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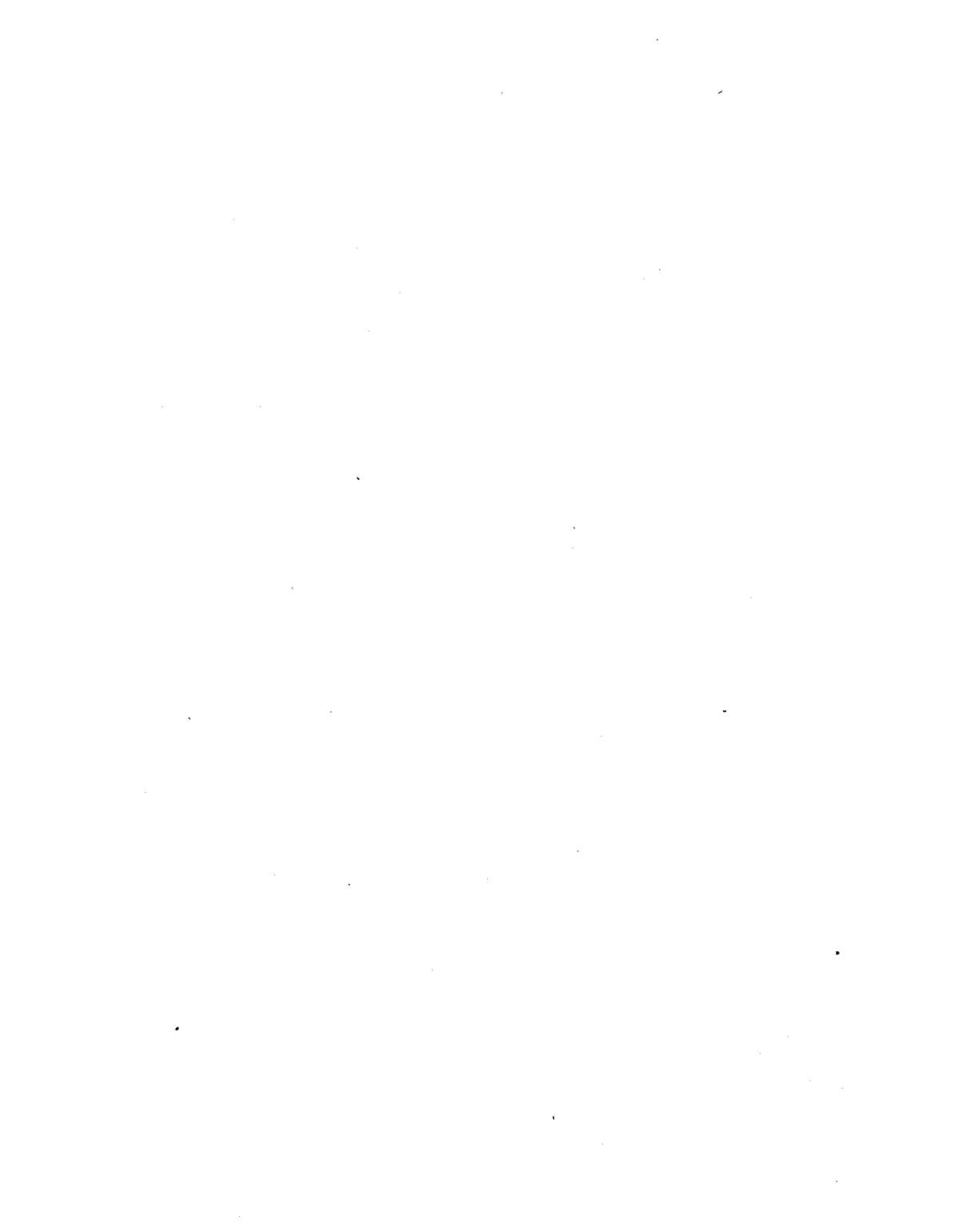
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*Secretary in the Central Management
of the International Committee of the Red Cross*

*THE DOCTOR
IN THE GENEVA CONVENTIONS OF 1949
(continuation)*

Maritime Warfare

As we have already seen, the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea is an adaptation to the conditions reigning for maritime warfare of the principles laid down by the First Convention. Thus the majority of our comments on the subject of the First Convention concerning war on land may also apply in the case of the Second. This is especially true of the general principles, and of all that has been said on the subject of the wounded and sick (to which it will suffice to add "shipwrecked"). There is an exception however with regard to the regulations for the medical personnel of hospital and other ships, which fall into enemy hands. These regulations differ from those concerning the personnel of land forces. They will be considered later in the chapter dealing with the retaining of medical personnel.

It should moreover be noted that maritime medical personnel will always be more "specialized" than the personnel of medical services of land forces, in which civilian doctors can be more easily incorporated after a minimum of military training. We do not think it necessary therefore to enlarge upon all the provisions of this Second Convention, as the extensive training given to naval medical officers nearly always includes the study of these provisions.

We propose therefore to confine ourselves to a rapid survey of the special provisions of this Convention which may possibly concern military or civilian medical personnel.

1. *Application of the Convention in the Mercantile Marine and Civilian Aviation.*

The Convention applies in principle to the shipwrecked, wounded and sick at sea belonging to the various branches of armed forces. But it also extends its protection to the crews of the mercantile marine and civilian aviation, in so far as the latter do not benefit by more favourable treatment under other provisions of international law (First Convention, Article 13).

2. *Handing over of wounded, sick or shipwrecked to a warship.*

All warships of a belligerent have the right to demand the surrender of the wounded, sick or shipwrecked on board military hospital ships or those belonging to relief societies or private individuals, as well as merchant vessels, yachts and other craft, whatever their nationality, provided that the wounded and sick are in a fit state to be moved, and that the warship can provide adequate facilities for necessary medical treatment (Second Convention, Article 14).

This provision is essentially the concern of naval medical officers, as it is for them to decide if the patients can support trans-shipment, and if they are in a fit state to support the conditions, very often of a less satisfactory nature, prevailing on board a warship. The medical officers of the warship should bear in mind that by accepting the wounded they assume the responsibility of making these victims (who are entitled to the most ample protection) share the inevitable, and often very great, risks attaching to every belligerent warship.

3. *Appeals for assistance to neutral vessels.*

In Article 21 the Second Convention authorises the Parties to the conflict to appeal to the charity of commanders of neutral merchant vessels, yachts or other craft to take on board and care for wounded, sick or shipwrecked persons and to collect the dead.

These neutral vessels are not of course obliged to respond to this appeal ; but charitable feeling will impel them to do so.

The medical officers of these vessels in particular may have a favourable influence in such cases.

It is obvious that here again no distinction whatever may be made among the victims for whom help is requested, and that their nationality in particular should play no part in the decision to accommodate them or not.

4. *The protection of sick-bays on warships.*

Should fighting occur on board a warship, the sick-bays are to be respected and spared as far as possible (Second Convention, Article 28).

It will be the duty of medical officers and the persons responsible for such sick-bays to see that they are respected and, in case of need, to organise their defence. Such defence (it is important to note) cannot be considered as a hostile act towards the attacker and cannot in consequence deprive the sick-bay of its right to protection.

5. *Conditions which do, or do not, deprive sick-bays of protection.*

The protection to which hospitals and sick-bays are entitled (Second Convention, Article 34) being similar to the protection granted to medical establishments, we refer to our comments on the latter.

There should be added to the conditions considered as acts harmful to the enemy, liable to cause the lapse of protection, the fact of hospital ships possessing or making use of a secret code for their wireless or other means of communications (Second Convention, Article 34, second paragraph).

To the conditions which are not liable to cause lapse of protection there should, on the other hand, be added :

- (a) the fact of the presence on board of apparatus exclusively intended to facilitate navigation or communications,
- (b) the fact of hospital ships having transport equipment and personnel exclusively intended for medical duties, over and above their normal complements.

Captivity

I. *Regulations concerning enemy prisoners of war.*

A Power, which has captured prisoners of war, is responsible for their treatment (Third Convention, Article 12). It is in particular bound to give them, free of charge, the medical care required by their state of health (Third Convention, Article 15), without prejudice to the provision that prisoners of war should preferably be treated by medical personnel of their own nationality (Third Convention, Article 30, third paragraph).

As a general rule, prisoners held by military authorities will be given the necessary treatment by military medical personnel. It may however occur that, the latter not being sufficient in number, the military authorities will call upon civilian doctors for this purpose. It is therefore necessary for these doctors to be acquainted with the regulations with which they must comply.

Such doctors will of course devote to the work all their professional attributes, and conscientiously give their patients the benefit of all their knowledge. They will not let themselves be influenced by any feeling of antagonism towards the new patients.

- (a) Medical officers will ensure that all sanitary measures are taken for the cleanliness of camps and to prevent epidemics (Third Convention, Article 29).
- (b) Adequate infirmaries are to be set up. Patients suffering from contagious or mental diseases are, if necessary, to be isolated (Third Convention, Article 30, first paragraph).
- (c) Prisoners suffering from serious diseases, or whose condition necessitates special treatment, are to be admitted to any military or civil unit qualified to give such treatment (Third Convention, Article 30, second paragraph).
- (d) Prisoners may not be prevented from presenting themselves to the medical authorities for examination.

They may request to be issued with an official certificate indicating the nature of their illness, its duration and the kind of treatment received (Third Convention, Article 30, fourth paragraph).

- (e) At least once a month all prisoners are to be given a thorough medical inspection (checking and recording of weight, examination of the general state of health, nutrition and cleanliness, and detection of contagious diseases, etc.). The most efficient methods are to be employed, e.g. mass periodic miniature photography for the detection of tuberculosis (Third Convention, Article 31).
- (f) The Detaining Power, in utilizing the labour of prisoners, is to ensure that national legislation for the protection of labour, and national regulations for the safety of workers, are applied. Prisoners so employed are to receive training, and to be provided with proper means of protection for their work, similar to those provided in similar cases for nationals of the Detaining Power (Third Convention, Article 51).
- (g) Prisoners who sustain working accidents, or who contract a disease in consequence of their work, are to receive all the care their condition may require. The Detaining Power is to deliver to them a medical certificate to enable them to submit their claims to the Power on which they depend (Third Convention, Article 54).
- (h) Prisoners' fitness for work is to be verified by medical examinations at least once a month, during which particular regard should be paid to the nature of the work they are required to do. The medical authorities must receive for this examination any prisoner who so requests. Medical officers may recommend prisoners, whom they consider unfit for work, for exemption therefrom (Third Convention, Article 55).

- (i) Independently of the work carried out by the Mixed Medical Commissions, the medical authorities should examine seriously wounded or seriously sick prisoners with a view to their repatriation or their accommodation in a neutral country (Third Convention, Articles 109 and 110).

2. *Retaining of medical personnel.*

(a) Retained personnel.

The question of the retaining of medical personnel, who fall into the hands of the adverse party, is the most important that the Diplomatic Conference of 1949 had to resolve in connection with the First Geneva Convention. The solution which it found has indeed raised sharp controversy, particularly in medical circles ; and the storms thus raised have not yet entirely subsided. We think therefore that this question should be viewed here from a closer angle.

For this it seems necessary to quote the entire Article 28 of the First Convention which deals with retained personnel and then to make a detailed analysis of the subject.

Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties :

- (a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.

- (b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.
- (c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

First Paragraph. — Retained Personnel.

This provision allows of medical personnel being retained, on such terms however as to show that retaining is subsidiary, and dependent upon the principle of repatriation.

According to the 1929 Convention, the retaining of medical personnel was only possible through an agreement. Under the 1949 Convention on the other hand the practice is fully legalised. But for a belligerent to hold back part of the medical and religious personnel fallen into his hands, he must hold prisoners, whose state of health or spiritual needs makes the retaining of the personnel in question necessary or essential for their requirements. The action must be justified by real and imperative needs.

It is not possible to deduce from the text of the Convention that the retaining of personnel is conditional on the adverse Party holding prisoners of the same nationality. Paragraph 2 of Article 28 stipulates that retained medical personnel are to carry out their duties "on behalf of prisoners of war, *pre-*

ferably those of the armed forces to which they themselves belong". Thus a belligerent holding more personnel than required of any particular nationality would be justified, if circumstances so required, in retaining such personnel to look after prisoners of another nationality. A solution of this nature, which obviously appears to be irregular, should remain exceptional and temporary.

Besides the condition arising out of the prisoners' medical and spiritual needs, there is a reference to the number of prisoners. It is only included to enable the proportion of retained personnel to be determined. Article 31, paragraph 2, stipulates that Powers may determine by special agreement the percentage of personnel to be retained in proportion to the number of prisoners.

In the absence of an agreement the Detaining Power will determine the percentage on the basis of reason, equity and experience. The maximum number is that which is sufficient to meet the exact needs of a camp without having recourse to the personnel of the armed forces of the captor.

The wording of this paragraph reflects the idea that the capture of medical personnel is bound to be fortuitous. It is inconceivable that any belligerent would deliberately try to capture them.

Paragraph 2. — Status of, and regulations for, detained medical personnel.

A. First and Second sentences — Status.

The Convention provides that retained medical personnel "shall not be deemed prisoners of war" and adds that "nevertheless they shall benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949". At first sight this wording is not perfectly clear. The object of the word "benefit" is to specify that the provisions of the Convention on prisoners of war are not all applicable to retained medical personnel, but merely those which constitute an advantage for the latter. This is sufficiently

proved by the wording of the corresponding article in the Convention on the Treatment of Prisoners of War (Article 33), which states that " they [the retained medical personnel] shall, however, receive as a minimum *the benefits and protection* of the present Convention ". Moreover, the minutes of the Conference definitely show that the legislators fully intended to lay down that the Detaining Power could only apply to retained medical personnel such provisions of the Convention on Prisoners of War as may be considered an advantage for them.

The Diplomatic Conference therefore wished, firstly not to treat retained medical and religious personnel as being in the same position as prisoners of war, but at the same time to ensure for them the advantages and protection which the Convention confers upon prisoners of war. It thus intended to give them the means of carrying out their medical or spiritual duties on behalf of the captured in the best possible conditions.

The Conference judged, on the one hand, that it was necessary to assert the universal (and in a way " neutral ") character of personnel, whom the nature of their functions placed outside the conflict. It should also be borne in mind that this personnel should normally have been repatriated, and that, if they are retained, it is only as an exceptional measure in the exercise of a charitable mission with the consent, and in some degree even for the account, of the Home Power.

On the other hand the Conference recognised that the guarantees afforded by international law to prisoners of war were efficacious, that they had proved their worth, and that in general they constituted the best protection that could be given to persons in the enemy's power.

During the time passed in enemy hands medical personnel, though legally not prisoners of war, will in fact find their liberty restricted to a certain extent. This situation will inevitably arise from the fact itself of their being " retained personnel ", from their enemy nationality and from the Detaining Power's need to ensure its military and political security. Moreover Article 28 provides that they are to be subject to the discipline of the camp where they are retained. The restrictions placed on their liberty will vary according to circumstances ; and it is

to be hoped that belligerents will show particular goodwill in this respect, by resorting to measures of control and of assigned residence, rather than actual internment, whenever possible. But one can hardly imagine that a Power would ever grant retained medical personnel full liberty of movement, and be willing for them to move about in a country at war, with all the risk of espionage which would result therefrom.

B. Third Sentence. — Exercise of functions.

Retained medical personnel and chaplains *continue* to exercise their medical and spiritual functions for the benefit of the prisoners. The words clearly show that, whereas capture followed by retention places medical personnel in a new position and under a different authority, the functions for which they are there—the care of military wounded and sick—remain unchanged; and it should be possible for these functions to continue without obstruction or solution of continuity.

These functions will henceforth be carried on within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services.

The Convention nevertheless tempers these requirements by a provision to the effect that members of the medical and religious personnel are to exercise their functions “in accordance with their professional etiquette”. Though they are under the administrative control of the captor authorities, their subordination is not unlimited. The restraint of the Detaining Power should not go beyond the bounds of the sphere which, both for ministers of religion and for doctors, is governed by the dictates of their profession and their conscience. For instance, a doctor could not be forbidden to give treatment to a sick person who would otherwise remain without attention, or be forced to give treatment which would be injurious to the patient’s health.

The text further states that retained personnel are to exercise their functions for the benefit of prisoners of war “preferably those belonging to the armed forces upon which they depend”.

C. Fourth Sentence and items (a), (b) and (c). — Facilities.

This sentence enumerates the further facilities which are to be granted to members of this personnel. It is specified at the outset (and is repeated in the detailed provisions) that these facilities are granted to them for " the exercise of their medical or spiritual functions ".

The facilities expressly specified in the Convention are thus of an imperative nature, and are always to take precedence over any other provisions of the Convention which may be cited in this connection.

D. Provisions of the Convention for Prisoners of War applicable to the retained personnel.

In connection with matters governed solely by the provisions prescribed for prisoners of war, consideration should be given to the factors arising out of the special position of the members of retained personnel and the nature of their duties, which may be summarized as follows :

- (a) the performance of medical or religious functions for the benefit of prisoners should be the decisive factor. Should there be any doubt, the most favourable interpretation on the point is to be adopted ;
- (b) the retained personnel are in fact in a state of restricted freedom ;
- (c) the personnel are subject to the military discipline of the camp where they are retained.

It follows that a great majority of the provisions of the Convention for prisoners of war are applicable to retained medical and religious personnel. It is to be hoped the Powers will take steps to clarify by agreements points on which the meaning is not clear.

E. Conclusions.

The various factors for determining the status and conditions peculiar to medical and religious personnel fallen into the

hands of the adversary and retained to care for their prisoner compatriots may be summarized as follows :

1. They are not prisoners of war, but enjoy the special immunity belonging to their profession.
2. Owing to their status of "retained personnel", their enemy nationality and the need for a Detaining Power to ensure its own security, they in practice only enjoy restricted freedom.
3. They are subject to the laws and regulations of the Detaining Power and to the internal discipline of the camp in which they are retained.
4. They exercise their functions in accordance with their professional etiquette.
5. They may not be compelled to carry out any work other than that concerned with their duties.
6. They may visit working detachments and hospitals.
7. The doctor in charge and the chaplains have access to the authorities and correspondence facilities.
8. They receive as a minimum all the benefits and protection of the Convention for Prisoners of War, except in so far as special arrangements are made on their behalf (items 3 to 7 above).

Paragraph 3. — Possible relief of medical personnel.

During the last world conflict belligerent countries considered instituting "relief" of medical officers retained in enemy camps by personnel sent from the home country to take their place, the former being repatriated.

The Diplomatic Conference did not think fit to make such a system compulsory ; it confined itself to making it an optional measure for agreement between the belligerents concerned.

In its Third Resolution however, the Conference requested the International Committee of the Red Cross to prepare a model agreement for the organising of relief of this nature¹.

Paragraph 4. — General obligations of the Detaining Power.

In conclusion the Article says that none of its provisions are to relieve the Detaining Power of its obligations with regard to prisoners of war in medical or religious matters.

Retention, as it is understood by the new Convention, should remain a loan of assistance, an additional benefit for the prisoners of war. The Detaining Power remains entirely responsible for the welfare of the prisoners of war in its power.

On the other hand, the Detaining Power is finally responsible for the work of the retained medical personnel, and may take whatever measures of guidance and control it may consider necessary, in conformity always with paragraph 2 of the Article in point.

(b) The return of non-retained medical personnel.

In Article 30 the First Convention stipulates that medical personnel, who are not retained by virtue of Article 28, are to be returned as soon as a road is open for their return and military requirements permit.

Pending their return they are not to be deemed prisoners of war but are to benefit at least by all the provisions of the Third Convention. They are to continue to fulfil their duties under the orders of the adverse Party, and preferably to be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

On their departure they take with them the effects, personal belongings, valuables and instruments belonging to them.

It may be observed in this connection that, should the repatriation of these members of the medical personnel be

¹ The International Committee of the Red Cross is now preparing this model agreement, for which the basic information has been supplied after an enquiry made among its members by the International Committee of Military Medicine and Pharmacy.

delayed, and the exercise of their duties make it justifiable, they would certainly be entitled to request a more extensive application of this provision. Moreover, by the sheer force of circumstances they should even be considered, within a fairly short delay, as having joined the ranks of the retained personnel, at least as regards their privileges, and so obtain the full benefit of the provisions of Article 28.

(c) Selection of personnel to be returned.

The selection is to be made irrespective of any consideration of race, religion or political opinion, preferably according to the chronological order of capture and the personnel's state of health (First Convention, Article 31).

It is also provided that Parties to the conflict may determine by special agreement the percentage of personnel to be retained in proportion to the number of prisoners, and the distribution of the personnel in the camps. In a final Resolution the Diplomatic Conference requested the International Committee of the Red Cross to prepare a model agreement for this purpose ¹.

(d) Return of the personnel of neutral countries.

The medical personnel lent to a belligerent by a recognized Relief Society of a neutral country, if they fall into the hands of the adverse Party, are in no circumstances to be considered as prisoners of war and may not be retained.

Unless otherwise agreed, these persons are to be allowed to return to their country as soon as possible or, if this is not feasible, to the territory of the belligerent to whom they were lent. Pending their return, they are to continue their work under the direction of the adverse Party, preferably in favour of the wounded and sick of the belligerent to whom their services were lent. They are to be granted the same food, lodging, allowances and pay as the corresponding personnel of the Power into whose hands they have fallen.

¹ This model agreement is now being prepared and the basic information was again supplied to the ICRC by the International Committee of Military Medicine and Pharmacy, following a detailed enquiry recently made among its members.

On their departure they take with them all the effects, personal articles, valuables, instruments, arms and, if possible, the means of transport belonging to them (First Convention, Article 32).

(e) Members of the Medical profession who, as combatants, may have become prisoners of war.

It may occur that doctors, dentists, medical orderlies or nurses are not enrolled in the Medical Services of their own armed forces but in a fighting unit. If captured, they will then of course become prisoners of war.

In this case Article 32 of the Third Convention allows the Power holding them to call upon them to exercise their professional functions on behalf of such of their compatriots as are also prisoners. Consequently, it is the duty of members of any of these four professions thus detained to make themselves known to the authorities upon whom they depend and to offer their services.

It should be observed that according to the terms of Article 32, the captor Power is not obliged to make use of the services of these doctors, dentists or medical orderlies ; but, if it does, the latter are obliged to give their services. It need hardly be emphasised that their services should always be given conscientiously and without compulsion. They are in such case to receive the same treatment as corresponding retained medical personnel and in particular to be exempted from any other work.

(f) Medical personnel of hospital ships and other craft.

We have seen that for the medical personnel of the land forces the retention of part of this personnel to assist in the care of prisoners of war is fully authorised.

At sea a different solution is adopted, especially with regard to the personnel of hospital ships. In this case the liberal conception which prevailed in the 1864 and 1907 Conventions is entirely predominant. Thus, the religious, medical and nursing personnel of a hospital ship and its crew cannot be captured or retained (Second Convention, Article 36). This difference in treatment is fully justified ; without its personnel and its crew,

a hospital ship could not longer fulfil its purpose ; for they are, as it were, an integral part of it. As has been pointed out, the ship would merely become derelict.

The protection to which members of the personnel and crew are entitled is enhanced by two further provisions. It is to prevail for the entire duration of their services on board the hospital ship ; and in addition they cannot be retained if they have been temporarily obliged to leave their ship or to go on land. Again the momentary absence of wounded and sick on board cannot cause their immunity to be withdrawn : for a hospital ship must have freedom of movement even if empty, and be able to put to sea at any moment.

This provision only applies to the personnel necessary for the operation of a floating hospital. It does not cover the extra medical personnel which the ship is allowed to transport. The position for this personnel is stated in the following Article (Second Convention, Article 37) which concerns the religious, medical or nursing personnel, apart from that of hospital ships, which may fall into enemy hands. It has a fairly extensive scope. In practice nevertheless it will in most cases apply to the medical personnel of captured vessels. These may be vessels of the Naval Forces or the Merchant Navy. As for the personnel, it belongs to the Army Medical or Chaplain Services and will be respected and protected in the same way as the corresponding personnel of the land forces.

What will be the outcome, if the personnel falls into the power of the adverse Party ?

For the reason stated above, the Diplomatic Conference of 1949 did not adopt for this personnel the solution decided upon for the personnel of the land forces. They will benefit by more liberal treatment, but still not such favourable treatment as that enjoyed by the personnel and crew of hospital ships (Second Convention, Articles 36 and 37).

The Convention prescribes that this personnel may continue to exercise their functions so long as this is necessary for the care of the wounded and sick. This does not mean that the personnel might dispense with such duties, but rather that they cannot be prevented from carrying them out. The wounded

and sick referred to are those only who happen to be on board the captor or captive vessel where the personnel was found.

When the presence of medical personnel on board is no longer essential, they are to be sent back as soon as the Commander-in-chief, under whose authority they are, considers it practicable. They may take with them, on leaving the ship, their personal property.

Such is the ruling. It is different to that which has prevailed for the land forces, and is in conformity rather with the traditional ideas of 1864 and 1907. But the wording is no longer so absolute; it is liable to an exception.

The Convention now gives the captor Power the right to retain part of this personnel, if this is proved necessary for the medical and religious needs of prisoners of war.

This personnel should be landed with all possible speed. On landing they will be subject to the provisions of the First Geneva Convention, which we have examined above.

It remains to consider the position of medical and nursing personnel of the Mercantile Marine who fall into the hands of the adverse Party. It has been seen that the Conference also applies to wounded, sick or shipwrecked members of crews of the Mercantile Marine, in so far as they do not benefit by more favourable treatment under other provisions in international law. With this reservation, all that has been said in connection with the medical personnel of warships is also applicable for the medical personnel of the Mercantile Marine. It is however inconceivable that medical personnel belonging to the Mercantile Marine would ever be retained to care for prisoners of war in general, though their retention to care for merchant seamen in the hands of the adverse Party would be justified.

B. CIVILIAN MEDICAL PERSONNEL

1. *Right to treat patients.*

With one exception, all treaty stipulations which directly concern the civilian doctor in wartime are to be found in the Fourth Convention for the Protection of Civilian Persons.

The exception is contained in Article 18 of the First Convention. In view of its importance we quote it in full :

The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse Party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded and sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligation to give both physical and moral care to the wounded and sick.

The principle expressed here is certainly one of the greatest achievements of the Geneva Convention, and was directly inspired by the events of Solferino. The wounded combatant should not only be respected. He should also be given treatment without delay, whatever his nationality may be. This task is of such urgency that, if the Army Medical Services are not available, an appeal for help should be made to the civilian inhabitants of the countries where conflicts are in progress. These civilians, if they respond to the appeal, are to be protected while engaged in this charitable work.

This appeal to civilians obviously concerns the doctors in the first place. Whereas it is optional for the inhabitants to respond or not, doctors are morally obliged to do so. They will be still more inclined to respond, as they now know they will receive greater protection while engaged in their duties. The sentences which have in the past been incurred by doctors and nurses for having cared for wounded enemies or friends would today be contrary to the letter of the Convention, and to paragraph 3 of this Article in particular.

It may also be observed that the Diplomatic Conference, which drafted these Conventions, refused to link the authority

thus granted to civilian inhabitants to give spontaneous aid with the acceptance of military control or any sort of compulsory declaration which might be tantamount to delation and might lead in the case of the doctors, to a breach of professional ethics. A military authority might no doubt issue orders of this description ; but, as the Rapporteur of the First Committee of the Diplomatic Conference observed, " It would be extremely undesirable that this should be mentioned in a humanitarian Conference ".

On the other hand, what are the protection and facilities mentioned in the first paragraph? They will depend upon circumstances, and cannot be enumerated. It should merely be remembered that it would not be in order for such protection to involve the right to display the red cross emblem, either on the premises sheltering the wounded person, or on the armband worn by the voluntary nursing orderly, even should he be a doctor. The premises could not be treated like a medical establishment, or the doctor be considered a member of the medical (or even the auxiliary) personnel of the armed forces.

We now come to the provisions of the Fourth Convention. We have already referred to several under Section II, which deals with general principles, and Section III, which deals with times of peace. There remain the provisions concerning times of war.

2. *Protection and respect due to the wounded, sick, infirm and expectant mothers.*

This is purely and simply the application to civilians of the great principle concerning military wounded and sick which dominates the First Geneva Convention (Fourth Convention, Article 16).

3. *Protection of the transport of wounded and sick civilians by convoys of vehicles ; right to display the distinctive emblem.*

It should be emphasised here that only transports by convoys or by two or more vehicles are protected and have the right to bear the emblem. There can be no question, for

instance, of displaying the flag with a red cross on a white ground on a private automobile taking a person to hospital. If such use had been authorised, all control of the use of the sign would have been impossible (Fourth Convention, Article 21).

In this connection it may be recalled that in time of peace the distinctive emblem may, with the authority of the Red Cross Society, be used for marking ambulances (First Convention, Article 44). In war-time this use would not be possible; it is only when these ambulances are used for transports by convoys that they may, with the authority of the State, display the protective sign. If they were assigned to the Army Medical Services, they would be protected individually as such.

4. *Lifting of blockades for the passage of medicaments, medical equipment, etc.*

In Article 23 the Fourth Convention stipulates that the contracting Parties are to allow free passage, firstly for consignments of medicaments, medical equipment and objects for religious worship intended only for the civilian population of another contracting Party, even though an enemy, and secondly for consignments of foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases. These consignments may not be diverted from their destination.

Civilian doctors who undertake to look after the general state of health of a population will have the right, and will in fact be in duty bound, to notify requirements which appear necessary to them. They would also be well-advised to take all possible steps in order that such consignments intended for other States are granted equally free passage through their own country. Moreover, it will be their particular duty to see that these consignments are in no instance diverted from their destination.

5. *The right for aliens in a neutral territory to receive medical attention.*

The Fourth Convention prescribes that aliens, who in time of war may be in the territory of a Party to the conflict, should

in general come under the provisions concerning the treatment of aliens in time of peace (Article 38). In any case they are, if their state of health so requires, to receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.

6. *Maintenance, in the event of occupation, of preferential measures in favour of certain members of the population.*

In Section III of Part III, which concerns occupied territories, the Convention stipulates (Article 50) that "the Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years".

This is an essentially humanitarian prescription and its application should have the particular attention of doctors. It is their right, if not their duty, to intervene by all means, in case of need, with the occupation authorities to secure complete respect for this provision.

7. *Maintenance of hospital, hygiene and public health establishments.*

The Fourth Convention entrusts civilian doctors in occupied territories with important duties and responsibilities. They are to lend their services to the Occupying Power in order to ensure the maintenance of public health by all means. In its first and third paragraphs Article 56 specifies :

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

.....
In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the

moral and ethical susceptibilities of the population of the occupied territory.

In its second paragraph Article 56 lays the obligation upon the Occupying Power to authorise and to grant recognition, if the competent organs of the occupied State are no longer operating, in regard to new hospitals set up in occupied territory, and their personnel and vehicles. It is the Occupying Power which will grant them the right to display the Red Cross emblem.

8. *Requisition of civilian hospitals.*

The personnel of a civilian hospital in an occupied country, which is requisitioned, have the right to ask for suitable arrangements to be made in due time for the care and treatment of the patients, and in general for the needs of the civilian population. Moreover, civilian hospitals may only be requisitioned temporarily and in cases of extreme urgency.

The said personnel may also ask for the material and stores of these hospitals not to be requisitioned, so long as they are necessary for the needs of the population. (Fourth Convention, Article 57.)

9. *Regulations concerning the treatment of civilian internees.*

These regulations are similar to those concerning the treatment of prisoners of war, set forth in the Third Geneva Convention. Reference is therefore made to our comments on this subject. The provisions concerning military doctors in prisoners of war camps are applicable *mutatis mutandis* to civilian doctors who are entrusted with medical care in civilian internee camps.

V

SOME SPECIAL CASES

A. MIXED MEDICAL COMMISSIONS

Article 112 of the Third Geneva Convention makes provision for the creation of "Mixed Medical Commissions", to visit

prisoners of war and decide which of them should, by reason of their state of health, be directly repatriated or accommodated in a neutral country.

The appointment, duties and operation of these Commissions are set down in special Regulations annexed to the Convention (Annex II), which should be regarded as part of it.

A detailed analysis of these Regulations would go beyond the scope of this study. In any case it hardly seems necessary, for doctors who might in the future be called upon to serve in one of these Commissions will always be thoroughly informed beforehand of the way in which they are run and the special nature of their tasks. We shall limit ourselves here to giving a general outline of them and their salient characteristics.

In accordance with the Regulations, Mixed Medical Commissions are to be composed of three members, one of whom is to be appointed by the Power detaining the prisoners to be visited, and the other two by the International Committee of the Red Cross, in agreement with the Power protecting the interests of the prisoners. These two members, who are also to be approved by the Parties to the conflict concerned, are to belong to a neutral country ; failing this arrangement, they are also to be appointed by the Detaining Power (in which case the Commission will be no more than a " Medical Commission "). One of these two members is, if possible, to be a surgeon and the other a physician. Deputy members in sufficient number are also to be appointed in the same way.

The neutral members are to be entirely independent of the Parties to the conflict, which are to grant them all facilities in the accomplishment of their duties.

The Commissions are to examine all the prisoners designated in Article 113 of the Third Convention. They are to propose repatriation, rejection, or reference to a later examination. Their decisions are to be made by a majority vote. They are to function permanently and to visit each camp at intervals of not more than six months.

Under Article 113 of the Convention, wounded or sick prisoners of war belonging to the following categories are

entitled to present themselves for examination by the Commissions :

1. Those proposed by a physician or surgeon who is of the same nationality and who exercises his functions in the camp.
2. Those proposed by the prisoners' representative.
3. Those proposed by the Power on which they depend, or by an organisation duly recognised by the said Power and giving assistance to the prisoners.
4. All prisoners of war who so desire.

Furthermore, under Article 110 of the Convention, special agreements may be concluded between the belligerents to determine the cases of disablement or sickness entailing either repatriation or accommodation in a neutral country. In order to facilitate the drawing up of such agreements, a " Model Agreement " in Annex I of the Convention gives a detailed list of the different cases of disablement or sickness justifying repatriation or accommodation. This Model Agreement forms the essential basis of the work of the Medical Commissions.

B. HOSPITAL AND SAFETY ZONES AND LOCALITIES. NEUTRALIZED ZONES

For a long time now, the Red Cross world, as also the world of medicine ¹, has been concerned with the setting up in war time of zones of protection where the wounded and sick, as well as certain categories of the population, can find shelter from the dangers of war and especially from bombing. Various plans were successively put forward, and the idea was finally

¹ In particular, the International Congress of Military Medicine and Pharmacy voted in 1933 a Resolution which gave birth to a Committee of doctors and jurists. This Committee drew up in Monaco in 1934 a rough draft Convention known as the " Projet de Monaco ". It might also be mentioned that the initiative taken in 1930 by the French Doctor-General Saint-Paul gave rise to the creation of the international agency known as the " Lieux de Genève ".

introduced into the Geneva Conventions of 1949, though only in an optional form, as Governments considered that they could not be bound by imperative provisions on this point.

Article 23 of the First Convention provides for the creation of *hospital zones and localities* intended to protect the wounded and sick in armies as well as the necessary medical and administrative personnel. When certain conditions have been fulfilled, these zones are to be respected and protected and to be placed under the protection of the red cross emblem.

For this purpose, agreements may be concluded between the belligerents. The text of a Model Agreement, which can be used as a pattern, will be found in Annex I of the First Convention.

The Fourth Convention moreover, in Article 14, makes very similar provisions: *hospital and safety zones or localities* may be established to protect the following categories of the population: wounded, sick, disabled, aged persons, children under fifteen, expectant mothers and mothers of children under seven. These zones are also to be respected and protected when certain conditions have been fulfilled. In distinction however from the zones known as "hospital zones", provided for in the First Convention, which are marked by means of red crosses, safety zones are to be marked by means of a special sign of oblique red bands on a white ground.

Agreements may also be concluded between belligerents for the protection of these zones. The text of a Model Agreement, identical to that of the First Convention on many points, will be found in Annex I of the Fourth Convention.

No doubt, the Powers bound by the Geneva Conventions are not under an obligation to arrange for such zones to be established; but the problem remains, and the wording of these two Articles and the Model Agreements indicates implicitly the utility of these zones.

The two Articles mentioned give no particulars on the ways of setting up and recognising hospital and safety zones. The draft agreements annexed are however sufficiently detailed, and might be used in many cases as they stand without alteration.

The creation of hospital or safety zones presents considerable interest for doctors, but also gives rise to numerous problems. Where only hospital zones intended for the sick and wounded in armies are established, military doctors will probably have sole charge of them, and these will have the powerful organisation of the army behind them, whereas in the case of civilian zones the number and variety of categories having a right to protection will almost always involve a considerable hospital, administrative and social staff. A new form of field activity will thus arise, not only for doctors, but also for National Red Cross Societies.

Before concluding the subject, it might also be mentioned that the Fourth Convention, besides safety zones and localities, also makes provision, in Article 15, for *neutralized zones*.

These zones are of a slightly different nature. They are sheltered areas set up in regions where fighting is taking place to protect those not taking part in the hostilities, namely wounded and sick combatants or non-combatants and civilian persons who take no part in hostilities, and perform no work of a military character while in the zones. The temporary nature of these zones is far more apparent; for, when fighting has ceased in the region where they are situated, they will no longer have any reason to exist.

VI

REPRESSION OF ABUSES AND INFRACTIONS

The Geneva Conventions form part of what are generally termed the laws and customs of war, violations of which are commonly known as "war crimes" and those responsible for them as "war criminals".

It was mainly during the Second World War and the years following it that the problem arose of punishing war criminals. The great number of violations committed during the war had given a topical aspect to the question, which deeply affected public opinion and the authorities of different countries.

It was the Geneva Conventions of 1949 which were the first of the laws and customs of war to be provided with a coherent system of rules repressing the violation of their provisions. These rules are embodied in four Articles which appear in all four Conventions (in the First in Articles 49-52, in the Second in Articles 50-53, in the Third in Articles 129-132, and in the Fourth in Articles 146-149).

It seems unnecessary to go into these provisions in detail here: it is the main features alone which are of interest to doctors.

The Conventions make a distinction between "grave breaches", which are listed, and "other breaches".

Grave breaches are those involving any of the following acts, if committed against persons or property protected by the Convention: "wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing of great suffering or serious injury to body or health... taking of hostages, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

The High Contracting Parties are under the obligation to search for persons "committing, or ordering to be committed" any of these grave breaches, and are to bring them, regardless of their nationality, before their own courts. They may also hand them over for trial to another Party concerned.

This provision establishes the joint responsibility of the author of an act and the person who has ordered it: they can both be prosecuted as co-authors.

With regard to the penal sanctions to be applied to these persons, the High Contracting Parties are bound to provide them in their penal laws and to enact any legislation necessary for the purpose. The accused persons are to have the benefit of safeguards of proper trial and defence, which are not to be less favourable than those provided by the Third Convention for prosecuted prisoners of war.

With regard to "other breaches", namely, all acts contrary to the provisions of the Conventions which have not just been mentioned, the High Contracting Parties are to take measures

necessary to suppress them. This means that legislative measures must be taken by each Party, and that the national laws must at least include several clauses or a single general clause providing punishment for such breaches.

It should also be noted that the fourth of these common Articles states that in case of alleged violation of the Conventions, and at the request of a Party to the Conflict concerned, an enquiry is to be instituted, in a manner to be decided upon. If agreement cannot be reached on this question, the Parties are to agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties concerned are to put an end to it and repress it without delay.

Two other Articles (Articles 53 and 54) have been added by the First Convention to the four common Articles. The first is intended to repress various abuses of the red cross emblem and the Swiss Federal colours; the second imposes upon Contracting Parties the obligation to adapt their penal legislation so as to prevent or repress these abuses.

CONCLUSIONS

Having arrived at the end of our report, we venture in concluding to make a few remarks.

The Geneva Conventions were not drawn up so as to confer privileges on medical personnel in war time, or in this way to pay tribute to the medical profession. The persons they intend to protect everywhere from war and from men and their indifference, their malice or their cruelty, are the fallen, the suffering, the weak and the innocent. If doctors and nurses are also accorded respect and protection it is only to the extent to which respect and protection are necessary for these persons. It is not the man who is protected as such, but the healer, and that is the finest tribute that can be paid to him.

Wherever the Conventions speak of rights, the doctor should substitute the word "duty". Has he the right not to be a prisoner of war? Most certainly, but only so that he can

better look after his sick compatriots, and that is a duty. Has he the right to be repatriated? Yes, but only so that he can take up his post again.

If man must suffer, let that suffering be as light as possible. The doctor and the Convention strive towards the same goal; they work alongside one another in trying to reach it. By recognising this principle and obeying it, the doctor will be doing no more than applying the Conventions, and by so doing he will help to make them universal, to impose them on every conscience as one of the evident acquisitions of civilisation. In this sense, the doctor is a peacemaker.

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