Army of Korea and the People's Army of Chinese Volunteers was handed to them in Korean on January 21, by General Lee San Jo himself. This exchange of documents was the first personal contact Delegates have had with North Korean representatives.

A visit which extended from January 4 to 16 was made to the United Nations No. 1 prisoner of war camp (Koje-do and Pusan).

Indo-China. — M. A. Durand, Delegate at Hong Kong, is at present acting as substitute in Vietnam for M. J. de Reynier who has been compelled to interrupt his activities temporarily for health reasons.

War Invalids. — The War Invalid Section sent the Bulgarian Red Cross 75 blankets and a small quantity of tonics for tuberculous war invalids receiving treatment at Tzarev-Brod. From part of a bequest made in Australia, three tandems were sent to Finland for war blind. Fifteen appliances were sent to Arab amputees in Jordan.

A medical film was loaned to the British Red Cross Branch in Mauritius.

Test Broadcasts. — In May last year, the Committee made test broadcasts on the shortwave allocated to it with a view to its transmitting information, should the necessity arise. Tests to collect further data were made on January 28 and 30 and February 1. Some 500 correspondents had been informed beforehand; 38 National Red Cross Societies, several ICRC Delegations, and, thanks to the courtesy of the Swiss Political Federal Department, a number of Swiss Legations and Consulates, have been asked for listeners' reports. The many replies received are now being sifted. The tests will be repeated later in the year.

Catastrophes. — The Committee has sent the Philippines Red Cross 1,500 dollars for relief to the victims of the volcanic eruption at Hibok-Hibok. The equivalent of 15,000 Swiss francs has been sent to the Turkish Red Crescent following the recent earthquake in Turkey.

JEAN S. PICTET,

Director for General Affairs of the ICRC

REPRESSION OF ABUSES OF THE RED CROSS EMBLEM

Commentary on Articles 53 and 54 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.

ARTICLE 53. — MISUSE OF THE EMBLEM

The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation " Red Cross " or " Geneva Cross ", or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trade-marks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of July 27, 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from

the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38.

General Remarks

(A) — *Two Kinds of Misuse.* — As we saw in connection with Art. 44 [1] the sign of the red cross on a white ground can be employed in two entirely different senses. On persons and things entitled to respect by the Convention, the sign has protective value; when it only indicates a person or thing connected in some way with the Red Cross, but not in the sense of being entitled to the protection of the Convention, the sign is indicatory only.

We thus have to distinguish between abuse of the protective sign and abuse of the indicatory. The first, in time of war, is infinitely the more serious, because it may endanger human lives. The gravity will vary with circumstances—from the thoughtless action of a doctor who, although not belonging to the medical personnel, wears a red cross armlet in good faith, to treachery such as placing large-sized emblems on an ammunition dump in order to mislead the enemy. Between these extremes, all sorts of misuse are conceivable. Typical abuses of the indicatory sign are its unlawful use by chemists, or in commercial trade marks.

(B) *Historical Background.* — Abuses of the 1864 Convention began soon after its adoption.

The Convention makes no provision for dealing with infractions, and is likewise silent on misuse of the emblem. Probably the Governments represented at Geneva had not foreseen what

[1] See English Supplement, January, 1952, p. 12 et seq.

would happen, because they removed a provision in the draft intended to deal with the matter; the provision in question was in any case much too narrow [1].

During the war of 1866, and still more so in 1870-71, abuses occurred which affected the protective sign only. By 1880, however, the indicatory sign was being unlawfully used in many ways. Chemists, vendors of medical apparatus, invalid nurses, and even barbers had taken the red cross as a sign. The emblem was used on boxes of pills and mineral water advertisements. The International Committee and the National Societies undertook a campaign against such abuses, which is not yet concluded [2]. The IIIrd International Conference (1884) recommended that " energetic measures, legislative or the like, be taken in all countries to prevent misuse of the emblem of the Convention, the red cross on a white ground, in peace as in war ". A similar Resolution was adopted by the IVth Conference (1887). In 1888, the International Committee held a competition for the best methods of preventing and suppressing misuse ; the two winning memoranda were published [3].

Unlawful employment continued nevertheless to spread. Some traders used a slightly modified red cross, and pretended that they were not using the emblem of the Convention. Although commercial marks and trade marks were protected in law, the highly significant symbol they had solemnly recognized in signing the Geneva Convention was left defenceless. Some countries indeed attempted to give the emblem legal protection, but did not go far enough.

The idea was then put forward that the Convention itself should contain clauses to prohibit abuse and compel States

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[1] Article 10 of the draft read : " Those who, not being entitled to wear the armlet, utilise it to commit acts of espionage shall be punished with the full rigour of the military laws ".

A similar clause was proposed to the 1868 Diplomatic Conference which studied the revision of the Convention, but was again dropped.

[2] A particular tribute must be paid here to the late Paul des Gouttes, Secretary-General and Member of the ICRC who, as long as he lived, was one of the emblem's most untiring champions.

[3] " De l'emploi abusif du signe et du nom de la Croix-Rouge " by Professors Buzzati and Castori, Geneva 1890.

to pass suitable legislation. This was successfully done at the 1906 Conference, which profoundly modified the Convention. In the fairly detailed Art. 27, Governments undertook to take, or to propose to their legislatures, the measures necessary to prevent at all times misuse of the Red Cross name and emblem. Art. 28 [1] moreover prescribed that misuse of the sign in wartime should be punished in the same way as unlawful wearing of military badges. The Convention thus forbade misuse of both protective and indicatory signs, although at the time the distinction had not been specifically made.

Moreover, abuse of the protective sign in wartime had long been recognized as an offence under international law. Art. 23 of the Regulations annexed to the IInd Hague Convention (1899) forbade unauthorized use of the distinctive markings of the Geneva Convention, and this clause was introduced in full in the same Article of the Regulations, revised in 1907 and still in force [2].

During the 1929 revision, the emphasis was on the problem which had arisen indirectly from the 1906 Convention: protection of the emblem of the Swiss Confederation. In order to get over the 1906 prohibition, unscrupulous traders had taken the sign of the white cross on red ground, counting on the analogy with the red cross sign and the possible confusion between the two.

Art. 27 was retained, but this time it also prohibited imitations of the red cross emblem. Unfortunately, the clause of Art. 28 which dealt particularly with misuse of the protecting sign was deleted; thus disappeared, at least in the Geneva

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[1] The same provision was introduced the following year into the Xth Hague Convention for the adaptation to maritime warfare of the principles of the Geneva Convention.

[2] It may be noted that the War Responsibilities Commission which was set up to prepare the Peace Treaties of 1919, included in the list of war crimes the deliberate bombing of hospitals, attack upon, and sinking of hospital ships, and violation of other regulations concerning the red cross. The United Nations War Crimes Commission used this list as a working basis. A United States Military Tribunal in 1946, for example, sentenced to imprisonment a soldier who, while in a vehicle bearing the red cross emblem, opened fire on the enemy. See *Law Reports of Trials of War Criminals*, Selected by the United Nations War Crimes Commission, Volume XIII, p. 146.

Convention, the distinction between the two types of abuse, between which there is so vast a difference in kind. The texts allowed both to be prosecuted, but were so worded as to create the impression that they covered only so-called commercial misuse—alone expressly mentioned. The consequence was that where legislation was introduced in fulfilment of obligations under the 1929 Convention, it generally covers commercial abuse only [1]. The necessity for systematic repression of the infinitely more serious abuses of the protective sign in wartime was almost completely ignored.

(C) *Absolute character of the new Article.* — Art. 53 of the 1949 Convention marks a real step forward. Firstly, it makes an absolute prohibition of what in 1929 (Art. 28) was subordinated to measures which Governments should take, or propose to the legislatures—a qualification which very much weakened the effect.

The new Article has the same standing as the various other prohibitions in the Convention dealing with the wounded, medical units, and so on. Its place should therefore logically be in Chapter VII (The Distinctive Emblem) rather than in Chapter IX (Repression of Abuses and Infractions). It should come immediately after Article 44, or even form part of it. A Delegation drew attention to this point, but, for reasons of procedure, the Conference let the matter rest [2].

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[1] See the *Recueil de textes*, published by the ICRC in 1934 and giving laws and decrees relative to the application of the Geneva Convention, especially those concerning repression of abuse of the emblem.

[2] This change would also have increased the emphasis on the other provisions of Chapter IX. It is regrettable that, in 1929, protection of the emblem was presented as the principal of the very many obligations under the Convention as a whole. Consequently, most national legislatures devoted their chief attention—and even here they did not go far enough—to this point, whereas the question of protecting through more precise measures than the ordinary rules of penal law, the wounded, and medical personnel and supplies against the attacks to which they are too often subject, required such attention at least as urgently. The 1949 Conference happily considered repression of infractions of greater moment than was the case in 1929.

PARAGRAPH 1. — MISUSE OF THE RED CROSS EMBLEM

(1) *Object of the Prohibition*

(A) *Protective Sign.* — The first Paragraph, as likewise Art. 28 of 1929, prohibits not only misuse of the indicatory sign (*e.g.*, its use for commercial purposes) but also abuse of the protective sign in wartime. The prohibition applies to " any sign... at all times... whatever the object of such use ". Paragraph 3 of the general Article 49, obliging the High Contracting Parties to take measures necessary for the repression of acts contrary to the provisions of the Convention, would in itself authorize such repression [1].

But, as in 1929, the distinction between the two types of abuse is not made. The very wording of Art. 53 may cause confusion ; as it sets out in detail so-called commercial abuses, it might be inferred that these only are covered.

It is very necessary that States should not merely rely on the general provisions of their municipal legislation but adopt precise and stringent legal measures to put down abuse of the protective sign. Penalties should in this case be very much more severe than for illegal use of the red cross for commercial purposes, or in trade marks. The fact that buildings in a war zone display the red cross sign although not entitled to do so, may compromise the security of hospitals which legally bear it, and undermine the respect due to the Convention. It is a question of human lives. The Committee suggested this improvement in the text to the 1949 Conference, but the matter was unfortunately overlooked [2].

In any case, even though the 1949 text might have been more precise, it is still adequate. Governments are responsible

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[1] Art. 23 of the Regulations annexed to the IVth Hague Convention, 1907, is still in force, and forbids, in wartime, misuse of the distinctive emblem of the Geneva Convention.

[2] There are grounds for holding that abuse of the protective sign should come under the " grave breaches " dealt with in Art. 50.

for giving effect to the new clauses, and adapting their legislation to forbid and punish both sorts of abuse.

(B) *Indicatory Sign.* — 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. The public, seeing the red cross on articles that have nothing to do with any charitable action [1], may fail in other circumstances of the most vital importance to recognize it for the protective sign it is.

(C) *Protection of the Title.* — Prohibition of misuse should obviously not be confined to the emblem only, but extend to the words which form its legal title. The words are as familiar to the public as the emblem, and enjoy the same prestige. Since 1906, the title " Red Cross " and its synonym " Geneva Cross " are protected in the same way as the emblem.

(D) *Imitations of the Emblem.* — A happy innovation in 1929 was to forbid unauthorized use not only of the originals, but of every sign or name which constituted an imitation of the emblem and title. This clause was naturally maintained in 1949.

Commercial undertakings, debarred after 1906 from making use of the emblem without risk of prosecution, thought out, with an ingenuity worthy of a better cause, signs which could not be said to be the red cross, but gave the impression that they were. This enabled them with impunity to claim for their products some at least of the prestige attaching to the emblem. As examples we may quote a red cross with a figure, or another cross superimposed ; a red cross which had only the outline or part of it in red, on a background of different colours ; a cross half red and half white with the two colours reversed on the background ; a red star which from a distance

[1] The curious fact may be mentioned that in one army it was customary to mark gas bombs with a coloured cross according to contents and it even happened that some were marked with a red cross and called " red cross bombs ". This practice, fortunately, did not survive. See *Revue internationale*, July 1939, p. 558.

looks like a cross. Such practices, harmful to the emblem and to the organization, had to be eliminated.

It is the duty of the authorities in each country to decide if a given mark constitutes an imitation [1]. A decision is often difficult. The criterium should be whether there is a risk of confusion in the public mind between the mark and the red cross, as it is precisely this that the clause is intended to prevent.

The intention of the user should also be examined, to determine whether he wilfully intended to exploit the prestige of the emblem. In such cases the Convention and the Red Cross should have the benefit of the doubt. If the user meant no harm, why should he have chosen a mark resembling the red cross? There can be no objection to replacing it by signs that are altogether different.

2. *Effect of the Prohibition*

(A) *On Organizations and Individuals.* — Use of the emblem is forbidden to everyone not expressly authorized by the Convention. Art. 44 gives a limitative list of those entitled. Amongst organizations, Red Cross and other recognized relief societies only are mentioned. The sole exception—and this is accorded only with explicit permission of the National Red Cross—is to identify a relief post or motor ambulance (Art. 44, Par. 4). Governments themselves may employ the sign only to distinguish the staff and the material of their Medical Services [2].

(B) *As regards Employment.* — Use of the emblem (always apart from permitted cases) is forbidden " whatever the object of such use ". We saw above that the prohibition applies to both the protective and the indicatory emblem. It also means that the emblem cannot be utilized, outside the Conventions,

[1] It is clear that any red cross, whatever its shape or background, constitutes an imitation and should be forbidden.

[2] We refer here to the limits set out by the Convention with which we are dealing—the First ; they are enlarged somewhat in the Second and Fourth Conventions (1949). We refer to the Commentary on Art. 44 where there is a complete list of the cases in which the red cross emblem may be employed. See English Supplement, January 1952, pp. 14-16.

for any object, however commendable, or for any other humanitarian purpose. If the red cross is sometimes scandalously exploited in order to sell pseudo-medical rubbish, there are other abuses which, although illegal, have no moral taint. Doctors and chemists offer typical examples.

It seems quite right that representatives of these two professions, both serving humanity, should have a distinctive and uniform emblem to designate their residences, their cars, or themselves personally. But instead of the inadmissible course of trying to take the red cross or the Swiss cross as emblem, why should doctors not adopt the sign of Asclepius (the staff and snake—not to be confused with the Caduceus of Mercury, which is the symbol of commerce) as some medical authorities have recommended? Chemists, in turn, could use the ancient sign of their profession : the snake, entwined round the cup of Hygiea, the goddess of health, daughter of Asclepius [1].

Moreover, a good deal of popular instruction is needed to root out the misconceptions of those who still believe that the red cross might be used to designate everything which can be connected with the fight against disease.

(C) *As regards Time.* — Firstly, the prohibition is valid "at all times"—in peacetime as in war.

Secondly, unauthorized uses must disappear irrespective of the date of their adoption. This requirement was already clearly contained in the 1906 and the 1929 Conventions [2].

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[1] See *Revue internationale*, 1933, Feb. p. 128, March p. 218 and April p. 310 ; 1935, Febr. p. 113 ; 1942, Jan. p. 77 ; 1943, Febr. p. 111.

[2] On this point we cannot agree with the opinion of Paul Des Gouttes (*Commentaire*, pp. 206-207). The prohibition in Art. 28 of the 1929 Convention was already absolute. There is no question of retrospective action; it would be, if it were intended to penalize those who have used this sign before the Convention was drawn up. But the Convention provides only for the future. Within five years from its coming into force, no use of the emblem will be lawful, except as provided in the Convention. The only object of the last sentence of Art. 28 is to prevent the registering of new unlawful signs during the intervening period. Finally, it may be noted that in ratifying the 1929 Convention, two States made reservations precisely with the idea of preserving the rights of previous users, as far as the emblem of the Swiss Confederation is concerned. They would not have done so if the Convention had spared such rights.

Some States, however, followed constitutional principles in legislating, and reserved rights acquired by previous use. It is therefore most fortunate that the wording should now be explicit. Manufacturing or trade marks incorporating the red cross must disappear, even if they have been in use for a hundred years. Commercial interests, however legitimate, must give way to the higher interests of humanity, whatever the cost may be.

Paragraph 2. — Misuse of the White Cross on a Red Ground

(A) *Types of Abuse.* — The formal prohibition, stated in the 1906 Convention and given legal effect by the national legislatures, of unlawfully using the red cross sign, led to misuse of the Swiss arms by a number of commercial firms—chemists in particular. Deprived of the red cross and wishing to exploit its prestige, they took the emblem which most nearly resembles it without actually being what would in law be considered an imitation. The Swiss flag was an obvious choice, constituting as it does the prototype of the other, with the colours reversed. Experience shows that most people will be vague about the difference between the two. The Swiss armorial bearings began to crop up on all sorts of medical or pseudo-medical articles, including the most questionable.

The resulting damage to the emblem of the Convention and to the Red Cross was not any less for being indirect. The effect was to mislead the public. The red cross, or the white cross on a red ground, is more or less tacitly accepted as a sort of guarantee, indicating, whether the article be food or drug, that it has been produced under medical control. Such misuse is mere exploitation of the good fame of another. Moreover, the tribute the Geneva Conference had intended to render to Switzerland turned into ridicule, since its flag was degraded [1].

[1] The Danish flag has been outraged—although less frequently—in the same way. It consists of a white cross on red ground, but not humetty as is the Swiss cross ; the arms of the cross extend on all four sides to the edges of the flag.

The arms of countries are not, however, without international protection. The Paris Convention of November 6, 1925, for the protection of industrial property, revising a previous Convention of March 20, 1883, took an important step forward. Under Art. 6 (c), the High Contracting Parties undertook (1) to forbid the use of State arms and their heraldic imitations, either as manufacturing or trade marks, or as part of such marks, and (2) to prohibit the commercial use of State arms when such use was liable to mislead buyers as to the origin of products.

These provisions were not in themselves sufficient to eliminate existing abuses. They were inadequately incorporated in municipal law, and applied only to manufacturing and trade marks. Moreover, the heraldic criterium appears particularly unfortunate. Heraldry is a complex science, known to a few specialists, and depends on details so precise that the slightest change can rule out imitation, even where the public would observe no difference. It was rightly said that the heraldic standard was ideal—for cheats! [1] Moreover, as the Swiss colours were little known abroad, it was difficult to show that their use could lead the public astray.

(B) *Extent of the Prohibition.* — It was clear therefore that the sign of the white cross on a red ground must be protected by introducing the requisite clauses into the Convention itself, and this was done in 1929.

The clauses were maintained in 1949, with some additional details. It is not alone "by reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours" that the prohibition exists, but especially because "of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention". The principal object of the clause is thus to preserve the red cross sign from every sort of infringement, and to pillory firms who exploit the likeness of the two emblems in order to mislead the public.

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[1] The International Association for the Protection of Industrial Property is preparing a revision of the Paris Convention. It is seeking to replace the heraldic standard, the new test being the possibility of confusion.

Imitations of the Swiss cross, as the red cross itself, are also prohibited, because of sharp practice by business men in the past [1].

The Federal colours are, however, less strictly protected than the red cross. A general prohibition is hardly feasible. To take one instance only, they are largely employed by Swiss nationals as their national emblem. The prohibition therefore applies to their use as a manufacturing or trade mark, or as part of such marks, and, for the rest, in cases where it is an unfair means of competition or liable to wound Swiss national sentiment.

A more explicit formula, unreservedly preventing all unfair commercial use, might have been desirable. But as it stands, the clause is adequate to allow Governments who so wish, to apply the letter and spirit of the Convention and eliminate every use of the Swiss cross which may lead to confusion with the red cross, or imply a medical guarantee or semi-official recommendation.

The first Paragraph prohibits misuse of the red cross "irrespective of the date of its adoption", but this phrase does not occur with reference to the Swiss arms in Paragraph 2. The question arises whether or not this allows States to admit vested rights of those using the white cross on a red ground. Although this was the aim of the Delegation which proposed the deletion of the clause, we do not think so. The present wording of Paragraph 2 is absolute, and an explicit reservation would have been needed to spare previous users. The corresponding provision in 1929 which, even with regard to the red cross sign, did not contain the words "irrespective of the date of adoption", already denied the maintenance of acquired rights. Moreover, State arms are protected by long-standing tradition, international and national; abuses should therefore have all disappeared. If some still remain, it is because municipal law is inadequate, or the authorities insufficiently vigorous. There is no justification for prolonging further a situation which we have shown all along to be highly prejudicial.

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[1] While every imitation red cross should be denounced whatever the background colour, it could scarcely be held that every white cross is an imitation of the Swiss flag.

Paragraph 3. — Period of Grace in States not party to the 1929 Convention

From the entry into force of the Convention in each country, the double prohibition of misuse of the red cross sign and the Swiss arms will be obligatory at once in all States party to the 1929 Convention, because this treaty had already introduced the prohibition.

A very few States not party to the 1929 Convention [1] may grant prior users of the red cross sign up to three years grace. It is further understood that during this period—an innovation is made here with good effect—signs and emblems employed must not be such as would appear in time of war to confer the protection of the Convention; therefore, purely indicatory signs may still continue for a limited period.

No such period can be allowed for improper use of the flag of the Swiss Confederation. This is commonsense, as the flags of States have been protected for longer even than the red cross itself.

Paragraph 4. — Protection of the Alternative Emblems

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, are henceforth prohibited in all States party to the Convention.

As Paragraph 4 refers back to Paragraph 1, the extent of the prohibition is the same as for the red cross, and thus covers imitations also [2].

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[1] Reference might also be made to the 1906 Convention, which already protected the red cross sign, but this Convention did not explicitly prohibit imitations.

[2] It was mentioned at the 1949 Conference that cigarette-boxes of the Turkish State Tobacco Company bore a red crescent, accompanied by stars, on a white ground. This mark, by reason of the colour, appears to us an imitation in the same way as would be a red cross accompanied by stars or other additions.

There is a vital difference in Paragraph 4, however: the prohibition concerning the two alternative emblems does not affect vested interests, but applies only to use of the emblems after the Convention has come into force.

This clause alone made Paragraph 4 possible; otherwise it would never have been adopted. It would clearly have been impossible to eliminate throughout the world signs which are used as a symbol of neutrality in only a very few countries [1].

ARTICLE 54. — PREVENTION OF MISUSE

The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

National legislation is required to enforce the clauses of the Convention which protect the emblem, and will continue to be necessary until some kind of international control can be introduced. This is to be hoped for but, in the present state of the world seems a doubtful prospect. Apart from administrative measures, municipal legislation is needed to prohibit and punish misuse, collective and individual.

Offences against the protective sign in wartime come naturally under the Military Code, which deals with offences against the laws and customs of war. Other abuses will be dealt with by Regulations for the application of the Geneva Conventions; forming part of public or administrative law, these will of course contain penal clauses.

It was pointed out (p. 5) that Article 53 should have come in the Chapter on the distinctive emblem; Article 54, on the other hand, is very properly in the Chapter on the repression of abuses and infractions. It might even have been incorporated

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[1] Persia alone uses the red lion and sun, and is not party to the 1929 Convention, which recognized this alternative symbol. As Persia is not party either to the 1906 Convention, it has contracted no obligation to protect the red cross or red crescent against misuse in its territory. It might accordingly appear unreasonable to provide for the protection of the red lion and sun in other countries. It is to be hoped that early ratification by Persia of the 1949 Conventions will end this anomaly.

in Article 49, which binds the Powers generally to take the measures necessary to prevent breaches of the Convention. It was accordingly suggested at the 1949 Conference that the two Articles be amalgamated, but the question was overlooked by the Commission dealing with the subject. The separate Article 54 was therefore drawn up to avoid re-opening discussion on Article 49, which had already been adopted.

Article 54 is obligatory where the corresponding provision in 1929 (Art. 28, Par. 1) was not. The earlier clause provided only that Governments of Contracting Parties " whose legislation was inadequate shall adopt or propose to their legislatures the measures necessary " to prevent abuse of the emblem. A wording allowing the legislatures the option of refusing, partly or in toto, the Government's " proposals ", was rightly rejected. It is the Contracting Parties themselves—by definition, sovereign States—whose will is expressed by Parliamentary votes, which, on ratifying an international convention, accept all the obligations resulting from it. There is no reason why an exception should be made in so important a case as the protection of the red cross. This singular anomaly, fortunately, did not enter into the Convention.

Wherever legislation is inadequate—and it can be counted as such, even if only as regards the newly-prescribed protection accorded to the red crescent and the red lion and sun—it must be amended. The Convention sets no time limit. If at all possible, the adaptation should already have been made when the Convention takes effect, that is, six months after ratification.

Article 53, in addition to welcome improvements, has the advantage also of following the general lines of the corresponding provision of 1929, and this will facilitate the changes required.

In most cases, however, municipal law is very inadequate, even in regard to the 1929 stipulations. It is therefore to be hoped that States, faced with the formal application of the new text, will take the opportunity to give full legal protection to the emblem against every kind of abuse.

There is a further point. The 1949 Conventions considerably extended the authorized use of the emblem. Previously reserved to certain categories of persons and objects clearly defined and

subject to strict military control, it now covers (with restricted safeguards) civilian hospitals, their staffs, and certain means of transport for sick civilians. The emblem is thus rendered more vulnerable than before, and there is a vital need that its protection be reinforced and the vigilance against misuse increased.

In speaking of Art. 53, we underlined the points on which national legislation should be completed and made more explicit; the reader should refer back. We may, however, recall here the necessity of putting down not only the so-called commercial misuse of the indicatory sign, but also abuses of the protective sign in wartime. The latter are much more serious and should be punished proportionally with greater severity. Specific penalties should be set out, instead of relying on general clauses in the penal law.

Laws protecting the sign of the white cross on red ground should prohibit all uses which exploit possible confusion between it and the red cross sign, or tend to imply a medical guarantee. Such practices must be eliminated, even though of long standing.

Finally, it is not sufficient merely to pass legislation, however adequate in itself. There must be a close watch to ensure that abuses will be tracked down and those responsible prosecuted. Most often illegal practices will end once a warning has been given. Public authorities will have a valuable ally in the National Red Cross Societies. The emblem is in large measure the heritage of these Societies, and they would do well to watch over it jealously. Unremitting attention is required for the successful defence of the red cross symbol and the maintenance in full of its profound significance.