

## CHAPTER 3

# RIGHTS OF MEDICAL PERSONNEL

### 1. GENERAL PRINCIPLES

#### 1.1. *Respect and protection.*

Art. 24-27, G I;  
Art. 36-37, G II;  
Art. 20, G IV;  
Art. 15, 62 & 67,  
P. I;  
Art. 9, P II

International humanitarian law provides that the medical personnel called upon to serve in the event of armed conflict shall be respected and protected. This means that they should be spared, and not attacked, and that they should be defended and given help and support. This right is valid in all circumstances and the obligation it implies is applicable to everyone, but especially, of course, soldiers, no matter to which side they belong.

#### 1.2. *Non-renunciation of rights.*

Art. 7, G I, G II  
& G III;  
Art. 8, G IV

Members of medical personnel may in no circumstances renounce any of the rights conferred on them by international humanitarian law. As mentioned above, the purpose of this provision, which is identical for all persons protected by the provisions of this branch of the law, is to ensure that they are completely protected. This categorical injunction is intended to prevent pressure being exerted on medical personnel to make them renounce their rights, and to preclude justification of a breach being claimed on the grounds that the victim had given

its consent (see, in addition, Chapter 2, points 2.4. and 2.5.).

1.3. *Special agreements.*

Art. 6, G I, G II  
& G III;  
Art. 7, G IV

The Geneva Conventions provide that the Contracting Parties may conclude special agreements, to supplement the Conventions, on any question they deem it suitable to settle in such a manner. It is, nevertheless, specified that such agreements should not adversely affect or restrict the rights of protected persons.

1.4. *Prohibition of reprisals.*

Art. 46, G I;  
Art. 47, G II;  
Art. 20, P. I

As mentioned under point 2.6. of Chapter 2, it is forbidden for a State to carry out reprisals against protected persons and property.

Consequently, medical personnel are entitled to use any lawful means available to them to prevent any reprisals against themselves or the wounded or sick in their care.

2. **PROTECTION OF MEDICAL DUTIES**

2.1. *Assistance which medical personnel may claim for the discharge of their duties.*

Art. 15, P. I;  
Art. 9, P. II

For medical personnel, the discharge of their duties is not only an obligation; it is also a right.

While the right of armed conflict victims to protection implies obligations on the medical personnel, it also imposes on the authorities of the Parties to the conflict the obligation to provide the medical personnel with the means and facilities necessary to ensure that the victims are cared for in the best possible manner.

Consequently, members of medical personnel are empowered to require the authorities to provide

such means and facilities to the best of their possibilities.

International humanitarian law emphasizes the importance for the Parties to a conflict to respect this obligation in two kinds of zone:

- where civilian medical services are disrupted by reason of the armed conflict;
- in occupied territories (to which we shall refer under point 5, below).

## 2.2. *Right of access.*

Art. 15 & 28, G I;  
Art. 18, G II;  
Art. 33, G III;  
Art. 15, P. I

In order that they should help the wounded and sick with efficiency, medical personnel should have access to the places where their services are necessary. This right is specified in international humanitarian law subject, however, to such supervisory and safety measures as the relevant Parties to the conflict may deem necessary.

It must also be remembered that the Parties to a conflict are urged to conclude agreements with a view to enabling care to be taken of wounded lying on the battlefield and their removal, to removing the wounded and sick from a besieged area and to permitting medical personnel and supplies to reach that area (see above, point 4.3. of Chapter 2).

Medical personnel retained in prisoner-of-war camps—whose rights we shall refer to in greater detail under point 4 below—are authorized to visit periodically the prisoners of war in hospitals or in labour units outside the camp. The means of transport required must be provided to enable them to do so.

## 2.3. *Medical personnel shall not be punished or importuned for having discharged medical functions compatible with medical ethics.*

Art. 18, G I;  
Art. 16, P. I;  
Art. 10, P. II

This is an important aspect of the protection of medical duties.

Such a provision is justified particularly in view of the violence, threats, persecutions and punishments of which medical personnel of a Party to a conflict have been the victims in times past for having tended the wounded or sick of the adverse Party.

It means that medical activities must under no circumstances give rise to such violence, threats, persecutions or punishments (penal or administrative penalties) if they were performed in accordance with medical ethics, regardless of the circumstances or the persons benefiting therefrom (whether friend or foe among the sick and wounded).

We have already considered these ethical principles in point 2.1. of Chapter 2.

2.4. *Medical personnel shall not be compelled to act contrary to medical ethics.*

Art. 15 & 16, P. I;  
Art. 9 & 10, P. II

This is a corollary of the previous rule.

Members of medical personnel must never be compelled to perform acts or do work incompatible with their humanitarian duties and which are contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions and the Protocols.

For example, should the authorities of a Party to a conflict force medical personnel to carry out medical experiments on prisoners of war, they would commit a twofold violation of international humanitarian law, one against the prisoners and the second against the medical personnel.

2.5. *Medical personnel shall not be compelled to give information about the wounded and sick in their care.*

Art. 16, P. I;  
Art. 10, P. II

This refers to information which the medical personnel believe would be harmful to the wounded



and sick or to their families. This right is conducive to a relationship of confidence established between the patients and the personnel tending them.

There are, however, two exceptions. One is natural, since it is in the general interest and is therefore justified, namely the compulsory notification of communicable diseases, the regulations for which must be respected. The other exception is to be deplored: it is implicitly accepted that the national laws of Parties to a conflict may compel medical personnel—but only if they are their own nationals—to reveal information. In that case the medical personnel of a Party to a conflict may be compelled to reveal such information to their own authorities. We cannot but hope that such cases will be few and far between.

### 3. EXEMPTION FROM CAPTURE

#### 3.1. *Exemption without possibility of retention.*

Art. 32, G I;  
Art. 36, G II

The rights referred to here concern the following categories of medical personnel:

- the medical personnel of a State not a Party to the conflict, or of a relief society of such a State made available to one of the Parties to the conflict;
- medical personnel working under the responsibility of the ICRC;
- the medical personnel of hospital ships and coastal rescue craft (these ships and craft being also exempt from capture).

Should the persons belonging to the first of these categories be in the hands of the enemy of the Party to which they have been made available, they shall be authorized to return to their own country or even to the Party in whose service they were carrying out

their activities, “as soon as a route for their return is open and military considerations permit”.

Persons of the second category must be either immediately repatriated, or assigned once again to their work for one of the Parties to the conflict, in accordance with an agreement concluded by those persons, the ICRC and the Party or Parties to the conflict.

### 3.2. *Exemption with possibility of retention.*

Art. 28, G I

The following categories of medical personnel are *in principle* exempt from capture but may be retained under certain conditions:

- permanent military medical personnel;
- the medical personnel of national voluntary aid societies (e.g. National Red Cross or Red Crescent Societies) of a Party to the conflict, attached to that Party’s Army Medical Service;
- the civilian medical personnel of a Party to the conflict.

The persons of these categories should in principle be repatriated “as soon as a route for their return is open and military considerations permit”.

3.2.1. Persons belonging to the first two categories may, however, be retained to attend to the health of prisoners of war. In that case, only the personnel necessary for that purpose shall be retained, depending on the state of health and on the number of prisoners. No discrimination shall be made in the choice of persons to be retained; preferably the chronological order of their capture and their state of health should be taken into consideration.

3.2.2. The capture of civilian medical personnel working near the front with the agreement of their own authorities, is a possibility not to be set aside, although such occurrences may be rare. It could

happen if that part of the territory in which they are working is rapidly run over by the enemy and they are taken away for security reasons. In that case, such people are protected like any other civilians in the adverse Party's territory. In principle, they are entitled to be repatriated. However, they may as an exception be retained if their departure is deemed "contrary to the national interests of the State" on whose territory they are. In that case, if the Detaining Party considers it necessary for it to exercise control, they may be held under house arrest or interned.

If the territory in which they are resident is occupied by the enemy, the civilian medical personnel, unless an agreement to the contrary has been reached, shall remain on that territory and shall be protected like anyone else resident on enemy-occupied territory (see, in addition, point 5 below).

3.3. *Personnel not exempt from capture.*

Temporary military medical personnel, if captured, have prisoner-of-war status and—unless repatriated or interned in a State not a Party to the conflict, for medical reasons or under an agreement—remain in detention until the cessation of hostilities.

4. **RIGHTS OF DETAINED  
MEDICAL PERSONNEL**

- 4.1. Pending their return, the medical personnel mentioned under 3.1. in the power of an adversary of the Party for which they were working shall be well treated and authorized to discharge their medical duties, preferably for the wounded and sick of the Party to the conflict in whose service they were working. Art. 30, G I



- 4.2.1. Persons of the first two categories mentioned under 3.2. may be detained, as already mentioned, only if their services are required to tend prisoners of war. In that case, they shall not be considered as prisoners of war, and shall at least benefit by the advantages and protection to which prisoners of war are entitled. They shall, moreover, be granted all facilities necessary to provide medical attention. They shall be entitled to visit periodically the prisoners of war in labour units or in hospitals outside the camp. They shall have access to the camp authorities, through a responsible doctor (in principle the most senior medical officer with the highest rank). They shall not be required to do any work other than that concerned with their medical duties. After a certain time, the Parties to the conflict shall agree concerning the possible relief of retained medical personnel. Art. 28, G I;  
Art. 33, G III
- 4.2.2. The civilian medical personnel of a Party to the conflict (the third category mentioned under 3.2.), if detained in the territory of the enemy, shall have the benefit of the prerogatives granted any civilian in that situation (e.g., the right to receive relief and, if necessary, suitable medical treatment; the right to practice their religion; the right to be protected from the dangers of war; the right not to be compelled to do work related to the conduct of military operations). If interned, they shall have the benefit of the many rules relating to the treatment of internees. In principle they may carry out their medical duties. Art. 35-46  
& 79-141, G IV
- 4.2.3. We shall see under point 5 below the rights of medical personnel in occupied territories.
- 4.3. The persons mentioned under 3.3.—who would thus have prisoner-of-war status should they fall in the power of the adverse Party—shall be employed, in such a case, on medical duties insofar as the need arises. Art. 29, G I

4.4. *Return.*

Art. 30, G I

All members of medical personnel in the hands of the Party opposed to that of which they are nationals or with which they served, are entitled, on their departure, to take with them the effects, personal belongings, objects, valuables and instruments belonging to them.

5. **OCCUPIED TERRITORIES**

5.1. *Protection of medical mission.*

Art. 56, G IV

Civilian medical personnel residing in territory occupied by a Party opposed to that to which they belong, and likewise, the medical staff who do not have the status of medical personnel, have the right to continue to carry out their duties.

5.2. *Hygiene and public health.*

Art. 56 & 60, G IV

The Occupying Power has the duty of ensuring and maintaining medical and hospital establishments and services, and public health and hygiene. Consequently, the medical personnel of occupied territory, taking part in carrying out those duties, are entitled to expect the Occupying Power to grant them the help and facilities necessary for the accomplishment of their task. In particular, they should have adequate medical supplies and medicaments.

5.3. *Relief actions.*

Art. 59, G IV

If an occupied territory is short of medical supplies and medicaments and the Occupying Power is unable to provide them, that Power must permit relief actions by States or by the ICRC. Such relief consignments may, insofar as needed, include food-

stuffs, clothing, bedding and emergency housing.

5.4. *Requisition of hospitals.*

Art. 57, G IV

Should hospitals be requisitioned, the medical personnel are entitled to specify the limits to requisition (see point 9.2.2. in Chapter 2 above) and to insist especially on the Occupying Power's duty make suitable arrangements for the care and treatment of the wounded and sick in the hospital and for the needs of the civilian population for hospital accommodation.