

XXIst INTERNATIONAL CONFERENCE OF THE RED CROSS

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**THE PROTECTION OF CIVILIAN MEDICAL AND
NURSING PERSONNEL IN TIME OF CONFLICT**

(Item 4 d of the Draft Agenda of the Commission on
International Humanitarian Law and Assistance to Civilian Population
in the event of Armed Conflict).

**Report submitted by the
International Committee of the Red Cross**



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PROTECTION OF CIVILIAN MEDICAL AND NURSING PERSONNEL IN TIME OF CONFLICT

The problem of providing protection for civilian medical and nursing personnel in time of international or civil war is not new. On several occasions solutions have been advanced by the International Committee of the Red Cross : in 1959 in its 425th circular, in 1961 in its report to the Council of Delegates at Prague, in 1963 in a draft submitted to the Council of Delegates at the Centenary Congress of the International Red Cross and again in 1965, in its report to the XXth International Conference of the Red Cross at Vienna.

In its resolution No XXX, the Vienna Conference "recognizing the interest attached to ensuring a better protection for civilian medical and nursing personnel in the event of international conflicts or internal disturbances", approved the basics of the draft but, at the same time asked the International Committee to give more detailed study to the problem of the distinctive sign and the possibility of extending the emblem of the red cross, red crescent and red lion and sun to cover this personnel.

Following this resolution, the organizations represented in the working group on international law (ICRC, World Medical Association, the International Committee of Military Medicine and Pharmacy, and, with observer status, the World Health Organization) decided in December 1965 to find out from their members or affiliated organizations what distinctive sign should in their opinions be adopted. This enquiry has not revealed any clear majority opinion. Half of the National Red Cross Societies replying to the questionnaire sent them by the ICRC in January 1966 were in favour of extending the sign of the Red Cross to civilian medical and nursing personnel.

Various reasons were given for this opinion, the one most frequently met with being that the Red Cross emblem was universally recognized and it was natural that it be extended to cover medical and nursing personnel, whilst the introduction of a new sign, such as the Staff of

Aesculapius would require a considerable public relations effort of which the extent would necessarily be restricted; on the other hand, the introduction of a new sign would increase the confusion of populations which daily see emblems of all kinds whose significance they do not always grasp.

The other half of the National Societies were in favour of the introduction of the red Staff of Aesculapius on a white background. The main arguments put forward by those opposed to the extension of the Red Cross sign were that several health and relief services were already using the Staff of Aesculapius and its extended use would not present any problem; so far the use of the Red Cross sign had been limited to a well defined category of persons attached to the armed forces and consequently enlisted for a precise purpose and subject to strict control; to extend it to the changing and indeterminate class of civilian medical personnel would be to open the door to many abuses and would make control very difficult. The Red Cross sign would thereby be depreciated and would lose some of its symbolic value.

The replies received by the International Committee of Military Medicine and Pharmacy from its affiliated national organizations revealed that a small majority favoured extending the red cross sign.

Under the circumstances, the International Committee of the Red Cross considers it essential for the question of the distinctive sign to be definitely solved before studying the matter any further with the assistance of governmental experts, consistent with the recommendation of the Vienna Conference. For that reason it requests National Red Cross Societies and interested governments which have not already done so to study this question as soon as possible so that the XXIst International Red Cross Conference may reach a decision on the emblem it would wish to see adopted.

In order to allow all countries to examine afresh the problem of protection for civilian medical and nursing personnel in time of war, the International Committee of the Red Cross has re-issued and attaches hereto the text of and comments on the Draft Rules which it had submitted to the XXth International Conference.

It will be observed that these Draft Rules suggest only the red Staff of Aesculapius on a white background as the distinctive emblem; the possibility of extending the Red Cross sign was suggested in the meantime.

DRAFT RULES

for the Protection of Wounded, Sick and Civil
Medical and Nursing Personnel in Time of Conflict.

1. The present rules confirm and complete the provisions referring to the wounded and sick and medical personnel in the IVth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of Conflicts.

They apply to all cases provided for by Article 2 of that Convention.

They also apply in cases of armed conflict of a non-international character occurring in the territory of one of the High Contracting Parties, as provided for under Article 3 of the Convention.

2. All wounded or sick persons, whether military or civilian, expectant mothers and women in confinement, young children, infirm and delicate persons will be accorded special protection and respect.

They will be treated humanely at all times and will receive whatever care they may require as speedily as possible, without any discrimination based on nationality, race, colour, religion or faith, political opinion, sex, birth, wealth, or any other similar criteria.

3. Any interference with the health and the physical or mental soundness of persons for which there is no therapeutic justification is prohibited.

It is especially prohibited to proceed to experiments on detained persons, in particular prisoners of war and civilian internees and nationals of enemy or occupied countries, even with their consent.

4. Civil medical and nursing personnel of all categories will at all times be respected and protected while engaged in the performance of their duties.

Insofar as possible, every assistance will be given to such personnel in order that it may carry out its humanitarian mission to the best of its ability. In particular it will have the right to free movement at all hours and to go to all places where its presence may be required, subject to whatever supervisory and safety measures may be considered necessary by the Parties to the conflict.

5. Under no circumstances will the performance of duties of a medical character in accordance with the rules of professional ethics be considered as an offence, whoever the beneficiary may be.

6. Civil medical and nursing personnel in occupied territory shall not be constrained to depart from the rules relating to professional secrecy in force in that territory.

7. Duly authorised civil medical and nursing personnel may at all times wear a distinguishing emblem, which shall be the Staff of Aesculapius, red, on a white ground.

This emblem can also be affixed to the equipment and vehicles of such personnel and on the premises where they are carrying out their professional duties.

8. The right to wear the distinguishing emblem will be conferred by the competent civilian authorities, in agreement with the professional associations.

The authorities shall also supply an identity card to all the members of the personnel concerned, stating in what capacity they are entitled to wear the emblem.

9. States shall take the necessary measures to prevent any abuse in the employment of this emblem. The professional association can be entrusted with supervising the application of these measures.

10. The present provisions do not affect the right conferred on certain categories of medical and health personnel to wear the distinguishing emblem provided for in Article 38 of the Geneva Convention of 12 August, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field.

EXPLANATORY NOTES

General Remarks

The present Draft is divided into three sections, each with its own particular object.

Article 1, defining the sphere of application for these Rules, is followed by Articles 2 and 3 relating to the wounded and sick. These Articles merely repeat what is already stipulated in the Geneva Conventions and contain no new provision. What is important in this repetition is that the principles set forth - which it is always useful to reaffirm - definitely apply this time to non-international conflicts, thus compensating one of the main omissions that have been reproached in Article 3, common to the four 1949 Geneva Conventions.

The second section, comprising articles 4, 5 and 6, aims at guaranteeing as best possible the protection to which medical and nursing personnel are entitled. It is not intended to replace the clauses of the IVth 1949 Convention, but only completes certain provisions considered inadequate or not sufficiently explicit.

Finally, the third section, comprising Articles 7 to 10 is entirely concerned with this new and original innovation of the medical emblem, the red staff with an entwined serpent, on a white ground (the Aesculapius staff).

Title

Draft Rules for the protection of the Wounded and Sick and Civil Medical and Nursing Personnel in Time of Conflict.

The protection conferred on the wounded and sick, both military and civilian, under the 1949 Geneva Conventions is generally considered to be adequate. On the other hand, the protection they confer on civil medical personnel, which is not so extensive as for the military personnel, does not seem to be sufficient.

If it has already been indicated in the title itself that the main purpose of the Rules is to guarantee the protection of the wounded and sick, while in fact the real aim is to protect medical and nursing personnel, this is because the latter is dependent on the former. Medical personnel is and must be protected solely to safeguard the wounded and sick. It is not the man who is protected in the doctor, but the healer. This principle is of such importance that Articles 2 and 3 deal with it.

As the whole set of Rules will later be amalgamated with the Geneva Conventions, the clauses already contained in these Conventions, which have only been inserted here to give the Draft Rules the necessary coherence, will naturally disappear.

The expression "in time of conflict" should be taken in its broadest sense: it applies equally to international conflicts, civil wars, internal disturbances, etc.

Article 1

The present rules confirm and complete the provisions referring to the wounded and sick and medical personnel in the IVth Geneva Convention of 12 August 1949, relative to the protection of Civilian persons in Time of Conflict.

They apply to all cases provided for by Article 2 of that Convention.

They also apply in cases of armed conflict of a non-international character occurring in the territory of one of the High Contracting Parties, as provided for under Article 3 of the Convention.

Para 1.

Any set of rules starts with certain definitions: framework, sphere and cases in which they are to be applied. The first paragraph states their framework as outlined in the IVth 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War. This is the Convention which appears to be inadequate or not sufficiently precise in certain respects; the Draft Rules are intended to remedy defects and give the additional details which are desirable. They are similarly arranged, are based on the same definitions and employ the same terms. In order to comprehend and analyse the present rules, reference should, therefore, be made to that Convention.

The IVth Convention was the subject of a detailed Commentary published by the ICRC. The definitions of the different terms taken from this Convention will not be reverted to here, as the reader can consult this document. (1)

Para 2.

The Draft Rules (1) sphere of application is the same as that of the Convention, which is defined in its Article 2. The Rules hence apply "to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties" as well as "to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".

Article 2 also deals with the application of the Convention if one of the powers in conflict is not a Party thereto.

Para 3.

This paragraph is one of the most important in the Draft Rules. It aims at repairing one of the main omissions in Article 3 of the Convention, the absence of any explicit reference to civil medical personnel and its protection.

(1) Commentary IV, Geneva, 1956.

Whatever may be imagined as to the significance of this omission,

(1) in the light of many painful experiences, it seems most indicated to state clearly that doctors, nurses, shall be allowed to carry out their humanitarian mission freely also in the event of internal conflicts, and shall be respected and protected in so doing, and that no discrimination should be exercised among the victims of such conflicts.

Article 2

All wounded or sick persons, whether military or civilian, expectant mothers and women in confinement, young children, infirm and delicate persons will be accorded special protection and respect.

They will be treated humanely at all times and will receive whatever care they may require as speedily as possible, without any discrimination based on nationality, race, colour, religion or faith, political opinion, sex, birth wealth, or any other similar criteria.

It seemed necessary to reiterate the principle of the respect of the wounded, sick and infirm, already clearly stated in the Convention, at the beginning of the Rules. On the one hand it emphasizes that this principle governs and justifies that of the protection of medical personnel and on the other it conforms to the logic of the Draft itself.

- (1) It should be noted that the "Committee of Experts to consider the question of Assistance to victims of Internal Conflicts" convened by the ICRC in October 1962, considered that the obligations laid down in Article 3, (1) and (2), implied the respect of the principles of neutrality in medicine and professional secrecy, and that Resolution XVII of the XIXth International Conference of the Red Cross (quoted above), was "purely and simply declaratory of the Law in force among the parties to the Geneva Conventions".

Para 1.

The list of persons specifically protected is more comprehensive here than in the Convention. Article 16 of the latter mentions the wounded and sick, the infirm and expectant mothers. To these have been added categories of individuals just as deserving, it would seem, of special protection, such as women in confinement, young children and those who are delicate. (1)

Para 2.

A basic principle of humanitarian law is repeated here: non-discrimination. The same formula as appears in the Conventions has been used. The list of criteria as regards the discrimination which is prohibited has been taken from Article 3 of the Convention, and nationality and political opinions added.

Article 3

Any interference with the health and the physical or mental soundness of persons for which there is no therapeutic justification is prohibited.

It is especially prohibited to proceed to experiments on detained persons, in particular prisoners of war and civilian internees and nationals of enemy or occupied countries, even with their consent.

Here, the promoters of the Draft Rules were anxious to revert to a rule already set forth in the four 1949 Conventions (Art. 12 Conv. I and II, Art. 13 Conv. III, Art. 32, Conv. IV), broadening it and slightly changing the form. This rule, inspired by the memory of barbarous acts of which there have been only too many examples during recent wars, aims at prohibiting what have been called "illegal medical experiments".

- (1) These categories are taken from Article 14 of the Convention, enumerating the persons who may be placed in safety zones; "aged" persons has been replaced by "delicate", which seemed more precise and better justified from the medical standpoint.

The IVth Convention prohibits "medical or scientific experiments not necessitated by the medical treatment of a protected person" (the two first Conventions only mention "biological experiments"). The promoters, the majority of whom, represented two large medical organisations it will be remembered, and were doctors themselves, considered these expressions were not sufficiently explicit and preferred the expression "therapeutic reasons".

The applications of this clause has been broadened. Whereas in the Conventions it covers "protected persons", here, in virtue of the first paragraph, it applies to any human being.

While the second paragraph reverts to the categories already covered by the Conventions, in particular protected persons deprived of their freedom, its purpose is to introduce a new conception, namely, "consent which is not valid". It seemed that these protected persons should be sheltered from themselves, from consent they might give owing to exhaustion, ignorance of its significance, the bait of an improvement of their conditions, or simply on account of unbalance.

This new idea is important and certainly an improvement on the text of the Convention. It would be desirable to incorporate it therein later.

Article 4.

Civil medical and nursing personnel of all categories will at all times be respected and protected while engaged in the performance of their duties.

Insofar as possible, every assistance will be given to such personnel in order that it may carry out its humanitarian mission to the best of its ability. In particular it will have the right to free movement at all hours and to go to all places where its presence may be required, subject to whatever supervisory and safety measures may be considered necessary by the parties to the conflict.

This is the first of the three clauses intended to afford the best possible protection to members of civil medical personnel in the exercise of their duties.

Para 1.

This Article begins with the general rule : whatever the circumstances - hence whatever the nature of the conflict - civil medical and nursing personnel of all categories is entitled to

respect and protection while engaged in its humanitarian duties. A similar rule is forth in the Conventions as regards military medical personnel; but, as has been noted, they are less explicit as regards civil personnel. The protection of the latter no doubt clearly follows from several provisions of the IVth Convention (in particular Article 56 and Articles, 14, 16, 20, 21, 22, 27, 32 and 57) and any violation would certainly be against the letter and spirit of the law, but it must be admitted that a definite stipulation of general application would be most valuable here.

Such a provision would be still more in place in Article 3 of the Geneva Conventions relating to non-international conflicts, which does not specifically mention medical personnel. It is this very omission that the whole set of Draft Rules aims at repairing.

By specifying that personnel "of all categories" is entitled to protection", it was wished to indicate that no distinction could be made here according to the category of the personnel involved. It is therefore all persons exercising a medical or paramedical profession, officially recognized as such, who will be protected. They will, however, only be protected "while engaged in the performance of their duties". Here, as in the Conventions, it is finally the humanitarian work which is the real object of protection, more than the individual.

Para 2.

Two new ideas are introduced here. The doctor or nurse sometimes requires outside assistance in order best to carry out their humanitarian mission. Such assistance might be of the most varying type : delivery of passes, disposal of means of communication, escorts, etc. This will be given "insofar as possible" and does not therefore constitute an obligation.

Experience has furthermore shown that assistance to the wounded and sick has often proved illusory owing to the manner in which the authorities hamper free movements of civilians, especially in the event of internal disturbances. It is these hindrances which doctors ask should be set aside so far as they are concerned, insofar as the lawful measures taken by the parties to the conflict for purposes of supervision and safety may permit.

Article 5

Under no circumstances will the performance of duties of a medical character in accordance with the rules of professional ethics be considered as an offence, whoever the beneficiary may be.

This provision reiterates the very important principle, while giving it a broader and more precise meaning, set forth in Article 18, paragraph 3, of the First 1949 Geneva Convention : "No one may ever be molested or convicted for having nursed the wounded or sick".

The modifications made in the statement of this principle are due to the proof that the legitimate work of the doctor, from which protection derives, is not confined to "medical attention". He may also be required to give a diagnosis (which may lead to the conclusion that nothing is out of order), an expert opinion, certify death, simply give some advice, etc. The more general expression "duties of a medical character" was therefore preferred. Furthermore, it is specified on account of national laws which do not authorise every type of "medical duty", and precisely to meet these laws, that these should be "in accordance with the rules of professional ethics."

Article 6

Civil medical and nursing personnel in occupied territory shall not be constrained to depart from the rules relating to professional secrecy in force in that territory.

This Article touches on the problem of professional secrecy. As can be seen, a limited and cautious solution has been found for this.

Here indeed is one of the problems on which the medical world and legislators are most at variance. The former are in favour of the complete observance of medical secrecy, while the latter consider it has no importance and pay no attention thereto. Some States guarantee that it shall be observed, while others punish those who claim to take refuge in it. A rule in international law aiming at imposing a general solution would therefore fail to have the slightest chance of being accepted at present by the majority of States.

Hence, it is simply specified in this Article that when the rule of professional secrecy is in force in a specific territory, it should be respected by any occupying power, whatever its own attitude thereto.

This seems to be a wise and humane provision, by which a doctor bound by professional secrecy cannot be constrained to violate it, while those who are not thus bound are unaffected.

Article 7

Duly authorised civil medical and nursing personnel may at all times wear a distinguishing emblem, which shall be the staff of Aesculapius, red on a white ground.

This emblem may also be affixed to their equipment, cars and professional premises.

Para 1

It is considered essential for members of medical and auxiliary professions to wear a distinguishing emblem. A doctor coming to the rescue of persons injured in a street fight, for example, or who rushes to the bedside of a patient after curfew must be able to make himself rapidly recognized. While an identity card is necessary it is not enough. A distinguishing sign was therefore imagined, which would be familiar to everyone, clearly visible, and acceptable to the members of the medical profession all over the world. The actual symbol of medicine was therefore chosen. The staff of Aesculapius is the recognized emblem today of the medical profession. By designing it in red on a white ground it is not only made clearly visible, but immediately and everywhere produces a certain reflex born of long familiarity with the sign of the Red Cross. It has purposely been avoided fixing its size and proportions, so as not to link its value with a definite form and leave doctors and nurses, pressed for time by circumstances, the possibility of quickly improvising an emblem which will still be valid. This consists in a vertical line around which a line is twined, symbolising the serpent.

The expression "at all times" means that this emblem is not reserved for time of conflict but can and even should be worn in time of peace, so that everyone may become familiar with it.

In order to wear it the members of civil medical and nursing personnel must be "duly authorised". The meaning and significance of this expression will be found in the next Article.

Para 2.

Those who have been authorised to wear this emblem will be allowed to use it at all times and in all places, affixing it to their professional premises, car or equipment, etc. No restrictions are placed on its employment. From this angle, it differs from the Red Cross and Red Crescent, the employment of which is subject to severe restrictions. These signs have their own value and are practically speaking protective, since most of those who wear them in time of war belong to the army, are in military uniform and could therefore, in principle, otherwise be legitimately attacked. Civil medical and nursing personnel, on the contrary, whether wearing the medical emblem or not, could in no event be attacked, since it is civilian.

This emblem is primarily of practical interest: it will facilitate movements, avoid checkings, enable the wearer to be identified at sight, etc.

It should further be pointed out that the medical emblem can be useful in all cases where the Red Cross sign should not or could not be worn. Despite prohibition, there are indeed only too many countries where doctors, for example, still employ the sign of the Convention. Henceforward there will be no reason for this, as they have been given a special emblem.

The Aesculapius staff can also serve as a distinguishing sign for the medical services of Civilian Defence, Fire Brigade or Police Corps, in a word, all the medical formations called into action as such in time of conflict also, and which, because they are neither attached to the army nor to civil hospitals, are not entitled to the Red Cross.

Finally, to our mind, the medical emblem could well progressively replace the Red Cross in all cases where it has been allowed because no other emblem existed at the time and a distinguishing sign nevertheless seemed necessary. Here we are thinking of vehicles used as ambulances and first aid stations, which Article 44, Paragraph 4, of the First 1949 Geneva Convention, authorise to employ the Red Cross emblem "As an exceptional measure" in time of peace only, in conformity with national legislation and with the express permission of the National Society.

Article 8

The right to wear the distinguishing emblem will be conferred by the competent civilian authorities, in agreement with the professional associations.

The authorities shall also supply an identity card to all the members of the personnel concerned, stating in what capacity they are entitled to wear the emblem.

Para. 1.

The promoters of the Draft Rules have attempted to draw up a list of the various categories of civil medical and nursing personnel which should be entitled to wear the emblem. They have ascertained that such a list would have neither the same meaning nor the same value in the various countries of the world and that it was hardly possible to establish. The qualifications, duties, titles and very existence of these categories vary indeed from one State to another. This is so, for example, as regards medical assistants, nurses, chiropractors, therapists of every type, etc.

The only solution therefore seemed to leave each State to draw up the list of persons authorised to wear the emblem for itself, on the criterion that it should include all the members of medical or auxiliary professions recognized as such by the State, whom it would be useful to distinguish by means of a distinctive sign.

It has also been stipulated that the employment of the emblem would be authorised "in agreement with the professional associations". This in the first place affords a guarantee : only the professions of some importance are represented by a recognized Association so far as the State is concerned. Secondly, it assures the defence of the legitimate interests of the members of these professions.

Para. 2

The wearer of the emblem must always be in a position to justify his title to it. This can only be done by means of an identity card, delivered by the State (generally speaking the Ministry of Health) thus offering all the necessary guarantees that it is authentic. This card could be given to the bearer at the same time as he is authorised to exercise his profession, or on the official award of his diplomas.

It should be stressed that the authorities are free, if they wish, to entrust the establishment and distribution of identity cards to professional associations, if these are sufficiently well organised and representative of all the recognized members of any profession.

Article 9

The States shall take the necessary measures to prevent any abuse in the employment of this emblem. The professional associations can be entrusted with supervising the application of these measures.

It is important that the employment of the medical emblem should be confirmed and regulated by national legislation, which should, of course, enact suitable measures to prevent abuse. The effectiveness of this emblem depends on the confidence it inspires.

The measures of supervision which could to all advantage be entrusted to the professional bodies are, for example, establishment and upkeep of registers of authorised persons, renewal and replacement of identity cards and the right to prosecute in the event of infringements.

Article 10

The present provisions do not affect the right conferred on certain categories of medical and health personnel to wear the distinguishing emblem provided for in Article 38 of the Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

The right to the medical emblem in no way affects the right to the Red Cross or Red Crescent conferred on certain categories of civil medical and nursing personnel by the Geneva Conventions.

Authorised persons can therefore replace the medical emblem by the sign conferred under the Conventions when the conditions laid down in these are fulfilled.

Vice versa, the right to the Red Cross never abolishes the right to the medical emblem. It is not however recommended to wear the two emblems simultaneously.

The categories of civil medical and nursing personnel which are entitled to wear the Red Cross emblem in time of war are the following :

1. Personnel placed at the disposal of the Medical Services of the armed forces in time of war by the National Red Cross Societies. This personnel, it is true, ceases to be civilian from the moment it is placed under the authority of the Army Medical Service.

2. Medical personnel in the merchant marine.

3. Medical personnel attached to recognized civilian hospitals, when on duty, but only in occupied countries and in zones of military operations.
