



# Attacks on Medical Personnel in International Armed Conflict Situations in International Law

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**Abstract.** In the international armed conflict, one of the protected parties is a medical officer. Medical officers in international humanitarian law have legal protections that must always be respected and obeyed by the parties to the International Armed Conflict following article 24 of the 1949 Geneva convention, article 20 paragraph 1 of the 1949 Geneva convention IV, article 12 (1) additional protocol 1 1977 and Article 9 (1) of Additional Protocol II 1977. The purpose of this article is to find out whether an attack on a medical officer is a violation of international humanitarian law. This research is normative legal research using a statutory and conceptual approach. The results of the research prove that attacks on medical officers in situations of international armed conflict are a form of serious violation of humanitarian law, namely the Geneva Convention 1 1949, article 20 paragraph 1 of the Geneva convention IV 1949, article 12 (1) additional protocol 1 1977 and article 9 (1) Additional Protocol II 1977 and violates the principles of military interest, humanity, and the principle of distinction.

**Keywords:** IAC · Humanitarian Law · Geneva Convention · medical personnel

## 1 Introduction

Humanitarian Law according to Mochtar Kusumaatmadja is “part of the Law of War which regulates the provisions of protection for victims of war; in contrast to the laws of war governing war itself and everything concerning the manner in which the war is conducted, such as regarding prohibited weapons”, according to which definition humanitarian law is used to regulate war and provide protection to parties not involved in the conflict or war. The provision of this restriction is intended so that in this conflict it does not result in excessive casualties [1]. In another sense, humanitarian law also has the main purpose of providing protection and assistance to victims of war both as combatants and non-combatants.

Mochtar Kusumaatmadja also said that the legal provisions of the Geneva Conventions are identical or synonymous with humanitarian conventions; while the Law of War or the Hague Conventions provide for how to conduct warfare. In addition, Mochtar Kusumaatmadja also divided humanitarian law into 2 kinds, namely: (1). *Ius ad bellum*, namely the law of war, regulates about in terms of how the state is justified in using

armed force; (2). *Ius in bello* i.e. the law applicable in war, subdivided into: (a). The law that governs the conduct of war. This section is usually called The Hague Laws; (b). Laws governing the protection of persons who are victims of war. These are commonly called The Geneva Laws [2]. International Humanitarian Law divides armed conflicts into International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC), the difference between these two types of conflict lies in the recognition and involvement of other countries in the ongoing conflict. In the IAC both parties have the same legal status, namely the state while in the NIAC the parties are slightly different, one party is a state while the other party is a non-state entity [3]. The similarity between the IAC and NIAC is the validity of the basic principles of humanitarian law, namely: Military Necessity; Humanity and Chivalry [4].

The emergence of victims as a result of conflicts both international and non-international in nature makes the presence of medical personnel when there is a conflict to provide care and assistance to victims is very necessary. The definition of a medical officer contained in the customary International Humanitarian Law chapter 7 Rule 25 summary states that a medical officer is an officer assigned to a party involved in a conflict that aims to help injured and sick parties when involved in armed conflicts both international and non-international.

Medics are one of the non-combatant elements in international humanitarian law who have immunity and the right not to be targeted or victimized by war. It is also stated in Article 24 of the Geneva Convention I of 1949 which outlines that medics employed specifically to care for war victims both combatants/hors de combatants and also wounded and sick civilians and/or officers employed as administrators in health buildings such as hospitals must be protected from all circumstances and prohibited from making them targets of war. In the Geneva Convention I 1949 states that people who carry out health care or can be categorized as medical personnel are categorized into 3 (three) groups, namely:

Members of the health services of the belligerent parties (Article 24);

Assistant health care personnel (Article 25); and

The helping volunteers came from a neutral country that assisted one of the parties in the war.

The statement that medical personnel are exclusively assigned to medical duties should be respected and protected in all circumstances is also contained in several regulations related to international humanitarian law including Art. 24-36 1949 Geneva Convention I; Art. 36 1949 Geneva Convention II; Art. 15 1977 Additional Protocol I; Art. 9 1977 Additional Protocol II; Rule 25 ICRC Customary IHL; Resolution 2286 on Protection of The Wounded and Sick, Medical Personnel and Humanitarian Personnel in Armed Conflict. The aforementioned articles form a legal basis for respect and implementation against the conditions of war that medics are not entitled to attack and are prohibited from being targeted by the military.

In conditions of war, principles in humanitarian law must be applied. In relation to the protection of medical personnel, the distinction principle is applied. Distinction principle is a principle in international humanitarian law that means the distinction between combatants and non-combatants. Non-combatants in this regard include civilians, clergy,

prisoners of war and medical personnel. Medics are categorized as non-combatants because they do not have an active contribution to military actions that, if attacked, do not provide military benefits, actually harm those who are not directly involved in the war [5]. In addition to the distinction principle there are other principles in international humanitarian law that must certainly be respected and upheld.

Although there are regulations governing the legal protection of medical personnel in armed conflicts, it turns out that there are still violations of the regulations in international humanitarian law and their principles. One of the incidents of lawlessness against medics was the shooting of a medic named Razan Al Najjar that occurred in the Gaza Strip. Razan Al Najjar was a 21-year-old Female medical officer at the time who served voluntarily for the Palestinian Medical Relief Society (PMRS). The shooting of medical officer Razan Al Najjar was a contrary act and violated humanitarian law. Razan Al Najjar while on duty had used a recognizable sign that marked himself a medic who was classified as a non-combatant. Based on this case, parties involved in armed conflict should guarantee that people who are medics are given a free space and a neutral position not to be used as objects targeted by the military and placed in a place protected from all threats and attacks, so that the presence of medical personnel must be respected and protected [6].

In addition to the incident of shooting medical officer Razan Al Najjar which is contrary to and violates international humanitarian law, in its development there are still many conflicting and unlawful events regarding attacks on medical personnel in armed conflicts of both IAC and NIAC. According to the International Committee of the Red Cross (ICRC) there have been thousands of incidents of violations of international humanitarian law in the form of attacks on health-care providers and patients including medical personnel in them in conflict countries or other emergency situations in the last 5 (five) years since the UN Security Council urged an end to impunity for attacks on civilians and non-combatants. Attacks on medical personnel and patients include murder, rape, physical abuse, looting and the destruction of medical facilities and medical transport vehicles.

According to ICRC data, there were 3,780 cases of attacks in 5 (five) years between 2016 and 2020 [7] with data taken from 33 countries within the 5 (five) year period. Most of these incidents and attacks occurred in Africa and the Middle East. The countries that have the largest number of incidents of attacks. According to ICRC data, there were 3,780 cases of attacks in 5 (five) years between 2016 and 2020 [7] with data taken from 33 countries within the 5 (five) year period. Most of these incidents and attacks occurred in Africa and the Middle East. The countries that have the largest number of incidents of attacks include, The Democratic Republic of the Congo, Israel and the occupied territories and Syria. ICRC President, Peter Maurer states that the world has failed to protect patients and victims of war, health-care providers including medical personnel in it considering that health-care is a major global concern, but it turns out that medical personnel and medical facilities still escape protection against undue attacks. In addition to the data presented by the ICRC, the World Health Organization also has several data records regarding violations of the protection of medical personnel in armed conflicts. In 2016 WHO recorded 302 attacks on health-care in 20 countries that left 372 dead and 491 injured, while between January 1 and March 31, 2017 WHO recorded that there

were 88 attacks on health-care in 14 countries that left 80 people dead and 81 people injured [8].

On May 3, 2016, the UN Security Council adopted Resolution 2286 supported by 80 countries and became the first resolution on the protection of health-care in the event of armed conflict. Resolution 2286 includes measures that states can take to reduce attacks on health-care and minimize the impacts that occur. However, in the 5 (five) years after Resolution 2286 was adopted, it was found that there was still a violation and disregard of international humanitarian law regarding the prohibition on attacking non-combatants, in this case health-care including medical personnel who are its components. On the other hand, the implementation of the measures set out in the resolution is still relatively weak. This paper will analyze related about what is the form of international legal protection against attacks by medical personnel in situations of international armed conflict?

## **2 Research Methods**

Research is an attempt to find a truth. With regard to legal research, what is sought is a legal truth. It should be remembered that legal science is prescriptive which means giving instructions or provisions. Legal Research is not only “know about” but also “know-how” which means that legal research is carried out to deal with a legal problem that must be solved [9]. The nature of legal research is not only applying existing regulations but also creating laws on issues which is being solved. This is normative juridical legal research [10]. of which the method employed to collect legal material used is through literature study. Normative or prescriptive legal theory has the function of directing the analysis, interpretation, systemization and value of positive law. Normative legal theory has multiple values, namely the dimensions of explaining in detail about legal norms as well as normative-contemplative dimensions to be used as guideline in legal practice [11]. The focus of the study of normative theory is legal norms that have a point of view from internal norms. In a study, legal materials are needed to be a source of literature. Legal materials were derived from primary and secondary law sources in the form of primary legal materials referred to the provisions of international law, namely in the form of international conventions relevant to the issues under study. Secondary legal materials were obtained from literature, lecture materials, and other relevant books or works of international jurists who provide explanations related to the provisions of international law, particularly those are related to the European Union policies on refugees. In this normative legal research, the legal materials that have been obtained were analyzed qualitatively through the provision of interpretation of the legal materials obtained from various sources. The analyses of the legal materials were assisted by using prescriptive method.

## **3 Result and Discussion**

### **3.1 International Legal Form About Respect and Protect of Medical Personnel as a Non-Combatant in IAC**

Sources of international humanitarian Laws governing health care protection, including medical personnel, are contained in several regulations. It is appropriate that based on

these regulations, protective measures against health care and medical personnel must be respected. Some of the sources of the Law include:

### **3.1.1 Art. 24–36 1949 Geneva Convention I and Art. 36 1949 Geneva Convention II**

A range of Articles 24–36 of the Geneva Convention I of 1949 essentially provides for a ban on attacking health service members. The health service members referred to in this case are divided into categories. The first category is members of the armed forces health service parties to the dispute (Article 24). The second category is health helper personnel (Article 25), and the third is voluntary assistance organizations from neutral countries that assist one party in a dispute (Article 27). In addition to medical personnel, buildings and health care centers for patients and victims of war must also be protected and prohibited from being used as objects of war targets like medical personnel. So it can be understood that healthcare, including medical personnel and medical units, must be respected and protected.

### **3.1.2 Art. 14 1977 Additional Protocol I and Art. 9 1977 Additional Protocol II**

Article 15 of The Additional Protocol I of 1977 also explains that medical personnel should be respected and protected. Medical personnel are entitled to all assistance if necessary and should not be forced to perform tasks that are not in harmony with their humanitarian duties. Medical personnel is entitled to access any place of duty, such as hospitals and health care centers for war victims. Under no circumstances can medical personnel be punished for carrying out health activities by medical ethics.

### **3.1.3 Rule 25 ICRC Customary IHL**

Rule 25 of the ICRC Customary IHL also explains that medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. However, they lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy. So medical personnel must be protected from all enemy attacks and are prohibited from being used as objects of war targets, but if medical personnel act outside their duties, such as taking up arms and siding with one of the warring parties, then the medical personnel lose their protection.

### **3.1.4 Security Council Resolution 2286 (2016) on Protection of the Wounded and Sick, Medical Personnel, and Humanitarian Personnel in Armed Conflict**

Resolution 2286 was adopted by the UN Security Council at its 7685th meeting on May 3, 2016. The resolution states that the identification of medical personnel and humanitarian personnel who are members of medical duties also includes transportation and other equipment such as hospitals and other health facilities are also entitled to protection from all attacks in armed conflict conditions with the use of differentiating emblems as stipulated in the Geneva Convention of 1949 and the Additional Protocol 1977. In addition to regulating the protection of medical personnel and their completeness, Resolution

2286 also lists the steps that the state can take to minimize acts of violations related to the protection of medical personnel. The state must ensure that military personnel who automatically become combatants in armed conflicts no one acts with impunity must be treated fairly when committing violations under the state parties' national laws and obligations under international Law. The resolution also stresses that liability for war crimes and other severe violations of international humanitarian Law has been strengthened through the efforts and prosecution of such crimes in the international criminal court and affirms the importance of cooperation between countries with international courts and tribunals under the obligations of their respective countries.

The state must also ensure with its powers that its military forces act in armed conflict by the provisions of the international humanitarian Law by avoiding non-military objects such as medical personnel and civilians. States involved in armed conflicts must also develop effective measures to prevent and address violence, attacks, and threats against medical personnel and their completeness by developing a national legal framework to ensure respect for relevant international legal obligations can be enforced.

In the event of a violation, the resolution urges such countries to act independently to conduct an immediate and impartial full investigation and effective in their jurisdiction into violations of international humanitarian Law relating to the protection of medical personnel and their completeness.

### **3.2 Distinction Principle Concept on International Humanitarian Law to Protect Civilian and Non-combatant in IAC**

Distinction principle is a principle that requires parties involved to take up arms in armed conflict to distinguish between war targets and not to attack civilians and non-combatants. The distinction principle concept in international humanitarian law emphasizes the protection and limitation of the treatment of violence in armed conflict. These protections and restrictions are applied to people who do not take part directly in combat and are also *hors de combat* as well as to infrastructure that is not a military object.

The distinction principle is the basis for protecting civilians and non-combatants. Basically, the distinction principle is rooted in *jus in bello*, because *jus in bello* distinguishes between acceptable and unacceptable acts of war and the prohibition of targeting civilians [12]. In 1966, the International Court of Justice in its decision determined that threats to the use of nuclear weapons and respect for the principle of fundamental distinction indicate that the distinction principle is a basic matter that must be respected and upheld by each state party involved in armed conflict.

Indeed, the distinction principle is an essential principle in international humanitarian Law that should be applied, especially in conditions of armed conflicts, such as the main objective of international humanitarian Law itself, which is that force may be used by prohibiting certain weapons and methods of warfare by insisting that attacks be directed only at military objectives. Moreover, even then that they should not cause disproportionate civilian casualties [13]. Military objectives, in this case, are targets that are limited by the nature of the object, the location of the place, and the purpose that makes an active contribution to military action, which, if attacked, will produce a favorable result for the military as described in Article 52 paragraph 2 Additional Protocol I. Therefore the combatant must be able to see which objects can be used

as military attacks. So with this, protecting civilians and non-combatants is a distinct principle in international humanitarian Law. So renewal at the concept level and the distinction principle can be implemented if humanity, proportionality, and distinction principle are applied together consistently in armed conflict.

### **3.3 Implementation of Distinction Principle and Protection to Medical Personnel in IAC**

As previously described as non-combatants, medical personnel are entitled to protection from any military attacks. However, in practice, there is still a violation of the protection of medical personnel, which is related to the application of the distinction principle. The disregard for the distinction principle of international humanitarian Law is one of the triggers for the non-optimal implementation of the convention governing the protection of medical personnel. In terms of implementation, it can be seen that several factors for the neglect of the distinction principle include differences in interpretation of the distinction principle of international humanitarian Law; the difficulty of distinguishing between combatants and non-combatants in modern-day armed conflicts; as well as the development of armed conflict forms both international and non-international and the existence of norm differences between the 1977 Additional Protocol I and II [12]. In addition, it is necessary to provide a military guideline (military manual) to minimize the occurrence of attacks on civilians and non-combatants.

As a manifestation of the distinction principle, medical personnel has also used lambing as a differentiator and a sign that their position exists neutrally and as non-combatants. The coat of arms of medical personnel under international humanitarian Law is set out in 1949 Geneva Convention I (Art. 38-44 and Art. 53-54); 1949 Geneva Convention II (Art. 41-45); 1949 Geneva Convention IV (Art. 18-22); 1977 Additional Protocol I (Art. 18-22); 1977 Additional Protocol II (Art. 12).

Every medical personnel and their equipment that uses the emblem is neutral, independent, and impartial so that everyone who is in charge of medical personnel uses the red cross lambing emblem even with the vehicle and also the hospital. The parties involved in the armed conflict must respect and protect the medical personnel and their completeness [14].

The implementation of protection of medical personnel and minimizing the neglect of international humanitarian Law can be started from the national scope of a country, including:

- a. State acts passed legislation to guarantee the implementation of the 1949 Geneva Conventions and the 1977 Additional Protocol;
- b. Recognition and granting of permission for the red cross of each country to act under the protection of the 1949 Geneva Convention;
- c. Support and provide facilities to the ICRC, overseeing fact-finding efforts and international investigations and determining the location of healthcare as well as safety zones;
- d. Dissemination and teaching of international humanitarian Law in society, providing an understanding of military guidelines to military soldiers involved in armed conflict and preparing experts.

In addition to the implementation of the distinction principle, parties to armed conflicts are prohibited from launching attacks that can have an impact on damage and loss to civilian lives, cause casualties or deaths, and loss of property as a concrete step of military measured attacks that become a form of proportionality. Protected persons shall not be arrested, prosecuted, or convicted by the occupying power for acts committed, opinions expressed before the occupation, or during a temporary interruption thereof, except for breaches of the laws and customs of war [15].

Recommended implementation measures include adhering to relevant international treaties, including the Additional Protocols to the Geneva Conventions, binding international human rights treaties, and the Arms Trade Treaty, and reinforcing domestic legislative frameworks. Ensuring legal protection for medical personnel to act in line with medical ethics can be a step that protects and respects medical personnel—adopting, implementing, and disseminating precautionary measures throughout the planning and conduct of military operations to prevent and minimize the consequences of hostilities on medical care in armed conflict. Full, prompt, impartial, independent, and effective investigations into alleged severe violations against medical care in armed conflict and prosecution of individuals suspected of committing such violations to provide a deterrent effect on every perpetrator who commits a violation. They are also providing reparations and assistance to victims of attacks against medical care in armed conflict, restoring essential services, including rebuilding medical facilities and establishing safe routes and environments for the delivery of medical services.

Another form of protection for medical personnel is the weaponization of health care. The “weaponization of healthcare” is a term that has recently been brought to the forefront following an inquiry into the conflict. This is because medical personnel often take repeated violations and work under difficulties, and how they differ from region to region, leading to their roles developing to meet demands [16]. State practice indicates that the protected status of medical personnel does not stop if they are equipped with light individual weapons to defend their patients or themselves against violence, marauders, or another light attack [17]. However, if they use the weapons to combat enemy forces acting in conformity with the Law of war, notably to resist capture, they will forfeit the protection.

Several military manuals specify that carrying light individual weapons does not revoke their protected status. The “individual weapons” such as pistols, submachine guns, and rifles are based on Germany’s Military Manual. At the Diplomatic Conference leading to the adoption of the Additional Protocols, the United States agreed that carrying of arms by medical personnel should not be considered an act harmful to the enemy. However, in occupied territories or in areas in which fighting was taking place, the right of the party in control of the area to disarm such personnel should be reserved [17].

### **3.4 Obstruction of Implementation of Protection Against Medical Personnel in IAC**

The practice of violations of the protection of medical personnel and the neglect of international humanitarian Law continue to occur. The sources of Law that are the rules in international humanitarian Law seem to be hindered in terms of implementing protective measures against medical personnel. Considering that in war, international humanitarian



Law is enacted, which is a branch of international humanitarian Law, there are several challenges, including (i) existing international treaties regulate almost exclude especially prevalent; (ii) even though armed groups are bound by IHL, they cannot negotiate treaties or become parties to relevant agreements, and they cannot contribute to the formation of customary international Law; and (iii) armed groups' views on humanitarian norms are generally dismissed, thus they may have limited incentives to respect them [18].

Obstacles in the implementation of protection for medical personnel are still often encountered. Understanding and knowledge of international humanitarian Law is an essential key to minimizing the number of victims due to armed conflict. Here are some factors that make it challenging to apply international humanitarian Law in war:

1. Those in the armed conflict argue that international humanitarian Law impedes their duties in combat [19].
2. International humanitarian Law should be implemented in difficult war conditions, i.e., the stability of national security is threatened.
3. International humanitarian Law is complex that legal experts compile in terms that are difficult to understand
4. Various provisions of the international humanitarian Law are operational; for example, provisions regarding violations of international humanitarian Law cannot be applied directly to impose penalties on the perpetrators of these violations [14].

On the other hand, the application of international humanitarian Law during war conditions also has obstacles, including a very lack of awareness about the implementation actions that must be taken at the national level. In addition, the level of expertise of legal experts is still limited in understanding the application of international humanitarian Law. Furthermore, the implementation of international humanitarian Law involves various elements of government and the most significant difficulty is the conflict of sharing interests. So it can be concluded that the lack of knowledge and understanding of international humanitarian Law in terms of its application during armed conflict conditions results in the difficulty of implementing the international humanitarian Law itself, which impacts protecting medical personnel.

## 4 Conclusion

As stated in Art, protecting medical personnel is an obligation in international humanitarian law. 24–36 1949 Geneva Convention I; Art. 36 1949 Geneva Convention II; Art. 15 1977 Additional Protocol I; Art. 9 1977 Additional Protocol II; Rule 25 ICRC Customary IHL; Resolution 2286 on Protection of The Wounded and Sick, Medical Personnel and Humanitarian Personnel in Armed Conflict. Regarding the protection of medical personnel, the distinction principle applies in international humanitarian law. Based on that case, the safety of medical personnel is an obligation that the parties must obey in the war, considering the legal basis and principles that cover the protection of medical personnel and the sanctions that will be imposed on those who violate international humanitarian law on the protection of medical personnel.

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