

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

("In the name of Allah, the Most Gracious, the Most Merciful.")

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My Note on: International Humanitarian Law.

Chapter Four: The Protection of Wounded, Sick, and Shipwrecked Members of the Armed Forces, section 4.1 – Protection against the Effects of Hostilities:

□ Core Principle

At the heart of this chapter is a **fundamental humanitarian principle**:

Wounded, sick, or shipwrecked members of armed forces must be respected, protected, and cared for—regardless of which side they belong to.

This is based on the **first Geneva Convention (1864)** and expanded by later treaties like the **1949 Geneva Conventions** and their **Protocols**.

□ Why Protection is Needed

Wounded and sick soldiers are **no longer part of the fight**. For them to receive medical help:

- They must be **shielded from combat**.
 - Medical staff helping them must also be **protected**.
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□ Scope of Protection

This protection applies in **two ways**:

1. **Ratione loci** (*by location*): e.g., designated hospital zones.
 2. **Ratione temporis** (*by time*): e.g., during truces or evacuations.
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□ Key Legal Provisions

1. **Geneva Convention I (1949), Article 12:**

- o Wounded or sick soldiers must be **respected and protected in all circumstances**, even if they are from the enemy side.
 - 2. **Protocol I (1977), Article 10:**
 - o All wounded, sick, and shipwrecked persons must be treated **humanely**.
 - o No discrimination **except for medical reasons**.
 - 3. **For Civil Wars (Non-International Conflicts):**
 - o **Common Article 3:** Same principle applies to internal conflicts.
 - o **Protocol II, Article 7:** Confirms humane treatment and protection of the wounded and sick.
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☐ Legal Obligations of Warring Parties

The treaties impose two duties:

- **Respect:** Do not attack or harm the wounded/sick.
- **Protect:** Actively take steps to:
 - o Move them out of danger.
 - o Evacuate them.
 - o Safeguard them from robbery or neglect.

☐ Protection of Medical Personnel and Facilities

- Wounded/sick cannot be helped unless **medical staff and facilities are also protected**.
- **Articles 19–35** of the First Convention (1949) provide this protection.
- **Protocol II, Article 9** extends this to internal conflicts:
 - o Medical and religious personnel must be **respected**, not forced to act against their mission, and allowed to treat based on **medical need only**.

□ Problem of Captivity

If medical personnel are captured:

- They **should not be treated as prisoners of war**.
 - They must be allowed to continue helping wounded, especially prisoners.
 - Once their services are no longer needed, they **must be returned** (Articles 28 & 30 of the First Convention).
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□ Neutrality of Medical Care

- Medical staff must be **free from punishment** for treating the wounded—even if the patient is from the enemy side.
 - **Protocol I, Article 16** and **First Convention, Article 18(3)** guarantee this.
 - Doctors must not be punished for medical work done **in line with professional ethics**.
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□ Medical Confidentiality

Although not explicitly mentioned in all provisions, the **doctor-patient confidentiality** is implied:

- If doctors are forced to report information, patients may **avoid seeking treatment**, which contradicts humanitarian goals.
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□ Summary

In war, both **international and internal**, the **Geneva Conventions and Protocols** guarantee that:

- Wounded and sick soldiers are **not to be harmed**, but **cared for humanely**.
- Medical personnel and facilities must be **protected**.
- Medical care must remain **neutral and confidential**.
- These protections are **universal and non-discriminatory**, applying equally to **all sides** in a conflict.

A **gap in the Geneva Conventions (1949)** and the attempts made to address it in later developments of **International Humanitarian Law (IHL)**—particularly concerning **medical confidentiality** and the **protection of medical services** during armed conflict.

□ **Key Issue: Medical Confidentiality Not Fully Protected**

- The **1949 Geneva Conventions** are **silent** about the right of medical personnel to **keep patient information confidential**, especially when that information might harm the **wounded or sick** or their **families**.
- This becomes a serious problem in wartime—**especially in civil wars or internal conflicts**—where:
 - Both sides are in **close contact**.
 - There's a risk that medical staff may be **forced to betray patient information**, e.g., to **identify enemy fighters** in disguise.
 - Medical services could be used as tools of war instead of remaining **neutral humanitarian actors**.

□ **What Protocol I (1977) Does Add**

- **Article 16(3) of Protocol I** (which applies to international conflicts) **tries to protect medical confidentiality**, but only partially:

“No person engaged in medical activities shall be compelled to give information... if, in his opinion, it would harm the patient or their family.”

EXCEPTIONS:

- The medical worker may still be required to report to **their own authorities** if **domestic law** demands it.
- **Epidemic reporting (e.g., for communicable diseases)** remains compulsory.

☞ So, if national laws or military rules require the reporting of “suspect wounds” (e.g., gunshot wounds in battle), this **overrides medical confidentiality**, weakening the protection.

□ **Weakness in Non-International Conflicts (Civil Wars)**

- In **internal conflicts**, the risk is even higher:
 - Combatants may force medical personnel to **report injuries**, suspecting undercover enemies.
 - There's **no clear international rule** stopping this kind of interference.
- **Article 3** of the 1949 Conventions (common to all four Conventions) only says:

"The wounded and sick shall be collected and cared for."

But it **doesn't**:

- Explicitly **protect medical confidentiality**.
- Forbid indirect methods of **interfering with medical services**, like pressuring doctors to report injuries.

□ **The New Delhi Red Cross Conference (1957)**

To fill this gap, the **19th International Red Cross Conference** proposed extending protections. It passed a **resolution** urging that the following should become law:

1. **Non-discriminatory care**: All wounded should receive medical attention without bias.
2. **Medical secrecy**: Doctors' confidentiality must be **respected** as **inviolable**.
3. **Unrestricted medicine**: There should be no arbitrary bans on the **sale or circulation of medicines** used for medical purposes.

They also **urged all governments** to **repeal laws** that violated these humanitarian principles.

□ **Diplomatic Conference Response**

- The **Diplomatic Conference on the Reaffirmation and Development of IHL** (1974–77) was expected to act on the New Delhi proposals.
- Unfortunately, it only **partially** incorporated these ideas into **Protocol I**, mainly applying to **international conflicts**, not civil wars.

So, even after decades:

- **Full protection of medical confidentiality** in **non-international conflicts** remains **limited**.
- **Doctors and nurses in civil wars** can still be vulnerable to **legal pressure** from their own side.

□ **Summary**

- The **Geneva Conventions (1949)** didn't clearly protect **medical confidentiality** or guard against **interference in medical duties**, especially in **civil wars**.
- **Protocol I (1977)** offers limited protection, mostly in **international wars**.
- In **internal conflicts**, doctors might still be forced to reveal patient information, especially if national laws demand it.
- The **1957 New Delhi Conference** urged reforms to fix this—but so far, **international law has not gone far enough** in turning these recommendations into binding legal protections.

Section 4.2: Protection against Arbitrary Treatment of the wounded, sick, and shipwrecked members of armed forces under International Humanitarian Law (IHL):

□ Core Principle:

The rule against arbitrary treatment is a **customary international law** principle that applies in **both international and non-international armed conflicts**. It obliges all parties to:

- **Search for, collect, and evacuate** the wounded, sick, and shipwrecked.
 - Do so **without delay** and **without adverse distinction** (i.e., no discrimination based on nationality, affiliation, race, religion, etc.).
 - Ensure that **no one is treated arbitrarily**, which means no denial of medical assistance based on non-medical grounds.
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□ Legal Foundations:

1. **1864 Geneva Convention:**
 - o First codified the obligation to collect the wounded without discrimination.
 2. **1949 Geneva Conventions:**
 - o Expanded and clarified these duties in greater detail.
 3. **Article 10 of Additional Protocol I (1977):**
 - o Reaffirms this duty more generally, using the language of “protecting” the wounded, sick, and shipwrecked (includes helping and defending them).
 4. **Common Article 3 (for non-international conflicts):**
 - o States that the wounded and sick shall be collected and cared for.
 - o This is reinforced in **Additional Protocol II** with more detail.
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□ Key Elements of the Rule:

1. **Non-Discrimination:**

- o Assistance must be provided **equally to all wounded**, regardless of side, rank, race, religion, or political affiliation.
 - 2. **Obligation of Means:**
 - o States and parties to a conflict are expected to take **all possible measures** to fulfill this duty.
 - o Even if perfect execution is not possible, the obligation requires **genuine effort**.
 - 3. **Criminalization of Abandonment:**
 - o Several national laws (e.g., Sweden) criminalize **abandoning** wounded or sick individuals.
 - 4. **Humanitarian Involvement:**
 - o Humanitarian organizations (e.g., ICRC) can assist in searching for and evacuating the wounded.
 - o Permission must be granted by the controlling party and **cannot be denied arbitrarily**.
 - 5. **Civilian Participation:**
 - o Civilians can also help in these efforts.
 - o Article 18 of the First Geneva Convention protects civilians from being punished for assisting the wounded.
 - 6. **International Recognition:**
 - o The UN (Security Council, General Assembly, Human Rights Commission) has supported this principle in practice (e.g., in El Salvador and Lebanon).
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□ **Practical Importance:**

- This rule **safeguards human dignity** and helps to reduce unnecessary suffering during armed conflict.
- It also aims to **prevent retaliatory or discriminatory actions** against wounded or sick persons simply because of their affiliation.

□ **Summary:**

The rule against arbitrary treatment ensures that all wounded, sick, and shipwrecked persons are treated humanely and without discrimination. It is a widely accepted **customary law norm**, reinforced by treaties, national legislation, military manuals, and international organizations. Failure to comply can amount to a **serious violation of IHL**.

The **protection of the wounded, sick, and shipwrecked** in international and non-international armed conflicts, focusing on **evacuation, medical care, and protection from mistreatment**.

□ **1. Cease-fires and Local Arrangements for Evacuation**

- **Geneva Conventions** and other instruments (like the **UN Secretary-General's Bulletin**) emphasize that **ceasefires** and **local arrangements** should be made **whenever possible** to:
 - Evacuate the wounded and sick
 - Remove or exchange them
 - Transport them from the battlefield
 - These agreements help create safe conditions for **humanitarian access**.
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□ 2. Equal Protection Without Adverse Distinction

- The rule applies to **all** wounded, sick, and shipwrecked:
 - Regardless of which side they belong to
 - Regardless of whether they are civilians or combatants
 - Even if they took part in hostilities
 - This principle of “**no adverse distinction**” means that only **medical needs** can justify giving priority in treatment (e.g., someone more seriously injured should be treated first).
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□ 3. Legal Basis for Protection

- **Article 16** of the **Fourth Geneva Convention** applies to **civilians**.
 - **Article 10** of **Additional Protocol I** and **Common Article 3** of the Geneva Conventions apply to all non-combatants in **non-international armed conflicts**.
 - **Article 8** of **Additional Protocol II** supports this protection without discrimination.
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□ 4. Medical Care Obligations

- Parties to conflict must provide **medical care and attention**:
 - To the **fullest extent practicable**
 - With the **least possible delay**
 - **Only medical criteria** may be used to prioritize treatment
 - This duty was first codified in:
 - **1864 Geneva Convention**
 - Reaffirmed in the **1949 Geneva Conventions**
 - Also in **Article 10** of **Additional Protocol I**
 - Denying care is a **criminal offence** under the laws of many countries.
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□ 5. Customary Law and Practice

- These obligations are recognized as part of **customary international law**.
 - Military manuals across the world reiterate these duties.
 - Courts, such as Argentina's **National Court of Appeals** (in the Military Junta case, 1985), have affirmed this rule.
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□ 6. Role of Humanitarian Organizations and Civilians

- **Humanitarian organizations** (e.g., ICRC) must be **allowed to assist**, but parties cannot **arbitrarily deny** permission.
 - **Civilians** may:
 - Be called upon to assist in care and evacuation
 - Are protected under **Article 18** of the **First Geneva Convention**
 - Must **respect** (not harm or rob) the wounded, sick, and shipwrecked
 - **No duty to help** is imposed on civilians by IHL unless required by national laws, but **not harming** is a **minimum obligation**.
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□ 7. Protection from Pillage and Ill-treatment

- Parties must take **all possible measures** to protect wounded, sick, and shipwrecked from:
 - **Ill-treatment**
 - **Pillage (theft of their belongings)**
 - This rule is found in:
 - **1906 Geneva Convention**
 - **1907 Hague Convention**
 - **1949 Geneva Conventions**
 - **Additional Protocol II** (for non-international conflicts)
 - Pillage or mistreatment is a **war crime** and is criminalized in many military manuals and national laws.
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□ 8. Persons "Hors de Combat"

- "Hors de combat" means **out of the fight** (e.g., wounded, surrendered).
- **Killing or harming** such persons is a **war crime** under the **ICC Statute**, whether in international or non-international conflict.

Chapter Five of International Humanitarian Law (IHL) discusses **the protection of civilians during armed conflict**, particularly their **immunity from the effects of hostilities**. Here's a breakdown and explanation of the key points in simpler terms:

1. General Principle: Civilians Must Be Protected from Hostilities

- **Core Idea:** Civilians **should not be targeted** or harmed by the fighting. This rule is part of **customary international law**, meaning it is accepted as binding even if not written in a treaty.
 - This principle was recognized **before it was formally codified** and is rooted in **humanity and civilization**.
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2. Codification in the Hague Regulations (Articles 25–28)

These articles from the **1907 Hague Regulations** help protect civilians during **land warfare**:

- **Art. 25:** Forbids attacks or bombardments of **undefended towns, villages, dwellings, or buildings**.
- **Art. 26:** Requires military commanders to **warn** authorities before bombing (unless in direct assault).
- **Art. 27:** Demands protection of buildings like **churches, museums, hospitals, etc.**, as long as they're not used for military purposes.
- **Art. 28:** Forbids **looting** (pillage) of a town, even if it's captured by assault.

These rules are **binding on all countries**, regardless of whether they signed the Hague Conventions, because they reflect **customary law**.

3. Protection at Sea – Hague Convention (IX) of 1907

- **Art. 1:** Naval bombardment of **undefended places** (ports, towns, villages) is **prohibited**.
- **Art. 2:** However, **military targets** at sea (like naval bases or ammunition depots) **can** be bombarded, **after a warning** and a chance to surrender.

Key Difference:

- On **land**, bombardment depends on whether a place is **defended or not**.
 - At **sea**, it depends on whether the target is a **military objective**.
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4. Challenges and Evolution of the Rule

Over time, especially during **World Wars I and II**, the line between civilians and combatants blurred due to:

- **Long-range artillery and air raids**, making it harder to define “undefended localities.”
 - Bombing of towns **behind front lines** justified as “reprisals.”
 - **Aerial warfare** targeting cities, often with **civilian casualties**.
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5. League of Nations – 1938 Resolution

In response to destructive bombing in conflicts like the **Spanish Civil War**:

- The **League of Nations** emphasized **three rules** that are part of positive international law:
 1. **Deliberate bombing of civilians is illegal.**
 2. Airstrikes must only target **legitimate military objectives**.
 3. Such attacks must **avoid harming nearby civilians**, even by accident.

But this resolution had **limited impact** because:

- Major violators (Germany, Italy, Japan) weren’t part of it.
 - It didn’t clearly define who qualifies as **civilian** or what counts as a **military target**.
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6. Geneva Conventions (1949)

- Though the 1949 Diplomatic Conference **didn’t fully ban aerial bombardment**, it did provide:
 - o **Protection for medical personnel and facilities.**
 - o Creation of **hospital zones** and **safety zones** for civilians.

Despite this progress, the core **principle of civilian immunity** was seen to be **weakened**, especially due to the devastating bombing in WWII.

7. Response by the Red Cross

Recognizing the danger to the very foundation of IHL, the **International Committee of the Red Cross (ICRC)** took steps to:

1. **Prohibit weapons of mass destruction** (nuclear, chemical, biological).
 2. **Restore the principle** that **civilian populations must be immune from hostilities**.
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Conclusion

- The **protection of civilians** is a **cornerstone of IHL**, rooted in **customary law** and enshrined in key treaties.
- Despite challenges, especially in **modern warfare**, efforts continue to **uphold and restore** this vital protection.
- Distinctions between **civilian vs. combatant** and **military vs. civilian objects** remain crucial to ensure this protection is meaningful and enforceable.