



Protection of Medical and Human Personnel Under the First Geneva Conventions

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Abstract— International humanitarian law provides special protection for medical personnel and property dedicated to saving lives and delivering healthcare to both civilians and combatants. This paper examines the legal aspects of protecting medical personnel in armed conflicts, using Afghanistan as a case study where the war has left many vulnerable. It discusses the minimum protections and standards set by international humanitarian law, which require all parties in a conflict to take necessary measures to safeguard and respect medical missions at all times.

Index Terms— Protection of medical personnel, Law of armed conflict, Military medicine.

1. Introduction

As armed conflicts become more common, there is a noticeable lack of respect for the Red Cross and Red Crescent symbols used by medical services. In Afghanistan, misuse of these symbols has led to medical staff and vehicles being targeted, violating international laws. This misuse makes it hard to verify if the symbols are used legitimately, affecting humanitarian missions and violating the Geneva Conventions. This problem impacts the International Committee of the Red Cross (ICRC) and those needing aid during conflicts, making it difficult to ensure their protection [2].

2. Protection of Medical Services and Victims of Armed Conflict Under the Geneva Conventions

International humanitarian law of armed conflict began in the 19th century with the signing of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field on 22nd August 1864 [1]. This convention established crucial humanitarian principles and laid the foundation for modern humanitarian law. It set standards to protect victims of armed conflict, especially wounded soldiers, reinforced the neutrality of medical services, and mandated respect for the Red Cross emblem on a white background.

A key strength of the Convention was its ability to allow any interested country to join. In 1906, it was updated with a new agreement in Geneva, expanding protection for wounded soldiers and introducing record-keeping and information exchange systems [3]. Experiences from later conflicts led to further development of international humanitarian law. By 1949, numerous declarations and conventions built on the 1906 Geneva Convention. Important milestones included the 1899

and 1907 Hague Conventions, the 1925 Geneva Protocol banning chemical and biological warfare, and the 1929 Geneva Conventions amending the 1906 Convention and addressing the treatment of war prisoners.

International humanitarian law, along with the work of the International Committee of the Red Cross (ICRC) during armed conflicts, is guided by the four Geneva Conventions of 1949 and their Additional Protocols. Together, these form a legal framework designed to protect those affected by war[1]. A key principle within this system is that medical personnel and civilians working in military contexts deserve special protection from attacks. Additionally, the work of medical staff should not be impeded or violated. According to Article 24 of the Geneva Conventions, medical personnel should be dedicated solely to aiding the wounded or sick, preventing disease, or managing medical facilities. Chaplains attached to the armed forces are also included in this protection. Geneva Convention II specifically extends protection to medical staff and hospital ship personnel. Article 36 of this convention ensures that these individuals are respected and safeguarded, and they cannot be captured while serving on a hospital ship, regardless of whether there are wounded or sick patients on board.

Article 37 states that if religious, medical, or hospital staff are captured by the enemy, they must be treated with respect and protected. They can keep doing their important work as long as it's needed to care for the wounded and sick. Once their work is done, they should be sent back as soon as possible, according to what the Commander-in-Chief deems feasible. They are also allowed to take their personal belongings with them when they leave the ship.

The First Additional Protocol to the Geneva Conventions ensures that civilian medical staff are respected and protected. If combat disrupts civilian medical services, all possible help must be provided to these personnel. In occupied territories, the occupying power must support civilian medical staff so they can perform their humanitarian duties effectively. While carrying out their duties, these personnel cannot be forced to prioritize patients based on anything other than medical need and cannot be made to take on tasks that conflict with their humanitarian mission. They should have access to any area where their services are needed, with any necessary safety measures in place. Additionally, civilian religious staff should also be respected and protected, with the same protections and

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identification requirements applying to them as to medical personnel.

Article 16 of the Geneva Conventions' First Additional Protocol guarantees that individuals involved in medical activities will not face punishment for performing their duties in line with medical ethics, no matter who the beneficiaries are. Those engaged in medical work cannot be forced to act against medical ethics or other medical guidelines intended to help the wounded and sick, nor can they be pressured to ignore these rules. They also cannot be compelled to share information about the wounded and sick if such information might harm the patients or their families, though mandatory reporting of communicable diseases must still be followed.

Article 38 of Protocol I prohibit the misuse of the Red Cross symbol and other internationally recognized emblems. Article 9 of Protocol II underscores the protection of medical personnel and emphasizes that all possible assistance must be provided to help them carry out their duties. Medical personnel should not be forced to undertake tasks that conflict with their humanitarian mission and should only prioritize patients based on medical needs. Article 10 of Protocol I establish overarching rules for the protection of medical duties, reinforcing that medical personnel should never be punished for performing their roles ethically, regardless of who benefits from their services.

Individuals engaged in medical activities cannot be forced to act against medical ethics or other rules designed to benefit the wounded and sick, nor can they be required to avoid performing acts that these rules necessitate. Their professional obligations regarding information about the wounded and sick under their care must be respected in accordance with national laws. No medical personnel should face penalties for refusing or failing to provide information about the wounded and sick, as long as this refusal aligns with national law. Article 11 addresses the protection of medical units and transports, stipulating that they must always be respected and protected from attack. This protection remains in place as long as these units and transports are solely engaged in their humanitarian functions. Protection can only be revoked if they are used for hostile acts, and only after a warning has been issued with a reasonable time frame for compliance, if appropriate, and the warning is ignored.

The Geneva Conventions are applicable in all situations of ongoing hostilities, whether or not the war is officially declared. The nature of the armed conflict, as determined by the parties involved, is irrelevant. The Conventions also cover situations of occupation, even if there is no active resistance. They apply to all states, including cases where one of the parties in the conflict is not a signatory to the Conventions [4]. According to Articles 47, 48, 127, and 144 of Geneva Conventions I, II, III, and IV, respectively, it is a legal duty for countries to disseminate knowledge of these Conventions and their Protocols [5].

Since 1949, the Geneva Conventions have been expanded through various regulations, conventions, agreements, and protocols, significantly shaping modern international humanitarian law. Today, humanitarian law encompasses norms dedicated to humanity, dignity, life, and health. It

includes widely adopted international standards, established both through formal conventions and customary practices. These legal norms apply globally in times of peace, war, and other situations, forming a comprehensive set of rules designed to assist and protect individuals. This framework includes the Geneva Conventions of August 12, 1949, aimed at protecting victims of war, and the Additional Protocols of 1977, which further enhance these protections.

3. Protection of Medical Services and Victims of Armed Conflict in the Light of International and Non-International Armed Conflict

At the outset, the war in Afghanistan was recognized as an international armed conflict, meaning the Geneva Conventions and Additional Protocols applied throughout the conflict. Humanitarian law was enforced for all parties involved, extending protections to those who were not directly participating in the fighting or who had stopped their involvement.

According to the Additional Protocols, special protections are granted to various groups, including:

- Wounded and sick soldiers on land, as well as medical personnel from the armed forces.
- Wounded, ill, or shipwrecked soldiers at sea, and naval medical staff.
- Prisoners of war.
- Civilians, including foreign nationals in the conflict zone, refugees, civilians in occupied territories, arrested or interned civilians, medical and religious personnel, and civil defence units [4].

Many standards from the Additional Protocols to the Geneva Conventions, which address international conflicts, are considered customary law and apply to all armed conflicts. This is particularly important because Additional Protocol I focus on protecting civilians and outlines the measures needed to shield them from the impact of hostilities.

The Nuremberg Tribunal stated, "The law of war is not only found in treaties but also in customs and practices that have gained broad recognition, as well as in the general principles of justice applied by legal experts and military courts." [6] This means that the law is not fixed but evolves through ongoing updates to meet the demands of a changing world. Often, treaties merely refine and clarify existing legal principles. International humanitarian law ensures that victims of conflict receive necessary material aid. According to these regulations, each high contracting party must allow the free passage of medical supplies, hospital equipment, and religious items intended for civilians of another party, even if that party is an adversary. They must also permit the unrestricted passage of essential food, clothing, and tonics for children under fifteen, expectant mothers, and those in maternity cases.

The occupying power is responsible for ensuring that the population receives adequate food and medical supplies. If the resources in the occupied territory are insufficient, the occupying force must bring in necessary provisions. If the population is not adequately supplied, the occupying power

must agree to and facilitate relief efforts to aid them. Additionally, any time a protected person is held in custody awaiting trial or punishment should be counted towards their overall sentence if they are subsequently convicted.

Protected persons cannot be arrested, prosecuted, or convicted by the occupying power for actions or opinions expressed before the occupation began, or during any temporary suspension of the occupation, except for violations of the laws and customs of war. Nationals of the occupying power who took refuge in the occupied territory before hostilities began cannot be arrested, prosecuted, convicted, or deported from the occupied area unless they committed offenses after the hostilities started. They also cannot be targeted for common law offenses committed before the outbreak of hostilities, unless those offenses would have warranted extradition under the laws of the occupied state during peacetime.

At this stage, the conflict in Afghanistan should be categorized as a non-international armed conflict. This classification is due to the fact that the fighting occurs between Afghan guerrillas, who are not part of the government's armed forces, and NATO troops. It is important to note that the conditions for applying Additional Protocol II are more stringent than those for applying Article 3 of the Geneva Conventions. In such conflicts, humanitarian law applies to all armed forces involved, whether regular or irregular. This law provides protection to those who do not participate in hostilities or who have ceased to do so, including wounded and sick combatants, individuals deprived of their liberty due to the conflict, civilians, and medical and religious personnel.

In non-international armed conflicts, humanitarian law mandates the provision of material aid to those affected. Article 18 of Additional Protocol II specifies that if the civilian population endures significant hardship due to a lack of essential supplies like food and medical aid, relief efforts must be undertaken. These efforts should be exclusively humanitarian and impartial, conducted without discrimination, and require the consent of the concerned High Contracting Party [7].

Moreover, the situation in Afghanistan extends beyond a conflict with the Taliban. It involves a complex web of minor conflicts, including an international coalition under ISAF, various state and non-state actors, international terrorist organizations, and criminal groups. This complex mix also includes different tribes, mercenaries, religious and ideological leaders, and rogue intelligence services. Given these factors, resolving the conflict in Afghanistan is a highly challenging task and likely remains out of reach for the foreseeable future. In such "new wars," it is crucial that international humanitarian law remains robust and fully enforced.

4. Conclusion

Throughout the history of armed conflict, there have been numerous instances of neglect and failure to adhere to international humanitarian law, affecting armed forces members, medical personnel, humanitarian workers (such as those from the ICRC), and civilians. This non-compliance often stems from a disregard for the Red Cross and Red Crescent symbols that signify medical and humanitarian work, governmental resistance to international organizations on the grounds of sovereignty, and the emergence of new types of conflicts, including unstructured conflicts and battles between armed forces and terrorists amid widespread terrorist activity.

Modern international humanitarian law offers protection to medical personnel and facilities. In international armed conflicts, it is crucial to apply the Geneva Conventions and Additional Protocol I, which are designed to safeguard both the participants in the conflict and those who do not take part in it or have ceased to do so. For non-international armed conflicts, Article 3 common to the four Geneva Conventions and Additional Protocol II should be implemented to ensure appropriate protection.

Even in the context of armed conflicts where the use of military force is legally and morally justified, certain actions remain unacceptable. The fight against terrorism, often described as "the scourge of the twenty-first century," does not permit the use of violence against civilians, including medical personnel. Such attacks are violations of the Geneva Conventions and are considered war crimes and crimes against humanity. Therefore, all countries that have ratified the Geneva Conventions and Additional Protocols are required to adhere to the rules of warfare outlined in these documents and to promote their principles during peacetime. Educating societies about international humanitarian law can help prevent attacks on medical facilities and personnel and greatly improve the conditions for victims of armed conflict.

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