

RESPECTING AND PROTECTING HEALTH CARE IN ARMED CONFLICTS AND IN SITUATIONS NOT COVERED BY INTERNATIONAL HUMANITARIAN LAW



International humanitarian law (IHL) – also called the “law of war” or the “law of armed conflict” – sets out detailed rules that seek for humanitarian reasons to limit the effects of armed conflict. It protects those who are not, or are no longer, taking part in the fighting, and sets limits on the means and methods of warfare. IHL is a universal set of rules. It consists of international treaty and customary rules that are specifically meant to resolve humanitarian issues arising directly from armed conflict, both international and non-international. The 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005 are its core treaties. The Geneva Conventions have been accepted by all States, and acceptance for the Additional Protocols is growing. These fundamental instruments are supplemented by various other treaties. Becoming party to these agreements is only a first step, but it is a vital one. Additional efforts are required to implement the rules contained in these instruments – to put the law into effect.

INTERNATIONAL AND NON-INTERNATIONAL ARMED CONFLICT

THE WOUNDED AND SICK

Attacking, harming or killing

The wounded and sick must be respected in all circumstances; attempts upon their lives and violence against their person are strictly prohibited (1949 First Geneva Convention (GC I) Art. 12; 1949 Second Geneva Convention (GC II), Art. 12; 1949 Fourth Geneva Convention (GC IV), Art. 16; 1977 First Additional Protocol (AP I), Art. 10; 1977 Second Additional Protocol (AP II), Art. 7). Wilfully killing them or causing great suffering or serious injury to their bodies or to their health constitutes war crimes as grave breaches of the Geneva Conventions (GC I, Art. 50; GC II, Art. 51).

The wounded and sick must be respected in all circumstances; attempts upon their lives and violence against their person are strictly prohibited.

In certain circumstances, the denial of medical treatment may constitute cruel or inhuman treatment, an outrage upon human dignity, in particular humiliating and degrading treatment, or even torture if the necessary criteria are met.

Searching for and collecting

Parties to an armed conflict must take all possible measures to search for and collect the wounded and sick without delay. If circumstances permit, parties must make arrangements for the removal or exchange of the wounded and sick (GC I, Art. 15; GC II, Art. 18; AP II, Art. 8; Rule 109 of the ICRC Customary IHL Study (CIHL Study); see also AP I, Art. 17 on the role of the civilian population and aid societies in relation to the wounded, sick and shipwrecked).

Protection and care

All parties to an armed conflict must protect the wounded and sick from pillage and ill-treatment. They must also ensure that adequate medical care is provided to them as far as practicable and with the least possible delay (GC I, Art. 15; GC II, Art. 18; GC IV, Art. 16; AP II, Arts 7 and 8; Rule 111 CIHL Study).

Treatment without discrimination

The wounded and sick must be treated without discrimination. If distinctions are to be made among them, it can be only on the basis of their medical condition (GC I, Art. 12; GC II, Art. 12; AP II, Art. 7(2); Rule 110 CIHL Study).

MEDICAL PERSONNEL

Protecting and respecting

Medical personnel exclusively assigned to medical duties/purposes must always be respected and protected, unless they commit, outside of their humanitarian function, acts that are harmful to the enemy (GC I, Art. 24; AP I, Art. 15; Rule 28 CIHL Study). When they carry and use weapons to defend themselves or to protect the wounded and sick in their charge, medical personnel do not lose the protection to which they are entitled (GC I, Art. 22(1); GC II, Art. 35(1); AP I, Art. 13(2)(a)). The wounded and sick under their care remain protected even if the medical personnel themselves lose their protection.

Provision of care

Parties to an armed conflict may not impede the provision of care by preventing the passage of medical personnel. They must facilitate access to the wounded and sick, and provide the necessary assistance and protection to medical personnel (GC I, Art. 15; GC II, Art. 18; GC IV, Art. 17; AP I, Art. 15(4)).

HEALTH-CARE PROFESSIONALS

Impartial care

No health-care professionals may be punished for having carried out activities compatible with medical ethics, such as providing impartial care (AP I, Art. 16(1); AP II, Art. 10(1)); see also GC I, Art. 18 on the role of the population; Rule 26 CIHL Study).

Medical ethics

Health-care professionals, such as physicians, have certain ethical duties to fulfil. These duties are protected by various provisions of IHL. Parties to an armed conflict must not compel medical professionals to carry out activities that are contrary to medical ethics or prevent them from fulfilling their ethical duties. Further, parties must not prosecute medical professionals for acting in accordance with medical ethics. (AP I, Art. 16(1), (2); AP II, Art. 10(1), (2); Rule 26 CIHL Study).

Health-care professionals must protect the confidentiality of information obtained in connection with the treatment of patients: this is one of the most important principles of medical ethics. Under AP I and II of 8 June 1977 additional to the Geneva Conventions, persons engaged in medical activities may not, unless required to do so by law, be compelled to give information concerning the wounded and sick who are or have been under their care either to their own party or to an adverse party, if this information would prove harmful to the patients or their families (AP I, Art. 16(3); AP II, Art. 10(3), (4)).

The World Medical Association is of the view that medical ethics remain the same during armed conflict and in peacetime.¹

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MEDICAL UNITS AND TRANSPORTS

Medical units

Medical units, such as hospitals and other facilities organized for, and exclusively assigned to medical purposes, must be respected and protected in all circumstances. Medical units may not be attacked and access to them may not be limited. Parties to an armed conflict must take measures to protect medical units from attacks, such as ensuring that they are not situated in the vicinity of military objectives. (GC I, Art. 19; GC II, Art. 22; GCIV, Art. 18; API, Art. 12; AP II, Art. 11; Rule 28 CIHL Study).

Medical units will lose the protection to which they are entitled if they are used, outside their humanitarian function, to commit acts harmful to the enemy, such as sheltering able-bodied combatants or storing arms and ammunition. However, this protection can be suspended only after due warning has been given with a reasonable time limit and only after that warning has gone unheeded. (GC I, Arts 21–22; AP I, Art. 13; AP II, Art. 11; Rule 28 CIHL Study).

Medical transports

Any means of transportation that is assigned exclusively to the conveyance of the wounded and sick, medical personnel and/or medical equipment or supplies must be respected and protected in the same way as medical units. If medical transports fall into the hands of an adverse party, that party becomes responsible for ensuring that the wounded and sick in their charge are cared for. (GC I, Art. 35; GC II, Arts 38–39; AP I, Arts 21–31; AP II, Art. 11; Rules 29 and 119 CIHL Study).

Perfidy

Parties to an armed conflict who use medical units or transports with the intent of leading the opposing parties to believe they are protected, while using them to launch attacks or carry out other acts harmful to the enemy, commit acts of perfidy. If such an act of perfidy results in death or serious injury to individuals belonging to an adverse party, it constitutes a war crime (AP I, Arts. 37 and 85(3) (f); Rule 65 CIHL Study).

¹ World Medical Association, WMA ;Regulations in times of armed conflict and other situations of violence, 1956 (last revision in 2012), available at https://www.med.or.jp/jma/jma_infoactivity/jma_activity/2012wma/2012_13e.pdf. See also WMA, Ethical Principles of Health Care in Times of Armed Conflict and Other Emergencies, 2015, available at https://healthcareindanger.org/wp-content/uploads/2016/04/4245_002_ethical_principles_of_health_care-eng.pdf.

USE OF THE DISTINCTIVE EMBLEMS PROTECTED UNDER THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

When used as a protective device, the emblem – the red cross, the red crescent or the red crystal – is the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on medical personnel, medical units and medical transports. However, no such emblem confers as such protection; it is the fact that persons or objects meet the requirements for qualifying as medical personnel and objects and the fact that they discharge medical functions that are constitutive of protection. (GC I, Art. 38; GC II, Art. 41; AP I, Arts 8(l); AP II, Art. 12; 2005 Additional Protocol III; Rule 30 CIHL Study). During an armed conflict, the authorized users of a protective emblem include military medical personnel, units and transports; National Red Cross and Red Crescent Societies' medical personnel, units and transports that have been recognized by the State and authorized to assist the medical services of the armed forces; State-certified civilian medical units authorized to display the emblem; and medical personnel in occupied territory. The emblem used as a protective device should be large enough to ensure visibility so that an adversary could recognize medical units from a distance on the battlefield. Medical units and transports may also use distinctive signals (such as light and radio signals) (GC I, Arts 39–44; GC II, Arts 42–43; AP I, Arts 39–44; AP II, Art. 12).

When used as an indicative device, the emblem links the person or object displaying it to an institution of the International Red Cross and Red Crescent Movement. In this case, the sign should be relatively small. (GC I, Art. 44).

Attacking buildings, material, medical units and transports or personnel displaying the distinctive emblems is a war crime.

Misuse of the emblem

Any use of the emblem not prescribed by IHL is considered to be improper. (GC I, Art. 53; AP I, Arts 37–38, 85; AP II, Art. 12; Rule 59 CIHL Study). Perfidious use of the emblem – to protect or hide combatants, for example – constitutes a war crime when it results in death or serious injury. (AP I, Art. 85; Rule 65 CIHL Study).

SITUATIONS OTHER THAN ARMED CONFLICTS

Under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States must take steps to ensure the right of everyone to enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of physical and mental health (the right to health).

General Comment No. 14 of the United Nations Economic and Social Council (General Comment No. 14) states that the right to health contains the core obligations to maintain essential primary health care, access to minimum essential food, basic shelter, housing and sanitation, and an adequate supply of safe and potable water, as well as the obligation to provide essential drugs. These core obligations are non-derogable and require States to respect, protect and ensure the right to health.

The right to medical care is also provided under Article 25 of the Universal Declaration of Human Rights.

Access to health care is also articulated in several other important instruments of international human rights law.²

² See Art. 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965); Arts 11 (1) (f), 12 and 14 (2) (b) of the Convention on the Elimination of All Forms of Discrimination against Women (1979); Art. 24 of the Convention on the Rights of the Child (1989); Arts 28, 43 (e) and 45 (c) of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990; and Art. 25. of the Convention on the Rights of Persons with Disabilities (2006).

THE WOUNDED AND SICK

Attacking, harming or killing

Wounded and sick have the right – just like any other individual under a State’s jurisdiction – not to be arbitrarily deprived of their lives. This is a non-derogable obligation of States under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Individuals also have a right to personal security under Article 9 of the ICCPR.

The use of force against an individual may be justifiable in certain cases where it is absolutely necessary. The United Nations’ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials sets out the situations in which the use of force is permissible. However, the lethal use of force is justified only when protecting life. A warning must be given prior to the use of force, and sufficient time allowed for it to be observed.

In certain circumstances, the denial of medical treatment may constitute cruel, inhuman and degrading treatment, or even torture if the necessary criteria are met.

In addition, under the Rome Statute of the International Criminal Court, the murder of wounded and sick people, as well as other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health, may amount to crimes against humanity. (Art. 7(1)(a) and (k), Rome Statute).

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Protection

States have an obligation to protect the wounded and sick from ill-treatment; they must also protect the right to health of the wounded and sick. The Human Rights Committee of the United Nations has stated on many occasions that States have an obligation under the right to security to take the necessary measures to protect individuals under their jurisdiction, even protecting them from private individuals. The right to health also requires that States take all necessary measures to “safeguard individuals within their jurisdiction from infringements of the right to health by third parties” (General Comment No. 14)

Searching for, collecting, and providing care

Under the right to health, States have a non-derogable obligation to “ensure the right of access to health facilities, goods and services” (General Comment No. 14). When individuals are unable to realize this right by themselves, as may be the case for the wounded and sick, States must take the necessary measures to provide this access, which may entail searching for and collecting the wounded and sick.

General Comment No. 36 on the right to life of the Human Rights Committee of the United Nations states that the right to life in the ICCPR also contains the obligation for States to take positive measures, which include measures to ensure health care, especially in life-threatening circumstances.

Treatment without discrimination

Under Articles 2.2 and 3 of the ICESCR, the right to health must be exercised without discrimination. Access to health care for the wounded and sick must be equitable. This obligation is immediate and non-derogable. Under Article 4 of the ICESCR, States are entitled to place restrictions on the right to

health. However, this must be done in accordance with the law, including human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society (General Comment No. 14).

HEALTH-CARE PERSONNEL

Protecting and respecting

Medical personnel have the right to protection against arbitrary deprivation of life and the right to security in the same way as the wounded and sick.

Provision of care

States must not prevent medical personnel from treating the wounded and sick. Under the right to health, States have an obligation to “refrain from interfering directly or indirectly with the enjoyment of the right to health” (General Comment No. 14).

Arresting medical personnel for providing care may amount to a violation of the protection against arbitrary arrest and detention, even if it is done lawfully under national law. The Human Rights Committee of the United Nations has stated that inappropriateness and injustice in legislation can amount to arbitrariness.

Medical ethics

Resolution 37/194 of the UN General Assembly on the Principles of Medical Ethics states that in these situations as in times of armed conflict, States should not punish medical personnel for carrying out medical activities compatible with medical ethics or compel them to undertake actions that contravene these standards.

HEALTH-CARE FACILITIES AND MEDICAL TRANSPORTS

Under the right to health, States have a non-derogable obligation to ensure access to health infrastructure. They must therefore respect medical units and transports. States may not target them or use them to launch law enforcement operations or to carry out other similar measures. States must also take measures to protect medical units and transports from attacks or misuse by third parties.

USE OF THE DISTINCTIVE EMBLEMS PROTECTED UNDER THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

During situations other than armed conflicts, the use of the emblem is restricted. Under GC I, Art. 44(1), military medical personnel, units and transports can use the emblem as a protective device in time of peace, and in situations of violence other than armed conflict. National Societies’ medical units and transports, whose assignment to medical duties in the event of an armed conflict has been decided, can also use the emblem as a protective device, as long as they have been authorized to do so by the appropriate authority. Finally, in certain cases, civilian medical units may be authorized to use the emblem as a protective device. This requires the medical units to have been recognized as such by the State and the State to allow this use of the emblem. However, this use should be limited to the preparation of medical units for an eventual armed conflict: for example, painting the emblem on the roof of a hospital.

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The emblem may also be used as an indicative device by ambulances and first-aid stations, when they are exclusively assigned to provide free treatment to the wounded and sick. In this case, the use must be in conformity with national legislation and authorized by the National Society.

MAINTAINING HEALTH-CARE SYSTEMS DURING ARMED CONFLICTS AND IN SITUATIONS NOT COVERED BY IHL

In all circumstances, in times of peace and during conflict, States have an obligation to maintain a functioning health-care system. They must maintain essential primary health care, access to minimum essential food, basic shelter, housing and sanitation, and an adequate supply of safe and potable water, as well as provide essential drugs, while respecting the principles of non-discrimination and equitable access. States must also design and implement public health strategies. (General Comment No. 14.) Similar provisions exist in IHL that require States to provide food and medical supplies to the population. In occupied territory, pursuant to GC IV, Art. 56, the Occupying Power (with the cooperation of national and local authorities) must, to the fullest extent of the means available, ensure and maintain medical and hospital establishments and services and public health and hygiene, and adopt the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Though both IHL and IHRL allow States to predicate their obligations on the resources available to them, a lack of resources does not justify inaction. Even in cases where resources are extremely limited, States should adopt low-cost programmes that target the most disadvantaged and marginalized members of the population.

Humanitarian relief

Under IHL, if a civilian population lacks essential supplies, the party concerned has the obligation to ensure that humanitarian assistance is provided. It may therefore have to allow an organization or a third State to enter its territory to provide humanitarian assistance or even to request it. This obligation is circumscribed by the requirement to secure the consent of the receiving party; however, to justify its refusal, the receiving party must produce reasons whose validity cannot be contested. In occupied territory, the Occupying Power does not have the option to refuse.

All States and all parties to an armed conflict must allow and facilitate the unimpeded passage of humanitarian relief on their territories to populations in need, subject to their right of control. This obligation is not limited to parties to the conflict; it also applies to third States through which relief consignments must pass in order to reach populations in need.

Under the right to health, States have an obligation to take all necessary steps and use their resources to the maximum extent available, which includes available humanitarian relief.

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DOMESTIC NORMATIVE AND PRACTICAL MEASURES

DISSEMINATION

To ensure protection of access to health care, States need to disseminate the content of both IHL and IHRL obligations at all levels. This information should be provided to the armed forces and to civil defence and law enforcement officials, as well as to medical personnel and civilians in general.³

Dissemination may require the translation of legal texts.

States must provide military commanders and law enforcement officials with legal advisers to help them apply and teach IHL and IHRL.⁴

USE OF THE DISTINCTIVE EMBLEMS PROTECTED UNDER THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS⁵

The responsibility for authorizing the use of the red cross, red crescent and red crystal emblems, and for suppressing misuse and abuse, rests with the State, which must regulate their use in accordance with the terms of the Geneva Conventions and their Additional Protocols.

States should therefore adopt internal measures to: identify and define the emblems that have been recognized and are protected by the State; determine which national authorities are competent to regulate and monitor the use of the emblems; decide which entities are entitled to use the emblem; and identify the uses for which permission is required.

States must enact domestic legislation prohibiting and punishing unauthorized use of the distinctive emblems and their denominations at all times, for any form of personal or commercial use, and prohibit imitations or designs that could be mistaken for the emblems.

States should also take measures to prevent the misuse of the emblems by the armed forces.

Medical personnel

In times of armed conflict, medical personnel should wear armlets and carry identity cards displaying the emblem.

Medical units and transports

In times of armed conflict, parties should use the emblem to clearly mark their medical units and transports on the ground, at sea and in the air.

REPRESSION OF VIOLATIONS⁶

Measures must be implemented at the national level to ensure an effective system for fixing individual criminal responsibility and for suppressing crimes against the wounded and sick, medical personnel, medical units and medical transports.

Under Article 2 of the ICCPR, States have an obligation to enact legislation to give effect to the rights contained in the Covenant and to provide effective remedy. This might require States to enact criminal sanctions for certain violations, such as torture.

³ For more information on dissemination, please refer to the fact sheet prepared by the Advisory Service of the ICRC and titled *The Obligation to Disseminate International Humanitarian Law*.

⁴ For more information on legal advisers in armed forces, please refer to the fact sheet prepared by the Advisory Service of the ICRC and titled *Legal Advisers in Armed Forces*.

⁵ For more information on the use of the emblem, please refer to the fact sheet prepared by the Advisory Service of the ICRC and titled *The Protection of the Red Cross/Red Crescent Emblems*.

⁶ For more information on the repression of violations, please refer to the fact sheet prepared by the Advisory Service of the ICRC and titled *Penal Repression: Punishing War Crimes*.

OTHER MEASURES⁷

Parties to an armed conflict must do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection (as is the case for medical personnel, units and transports) but are military objectives.




When targeting military objectives or choosing means and methods of attack, parties to an armed conflict must take all feasible precautionary measures to avoid harming, or at least to minimize the danger to, medical personnel, units and transports.

This requires: choosing means and methods of attack that inflict the least incidental injuries to the wounded and sick and to medical personnel; cancelling attacks where it becomes apparent that they could result in excessive injury or damage, that the objectives are not military in character or that these objectives enjoy special protection; and giving effective advance warning of attacks that might affect the protected population.

⁷ For more information on the implementation of IHL, please refer to the fact sheet prepared by the Advisory Service of the ICRC and titled *Implementing International Humanitarian Law: From Law to Action*.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

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