

Medical personnel in war zones are protected under international law

By **Dr Mohammad Naqib Eishan Jan**

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Medical personnel work at center of the local health company of Naples that was opened for Ukrainian refugees, among whom some positive Covid-19 cases were detected, at the Mostra d'Oltremare, Naples, Italy. - EPA Pic

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The World Health Organization (WHO) has confirmed "several" attacks on "health care" since the start of the war in Ukraine, but Ukraine is not the only war zone where "medical personnel" have been attacked in violation of international humanitarian law (IHL).

In the Occupied Palestinian Territories, Afghanistan, Yemen, Syria and Iraq, 'medical personnel' and 'units' have also been attacked.

Warring parties in armed conflict, whether international or non-international, should not attack medical 'personnel' and 'units', whether military or civilian, thereby demonstrating their respect for and commitment to international law and ensuring observance to both the letter and spirit of the law.

All persons who provide direct care to the wounded and sick such as doctors, surgeons, dentists, chemists and nurses, as well as administrative staff that directly care for the wounded, such as hospital cooks, cleaners, drivers and other technical staff in the medical units and transports, are collectively known as 'medical personnel'.

According to IHL, medical personnel whose function it is to "search, collect, transfer, diagnose or treat the injured [and] the sick and prevent disease" must always be respected and protected in all circumstances, "unless they commit, outside of their humanitarian function, acts that are harmful to the enemy."

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They should be given freedom of movement so that they can collect the sick and injured. Except for medical reasons, they should not be forced to give priority to anyone or group of persons, and also should not be forced to violate medical ethics or violate doctor-patient confidentiality privilege.

Medical personnel, and medical 'units' (i.e. hospitals and other facilities that have been set up for medical purposes) have target immunity under the IHL.

They must not be attacked or shot, or unnecessarily prevented from performing their proper function in providing medical care to the 'wounded and sick' (military or civilian).

In fact, it is in the interest of the warring parties and fighters to ensure that medical personnel are not targeted, because if they are targeted and killed, the fighters may suffer from the lack of available treatment.

Intentionally attacking medical personnel "in the context of an international or non-international armed conflict is a war crime, punishable under [IHL] and international criminal law."

The Statute of the International Criminal Court (ICC) clearly states that "deliberate attack on [medical] personnel using distinctive symbols of the Geneva Convention in conformity with international law" is a war crime.

Such an attack also "constitutes a grave breach of the Geneva Conventions [of 1949] when committed in the context of an international armed conflict", like the one in Ukraine.

For the IHL protection system to work effectively, medical personnel must use internationally recognized insignia such as the Red Cross or Red Crescent for identification. Medical units, fixed or mobile and medical transports must also be clearly marked with the distinctive emblems.

The emblems must not be used for commercial or military purposes, otherwise that would amount to abuse of the emblem.

All medical personnel (both temporary and permanent) are required to provide exclusive medical service to the victims of war and others who need medical attention.

In addition to emblem, medical personnel must be supplied, by the warring parties, with identity cards containing their photos, personal information and their ranks.

Military medical personnel are members of the armed forces. However, they are considered "non-combatants". This means they cannot engage in fighting during the war.

Nevertheless, they are permitted to carry light weapons to defend themselves and to maintain order or to defend the wounded and sick against violent acts.

According to Geneva Convention for the Amelioration of the Condition of the Wounded and sick in Armed Forces in the Field of 1949 and Protocol 1 medical personnel do not

lose their protective status by virtue of being armed for the purpose of their own self-defence or the defence of the wounded and sick.

In the event of capture during an international armed conflict permanent military medical personnel should not be considered prisoners of war and should be released.

However, they can be retained in order to provide medical care, in accordance with their professional ethics, to prisoners of war, preferably those who belong to their armed forces.

As for the temporary military medical personnel, in the event that they are captured by the adversary during an international armed conflict, will be considered as prisoners of war, but must be employed on their medical duties in so far as the need arises.

In short medical personnel enjoy protection so long as they do not indulge in acts harmful to the enemy or so long as they do not participate in the hostility.

In other words, medical personnel and medical units and vehicles lose their protection if they engage in acts outside their humanitarian function that are harmful to the enemy.

Examples of harmful actions for the enemy include using the hospital as a shelter for capable fighters or fugitives, as a storehouse of weapons or ammunition, or as a military observation post or the deliberate deployment of a medical unit in a situation that prevents an attack.

All these actions will be harmful to the enemy and should therefore be avoided, otherwise medical personnel and medical units may lose their protection.

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