INTERNATIONAL MEDICAL LAW

New Trends

by J. Patrnogic

I. Purpose and Definition

If the subject covered by medical law must be stated, it is easy to say that it is the practice of medicine. This, the work of the doctor, should be defined by the jurist. The doctor in the first place is he who cures. It is an axiom that the purpose of medicine is to protect and preserve human life as far as possible. Confronted daily by the suffering and death of his neighbours, the doctor, *nolens volens*, finds himself as a privileged technician at the centre of a problem which it would be illusory to ignore.

But today this conventional idea of medicine has been broadened. It is essential to examine with a frank medical outlook all the scientific, technical, moral, legal, social and philosophical aspects of that broader concept.

In at least three ways that widening notion is observable: the extension of medical techniques; the possibility for modern medicine to prevent rather than cure; and the fact that the doctor is required to lead and direct man's physiological life, particularly in terms of his occupation and family life. It is no longer essentially a question of the art of healing, but more and more of the privilege of working upon the human body itself.

From the " purely " legal viewpoint, international medical law is now a whole set of principles, standards and various institutions

designed to ensure firmly and effectively the protection of human values which are symbolic of human life and health. The complicated and complex activities carried on in this new branch of law will have as their aim the limitation of the subject, whilst at the same time distributing it harmoniously but bringing out in particular the human, impartial, universal and, as far as possible, the independent character of international medical law within the system of humanitarian law.

Since the Second World War, several international organizations, military and civilian doctors and legal experts have been clamouring for the internationalization of medicine and the adoption of a medical charter not only nationally but also internationally.

The twofold legal framework of the medical contract and the exercise of the medical profession has, after a long evolutionary period, been gradually defined to the extent that it could be the subject of laws. The law had to intervene first to confer on the medical profession its guarantees and basic obligations. Several countries have adopted rules and laws on the exercise of the medical profession and have founded professional corporate organizations. Some national medical associations have already devised their own rules of conduct (in the first place, a code of ethics). It may be said that those regulations constitute the outline of an international medical charter which would officially recognize the privileges, duties and rights of doctors.

Particular attention is being given internationally to three basic sectors of medical law:

The first covers the possibility of legal regulations relating to medicine (medicine and the exercise thereof).[1] The second is the medical mission (the international code of ethics, medical ethics, professional secrecy, the doctor-patient relationship) and the third—the most important, and embodying the first two—is the humanitarian mission of medicine.

The latter is the basis of international medical law, particularly in time of conflict, because it will not be possible effectively to protect the victims of war only through the action of doctors for

[1] International Law Association, Hamburg Conference, 1960; International Medical Law Commission, pp. 684-708.

whom the only reason for the existence of medicine is the protection and the safeguard of human life.

Most rules and essential features which must be included in international medical law are to be found in the Geneva Conventions for the protection of the victims of armed conflicts. Other important legal instruments from which international medical law draws its inspiration are: the United Nations Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Economic Social and Cultural Rights, the Conventions of the World Health Organization, the Court Reports on the trials of German (Nuremberg) and Japanese (Khabarovsk) doctors condemned for war crimes and crimes against humanity, etc.

In his report on the objectives of medicine and the duties and rights of doctors and medical personnel of all kinds to the 49th Conference of the International Law Association (ILA), General Jovanovic stressed: " Medicine is most directly concerned in the application of the basic principles of the safeguard of human values. Medical science has therefore acquired one of the most important places in the system of international guarantees of human rights. Like a deep and hidden current, medicine links the many branches and disciplines of law, conferring on them the stamp of a profound humanism. This important role of medicine in contemporarily international society made it necessary to regulate it by international legal standards. Consequently we can today speak of the existence of international medical law. The development of this branch of international law is in full swing and acquiring an important place in the international law of war, particularly of humanitarian law ".[2]

When adopting the resolution on international medical law, the 49th ILA Conference considered " that the question of legally defining the objectives of medicine and the elementary rights and duties of doctors and medical personnel, is of capital importance for studies related to the development of international law, bearing in mind that doctors alone direct therapy and prophylaxis ".*

The ILA Medical Law Commission may be expected to continue its work in this basic field of international medical law.

[2] Our translation. See note No. 1, p. 700.

* Our translation.

II. New trends

It must not be forgotten that the major contribution to the development of international medical law was due in the first place to the International Committee of Military Medicine and Pharmacy (ICMMP), the *Commission médico-juridique de Monaco* and the International Committee of the Red Cross (ICRC). Since 1952, on the initiative of the ICMMP and the ICRC, there have been 14 meetings on international medical law, the last one in November 1970. These exchanges of views on medical law studies, projects and proposals submitted by the most competent international organizations, have undoubtedly contributed not only to the development but also to the affirmation and role of contemporary international medical law.

Several projects and conclusions have been adopted during the meetings on medical law. For example, the 1958 medical ethics in time of war and rules to provide relief and care to the wounded and the sick, particularly in time of armed conflict, were the subject of important consultations on the occasion of International Conferences of the Red Cross and the Military Medicine Congresses.

The ICRC dealt with this subject in its circular (No. 425) to the Central Committees of National Red Cross Societies on 6 February 1959. The result of that initiative was very favourable. At the XXIst International Conference of the Red Cross, the ICRC submitted a report on the protection of civilian medical and nursing personnel and medical assistance to the wounded and sick. Two resolutions adopted by that Conference have given strong support to the ICRC's work in the realm of medical law and authorized it to prepare concrete proposals, particularly within the framework of studies related to the reaffirmation and development of the laws and customs applicable in armed conflicts.[3]

[3] The XXIst International Conference of the Red Cross... underlines the necessity and the urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds, in order to strengthen the effective protection of the fundamental rights of human beings, in keeping with the Geneva Conventions... and requests the ICRC on the basis of its report to pursue actively its efforts in this regard with a view to:

1. proposing, as soon as possible, concrete rules which will supplement existing humanitarian law...
(Istanbul, September 1969)

See also Resolutions XVI and XXXI of the same Conference.

The XIIIth Meeting on International Medical Law, organized in Geneva in 1970 on ICRC initiative, encouraged the latter to continue its efforts for the protection in time of armed conflict of the wounded and the sick and also medical personnel.

It is very difficult to state what current medical law problems should be studied as a matter of priority. Conditions today and the fact that armed conflicts unfortunately break out almost daily, demand urgent and effective responses to the basic questions relative to the medical protection of human beings in all circumstances.

Some examples of matters calling for priority are the following:

1. The protection of wounded and sick in internal conflicts. Article 3 common to the four Geneva Conventions states that " the wounded and sick shall be collected and cared for ".

In 1949, when the four Geneva Conventions were adopted, article 3 as a whole was considered a revolution in legislation relating to the protection of victims of armed internal conflicts. But it was soon observed during recent armed conflicts that the rules relating to the protection of victims of internal conflicts (article 3) were inadequate and unequal to the needs of the time. Experience has shown that effective protection for wounded and sick must be devised. In other words, article 3 of the Geneva Conventions must be supplemented, bearing in mind in the first place the other provisions of those Conventions for the protection of casualties.

It is obvious that ways and means of supplementing article 3 of the Geneva Conventions, to ensure protection for the victims of internal conflicts and for the wounded and the sick, must be examined simultaneously. The broadening of the scope of humanitarian treaties demands that the supplementing provisions be applicable in all circumstances. That is why those Conventions are developing gradually, by stages, as dictated by necessity.

To improve article 3 of the Geneva Conventions, from the medical point of view, will necessarily entail the study of the following three fundamental problems:

(*a*) more effective protection of wounded and sick, bearing in mind nevertheless the specific characteristics of the various kinds of internal armed conflicts;

(*b*) the protection of medical personnel and equipment;
(*c*) the display of and respect for the red cross sign.

What is contained in the Geneva Conventions must not be called into question. Indeed their provisions must be made applicable in internal conflicts. Article 3 is an integral part of the Geneva Conventions and it cannot be considered in isolation. Its development means the simultaneous development of the traditional system of the Geneva Conventions. It is essential to achieve that objective.

2. The Third International Congress of the Neutrality of Medicine, in Rome, 1968, after a very interesting discussion, adopted an important resolution on problems related to organ transplants. It states that " although certain sick or injured persons may benefit from organ transplants, there are, incontrovertibly, risks that attempts may be made on the life or health of persons detained or at the mercy of a foreign or hostile Power which might be tempted to put into effect, to the detriment of those persons and for the benefit of its own nationals or its partisans, the monstruous idea of organ banks ".[4]

Referring to this delicate and complex problem, important both in time of peace and in time of war, the Congress proposed: " that the provisions of the Geneva Conventions forbidding multilation and medical or scientific experiments not required for the medical treatment of a protected person, particularly any act intended to destroy a physiological function such as reproduction, and any form of genocide,[5] should be supplemented and stated in more precise terms; that organ transplants on a person deprived of freedom should be forbidden. . . that the removal of an organ from

[4] Our translation. " Third International Congress of 'the Neutrality of Medicine, provisional summary record and resolutions adopted; Rome 16–20 April 1968," p. 30 (Resolution VI).

" Recognizing that, in certain fields of scientific research, experiments on man are essential for the progress of medical knowledge and human welfare;

Considering that research should not jeopardize human rights;

Aware that biomedical experiments on man have roused considerable interest and justifiable anxiety throughout the medical profession and in public opinion. . ." (extract from the resolution adopted by the Round Table Meeting on " Biomedical Science and Experimentation on Man ", organized by CIOMS, UNESCO Building, Paris, 7 October 1967). (Our translation.)

[5] See note No. 4, p. 30.

a person deprived of freedom, subject to racial discrimination or under foreign domination in time of war or internal conflict, should be forbidden. . . . .[6]

Organ transplants have caused considerable disquiet not only among doctors and legal experts (whose opinions vary considerably) but particularly among the general public. They have given rise to a number of medico-legal questions which will have to be solved.

3. Who is competent (even in time of armed conflict) to make out a list of priorities? What is the scope and where are the limits of medicine? Medical science has developed rapidly and medical technology has provided the means for the exercise of the medical profession. If material resources are limited, who will reach the decision concerning medical assistance?

There is another problem, a social problem, which is directly related to the progress of medicine, particularly medical technology, namely: the definition of death.

From the traditional legal point of view, death occurs when the heart ceases to beat. Today, however, with modern resuscitation techniques and the possibility of removing it, the heart can be made to stop and function again after a relatively long time. But what can and should the doctor do for a patient whose heart is still beating although his brain cells are dead and show no reaction on the electroencephalogram? Does that mean that the doctor is confronted with a " euthanasic dilemma "?

But a doctor is not entitled to cease giving assistance to a patient even if death is inevitable. This is a recurring problem in cases of organ transplants which today are frequent and often unsupervised.

4. On the problem of euthanasia, all, or nearly all, international meetings of doctors stress the importance and necessity of inter-

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[6] Our translation. See note No. 4, p. 30.

" Heart transplants at present are a palliative and an exceptional operation whose results are as yet unpredictable. Such an operation can only be considered in institutions which have specialists actively concerned in cardiology, immunology, neurology and heart surgery, all working in close co-operation. . ." (extract from a resolution on " Heart Transplants " adopted by the Round Table organized by the CIOMS, Geneva, 13–14 June 1968). (Our translation.)

national regulations. Opinions vary, however, and there are those who are in favour of the free exercise of euthanasia.

Dr. Gabriel Deshaies, analysing the problem " the doctor and euthanasia ", has submitted conclusions which are a " direct attack " on conventional medicine:

(*a*) Euthanasia, the lesser evil, is a humanitarian and a thorny problem for the doctor. It should be discussed against the background of rapidly evolving institutions.

(*b*) Some aspects of the problem are not new; they have been solved to some extent by practitioners, with their traditional discretion.

(*c*) A broader and more enlightened attitude in favour of euthanasia would reflect an even more exacting conscience of the medical profession, one which would be able to combine helping people to live with helping people to die; for which men often have great need.

(*d*) Any change in the law should be in the nature of an optional authorization and should lay down the procedure to be followed.[7]

Mrs. B. de Féligonde, in 1952, stated: " On whether a person is useful to or a burden on society will depend his right to live. It was on this utilitarian social policy that the Hitlerian doctrines resulted in the elimination of the insane, the incurably sick and the subnormal " [8]. Does this attitude still prevail?

The *Académie des Sciences morales et politiques* (Paris) rejected the idea of killing, by any methods whatsoever, persons considered to be monstrosities, deformed, deficient or incurable. Its post-war statement is still valid today: " Euthanasia, the act or practice of painlessly putting dying persons to death, should not be countenanced. It is undoubtedly the doctor's duty to alleviate as much as possible the dread and throes of death. The fear that death might occur in the course of his administrations should not inhibit his therapeutic efforts, but he should not consider the deliberate inducement of death as permissible. . . the practice of euthanasia would

[7] Our translation. Report submitted to the meeting of doctors (Medical Faculty), Paris, February 1970, pp. 6–7.

[8] Our translation. S. de Féligonde, *Les sources actuelles d'un Droit international médical*, Liège 1952, p. 105.

be tantamount to vesting in the doctor the power to choose life or death for his patient, in contradiction to his true function, which is to cure, and in disregard of the traditions of his profession, public order and the moral principles of a millennium and one of whose pillars is hope. . ." [9]

III. Conclusion

This article began by pointing out that medical law is concerned with medical practice; it concludes with a reminder of some ideas put forward by Professor Portes in 1950: " There are four essential and indissociable aspects to the doctor's duty: scientific knowledge, manual dexterity and technique—which in themselves raise serious questions; dedication—acceptance of unlimited demands on the doctor's spare time and of the often formidable risk of contagion; an overriding wish never to harm, directly or indirectly, a patient or his entourage; and the discretion which is the subject of this study and for which the conventional term is " professional secrecy " or, preferably, " medical secrecy ".[10]

International medical law bears a heavy responsibility as a new scientific branch of law: to counter all trends which might lead to a change in medicine, and to encourage all measures designed to maintain and develop humane medicine.

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[9] Our translation. *Presse médicale*, 7 January 1950, Paris.
[10] *Médecine de France*, No. XIV, 1950, p. 5.