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Commentary on AP I and II: SANDOZ, Yves – SWINARSKI, Christophe – ZIMMERMANN, Bruno, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, 1625 pp.

Commentary on AP III: QUÉGUINER, Jean-François, “Commentary on the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)”, *IRRC*, March 2007, n° 865, pp. 175-207.

Commentary on GC I: PICTET, Jean (ed.), *Commentary – I Geneva Convention*, ICRC, Geneva, 1952.

Commentary on GC IV: PICTET, Jean (ed.), *Commentary – IV Geneva Convention*, ICRC, Geneva, 1958.

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See Jean-François Quéguiner, "Commentary on the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)", *IRRC*, March 2007, No. 865, pp. 175-207.

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See *Nicaragua v. US* (Judgment of 27 June 1986) (Merits) 1986 ICJ Rep. 14, at 114, para. 119; Report No 55/97, Case No 11.137 (Argentina), para. 174 (30 October 1997); Report No 26/97 Case No 11.142 (Colombia), para. 131 (30 September 1997); UN Security Council, Res. 1193 (1998), para. 12 (28 August 1998) (on Afghanistan); UN Security Council, Res. 812 (1993), para. 8 (12 March 1993) (on Rwanda); UN Security Council, Res. 794 (1992), para. 4 (3 December 1992) (on Somalia); No. ICTR-6-4-T, at 248, para. 611 (2 September 1998); UN Commission on Human Rights, Res. 1987/51, para. 3 (11 March 1987) (on El Salvador); UN Commission on Human Rights, Res. 1997/59, para. 7 (15 April 1997) (on Sudan).

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See *Commentary on AP I and II*, Annex I, Chapter II of AP I, paras 4018-4026, p. 1167; "Tests by the Dutch Air Force", *IRRC*, March 1936, p. 204; "Test by the Swiss Air Force", *IRRC*, May 1936, p. 408; Gérald C. Cauderay, "Visibility of the Distinctive Emblem on Medical Establishments, Units, And Transports", *IRRC*, No. 277, pp. 295-321; *Manual for the use of technical means of identification by hospital ships, coastal rescue craft, other protected craft and medical aircraft*, 2nd ed., ICRC, Geneva, 1995.

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François Bugnion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, May 2007, p. 20.

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Commentary on GC I, Article 25, pp. 221-222. The *Commentary on GC I* ("Medical personnel"), on p. 217, identifies six categories of protected personnel:

"Personnel protected by the present Convention comprise the following six categories:

1. Medical personnel of the armed forces exclusively engaged in the search for, or the collection, transport or treatment of the wounded and sick, or in the prevention of disease (Article 24).
2. Personnel of the armed forces exclusively engaged in the administration of medical units and establishments (Article 24).
3. Chaplains attached to the armed forces (Article 24).
4. The staff of National Red Cross Societies and other recognized relief societies, employed on the same duties as the personnel mentioned under 1, 2 and 3, and subject to military laws and regulations (Article 26).
5. Personnel of relief societies of neutral countries, who lend their assistance to a belligerent and are duly authorized to do so (Article 27).
6. Members of the armed forces specially trained for employment, in case of emergency, as hospital orderlies, nurses or auxiliary stretcher-bearers (Article 25).

Personnel in the last of these categories are known as 'auxiliary personnel', as opposed to 'permanent personnel' (see title of Article 24) – a term which is sometimes used to describe the personnel in the first five categories."

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"[...] This exclusive assignment to certain duties applies only to medical personnel, and it was at this price that the States agreed in the Geneva Convention to accord special immunity, even on the battlefield, to members of the enemy's armed forces. The words 'exclusively engaged' indicate that the assignment must be permanent, which is not the case in Article 25 dealing with auxiliary personnel." (*Commentary on GC I*, Article 24, pp. 218-219.)

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Up to 1949, this category of auxiliary medical personnel was not very numerous in practice; it could comprise for example regimental bandsmen, who had received instruction in medical work. However, already at that time, according to the *Commentary on GC I*, nothing prevented military personnel who were combatants in the true sense of the word to fill in this category. See *Commentary on GC I*, Article 25, p. 222.

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It is worth noting the explanation given by the Drafting Committee (Committee II) for using the words "assign" and "devote" with regard to permanent and temporary personnel, respectively:

"These different words have been chosen in order to make it clear, that the protection of permanent units or personnel starts at the time of the order, assignment or similar act creating the unit or giving a medical task to the personnel. The protection of temporary units or personnel, however, commences only when they have in fact ceased to do other than medical work." See the *Commentary on AP I and II*, Article 8(k) of AP I, para. 392.

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With regard to the meaning of the term "respect and protection", State practice, such as set out in the US Field Manual, that these personnel "must not knowingly be attacked, fired upon, or unnecessarily prevented from discharging their proper functions". United States of America, *Field Manual 27-10, The Law of Land Warfare*, US Department of the Army, 18 July 1956, as modified by Change No. 1, 15 July 1976, §§ 225-226.

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As an example, the *Commentary on AP I and II* considers as conceivable the use of weapons in a defensive way only on the ground, particularly when an aircraft is forced to land or to alight on water. See *Commentary on AP I and II*, Article 28(3) of AP I, paras 1069-1070.

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The commentary on para. 178 indicates that the rules contained in Article 28 of AP I (summarized in para. 178) are of a customary nature. See *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, para. 178.1, p. 244.

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See, e.g., the military manuals of Argentina, *Leyes de Guerra*, RC-46-1, Público, II Edición 1969, Ejército Argentino, Edición original aprobado por el Comandante en Jefe del Ejército, 9 May 1967, para. 3.007; Australia, Australian Defence Force, *Law of Armed Conflict, Commanders' Guide*,

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Australian Defence Force Publication, Operation Series, ADFP 37 Supplement 1 – Interim Edition, 7 March 1994, para. 615; Australia, Australian Defence Force, *Manual on Law of Armed Conflict*, Australian Defence Force Publication, Operations Series, ADFP 37 – Interim Edition, 1994, para. 521, see also paras. 911 and 964; Belgium, *Droit de la Guerre, Dossier d'Instruction pour Soldat, à l'attention des officiers instructeurs*, JS3, État-major Général, Forces Armées belges (Undated), pp. 18-19; Benin, *Le Droit de la Guerre*, III fascicules, Forces Armées du Bénin, Ministère de la Défense nationale, 1995, Fascicule II, p. 16; Cameroon, *Droit International Humanitaire et Droit de la Guerre, Manuel de l'Instructeur en vigueur dans les Forces Armées*, Présidence de la République, Ministère de la Défense, État-major des Armées, Troisième Division, Édition 1992, p. 87, para. 142; Canada, *Code of Conduct for CF Personnel*, Office of the Judge Advocate General, Edition of 4 June 2001, Rule 10, para. 6; France, *Fiche de Synthèse sur les Règles Applicables dans les Conflits Armés*, Note No. 432/DEF/EMA/OL.2/NP, Général de Corps d'Armée Voinot (pour l'Amiral Lanxade, Chef d'État-major des Armées), 1992, para. 2.3; Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by the Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, August 1992, para. 631, see also paras. 315 and 619; Kenya, *Law of Armed Conflict, Military Basic Course (ORS)*, 4 Précis, The School of Military Police (Undated), Précis No. 3, p. 9; The Netherlands, *Toepassing Humanitair Oorlogsrecht, Voorschrift No. 27-412/1*, Koninklijke Landmacht, Ministerie van Defensie, 1993, p. VI-5; South Africa, *Presentation on the South African Approach to International Humanitarian Law*, Appendix A, Chapter 4: International Humanitarian Law (The Law of Armed Conflict), National Defence Force, 1996, para. 48; Spain, *Orientaciones. El Derecho de los Conflictos Armados*, Publicación OR7-004, 2 Tomos, aprobado por el Estado Mayor de Ejercito, División de Operaciones, 18 March 1996, Vol. I, para. 4.5.b.(1)(b); UK, *Manual of the Law of Armed Conflict*, 2004, para. 7.15; United States of America, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.7, issued by the Department of the Navy, Office of the Chief of Naval Operations and Headquarters, US Marine Corps, and Department of Transportation, US Coast Guard, October 1995 (formerly NWP 9 (Rev. A)/FMFM 1-10, October 1989), para. 11.5.

83

Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by the Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, August 1992.

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The Netherlands, *Toepassing Humanitair Oorlogsrecht, Voorschrift No. 27-412/1*, Koninklijke Landmacht, Ministerie van Defensie, 1993. See *Customary IHL Study*, Rule 25, p. 86.

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"Small surgical instruments are a case in point." See the *Commentary on GC I*, Article 39, p. 307.

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"Sometimes, in front-line positions, a commander will camouflage his medical units in order to conceal the presence or real strength of his forces." See the *Commentary on GC I*, Article 39, p. 307. Where civilian hospitals are concerned, the *Commentary on GC IV*, Article 18, pp.149-150, offers these precise observations:

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“The general rule that ‘civilian hospitals’ shall be ‘marked’ (...) is nevertheless subject to State authorization and this is optional. It follows therefore that while marking of civilian hospitals is obligatory in principle, its application depends on authorization by the State. The marking of civilian hospitals is then a different matter from their recognition. It does not necessarily follow upon recognition. Whereas all civilian hospitals marked with the protective emblem must necessarily have been officially recognized, all recognized civilian hospitals may not necessarily be marked. Of course, in practice official recognition is most often accompanied by authority to display the distinctive sign.”

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"Whether the units and transports are civilian or military, their use is subject to control by the Party to which they belong. Thus the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)." *Commentary on AP I and II*, Article 18 of AP I, para. 766.

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The Commentary on AP I and II (Article 18(4) of AP I, para. 766) states that "the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)".

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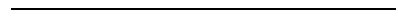
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"However, in reality the situation is more varied: certainly, the authority could not permit a unit or transport which is not recognized as a medical unit or transport within the meaning of the Protocol to be marked in this way. On the other hand, it is not out of the question that it desists from marking a medical unit or transport recognized as such, even if, in the great majority of cases, this would be against its own interest. Indeed, it may happen in some exceptional cases that a distinctive emblem is too striking, and this could be detrimental to military exigencies."

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See *Commentary on GC IV*, Article 18, p. 151: "The unnecessary and inordinate use of the red cross in peace time on buildings not belonging to the Red Cross Society may create confusion in people's minds."

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Annex 1, Section E.II, par. 11, of the Convention makes reference to the capital white H on a blue background as a "sign [which] shall be used to notify drivers of vehicles that they should take the precautions required near medical establishments; in particular, that they should not make any unnecessary noise

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The *Commentary on GC IV* states that "Whereas all civilian hospitals marked with the protective emblem must necessarily have been officially recognized, all recognized civilian hospitals may not necessarily be marked."(*Commentary on GC IV*, Article 18, p. 150).

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"Whether the units and transports are civilian or military, their use is subject to control by the Party to which they belong. Thus the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)." *Commentary on AP I and II*, Article 18 of AP I, para. 766.

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"To a great extent the system of the Conventions is based on the trust which can be placed in the distinctive emblem. The supervision of its use and the repression of abuses are therefore indispensable elements in the system.

(...)

However, the obligation upon the Contracting Parties (or, in the case of the Protocol, upon any other Parties to the conflict bound by it), to supervision the use of the distinctive emblem and signals by persons and on objects belonging to them, also arises in a more general way from their undertaking to respect and to ensure respect for the Conventions and the Protocol in all circumstances."

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"If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge."
Commentary on AP I and II, Article 12 of AP II, para. 4746

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Antoine Bouvier, "Special aspects of the use of the red cross or red crescent emblem", *IRRC*, n° 272, September-October 1989, pp. 443-447.

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Antoine Bouvier, "Special Aspects of the Use of the Red Cross or Red Crescent Emblem", *IRRC*, n° 272, September-October, 1989, pp. 448-451

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Agency for International Development (USAID), 22 C.F.R. Part 226 [Aid Reg 226], RIN 0412-AA55, Administration of Assistance Awards to U.S. Non-Governmental Organizations; Marking Requirements, 2 January 2006, Part A: General Comments, p. 18. Specifically, paragraph 226.91(h)(1) of the said marking rules provides that:

“The above marking requirements in § 226.91 (a)–(e) may not apply if marking would:

- (i) Compromise the **intrinsic independence or neutrality** of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.
- (ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings **must be seen as independent.**

Conflict with international law.” (Emphasis added)

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François Bugion, *Red Cross, Red Crescent, Red Crystal*, ICRC, Geneva, May 2007, p. 8.

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Gustave Moynier and Henry Dunant, *3ème Circulaire: Le Comité International de Genève à Messieurs les Présidents et les Membres des Comités de Secours aux militaires blessés dans les divers Pays*, Geneva, 31 July 1865.

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The *Commentary on AP I and II* states that:
 "If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge."
Commentary on AP I and II, Article 12 of AP II, para. 4746

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Commentary on GC I, Article 26, p. 226. The Knights of Malta and the Order of St. John of Jerusalem are two examples of such "other Voluntary Aid Societies".

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"Whether the units and transports are civilian or military, their use is subject to control by the Party to which they belong. Thus the distinctive emblem should not be affixed without the consent of the competent authority of this Party (which may also be an adverse Party for that matter, particularly in the case of occupied territory)." *Commentary on AP I and II*, Article 18 of AP I, para. 766.

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"To a great extent the system of the Conventions is based on the trust which can be placed in the distinctive emblem. The supervision of its use and the repression of abuses are therefore indispensable elements in the system.

(...)

However, the obligation upon the Contracting Parties (or, in the case of the Protocol, upon any other Parties to the conflict bound by it), to supervision the use of the distinctive emblem and signals by persons and on objects belonging to them, also arises in a more general way from their undertaking to respect and to ensure respect for the Conventions and the Protocol in all circumstances."

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Antoine Bouvier, "Special Aspects of the Use of the Red Cross or Red Crescent Emblem", *IRRC*, n° 272, 1989, pp. 438-458.

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See Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974-1977), Vol. XII, p. 270, CDDH/11/SR. 80, para 16, quoted in the *Commentary on AP I and II*, Article 12 of AP II, para. 4667.

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“If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge.

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269

See, for example, the services offered by Sandline Inc., <http://www.sandline.com/company/index.html>

(2009 / 26);

Medical Support Solutions (MSS), <http://www.medsupportsolutions.com/>

); 2009 / 26 (

Tangiers International, <http://tangiersinternational.com/> (2009 / 26);

Global Operational Resources Group, <http://www.gorgrp.com/>

)2009 / 26 (

270

Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict, Swiss Initiative in Cooperation with the ICRC on Private Military and Security Companies, Montreux, 17 September 2008, para. 9, p. 3.

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Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict, Swiss Initiative in Cooperation with the ICRC on Private Military and Security Companies, Montreux, 17 September 2008, para. 9, p. 3.

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Medical personnel are defined by Article 8(c) of AP I as "those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operations or administration of medical transports. Such assignments may be either permanent or temporary." As underlined by the *Commentary on AP I and II*, Article 8(c) of AP I, para. 354, "it is essential that the Party to the conflict, which is responsible for preventing the misuse of the protective emblem, retains the power to decide who is entitled to the protection reserved for medical personnel." For the purposes of this Question, the authority responsible for the assignment of PMCs/PSCs' medical personnel to "medical purposes" is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs. Article 15 of AP I provides that civilian medical personnel must be respected and protected.

278

Medical units are defined by Article 8(e) of AP I as "establishments and other units, whether military or civilian, organized for medical purposes [like] hospitals and other similar units". For the purposes of this Question, the authority responsible for the organization of PMCs/PSCs' medical units for "medical purposes" is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs.

Due to their specific nature, PMCs/PSCs medical units must fulfil the additional conditions specifically set forth by Article 12(2)(b) of AP I for "civilian medical units" in order to be respected and protected by IHL, namely to be "recognized and authorized by the competent authority of one of the Parties to the conflict".

279

Medical transports are defined by Article 8(g) of AP I as "any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict". For the purposes of this Question, the authority responsible for the assignment of PMCs/PSCs' medical transports to "medical purposes" is to be understood as the authority of the party to the conflict hiring such PMCs/PSCs.

Medical transports are respected and protected under IHL within the limits set forth under Section II, Part II, of AP I.

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“To a great extent the system of the Conventions is based on the trust which can be placed in the distinctive emblem. The supervision of its use and the repression of abuses are therefore indispensable elements in the system.

(...)

However, the obligation upon the Contracting Parties (or, in the case of the Protocol, upon any other Parties to the conflict bound by it), to supervision the use of the distinctive emblem and signals by persons and on objects belonging to them, also arises in a more general way from their undertaking to respect and to ensure respect for the Conventions and the Protocol in all circumstances.”

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See the *Commentary on AP I and II*, Article 9 of AP II, paras 4663-4664; *Commentary on AP I and II*, Article 12 of AP II, paras 4711-4712; *Customary IHL Study*, Rules 25, 28 and 29. See also Question 23 of the Study. For the definitions of medical personnel, units and transports in AP I, see above the section "May PMCs/PSCs qualify as 'medical personnel, units and transports', as defined under AP I?"

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"If the emblem is to be effectively respected, it is essential that its use should be subject to supervision. Otherwise anyone might be tempted to use it. The protection conferred by the distinctive emblem requires that its use be subject to the authorization and supervision of the competent authority concerned. It is up to each responsible authority to take the measures necessary to ensure that such control be effective. The competent authority may be civilian or military. For those who are fighting against the legal government this will be the *de facto* authority in charge.

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“Article 44, paragraph 4 of the First Convention allows the marking, besides ambulances, of aid stations "exclusively assigned for the purpose of giving free treatment". Experience has shown that this rule of free treatment is often interpreted with a degree of flexibility. This practice is acceptable, and in conformity with the spirit of the Convention, only in so far as treatment is in no case conditional on payment of a fee and the idea of voluntary service linked to the Movement is upheld.”

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General Rapporteur of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Geneva, 27 July 1929), in *Actes de la Conférence diplomatique de Genève de 1929*, Geneva, 1930, p. 619, quoted in the *Commentary on GC I*, Article 44, p. 339.

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Commentary on GC I, Article 44, p. 339.

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As outlined as well in the *Commentary on GC I* (*Commentary on GC I*, Article 44, p. 338):
"Red Cross Societies, whenever they grant permission in accordance with these provisions, would do well to exercise a very careful check on the use made of the authorization given, in order that there may be no abuses to diminish the prestige which the emblem must retain in all circumstances.
[...]

Red Cross Societies, before giving the permission on which every fresh use depends, would be well advised to make certain that no prejudice will result from it; they might even refuse their authorization unless satisfied that they can exercise effective and permanent control."

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See, e.g., ANWB, Onderzoek verkeersborden (Research on Traffic Signs), 2005

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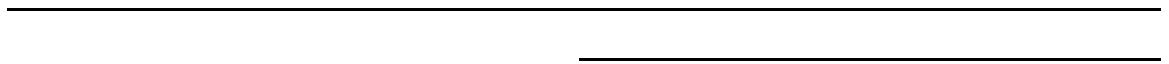
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"Il faut ici distinguer l'utilisation de l'emblème pour indiquer qu'une personne ou un bien est rattaché à la Société, utilisation pour laquelle la rigueur du graphisme s'impose, et l'utilisation à titre de promotion de la Société et du Mouvement, où une certaine souplesse est tolérable si elle ne porte pas atteinte au prestige de l'emblème. Dans ce dernier cas, c'est à la Société nationale de juger, en fonction de la législation nationale et de son contexte national, s'il est possible et opportun d'autoriser un tel usage. La souplesse du graphisme pourra consister par exemple en une croix rouge sertie d'or,

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Usage du nom et du logo CICR

Le Comité international de la Croix-Rouge autorise

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à faire usage du nom et de l'image du CICR
pour la période qui s'étend du

XX.XX.XXXX au **XX.XX.XXXX**

Donneurs d'autorisation

M. XXXXX

M. XXXXXX

Genève le, XX.XX.XXXX

Comité international de la Croix-Rouge

19, Avenue de la Paix
1202 Genève
Suisse

Tél: +41 22 734 60 01
Fax: +41 22 730 27 68
www.icrc.org



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"International Committee of the Red Cross"

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- International Committee of the Red Cross (ICRC)
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- Internationales Komitee vom Roten Kreuz (IKRK)
- Comité Internacional de la Cruz Roja (CICR)

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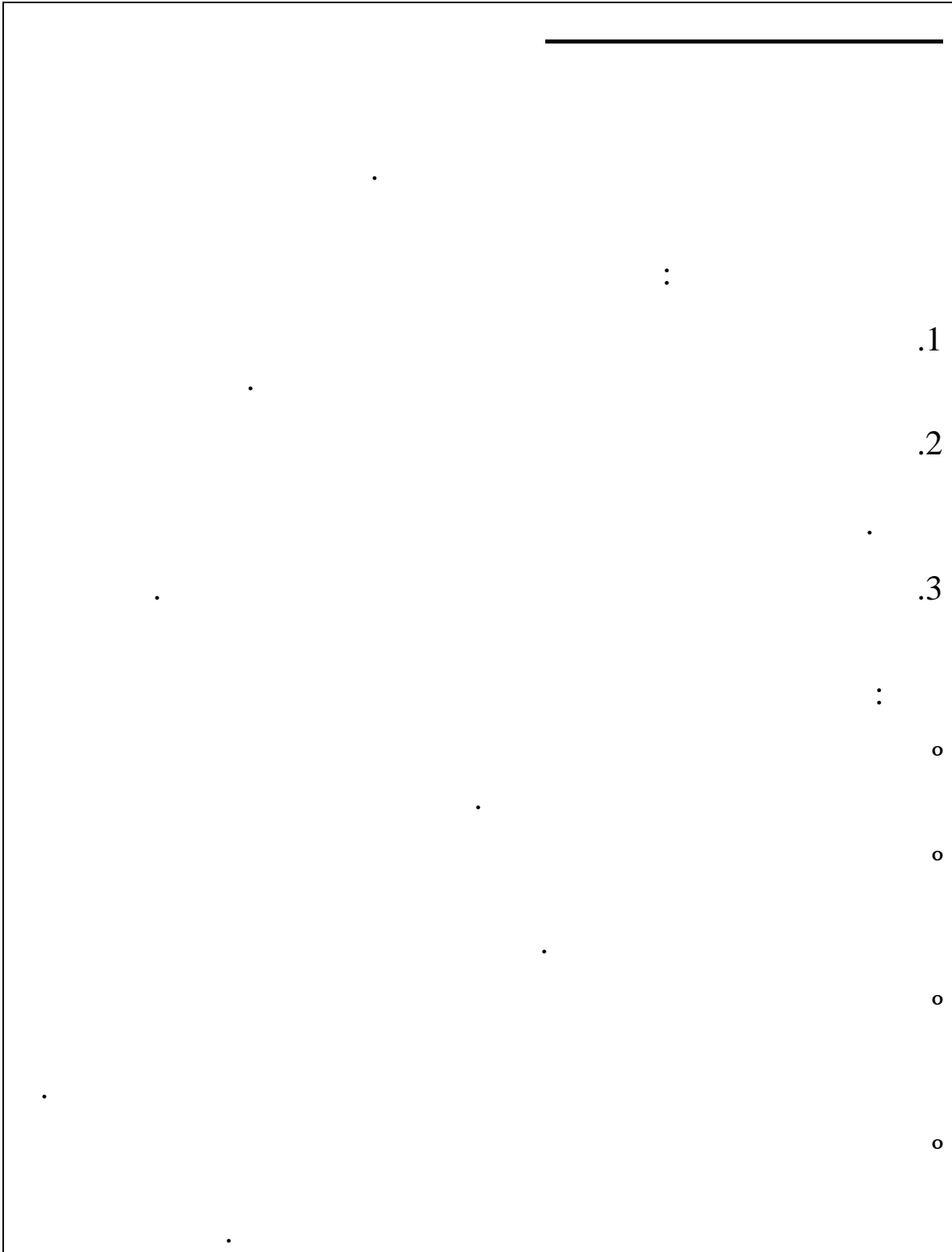
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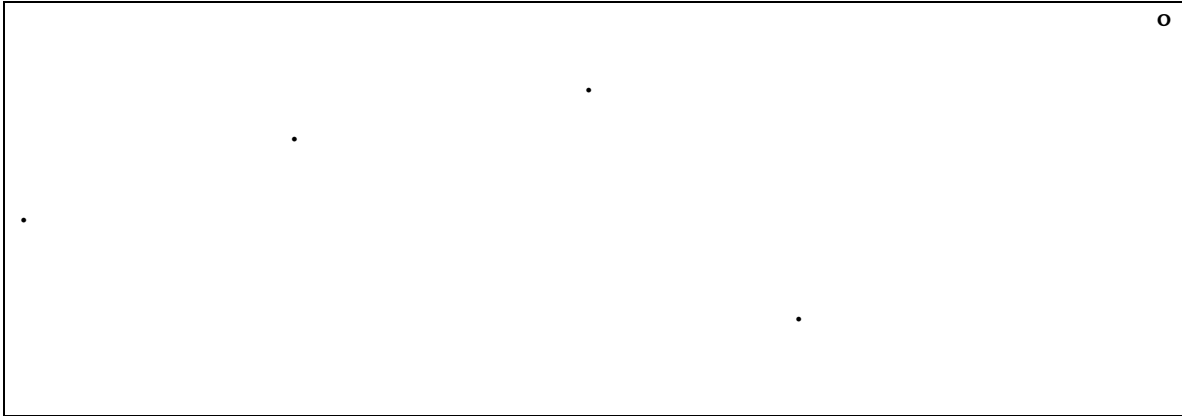
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“The Board of Governors, taking into account that sometimes there exists, at the same time as a National Society, another Society which illegally uses the same name, considers that in such a situation, the League should intervene to stop this state of affairs and request Governments to support National Societies in their efforts to that effect.”

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Laurence Boisson de Chazournes, Luigi Condorelli, "Common Article 1 of the Geneva Conventions revised: Protecting collective interests", *IRRC*, No. 837, 2000, pp. 67-87.

385

Laurence Boisson de Chazournes, Luigi Condorelli, "Common Article 1 of the Geneva Conventions revised: Protecting collective interests", *IRRC*, No. 837, 2000, pp. 67-87.

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"States take strict measures to ensure that the [red cross] emblem, as well as other emblems referred to 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, is used only within the limits prescribed by the Geneva Conventions, in order to safeguard their authority and protect their high significance."

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According to the *Commentary on GC I*, "Article [53 of GC I] has the same standing as the various other prohibitions in the Convention (in regard to the wounded, medical units, and so on)." *Commentary on GC I*, Article 53, p. 383

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Commentary on GC I, Article 53, p. 381. The *Commentary* states also that "[i]t is the duty of the authorities in each country to decide if a given mark constitutes an imitation. The decision may sometimes be a difficult one. The criterion should be whether there is a risk of confusion in the public mind between the mark and the red cross emblem, as it is precisely this that the clause is intended to prevent." *Commentary on GC I*, Article 53, p. 385.

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Resolution XI states that:

"The 23rd International Conference of the Red Cross,

having considered the difficulties arising in several countries by the misuse of the emblem of the red cross, red crescent, red lion and sun by numerous unauthorized persons, private enterprises and organizations,

recalling the provisions of the First Geneva Convention of 12 August 1949 restricting the use of the emblem, by which the States Parties to this Convention have undertaken to take necessary measures for the prevention and repression at all times of the misuse of the emblem,

invites the governments of States Parties to the Geneva Convention to enforce effectively the existing national legislation repressing the abuses of the emblem of the red cross, red crescent, red lion and sun, to enact such legislation wherever it does not exist at present and to provide for punishment by way of adequate sentences for offenders,

takes note with satisfaction of the steps undertaken by the ICRC in this field with National Societies and invites it to continue its efforts in conjunction with those governments wherever necessary,

invites the National Societies to assist their own governments in fulfilling their obligations in this respect and to support the efforts of the ICRC to that end."

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See Jean-Philippe Lavoyer, "National Legislation on the Use and Protection of the Emblem of the Red Cross or Red Crescent", *IRRC*, No. 313, 1996, pp. 482-485

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[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem-model-law-](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem-model-law-150708/$File/Model%20law.emblem-0708_eng%20.pdf)

150708/\$File/Model%20law.emblem-0708_eng%20.pdf (2009 / 26).

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http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/advisory_service_ihl?OpenDocument : 398

(2009 / 26)

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Jean-Philippe Lavoyer, "National Legislation on the Use and Protection of the Emblem of the Red Cross and Red Crescent", IRRC, No. 313, July-August 1996, pp. 482-485.

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See the document prepared by the ICRC Unit for the Relations with Armed and Security Forces:
"Armed Forces: Integration of IHL", available at:
<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-forces-ihl-integration-310503?opendocument>
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Marco Sassoli, Antoine Bouvier, *How Does Law Protect in War?*, Volume I, ICRC, 2nd Edition, Geneva, 2006, p. 274; Umesh Kadam, "Teaching International Humanitarian Law: an Overview of an ICRC Dissemination Programme", *IRRC*, No. 841, 2001, pp. 167-169.

405

Stéphane Hankins, "Promoting International Humanitarian Law in Higher Education and Universities in the Countries of the Commonwealth of Independent States", *IRRC*, No. 319, 1997, pp. 451-454; Luisa Vierucci, "Promoting the Teaching of International Humanitarian Law in Universities: the ICRC's experience in Central Asia", *IRRC*, No. 841, 2001, pp. 155-165.

“Educational Development Centre, Inc. (EDC)”

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Michael Meyer, "Protecting the Emblems in peacetime: the experience of the British Red Cross Society", *IRRC*, No. 272, 1989, pp. 459-464

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Michael Meyer, "Protecting the Emblems in peacetime: the experience of the British Red Cross Society", *IRRC*, No. 272, 1989, p. 459.

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<http://www.redcross.ca/article.asp?id=010952&tid=001>

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François Bugnion, *Red Cross, Red Crescent, Red Crystal*, Geneva, ICRC, May 2007, pp. 4-5; see also Yves Sandoz, *The International Committee of the Red Cross as guardian of international humanitarian law*, ICRC, Geneva, 1998, 32 pp

419

Jean Pictet, ed., "Unpublished documents relative to the founding of the Red Cross, Minutes of the Committee of Five", *IRRC*, English supplement, Vol. II, No. 3, March 1949, p. 127; *Procès-verbaux des séances du Comité international de la Croix-Rouge, 17 février 1863 – 28 août 1914*, ed. Jean-François Pitteloud, with Caroline Barnes and Françoise Dubosson, Geneva, ICRC and Henry Dunant Society, 1999, p. 18, quoted by François Bugnion, *Red Cross, Red Crescent, Red Crystal*, Geneva, ICRC, May 2007, p. 5.

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As stated in the *Commentary on GCI*, “[t]he authorization is without reservation. Consequently – as the discussions at the Conference clearly show – the sign may have protective value when circumstances and the nature of the work require”. *Commentary on GCI*, Article 44, p. 336. (Footnote omitted).

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http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem-ratificationkit-110107/\$File/Ratification%20kit.emblem0107.pdf. (2009 / 26)

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See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 17.

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"Doctrine is understood as all standard principles that guide the action of arms carriers at strategic, operational and tactical levels, independently of the formats these principles take." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 23.

429

"Education focuses on providing personnel with theoretical knowledge on what to do." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 26

430

"The training of arms carriers focuses on providing personnel with practical experience of how to perform their functions while complying with the law." "Equipment provides personnel with the assets needed to conduct missions in accordance with the law." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, pp. 29 and 32.

431

"Sanctions must be visible, predictable and effective." See the ICRC booklet, *Integrating the Law*, ICRC Publication, ref. 0900, 2007, p. 35

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See Stéphane Hankins, "Promoting International Humanitarian Law in Higher Education and Universities in the Countries of the Commonwealth of Independent States", *IRRC*, No. 319, 1997, pp. 451-454; Yves Sandoz, *The International Committee of the Red Cross as guardian of international humanitarian law*, ICRC, Geneva, 1998, 32 pp.; Luisa Vierucci, "Promoting the Teaching of International Humanitarian Law in Universities: the ICRC's experience in Central Asia", *IRRC*, No. 841, 2001, pp. 155-165.

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“Art. 23. The emblem of the red cross on a white ground and the words 'Red Cross' or 'Geneva Cross' may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and 'matériel' protected by the convention.

(...)

Art. 27. The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.”

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“Art. 24. The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used either in time of peace or in time of war, except to protect or to indicate the medical formations and establishments and the personnel and material protected by the Convention.

(...)

Art. 28. The Governments of the High Contracting Parties whose legislation is not at present adequate for the purpose, shall adopt or propose to their legislatures the measures necessary to prevent at all times:

(a) The use of the emblem or designation "Red Cross" or "Geneva Cross" by private individuals or associations, firms or companies, other than those entitled thereto under the present Convention, **as well as the use of any sign or designation constituting an imitation, for commercial or any other purposes;**

(b) By reason of the compliment paid to Switzerland by the adoption of the reversed Federal colours, the use by private individuals or associations, firms or companies of the arms of the Swiss Confederation or marks constituting an imitation, whether as trademarks or as parts of such marks, for

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a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment.

The prohibition in (a) of the use of marks or designations constituting an imitation of the emblem or designation of 'Red Cross' or 'Geneva Cross,' as well as the prohibition in (b) of the use of the arms of the Swiss Confederation or marks constituting an imitation, shall take effect as from the date fixed by each legislature, and not later than five years after the coming into force of the present Convention. From the date of such coming into force, it shall no longer be lawful to adopt a trademark in contravention of these rules." (Emphasis added)

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Commentary on GC I, Article 53, p. 386. The French version of the *Commentary on GC I*, Article 53, put the emphasis on the attempts of exploiting the universal recognition of and good will toward the emblem for (commercial) advantage: "[N]y a-t-il aucune idée de fraude, aucune arrière-pensée de profiter de la notoriété de l'emblème ?" See *La Convention de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne*, *Commentaire publié sous la direction de Jean S. PICTET*, Genève, CICR, 1952, p. 434.

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Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 8.

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See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 9

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See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, p. 10.

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See Leslie Leach, *Nepal Red Cross Society. Emblem Protection Campaign Review*, in collaboration with the Nepal Red Cross Society and the ICRC, February 2007, pp. 7-8, 15-16 and 24-25.

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