

# M I S C E L L A N E O U S

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## DOCTORS' RIGHTS IN WAR

Professor Christian Dominicé of the Geneva University Faculty of Law, has published an article entitled *Le droit des médecins en cas de guerre* in which he outlines the law designed to ensure for the medical profession the respect, protection and freedom of action which is necessary for it to carry out its humanitarian mission.<sup>1</sup> It is a fact, as he emphasizes, that the Conventions of the Red Cross have developed a veritable doctors' law:

“International medical law—the body of legal rules determining the status of doctors and of medical personnel and equipment in general in the event of armed conflict—is the subject of close study, work, and seminars, which testify to the concern of specialized circles to ensure better knowledge of existing law and if possible to improve law and even promote new ideas and concepts.”

After considering the import of present law, the author adds:

“Although this summary of the main rules affecting the status of doctors in war is limited to essentials, it does show both the positive character of the principles to which governments have subscribed as a result of the untiring efforts of the ICRC and specialized circles, and also the shortcomings which still exist in the present system of international medical law.

Treaty law is not drawn up by good intentions and the humanitarian ideal alone. Account must constantly be taken of political realities, government resistance and various national attitudes. Although each improvement is but a step forward and not an end to itself, we must take care not to discredit—perhaps unwittingly—what has been accomplished, on the pretext of doing more and better. Notwithstanding this reservation, no pains must be spared to ensure that, by intelligent constructive action, the doctor is in a better position to acquit himself of his mission.

Tribute must be paid to the efforts which have been exerted in a number of quarters to provoke some conscience-searching in

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<sup>1</sup> See *Revue suisse de médecine militaire*, Basle, April 1967.

connection with humanitarian demands and the responses they require. Apart from the sustained attention devoted to the question of status for doctors by the ICRC—the guardian of the Geneva Conventions—mention must be made of the activity carried out by specialized bodies such as the Committee of Military Medicine and Pharmacy, the World Medical Association, the Centre d'études de droit international médical de Liège, the Medico-Legal Commission of Monaco, the International Committee for the Neutrality of Medicine, and the International Law Association which has set up a medical and legal commission."

The author also reviews various developments worthy of consideration, after describing the significance of "medical neutrality" in time of war, a concept which, due to the way it is sometimes applied, might give rise to misunderstanding:

"Ambiguity may be caused by the fact that some people have advocated the complete neutralization of health services, which they hold should not be part of the armies in the field. To the inexperienced, there is a contradiction here, or at least a fundamental difference, between the idea of medical neutrality on the one hand and the law as it stands on the other. This is a wrong view of the situation. Since Solferino, all the efforts of the promoters of the Red Cross have been directed to having medical neutrality recognized and the treaties which have been adopted by governments have sanctioned this fundamental idea. In point of fact, it is not the neutrality of medicine *per se* which is the aim of the Red Cross, it is the neutrality of the victims of conflicts, i.e. the wounded, the sick, the prisoners, non-combatants and the civilian population. Because the man who is in suffering cannot be considered an adversary, anyone alleviating his distress shall be considered "neutral" or "neutralized". This is the common denominator of all rules demanding respect and protection for doctors, stipulating that they shall not be considered prisoners of war and shall be granted the benefit of a distinctive sign. It is true that the word "neutrality" is not mentioned in the Geneva Conventions,<sup>1</sup> but this is because in law it has a specific and more restricted sense than that given to

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<sup>1</sup> It might be mentioned that the First Geneva Convention of 1864 stipulated that ambulances and military hospitals "shall be recognized as neutral" and that medical personnel "shall have the benefit of the same neutrality".

the idea of neutrality of medicine for which the terms *respect* and *protection* have been used to avoid any misunderstanding.

It would not therefore be correct to say that the neutrality of medicine was an end unto itself which had not been even partly sanctioned. On the contrary, it is one of the fundamental principles of the Red Cross."

Professor Dominicé concludes:

"Before bringing this brief summary of present law and contemporary efforts to a close, we might give a few observations to summarize certain features which demand special attention.

Humanitarian law, and particularly international medical law, are not the transcription in legal texts of those provisions which appear to be the most desirable. They are merely the compromise to which governments have been induced to subscribe. They should therefore be appreciated in the light of political considerations by which all law achieved through diplomatic procedures is conditioned. And especially *de lege ferenda* it may be reasoned, in abstract, any proposition must be commensurate with its chances of being accepted and effectively applied.

Consequently, it is obvious that the law as it stands at present, with its highlights and its shadows, is the only possible basis from which to go forth. It is on the strength of this body of rules that we can, on the one hand, work for the improvement of control procedures and, on the other hand, detect points which require revision or completion.

From this point of view, we have seen that although it is desirable to draw up a genuine medical status valid in all circumstances, it appears preferable not to jeopardize the rules already existing but to work for this objective by starting with the present distinction between military and civilian doctors and by trying to solve the problems affecting each of these two categories.

We have had occasion to mention the attention being given to the introduction of an international code of medical ethics and it is in fact obvious that there is a close connection between this problem and the improvement of protective rules for doctors. Such rules are likely to be accepted and observed only to the extent by which those who benefit from them inspire confidence.

It must be said, in conclusion, that the "Geneva mission", far from being the exclusive sphere of a few specialized institutions and

governments, is of concern to all medical circles whose co-operation is desirable on as wide a basis as possible through medical studies, dissemination of ideas and even through co-ordinated approaches to governments.”

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### PROTECTION OF CULTURAL PROPERTY

*In July 1954 the Revue internationale published an article by Mr. R.-J. Wilhelm entitled « La Croix-Rouge des monuments » concerning the Convention for the Protection of Cultural Property in the Event of Armed Conflict; this Convention was signed in The Hague on May 14, 1954, by 37 States. The text and the regulations for its implementation were quoted in the article in question. This Convention, described as « humanitarian » by its authors, could be considered, as Mr. Wilhelm pointed out, a tribute to the Red Cross and the 1949 Geneva Conventions, in that it secures for works of art the same regard as the Red Cross had succeeded in obtaining for the benefit of war victims. This was, moreover, how it was viewed by the delegates meeting in The Hague, as they demonstrated by declaring their intention to have recourse as much as possible to the solutions advocated by the Geneva Conventions and adopted in the draft which was submitted to them.*

*In a subsequent issue we had occasion to mention the meeting of the contracting parties to The Hague Convention which took place in Paris in 1962 under the auspices of UNESCO and to which the ICRC sent an observer.<sup>1</sup>*

*More recently, in October 1967, UNESCO gave information which was the more interesting as it referred to the present situation and the implementation of this Convention in the Middle East, i.e. where there are so many treasures of the past.<sup>2</sup>*

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<sup>1</sup> See *International Review*, September 1962.

<sup>2</sup> See *UNESCO Chronicle*, Paris, 1967, No. 11.