

RETRACING THE ORIGINS OF INTERNATIONAL HUMANITARIAN LAW

The contribution of army medical officers to the emergence of humanitarian law

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I. The heritage of history

The part played by army medical officers in the beginnings of the humanitarian movement that led to the foundation of the Red Cross 125 years ago is all too often unrecognized. Until the foundation of societies for the relief of the wounded brought their names into the limelight, their writings were hardly known outside their small professional circle, although they had taken part in international exchanges that were in themselves remarkable. Their position was made all the more difficult by their feeling bound to protest at the shortcomings of a service of which they were active members, but in whose decisions they had no voice.

This situation reached its peak in the mid-nineteenth century, when a new generation of firearms suddenly vastly increased the number and seriousness of wounds. The outraged consciences of civilians who had seen the effects of the new firearms on the battlefields of the Crimea and Italy led to the foundation of the Red Cross. Its founders' merit is beyond doubt. That their ideas coincided with the already long-standing humane concerns of army medical officers and army surgeons does nothing to lessen that merit. These doctors and surgeons, whose calling was to relieve suffering, saw the steadily worsening conditions imposed on combatants by more sophisticated weaponry, and were inevitably appalled by the mounting toll of suffering inflicted on the wounded. Several of them were among the founders of the first societies for the relief of the wounded. All of them had inherited a long tradition which in the end did more to promote international conventions than is

normally realized. Anniversaries of this kind legitimately invite historical survey which may be an opportunity to pay deserved tribute to authentic pioneers, of whom there was no lack in their ranks.

First of all I would repeat the basic principle that care for the wounded, without distinction between friend and foe, is a rule of ethics with which every doctor, military or civilian, must comply. Except in those dark times, some of them recent, in which barbarism has imposed its own brutal reasoning, this rule has been commonly accepted and respected by all military leaders.

It is as old as scientific medicine itself. The **Hippocratic Oath** obviously applies to the private practice of medicine, but the Book of Precepts contains more general advice. Its Precept 6 clearly states that compassion for suffering, wherever the sufferer comes from and whether he is rich or poor, is inseparable from love of medicine¹:

Ἦν δὲ καιρὸς
εἶη χορηγίης ξένῳ τε ἔοντι καὶ ἀπορέοντι, μάλιστα ἑπαρκέειν τοῖσι
τοιουτέοισιν· ἦν γὰρ παρῆ φιλανθρωπίη, πάρεστι καὶ φιλοτεχνίη.

And surely enough, the doctors of ancient Greece practised Socrates' precepts many times, both in internal wars between city states and in the wars against the Persians.

Ctesias of Cnidus is a famous example of this. He lived at the end of the fifth century BC, in the troubled times following the Peloponnesian war when, like the other Greek city states of Asia Minor, his native city was torn between Persian, Athenian, and Spartan influences. Taken prisoner by the Persians, such was his reputation that he was taken into the court at Babylon and was even given an official post. Diodorus the Sicilian in his *Historical Library*, and Plutarch in his *Life of Artaxerxes*, quoting sources now lost, mention several exemplary episodes in the life of this expatriate doctor. He accompanied Artaxerxes to the battle of Cunaxa (401 BC) against Cyrus and the Greek army of the Ten Thousand led by Clearchus the Lacedemonian. Faithful to his dual loyalties — to the sovereign who had honoured him and to

¹ "If the opportunity occurs to relieve the suffering of a stranger or of someone in need, these are the people to help first, for one cannot love medicine without loving mankind."

his countrymen — he tended Artaxerxes' wound, but after the death of Cyrus and the betrayal of Clearchus he intervened to obtain less rigorous conditions of imprisonment for Clearchus, but could not prevent his execution by the Satrap Tissaphernes. He was later closely involved in the negotiations of the Athenian Strategus Conon with Artaxerxes to defeat the Spartan projects, and in 397 BC returned to his native city bearing letters from the Persian king.

Other examples, even late ones, such as that of **Tribunos of Edessa**, mentioned by Procopius of Caesarea in the time of Justinian (Persian Wars, II, 28), are typical of the doctors in the Greek tradition, who rose above the passions of war and were often chosen as negotiators of the highest order.

With the beginning of the Christian era came fresh encouragement to show charity towards an enemy. This is illustrated by the parable of the Good Samaritan (St. Luke 10), and more strongly in the exhortation to works of compassion contained in the recital of the last judgement (St. Matthew 25). To Christians, especially Christian doctors, a defeated, humiliated, and wounded enemy is the very image of Christ in his suffering, and their compassionate response is natural and spontaneous.

This attitude is, indeed, an essential part of the Code of Chivalry that inspires early mediaeval literature. It says little about doctors (the fund of knowledge of Western doctors was small indeed) but comes down decidedly on the side of compassion. Thus in the twelfth-century romance entitled *Raoul de Cambrai* (which is founded on fact) two wounded enemies, Bernier and Gauthier, are brought back to the royal palace, where their wounds are tended with equal care by the same doctors; and it tells how a truce was arranged after the battle of Origny, as often between knights of enemy armies, though more to give the dead Christians burial than to care for the wounded. Doctors had little to do with it; it was first and foremost a matter of honour between enemy leaders, and when, in *Raoul de Cambrai's Chanson de Geste*, Guerri le Sor breaks the truce on finding his nephew's body, he is berated for a serious breach of the Code of Chivalry.

In the long-drawn-out Crusades both sides showed extremes of motive and behaviour; neither camp was wholly barbaric nor wholly magnanimous. The Crusaders acted barbarously at the sack of Jerusalem in 1099, and the Arabs when they blinded 300 Frankish prisoners, an atrocity said to have prompted the foundation by St. Louis of the Hôpital des Quinze-Vingts for the blind.

Examples of generosity are Saladin's clemency, especially to the Knights Hospitallers of St. John, after the recapture of Jerusalem in 1187. But there are just as many examples of Crusader generosity, some of them reported by Arab historians. Thus the Chronicle of the historian Ibn-Alatyr records that in the year 502 of the Hegira (1108), after the battle of Tell Bascher in Syria, the victorious Count Baudouin and Josselin collected and cared for the Muslim wounded²:

كثير من المسلمين. ففعلنا معهم الجميل وداوينا الجرحى وكسروا
العراة وسيرام الى بلادهم

In all these circumstances, whether treatment of the wounded was harsh or mild depended ultimately on the military leader.

Only much later, from the sixteenth century onwards, were doctors and their science granted greater recognition. Only then do they appear regularly — initially as implementing and later as bringing about the first acts of humanity, and humanitarian conventions, between belligerents.

One of the first acts of this kind was in 1552, after the Emperor Charles V raised the siege of Metz, leaving behind him many wounded and sick soldiers of his army. The Duke of Guise sent Ambroise Paré and other surgeons into the field to look after them. **Ambroise Paré** describes the incident in his *Voyage de Metz* as follows:

We went to their camp, where we found several corpses unburied, and the earth all disturbed, as in the Saint Innocent cemetery in some great epidemic. They had also left a lot of sick men in their tents, pavilions and shelters ... On the orders of the Duke of Guise the dead were buried and the sick cared for.

The armies had also left many of their wounded soldiers in the Abbey of St. Avold, having had no means of bearing them away. The Duke of Guise sent them food in sufficient quantity for all, and ordered me and the other surgeons to go to them and dress their wounds and bring them

² "They gave kindly welcome to several Muslims who had asked them for refuge, dressed their wounds, gave clothing to the naked, and sent them all back to their own country."

*remedy, which we did of a good heart, although we thought that they would not have done as much for our men.*³

At the end of the sixteenth century and in the seventeenth century, especially in Flanders, the whole style of war changed. Towns fortified according to the new technique required by the growing power of artillery all had hospitals; armies in the field, particularly besieging armies, had mobile hospitals; and in all these hospitals, fixed and mobile, served growing numbers of surgeons engaged for the duration of a campaign and skilled in extracting bullets by the various techniques amply codified since the time of Ambroise Paré.

Campaigns were decided by sieges and capitulations of fortified places, even more than by pitched battles. Under a rule for which the initial credit is undoubtedly due to Spanish generals, cartels regulating capitulations contained as a matter of course clauses prescribing good treatment for the wounded and sick and for the doctors and surgeons looking after them.

Ernst Gurlt's collection of these cartels contains more than 50 of them concluded between the end of the sixteenth and the beginning of the eighteenth century.

The earliest is that granted by Alessandro Farnese after the surrender of Tournai on 30 November 1581. Its terms are recorded by A. G. Chotin from the copy preserved in the city's archives. The city was to pay an indemnity of 200,000 florins, the unfortunate defenders were granted a general amnesty, and the sick and wounded were guaranteed similar treatment when they recovered:

As to the captains, officers and soldiers, whether of this country or foreigners, and whether from the garrison or from the castle, His Highness, desiring to treat them benevolently, grants them leave to withdraw with their flags on their shoulder, bearing their matchlocks with lighted matches, their drums, and such goods and baggage as they can carry with them.

³ «On alla à l'endroit de leur campement, où l'on trouva plusieurs cadavres non encore enterrés, et la terre toute retournée comme l'on voit le cimetière Saint Innocent durant quelque grande épidémie. De même ils avaient laissé nombre de malades dans leurs tentes, pavillons et abris... Monseigneur de Guise fit enterrer les morts et soigner les malades.

De même les armées avaient laissé dans l'abbaye de Saint-Avoid beaucoup de leurs soldats blessés, faute de moyens pour les faire emmener. Monseigneur de Guise leur envoya des vivres en quantité suffisante pour tous, et il me commanda, ainsi qu'aux autres chirurgiens, d'aller les panser et leur porter des remèdes: ce que nous faisons bien volontiers, quoique nous croyions qu'ils n'eussent agi de même envers les nôtres».

*As for the wounded and sick who by reason of their infirmity cannot leave at the same time, his intention is that when they are in better health they shall enjoy the same advantages as their companions and that all shall be given a passport and escort to conduct them until they are out of danger.*⁴

In prolonged sieges, truces for the care of the wounded came back into favour at that same time. At the siege of Casale, on 15 September 1630, a truce between the Spanish Marquis de Santa Cruz and the French governor de Toiras allowed the wounded and sick to leave the town and assigned a place for their treatment:

1. His Lordship the Marquis de Santa Cruz assigns to the Lord de Toiras the domain of Mirabello or Mirebeau in the Montferrat country for the duration of the truce, to send his wounded and sick there and have them looked after there, with licence to bring them back to the Citadel whenever he shall so desire.

*... At the request of the Lord de Toiras and in addition to those persons who shall be necessary at Mirabello to serve and assist the sick, the Lord de Toiras shall be allowed to place several reliable officials to see that the said sick and wounded soldiers shall not abscond; and when the truce finishes and His Excellency decides that the Lord of Toiras shall withdraw his sick, he shall be bound to give him three days advance notice.*⁵

Medical personnel were of course involved in these arrangements, and are implicitly mentioned in the second article of the Convention

⁴ «Et en ce qui concerne les capitaines, officiers et soldats, tant étrangers que du pays, de la garnison ou du château, Son Altesse, voulant les traiter avec bienveillance, leur accorde de se retirer avec leurs enseignes sur l'épaule, leurs armes mèche allumée, leurs tambours, et les biens et bagages qu'ils pourront emporter avec eux.

Quant aux blessés et aux malades, qui, en raison de leur infirmité ne pourront sortir en même temps, son intention est, quand ils se porteront mieux, qu'ils jouissent des mêmes avantages que leurs compagnons, et qu'il soit donné aux uns et autres passeport et escorte pour les conduire jusqu'à ce qu'ils soient hors de danger».

⁵ «Le Seigneur Marquis de Sainte-Croix donne pour quartier au Seigneur de Toiras le domaine de Mirabello, ou Mirebeau, situé dans le Montferrat, pendant la durée de la trêve, afin d'y envoyer les blessés et malades et les y faire soigner, d'où il pourra les retirer pour les faire rentrer dans la Citadelle quand il lui plaira.

... Suivant la demande qu'en a faite le Seigneur de Toiras, on lui permet qu'outre les personnes qui seront nécessaires au lieu dit de Mirebeau pour le service et l'assistance des malades, il puisse placer quelques hommes de confiance pour prendre garde que lesdits soldats malades et blessés ne prennent la fuite. Et lorsque la trêve finira et que Son Excellence aura décidé que le Seigneur de Toiras retire ses malades, il aura obligation de lui en faire donner avis trois jours à l'avance».

of Casale; but also they are increasingly the subject of special measures which are spelled out in particular articles of capitulations. The oldest example of this is the capitulation of Breda granted by the Marquis of Spinola on 2 June 1625, article 2 of which reads:

*2. Similarly the chaplains, Quarter-Masters' staff and surgeons of regiments and companies ... with their wives and children, servants, horses, and all equipment shall be included under the first and previous article and shall enjoy the benefit and tenor of that article.*⁶

The privileges repeatedly granted to the seriously sick and wounded and to the medical personnel who had stayed with them led to the first mentions of respect for military hospitals, amounting in some cases to their declaration as neutral.

The most revolutionary document of this kind is the Act of Safeguard decreed on 23 August 1677 by the Duke of Villa-Hermosa, Governor of the Netherlands, in favour of the French military hospital at Marchienne-au-Pont near Charleroi, which had been captured a fortnight previously with its wounded and personnel. The Act is recorded as follows by Surgeon General E. Evrard of the French Army Medical Corps:

By virtue of the fact that we have taken, and take, and place under the protection and special safeguard of His Majesty and ourself:

1. the Directors, Controllers, doctors, surgeons and other officers of the hospital of His Most Christian Majesty at Marchienne-au-Pont,

2. the sick soldiers in that hospital until their recovery and their leaving the said hospital,

3. all the servants, property, installations and all other things that have been there in any way whatsoever,

we request and require you most expressly in the name of His Majesty not to levy or allow to be levied any tax on food, or to commit or allow any exaction or violence of any kind, in respect of the said hospital, or its Directors, Controllers, doctors, surgeons, other officers, and sick soldiers until their recovery and departure from the hospital, their servants, movable property and other things enumerated above, under pain of incurring the disavowal of His Majesty and ourself, and of punishment for disobedience to our safeguards and commands.

⁶ «2. De même, que les aumôniers, commissaires des revues, chirurgiens des régiments et des compagnies... avec leurs femmes et enfants, serviteurs, chevaux, armes et bagages, seront compris sous le premier article, et jouiront du bénéfice et de la teneur de celui-ci».

We therefore desire and command that a full copy of this safeguard granted by ourself, checked by Master Lambert, Director of the said hospital, shall serve the above-mentioned officers as authority to come and go between the aforesaid Marchienne-au-Pont and Charleroi.

This safeguard shall be valid for so long as there are sick persons in the said hospital.

Done in camp at Thieu, 23 August 1677.⁷

In this already very elaborate form this Act is unique in seventeenth-century military jurisprudence, but the vast increase in the numbers of treaties that include clauses protecting wounded and sick and medical personnel is a landmark in the humanitarian movement leading to the foundation of the Red Cross.

At the end of the seventeenth century, acts of capitulation obviously following the same models habitually distinguish two categories in dealing with sick and wounded in enemy hands: those who can be moved are returned in protected convoys or boats, under the surveillance of doctors and surgeons covered by the same arrangement; the others are given emergency treatment on the spot by doctors and surgeons of their own nationality, until they can be repatriated under arrangements carrying the same guarantees as for the previous category.

This is undoubtedly a step forward — realistic rather than altruistic perhaps, since such measures were reciprocal, but not without a feeling

⁷ «En vertu du fait que nous avons pris et que nous prenons et mettons sous la protection et la sauvegarde spéciale de Sa Majesté et sous la nôtre:

1^o) les Directeurs, les Contrôleurs, les médecins, les chirurgiens et les autres officiers de l'hôpital de l'Armée du Roi très-chrétien établi à Marchienne-au-Pont,

2^o) les soldats malades qui y sont, jusqu'au jour où ils seront guéris et sortiront du dit hôpital,

3^o) tous les serveurs, les biens, les installations, et toutes les autres choses qui y ont été en quelques manières que ce soit,

— nous vous demandons et vous ordonnons très expressément au nom de Sa Majesté de ne faire ni permettre que soient faites aucune imposition de vivres, aucune exaction ni violence d'aucune sorte, envers ledit hôpital, le Directeur, les Contrôleurs, les médecins, les chirurgiens, les autres officiers, les soldats malades jusqu'au jour où ils seront guéris et sortiront de l'hôpital, les serveurs, les biens meubles et autres choses énumérées ci-dessus,

— sous peine d'encourir le désaveu de Sa Majesté et de nous-même, et d'être punis comme contrevenants à nos sauvegardes et commandements.

Aussi nous voulons et commandons que la copie intégrale de la présente sauvegarde accordée par nous, collationnée par le sieur Lambert, directeur du dit hôpital, serve aux officiers ci-dessus mentionnés pour pouvoir aller et venir du dit Marchienne-au-Pont à Charleroi.

La présente sauvegarde restera en vigueur tant qu'il y aura des malades dans ledit hôpital.

Fait au camp de Thieu, le 23 août 1677».

of military honour, especially on the Spanish side. The whole conception of war by professional armies was also influenced by the first treatises on international law. The *De jure belli* of the Spanish Dominican friar Francisco de Vittoria in the sixteenth century, the *Disputatio XIII—De bello* of the Spanish Jesuit Francisco Suarez, and the *De jure belli et pacis* of the Dutchman Hugo de Groot at the beginning of the seventeenth century, adopt St. Augustin's definition of a just war but also set out the duties of moderation, particularly towards the weak, incumbent on combatants.

This was a real advance, but made little difference to the actual application of such measures, which always depended on the personal decision of the victor. And he, though increasingly bound by custom as it became more established, had to take equal account of military realities.

Secondly, these rules applied only to professional armies, who often had more in common with their enemy counterparts than with their fellow countrymen. They were *ipso facto* inapplicable to unregimented combatants, as in 1690 the Piedmontese Barbets, and in 1704 Cavalier's Camisards, found to their cost.

Lastly, although military medical officers and surgeons were the essential and often esteemed bearers of aid to the wounded and sick, they took no part in decisions regarding them and had no opportunity of stating their own views. One can only suppose that, had they done so, they would, like their precursor Ambroise Paré, have confirmed that they approved of such measures and that they applied them "with a good heart".

In the eighteenth century, the century of bold intellect, the very basis of thinking changed. The appeal to reason took precedence over the appeal to religion. The philosophers' attitude to war is well known from Rousseau's *Contrat social* and Voltaire's *Le monde comme il va* and *Dictionnaire philosophique*. It is often forgotten that in essence these ideas began in England at the end of the seventeenth century, and came mainly from **John Locke**, doctor, philosopher, and apostle of tolerance, who was one of the first men to postulate inprescriptible rights. His *Treatises of Government* (1690) begins:

The State of Nature has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions.

Every one as he is bound to preserve himself, and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another.

The right to life and health (unfortunately forgotten in the Declaration of 1789) follows logically from English thought — it was England that produced the *Habeas Corpus*. In Locke's view there had to be overwhelming reasons, in fact peril to his own life, before he could feel justified in attempting another person's life, even indirectly; except in that single circumstance, respect for the life and health of others was an inescapable duty.

The first proposal for permanent neutrality of military hospitals is consonant with that thinking. It came from another humanist English doctor, **John Pringle**, whose military career began in 1743, when England entered the War of the Austrian Succession. Pringle, an Edinburgh professor, served under his friend the Earl of Stair, the Commander-in-Chief of the English troops in the German campaign, with the title of "Physician general to His Majesty's Forces". He writes in his *Observations on the Diseases of the Army*, published ten years later, that he proposed that military hospitals should be declared neutral because he had seen the immense harm done to wounded and sick by the difficulties of running such military hospitals during wartime operations:

During the late war, one considerable step was made for their improvement. Till then it had been usual to remove the sick a great way from the army, whereby many were in a manner lost before they came under the care of the physicians; or which was attended with equally bad consequences, if the hospitals were nigh, they were for the greater security to be frequently shifted, according to the changes of the camp. But the Earl of Stair, my late illustrious patron, being sensible to this hardship, when the army was encamped at Aschaffenburg, proposed to the Duke of Noailles, of whose humanity he was well assured, that the hospitals on both sides should be considered as sanctuaries for the sick, and mutually protected. This was readily agreed to by the French General...

This agreement was strictly observed on both sides all that campaign; and tho' it has been since neglected, yet we may hope that on future occasions, the contending parties will make it a precedent.

This agreement set out in advance the principles to be respected during a campaign. It was the first of its kind, and was made possible by the coincidence that the key posts were held by three eminent men who knew and esteemed each other and were all imbued with the philosophy of the Enlightenment.

The agreement was applied at once, and is mentioned in the letters of the Marshal de Noailles to Louis XV, collected by C. Rousset. On 28 June, five days after the Battle of Dettingen, the Marshal wrote to his sovereign as follows:

When the enemy retired he left behind him some of his wounded on the battlefield, and a larger number in the two villages which we had occupied at first, where I have just sent a guard at their request, to ensure the safety of their men and ours.

The agreement between the two Commanders-in-Chief exists in an official translation, whose successive stages can be seen. The French War Commissary Etienne de Silhouette was sent to the Earl of Stair on 10 June 1743 at Aschaffenburg to “establish a preliminary basis for a treaty of exchange and to decide on the proposal that the sick from both armies could be left in hospitals”. He sent with his report a draft which follows the usual wording except in its first article. That article had been specially requested by the Earl of Stair, and provided implicitly for the neutralization of hospitals. It reads:

Art. I. That sick persons on either side shall not be made prisoner and may safely remain in hospitals or be sent under the generals' respective passports.

After the Battle of Dettingen (23 June) the “Treaty and Convention for the sick, wounded and prisoners of war” signed in Frankfurt on 18 July 1743 by the Comte de Ségur and Marshal von Chanclos very largely followed the terms of the draft of 10 June, especially in articles XLI and XLII, which deal especially with sick and wounded persons:

XLI. That both sides shall care for the wounded; that their medications and food shall be paid for; that their cost shall be repaid by both sides; and that it shall be permitted to send them surgeons and their domestic servants with Generals' Passports.

XLII. That the sick on both sides shall not be made prisoner; that they may safely remain in the hospitals, where each of the belligerent

parties and their auxiliaries shall be free to provide them with a guard. That guard, and the sick persons, shall be sent back under the respective Generals' Passports by the shortest route, and shall not be interfered with or arrested.

The same conditions shall apply to the War Commissaries, Chaplains, Doctors, Surgeons, Apothecaries, Medical Orderlies, Servants and other persons required to look after the sick, who shall not be made prisoner and shall be sent back in the same way.

The more general and less formal wording of the Gentlemen's Agreement between the Earl of Stair and the Marquis de Noailles, concluded at Pringle's instigation and reported by him, is perhaps preferable to that of the Treaty of Frankfurt; but although the wording of that treaty followed the spirit of the seventeenth-century cartels, it undoubtedly went much further by setting out guarantees of safe treatment in the hospitals and stipulating that the sick, and the medical personnel looking after them, should not be made prisoner.

Although not mentioned by name, the principles of the philosophy of the Enlightenment are also evident in the wording of the treaty and in the preliminary negotiations before the Battle of Dettingen. Both the treaty and the preliminary negotiations pay particular attention to medical care of the wounded; and in the liberal climate of the century this consideration became a usual one.

II. The time of proposals

The agreement on the protection of hospitals, concluded by the Earl of Stair and the Marquis de Noailles in June 1743 at Aschaffenburg at the instigation of the English doctor John Pringle, and confirmed by the *Treaty and Convention for the sick, wounded and prisoners of war* signed in Frankfurt on 18 July after the Battle of Dettingen, is a landmark — halfway through the century of Enlightenment — in the progress of humanitarian law as applied to war.

Ten years later, in 1753, John Pringle wrote in his medical history of the campaign that he regretted that the agreement had lapsed at the end of the campaign, and expressed the hope that it would serve as a model for future conventions. That hope was fulfilled a few years later.

During the Seven Years War (one of the bloodiest of the century) the Convention of 1743 was reactivated on two occasions. The first was

the new "Treaties and Conventions for the sick, wounded and prisoners of war" concluded on 6 February 1759 in Sluys between the Marquis du Barrail, commanding the French troops, and Henry Seymour Conway, major-general of the English troops. The second was on 7 September 1759 in Brandenburg, between the Marquis de Rougé, commander of the French troops in Germany, and the Baron von Buddenbrock, major-general of the Prussian troops.

On both occasions articles XLI and XLII of the Convention of 1743 were reproduced word for word (in articles XXVI and XXVII at Sluys, and XXVII and XXVIII at Brandenburg). The Brandenburg Convention was officially ratified by the King of Prussia and the King of France (on 9 September by Frederick II and on 19 September by Louis XV) who "approved, ratified and confirmed" the treaties made by their plenipotentiaries.

Thus in the reign of Louis XV, who had already shown his solicitude for the wounded after the Battle of Fontenoy, these two conventions reinstated the rules inherited from the War of the Austrian Succession and applied them to the equally long and bloody Seven Years War.

They were echoed in the writings of army medical officers who had enthusiastically supported the proposal made in 1743 by John Pringle, himself an army medical officer, that hospitals be recognized as neutral.

For example, the English army medical officer **Donald Monro** wrote in 1764, in his *Account of the Diseases which were most frequent in the British Military Hospitals in Germany* (translated in 1769 by his French colleague **Lebègue de Presle** under the title *Médecine d'armée, ou traité des maladies les plus communes dans les camps et les garnisons*):

In the Time of Service the Commander in Chief generally orders the Hospitals to be established in Towns or Villages that least interfere with the military Operations, to which the Sick and Wounded can most easily be conveyed; and which he can best protect from the Insults of the Enemy...

It would be a right Measure, in the Beginning of every War, to settle by a Cartel that military Hospitals on both Sides should be considered as Sanctuaries for the Sick, and mutually protected; as was agreed upon between the late Earl of Stair, who commanded the British Troops, and the Duke de Noailles, who commanded the French in the Campaign in Germany in the Year 1743.

A few years later, in 1772, a high-ranking French army medical officer, the Inspector of Military Hospitals, **Jean Colombier**, published

a bulky *Code de médecine militaire*. In its first volume, entitled *De la Santé des gens de guerre* (Health in the Forces) he writes (in article III):

Commanders should assign safe places to which wounded may be brought and where they will be safe in all circumstances...

Places of asylum for wounded and sick should be respected. It is customary that they shall not be maltreated; on the contrary, generals take particular care that they shall lack for nothing.

The French Revolution could not do otherwise than adopt these magnanimous ideas, in spite of its aversion for rules inherited from the *Ancien Régime*. It did so in 1793, and deserves all the more credit for doing so then because it was at war with the whole of Europe. As part of the reorganization carried out by the war department of the Committee of Public Safety, the decree of 25 May 1793 on the treatment of enemy prisoners devotes an entire article to respect of the humanitarian clauses:

THE NATIONAL CONVENTION,

... being convinced that it is in the interest of the belligerent nations to hand over to each other without delay those of their defenders placed by the fortune of war in each other's power, and that they should conciliate in these kinds of calamities all that justice, humanity and loyalty demand of them;

having heard the report of its war committee, DECREES as follows:

Art. 26. Sick or wounded enemy prisoners shall be cared for in the military hospitals of the Republic, both ambulatory and sedentary, with the same care as French soldiers; and their pay and allowances shall then be subject to the deductions made in similar circumstances from the pay and allowances of the officers and soldiers of the Republic; it being understood that this provision, which is dictated by justice and humanity, shall be reciprocally observed by the enemy towards French prisoners.

This merely carries on a long-standing tradition of military hospitals. One cannot help thinking (although with no direct evidence) that Jean-François Coste, the former Chief Medical Officer of the French Expeditionary Corps in America and a great champion of military hospitals, who was then Chief Military Medical Officer and a member of the Military Health Board, was partly responsible.

Five years later, under the *Directoire*, at the height of the war with England, army medical officers were given important responsibilities in connection with the cartel for the exchange of prisoners signed in London on 19 September 1798; that is, they were required to select the wounded and sick unfit for further service, who were unconditionally set free, as were military medical officers themselves:

Art. 5. Prisoners of either side (except officers) whose wounds, age or infirmities make them unfit for further service, and children under the age of 12, shall be sent back to their home country irrespective of the number or equality of the exchange; but the selection of such persons shall be the entire responsibility of the Agents or surgeons of the country in which they are detained.

Art. 6. Surgeons, surgeons' assistants, assistant commissaries (or pursers), secretaries, food supplies clerks (or pursers-stewards), chaplains and school teachers, not being listed in the category of combatants, ... shall not be regarded as prisoners of war and shall consequently be free to return immediately to their own country without being entered on the list of persons for exchange.

The sweeping changes of that time in organization and battle technique countered these generous ideas with a new and merciless code of military practice that was seen at its worst in the Napoleonic campaigns. Battles can be won by surprise attacks, which can keep down casualties if they shorten a campaign, but the results are very different when they end in disaster; disasters mean heavy casualties. Army medical corps were too small, and the wounded and sick were left — to use the phrase repeatedly occurring in unilateral proclamations — “to the care and humanity of the Allied Powers”.

This aberration was not passed over in silence by humanist military doctors, particularly French and German ones, who remembered the treaty of 1743.

Prominent among them was **Pierre François Percy**, the oldest of the celebrated surgeons of the *Grande Armée*, who, when the German campaign opened in 1800, was in a position very like John Pringle's in the same area 56 years earlier. That is, he was the Chief Surgeon of the army entering the campaign, already well known for his scientific works on war surgery; and he was friendly with the Commander in Chief, General Moreau, with whom he had served in Flanders and Italy and whose humanism and rectitude he admired. After passing two convoys of Austrian wounded evacuated towards hospitals in the inter-



Baron Antoine-Jean Gros (1771-1835)

**Napoleon on the battlefield at Eylau
(9 February 1807)**

The Louvre INV 5067

Photo R.M.N.

In this famous painting, the artist depicts **Pierre François Percy**, surgeon general of the *Grande Armée*, showing the Emperor a Russian cavalryman he has just operated on and seems to be protecting.

Percy's own account of this fierce battle, in which acts of bravery rivalled acts of brutality, throws some light on the scene: "There is no pity in the Army. All you can see are soldiers inflamed by combat, courageous and intrepid officers... only in the hearts of the surgeons have compassion, philanthropy, love for one's fellow man, found refuge."

ior of the country, and seeing near Neuburg the ambulance of the Leclercq Division kept prudently too far from the fighting to be of use, he suggested to General Moreau on 30 April 1800 that he should revive the historic Aschaffenburg Agreement on the inviolability of medical personnel and wounded. General Moreau at once agreed, and Percy drew up a very elaborate draft for submission to general Kray, the Austrian Commander in Chief.

The text of this draft was found in Percy's manuscripts and was reported in 1827 by his nephew Charles Nicolas Laurent. It is virtually a forerunner of the Conventions of 64 years later.

General Kray, commanding the Austrian army, and General Moreau, commanding the French army, being desirous of reducing as far as possible the disasters of war and mitigating the plight of soldiers wounded in action, agree as follows:

ARTICLE 1. — Military hospitals shall be considered as inviolable sanctuaries, where unfortunate valour shall be respected, succoured and always free, whatever the army to which these hospitals belong and on whatever site they are established.

ART. 2. — The presence of these hospitals shall be indicated by notices erected in the paths leading to them, so that troops shall not approach them and that when passing them they shall observe silence and cease to play their drums and instruments.

ART. 3. — Each army shall be responsible for the upkeep of these hospitals after losing the country in which they exist, as if that country were still in its power. Their installations shall continue to belong to it; their expenditure shall be defrayed by it; there shall be no change in the running of these establishments, and the orders given for their safeguard shall be agreed upon between the heads of the service and the commander of the foreign forces.

ART. 4. — The armies shall each facilitate the delivery of supplies to the other's military hospitals situated in any countries occupied by them, and shall cause all objects necessary to the wounded and staff of the hospitals to be supplied by the inhabitants, or shall supply them themselves against reimbursement of the cost, or may even detain hostages or goods until the goods supplied have been paid for.

ART. 5. — Military personnel cured of their wounds shall be returned to their own army under escort. The escort shall cause them to be provided with food and carts on the way, and shall accompany them as far as the outposts of the army to which they are proceeding. Similarly,

when the hospital is completely evacuated, an escort shall be granted to protect the convoys of carts laden with goods, unless such goods are retained to guarantee payment of the expenditure incurred for the said hospital.

This convention shall be applicable only to wounded soldiers and shall be published in the army orders of both sides and read out twice a month in every corps. All brave soldiers are asked to carry out the prescriptions of these articles loyally and humanely, and each army promises to punish in exemplary fashion any person contravening them.

Unfortunately, the resemblance with the events of 1743 stops short at the early stages. The Earl of Stair's opponent was the Marquis de Noailles, who shared his humanitarian outlook; but General Moreau's adversary was General Kray who, full of self-importance as newly appointed Commander in Chief, rejected the proposal as inimical to military efficiency.

In the long run General Kray's refusal did nothing for his career — he was relieved of his post some months later after suffering an uninterrupted series of defeats at the hands of Moreau — nor for the fortune of war of the Austrian armies, who were finally crushed at Hohenlinden; but it certainly deprived the humanitarian impulse of an opportunity that might have brought the age of the great Conventions years nearer.

Other army medical officers too regretted that the great principles of the eighteenth century had been jettisoned. Some of them, even some of the lowliest, saw clearly the potential benefits of the international convention they ardently desired. This was true of **Jean Philippe Graffenauer**, a humble doctor in the Grande Armée, who after seeing his hospital at Dargun, Pomerania, pillaged by Swedish troops wrote in a letter of April 1807 published in 1809:

It would surely be desirable for hospitals to be declared neutral by a reciprocal convention between the belligerent powers. The unfortunate sick and wounded in the hands of doctors and surgeons should not be regarded as prisoners of war; still less should their doctors and surgeons be so regarded. The place of refuge of unfortunate war victims should be considered a sacred place and respected by all nations. But unfortunately we have not yet reached that degree of humanity.

Graffenauer could not foresee what frightful disasters the wounded soldiers would suffer from the medical unpreparedness that reached its

peak in the last Napoleonic campaigns. Prussia was at the heart of the decisive events of 1813, and drew conflicting conclusions from them: the doctors were appalled by the plight of the wounded left uncared for; but the strategists explored the new principles they had absorbed and were to develop in ensuing years.

In this concert of discord the doctors' voice went unheeded. Not that they lacked courageous spokesmen: **August Ferdinand Wasserfuhr**'s proposals of 1820 for the reform of the Prussian Army Medical Service (*Beitrag für die Reform der Königlich-Preussischen Militär-Medizinal-Verfassung*) describe the pitiful condition of the sick and wounded in the Prussian (and other) armies, caused by inattention to the conditions in which army medical officers had to work, and by the lack of elementary rules of protection. He ends his preface by exhorting the competent authorities to promote a humanitarian convention that he saw as essential in future conflicts:

It is to be hoped that the memory of these horrors will not again go unnoticed, and that in the end all nations will sign a convention recognizing that captured wounded and sick combatants are not enemies, and undertaking not only to allow all hospitals to function without interference in accordance with the regulations made by the officials in charge of them, but also to give them the necessary assistance. All sick and wounded falling into enemy hands should be allowed to stay in their hospital under the care of their doctors until they are restored to health, and all the permanent invalids among them should be allowed to return freely to their own country, and be granted a passport for that purpose, without subsequent exchange.

Compassion for wounded brothers left without aid is the first of all human duties; should it not be raised to the status of international law? What enemy can still be harmed by a bleeding and exhausted combatant? Could any nation refuse to allow the wounds of its most unfortunate sons to be dressed? If only the ministers of Europe could see just once a stricken battlefield where suffering men groan unheeded and unpitied, consumed by hunger and thirst and their soul torn by pain and anguish, they would surely want to do what they have so long neglected, and are still neglecting.

Koblenz, 21 May 1820.⁸

⁸ «Möchte diese Erinnerung an jenes unedle Betragen nicht abermals unbemerkt bleiben, und möchten endlich alle Nationen den Bund schliessen, auch die gefangenen kranken und verwundeten Krieger für unfeindlich zu erklären, und sich verpflichten, nicht nur alle Hospitäler nach den Anordnungen ihrer Dirigenten frei wirken zu lassen,

At this very time, however, in Prussia, Karl von Clausewitz was elaborating military theory in the light of the Napoleonic wars. His *On War (Hinterlassene Werke über Krieg und Kriegführung)*, published after his death in 1832, takes an exactly opposite stance to Wasserfuhr's magnanimous one:

*In our times some philanthropic souls have lightly imagined that there is a clever way of disarming and defeating adversaries without wounding too many of them, and that this should be the purpose of the art of war. However satisfying this aberration may appear it has to be got rid of; in anything as dangerous as war, the mistakes kindness can lead to are the worst of all.*⁹

Throughout the first half of the nineteenth century Clausewitz's ideas had the approval of European general staffs. This was the worst time of all for army medical corps, which were starved of resources and, especially in France, placed under the rigid control of the Quartermaster-General's department.

A rude awakening came in the wars of the mid-nineteenth century (the Crimean War of 1854-1856 and the Italian campaign of 1859), which inaugurated a new generation of firearms with dreadful results. Rifled barrels and cylindro-conical projectiles led to an appalling increase in the number of wounded, and inflicted much more serious

sondern ihnen auch die nöthige Unterstützung zu gewähren. Alle Kranken und Verwundeten, welche in feindliche Hände gerathen, müssten daher ihrem bestehenden Hospital und ihren Aerzten so lange gelassen werden, bis sie hergestellt sind, und alle wirklichen Invaliden müssten ohne weitere Auswechselung, mit Pässen versehen, nach ihrem Vaterlande frei zurückkehren dürfen.

Sollte man die erste aller menschlichen Pflichten — Mitleiden mit dem verwundeten hilflosen Bruder, — sollte man diese nicht zu einem Völkerrechte erheben wollen? Welchem Feinde kann denn der blutende und erschöpfte Krieger noch schaden? und sollte sich eine Nation wohl weigern können, die Wunden ihrer unglücklichsten Söhne verbinden zu lassen? Hätten die europäischen Minister nur einmal jene Schlacht und Leichenfelder gesehen, wo unbedauert und ungehört der Jammer ächzt, wo Durst und Hunger glühen, und Schmerz und Angst die Seele zerreisst, gewiss, sie würden thun, was sie so lange versäumten.

Coblenz, den 21. Mai 1820».

⁹ «Nun konnten menschenfreundliche Seelen sich leicht denken, es gebe ein künstliches Entwaffnen oder Niederwerfen des Gegners ohne zu viel Wunden zu verursachen, und das sei die wahre Tendenz der Kriegskunst. Wie gut sich das auch ausnimmt so muss man doch diesen Irrthum zerstören, denn in so gefährlichen Dingen, wie der Krieg einst, sind die Irrthümer welche aus Gutmüthigkeit entstehen grade die Schlimmsten.»

wounds. The carnage at Solferino prompted Dunant's reaction and the foundation of the Red Cross, but army medical officers trying to cope with the new battlefield conditions also bore witness to the changes that were making it so much more difficult for them to do their duty. Two army medical officers of very different function and rank expressed ideas similar to Dunant's only a few years before Solferino.

The first of these two officers, **Lucien Baudens**, Inspector of Army Medical Services, was sent to the Crimea in July 1855 after the medical disasters of the first winter of the campaign. His report, published in 1857, describes the terrible conditions of wounded and sick soldiers cared for by all too few doctors. Describing the unfortunate Traktir episode of 16 August 1855, when the Russian batteries covering the retreat of their troops fired on the doctors who had come to collect and care for the Russian wounded, he recommended that there should be a single distinctive sign, the same for all countries. His proposal was clearly set out in the *Revue des Deux Mondes* of 15 February 1857, as follows:

Such mistakes would be impossible if by agreement between nations, doctors and hospital staff wore a distinctive sign, the same in all armies and all countries, by which they would be easily recognized by both sides.

Although this proposal came from an illustrious surgeon, the supreme authority in the French Army Medical Corps, and was reproduced in the volume published after his death in 1858, it was passed over in silence by the French military authorities.

Three years later **Ferdinando Palasciano**, a Neapolitan surgeon, tried to suggest means to prevent a repetition of the disastrous plight of the wounded in the Crimea and at Solferino. When on 28 April 1861 he submitted to the *Accademia Pontaniana* of Naples the programme of a competition offering prizes for the best memoirs about war surgery, he declared that nations should facilitate the surgeons' task by recognizing that wounded combatants and the sick were neutral for the whole duration of their treatment, and providing an unlimited increase in the numbers of medical personnel throughout the war (*il principio della neutralità dei combattenti feriti o gravemente infermi per tutto il tempo della cura, e l'aumento illimitato del personale sanitario durante tutto il tempo della guerra*).

Almost at the same time in Paris, on 30 April, Henri Arrault, a pharmacist supplying the French armies, included in a notice on the

subject of the reintroduction of light ambulances a proposal that the staff and equipment of military ambulances should be recognized as inviolable. Arrault did not directly mention the wounded, proposing only that they should be handed over to the surgeons of the victorious army so that surgeons taken prisoner could be repatriated at once.

Palasciano refuted this suggestion as detrimental to proper care of the wounded. He believed on the contrary that it was absolutely necessary to reinforce the medical personnel on the battlefield immediately after a battle, and to pool all available resources.

To this end, he made his second speech on neutrality to the Naples Academy on 29 December 1861. In this he set forth a coherent doctrine in six points, as follows:

For this purpose it would suffice for the belligerent armies to be required to:

1. Return to each other all wounded prisoners immediately after every engagement.

2. Have all combatants too badly wounded to bear immediate transport looked after on the site of the engagement by medical personnel of their own country.

3. Medical personnel in numbers proportionate to the numbers of wounded left for treatment on enemy territory would go there with a safe conduct and an escort, would stay there as long as necessary, and would then also be returned in a time of truce to the outposts or enemy frontier.

4. All necessary food, lodging and medicaments in enemy territory would be supplied by the local commissariat in exchange for an order from the attending physicians, to be re-valued after the war.

5. As regards besieged places, besides the aforesaid return of wounded by both sides, the besieged might be allowed to evacuate their own wounded provided a neutral state was willing to take them in, and when they were not generously offered asylum by the besieging forces.¹⁰

¹⁰ «Perciò basterebbe che gli eserciti belligeranti fossero obbligati a

^{1°}. farsi reciproca restituzione di tutti i prigionieri feriti, immediatamente dopo ogni combattimento.

^{2°}. a far curare sul sito stesso del combattimento dal proprio personale sanitario tutti i combattenti che per la gravità delle riportate ferite non potessero impunemente soffrire un immediato trasporto.

^{3°}. Il personale sanitario in proporzione degli uomini feriti lasciati in cura sul territorio nemico vi passerebbe con salvocondotto e scorta: vi resterebbe fino al cessar del bisogno e poscia sarebbe ugualmente restituito in momento di tregua agli avamposti o alla frontiera nemica.

The basis of Palasciano's doctrine was that wounded soldiers should be regarded as neutral and be unconditionally exchanged as soon as they were fit to travel; and that the most seriously wounded should be cared for on the spot, preferably by surgeons from their own country, who should where necessary be reinforced by other such surgeons travelling under adequate protection to join them. This evidently implied that the other requirement laid down from the first, namely that the army medical corps should be reinforced for the duration of the war, should also be complied with.

Palasciano's speech, just one year before the *Memory of Solferino*, was unfortunately heard by nobody outside the *Accademia Pontaniana*. Italy was at grips with all the problems of rapid reunification; it was not the best time for an Italian proposal, particularly one from Naples. Neither was Palasciano any the more heeded in Geneva at the Conference of 1863 and the Congress of 1864, for he was not a member of the Italian delegation. The early death of Lucien Baudens in December 1857 deprived the final debate of yet another champion of internationalized care for the wounded.

The medical profession was, however, well represented at the 1863 Conference (by 18 of the 31 delegates) and the 1864 Congress (by 12 of the 26 participants). Dr. Louis Appia and Dr. Théodore Maunoir, the two doctors of the Committee of Five, were prominent in both; and the Prussian representative **Dr. Friedrich Löffler**, and the Netherlands representative **Dr. Jan-Hendrick Basting**, were instrumental in putting forward the proposal (first made in the Berlin Circular of September 1863 and later in the recommendations added to the Resolutions of the Conference) that ambulances, military hospitals, and wounded should be recognized as neutral.

The essence of the Red Cross contribution lay in two ideas: first, that the sick and wounded of all belligerents should be cared for without discrimination and with the help of volunteers; and secondly, that medical personnel and equipment should be respected. Naturally the army medical officers fully and unhesitatingly supported the second of these proposals, and left their mark even more clearly on the final version of the 1864 Convention.

4°. Tutto l'occorrente in vitto, alloggio e medicine sul territorio nemico sarebbe somministrato dal Commissariato del luogo contro voglia dei medici curanti, da esser rivaluto dopo la guerra.

5°. Per le piazze assediate, oltre la medesima restituzione reciproca dei feriti, potrebbe esser permesso agli assediati di far sortire i propri feriti, sempre che uno stato neutro voglia riceverli e quando la generosità degli assediati non offrisse loro un asilo».

That Convention, however, differs in some important respects from the proposals that army medical officers has been putting forward with remarkable continuity since 1743.

The first five articles of the 1864 Convention set out the conditions in which ambulances, military hospitals and the personnel serving them, including civilian volunteers, are recognized as neutral (only when wounded are present). Only one article (Art. 6) deals with the wounded. The word "neutrality" is not used in relation to them, and although the conditions on which they may be repatriated after capture are mentioned, they are left largely to the discretion of the military command.

The army medical officers' proposals, made by Pringle in 1743, Percy in 1800, Wasserfuhr in 1820, and Palasciano in 1861 — four army medical officers of different nations that had often been at war with each other — sprang from a common concern different from, and even contrary to, the provisions of the 1864 Convention. The doctors' overriding concern was that the wounded themselves should be recognized as neutral, and therefore that the places in which they were cared for should be considered inviolable and the persons caring for them should be allowed to do so without let or hindrance. Their proposals were justified by the humanitarian feeling undoubtedly contained in them, but just as much on the grounds of efficiency, in their view equally legitimate. They saw the hazards of transporting wounded to crowded hospitals in rear areas, and tardy operations in the worst possible conditions, as the main reason for the unacceptably high mortality of wounded after great battles, and believed that there could be no improvement unless surgeons could operate with a minimum of delay in comparatively peaceful conditions. They themselves, however, were proud of serving in their own army and identified themselves with their brothers in arms; they rejected any suggestion that their own persons should be regarded as neutral and that they should be bound by the duties of neutrality. It was their duties rather than themselves that they wanted to be recognized as neutral.

After the War of the Duchies (the Schleswig-Holstein war) of 1864 and the war of 1866 involving Austria, Italy and Prussia, this difference of attitude became more marked at the Paris Conference of 1867. Drawing their conclusions from both wars, the army medical officers present — **Dr. Löffler** for Prussia and **Dr. Chenu** for France — stated clearly the views of the army medical corps and wholeheartedly affirmed that wounded combatants were neutral. These proposals were added to the additional articles approved in Geneva in the following year.

Plainly, army medical officers played no small part in the process that led to the foundation of the Red Cross, and in preparing the constituent texts. They have undoubtedly been a power for good in bringing about the arduously won alliance between the new movement depending on international consensus and armies rightly proud of their traditions. Their disinterestedness has never been seriously questioned by anyone who has seen them at work. This, and their no less certain attachment to the army of their own country, made it impossible to accuse them of defending the vested interests of their profession — an accusation that might otherwise have been provoked by their obstinate stand on principles in fact adopted in the interests of the wounded.

The unanimity of army medical officers on this fundamental issue explains their firm and unfailing support for Red Cross work within the army. That support, still further consolidated in the world wars in which they served, is as lively and vigorous today as when the Red Cross was founded 125 years ago.

Dr. Jean Guillermand

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