

The Flanders Fields Conference of Military Law and the Law of War  
ISMILLW



# Loss of protection of medical personnel in armed conflict

**VAIOS KOUTROULIS**

**Professeur assistant,  
International Law Centre, Law Faculty, Université  
libre de Bruxelles**

# Plan



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III. Which acts entail loss of protection?

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# I. Basic rules and concepts



Basic rule: Medical personnel exclusively assigned to medical duties should be respected and protected in all circumstances.

## *Sources:*

- arts. 24-26 1949 Geneva Convention I (GC I)
- art. 36 1949 GC II
- art. 20 1949 GC IV
- art. 15 1977 Additional Protocol I to the GC (AP I)
- art. 9 1977 Additional Protocol II to the GC (AP II)
- rule 25 ICRC Customary IHL

The same principle applies to medical units and medical transport.

# I. Basic rules and concepts



Exception: Medical personnel lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.

The same exception applies to medical units and medical transport.

*Sources:*

Nothing in international conventions on loss of protection of medical personnel. (analogy from medical units and civil defence)

Only for loss of protection of

(a) medical units and transportation: art. 21 GC I / art. 34 GC II / art. 19 GC IV / arts. 13, 23, 28 AP I / art. 11 AP II

(b) Members of civil defence organisations: arts. 65, 67 AP I

Key concept for loss of protection: act harmful to the enemy (= “hostile acts” used in AP II).

# I. Basic rules and concepts



## Definitions

### Medical personnel – art. 8 (c) AP I

Persons assigned, by a party to the conflict, exclusively to (...) medical purposes (= prevention of disease or search for, collection, transportation, diagnosis, treatment of wounded and sick) or to the administration of medical units or to the operation and administration of medical transports. Such assignments may be either permanent or temporary. The term includes

- (a) medical personnel of a party to the conflict, military or civilian;
- (b) medical personnel assigned to civil defence organizations;
- (c) medical personnel of Red Cross (Crescent) Societies;
- (d) medical personnel of national voluntary aid societies duly recognised and authorised by a party to the conflict;
- (e) medical personnel of neutral or third State made available to a Party to the conflict;
- (f) medical personnel of an impartial international humanitarian organisation.

# I. Basic rules and concepts



## Definitions

### Medical units – art. 8 (e) AP I

Establishments and other units, whether military or civilian, organised for medical purposes, namely the search for, collection, transportation, diagnosis or treatment – including first-aid treatment – of the wounded, sick and shipwrecked, or for the prevention of disease.

They may be fixed or mobile, permanent or temporary.

The term includes

- (a) hospitals and other similar units;
- (b) blood transfusion centres;
- (c) preventive medicine centres and Institutes;
- (d) medical depots and medical and pharmaceutical stores of such units.

# I. Basic rules and concepts



## Definitions

### Medical transport – art. 8 (g) AP I

Any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation (= the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies) and under the control of a competent authority of a Party to the conflict.

“permanent” = assigned exclusively to medical purposes for an indeterminate period

“temporary” = assigned exclusively to medical purposes for limited periods, during the whole of such periods.

## II. Which acts do not entail loss of protection?



No loss of protection if:

### ***A. Acts not harmful to the enemy***

For example:

- equipment with light individual weapons for self-defence and defence of patients and use of such arms in such cases
- armed escort or guard by military personnel, sentinels etc.
- possession of arms and ammunition taken from patients and not yet handed over
- presence of members of the armed forces for medical reasons
- caring for enemy military personnel (wounded, sick, shipwrecked)
- wearing enemy military uniforms and insignia

### ***B. Acts harmful to the enemy but committed within the humanitarian function***

Eg. X-ray interfering with army radio communications



# III. Which acts entail loss of protection?



Meaning of the term “acts harmful to the enemy” and relationship with the notion of “direct participation in hostilities” (DPH).

DPH – ICRC Interpretative Guidance 2009

3 cumulative criteria

- (a) Threshold of harm to the enemy = adversely affect military operations or military capacity of the enemy or inflict death, injury, destruction on protected persons or objects
- (b) Direct causation = direct causal link between the act and the harm
- (c) Belligerent nexus = intent to cause the harm in support of a party to the conflict and against the other.

# III. Which acts entail loss of protection?



Examples of acts harmful to the enemy:

Art. 28 AP I – Medical aircraft

- using medical units to attempt to acquire any military advantage over an adverse party
- using medical units to attempt to render military objectives immune from attack
- using medical units to collect or transmit intelligence data
- using medical units to carry any persons or cargo not related to medical function

Other examples:

- taking direct part in hostilities
- any attempt to deliberately hinder the adversary's military activities in any way whatsoever

Acts harmful to the enemy: notion larger than DPH

# III. Which acts entail loss of protection?



Acts harmful to the enemy: notion larger than DPH

Example - Intelligence gathering

- According to the ICRC, only intelligence gathering with a view to executing a specific hostile act would constitute DPH (direct causation criterion)
- Under art. 28 AP I, any act of collection or transmission of intelligence data is an act harmful to the enemy, whether part of a concrete and coordinated tactical operation that directly causes harm or not.



All acts of DPH are necessarily acts harmful to the enemy

but

All acts harmful to the enemy are not necessarily DPH

# IV. What does loss of protection mean?



Consequences of acts harmful to the enemy

- Two types of acts: those who constitute DPH and those who do not
- Two types of personnel: military and civilian

Acts harmful to the enemy which also constitute DPH =>  
medical personnel (military or civilian) may be attacked.

Acts harmful to the enemy which do not constitute DPH=>

- (a) civilian medical personnel: may be interfered with and have no right to use the emblems but cannot be attacked
- (b) military medical personnel: may be interfered with and have no right to use the emblems; can they be attacked?

# IV. What does loss of protection mean?



	Act harmful to the enemy + DPH	Act harmful to the enemy
Military medical personnel	Can be attacked	Loss of protection (can be interfered with / no right to emblem)  Attacked?
Civilian medical personnel	Can be attacked	Loss of protection (can be interfered with / no right to emblem)  Not attacked

# IV. What does loss of protection mean?



Status of military medical personnel: Art 43(2) AP I

“Members of the armed forces of a party to a conflict (other than medical personnel (...)) are combatants, that is to say, they have the right to participate directly in hostilities.”

What is the status of military medical personnel when they commit an act harmful to the enemy?

Is protection lost permanently or temporarily (i.e. during the commission of the act harmful to the enemy)?