

## **THE DUTY OF GIVING ASSISTANCE AND THE RIGHT TO RELIEF**

by J. Maystre

*In December 1965 there took place in Liège a "Study period on international medical law" which consisted of a discussion by representatives of the International Committee of the Red Cross, of the International Committee of Military Medicine and Pharmacy and of the World Medical Association : the World Health Organization and the League of Red Cross Societies were represented by observers. This was followed by a general meeting of the Medico-legal Commission of the International Law Association and of the International Medical Law Study Centre of Liège.*

*The ICRC had delegated Mr. J. Pictet, Director for General Affairs, to these meetings ; he spoke of Resolution XXV of the XXth International Conference of the Red Cross. This resolution is a definite step forward in the application of the Geneva Conventions by the United Nations forces. The principal item on the agenda bore on the protection of civilian medical and nursing personnel. The participants in the meeting took note of the approval given in principle by the XXth Conference in Vienna of the draft rules drawn up by their working party. Note was also taken of the fact that further study was judged to be necessary as regards the protective emblem.*

*Some preliminary observations were then made by the World Medical Association, presented by Dr. Maystre on "The duty of giving assistance and the right to relief", which the International Review now has pleasure in reproducing below.*

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*Amongst other subjects discussed, we would also mention the problem of medical aviation and that of training courses for young military doctors, the latest of which took place in Madrid in 1965, and which are showing encouraging progress. It has been arranged for the next session, that both the ICRC and the League will give courses lasting four hours. The ICRC will devote itself to the Geneva Conventions and to the principles of the Red Cross, whilst the League will deal with the organization of relief at times of natural disaster.*

*It should finally be pointed out that, during the general meeting which followed, an important question was on the agenda, that of the application of the Geneva Conventions in wars not of an international character (Ed.).*

### 1. — The duty of giving assistance in time of peace

In its introductory note of 1964, the International Committee of Military Medicine and Pharmacy rightly pointed out that legislation in many countries obliges anyone witnessing the grave danger threatening the life of a human being to intervene promptly on pain of penal sanctions.

In most national legislations, the duty of assistance applies equally to all; in other countries the duty of giving assistance in case of peril extends not only to direct but also to indirect witnesses, such as doctors.

As an example of this, the French penal code makes no distinction between a direct and an indirect witness (art. 63, paras 1 and 2). According to this code, felonious abstention is shown when a doctor whose help has been requested by telephone, and warned of a danger of which he alone can appreciate the gravity, refuses his assistance without previously assuring himself that this danger does not require his immediate intervention. (Decree of the Supreme Court of Appeal of January 21, 1954).

Other national legal regulations, as in Germany, Belgium and Italy, are more subtle and admit unblameworthy abstention on the part of the doctor with certain reservations and under certain conditions. Such legislation, for example, recognizes that the doctor has the right to determine a priority scale of urgency, when he is retained by some other more urgent professional duty.

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Codes of medical ethics impose an obligation on the doctor to give assistance in the case of grave peril and in an emergency. There is, in fact, no code which runs counter to such an obligation which has always been regarded by the medical profession as a fundamental duty.

In this connection, one should mention the provisions of the 1955 French Code of Ethics:

Article 5: "a doctor must bring emergency aid to a sick person who is in imminent danger if no other medical assistance is available."

Similar provisions can be found in the majority of national codes of ethics and on the international level in the Geneva Oath and the International Code of Medical Ethics adopted by the World Medical Association and its 60 national associations. The provisions of the International Code of Medical Ethics as regards emergencies are formulated in the following terms:

Duties of doctors to their sick: (paragraph 4) "a doctor must, in the case of emergency, give the necessary treatment out of duty to humanity. He can withdraw after having assured himself that the treatment he has prescribed will be given by another qualified person."

Medical practice today demands that a considerable amount of technical equipment be placed at the disposal of the sick and wounded, most especially in cases of extreme urgency and grave danger.

Such equipment and the specialist personnel assigned to it are generally concentrated in establishments for general and specialist treatment.

The effectiveness of medical assistance is dependent on time, that is to say on the speed with which transport and the personnel and equipment of treatment centres can act. The time factor, in fact, plays a preponderant role and can have a direct influence on the doctor's attitude. Emergency medical aid services have been set up and organized in many places. These "Specialist Services" comprise many variations, but they all attempt to achieve maximum effectiveness on behalf of the sick and wounded.

**2. — The duty of giving assistance in time of armed conflict**

One should first of all quote the Geneva Conventions of 1949 which bind very many States signatories and which comprise valuable factors of positive law in time of conflict, international or otherwise.

Article 3 of the First Convention (Wounded and sick) is reproduced in similar terms in the Fourth Convention (Protection of civilians). Article 3 deals with conflicts not of an international character and stipulates that:

“the wounded and sick shall be collected and cared for.”

Article 12 of the First Convention lays down that:

“only urgent medical reasons will authorise priority in the order of treatment to be administered.”

Article 18 of the First Convention declares that:

“no one may ever be molested or convicted for having nursed the wounded or sick.”

In addition, the International Committee of the Red Cross, the International Committee of Military Medicine and Pharmacy and the World Medical Association have, in common, drawn up two resolutions whose purpose it is to assure, in a more thorough manner, aid and care for the wounded and sick, especially in time of armed conflict.

The first resolution is entitled:

Medical ethics in time of conflict.

It states in particular:

paragraph 1: “medical ethics in time of armed conflict are similar to those in time of peace. These are laid down in the Code of Ethics of the World Medical Association.”

Paragraph 5 states: “in case of emergency, a doctor must always give the treatment which is immediately necessary, with impartiality and without any distinction of sex, race, nationality, religion, political beliefs or any other similar criteria. A doctor will continue to give his assistance as long as his presence with the sick or wounded is necessary.”

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The second resolution is entitled:

Rules to ensure relief and care for the wounded and sick, especially in time of armed conflict.

This states:

Art. II.1: "in case of emergency, doctors and medical personnel of all categories are bound to give their care without delay and in keeping with their conscience, spontaneously or if they are requested to do so. No distinction whatsoever shall be made between patients, except that which may be dictated by medical urgency. They can refrain from giving treatment if this has already been assured by others."

These two resolutions were adopted by the three above-mentioned organizations and they were brought to the notice of governments in 1965 during the World Health Assembly and the International Conference of the Red Cross.

Other international medical organizations, such as the Medico-legal Committee of Monaco and the International Committee of the Neutrality of Medicine formulated similar resolutions.

### 3. — The duty of giving aid in all circumstances

Medical or social legislation in certain countries imposes on doctors the duty of giving assistance in all circumstances, including cases of emergency. Such provisions relative to the treatment of the sick and wounded are a serious threat to the indispensable independence of the medical profession. They can entail, as a consequence for doctors, a permanent obligation to give treatment and reply to every call, they can even lead to the whole of the profession's being set up as a State health service.

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In conclusion, the medical profession considers that the duty of giving assistance in cases of grave peril and emergency is a fundamental principle of medical ethics.

However, the medical profession itself defines the notion of urgency in a setting and in terms which are its own and are not always accepted by the legislator.

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Widely extended interpretation calls for serious reservations. It would not appear wise to impose a sort of permanent requisition on all practitioners which could not fail to have unfortunate consequences.

The question raised by the International Committee of Military Medicine and Pharmacy is of considerable interest to the World Medical Association which has decided to pursue its study.

At the present stage, the position of the World Medical Association as regards emergency treatment is defined in the International Code of Medical Ethics and in medical ethics in time of conflict. This position may be given more precision when the WMA has completed the inquiry it is undertaking with its members. It is in fact a question of examining with the greatest care the influence which legal provisions for medical urgency could have on certain principles of medical ethics.

**Dr. Jean MAYSTRE**  
President of the International  
Liaison Committee  
of the Medical Welfare Association

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