

CHAPTER 2

DUTIES OF MEDICAL PERSONNEL

GENERAL PRINCIPLES

- 1.1. *Wounded, sick and shipwrecked persons, prisoners of war and civilians exposed to the consequences of an armed conflict, i.e. all persons who by their situation are outside the conflict or who do not take a direct part in it, must be treated humanely under all circumstances.*
- Art. 3, G I, II, III & IV;
Art. 12, G I & II,
Art. 13, G III;
Art. 27, G IV,
Art. 10, P. I;
Art. 4 & 7, P. II

All the persons referred to above are protected by the provisions of international humanitarian law.

Medical personnel, called upon to deal with these persons, must do so with humanity under all circumstances, to the best of their possibilities and in accordance with their conscience.

The principle of humanity, of compassion for victims, is one of the fundamental principles of the International Red Cross.

- 1.2. *The protection of medical personnel is not a personal privilege accorded to them, but is a natural consequence of the requirements designed to assure respect and protection for the victims of armed conflicts.*

Protection is accorded to medical personnel in order to facilitate the humanitarian tasks assigned to them and this protection is given them only if—or when—

they are exclusively carrying out these tasks. The auxiliary medical personnel referred to in the First Convention (Art. 25), for example, are obviously not protected when carrying out their military functions. Similarly, a doctor protected by the Conventions could not benefit from this protection to carry on commercial activities.

1.3. *Medical personnel must abstain from all acts of hostility.*

Medical personnel are protected because they must remain neutral in the armed conflict in which they are called upon to intervene. If they cease to be neutral, they lose this protection.

“Neutrality”, with respect to medical personnel, is the requirement that they abstain from any act of activity, and, more generally, from any intervention in military operations. It is on this condition that special protection is accorded to them.

1.4. *Medical personnel are authorized to carry only light weapons and have the right to use them only for their own defence or for that of the wounded and sick for whom they are responsible.*

Art. 22, G I;
Art. 35, G II;
Art. 13, 28, 63, 65
& 67, P. I

If one were to consider only the humanitarian function which medical personnel must exercise and the protection granted them in their capacity as “neutrals”, one might be surprised to allow for the possibility that they might be armed.

We must take into account however some of the contingencies of the international or non-international armed conflicts in which these persons are called upon to extend their services. The circumstances of such conflicts are often conducive to a state of internal disorder which, apart from the conflict itself, engenders such acts of violence as rape, looting or banditry. It is therefore essential to defend the wounded and sick against such acts. In addition,

wounded soldiers may not necessarily be incapacitated and it is important to maintain order among the wounded and in all medical installations. It is mainly for these two reasons that States considered that the arming of medical personnel could not be totally excluded. In reality, without explicitly permitting it, international humanitarian law implicitly accepts the arming of medical personnel.

Arms borne by such personnel, however, must be restricted to light individual weapons and may not be used except for the purposes stated above. If medical personnel were to attempt to resist a military advance by using arms, they would lose their “neutrality” in the conflict, and hence their right to protection, unless the enemy were to attempt, deliberately, to kill the wounded, the sick or members of the medical personnel.

1.5. *Medical personnel must be identifiable.*

Art. 40 & 41, G I;
Art. 42, G II;
Art. 20, G IV;
Art. 18, 66, 67
& Annex I, P. I;
Art. 12, P. II

Since the adoption of the Protocols of 1977, special emphasis has been given to the visibility of the protective sign. All medical personnel entitled to protection must display the sign in the most conspicuous possible manner (a large red cross on the chest and one on the back, for example) in occupied territories or in areas where combats are taking place or seem likely to take place. In addition, such personnel must be supplied with identity cards meeting specified requirements (see in Protocol I, article 1 of Annex I).

Protocol I of 1977 introduced a new protective sign for members of civil defence organizations, a blue equilateral triangle on an orange ground. Medical personnel assigned to civil defence organizations are entitled to use both protective signs. In any event, emphasis must be given to the visibility of the sign or signs, as the essential assurance of their efficacy. There is no reason why the means of identification of medical personnel should not be prepared in

peacetime. Indeed, such advance preparation is desirable, since improvisation in this field is difficult.

1.6. *Medical personnel who commit abuses or breaches of international humanitarian law are subject to punishment.*

Art. 3, 44, 49
to 54, G I;
Art. 3, 44, 45, 50
to 53, G II;
Art. 3, 13, 129
to 132, G III;
Art. 3, 146 to 149,
G IV;
Art. 11, 18, 85
& 86, P. I;
Art. 4 & 5, P. II

The repression of abuses and breaches of international humanitarian law is dealt with in the texts of that law, but in a relatively cursory manner, and it is essential to supplement these provisions concerned by appropriate national legislation in the various countries.

All violations of provisions of international humanitarian law constitute breaches of that law and the States Parties to the Conventions are under the obligation to put an end to such violations. International humanitarian law does not specify the manner in which the States are to accomplish this. As a rule, internal penal provisions provide for punishment for violations of the most important provisions.

Humanitarian law itself does however characterize certain violations as *grave breaches*. In these cases, international humanitarian law demands not only that an end be put to the violations but also that penal sanctions must be imposed. It is left to the national legislative bodies however to determine the punishment.

Grave breaches, moreover, are formally considered to be war crimes and accordingly are subject to prosecution at any time (imprescriptibility) and at any place (universal jurisdictional competence).

Let us now consider infractions which, by their nature, might be committed by medical personnel in the exercise of their functions and constitute *grave breaches* of international humanitarian law if they are committed against persons or objects protected by that law, such as:

- wilful killing;
- torture or inhuman treatment, including biological experiments or other medical or scientific experiments;
- wilfully causing great suffering or serious injury to body or health;
- any wilful act or omission which endangers the physical or mental health or integrity of those persons. It is to be noted in this connection that donations of blood for transfusion and of skin for grafting are allowed if the donor's agreement is obtained without any coercion and then only for purely therapeutic purposes. Such donations should be recorded in a medical file;
- the perfidious use of the distinctive emblem of the red cross or red crescent or of other recognized protective signs or signals, causing death or serious injury to body or health.

What happens to the person or persons responsible for these *grave breaches*? Every one of the States parties to the Geneva Conventions (and to the additional Protocols) is obliged to seek the person or persons who have *committed or ordered the commission* of these breaches. We wish to stress at this point the responsibility of superiors for the actions of their subordinates if, knowing or having information to the effect that such a subordinate was committing or was going to commit a breach, they do not take all measures in their power to prevent the infraction.

The State must then bring such persons before their own courts, regardless of nationality. It may also turn them over to another State which wishes to prosecute them.

In conclusion, emphasis must be laid on the great responsibility incumbent on every member of the medical personnel providing their services in armed conflicts. They must be aware that the infraction or abuse which they might commit could lead not only to fatal consequences for the victim or victims of

those infractions or abuses—and for themselves if they were found out—but could also endanger the whole system of protection based upon confidence, established by international humanitarian law.

2. THE PROVISION OF MEDICAL CARE

- 2.1. *Medical personnel who provide their services in armed conflicts must respect the principles of medical ethics in the same manner as in peacetime.* Art. 16, P. I;
Art. 10, P. II

The principles of medical ethics (the duties of the doctor in the exercise of his profession) originally set forth in the “Oath of Hippocrates” (460-380 B.C.) which every doctor must know, control the medical function both in times of peace and in times of war. In 1948, the World Medical Association (WMA), which includes about 700,000 doctors, developed a modern version of this oath to which they gave the name “Geneva Oath” and adopted the “International Code of Medical Ethics” to supplement it. A draft code of medical ethics was also developed recently by the World Health Organization (WHO). In its resolution 35/179 of 27 January 1981, the General Assembly of the United Nations asked the Economic and Social Council to study this draft with a view to submitting it to the General Assembly for adoption at its thirty-sixth session.

Even though they have no legal force in international relations, since they have not yet been adopted by the States, these texts are widely recognized. We may note that since medical deontology is specifically referred to in Protocol I of 1977, without being defined (article 16), it is the forementioned texts to which one must mainly refer to interpret the provisions of the Protocol on this subject.



We may recall here the main rules in the “Geneva Oath”, whereby the doctor commits himself:

- to exercise his profession with conscience and dignity;
- to treat the health of his patient as his principal concern;
- to respect secrets entrusted to him;
- to abstain from any religious, national, racial, political or social discrimination in the performance of his duty;
- to pay absolute respect to human life;
- not to use his medical knowledge against the laws of humanity, even under threat.

In 1957, the ICRC, the International Committee of Military Medicine and Pharmacy (ICMMP) and the World Health Organization (WHO) approved the “Rules of Medical Ethics in Wartime” and “Rules to Assure Relief and Services to the Wounded and Sick in Armed Conflicts” which the World Medical Association had adopted.

The latter document contains the essential rules governing the conduct of medical missions under wartime conditions.

Recalling the principle that medical ethics in times of conflict are the same as they are in peacetime, it specifies, *inter alia*:

- that the essential mission of the medical profession is to assure the protection of human life and health;
- that experiments on human beings are forbidden;
- that in emergency conditions, medical care must be provided on the basis of medical necessity and without any distinction based on other than medical criteria.

It should be noted that although the main principles of medical ethics are almost universally accepted, medical standards still vary considerably from one

region to another. International humanitarian law accordingly does not demand the application of universal standards and limits itself to calling upon the Parties to a conflict to apply to protected persons in their power the generally recognized medical standards which they would apply in comparable medical circumstances to their own countrymen living in conditions of freedom.

2.2. *Persons who do not take a direct part in hostilities and those placed "hors de combat" shall be treated humanely.*

Art. 3, 12, G I;
Art. 3, 12, G II;
Art. 3, 13, 14, G III;
Art. 3, 16, 27, G IV;
Art. 10, 75, P. I;
Art. 4, 5, 7, P. II

Thus, the wounded, the sick, the shipwrecked, the prisoners of war, the civilians in enemy or occupied territory, must be respected and protected and must benefit from humane treatment. This implies that one must spare these persons and never attack them and, in addition, that one must defend, succour and help them. *Respect*, so defined, goes without saying for the medical personnel, but it is in terms of *protection* that such personnel must also play an important role, not only by treating the wounded and sick entrusted to them to the best of their possibilities but also by giving relief and assistance to protected persons. The obligation of treating these persons *humanely* adds another element to the respect and protection thus defined. One must care for them as human beings, in the widest sense of the term, as members of the same human community. This demands understanding, warmth and brotherhood.

2.3. *Care must be given without any distinction based on other than medical criteria.*

Art. 3, 12, G I;
Art. 3, 12, G II;
Art. 3, 13, 14, G III;
Art. 3, 13, 27, G IV;
Art. 10, 75, P. I;
Art. 4, 5, 7, P. II

This principle of non-discrimination follows both from medical ethics and from one of the fundamental principles of the Red Cross: impartiality.

It means that any differences in treatment based on race, political, religious or philosophical opinion, sex, birth, language, nationality, social status, wealth or any similar criteria must be abolished. Only reasons of medical urgency may justify priorities in the order of treating people. In other words, in his approach to a wounded person, the doctor must see only a patient, and not a friend or an enemy.

This principle is clearly stated in international law and it is important for medical personnel to bear it in mind because, in the heat of action, they are often liable to being subjected to contrary impulses or pressures.

We should also note that international humanitarian law leaves it up to the medical personnel to determine medical priorities; this must be done, in one's heart and conscience, in conformity with medical ethics.

The prohibition of any adverse distinction, it should be noted, does not indicate an obligation to treat all patients in exactly the same way. Special attention is justified for persons in a state of weakness, such as children, old people or pregnant women. Likewise, it would not be contrary to the principle to give additional clothing to persons who suffer especially from cold to which they are unaccustomed because of their origins. What is important, in applying strictly the spirit of the principle, is to do so with common sense.

- 2.4. *It is prohibited to subject protected persons to any medical procedure which is not indicated by their state of health and to carry out on them any medical, biological or other scientific experiments.*

Art. 12, G I;
Art. 12, G II;
Art. 13, G III;
Art. 32, G IV;
Art. 11, P. I

International humanitarian law showed particular strictness in this domain, largely as a result of the atrocities committed in the Second World War.

In normal times, it is essential for the progress of

medicine, on condition that all necessary precautions are taken and all necessary guarantees provided, for some persons to be used in experiments with new treatments or drugs. It is obvious, however, that this is only permissible on the basis of their complete consent. But it is impossible to be absolutely sure that the consent of persons protected by international humanitarian law—who are generally under the control of their enemies—has been freely given. It is therefore advisable to exclude in advance any scientific experiments on these persons.

This rule does not depend upon the wishes of the persons concerned. Even if they wished to take part, they could not be involved in any medical experiments without there being a violation of international humanitarian law.

A slight exception was nevertheless accepted, with the authorization of two medical acts which are not justified by the health of the patient: donations of blood for transfusion or of skin for grafts, if these are made with the complete agreement of the donors and are intended for therapeutic purposes. This exception is justified by the medical benefits it makes possible, which are often vital in the course of armed conflicts. It should also be noted that certain wilful omissions or instances of serious negligence equally constitute violations of international humanitarian law. Examples of such breaches are: leaving without care persons whose condition is such that care is essential, or knowingly exposing wounded or sick persons to the danger of infection or contagion.

Repression of the infractions referred to above is particularly severe. International humanitarian law considers as a “grave breach”—and therefore as a war crime to be prosecuted at any time and at any place—any wilful act or omission which seriously endangers the lives of protected persons in the

hands of a Party to the conflict which is not their own country.

Medical personnel must in addition avoid any affront to the dignity of protected persons, any humiliating or degrading treatment, such as exposing them to the public gaze. They must also make sure that the protected persons are not subjected to any intimidation.

2.5. *The will of the wounded and sick must be respected.* Art. 11, P. I

As we have seen above, such acts as medical experiments, which might be detrimental to the health of a patient, are forbidden even if the patient agrees. On the other hand, before undertaking a treatment which he considers appropriate for the health of the patient, a doctor should obtain the consent of the patient, insofar of course as the latter is in a condition to give his consent. Thus, the wounded and sick may refuse any surgical intervention to which it is proposed to subject them. In such cases, in order to forestall any accusation which might later be made against him, the doctor should ask the patient for a written statement, signed or acknowledged, in which the patient expresses his refusal.

2.6. *Reprisals against protected persons and objects are prohibited.* Art. 46, G I;
Art. 47, G II;
Art. 13, G III;
Art. 33, G IV;
Art. 20, 51, 54, 55
& 56, P. I

Reprisals are acts contrary to law which are nevertheless knowingly carried out by one State against another in response to earlier violations by the latter, for the purpose of ending such violations.

International law tolerates reprisals in certain cases, but international humanitarian law unequivocally forbids any kind of reprisals against the persons and objects it protects. Accordingly, even if the wounded or prisoners of war are mistreated by one

Party to a conflict, the other Party does not have the right to do the same thing.

It is important for members of the medical personnel who are called upon to supply their services in armed conflicts to know this, and not only refuse to give their assistance to measures of reprisal against protected persons but also attempt to oppose such acts by all means at their disposal.

3. **RECORDING AND TRANSMISSION OF INFORMATION**

- 3.1. *Families of victims of armed conflicts have the right to know about the situation of these relatives and the latter to know about their families.*

Art. 122, 123, G III;
Art. 136, 140, G IV;
Art. 32, P. I

In order to achieve the humanitarian purpose of restoring contact between victims of armed conflicts and their families, the ICRC has established a *Central Tracing Agency* which centralizes information it receives from every part of the world. The Geneva Conventions provide for the establishment of *national Information Bureaux* in countries at war, responsible for gathering and transmitting information in their respective countries. The Central Tracing Agency, attached to the ICRC, has now been in existence for more than a century and has accumulated information on about 55 million persons. It brings together in one organization the Central Prisoners of War Information Agency and the Central Information Agency for protected persons provided for in the Geneva Conventions. Its tasks are clearly defined:

- to *Gather, Register, Centralize* and, if necessary, *Transmit* all essential information about persons subject to action by the ICRC (prisoners of war, civilian internees, political detainees, displaced persons, refugees, etc.);

- to *Deliver* family messages between separated persons when normal channels of communication are non-existent or interrupted by events;
- to *Search* for missing persons;
- to *Organize* family reunions, transfers and repatriations;
- to *Establish*:
 - (a) certificates of captivity, sickness, death, etc.;
 - (b) travel documents.

The Central Tracing Agency thus serves as an intermediary for victims and their families.

The principal channels of transmission for the Central Tracing Agency at the international level are the national Information Bureaux which each Party to a conflict should set up at the beginning of hostilities and in all cases of occupation.

Often, however, the ICRC has had to take on the task of organizing these Information Bureaux or of opening its own Tracing Agency in the field, to gather and transmit information on prisoners of war and other protected persons who are in the hands of the Party upon which the Bureaux depend.

3.2. *Data helping to identify wounded, sick or shipwrecked persons fallen into the hands of the enemy.* Art. 16, G I;
Art. 19, G II

Each Party to a conflict should record as soon as possible all data which may help to identify wounded, sick and shipwrecked persons of the adverse Party who have fallen into its hands. If possible, the information should contain the following elements:

- designation of the Power on which the wounded, sick or shipwrecked persons depend;
- army, regimental, personal or serial number;
- surname and first names;
- date of birth;

- any other particulars shown on the identity card or disc;
- date and place of capture;
- particulars concerning any wounds or illness.

The final element given above indicates clearly that the medical personnel has a role to play in this process.

This information should be supplied as quickly as possible to the national Information Bureau—or in its absence to the ICRC delegation—which will forward it to the Power on which the persons depend, through the intermediary of the ICRC Central Tracing Agency.

3.3. *Data for identification of the dead.*

Art. 16, 17, G I;
Art. 19, 20, G II;
Art. 120, G III;
Art. 129, 130, G IV

Each Party to a conflict should record as soon as possible all data necessary for the identification of dead persons of the adverse Party who are in its hands. This information should contain the same elements as in the case of the wounded, sick and shipwrecked and in addition the place and date of death and details concerning the cause of death. In this case as well, the assistance of medical personnel is essential.

As soon as possible, this information should be given to the national Information Bureau or—in the absence of such a Bureau to the ICRC delegation—which will send it to the Power on which the persons depended, through the intermediary of the Central Tracing Agency.

Also to be sent in the same way are death certificates, lists of dead persons, one half of the double identity disc (the other half remaining on the body), last wills or other documents of importance to the next of kin, money and any articles found on the dead which have intrinsic or sentimental value, and information concerning the exact location of graves.

3.4. *Information on the condition and situation of prisoners of war.* Art. 30, 54, 122 & 123, G III

As soon as possible, each Party to a conflict, insofar as the information is available, should supply its national Information Bureau—or, failing its existence, the ICRC—with the following data concerning prisoners of war in its hands:

- surname, first names, rank, age, army, regimental, personal or serial number, place of birth, indication of the Power on which the prisoner depends, the first name of the father, maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent;
- indications concerning releases, repatriations, escapes, admissions to hospital and deaths.

At regular intervals and if possible every week, reports on the health of wounded or seriously sick prisoners of war should be sent, and it is essential that the medical personnel responsible for their care should assist in carrying out this task. It is also the responsibility of this personnel to supply medical certificates to prisoners who are victims of working accidents or other accidents, so that these prisoners may, in particular, assert their rights after repatriation.

Neutral or non-belligerent States should proceed in the same way with respect to prisoners they have received on their territory. The respective national Information Bureaux—or in their absence the ICRC—must forward this information immediately to the Power or Powers concerned, through the intermediary of the Protecting Powers* if such have

* In international humanitarian law, a Protecting Power is a Power designated by one Party to a conflict to defend its humanitarian interests of a humanitarian character in the country of the adverse Party. A Protecting Power cannot assume its functions without agreement between it and each of the Parties to the conflict.

been designated and the Central Tracing Agency, which must be given the information in all circumstances.

The Detaining Power, through the intermediary of the national Information Bureau if one exists, is also responsible for collecting and sending to the Powers concerned all personal valuables, including sums of money, documents of importance to the next of kin, and all personal effects left behind by prisoners of war who have been repatriated or released or who have escaped or died.

The Power on which prisoners depend is responsible for sending immediately to the prisoners' families all information received concerning prisoners of war and for transmitting to them the property due to them. If there is a national Information Bureau, it will be responsible for carrying out this task.

3.5. *Information concerning civilian victims of an armed conflict.* Art. 91, 136, 137, 138 & 140, G IV; Art. 33, 78, P. I

As soon as possible, each Party to a conflict will inform its national Information Bureau—or, if there is no such bureau, the ICRC delegation—of the measures it has taken concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence, or who are interned.

In addition, it will instruct the appropriate services to furnish immediately the Information Bureau or the ICRC delegation with all information concerning changes in the situation of protected persons: transfers, escapes, releases, repatriations, admissions to hospital, births and deaths.

The national Information Bureau or the ICRC delegation must immediately forward all information concerning the protected persons to the States of which these persons are nationals or to the Powers in whose territory they resided, through the intermediary of the Protecting Powers, if there are

such, or the Central Tracing Agency. Even if such information is transmitted by other intermediaries, it should be communicated as well to the Central Tracing Agency for registration.

The national Information Bureau—or the ICRC delegation—must also collect valuables left behind by protected persons, in particular those who have been repatriated or released or who have escaped or died, and must take action on any legitimate requests for information which might be presented to it concerning protected persons.

Members of medical personnel must in particular make certain that the following are respected:

- the obligation to transmit regularly, and if possible every week, reports on the health of wounded or seriously sick internees;
- the right of internees to have access to medical authorities for examination and the obligation to supply them, on request, with an official statement giving the nature of their sickness or wounds, the duration of treatment and the assistance received (a copy of which must be sent to the Central Tracing Agency);
- any special measures taken to protect children who are not nationals of the country and who must be temporarily evacuated to a foreign country for reasons of health or safety. The authorities of the country ordering the evacuation and those of the country of asylum must draw up, for each child, a record to be communicated to the Central Tracing Agency, containing in particular the data needed for identification of the child, its photograph, a description of the state of its health and its blood group and also, in the event of death, the circumstances of its death.

3.6. *Summary.*

Medical personnel, with respect to the transmission of information, have specific tasks to perform,