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SUPPLEMENT

CONTENTS

	Page
Jean Des Cilleuls and Raymond de la Pradelle: Medical neutrality in subversive wars	195
The activities of the ICRC in the Congo	205

MEDICAL NEUTRALITY IN SUBVERSIVE WARS ¹

Doctors are confronted today with three forms of warfare :

- conventional*, in which weapons of the Second World War, which have since been improved, are employed ;
- atomic* ;
- subversive*, which has been particularly affected by the development of nuclear weapons and of ideological warfare and is attendant on those mentioned above.

The chief characteristic of this form of warfare is its struggle against existing authority, whether of the national legitimate authority, of an occupying Power on national territory, or of the national authority supported by a foreign Power.

It is able to transcend frontiers in offensives which are designed to come to the support of an oppressed population in its struggle against authority.

Possessing the attributes of total warfare in time and space, since it combines all the elements of resistance to the national Power supported by a foreign Power, it consequently embraces without exception all the living forces of a nation.

¹ Report submitted to the « *Congrès international de la neutralité de la médecine en temps de guerre* », Paris, April 1959.

Translator's Note: Most of the texts quoted in this article have been translated from the French.

Finally, when pursued outside its own territory, it is offensive in character, whilst in its own territory its nature is insurrectionary or revolutionary.

Since psychological factors are involved in this form of warfare in which the mass of the population is led to violence and in which the expression of passionate feelings is its most dangerous aspect, « as is the attraction which it exercises over those taking part for the glory which it offers » (J. Muller), how then can the principle of medical neutrality be upheld throughout the progressive stages of dispersed, mobile and collective resistance operations?

In *dispersed resistance* operations, it is quite out of the question for doctors to accompany partisan groups. Only the charity of the inhabitants or the effective assistance given by persons known in advance to be sympathisers, can be depended upon for the transport of the wounded to doctors for emergency treatment, or for treatment at remote farmsteads, in private clinics or hospitals.

Doctors will naturally be inclined to favour members of partisan groups, concentrated in clandestine camps, just as members of such groups, whose homes are in the district, will call in local doctors who are well known to them and upon whose assistance they can count, the most stringent precautions being taken against their movements being known in the neighbourhood.

In *mobile resistance* operations, in which the resistance elements being larger and more firmly based, it will be possible to improvise relatively co-ordinated and supplied medical units. Doctors will, however, in the absence of adequate staff, still have to rely upon their own resources.

In *collective resistance* operations, in which medical units will be less tenuous and more clearly defined, it will be possible, due to a greater absence of risk from all quarters, to ensure better treatment of the wounded, always provided that this is effected in a strictly clandestine manner.

The doctor's rôle throughout each successive phase of resistance operations is of such capital importance that he is

bound to carry out his duties, whether in his own house or clinic, in urban or rural areas, by strictly observing professional secrecy and with the utmost impartiality. Only in this way will he be able to avoid laying himself open to charges by the adverse party of his having shown discrimination and thereby breaking his international obligations, with possibly harmful results for the wounded under his care.

Doctors should always bear in mind that they possess an inviolable right of neutrality and protection under the Geneva Conventions and consequently they cannot be the subject of reprisals in their person, family or property, whether they have been called upon, coerced or have acted of their own free will in carrying out their medical rôle.

If on the other hand they have acted as partisans, rebellious to their own government, they should be considered and treated as such, not by reason of their medical rôle but on account of their having infringed the established order of their country by their conduct... (A. Schikelé).

Pope Pius XII came to the same conclusion at an audience which he gave in October 1953 to members of the XVIth meeting of the International Information Office for Military Medicine and Pharmacy. He said¹: «No doctor can be convicted for the sole reason that he looked after those who were in need of treatment, nor for refusing to allow the sick or wounded to die without coming to their assistance, to do harmful acts to the person, to mutilate or even to kill... But these obligations cannot by themselves confer automatic rights under international law, unless doctors have themselves refused throughout the whole course of the conflict to take part in any political or military activity nor have been influenced by one of the two parties.»

¹ His Holiness spoke in French as follows:

“... On ne pourra poursuivre au pénal aucun médecin pour le seul motif qu'il a soigné ceux qui en avaient besoin; qu'il a refusé de laisser périr des malades ou des blessés sans les secourir, de nuire à la vie ou au corps humain, de mutiler ou même de tuer... Mais ces exigences ne peuvent devenir normes obligatoires d'un droit international que si le médecin lui-même s'est interdit, pendant la durée du conflit, toute activité politique ou militaire et n'y est amené par aucun des deux partis...”

Although the doctor's task in a subversive war is singularly complicated, he must, however, continue to fulfil his humanitarian rôle in spite of the dangers to which he may be exposed.

Article 12 of the First Geneva Convention of August 12, 1949, stipulates that, « members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances » and Article 13 designates amongst protected persons members « of organized resistance movements », with certain reservations.

On the other hand, the third and fourth paragraphs of Article 18 of the said Convention stipulate that « no one may ever be molested or convicted for having nursed the wounded or sick and 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. »

In this connection it is worth recalling that during the French Revolution, Article 2 of a decree of the Convention of September 7, 1793 declared traitors and outlaws all French men who had accepted or were prepared to accept official appointments in enemy occupied territory, with the exceptions of doctors and medical officers.

Such humanitarian principles are of course equally applicable to counter-subversive operations carried out by the forces of law and order for the repression of an insurrection. The affirmation of these principles on August 12, 1949 was shown to have been more necessary than ever, since there have been past and even more recent cases of doctors having been forced to disclose the names of the wounded belonging to rebel forces for whom they had cared.

There are two points of historic interest which are also worth recalling.

During the French Revolution, a certain Laribeau, who had assumed the title of Chief Army Medical Officer, drew the attention of the Committee of Public Safety to the action of the doctors of the military Hospital of Gros Caillou in refusing to forward the names of those who had been wounded on 13 vendémiaire, year IV and for whom they had cared. For this he incurred the severe displeasure of the Army Medical

Council which made a unanimous protest on the following day to the Committee of Public Safety, declaring that all insurgents of 10 vendémiaire were prisoners of war to whom the Convention of 2 ventose, year II was applicable. The Council added the rider that the citizen Laribeau was no doubt unaware of the fact that «after an engagement the wounded were entitled to be cared for without discrimination and that this provision, which was founded on humanitarian principles, was in accordance with military regulations.»

The Medical Council further added that, «if another procedure was called for for political reasons, this would be the concern of the War Commissioner directly responsible for the hospital's administration and not of the medical officer, who should in any case in the execution of his duties always look upon those who are suffering as being in need of care.»

In this case, the War Commissioners during their tour of inspection at the Gros Caillou Hospital were in fact conforming to the intentions of the Medical Council by the enquiries which they had put to the director of the hospital, who had maintained that he admitted only brothers and republicans whom they themselves considered to be all alike. The Commissioners even went so far as to state that it would be highly inadvisable in view of their condition, to ask the sick or wounded indiscreet questions which might cause them distress. They did not therefore see any reason at present for altering the existing state of affairs.»

The ordinance of June 10, 1832, signed by the Chief Police Commissioner Gisquet and counter-signed by Comte d'Argout, is also of interest, since at the time it aroused the indignant protests of the Medical Corps and in particular of Dupuytren, who declared in front of all his pupils at a lecture on June 12 : « Since 13 vendémiaire when I was first attached to the Medical Service I have never met with a single case of discrimination against the wounded of a defeated enemy whether they had taken up arms against the Republic, the Empire or the Restoration. In my experience, the authorities have never even considered court-martialing those unfortunate ones, who had already expiated by their wounds, by loss of limbs and by the

risks which they had taken with their own lives. There are no insurgents in my wards, there are only the wounded... ».

Are doctors themselves assured of immunity in the delicate and dangerous task of carrying out their humanitarian rôle in subversive warfare? Article 3 common to the four Geneva Conventions stipulates that « persons taking no active part in the hostilities » shall be « treated humanely » and Article 18, paragraph 3, of the First Geneva Convention is also applicable.

Furthermore, the second paragraph of the said Article 18 stipulates that « the military authorities shall permit the inhabitants... even in invaded or occupied areas, spontaneously to collect and care for the wounded and sick... ». « The inhabitants are under no obligation spontaneously to place themselves under the control of the authorities » (J.-S. Pictet). To care for the sick or wounded must therefore never be considered as being an unwarranted interference in a conflict.

The fact remains, however, as Henri Lavergne has rightly observed, that the definition of the status of doctors who collect and care for the wounded or sick in subversive warfare remains in abeyance on account of the complex and mobile nature of such operations.

Consequently, the " Commission médico-juridique de Monaco " drew up in February 1950 a preliminary draft " Convention Internationale pour l'exercice de la Médecine " in which Articles 5, 11 and 12 amongst others are categorical. The first of these Articles stipulates that " doctors by reason of their profession, are obliged to care for all persons with complete impartiality and without any adverse distinction founded on sex, race, nationality, class, religion, philosophical or political beliefs ".

Article 11 stipulates that " doctors, whilst carrying out their duties, have the right to be assisted and supported by the authorities " *de jure* or " *de facto* of the country in which they find themselves ". Article 12 lays further emphasis on this protection: " Doctors by reason of having performed their duties shall not be molested or convicted and their person, family and property, should be respected. "

On the other hand, an enquiry on an international level was carried out following on a proposal submitted by one of us and seconded by Dr. Gloor of the International Committee of the Red Cross at the 17th meeting of the International Information Office for Military Medicine and Pharmacy (Luxemburg, November 1954) in order to define, *inter alia*, the status of "the medical services in the case of armed conflict not of an international character."

The question which had been put to the meeting was "to define the status of military and civilian medical personnel in so-called internal conflicts to which Article 3 common to the four Geneva Conventions afforded only limited protection."

The result of the subsequent enquiry, which was carried out by four specialists in the legal and sixteen in the medical field, have recently been published by the Luxemburg Army Medical Services in a pamphlet containing 135 pages entitled, *La protection des Services de santé en temps de guerre*.

Three detailed reports in the form of analyses were presented to the 18th meeting of the International Information Office for Military Medicine and Pharmacy held at Istanbul by Mr. Jean S. Pictet on behalf of the International Committee of the Red Cross, Mr. J. Galiacy and Mr. J. Puyo, for the International Committee of Military Medicine and Pharmacy and General R. Jovanovic representing the Yugoslav delegation, whose report under the heading "La protection du Service de santé en temps de guerre", had been presented to the previous meeting in Luxemburg.

In their report, Mr. Galiacy and Mr. Puyo came to the conclusions that 'the Medical Services shall enjoy the same status in cases of armed conflict not of an international character as in the event of an international conflict. The present texts of the Geneva Conventions are sufficiently explicit as they stand, provided these are interpreted in good faith. Even to make minor alterations however in the wording of the relevant Articles would entail the holding of a series of international meetings which cannot be seriously contemplated at the present time. There is therefore a special need for the setting up of an international organization to deal with this form of conflict'.

In the opinion of Mr. Paul de Visscher, Professor of Law at the University of Louvain, Article 3 common to the four Geneva Conventions, must be considered as being one of the most successful achievements of the Diplomatic Conference of Geneva of 1949. ”

This Article in fact includes principles, directives and contingencies, which in many cases have already been realised. “ An amelioration of the condition of wounded and sick in case of civil war can be expected by the application of the provisions of Article 3, since insurgents who seek international recognition will be more likely to conduct themselves humanely and in accordance with international principles as a point of honour, in order to influence opinion in their favour. Furthermore, it is to be hoped that governments will be activated by similar motives in their own attitude towards the outside world... ” (van der Giessen).

The XIXth International Conference of the Red Cross held at New Delhi in 1957 affirmed the unconditional right of doctors to carry out their humanitarian duties and expressed the wish “ that a new provision be added to the existing Geneva Conventions of 1949, extending the provisions of Article 3 thereof so that :

(a) the wounded may be cared for without discrimination and doctors in no way hindered when giving the care which they are called upon to provide in these circumstances,

(b) the inviolable principle of medical professional secrecy may be respected. ”

Mention should be made of Mr. Jean Graven’s wise counsel in this connection : “ The question of the professional status of doctors should be influenced by force of circumstances and by professional, ethical and human considerations. In other words, its definition and legal regularisation should not depend on such external influences as conditions, considerations or the existing political situation, which should in this connection be treated as being of purely incidental and secondary importance. All legal codification, especially on an international level, should

conform to reason and to common sense and be based on reality, if it is to be respected and above all if it is to endure. ”

If it is accepted as a principle that doctors should be respected and given protection in subversive warfare, this would then imply the definite and universal acceptance of their neutrality. Logically, therefore, such acceptance would in theory have to depend on their own impartiality and on their not becoming involved in political issues. In practice, however, this is by no means such an easy matter to resolve. As Mr. G. Chauillac points out, “In a subversive war, is it possible for doctors to avoid acting at variance with their own humanitarian rôle on every single occasion, whilst taking an active and legitimate part in the movement to which they belong? And if, and this I very much doubt, they are molested or convicted for having cared for some of the sick or wounded, in accordance with the Geneva Conventions, could this not be due to their having belonged to a particular movement? The position is further complicated by the fact that, outside their own medical activities, they cannot be subjected to pressure for holding their own political views nor can they be denied the freedom of thinking, writing or speaking as they see fit. If the principle of medical neutrality is to be made absolute, it is essential to re-examine the methods of its application most carefully in the light of circumstances and with a more open mind. ”

We do not believe that the principle of medical neutrality is sufficiently recognised, nor does it appear to be widely enough known, for a more flexible application to be made at present. Doctors can only ensure the recognition of their medical neutrality by their own declarations to that effect.

In case of conflict or in the event of war, doctors should regard their mission as being something more sacrosanct than the mere exercising of their profession. Flexibility in applying this principle can only be achieved gradually, but it is for the jurisdiction of the courts to bring about its wider application.

Recently French doctors, who had cared for the wounded of FLN groups to whom they had attached themselves were convicted for connivance with wrong-doers. It is not possible to offer a judgment of any value on such a verdict. It would

however be advisable in future for courts, when dealing with such convictions, to consist of one or more doctors, provided the medical officer concerned is still acting in his professional capacity.

The same difficulties are encountered in maintaining the affirmation of the principle of medical neutrality in a subversive war as in so-called conventional warfare. In the latter this principle is upheld by those who maintain that doctors are non-combatants, whose sole aim it is to come to the relief of suffering wherever it may exist. The same principle applies equally to subversive wars, always provided that doctors conduct themselves humanely by standing apart from party interests and activities and by not laying themselves open to subsequent charges justifying prosecution through their actions, for which they and ultimately those for whom they had cared, would suffer.

It is only by conducting themselves in this manner in the midst of violence and passion that, in the absence of a hitherto precise and universally accepted definition, can the protection of doctors and the sick and wounded entrusted to their care, be ensured.

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INTERNATIONAL COMMITTEE OF THE RED CROSS

THE ACTIVITIES OF THE INTERNATIONAL COMMITTEE IN THE CONGO ¹

MEDICAL RELIEF ACTION

In July 1960 the United Nations Secretary-General, Mr. D. Hammarskjöld, made an urgent request to the International Committee of the Red Cross and the League of Red Cross Societies to send medical teams to the Congo to fill the gaps caused by the departure of a great many Belgian doctors.

The two international Red Cross institutions made an immediate appeal to the National Red Cross (Red Crescent, Red Lion and Sun) Societies which met with a quick response.

In conjunction with the World Health Organisation and the Congo Government a programme was established whereby the medical teams sent by the National Societies were assigned to the principal civilian hospitals in the country under the responsibility of the International Committee of the Red Cross in agreement with WHO which co-ordinates their work.

At present, the first phase of this action, namely the arrival and posting of the medical teams, can be considered as having been achieved ; it may be of interest to give a summary of what has been done so far.

On September 15 the medical action of the International Committee of the Red Cross comprised 28 medical teams representing a total strength of 98 persons including 52 doctors, the

¹ See *Revue internationale*, August and September 1960.

INTERNATIONAL COMMITTEE

other members being nurses, male nurses, analysts, anaesthetists, interpreters, etc. The teams, sent by the Red Cross Societies of 21 different countries have been assigned as follows :

<i>Germany</i> (Dem. Rep.) (2 teams)	13 persons — Shabunda, Mwenga and Kindu (Kivu Province)
<i>Germany</i> (Fed. Rep.) (3 teams)	4 persons — Goma (Kivu Province)
<i>Australia</i> (2 teams)	6 persons — Bakwanga (Kasai Province)
<i>Canada</i> (2 teams)	7 persons — Coquilhatville (Equatoria Province) + 2 nurses — UNO Dispensary, Leopoldville
<i>Denmark</i>	8 persons — Matadi Civilian Hospital (Leopoldville Province)
<i>Finland</i>	3 persons — Leopoldville (Hôpital des Congolais)
<i>Greece</i>	8 persons — Luluabourg, Leopoldville (2 nurses) and Thysville (1 nurse)
<i>India</i>	3 persons — Lisala (Equatoria Province)
<i>Iran</i> (2 teams)	4 persons — Leopoldville (military camp) and Thysville (military camp)
<i>Ireland</i>	2 persons — Lubero (Kivu Province)
<i>Japan</i>	3 persons — Inongo (Leopoldville Province)
<i>Norway</i>	4 persons — Luluabourg (Kasai Province)
<i>Pakistan</i>	5 persons — Gemena (Equatoria Province)
<i>Netherlands</i>	5 persons — Leopoldville (Red Cross Blood Transfusion Centre)
<i>Poland</i>	3 persons — Thysville (Leopoldville Province)
<i>United Arab Republic</i>	2 persons — Kisantu (near Thysville)
<i>Sweden</i>	3 persons — Uvira (Kivu Province)
<i>Switzerland</i>	1 person — Katana (Kivu Province)
<i>Czechoslovakia</i>	3 persons — Banningville (Leopoldville Province)
<i>Jugoslavia</i>	5 persons — Bukavu (Kivu Province)
<i>Venezuela</i>	4 persons — Bunia (Eastern Province)

In most cases the teams were accompanied to their posts by one of the members of the ICRC Delegation in Leopoldville who introduced them to the local civil and military authorities and

looked after their accommodation. All the teams, without exception, started work immediately with great courage thus replacing, almost at a moment's notice, doctors who, owing to the events, had left the country. They have been well received by the local people and have not so far been affected by past or present disturbances in some areas of the Congo. Some of the teams brought with them various stocks of surgical equipment and medicaments. Others are supplied with medicaments by the World Health Organisation through the Congo Ministry of Health. In most cases the hospital equipment was found on arrival to be adequate and sometimes very satisfactory.

The Netherlands team, which remained in Leopoldville has taken over the Blood Transfusion Service of the Congo Red Cross. Another team (an Iranian surgeon and two Greek nurses) has been placed—through the offices of the ICRC—at the disposal of the Congo Army Medical Service for duties in the military camps of the capital.

This voluntary assistance undertaken in behalf of the Congo people represents a far from trifling contribution on the part of the Red Cross movement; it is based on a period of three months and the cost is estimated at not less than 150,000 US dollars.

The teams have now been installed. The next phase—the functioning of the work—has begun. The ICRC Delegation in Leopoldville endeavours, in this connection, to keep in very close touch with the medical teams posted to various areas in the Congo. A special aircraft placed at the Delegation's disposal by the United Nations will enable contact to be maintained with the teams and a means of transport, especially for medicaments.

ASSISTANCE TO REFUGEES

In South Kasai where tribal conflicts had broken out after recent events in the Congo, the Baluba living in territory mainly occupied by the Lulua tribe, who were constantly being attacked, fled from the area and took refuge in districts inhabited solely by their own people. So far no official census has been taken but the number of refugees can be estimated at 100,000. With a

view to alleviating suffering and despite great difficulties, the ICRC Delegation has already succeeded, in co-operation with the United Nations emergency services, in distributing about 40 tons of foodstuffs to these refugees. The relief supplies made available by the United Nations were taken by a DC 3 aircraft from Leopoldville to Luluabourg and from there, in small aircraft, to Bakwanga. A delegate of the ICRC accompanied every flight and also organised distributions to the refugees under his supervision.

Owing to military operations of the Central Government forces in this area, this relief action has temporarily been discontinued on account of the unsettled situation and disturbances now prevailing.

The ICRC Delegation is endeavouring to overcome present difficulties and to resume the distributing of relief supplies over a still wider field.

TRACING OF MISSING PERSONS

The events in the Congo in July last have resulted in a flow of enquiries to the Belgian Red Cross and the International Committee concerning persons presumed to have disappeared or from whom no news has been received owing to the break down of communications. In mid-August the ICRC set up a special tracing service to deal with these enquiries.

The delegate appointed for these duties took steps to organise a tracing office immediately on his arrival in Leopoldville.

On leaving Geneva he took with him about fifteen enquiries from the Belgian Red Cross or private individuals. The Central Agency in Geneva has since sent 146 requests for news and about 50 messages to Leopoldville. Since September 3 the tracing service in the Congo has registered 384 enquiries ; from that date the number has increased and 600 to 700 enquiries have been opened up to the present.

The ICRC Delegation sought for correspondents in the various Congo provinces to assist in the tracing operations. At present correspondents are at work in all the provinces with the excep-

tion of Katanga where it is hoped a start will be made in the near future.

A great many replies to enquiries have already been received ; positive results obtained represent about 26% and, in Kiva, the particularly high figure of 45%.

In the city of Leopoldville results are also very satisfactory ; the delegate of the ICRC makes use of every opportunity for opening enquiries, either directly at the homes of the persons sought or by personal applications to consulates or other bodies.

A list of 155 cases was recently handed to the ICRC Delegation by a member of the Belgian Diplomatic Mission, to whom a number of positive replies have already been communicated verbally. In many cases enquirers are requested to give further information owing to names of persons, and of places in particular, being illegible or mis-spelt.

It is expected that tracing operations will continue, in co-operation with the Red Cross of the Congo until the latter has duly been organised and is able to deal with the matter.

DEVELOPMENT OF THE CONGO RED CROSS

The ICRC Delegation also lends its assistance to the new Congo Red Cross at present being instituted. This Society which, until early in the year, was a branch of the Belgian Red Cross, is now in the process of organisation. A joint approach has been made by this Society and the ICRC Delegation to the Congo Government, to request its accession to the Geneva Conventions and official recognition of the new National Society. Mention should be made of the magnificent work done by the Juniors of the Congo Red Cross, early in July, during the mass evacuation of European civilians. In August these young people took over and extended the distributions of milk and vitamins in the main districts of the Leopoldville area. These distributions were made possible through a first gift of the ICRC, and regular supplies made available by the United Nations emergency services. The Congo Red Cross also gave very valuable assistance to the ICRC Delegation for these activities.

VARIOUS ACTIONS

Other actions have also been undertaken by the ICRC Delegation, in particular by intervening in behalf of political detainees in Stanleyville and Luluabourg, and Belgian civilian and military prisoners in Leopoldville. The Delegation also took part in the release and repatriation from Leopoldville to Brussels in the second fortnight in August of 15 wounded Belgian military personnel. A doctor of the ICRC accompanied the wounded men from the hospital in Leopoldville until their arrival in Brussels.

The ICRC Delegation is at present co-operating with the Congo military authorities and the Red Cross in a similar field, namely the translation and dissemination of a summary of the Geneva Conventions in the Lingala language.

The ICRC Delegation in the Congo consists of five delegates and two secretaries.
