

REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES OF WOUNDED AND SICK PRISONERS OF WAR¹

The termination of captivity for reasons of health is one of the rights of prisoners of war stipulated by the Geneva Conventions.

I.

Article 109 of the Third Convention lays down that Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war.

The same article stipulates that the belligerent Parties shall endeavour to make arrangements for the "accommodation in neutral countries", as a subsidiary solution, of all cases where captivity should be terminated for humanitarian reasons, but where, for military motives, the States concerned are unable to agree to repatriation. We are here above all thinking of aged prisoners, of those who have undergone a long period of captivity or of those whose mental health has deteriorated.

During the First World War, the belligerents had already employed these two possibilities. At the beginning of 1918, the French and German Governments had agreed to the repatriation of non-commissioned officers and other ranks and to the accommodation in a neutral country of officers whose health had suffered from continued captivity.

During the Second World War the setting in motion of repatriations was unfortunately extremely slow. The first exchange took place in Smyrna, Turkey, in 1942 between British and Italians; further exchanges were made in Lisbon and Oran, then between British and Germans in Göteborg in 1943. Whilst there were differences of interpretation between the belligerents on various minor points, difficulties of a political order above all delayed repatriation. Unfortunately also, the belligerents could never agree about accommodation in a neutral country and finally accepted

¹ Talk given to the Group for International Missions of the ICRC.

REPATRIATION IN NEUTRAL COUNTRIES

that sick and wounded prisoners, who should normally have been accommodated in a neutral country, be repatriated direct to their country of origin.

Thanks to the good offices of the Protecting Powers or of the ICRC, a certain number of persons were repatriated from West Europe, the Middle East and Africa, as follows:

1. Allies: — sick and wounded prisoners of war	10,200
— civilians	930
— protected personnel (medical)	<u>2,230</u>
	13,360
2. Axis powers:	
— prisoners of war	11,300
— civilians	930
— protected personnel	<u>6,500</u>
	18,730

In addition, the German authorities repatriated direct a considerable number of seriously sick and seriously wounded prisoners of war, belonging to countries which they totally or partly occupied.

A further exchange took place in the spring of 1953 in Korea in which 3000 North Koreans and Chinese were exchanged for about 800 prisoners belonging to the United Nations forces, of which some 600 were South Koreans.

II.

Article 110 stipulates:

The following shall be repatriated direct:

1) Incurably¹ *wounded and sick whose mental or physical fitness seems to have been gravely diminished.*

2) *Wounded and sick who, according to medical opinion, are not likely to recover within one year*¹, *whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.*

¹ Our underlining.

REPATRIATION IN NEUTRAL COUNTRIES

3) *Wounded and sick who have recovered, but whose mental or physical fitness seems to have gravely and permanently diminished.*³

The following may be accommodated in a neutral country :

1) *Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.*

2) *Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.*

It is evident that such criteria are too indefinite to enable doctors who have to examine the sick or wounded to decide whether a prisoner should be repatriated or not. They allow for too many interpretations which are prejudicial to a certain uniformity of decision which the belligerents have the right to demand.

A Model Agreement (Annex I of the Third Geneva Convention) has therefore been drawn up for doctors which lays down more precise medical principles to enable the work of Medical Commissions to be better co-ordinated.

It is obvious that such a Model Agreement is dependent on the development of medicine and should be revised and completed from time to time. For example, until when will leukemia remain an incurable disease, authorizing direct repatriation? On the other hand, this agreement has not yet taken injuries incurred from nuclear weapons into account.

III.

Prisoners are examined, with a view to their repatriation, by Mixed Medical Commissions (MMC) (Art. 112 of the Third Convention and Annex II of the same Convention), composed of three members, two of whom belong to a neutral country (one surgeon and a specialist in internal medicine) appointed by the International Committee of the Red Cross, the third being appointed by the Detaining Power. The Chairman must always be one of the two neutral doctors.

Their decisions, made by majority vote, may be repatriation, rejection or reference to a later examination.

REPATRIATION IN NEUTRAL COUNTRIES

This is the work of a medical expert, similar to that of any military doctor who has to decide whether an individual is fit or not for military service. In the present case, however, the doctor must decide whether the soldier is fit for repatriation or not. He therefore has to base himself on a preparatory examination which should be as thorough as possible, in line with the requirements of modern medicine (laboratory tests, X-rays, etc.). He must then have rules at his disposal in support of his decision. The Model Agreement has been drawn up for this purpose.

Decisions made by the MMC will be communicated direct to each prisoner of war examined to whom a repatriation certificate will be issued as laid down in Annex II, art. 11. During the Second World War, possession of such a certificate was, in fact, often essential to enable a prisoner to prove to certain authorities of the Detaining Power his right to repatriation (difficulties arising from a change of camp or hospital, or to an administration disrupted after bombing, etc.).

In order to improve the situation as we knew it during the conflict of 1939-45, the Geneva Conventions, signed on August 12, 1949, required decisions of the MMC for repatriation to be carried out by the Detaining Power within three months of their receiving such notification.

Visits by Mixed Medical Commissions should take place at least every six months.

Seriously sick and seriously wounded prisoners may be repatriated should the Detaining Power consider it desirable, even if they have not been examined by an MMC. Thus the repatriation of those whose condition is particularly serious may be accelerated, as was the case in the United States during the Second World War.

The German authorities adopted another solution for prisoners whose country had capitulated or had been totally occupied. The seriously sick and the seriously wounded could be sent back to their own country by decision of the medical officers of the Detaining Power, or else they were examined by doctors of a "diplomatic mission" acting as the Protecting Power for their prisoner compatriots. This was the case for France whose diplomatic mission (called the Scapini Mission) took part in the repatriation of sick and wounded prisoners.

REPATRIATION IN NEUTRAL COUNTRIES

It was fortunate that the 1949 Diplomatic Conference did not adopt this procedure, since decisions which should be of a purely medical and humanitarian character are more often than not likely to be influenced by political or military considerations. We had occasion to become aware of this during the exchange of prisoners in Korea in 1953. Medical decisions favourable or not for repatriation had been taken by the Detaining Powers and these did not often correspond to the provisions of article 110 or of the Model Agreement. It was only the presence of two neutral doctors on the Mixed Medical Commission which enabled difficulties arising from political considerations to be avoided.

IV.

Right to Examination by an MMC.—In principle, all prisoners have the right to present themselves before a Mixed Medical Commission. During the Second World War, however, the work of these commissions was too often hampered by the large number of prisoners presenting themselves for minor ailments, giving them under no circumstances the right to repatriation. Therefore, with the drawing up of art. 113 which defines this right, a certain selection was to be put into operation. In fact, the following will be examined first of all:

- a) prisoners designated by the Detaining Powers
- b) prisoners proposed by a medical officer of the same nationality
- c) prisoners proposed by their camp representative
- d) prisoners proposed by the Power on which they depend.

In this way, an attempt has been made to bring home to prisoners wishing to present themselves to an MMC for examination that their chances are slender, unless they have been proposed by any of the above. The prisoners' medical officers can also influence their comrades to that effect.

However, the Commission stipulates that in spite of the procedure laid down above, each prisoner has the right to be examined by the MMC. This provision has rightly been introduced. In fact, it has often been able to be proved that prisoners were not given the opportunity of being examined by an MMC as a result of ill-will

REPATRIATION IN NEUTRAL COUNTRIES

on the part of the Detaining Power, of political strife between the prisoners or of some personal grudge by the doctor of the same nationality or by the prisoners' representative.

It is partly in order to have this right the better respected that the Conventions stipulate that doctors of the same nationality and prisoners' representatives are to be present whilst the MMC's are at work. On the other hand, their presence can reassure their fellow prisoners of the MMC's objectivity.

V.

Prisoners proposed for repatriation and who are undergoing disciplinary punishment may not be kept back on the pretext that they have not completed their punishment. On the other hand, prisoners undergoing sentence for penal offences are dependent on the mercy of the Detaining Power.

VI.

The last paragraph of art. 109 stipulates that no sick or injured prisoner of war who is eligible for repatriation may be repatriated against his will during hostilities.

Taking the prisoner of war's wishes into consideration is a new factor made necessary by the dangers which could be incurred by nationals of a State undergoing political upheavals. This new principle had considerable importance during the repatriation of Korean prisoners in 1953.

It is evident that we doctors should base ourselves, when making decisions, only on medical and humanitarian considerations. However, difficulties have arisen and will always arise when such considerations are in violent opposition to certain military conceptions.

A few examples of these can be quoted:

- The Detaining Power pleaded security reasons for refusing some repatriations, especially when it was a question of certain senior officers or specialists. It was feared that such military personnel might, on returning to their own country, take up non-military employment, (since art. 117 of the Third Convention prohibits employment on active military service on repatriation) but which could entail indirect participation in the war.

REPATRIATION IN NEUTRAL COUNTRIES

- Repatriation had to be refused prisoners whose disability (for example, the loss of a limb) was incurred before the war and had not been aggravated by it.
- Similar procedure had to be adopted as regards prisoners who, before capture, had served in their own country's armed forces although suffering from a disability which would have given them the right to be repatriated if it had been caused by fighting or captivity.
- This also applied to prisoners repatriated as a result of a decision by an MMC and who were again captured with their arms, in flagrant violation of art. 117 of the Convention which stipulates that no repatriated person may be employed on active military service (he must be to a certain extent "neutralised" in the territory of the Power on which he depends).
- The most difficult was to ensure that such repatriations took place "regardless of number or rank".

In conclusion, it must be admitted that, generally speaking, the Mixed Medical Commissions were able to work in a correct manner during the Second World War, thanks to the spirit of duty, to the humanitarian and moral sense shown by the doctors we met on both sides.

One should remember that any medical officer may find himself in one of the three following situations:

- to be a doctor of the Detaining Power and having to concern himself with prisoners of war;
- to be a doctor prisoner, responsible for his own compatriots;
- to be a neutral doctor on a Mixed Medical Commission.

Each one of these functions requires a thorough knowledge of the Geneva Conventions.

Finally, it must be pointed out that it is high time the "Model Agreement" was revised. It dates back to 1949 and is not abreast of present-day medical knowledge.

Dr. Jean-Maurice RUBLI

Delegate of the ICRC

Former member of the Mixed Medical Commissions