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“SAFEGUARDING MEDICAL SERVICES DURING WAR”

AUTHORED BY - KHUSHI KATRE

“War does not determine who is right - only who is left.” ~ Bertrand Russel

ABSTRACT

Attacks on health-care workers, facilities, patients, and transporters during armed conflict are major violations of human rights and international humanitarian law. The delivery of health care under times of armed conflict, civil unrest, and governmental repression has great problems due to attacks on and interference with health care services, providers, facilities, transporters, and patients. International humanitarian law (IHL) offers strong protection to health care providers during armed conflict, but it also has flaws. IHL also doesn't apply in circumstances when there isn't an armed conflict. This study examine the study on health-related attacks to determine what data is used, what issues are covered, and what gaps exist in order to propose a future research agenda. The specifically cover the International humanitarian approach and measures of ICRC as a normative foundation from which to further develop states' obligations to respect, protect, and fulfil the right to health in all contexts of armed conflict.

Keywords: *Attacks on health, right to health, conflict, violence, Red Cross.*

INTRODUCTION

During armed conflicts and other emergencies, humanitarian aid is crucial for saving lives, alleviating suffering, and preserving human dignity. It focuses on giving material aid (such as food, water, and clothing) and facilitating logistical aid to those in need (e.g., providing shelters, safe transportation). In contemporary armed conflicts in Asia, Africa, Europe, the Middle East, and Latin America, denials and obstructions of humanitarian aid by combatants have unfortunately become a common occurrence¹.

¹Mina Radoncic and Ximena Galvez, “Humanitarian Access in Armed Conflicts: Main Takeaways” 2021, [https://www.genevacall.org/humanitarian-access-in-armed-conflicts-main-takeaways/#:~:text=It%20focuses%20on%20providing%20material,providing%20shelters%2C%20safe%](https://www.genevacall.org/humanitarian-access-in-armed-conflicts-main-takeaways/#:~:text=It%20focuses%20on%20providing%20material,providing%20shelters%2C%20safe%20)

“International humanitarian law” (IHL) – sometimes known as the "law of war" or the "law of armed conflict" – is a body of principles that seeks to restrict the impacts of armed conflict for humanitarian reasons. It safeguards people who are not, or are no longer, engaged in combat and limits the means and techniques of battle. IHL is a set of universal rules. It consists of international treaties and customary standards intended to settle humanitarian difficulties resulting directly from international and non-international armed conflicts.² Its primary accords are “the Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005”. All states have recognized the Geneva Conventions, and ratification of the Additional Protocols is expanding. Various other treaties supplement these essential instruments. Becoming a party to these agreements is a preliminary but essential step. To apply the rules included in these instruments – to make the law – additional effort is required.

International humanitarian law has its roots in the responsibility to treat the injured and ill, as well as the protection of medical personnel and facilities (IHL). This was reinforced by the Two Additional Protocols of 1977 and the Four Geneva Conventions of 1949. Every country on earth has domestic legislation and a military code that reflect the International Humanitarian Customary Guidelines, which include the protection of medical services in conflict zones. The paper provide the quick overview of the fundamental principles governing the protection of medical services under international humanitarian law and also highlight the origin and importance of international committee of red cross.

RESEARCH OBJECTIVE

- To analyze the fundamental principles governing the protection of medical services.
- To be aware of the origin and importance of “International committee of Red Cross”.
- To examines the role of ICRC and other international humanitarian organizations’ role in the protection, promotion and implementation of international humanitarian law in international armed conflicts as protecting powers.

² “Respecting and protecting health care in armed conflicts and in situations not covered by international humanitarian law” by ICRC

RESEARCH METHDOLOGY

In the processing of this work the doctrinal method has been adopted. There is no fieldwork involved in this project. It is a normative examination of rules the application of humanitarian law to armed conflicts. It requires a comprehensive examination of source materials, textual analyses, international conventions, treaties, and resolutions. The researcher relies on textbooks, the Geneva Conventions, Protocols, and data acquired from numerous national and international institutions and organizations.

RIGHT TO HEALTH DURING CONFLICTS

Access to health services is regarded to be the right to health. However, good health is not an absolute right in and of itself. “The World Health Organization” defines ‘health services’ as those actions designed to restore and preserve health. Right to health, must include immunizations, medical treatment, sanitary services relating to water and hygiene, a clean environment, and any actions that ensure access to food resources.³

In reality, wars result in human catastrophes that effect entire populations. The repercussions of war on health are diverse and range from the obvious, such as the injured, the dead, diseases, and famine, to the less obvious, such as the disorganization and, in some cases, utter destruction of health facilities. So safeguarding the medical services during the war is important.

Many of the conventions and declarations deals with this, like, of Article 25 of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (Articles 12, 24), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5), the Convention on the Elimination of All Forms of Discrimination Against Women (Articles 10, 12, and 14), the Convention on the Rights of the Child (Article 24). In fact, a number of clauses in the Additional Protocols to the Geneva Conventions and those of those Conventions protect medical facilities and medical staff. Hospitals cannot be attacked, and medical workers must be able to do their jobs without any sort of discrimination. The protection of the right to health in times of armed conflict is addressed in a number of areas of international humanitarian law; these include the protection of the right to care and the protection of basic

³ <https://www.legalservicesindia.com/article/677/Health-Care-During-Armed-Conflict.html#:~:text=Right%20to%20health%20during%20armed%20conflict,-The%20right%20to&text>

services for maintaining health. Moreover, protection is needed for the resources necessary to maintain health, such as food, water for drinking, hygiene practises, and habitat. It is prohibited to assault, disable, or make these services unusable in order to ensure such protection. Attacks on food supplies, agricultural areas, harvests, herds of animals, and irrigation systems are prohibited since they restrict access to food.

HEALTH PROTECTION UNDER IHL

“In international and non-international armed conflicts”, the Geneva Conventions and Additional Protocols, as well as the CIL, stipulate that medical personnel, facilities, and transports, as well as the wounded and sick, may not be attacked or harmed, and that the provision of health care may not be unduly impeded.⁴

GRAVE VIOLATION OF INTERNATIONAL HUMANITARIAN LAW

A targeted attack on a medical facility is a violation of IHL and may constitute a war crime if it was carried out-

- Intentionally or purposeful,
- as a result of negligence resulting from a failure to properly verify the military or civilian character of the target,
- a disproportionate response to the perceived military threat,
- or carried out without advance warning of an impending attack.

MEDICAL PERSONNEL

Whether military or civilian, medical workers performing their solely humanitarian mission must be respected and safeguarded from attack and harm, unless they engage hostile acts outside of their humanitarian activity⁵. "Medical personnel" is a term used in the Geneva Conventions and Additional Protocols to describe individuals, whether temporary or permanent, who are solely assigned to perform medical tasks by a party to a conflict, as well as medical professionals who

⁴ K. H. A. Footer and L. S. Rubenstein, "A human rights approach to health care in conflict", Volume 95 Number 889 Spring 2013

⁵ See AP I, Art. 8(c)

are members of the Red Cross and Red Crescent societies or specific humanitarian organisations. Other people providing medical care, however, are typically safe from harm and intervention. Regardless of whether they fall under the category of "medical personnel," the two Additional Protocols provide protection to all healthcare providers who uphold their professional ethical requirements, such as the duty to provide impartial care to everyone. People cannot be punished for abiding by medical ethics' rules, forced to forego actions that are required by medical ethics, or forced to go against its dictates. Health care professionals have been threatened, imprisoned, charged with crimes, or even killed for upholding their ethical duty to provide care impartially, regardless of the patient's affiliation or political ideology, in a number of different countries around the world, including Chechnya, Kosovo, Burma, and Syria. The only limitation is to medical secrecy, where it is illegal under national law to disclose information on ill or injured patients who are receiving care from a health worker. Insofar as they are civilians, CIL stipulates that medical staff are immune from attack, unless and until they take part in hostilities directly.

THE WOUNDED AND SICK

Parties to a war are required under the Geneva Conventions and Additional Protocols to respect the injured and sick by providing them with medical care and attention as soon as feasible and with the least possible delay. In the midst of hostilities, parties are required to adopt all feasible measures, subject to the availability of resources and practicality. Moreover, nondiscrimination is a core concept of international humanitarian law. "The Geneva Conventions and Additional Protocols" require, among other things, that the injured and sick must be treated humanely and cared for without discrimination by a party to the conflict, with decisions based solely on medical reasons. By definition, the injured and sick do not engage in hostilities, but like civilians, they may lose their protection against attack if and when they engage in hostilities directly.⁶

Both the First and Fourth Geneva Conventions safeguard civilians from the effects of conflict. This involves the formation of hospital safety zones and the protection of civilian hospitals and their personnel, without regard to race, nationality, or religion in particular. These provisions have been incorporated into CIL.

⁶ "Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law", by the Advisory Service of the ICRC

MEDICAL TRANSPORTATION AND UNITS

Under international humanitarian law, the hospitals, clinics, and pharmacies, whether military or civilian, fixed or mobile, permanent or temporary, must be respected and defended in all situations. Similarly, medical transports designated solely for the transportation of wounded and sick individuals, medical professionals, equipment, and supplies must be recognised and protected.

According to military regulations, the term 'respect and protect' mandates that medical units not be attacked, shot upon, or otherwise harmed. They should not be utilised to shield military objectives from attack either. Medical transporters generally have the same level of protection as mobile medical units, according to official practise. If they are used in ways that are harmful to the enemy, such as using a hospital for military operations or transporting weapons in an ambulance, they both lose their protection.

Attacks against hospitals, clinics, or other locations housing sick or injured people are classified as war crimes under the Statute of the International Criminal Court, just as attacks on ambulances bearing the Geneva Conventions' emblem are, provided the target is not a military target. A party must give notice before an attack and take precautions to minimise harm to civilians inside the institution if medical facilities or transports are utilised for military reasons, such as hospitals that serve as military outposts or ambulances that transport weapons.

UTILIZATION OF DISTINGUISHING EMBLEMS SAFEGUARDED UNDER THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

The emblem—the red cross, the red crescent, or the red crystal—when used as a protective measure serves as a conspicuous reminder of the protection medical personnel, medical units, and medical transports are afforded by the Geneva Conventions and their Additional Protocols. This covers military medical personnel, units, and transports during an armed conflict as well as medical personnel, units, and transports of National Red Cross and Red Crescent Societies authorised to assist the armed forces' medical services by the State, State-certified civilian medical units permitted to display the emblem, and medical personnel in occupied territory. The protective device's symbol should be visible and large enough to assure protection. Moreover, special signals may be used by

medical units and transporters (such as light and radio signals). When employed as a signifier, the logo links an object or person to a member of the International Red Cross and Red Crescent Movement.⁷ In this instance, the size of the sign should be modest. It is a war crime to attack structures, materials, medical units, transporters, or personnel exhibiting unique symbols.

MISUES OF THE EMBLEM

Any use of the insignia not specified by the IHL is deemed improper. When it leads in death or serious injury, perfidious use of the symbol, such as to shield or conceal combatants, constitutes a war crime.

THE RED CROSS AND RED CROSS MANDATE

The Red Cross Movement consists of –

- “The International Committee of the Red Cross(ICRC)”,
- “The International Federation of the Red Cross(IFRC)”, and
- “National societies”.

The ICRC and IFRC have their headquarters in Geneva, whereas the National Societies are headquartered in their respective states. The ICRC's mandate, derived from the Four Geneva Conventions, is to offer humanitarian protection and support during international and non-international armed conflicts. At the crossroads of human needs, state sovereignty, and international organisations, the ICRC operates. It has access to governmental authorities and the local population and is rooted in its values. It has influence within nations and on the world stage, especially thanks to the International Conference and its observer status at the United Nations General Assembly.⁸ The ICRC has the authority to take action with force of law and broaden its global reach. The ICRC is able to provide people in need with food, medical care, shelter, and water thanks to the current legal system and methods for humanitarian protection and support.

⁷ “Implementing International Humanitarian Law: From Law to Action” the advisory service of the ICRC

⁸ Council of Delegates (ICRC), ‘Agreement on the Organisation of the International Activities of the Components of the International Red Cross and Red Crescent Movement—The Seville Agreement’ (Council of Delegates, ICRC, 25–27 November 1997). www.icrc.org/eng/resources/documents/misc/57jp4y.htm, preamble (Seville Agreement)

THE RED CROSS MOVEMENT

The Red Cross Movement began in 1864, but with the passage of the Geneva Conventions I–IV at the end of the Second World War, it fully came into its own. States have granted permission for the Red Cross to be present on their sovereign territory through a number of international agreements, including the Geneva Conventions I–IV, the Statutes of the Red Cross and Red Crescent Movement, the Statutes of the ICRC, and individual Headquarters Agreements drafted by the ICRC and governments.⁹ The Red Cross is able to respond independently to humanitarian crises because to these international agreements and the Red Cross Movement's governance structure (from Geneva via National Societies to the field). This means, for instance, that while the WHO may have the authority to command and coordinate global health initiatives and policy, The Red Cross is able to act on its own: States can directly request its assistance, it can do so through National Societies of States, and its International Conference can create specialised programmes like the Health Care in Danger project 2011-2015.

The Red Cross was founded with the intention of providing medical care for wounded soldiers. Henry Dunant envisioned a group of volunteer nurses and doctors who would assist all wounded troops, regardless of which side they fought on. From these beginnings, the Red Cross has expanded its healthcare goals and capacities.

The Movement is composed of three distinct branches:

- The International Committee of the Red Cross,
- The International Federation of the Red Cross, and
- The National Societies.

Generally speaking, the International Federation of Red Cross and Red Crescent Societies (IFRC) coordinates development efforts with relief operations to strengthen the capacities of its member National Societies.¹⁰ The IFRC's activities are focused on promoting humanitarian ideals, disaster response, disaster preparedness, and health and community care. It aims to encourage, support, and publicise any humanitarian endeavours made on behalf of the most disadvantaged people by its member national societies. It runs independently, just like every other Red Cross component, therefore it is not "governmental, political, racial, or sectarian in nature." Through National

⁹ Statutes of the Movement art 3(2) National Red Cross and Red Crescent Societies

¹⁰ Art 6(1) of the IRCRCM Statutes

Societies, the IFRC has access to local knowledge and skills, which enables it to respond to disease outbreaks effectively.

In accordance with Article 6(1) of the IRCRCM Statutes, “the International Federation of Red Cross and Red Crescent Societies is composed of National Red Cross and Red Crescent Societies”. It operates under its own constitution with all the powers and responsibilities of a legal entity.

Article 6(3) states that the “general object of the Federation is to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by the National Societies, with a view to preventing and alleviating human suffering and thereby contributing to the maintenance and the promotion of peace in the world”.

In accordance with Article 6(4)(f) of the IRCRCM Statutes, Its duties include organising National Societies' participation in efforts to safeguard the public's health and advance social welfare in partnership with their respective national authorities. Any humanitarian endeavours carried out by its member country societies on behalf of the most disadvantaged people are encouraged, facilitated, and promoted by it. Lastly, "in each nation, the Federation shall function via or in collaboration with the National Society and in accordance with that country's laws." The IFRC benefits from the National Societies' local volunteers. It has access to local information and skills, making it a vital resource in the event of a disease outbreak.¹¹

National Societies must first be recognised by the ICRC and then accepted by the International Federation in order to participate in the IRCRCM. Eleven prerequisites for National Societies' recognition are listed in Article 4 of the IRCRCM Statutes. According to Article 4(1), National Societies must be founded on the soil of a sovereign state that is a party to the Geneva Convention for the Improvement of the Condition of the Wounded and Sick in Military Forces in Field. Additionally, in accordance with Article 4.3), a National Society must be duly acknowledged as a voluntary aid society auxiliary to the public authorities in the humanitarian field by the legal government of its country, in accordance with the Geneva Conventions I, II, III, and IV of 1949 and national law.

¹¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7226897/>

- <https://www.legalservicesindia.com/article/677/Health-Care-During-Armed-Conflict.html#:~:text=Right%20to%20health%20during%20armed%20conflict,-The%20right%20to&text>
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- See AP I, Art. 8(c)
- “Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law”, by the Advisory Service of the ICRC
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