

PROTECTION AND NURSES

Developments in international humanitarian law

by Yves Sandoz

The fourth and last session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts has just opened. The Conference is considering two Protocols additional to the Geneva Conventions of 1949. The first widens the scope of humanitarian law applicable in international armed conflicts, in particular by giving additional protection to civilians even when they are not in the enemy's power, and by extending to civilian medical personnel the protection which until now had been granted only to military medical personnel. The second Protocol develops the law applicable in non-international armed conflicts, which until now was restricted to a few principles contained in common article 3 of the four Conventions of 1949.

Nurses may become involved in such conflicts in various ways: their own country may be at war with one or more States, or it may be occupied by the troops of a foreign power, or it might be the theatre of civil war.

It could also happen that nurses might be caught up in wars which do not touch their own country: for example, the medical staff of relief societies in States not involved in a conflict may be made available, subject to certain conditions, to the parties to a conflict, to help them in their medical tasks.

The rights and duties of nurses in any one of those cases will be briefly examined here.

Duties of nurses

The duties of nurses are closely related to the rights of the wounded, sick and shipwrecked persons under their care. It should be pointed out, first of all, that the Protocols currently under discussion give much wider definitions of wounded, sick and shipwrecked persons than those which are customarily accepted: the wounded and sick—provided, of course, they refrain from any act of hostility—may be either military or civilian, their status of “wounded”, “sick” or “shipwrecked” taking precedence provisionally over any other status. Maternity cases, expectant mothers, new-born babies and the infirm are assimilated to wounded and sick.

The rights of those persons—and consequently the nurses’ duties towards them—are basically the following: respect (i.e. the right not to be harmed), protection (the right to receive assistance), humane treatment (the right to receive the very best possible medical care which their condition requires). Two principles must not be forgotten in connection with those rights: the persons concerned may not renounce them, even of their own free will (inalienable rights); and care should be given to protected persons without any adverse distinction founded on religion, race or any other criteria, urgent medical reasons alone authorizing priority in the order of treatment to be administered (principle of non-discrimination).

Parallel to those duties which may be called the active duties of nurses in relation to the rights of the wounded, sick and shipwrecked, there are also those which may be called passive duties. Nurses must not forget that reprisals against the wounded, the sick and the shipwrecked, against prisoners and civilians, are severely prohibited, even though members of the opposing party may have perpetrated acts of violence against the wounded, sick and shipwrecked in their power. They must under no circumstances whatsoever be involved in acts of violence in reprisal against the persons under their care. Indeed, they should oppose such acts with all the means they possess.

The Protocols also provide for certain fundamental guarantees applicable in armed conflicts to all persons who do not enjoy wider protection. Those guarantees—whose exact formulation is still under discussion—include the prohibition of endangering the physical or mental health of persons and of performing any medical act which might harm the patient. Here, again, it is the nurse’s duty to abstain from taking part

in such acts and to stop them if possible. In principle, nurses must abstain also from giving any information which they might have received from persons under their care.

Rights of nurses

It is only because wounded, sick and shipwrecked persons need the services of medical personnel that the latter are entitled to certain rights, without which they would not be able to perform their tasks adequately. In the case of temporary medical personnel, it is only when such persons are working as medical personnel that they may enjoy those rights, which are attached to their function and not to their person.

Medical personnel have as much right to respect and protection as the wounded, sick and shipwrecked. In case of need, they shall be afforded assistance and they shall have access to any place where their services are essential, subject of course to appropriate supervisory and security measures. Under the Protocols now being discussed civilian medical personnel also are entitled to this freedom of movement. Medical personnel shall not be punished in any way for carrying out medical activities compatible with medical ethics, even if such medical care is for enemy persons. This immunity is the obvious corollary of the principle of non-discrimination in the care of the wounded and sick. Similarly, the duty not to take part in medical acts contrary to the patient's health implies the right of the medical personnel not to be compelled to perform such acts.

Medical personnel attached to armies may not be retained when captured. No exception to this rule may be invoked in the case of personnel of relief societies sent to help one of the parties to the conflict. In the case of medical personnel of a party to the conflict, they may be retained only in so far as their services may be required to tend prisoners of war belonging to their own party. Such personnel may not be compelled to carry out any work other than their medical duties and must be released when their services are no longer required. These restrictions in the rights of medical personnel are only in the interest of the wounded and sick. Pursuant to this same principle, the requisition by the occupying power of civilian hospitals or other civilian medical establishment is not absolutely forbidden. If there are many wounded

among the occupying forces and the hospitals in the occupied territory are almost empty and their staff only partially employed, the principle of non-discrimination demands that those hospitals and their staffs should be used to care for those wounded. Requisition is therefore allowed on those grounds, provided that the health of the civilian patients treated in those hospitals is not impaired and that the medical needs of the civilian population as a whole continue to be satisfied. In any case, the requisition should only last while there is a need for it.

It should also be noted that medical personnel have to observe certain obligations which are inherent to their rights. Thus, to be respected, it is essential that they should be recognizable; consequently, they must wear a distinctive emblem and carry a special identity card.

Finally, the rights afforded to medical personnel rest, above all, like the entire Red Cross system in time of conflict, on a foundation of trust.

If nurses consented to perform tasks not related to their duties — for example, spying—not only would they lose all their rights, the work of the Red Cross itself would be jeopardized.

Conclusion

The broad principles governing medical personnel activities in time of conflict are simple. Besides, the majority of those principles (respect, protection of and aid to the wounded and sick; non-discrimination in care of patients; prohibition of activities harmful to the patients) are valid at all times and in all places. There is no doubt that most nurses, obeying the natural impulse of their feelings, unconsciously apply them without having actually learnt them.

All the same, all nursing personnel should be taught the principles, for it is of vital importance that they should know exactly what are their rights and their duties.
