

Chapter 4

The Protection of Wounded, Sick, and Shipwrecked Members of the Armed Forces

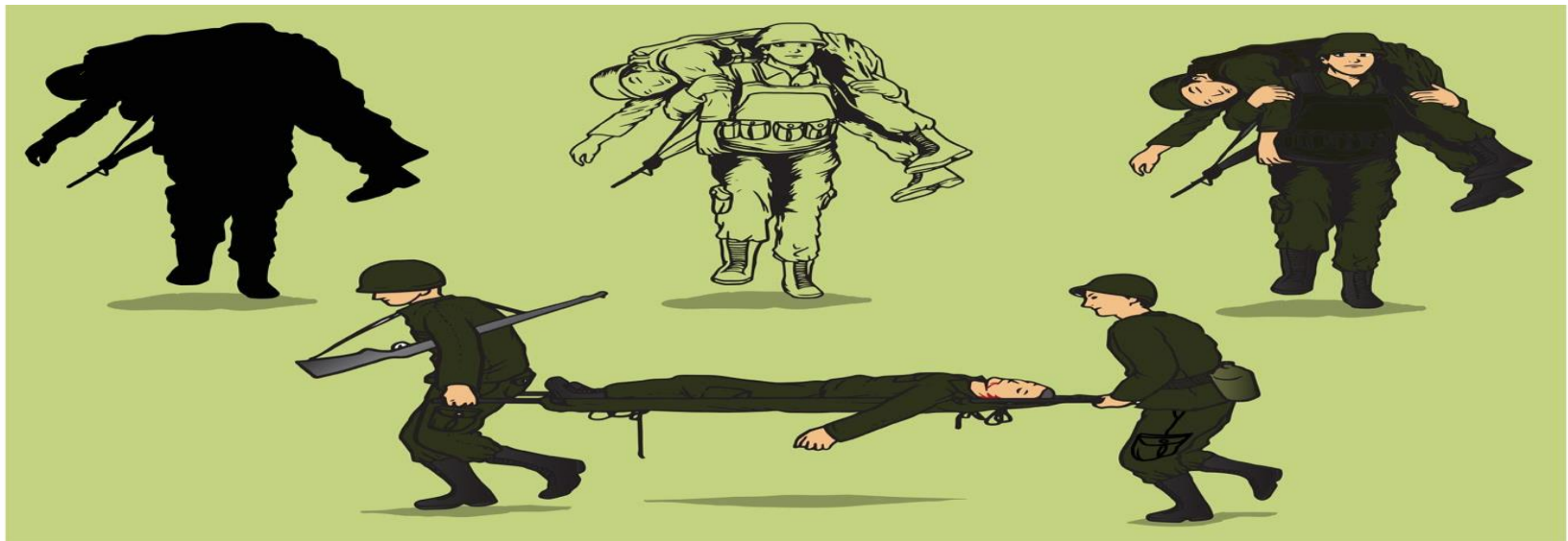
Lecture note 4

Definitions:

- “wounded” & “sick” - Art 8(a) AP I:

“Persons- military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical ... care and **who refrain from any act of hostility.**”

It also covers: maternity cases, new-born babies ,the infirm or expectant mothers, and **who refrain from any act of hostility.**



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Expectant soldier, infirm & new born babies:



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- **Shipwrecked**- Art 8(b) AP I:

“Persons- military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and **who refrain from any act of hostility**”









Protection the wounded & sick military personnel

- First enshrined in the 1864 GC
- **Art 12 of GC I:**

“Members of the armed forces and other persons... who are wounded or sick, shall be **respected** and **protected** in all circumstances.”

They shall be treated **humanely** and cared for by the Party to the conflict in whose power they may be,...!
- **Common art 3 of GCs, Art 10 AP I & Art 7 AP II** – provides the same protection!!
- Immunity of the wounded, sick & shipwrecked are firmly rooted in GC & applied to both IAC & NIAC

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- **Art 12 & 13 GC I**- lists the protected persons are the wounded, sick, shipwrecked:
 - ✓ Members of the armed forces of a Party to the conflict
 - ✓ militias or volunteer corps forming part of such armed forces,
 - ✓ Members of organized resistance mov't,
 - ✓ civilian members of military aircraft crews, war correspondents, supply contractors,
 - ✓ Members of crews- masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict
 - ✓ Members of *levee en mass*

The immunity of the wounded & sick impose the ff obligations:

1. Obligation to respect:

The duty to refrain from certain acts; it forbids attacks on, or other acts of violence against the wounded and sick;

2. Obligation to protect:

➤ Is a duty to act

- ✓ Duty to take all **precautions** in attack and defense- to avoid exposing wounded & sick military personnel gratuitously to danger;
- ✓ Duty to **remove** them from the fighting & **evacuate** them;
- ✓ To collect them after engagement- to protect them from pillage, ill-treatment, etc
 - Armistice- to collect the wounded, sick, dead & for passage of medical & religious personnel

- Medics treating wounded soldiers:



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- **Art 17- burial or cremation of the dead:**
 - ✓ After confirming death & establishing identity
 - ✓ Individually- if possible!
 - ✓ Cremation is only for hygienic purpose or for religious motives



Immunity of medical personnel & equipment:

- This immunity is a corollary of the principle that the wounded & sick in armed forces are inviolable.
- **Articles 19 - 44 of GC I** provides for the immunity of medical personnel, installations & equipments

✓ **Art 19 GC I- protection:**

“Fixed establishments and mobile medical units of the Medical Service **may in no circumstances be attacked**, but shall at all times be **respected and protected** by the Parties to the conflict.”

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- **Article 24 GC I- Protection of medics**

- ✓ “Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.”

- **Article 15 &16 AP I and Art 9 of AP II**

“Medical & religious personnel shall be respected & protected.... **They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.**”

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- A chaplain serving soldiers:



Medical units

- Mobile medical units: Art 19 GC



Art 19 GC I



- Fixed hospital: Art 19 GC I- Immune from attack



- Hospital ship: Immune from attack -Art 20 GC I



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Art 21 GC I & Art 13 AP I: Exception to the protection of medical units:

“The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease **unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy.**”

Conditions:

- ✓ when used to commit acts harmful to the enemy outside their humanitarian duties &
- ✓ When due warning has been given which has remained unheeded

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Article 22: The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

1. That the personnel of the unit are equipped with light individual weapons **to defend themselves & the wounded and sick in their charge;**
2. That the unit or establishment is protected by escort/guard;
3. That small arms & ammunition taken from the wounded & sick not yet handed to the proper service, are found in the unit or establishment;
4. That members of the armed forces or other combatants are in the units for medical reason
5. That the humanitarian activities of... extend to the care of civilian wounded or sick

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- **Medical building & material-**

“The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from that purpose as long as they are required for the care of wounded and sick.” (Art 33 GC I)

- **Medical transport**

“Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.” (Art 36 GC I)

Retention of medical personnel

- When the medical personnel fall in the hands of enemy, their retention of is justified:
 - ✓ Art 19 2nd sentence-
as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units &
 - ✓ Art 28 GC I:
only in so far as the state of health, the spiritual needs & the number of POW require.
Personnel whose retention is not indispensable shall be returned to the Party to the conflict!
- NOTE:** Personnel thus retained shall not be deemed prisoners of war (Arts 28(1) & 30 para 2 of GC I)

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***Prosecutor v. Delalic*, ICTY, Appeals Chamber Case No. IT-96-21-A (2001)**

- 1992- Balkan conflict:
 - ✓ Bosnian and Croat forces took over villages in Bosnia and Herzegovina, detaining prisoners in the village of Celebici, where the forces subjected them to torture and cruel treatment.
 - ✓ In response to these mass atrocities, UNSC created ICTY in 1993.
 - ✓ In 1993, four members of the Bosnian and Croat forces involved in the abuses at Celebici were brought to trial before the ICTY.
 - ✓ The Trial Chamber determined that **three out of the four** defendants were guilty of various breaches of the Geneva Conventions **for acts of killing, torture, denial of medical care and sexual abuse of the Celebici detainees.**

Assignment

1. Case concerning armed activities on the territory of the Congo (new application: 2002)-(Democratic Republic of the Congo v. Rwanda)
2. Case concerning armed activities on the territory of the Congo (2005) (Democratic Republic of the Congo v. Uganda)
3. Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) ICJ June 27, 1986
4. Legal consequences of the construction of a wall in the occupied Palestinian territory (ICJ- 2004)
5. The Legality of the threat or use of nuclear weapon (ICJ- by UNGA)
6. The Prosecutor v. Thomas Lubanga Dyilo (ICC 2012)
7. Prosecutor v. Tadic (ICTY)
8. Prosecutor v. Charles Ghankay Taylor (SCSL)
9. Prosecutor v. Delalic (Elebici case) (ICTY)
10. Prosecutor v. Jean Paul Akayesu (ICTR)
11. Discuss the Nuremburg tribunal & Tokyo Tribunal: the purpose of establishment, jurisdiction, decision, & critique!