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ARCHIVES DU CICR

THE RETENTION AND RELIEF
OF MEDICAL PERSONNEL AND CHAPLAINS



MODEL AGREEMENTS

The Diplomatic Conference called to draft and discuss the four Geneva Conventions of August 12, 1949, for the protection of war victims, adopted the following Resolution (No 3) at the conclusion of its debates :

Whereas agreements may only with difficulty be concluded during hostilities;

whereas Article 28 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, provides that the Parties to the conflict shall, during hostilities, make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief;

whereas Article 31 of the same Convention provides that, as from the outbreak of hostilities, Parties to the conflict may determine by special arrangement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps,

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the Conference requests the International Committee of the Red Cross to prepare a model agreement on the two questions referred to in the two Articles mentioned above and to submit it to the High Contracting Parties for their approval.

The International Committee of the Red Cross, in pursuance of this Resolution, submits hereunder the texts of two model agreements, one relating to the retention of medical personnel and chaplains, and the other to the relief of such personnel.

In deciding to draw up two draft agreements instead of a single one, as suggested by the Resolution, the International Committee was guided by the following considerations :

The principle of the relief, in the course of hostilities, of medical personnel and chaplains captured by the enemy and detained by him has given rise to criticism. The debates during the 1949 Diplomatic Conference in Geneva showed that several Powers were in fact strongly opposed to it. For that reason, the Convention (1), when mentioning the matter in Article 28, in no wise rendered it obligatory; the relieving of retained personnel remains optional and is subject to the agreement of the two Parties concerned. On the other hand, the retention of medical personnel and chaplains is expressly authorized as soon as the state of health, the spiritual needs and the number of prisoners of war make it necessary. Once these conditions have been fulfilled - and they doubtless would be very rapidly - the Detaining Power may decide, on its own initiative, to retain the medical personnel and chaplains who have fallen into its hands.

It can therefore be foreseen that in a future conflict, retention will become the rule, whereas relief will tend to remain the exception.

A single model agreement relating to both retention and relief, would run the risk of being rejected in its entirety by the Powers opposed to the principle of relief. The problems relating to retention would then remain unsolved. In submitting two draft agreements, the International Committee wished to limit the disastrous consequences of such a situation and to allow at least the rules relating to the retention of medical personnel

(1) The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, referred to hereafter as "The First Convention".

and chaplains to be applied as generally as possible. This was, moreover, the more logical method to adopt.

It should, finally, be remembered that these draft agreements, together with the various model agreements drafted by the 1949 Conference itself, are merely models submitted to States who may introduce whatever modifications they consider desirable.

When drafting these two model agreements, the International Committee followed, sometimes very closely, the very helpful indications contained in the replies to an enquiry conducted by the International Information Office for Military Medicine and Pharmacy, which is an organ of the International Committee of Military Medicine and Pharmacy. At the request of the International Committee of the Red Cross, the Office instituted an enquiry, from 1951 to 1953, with the various army medical services of members States and with other organizations, concerning the various problems to which the retention and the relief of medical personnel and chaplains might give rise. Numerous detailed replies were received. On many points they confirmed the experience of the International Committee of the Red Cross itself in recent armed conflicts and on other points provided valuable additional information.

The International Committee wishes to express here its warmest thanks to the International Information Office for Military Medicine and Pharmacy, as well as to the authors of the various replies, which have greatly facilitated its task.

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MODEL AGREEMENT
RELATING TO
THE RETENTION OF MEDICAL PERSONNEL AND CHAPLAINS

Article 1

Medical personnel and chaplains designated in Article 24

of the First Geneva Convention of 1949 (1), who have fallen into the hands of the adverse Party, shall only be retained, taking into account the provisions of Article 28, paragraph 1, of that Convention, to carry out their duties on behalf of prisoners of war of the armed forces to which they themselves belong, and only if the Detaining Power is not itself in a position to assume, in their entirety, the obligations imposed upon it under Article 28, paragraph 4, of the First Convention.

The personnel designated in Article 26 of the First Convention may only be retained at their own express wish, and under the same conditions.

Article 2

The retention of medical personnel and chaplains and their posting to the camps shall be carried out in accordance with the following criteria :

- (a) One general practitioner, one dentist and one chaplain per 2,000 prisoners, or a lesser number not inferior to 1,000 prisoners;
- (b) One surgeon, one medical specialist, one pharmacist and one dental mechanic per 5,000 prisoners;
- (c) One ear, nose and throat specialist, one ophthalmologist, one dermatologist, one neuro-psychiatrist and one lung specialist per 10,000 prisoners;
- (d) One male nurse per 250 prisoners, or a lesser number not inferior to 100 prisoners.

For each of these various categories, those persons shall be retained whose date of capture is the most recent and, amongst them, those who are the youngest and whose state of health is the best.

Article 3

Surgeons, medical specialists and other specialists

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- (1) The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, referred to hereafter as "The First Convention".

mentioned in Article 2 (c) shall only be retained if they can carry out their duties in a hospital unit.

A specialist, that is to say a physician whose specialisation has been duly recognized by the medical authorities of the country to which he belongs, may not be retained for medical duties outside his speciality. In exceptional cases, however, a specialist may be called upon provisionally to carry out other duties, in place of a general practitioner or another specialist who is temporarily unable to perform his duties, and until such time as the Detaining Power has arranged for his replacement by a practitioner with similar qualifications.

In the course of hostilities, the Parties to the conflict may conclude agreements concerning the non-retention or immediate repatriation of physicians who are considered to be highly specialized, and whose presence in their country of origin is considered necessary for public health.

Article 4

Nurses shall only be retained if they can perform their duties in a hospital unit and only in order to complete, should the need arise, the number of male nurses retained in accordance with Article 2 (d), should this number not attain the proportion laid down.

They may also be retained in order to perform their duties in a camp for women prisoners of war. In this case, they shall only be retained in a proportion of one nurse per 250 women prisoners, or a lesser number not inferior to 100 women prisoners.

Article 5

The number of medical personnel and chaplains liable to be retained, as determined by the foregoing provisions, shall be considered as a maximum, and shall not be exceeded in order to provide for possible needs arising from the capture, at a later date, of enemy military personnel, or on any other pretext.

Surplus personnel may, however, be retained to replace medical personnel and chaplains belonging to the same armed forces who have been carrying on their work for prisoners of war for at least one year, or to replace those whose repatriation is impending under the Agreement relating to the Relief

of Medical Personnel and Chaplains (1).

The personnel thus replaced shall be repatriated in accordance with the provisions of Article 30 of the First Convention.

Article 6

The Parties to the conflict may likewise agree mutually, in the course of hostilities, to increase the number of chaplains to be retained, should this be necessary, and in the case of a Detaining Power not having ministers of the religion practised by the prisoners, among its own nationals.

Article 7

Auxiliary medical personnel, that is to say the hospital orderlies and auxiliary stretcher-bearers designated in Article 25 of the First Convention, who fall into the hands of the adverse Party, shall be employed on medical duties on behalf of prisoners belonging to the armed forces to which they themselves belong. The number retained shall reduce by the same amount that of the regular personnel engaged on similar duties who are liable to be retained under Article 2 above.

In the same way, the prisoners of war, mentioned in Article 32 of the Third Geneva Convention of 1949 (2), required by the Detaining Power to exercise their medical functions in the interests of prisoners of war who are members of the same armed forces, shall reduce by the same amount the number of medical personnel to be retained.

Article 8

The transfer of retained medical personnel and chaplains to another Detaining Power shall only be possible where such

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- (1) It would also be possible to fix a time-limit and say, for example, "if this repatriation is to take place within the space of one month".
 - (2) Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, referred to hereafter as "the Third Convention".

personnel accompany prisoners of war who have already been in their care and are being transferred under the circumstances provided for in Article 12 of the Third Convention, and only in so far as such care cannot be provided by medical personnel of the new Detaining Power.

The provisions of Article 12 of the Third Convention shall in general apply to medical personnel and chaplains so transferred.

Article 9

The provisions concerning the financial resources of prisoners of war, in Part III, Section IV, of the Third Convention shall apply to retained medical personnel and chaplains.

In particular, such personnel shall receive working pay at the rate of for members of para-medical professions (which shall not be less than one-fourth of one Swiss franc per working day) and for members of the medical profession and chaplains (which shall not be less than one-half of one Swiss franc per working day).

Article 10

Retained medical personnel and chaplains, whose intellectual or physical faculties appear to have diminished considerably, shall be repatriated without delay.

The same applies to retained personnel who are wounded or sick, and who, according to medical opinion, are not likely to recover within a period of three months from the date of the wound sustained or the beginning of the illness.

The decisions concerning them shall be taken immediately by the responsible medical authorities of the Detaining Power, on the recommendation of the detained physicians of the adverse Power. Appeals against these decisions may be made to the Mixed Medical Commissions provided for under Article 112 of the Third Convention.

The retained personnel shall not be accommodated in hospitals in a neutral country, but shall be repatriated direct.

Article 11

In general, the provisions of the Third Convention, by which retained medical personnel and chaplains should as a minimum benefit, in accordance with Article 28, paragraph 2, of the First Convention, shall always be applied in such a manner as to allow such personnel to carry out their medical duties in all circumstances and under the best possible conditions.

Article 12

The provisions of the present Agreement shall also apply to medical personnel and chaplains who have fallen into the hands of the adverse Party and, not having been retained, are awaiting their return in accordance with Article 30 of the First Convention. They shall be applicable as long as such personnel remain in the territory of the Party into whose hands they have fallen.

These provisions shall also apply, should occasion arise, to the personnel relieving retained personnel in accordance with the Agreement relating to the relief of Medical Personnel and Chaplains, or any other similar agreement.

COMMENTARY

The retention of medical personnel and chaplains is provided for, and the method of carrying it out laid down, in Articles 28 to 31 of the First Convention. The system thus evolved is often complex, however, and sometimes even uncertain; it therefore calls for detailed rules, apart from the Convention itself, if it is to work satisfactorily, without giving rise to divergent interpretations. It consequently appeared that these rules should not be limited to laying down the percentage of personnel to be retained, as the Resolution of the Diplomatic Conference requires, but should also define more clearly the actual status of retained personnel. Since it can be foreseen that in a possible future conflict, retention will be frequently resorted to and may even become the rule, it was felt preferable to lay down carefully at the outset the methods to be employed.

It is clear, however, from the very terms of Article 28 (paragraphs 1 and 2) and from the whole system proposed - which

is, incidentally, only a compromise between the two fundamentally opposed theses which appeared at the Diplomatic Conference - that retention should only be considered as a complementary measure to those taken by the Detaining Power itself for the health of the prisoners.

Consequently, the duties of the Detaining Power have been expressly mentioned both here and in the model agreement relating to relief. In the first place, the presence in the camps of medical personnel belonging to the Detaining Power has been counted upon. Similarly, always with a view to alleviating the conditions of capture of regular medical personnel who have fallen into the hands of the enemy, it has been stipulated that temporary or auxiliary personnel captured by the enemy, and doctors who happen to be prisoners of war (because they were enlisted in a combat unit of their army and were captured as combatants), should take the place of regular personnel.

The problems which the present Model Agreement endeavours to solve are of two kinds.

Firstly, in Articles 1 to 7, it lays down the precise number of medical personnel and chaplains of all categories, who may be retained in proportion to the numbers of prisoners of war. Furthermore, in Articles 8 to 12, it amplifies certain provisions of the Third Convention which are applicable in law to retained personnel, but whose interpretation requires clarification.

We may mention in this connection that Article 28 of the First Convention, paragraph 2 (b), lays down that "Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26". The International Committee felt that it was unnecessary to repeat or to amplify, in this agreement, an imperative clause of the Convention, in itself sufficiently clear. Moreover, it appeared impossible to lay down in a draft drawn up in advance, what this "corresponding seniority" might be, in view of the considerable differences which exist on this point from one country to another.

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Article 1.- Article 28 of the First Convention recommends that retained medical personnel and chaplains should "preferably" be attached to prisoners of war of their own armed forces. The Model Agreement has made an obligation of this recommendation. As a matter of fact, the main reason advanced in support of the actual principle of retention was the importance to prisoners of war of being assisted by fellow citizens speaking the same language and sharing the same beliefs and customs. The experience gained in the course of recent conflicts has further emphasized the importance of this factor, which would on its own account justify the retention of medical personnel and chaplains if the Detaining Power is not itself in a position to ensure the care of the prisoners.

It seemed necessary, in paragraph 2, to add a rider to the Convention : the staff of voluntary aid societies, employed in time of war on the same duties as the regular personnel of Army Medical Services - who have fallen into the hands of the enemy - cannot in all fairness be retained in captivity against their will, in view of the entirely voluntary nature of their recruitment. Moreover, as authorized opinion has stressed, the absolute right to retain such personnel might discourage volunteers - within National Red Cross Societies for example - who offer to serve in time of war, and might as a consequence deprive the belligerents themselves of valuable auxiliary medical personnel.

Article 2.- This Article, which amplifies and completes Article 31 of the First Convention, lays down the manner in which the choice of medical personnel and chaplains who are to be retained should be made from among all those who have fallen into enemy hands. The first criterion is the total number of prisoners of war of the same nationality as the personnel in question; the proportions given here for each of the various categories of medical personnel and chaplains to be retained in relation to the number of prisoners, are based upon figures given in the great majority of the replies made to the enquiry of the International Information Office for Military Medicine and Pharmacy.

Once the number and categories of personnel to be retained had been decided, it was necessary to lay down the criteria governing the final choice : in each category, those whose date of capture is the most recent will be retained; and from among them, those whose state of health is the best, and, finally, from among the latter, the youngest.

Article 3.- Generally speaking, this Article is designed to protect "specialists", and to avoid, so far as possible,

their being unnecessarily retained. They should, indeed, because there are so few of them, always be able to practice the branch of medicine in which they have specialized, to the exclusion of all other activities.

It was felt necessary, in paragraph 2, to define what a "specialist" is, in order to avoid any misunderstanding.

Finally, the last paragraph lays down that an agreement may be reached between the interested Parties in the course of hostilities, with a view to the repatriation of highly specialized physicians. If it was not felt necessary to make specific provision for such repatriations right away, in the present Model Agreement, that was because such measures always concern individual cases and depend on the circumstances existing at the time.

Article 4.- This Article concerns nurses, who may only be retained in two specific cases, firstly in order to make up the numbers of male nurses in hospital formations, should their number be insufficient, and secondly in order to assist female prisoners of war in their own camps.

These criteria, together with the figures fixing the proportion of nurses who may be retained, correspond to the information contained in the majority of the replies to the enquiry conducted by the International Information Office, as well as to the experience of the International Committee of the Red Cross itself.

Article 5.- The first paragraph lays down a general rule : the number of medical personnel and chaplains retained must correspond to the actual number of prisoners, and not to the possible number of future prisoners. The figure thus arrived at cannot be increased.

This rule, however, admits of one exception. The intention, in authorizing, in paragraph 2, the retention of personnel in greater numbers in order to allow for the relief of personnel of the same nationality who have been on duty for at least a year, was to provide for cases where Parties to the present agreement were not also bound by the agreement relating to relief. It was necessary, in such cases, to give retained personnel, who would otherwise be liable to remain on duty in camps and hospitals for the entire duration of hostilities, the possibility of being relieved by personnel who might later fall into the hands of the Detaining Power.

Provision has also been made for the replacement of personnel retained by Powers who have adhered to the agreement on relief, by recently captured personnel, should the repatriation of the former be imminent. Before being relieved by persons who have volunteered for the purpose, it is normal that they should be relieved by other members of the regular personnel of the armed forces, who have in their turn fallen into the enemy's hands.

Finally, the last paragraph of this Article recalls that the repatriation of such personnel should be carried out in accordance with the rules already laid down in the First Convention (Article 30).

Article 6.- This Article, which authorizes the retention of a number of chaplains greater than the prescribed proportion, also constitutes an exception to the rule laid down in the first paragraph of the preceding Article. Provision must, in fact, be made for cases where the Detaining Power may not have, amongst its nationals, any priest or minister of the faith of the prisoners of war which it holds; in such cases the proportion of one chaplain per 2,000 prisoners might be insufficient.

Article 7.- According to the terms of the First Convention (Article 29), auxiliary medical personnel are to be considered as prisoners of war, but may, if the need arises, be employed on medical duties. Such a need exists from the moment a Detaining Power expresses a wish to retain regular medical personnel who have fallen into its hands; it is therefore logical that such auxiliary personnel should take the place of regular personnel carrying out the same or similar duties.

A similar situation is foreseen in paragraph 2 with regard to prisoners of war who happen to be members of a medical profession and are called upon to practise it by the Detaining Power : these prisoners will replace equal numbers of members of the same professions belonging to the regular personnel who have fallen into the hands of the Detaining Power. We must remember, however, that according to the terms of Article 32 of the Third Convention, the Detaining Powers are not obliged to call upon these prisoners to exercising their medical profession on behalf of their fellow countrymen, more especially because in most cases the Detaining Power will not know that these prisoners are medical men and also because evidence of their real qualifications will be lacking.

Article 8.- This Article, and those which follow it, deal with the problems raised by the application, to retained medical personnel and chaplains, of the provisions of the Third Geneva Convention of 1949. These questions appeared to require some clarification.

The present Article lays down the safeguards which should cover the possible transfer of retained personnel to another Power. It extends the general provisions of Article 12 of the Third Convention, relating to the transfer of prisoners of war, to such personnel.

Article 9.- This Article deals with the financial resources of retained personnel. It seemed only right to provide that, in application of the Third Convention, retained personnel should receive working pay, quite apart from the pay due to them under Article 60 of the Third Convention. When one considers that working pay is paid to all prisoners obliged to work, in particular to those who, being doctors, may be required to practise their profession, it would seem hardly fair to refuse it to retained personnel.

The minimum rate of working pay laid down in paragraph 2 for the para-medical professions, is the same as that laid down in the Third Convention for prisoners. It was felt that it could be doubled for the medical professions.

Article 10.- The purpose of the first three paragraphs of this Article is to extend to retained personnel the provisions of the Third Convention (Articles 109 and 110), relating to the repatriation of prisoners of war in case of wounds or sickness. When applied to retained personnel, these provisions must be extended and rendered more flexible. In fact, as soon as a member of this personnel, being sick or wounded, is no longer able to practise his profession - which is the sole reason for his retention - there are no longer any valid grounds for keeping him in captivity and orders for his repatriation should be given immediately. Furthermore, the medical prognosis of incapacity, which for prisoners of war must be one year in order to justify repatriation, may be reduced to 3 months in the case of retained personnel, who are in principle repatriated in any case at the end of 12 months.

It is specifically stated in the last paragraph that the possibility of accommodation in hospitals in a neutral country cannot be considered in the case of sick or wounded retained personnel. In the case of prisoners of war accommodation in a neutral country is justified, as it prevents the prisoner concerned

from taking up arms again, and at the same time allows him to be given better care, but there is no possible justification for it in the case of medical personnel and chaplains, who, not being engaged in hostilities, are on principle eligible for repatriation. Moreover, such personnel must be able to work wherever their presence is most necessary, and in a country at war doctors are in particular demand.

Article 11.- Generally speaking, the application to retained medical personnel and chaplains of the provisions of the Third Convention, relative to the treatment of prisoners of war, would not seem to present any particular problems. Where the interpretation of these provisions is not immediately clear, Article 8 to 10 above furnish the necessary clarification.

It is not inconceivable, however, that certain provisions might turn out in practice to be difficult to apply to retained personnel as they stand. An attempt might, of course, have been made to remedy this state of affairs here by listing them in the present Model Agreement. Such a solution would have rendered the agreement too rigid, however, and, while attempting to be exhaustive, might have overlooked certain contingencies, leaving unforeseen cases without an answer. It was therefore felt preferable to lay down a general and flexible rule, indicating the sense in which the various provisions of the Third Convention must be interpreted.

This rule stems from the following considerations : the only reason justifying the retention of medical personnel is the need which prisoners may have of their care. Consequently, the rules fixing the conditions under which they are retained must not only permit, but also facilitate, so far as possible, the carrying out of this humanitarian mission. Moreover, should difficulties arise with regard to the application of these rules, the solution most favourable to the accomplishment of this mission should always be sought, since the ultimate object aimed at is purely and simply the amelioration of the conditions of captivity of sick and wounded prisoners.

Article 12.- This Article extends the provisions of the Model Agreement to medical personnel and chaplains who are not retained but are awaiting repatriation - which, as experience has shown, can take a long time - as well as to relieving personnel sent out by the Power of origin.

It appeared essential that both these categories of personnel should enjoy a status identical to that of retained

personnel and that they benefit to the same extent as the latter by provisions of the present agreement. We may recall here that both these categories also benefit by the relevant provisions of the Geneva Conventions, the first in virtue of Article 30 of the First Convention, and the second in virtue of Article 5 of the Model Agreement relating to the Relief of Medical Personnel and Chaplains.

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MODEL AGREEMENT RELATING TO
THE RELIEF OF MEDICAL PERSONNEL AND CHAPLAINS

Article 1

Medical personnel and chaplains designated in Articles 24 and 26 of the First Geneva Convention of 1949 (1), who are retained in accordance with the provisions of Article 28 of that Convention and the provisions of the Agreement relating to the Retention of Medical Personnel and Chaplains, shall be relieved at the end of one year from the date on which they fall into the hands of the Detaining Power, as soon as a road is open for their return.

This period may be shorter in the case of retained medical personnel and chaplains who are to be repatriated for reasons of health, in accordance with Article 10 of the Agreement relating to the Retention of Medical Personnel and Chaplains.

Article 2

In so far as it has not been possible to replace them by personnel belonging to the Detaining Power or by fresh personnel who have fallen into the hands of that Power, in accordance

(1) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, referred to hereafter as "The First Convention".

with Article 5, paragraph 2, of the Agreement relating to the Retention of Medical Personnel and Chaplains, the retained personnel shall be relieved by personnel of the same nationality, from the home country, who shall have the same competence and carry out the same duties. Such personnel shall, in turn, be relieved at the end of one year.

Article 3

The choice of the personnel to be relieved shall be carried out according to their chronological order of capture, and without any discrimination based on race, religion, political opinions or other factors.

Article 4

In cases where the period of one year cannot be respected for the relief of all the personnel who have fallen into the hands of the adverse Party on the same date, those whose state of health is the most deficient shall be repatriated before the others; then those whose date of capture is the earliest; then the oldest; then the specialists; and finally those whose family circumstances are the most difficult. In each of these categories female personnel shall have priority over male personnel and members of the reserve over personnel on the active list.

Article 5

From the time they enter the territory of the Detaining Power, the relieving personnel shall be placed under the authority of the latter's competent services. They shall be subject to the military laws and regulations of that Power, as well as to all the rules of international public law which apply to the medical personnel and chaplains designated in Articles 24 and 26 of the First Convention. In the same way, such personnel shall benefit by the provisions of the Agreement relating to the Retention of Medical Personnel and Chaplains.

Article 6

The relieving operations shall in no case result in a diminution, even temporary, of the care to which wounded and sick prisoners of war are entitled.

To this end the repatriation of the personnel to be relieved shall only take place after arrival of the relieving personnel, allowance being made for the time required for the latter to become acquainted with all their duties. This overlapping period shall not, however, exceed a fortnight.

Article 7

The Parties to the conflict shall take all necessary steps to ensure that the repatriation of the relieved medical personnel and chaplains, and the passage of the relieving personnel, is effected in safety, by the most direct and rapid means. In particular the flight of aircraft transporting such personnel shall be facilitated in every way.

Article 8

The Parties to the conflict shall ensure that persons called upon to relieve retained personnel are duly issued with the identity card provided for under Article 40 of the First Convention. This card, similar if possible to the model annexed to the First Convention, shall also indicate the bearer's special qualifications, if he is a specialist.

Article 9

The recruiting and selection of persons called upon to relieve retained personnel shall take place under the responsibility of the Power to which these persons belong. Nevertheless, the list of the persons thus selected shall be submitted to the Detaining Power and shall only become final when approved by the latter.

Article 10

In time of peace the Powers shall take appropriate legal or administrative measures to enable the relieving operations to function in time of war.

They shall further ensure that relieving personnel are duly informed, before their departure, of the duties incumbent upon them, both from a professional standpoint and in regard to the Detaining Power by which they will be received. They shall, in particular, take care that such personnel do not commit any act hostile to that Power.

Article 11

The Parties to the conflict who retain members of medical personnel and chaplains who have fallen into their hands, shall without delay set up a Commission on their territory, whose duty it shall be to lay down, in agreement with the competent services of the Powers concerned, the methods to be followed for the carrying out of relief operations.

This Commission shall be composed of two representatives of the Health Services of the Detaining Power, a representative of the retained medical personnel and chaplains, nominated by the Power to which such personnel belong, a representative of the Protecting Power and a representative of the International Committee of the Red Cross.

The Chairman of the Commission shall be the representative of the Protecting Power or that of the International Committee of the Red Cross. The Commission shall lay down its own rules of procedure.

In carrying out its duties this Commission shall remain in close contact with the respective Health Services of the Powers concerned, either directly or through the channel of the International Committee of the Red Cross.

Article 12

The Commission designated in Article 11 shall in particular be called upon -

to perform, or to have performed, all formalities pertaining to the relieving of personnel and to fix the rate of relief,

to make out the individual record cards of the personnel to be relieved and to communicate them to the Power to which such personnel belong,

to receive the lists of the relieving personnel and to arrange for the posting of these personnel to the camps,

to assemble the personnel to be repatriated and to organize their journey, and also that of the personnel to be received,

to ensure that relieving operations are carried out in conformity with the stipulations set forth above and, in general, to settle any questions which may arise in this connection, in agreement with the competent services of the Powers concerned.

COMMENTARY

Examination of the numerous replies received to the enquiry conducted by the International Information Office for Military Medicine and Pharmacy concerning the relief of medical and religious personnel, showed clearly that opinions on this subject, under almost all its aspects, varied considerably and were often actually contradictory. This multitude of divergent opinions, which had already been noted in the course of the 1949 Diplomatic Conference, is symptomatic of the special character, highly technical and often varying according to the regions and nationalities concerned, of the problems raised by the organization of a relief operation, in the sense in which the term is used here.

It must be recognised that the actual lines on which a relief operation is organized, and the details of the numerous formalities which such an operation entails, cannot form the subject of international regulations. The method employed depends on too many factors of too variable a nature to be forecast in advance. It depends especially on the circumstances obtaining at the time, the nature of the conflict, the Powers concerned in the relief, their national characteristics, the geographical distances which separate them, the number of prisoners, the actual organization of the Medical Services of the armies concerned and that of the medical profession, the state of mind of the civilian population, and so on.

Under these circumstances two possibilities were open to the International Committee of the Red Cross. One was to inform the signatory Powers to the Geneva Conventions of August 12th, 1949 that in the Committee's opinion the problems relating to the relief and replacement of personnel could not form the subject of a complete and detailed model agreement, drawn up in advance. The second was to present an actual draft agreement, keeping to a few principles apparently valid in all cases.

This latter solution was the one adopted by the International Committee of the Red Cross, after mature consideration. The model agreement which it is now submitting presents the following characteristic features :

The principles applicable in all cases, together with all observations of a general nature, are to be found in the first part, i.e. in Articles 1 to 10. The second part, comprising Articles 11 and 12, provides for the setting up of a special Commission in all countries where the relief of retained personnel may have to be carried out. The Commission's task will

be to solve the practical problems inherent in such an operation by establishing contact at more or less regular intervals between the competent services of the Powers concerned, possibly through the channel of the International Committee of the Red Cross.

Such a device, though it may seem an easy way out of the problem, appears nevertheless to the International Committee of the Red Cross to be the one which is surest and has the greatest chance of securing the acceptance by the majority of States of the actual principle of an agreement on relief. While couched in general terms, this agreement is, of course, at all times open to any addition on matters of detail with regard to its application. In fact, it is essentially a framework within which a complete and detailed agreement can be concluded when the time comes, taking into consideration the circumstances then existing.

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Article 1.- This Article lays down the actual principle of relief: all medical personnel and chaplains who are retained shall be relieved one year after falling into the hands of the adverse Party.

Such retained personnel include, on the one hand, regular medical personnel and chaplains of the armed forces, as defined in Article 24 of the First Convention, and, on the other, voluntary aid personnel, as defined in Article 26. Although in virtue of the Model Agreement relating to the Retention of Medical Personnel and Chaplains, the personnel of voluntary aid societies may not be retained against their will, it has nevertheless been provided here, that such personnel may be relieved, in those cases, namely, where they have agreed to be retained.

The second paragraph brings this provision into line with the agreement relating to retention which provides, in Article 10, for the immediate repatriation of any medical personnel or chaplains who are sick or wounded. It is essential, we feel, for such personnel to be relieved immediately, without waiting for the end of the theoretical period of one year, for fear of the prisoners being left without adequate care.

This Article, as well as a number of those which follow it, refers back to the Agreement relating to the Retention of

Medical Personnel and Chaplains. It should be stressed here that though it is always possible for a Power to adhere to that agreement without necessarily accepting the agreement on relief, the reverse is hardly possible. It has thus been foreseen, from the outset, that any Power which subscribes to the principles laid down here with regard to the relief of personnel, will also have previously agreed to conclude an agreement with the adverse Party on the subject of the retention of medical personnel and chaplains. This may be the Model Agreement proposed above, or any similar agreement.

Article 2.- Before defining what constitutes "relieving" personnel, this Article recalls what a Detaining Power's duties are : even if this Power was not, at the time of capture of the prisoners of war, able to set aside a proportion of its own medical personnel for their care, it may nevertheless be in a position to do so one year later. Such personnel would then relieve the personnel due for repatriation. The case considered in Article 5, paragraph 2, of the model agreement relating to retention, which lays down that the relief of medical personnel and chaplains shall, in the first place, be undertaken by members of this same personnel who have recently fallen into the hands of the adverse Party, is also reserved.

It should be noted that this Article also lays down the principle according to which "relieving" personnel should, in their turn, be relieved at the end of one year.

Article 3.- This provision is inspired by the principle of humanitarian equality which runs right through the humanitarian law of Geneva. Thus, the chronological order of capture will alone determine the rhythm of relief to the exclusion of all other considerations based on race, political opinion or other factors.

Article 4.- It will probably not always be possible to adhere strictly to the period of one year laid down in Article 1 for the repatriation of all the personnel who have fallen into the hands of the adverse Party on the same date. This will more especially be the case if such personnel are numerous. Repatriations will be staggered over a certain period, and the order in which they are to take place must therefore be laid down. The criteria set forth in this Article are based on the results of the enquiry conducted by the International Information Office for Military Medicine and Pharmacy.

Article 5.- It seemed necessary to specify to which law "relieving" personnel should be subject, as from the time of their entry into the territory controlled by the Detaining Power, and to bring their situation into line with that of regular medical personnel and chaplains, as laid down in the First Convention (Article 28, paragraph 2).

It was also thought advisable to state specifically that "relieving" personnel were to benefit by the provisions of the Agreement relating to the Retention of Medical Personnel and Chaplains, as already provided in Article 12 of that agreement.

Article 6.- A well known principle of the Red Cross finds fresh expression here : the humanitarian interest of war victims must override all other considerations. It is therefore laid down that relief operations can under no circumstances, even temporarily, render the care which prisoners require less effective as regards either quality or quantity. Consequently, the repatriation of "relieved" personnel cannot take place before the arrival of the "relieving" personnel, and only after the latter have been initiated in their duties.

Article 7.- Article 30, paragraph 1, of the First Convention lays down that the personnel to be repatriated shall be sent home as soon as a road is open for their return and military requirements permit. It seemed opportune to stress here that the passage, not only of the repatriated personnel but also of the "relieving" personnel, should be effected in safety, by the most direct and rapid means. The possible use of aircraft - planes and helicopters - is also mentioned, as they would appear to be the most suitable means of transport for such operations. When laying down that such passages should be facilitated in every way, it was the provisions of Articles 36 and 37 of the First Convention, dealing with the protection to be accorded to medical aircraft - one of whose tasks is in fact the transportation of medical personnel - that the authors of the Article had particularly in mind.

Article 8.- It did not appear necessary to recall, in the model agreement relative to retention, that medical personnel and chaplains should be issued with the identity card prescribed in Article 40 of the First Convention. On the other hand, it was felt essential to stipulate that this identity card should likewise be issued to "relieving" personnel, who might very well not belong to the regular personnel of the Army Medical Service.

When laying down that this identity card should also show what the holder's speciality is, the idea was to remedy what appeared on close examination, to be an oversight in the description in Article 40 of the First Convention - and in the Model annexed to the Convention - of the various entries which must be made on this identity card. The indication of the special medical qualifications of holders of the card can, indeed, render valuable service by, on the one hand, authenticating their declarations and on the other by accelerating and facilitating their posting to prisoners of war camps and hospitals (1). Thanks to this provision of the Model Agreement this indication will at least be included on the "relieving" personnel's cards.

Article 9.- The International Information Office for Military Medicine and Pharmacy asked in its enquiry to which authority the task of designating persons to relieve retained personnel should be entrusted. The replies received differed appreciably. The Army Medical Service, the Ministry of Health, the National Red Cross Society, the professional bodies or associations, etc. were each suggested in turn. In view of the diversity of the opinions expressed, the International Committee decided to propose that this task should be carried out under the responsibility of the State, leaving to it the choice of the authority it would entrust with the actual recruiting of the "relieving" personnel.

An important point mentioned is the following : the Power which is to receive the "relieving" personnel has the right to refuse entry to its territory to all persons who, for any reason whatsoever, do not meet with its approval. It should not, indeed, be forgotten that one of the main obstacles facing the relief of medical personnel is the fear which Powers may feel of persons entering their territory under such auspices and making abusive use of their mission in order to engage in military or economic espionage. Every possible effort should be made in order to allay this fear.

(1) This oversight was also stressed by the International Committee of Military Medicine and Pharmacy which, as a result of an enquiry it made, has now invited all Medical Services of member States to add this new item, in so far as possible, to the identity cards of their personnel.

Article 10.- The first paragraph of this Article invites the Powers who can already foresee that they will, in time of war, be favourable to the principle of relief and wish to organize it, to take all necessary steps, in peace time, in order to assure its functioning. It did not seem possible to lay down here what these measures should be, since they depend on a number of variable and unpredictable factors.

The second paragraph is a corollary to the preceding one and calls upon Powers to take all appropriate steps in order to prevent their nationals, members of the relieving personnel, from committing acts hostile to the adverse Party.

Article 11.- This Article, together with the one which follows it, provides for the creation of the Commission which is to carry through the relief operations, and fixes its composition and tasks. Its terms of reference have been purposely left both general and flexible, care being taken to do no more than sketch in broad outline the working procedure and the activities of the Commission in order to allow in all cases for adaptation to circumstances.

Article 11 is more especially concerned with the composition and methods of work of the Commission. The representatives of the medical circles concerned will be able to make themselves heard (or will have the majority on the Commission). This body will, moreover - and this is a very happy solution - include two neutral members, one of whom will be chairman, and will of necessity remain in constant touch with the Army Medical Services of the countries separated by hostilities. The last paragraph provides that such contacts may, should the need arise, take place through the channel of the International Committee of the Red Cross, though it would, of course, be preferable if they were direct.

Article 12.- This Article mentions some of the tasks which may be entrusted to the Commission. They have been expressed in very general terms in order to enable the Commission to undertake all and any of the activities which may fall to it and which it did not seem desirable to enumerate in detail here.

Generally speaking, and according to the terms of the final paragraph, the Commission will be competent to take all measures which the situation may demand and also to settle, in agreement with the authorities, any individual questions which may arise with regard to the relieving operations.
