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## ^ CHAPTER BIBLIOGRAPHY

- KLEFFNER Jann K., "Protection of the Wounded, Sick, and Shipwrecked", in FLECK Dieter (ed.), *The Handbook of International Humanitarian Law*, Oxford, Oxford University Press, 3rd ed., 2013, pp. 321-357.
- PERRIN Pierre (ed.), *Handbook on War and Public Health*, Geneva, ICRC, 1996, 446 pp.

## Introductory text

The sight of thousands of wounded soldiers on the battlefield at Solferino moved Henry Dunant to initiate the process that resulted in the Geneva Conventions. Conventions I and II are entirely given over to safeguarding not only the wounded, sick and shipwrecked, but also the support services (personnel and equipment) needed to come to their aid. Once wounded, sick or shipwrecked and provided that they refrain from any act of hostility, even former combatants become "protected persons". [1] They may not be attacked and must be respected and cared for, often by removing them from the combat zone for impartial care. Protocol I extends this protection to wounded, sick and shipwrecked civilians refraining from any acts of hostility. [2]

The necessary care can often only be given, however, if the people who provide it are not attacked and allowed to fulfill their task. On the battlefield this will only work if they constitute a separate category -medical personnel-, never participating in hostilities and caring for all the wounded without discrimination, and if they are identifiable by an emblem.

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- MILIKOWSKY Matthew, “There Are No Enemies After Victory: the Laws Against Killing the Wounded”, in *Georgetown Journal of International Law*, Vol. 47, No. 4, 2016, pp. 1221-1269.

#### Further reading:

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- BOTHE Michael & JANSSEN Karin, “Issues in the Protection of the Wounded and Sick”, in *IRRC* Vol. 26, No. 253, August 1986, pp. 189-199.
- DE CURREA-LUGO Victor, “Protecting the health sector in Colombia: A step to make the conflict less cruel”, in *IRRC*, No. 844, December 2001, pp. 1111-1126.
- GRIGNON Julia & OUIGOU SAVADOGO Raymond, “Les attaques contre les blessés, les malades, les naufragés, le personnel médical et les défis posés par les attaques subséquentes”, in *Actes du 14e Colloque de Bruges, La protection des personnes particulièrement vulnérables: quelques enjeux, 17-18 October 2013*, Collège d'Europe/Comité international de la Croix-Rouge, Brugge, No. 44, 2014, pp. 37-49.

## I. The idea of Solferino

### ▲ SPECIFIC BIBLIOGRAPHY

#### Suggested reading:

- DUNANT Henry, *A Memory of Solferino*, Geneva, ICRC, 1986 (1862), 147 pp., online: <http://www.icrc.org/eng/resources/documents/publication/p0361.htm>.

#### Further reading:

- BUGNION François, *From Solferino to the birth of contemporary international humanitarian law*, Geneva, ICRC 2009, 38 pp.

## II. Respect, protection and care for the wounded, sick and shipwrecked, without any adverse distinction

### Introductory text

Wounded and sick are persons who are, because of trauma, disease or other physical or mental disorder or disability, in need of medical assistance. [3] This covers equally new-born babies, maternity cases and other persons in immediate need of medical assistance. Shipwrecked are persons who are in peril in waters as a result of misfortune affecting them or their vessel. [4] The IHL definition is however more restrictive than

common parlance, because persons who continue despite their condition to commit acts of hostility are excluded from the definition and specific protection.

The wounded, sick and shipwrecked must, first, be **respected**, i.e. may neither be attacked when not in the power of a party, nor killed or ill-treated by a party in whose power they are. [5] This implies in our view equally that they must be taken into account in the proportionality evaluation of the anticipated adverse effects of an attack in the conduct of hostilities and it is uncontroversial that precautionary measures have to be taken for that purpose.

Second, a party must also **protect** them, i.e. exercise due diligence in preventing the wounded and sick from being harmed by others (pillage and ill-treatment are specifically mentioned [6]) or natural causes. This is specified by an obligation to take all feasible measures to search for them and to collect them [7], which also ensures that they will be cared for. This must be done on land at all times, and particularly after each engagement, at sea only after each engagement. [8] To facilitate such search and evacuation, cease-fires and agreements to remove them from besieged areas are encouraged. [9]

Third, they must be treated humanely and **cared** for (to the fullest extent practicable and with the least possible delay) by the party in whose power they are, without any adverse distinction. [10] Only medical reasons and not nationality authorize priority in treatment.

To avoid that wounded, sick or shipwrecked are considered as missing certain information about them must be recorded and transmitted to their power of origin through the (Central Tracing Agency of) the ICRC and, when it exists, the Protecting Power. [11]

## ▲ SPECIFIC BIBLIOGRAPHY

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### Further reading:

- JUNOD Sylvie S., *Protection of the Victims of Armed Conflict Falkland-Malvinas Islands (1982): International Humanitarian Law and Humanitarian Action*, Geneva, ICRC, 1985, 45 pp.

## 1. Beneficiaries

Provided that they refrain from any act of hostilities.

## ^ CASES AND DOCUMENTS

- German Invasion of Crete
- British Policy Towards German Shipwrecked
- Israel, Navy Sinks Dinghy off Lebanon

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BELLAL Annyssa, “Who Is Wounded and Sick?”, in CLAPHAM Andrew, GAETA Paola Gaeta & SASSÒLI Marco (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford, Oxford University Press, 2015, pp.757-766.
- MCCOUBREY Hilaire, “The Wounded and Sick”, in ROWE Peter (ed), *The Gulf War 1990–91 in International and English Law*, New York, Routledge, 1993, pp. 171-189.

- a. under Conventions I and II: military personnel  
GC I-II, Art 13

## ^ SPECIFIC BIBLIOGRAPHY

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## ^ CASES AND DOCUMENTS

- Netherlands, In re Pilz

- a. under Protocol I: extension to civilians  
P I, Art. 8(a) and (b)

## ^ SPECIFIC BIBLIOGRAPHY

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## 2. Respect

### ^ CASES AND DOCUMENTS

- German Invasion of Crete
- British Policy Towards German Shipwrecked
- British Military Court at Hamburg, The Peleus Trial
- ICRC/Lebanon, Sabra and Chatila
- Israel, Navy Sinks Dinghy off Lebanon
- ICRC, Iran/Iraq, Memoranda
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
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- UN, Report of the Secretary-General for the World Humanitarian Summit
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### ^ SPECIFIC BIBLIOGRAPHY

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- SIMPSON Stephen W., “Shoot First, Ask Questions Later: Double-Tapping Under the Laws of War” in *West Virginia Law Review*, Vol. 108, No. 3, 2006, pp. 751–775.

## 3. Protection

### ^ CASES AND DOCUMENTS

- Gaza: Health situation in the Gaza Strip
- Yemen, Obstructing Medical Care
- Afghanistan, Attack on Kunduz Trauma Centre
- Thailand, Attack on Hospital

- UN, Security Council Resolution 2286 on Attacks on Hospitals

#### 4. Care

##### ^ CASES AND DOCUMENTS

- Netherlands, In re Pilz
- ICRC Report on Yemen, 1967
- ICRC, Iran/Iraq, Memoranda
- Gaza: Health situation in the Gaza Strip
- Yemen, Obstructing Medical Care
- Syrian Statement at the UN on the Medical Treatment of Enemy Fighters
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- United States of America, The Death of Osama bin Laden
- Sri Lanka, Naval War against Tamil Tigers

- equal treatment  
GC I-II, Art. 12 [CIHL, Rule 110]

##### ^ CASES AND DOCUMENTS

- Iraq, Care for Wounded Enemies
- Afghanistan, Separate Hospital Treatment for Men and Women
- South Sudan: Medical Care Under Fire
- Afghanistan, Attack on Kunduz Trauma Centre

- evacuation  
GC I-II, Art. 15 [CIHL, Rule 109]

##### ^ CASES AND DOCUMENTS

- Israel, The Rafah Case [Paras 40-44]
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 3]
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- Democratic Republic of Congo, Fighting with the M 23 Group

### III. Medical and religious personnel

#### Introductory text

Conventions I and II, which aim to protect and ensure care for the wounded, sick and shipwrecked, also extend protection to medical personnel, administrative support staff and religious personnel. [12] They are not to be attacked on the battlefield and must be allowed to perform their medical or religious duties. [13] This presupposes a certain stability of the status of such personnel, but IHL foresees the existence of both permanent and temporary medical personnel. [14] In both cases, they must be designated as such by a party. Temporary personnel is only protected while carrying out its duties.

If they fall into the hands of the adverse party, permanent medical and religious personnel are not to be considered prisoners of war and may only be retained if they are needed to care for prisoners of war. [15] Conventions I and IV provide protection for civilians caring for sick and wounded combatants and civilians. [16] This includes the right for inhabitants of the conflict zone to collect and care for wounded and sick. [17] The civilian population has even an explicit obligation to respect the wounded and sick. [18] Protocol I further expanded the category of persons (permanent or temporary personnel, military or civilian) protected by virtue of their medical or religious functions and abandoned the distinction between military and civilian personnel. [19] Aid societies are granted the same protection if they meet the requirements laid out in the Conventions. [20] This includes staff of National Red Cross and Red Crescent Societies only if they fulfil the traditional role as part of the military medical services of a party, which is very rarely practiced. Military religious personnel benefit under the same conditions than military medical personnel from the same protections and status than medical personnel.

IHL contains no explicit rule on when medical personnel lose their special protection. There are, however detailed rules on when fixed medical establishments and mobile medical units lose their special protection. [21] It is accepted to apply those rules by analogy to medical personnel. Special protection is lost when they commit, outside their humanitarian duties, **acts harmful to the enemy**, but only after due warning and after a time limit given to stop such acts has remained unheeded. [22] IHL lists certain circumstances which do not lead to a loss of protection. The most important circumstance is that the personnel is armed (Protocol I specifies: with light individual weapons) and that the personnel uses such weapons in their own defence or in that of the wounded and sick. [23] Such self-defence or defence of others may obviously only be directed against unlawful attacks.

What counts as such acts harmful to the enemy is subject to controversy. Some consider that the term is larger than that of direct participation in hostilities, which is correct for medical units and transports, for whom the concept is used in the treaties. One may however argue that persons only lose their special protection if they directly participate in hostilities. Civilian medical personnel who do so lose their protection as civilians only if and for such time as they directly participate in hostilities. For military medical personnel, the consequences and duration of such loss of protection are again controversial. Some argue that as members of the armed forces they turn into combatants who turn into POWs if captured. Others consider that they regain protection as medical personnel as soon as they no longer commit acts harmful to the enemy, which would mean that they have to be repatriated if they fall into the power of the enemy.

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## 1. Definition

- a. military (permanent or temporary) medical personnel  
GC I, Arts 24-25; GC II, Arts 36-37
- a. civilian medical personnel assigned by a party to the conflict  
GC IV, Art. 20; P I, Art. 8

### Suggested reading:

- SASSÒLI Marco, “The Advances of the Additional Protocols Related to the Protection of Wounded, Sick and Shipwrecked Civilians as well as Civilian Medical and Religious Personnel, Units and Transports”, in *18<sup>th</sup> Bruges Colloquium, Proceedings, The Additional Protocols at 40: Achievements and Challenges, 19-20 October 2017*, College of Europe/ICRC, Brugge, No. 48, 2018, pp. 17-25.

a. religious personnel attached to the armed forces or medical units

P I, Art. 8

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- O’BRIEN R., *A Manual of International Humanitarian Law for Religious Personnel*, Adelaide, Australian Red Cross, 1993, 31 pp.

### Further reading:

- HIEBEL Jean-Luc, “Human Rights Relating to Spiritual Assistance as Embodied in the Geneva Conventions of 1949”, in *IRRC*, No. 214, January 1980, pp. 3-28.

a. medical personnel made available by third States or organizations to a party to the conflict

P I, Art. 8

a. personnel of a National Society recognized and specifically authorized by a party to the conflict

GC I, Art. 26; GC II, Art. 24; P I, Art. 8

## ▲ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

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- ICRC, *Safer Access, A Guide for All National Societies*, Geneva, ICRC, 2013, 86 pp.

## 2. Protection

## ▲ SPECIFIC BIBLIOGRAPHY

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- GISEL Laurent, “Can the incidental killing of military doctors never be excessive?”, in *IRRC*, Vol. 95, No. 889, March 2013, pp. 215–230.

a. on the battlefield (including inhabitants of the combat zone)

- may not be attacked

GC I, Arts 24-25; GC II, Arts 36-37; P I, Arts 15-16 [CIHL, Rules 25 and 30]

## ^ CASES AND DOCUMENTS

- ◦ ICRC Report on Yemen, 1967
- Lebanon, Helicopter Attack on Ambulances
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 43-47]
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- Health Care in Pakistan’s Tribal Areas
- Democratic Republic of Congo, Fighting with the M 23 Group
- The armed conflict in Syria
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Afghanistan, Attack on Kunduz Trauma Centre
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 154-160, 165]
- UN, Security Council Resolution 2286 on Attacks on Hospitals
- Italy, Use of force against ambulances in Iraq
- Syria, the Battle for Aleppo

- may perform medical duties in conformity with medical ethics

## ^ CASES AND DOCUMENTS

- United Kingdom, Misuse of the Emblem
- Health Care in Pakistan’s Tribal Areas
- Afghanistan, Attack on Kunduz Trauma Centre

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- BOUCHET-SAULNIER Françoise & WHITALL Jonathan, “An environment conducive to mistakes?”

Lessons learnt from the attack on the Médecins Sans Frontières hospital in Kunduz, Afghanistan”, in *IRRC*, Vol. 100, No. 907-909, 2019, pp. 337-372.

a. once in enemy hands

GC I, Arts 28-32

- immediate repatriation, or
- employment caring for prisoners of war

## ^ CASES AND DOCUMENTS

- United States, *Mukhtar Yahia Maji Al Warafi v. Obama*

c. under control of the enemy

P I, Arts 15-16 [CIHL, Rule 26]

- right to perform their medical mission

## ^ CASES AND DOCUMENTS

- ICRC Appeals on the Near East [Part C., para. 9]

- right not to perform acts contrary to medical ethics
- right to confidentiality in patient relationships (medical privilege), except as required by the law of their party

## ^ CASES AND DOCUMENTS

- United Kingdom, *Misuse of the Emblem*
- Health Care in Pakistan’s Tribal Areas

## ^ SPECIFIC BIBLIOGRAPHY

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### 3. Duties of medical personnel

#### ^ SPECIFIC BIBLIOGRAPHY

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- TORRELLI Maurice, *Le médecin et les droits de l’homme*, Paris, Berger-Levrault, 1983, 466 pp.

##### Further reading:

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- SCHOENHOLZER Jean-Pierre, “The Doctor in the Geneva Conventions of 1949”, in *IRRC Supplement*, Vol. VI, No. 11, 1953, pp. 191-213.

#### a. no direct participation in hostilities

- they may be armed, but only with light weapons
- and may only use them for their own defence or for that of the wounded and sick under their care

#### ^ CASES AND DOCUMENTS

- British Military Court at Hamburg, The Peleus Trial
- Health Care in Pakistan’s Tribal Areas
- United States, Mukhtar Yahia Maji Al Warafi v. Obama
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 161-165]

#### ^ SPECIFIC BIBLIOGRAPHY

##### Suggested reading:

- HAECK Tom, “Loss of Protection” in CLAPHAM Andrew, GAETA Paola & SASSÒLI Marco (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford, Oxford University Press, 2015, pp. 839-854.
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a. respect for medical ethics

## ^ CASES AND DOCUMENTS

- Iraq, Medical Ethics in Detention
- Iraq, Care for Wounded Enemies
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health

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a. give care without discrimination

## ^ CASES AND DOCUMENTS

- Iraq, Medical Ethics in Detention
- Iraq, Care for Wounded Enemies
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Afghanistan, Attack on Kunduz Trauma Centre

a. respect principle of neutrality

## ^ SPECIFIC BIBLIOGRAPHY

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- TOEBES Brigit, "Healthcare on the Battlefield: in Search of a Legal and Ethical Framework", in *Journal of International Humanitarian Legal Studies*, Vol. 4, No. 2, 2013, pp. 197-219.

a. identification  
GC I, Annex II

## ^ CASES AND DOCUMENTS

- United States, Mukhtar Yahia Maji Al Warafi v. Obama

## IV. Protection of medical transport, units and material

(including hospitals and ambulances)

### Introductory text

International Humanitarian Law (IHL) establishes comprehensive and detailed protection for medical units, [24] medical transports [25] and medical material [26] be they military or civilian. [27] These units and transport must be respected and protected at all times by the belligerents [28] and are not to be the object of attack. Under no circumstances are protected installations to be used in an attempt to shield military objectives from attack. [29]

The protection to which medical installations are entitled does not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. [30] In such instances their protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

IHL treaties lists some situations which do not lead to a loss of protection: that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge; that the unit is guarded by a picket or by sentries or by an escort (which may also carry only light individual weapons and use them only in self-defence and defence of others), that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units; or that members of the armed forces or other combatants are in the unit for medical reasons. [31]

## ^ CASES AND DOCUMENTS

- United States, Use of medical helicopter to target protesters
- Sri Lanka, Jaffna Hospital Zone
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 5]
- Yemen, Obstructing Medical Care
- Syria, the Battle for Aleppo

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## 1. Protection

GC I, Arts 19 and 35 [CIHL, Rules 28, 29 and 30]

## ^ CASES AND DOCUMENTS

- Cameroon, Law on the Protection of the Emblem and the Name “Red Cross” [Arts 7-9]
- Lebanon, Helicopter Attack on Ambulances
- Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law [Part A., Annex, paras 41 and 44]
- Sri Lanka, Conflict in the Vanni [Paras 17-22]
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- Thailand, Attack on Hospital
- UN, Security Council Resolution 2286 on Attacks on Hospitals
- Yemen, Potential Existence and Effects of Naval Blockade
- Italy, Use of force against ambulances in Iraq

### 2. Loss of protection

GC I, Arts 21 and 22

## ^ CASES AND DOCUMENTS

Yemen, Obstructing Medical Care

The armed conflict in Syria

Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health

ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [para. 163]

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## V. Possible constitution of hospital, safety and neutralized zones

GC I, Art. 23; GC IV, Arts 14-15 [CIHL, Rules 28 and 29]

(See also *infra*, Conduct of Hostilities, II. The protection of the civilian population against the effects of hostilities, 13. Zones created to protect war victims against the effects of hostilities)

### ^ CASES AND DOCUMENTS

- Sri Lanka, Jaffna Hospital Zone
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 5]
- Yemen, Obstructing Medical Care

### ^ SPECIFIC BIBLIOGRAPHY

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- SANDOZ Yves, “Localités et zones sous protection spéciale”, in *Quatre études du droit international humanitaire*, Geneva, Henry-Dunant Institute, 1985, pp. 35-47.

## VI. The emblem of the Red Cross/Red Crescent/Red Crystal

### Introductory text

The Conventions and Additional Protocols authorize the use of four emblems – the red cross, the red crescent, the red crystal and the red lion and sun – on a white background. [32] However, today only the first three authorized emblems are utilized. For a number of years the International Red Cross and Red Crescent Movement has encountered problems arising from the use of a host of other emblems. This threatens the emblem’s essential universality, neutrality and impartiality, and ultimately undermines the protection it provides. Hopefully, these problems have been solved with the entry into force of Protocol III enabling States to adopt the red crystal.

The emblem serves both protective and indicative functions. It is used mainly as a protective device in times of conflict to distinguish and identify from certain persons and objects protected by the Conventions and the Additional Protocols (medical personnel, medical units and medical means of transport [33]). This also covers

military medical personnel, units and transport. To be effective in such circumstances the emblem must be visible and therefore large. [34] It may only be displayed for medical purposes, and such use must be authorized by and under the control of the State.

The emblem is used as an indicative device mainly in peacetime, as such use does not signify protection but rather identifies persons, equipment and activities (in conformity with Red Cross principles) affiliated with the Red Cross or the Red Crescent. [35]

Utilization for indicative purposes must comply with national legislation, and if used for such indicative purposes in times of armed conflict, the emblem must be small in size. In contrast to the above-mentioned limitations, the ICRC and the International Federation of Red Cross and Red Crescent Societies may use the emblem, including of all dimensions at all times and for all their activities.

In order to avoid undermining the protection the emblem provides, abuse and misuse of the emblem, which in certain situations constitutes a war crime, [36] must be prevented; thus, the emblem may be neither imitated nor used for private or commercial purposes. [37] States Parties have an obligation to implement national legislation, consistent with the Conventions and Additional Protocols, regarding not only appropriate authorization of the emblem's use but also punishment of abuse and misuse of the emblem. [38]

## ^ CASES AND DOCUMENTS

- ICRC, Model Law Concerning the Emblem
- Cameroon, Law on the Protection of the Emblem and the Name "Red Cross"
- Colombia, Misuse of the Emblem
- Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003

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- ICRC, *Emblems of Humanity*, Geneva, ICRC, 2016, 7 pp.

### 1. Three distinctive signs

GC I, Art. 38

## ^ CASES AND DOCUMENTS

- The Third Protocol Additional to the Geneva Conventions
- ICRC, The Question of the Emblem
- Iran, Renouncing Use of the Red Lion and Sun Emblem
- Saudi Arabia, Use of the Red Cross Emblem by United States Forces
- Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003

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## 2. Technical means of identification

P I, Annex I

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- EBERLIN Philippe, “La modernisation de la signalisation protectrice et les communications des unités et moyens de transport sanitaires”, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva/The Hague, ICRC/M. Nijhoff, 1984, pp. 47-75.

#### Further reading:

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### 3. Protective use

GC I, Arts 39-43 and 53-54 [CIHL, Rule 30]

#### ^ CASES AND DOCUMENTS

- ICRC, Model Law Concerning the Emblem [Arts 3-5, 8, and 9]
- Cameroon, Law on the Protection of the Emblem and the Name “Red Cross” [Arts 7-9]
- Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003
- Syria, the Battle for Aleppo

a. to distinguish medical personnel and units

#### ^ CASES AND DOCUMENTS

- ICRC, The Question of the Emblem
- Iran, Renouncing Use of the Red Lion and Sun Emblem
- Lebanon, Helicopter Attack on Ambulances
- Saudi Arabia, Use of the Red Cross Emblem by United States Forces
- Sri Lanka, Jaffna Hospital Zone
- United Kingdom, Misuse of the Emblem
- Afghanistan, Attack on Kunduz Trauma Centre
- Italy, Use of force against ambulances in Iraq

a. to be displayed with the permission and under the control of the competent authority

b. may be used at all times by the ICRC and the International Federation

#### ^ CASES AND DOCUMENTS

- ICRC, Model Law Concerning the Emblem [Art. 7]
- United Kingdom, Misuse of the Emblem
- Colombia, Misuse of the Emblem
- Afghanistan, Operation “Enduring Freedom” [Part B.]

### 4. Indicative use

GC I, Art. 44

## ^ CASES AND DOCUMENTS

- ICRC, Model Law Concerning the Emblem [Art. 6]
- Cameroon, Law on the Protection of the Emblem and the Name “Red Cross” [Arts 4-6]
- United Kingdom, Labour Party Campaign - Misuse of the Emblem
- United States Military Court in Germany, Trial of Skorzeny and Others
- Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003

### 5. Repression of abuse and misuse

GC I, Arts 53-54

## ^ CASES AND DOCUMENTS

- United States, Use of medical helicopter to target protesters
- ICRC, Model Law Concerning the Emblem [Arts 10-12]
- United Kingdom, Labour Party Campaign - Misuse of the Emblem
- United Kingdom, Misuse of the Emblem
- Colombia, Misuse of the Emblem
- Burkina Faso, Law on the Use and Protection of the Red Cross and Red Crescent Emblems in Burkina Faso, 2003

## ^ SPECIFIC BIBLIOGRAPHY

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## VII. Provisions on the dead and missing

### Introductory text

It is not primarily to protect the dead and the missing themselves that IHL contains specific rules concerning them. Their main concern is “the right of families to know the fate of their relatives”. [39] If the missing person is alive, the first concern is obviously to find him or her and that he or she is treated in conformity with IHL. If the missing person is dead, the main concern is to inform the family about the death and the place of burial. However, the respect of human dignity which applies beyond the death of a person to his or her remains as well as the respect of the feelings of the family and the community towards the dead are also humanitarian concerns.

Persons are considered missing if their relatives or the power on which they depend have no information on their fate. Each party has an obligation to search for persons who have been reported as missing by the adverse party. [40]

In reality, missing persons are either dead or alive. If they are alive, they are missing either because they have been detained by the enemy or separated from their families by front-lines or borders. In that case, they benefit from the protection IHL offers to the category to which they belong (civilian, prisoner of war, wounded and sick, etc.). In any case, IHL contains rules designed to ensure that they do not remain missing – except if they wish to sever their links with their family or country. [41]

If the person is missing because, as is regularly the case in armed conflicts, postal services have been interrupted or groups of people displaced, family links should soon be re-established, inter alia through the ICRC Central Tracing Agency, as long as the parties respect their obligation to promote the exchange of family news and reunification of families. [42] If a person is missing because he or she has been detained or hospitalized by the enemy, the family’s uncertainty should not last for long, as IHL prescribes that information on their hospitalization or detention be forwarded rapidly to their family and the authorities through three channels: notification of hospitalization, capture or arrest, [43] transmission of capture or internment cards, [44] and the right to correspond with the family. [45] A lawfully detained person can therefore not be missing for long. The personal details of every person deprived of their liberty must be recorded [46] and the detaining authorities are under an obligation to answer inquiries about protected persons. [47] Secret detention, i.e. forced disappearances, are absolutely prohibited by IHL. [48]

If the missing person is dead, it is as important but more difficult to inform the family. There is no obligation for each party to identify every dead body found, as this would be an impossible task. However, whenever circumstances permit, and particularly after an engagement, each party to an armed conflict must, without delay, take all possible measures to search for, collect and evacuate the dead. [49] Each party must also attempt to collect and record information that may assist in the identification of the deceased [50], including by agreeing to establish search teams. [51] The collection of such information is facilitated if individuals wear identity cards or tags as prescribed for combatants. [52] Identifying the dead often requires comparing

forensic data obtained from a dead body (e.g., dental forensics) with data about a person reported missing previously collected when he or she was living or which is still available through the family. [53] This process necessitates cooperation between two belligerents (or, after the conflict, between the former belligerents): the party with control over the remains of the deceased individual and the party with the information necessary to identify those remains thanks to, *inter alia*, data provided by the deceased's family.

If such identification is successful, the family has to be notified. In any case, the remains must be respected [54] and given decent burial, and the gravesites marked. [55] Each party to the conflict must take all possible measures to prevent the dead from being despoiled and the mutilation of dead bodies is prohibited. [56] Burial at sea is possible for persons dying in sea warfare [57], but it inevitably deprives the families of the possibility to receive the remains and to visit the grave site.

Understandably, relatives will wish to have access to the graves and often even to have the remains of their loved ones returned to them. This requires an agreement between the parties concerned, which can generally only be reached once the conflict has ended. [58]

A problem not solved by IHL, but which must be tackled by domestic law, is that families need pragmatic solutions to legal problems they face while a person remains missing. Such solutions, the abovementioned measures to prevent disappearances as well as steps to be taken to elucidate the fate of missing persons, and assisting the families of missing persons in other respects necessitate domestic legislation, parts of which should already be adopted in peacetime. The ICRC and the Inter-Parliamentary Union have published a guide for Parliamentarians, comprising a model law, to facilitate the adoption of such comprehensive legislation. [59]

[See "The Missing: Documentation of Reference Database" available on [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0857.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0857.pdf)]

## ^ CASES AND DOCUMENTS

- ICRC, Tracing Service [5]
- United States, Former Prisoner of War on a Mission to Hanoi
- Israel, Cheikh Obeid et al. v. Ministry of Security
- ECHR, Cyprus v. Turkey [Paras 129-157]
- Eritrea/Ethiopia, Partial Award on POWs [Part B., paras 159-160]
- ICRC, Request to Visit Gravesites in the Falklands/Malvinas
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 22]
- Bosnia and Herzegovina, Release of Prisoners of War and Tracing Missing Persons After the End of Hostilities
- The Conflict in Western Sahara
- Treatment of the Dead in Afghanistan

- United States of America, The Death of Osama bin Laden
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## ▾ SPECIFIC BIBLIOGRAPHY

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### Further reading:

- ICRC, *Living with absence: Helping the families of the missing*, Geneva, ICRC, August 2014, 28 pp.
- ICRC, *Accompanying families of missing persons in relation to armed conflict or other situations of violence*, Geneva, IRRC, March 2013, 182 pp.

## 1. Relationship between the dead and the missing

### ▾ CASES AND DOCUMENTS

- UN Compensation Commission, Recommendations

## 2. Obligation to identify dead bodies and notify deaths

GC I, Art. 16; P I, Art. 33(2) [CIHL, Rules 112 and 116]

### ▾ CASES AND DOCUMENTS

- Israel, Evacuation of Bodies in Jenin
- ICRC/Lebanon, Sabra and Chatila
- Treatment of the Dead in Afghanistan

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

- ICRC, *Forensic science and humanitarian action*, Geneva, ICRC, December 2013, 6 pp.
- ICRC, *Missing people, DNA analysis and identification of human remains: a guide to best practice in armed conflicts and other situations of armed violence*, Geneva, ICRC, 2009, 48 p.
- NAQVI Yasmin, “The Right to the Truth in International Law: Fact or Fiction?” in *IRRC*, Vol. 88, No. 862, 2006, pp. 245–73.

### 3. Obligation to search for persons reported missing

P I, Art. 33(1) [CIHL, Rule 117]

## ^ CASES AND DOCUMENTS

- ECHR, *Cyprus v. Turkey* [Paras 129-150]
- Inter-American Court of Human Rights, *Bámaca-Velasquez v. Guatemala*
- *The Conflict in Western Sahara* [Parts A. and B.]
- *Cameroon, Dead and Missing Persons*

## ^ SPECIFIC BIBLIOGRAPHY

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### 4. Treatment of remains

## ^ CASES AND DOCUMENTS

- *Iraq, Care for Wounded Enemies*
- *Treatment of the Dead in Afghanistan*
- *United States of America, The Death of Osama bin Laden*

## ^ SPECIFIC BIBLIOGRAPHY

### Suggested reading:

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### Further reading:

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- ICRC & al., *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, 2nd ed, Pan-American Health Organization, 2016.
- RABE SMOLENSKY Kirsten, “Rights of the dead”, *Hofstra Law Review*, Vol. 37, No. 3, 2009, pp. 763–803

#### a. respect

GC I, Art. 15; P I, Art. 34(1) [CIHL, Rule 113]

## ^ CASES AND DOCUMENTS

- German Invasion of Crete
- Israel, Evacuation of Bodies in Jenin
- Treatment of the Dead in Afghanistan
- Sweden/Syria, Can Armed Groups Issue Judgments?

#### a. decent burial

GC I, Art. 17; P I, Art. 34(1) [CIHL, Rule 115]

## ^ CASES AND DOCUMENTS

- Israel, Evacuation of Bodies in Jenin
- Israel, The Rafah Case (Paras 46-53)

- Treatment of the Dead in Afghanistan

- a. marking of gravesites
- b. access to gravesites
- c. agreements on the return of remains  
P I, Art. 34(2) and (4)

## ^ CASES AND DOCUMENTS

- Israel, Evacuation of Bodies in Jenin

## VIII. Transmission of information

### ^ CASES AND DOCUMENTS

- ICRC, Tracing Service [5]

#### 1. Recording of information

GC I, Art. 16; GC II, Art. 19

#### 2. Notification (to the power of origin through the Central Tracing Agency)

GC I, Art. 16; GC II, Art. 19

#### 3. Transmission of death certificate and belongings (to the next-of-kin through the Central Tracing Agency)

GC I, Art. 16; GC II, Art. 19 [CIHL, Rule 114]

#### Footnotes

- [1] See Protected persons are defined in GC I-II, Art. 13
- [2] See P I, Art. 8(a) and (b); GC IV, Art. 16
- [3] See PI Art. 8(a)
- [4] See Ibid. Art. 8(b)
- [5] See GCs I and II, Arts 12. See also the detailed list of prohibited acts and precautionary measures to be taken in PI, Art. 11
- [6] See GCI, Art. 15(1); CIHL Rule 111
- [7] See GCI, Art. 15(1); CIHL, Rule 109
- [8] See GCII, Art. 18(1)
- [9] See GCI, Art. 15(2) and (3) and GCII Art. 18(2)
- [10] See GCs I and II, Arts 12(2) and (3); PI, Art. 10(2); GCs, common Art. 3(2); PII, Art. 7(2); CIHL

## Rule 110

- [11] See GCI, Art. 16; GCII, Art. 19
- [12] See GC I, Arts 24 and 25
- [13] See GC I, Arts 24-27; GC II, Arts 36 and 37; P I, Arts 15-20; P II, Art. 9; CIHL, Rule 25
- [14] See GCI, Arts 24 and 25
- [15] See GC I, Arts 28 and 30; GC II, Art. 37; GC III, Art. 33
- [16] See GC I, Art. 18; GC IV, 20(1)
- [17] See GCI, Art. 18
- [18] See GCI, Art. 18(2)
- [19] See PI, Art. 8(c) and (d)
- [20] See GC I, Arts 26 and 27; GC II, Arts 25 and 36; P I, Art. 9(2)
- [21] See GCI, Arts 21 and 22; PI, Art.13
- [22] See GCI, Art. 21; GCII, Art. 34; PI, Art. 13(1); CIHL, Rule 25
- [23] See GCI, Art. 22; GCII, Art. 35; PI, Art. 13
- [24] See GC I, Arts 19-23; GC IV, Art. 18; P I, Arts 8(e) and 12-14. According to P I, Art. 8(e):  
““Medical units” means 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. The term includes, for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary.”
- [25] See GC I, Arts 35-37; GC II, Arts 38-40; GC IV, Arts 21-22; P I, Arts 8(g) and 21-31 According to P I, Art. 8(g): ““Medical transports” means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict.”
- [26] See GC I, Arts 33-34
- [27] See CIHL, Rules 28-30
- [28] See GC I, Arts 19, 33, and 35; GC II, Arts 22-27; P I, Art. 12(1)
- [29] See GC I, Arts 19 and 35; P I, Art. 12; P II, Art. 11
- [30] See GC I, Art. 21; GC II, Art. 34; P I, Art. 13(1); CIHL, Rules 28 and 29.
- [31] See GC I, Art 22; GC II, Art 35; P I, Art 13
- [32] See GC I, Art. 38; GC II, Art. 41; P I, Art. 8(1); P II, Art. 12; and, for the red crystal, P III
- [33] See GCI, Arts 39-43; GCII, Arts 41-43; PI Art. 18; PII, Art. 12. For transport by land see GC I, Art. 35; by sea see GC II, Art. 22, 24, 26, 27 and 43; and by air see GC I, Art. 36 and GC II, Art. 39
- [34] For technical means of identification see P I, Annex I, Arts 4-5
- [35] See GC I, Art. 44(2)-(4)
- [36] See P I, Arts 37(1) and 85(3)(f)
- [37] See HR, Art. 23(f); GC I, Art. 53; GC II, Art. 45; P I, Arts 38 and 85(3)(f); P II, Art. 12
- [38] See GC I, Art. 54; GC II, Art. 45
- [39] See P I, Art. 32
- [40] See P I, Art. 33(1)

- [41] The problems raised by such a wish are not covered by IHL – except that it has to avoid notifications which may be detrimental to the persons concerned. See GC IV, Art. 137(2)
- [42] See GC IV, Arts 25 and 26
- [43] See GC I, Art. 16; GC II, Art. 19; GC III, Arts 122 and 123; GC IV, Arts 136 and 140; P I, Art. 33(2)
- [44] See GC III, Art. 70; GC IV, Art. 106
- [45] See GC III, Art. 71; GC IV, Art. 107. See also for both IACs and NIACs CIHL Rule 125
- [46] See CIHL Rule 123
- [47] See GC III, Art. 122(7); GC IV, Art. 137(1)
- [48] See CIHL Rule 98
- [49] See CIHL Rule 112. See also GC I, Art. 15 and GC II, Art. 18
- [50] See GC I, Art. 16; P I, Art. 33(2)
- [51] See P I, Art. 33(4)
- [52] See GC III, Art. 17(3)
- [53] See ICRC, *Missing People, DNA Analysis and Identification of Human Remains: A Guide to Best Practice in Armed Conflicts and Other Situations of Armed Violence*, ICRC, Geneva, 2009, online: <https://www.icrc.org/en/publication/4010-missing-people-dna-analysis-and-identification-human-remains-guide-best-practice>
- [54] See for further details on the management of dead bodies: ICRC, World Health Organization, Pan American Health Organization and International Federation of Red Cross and Red Crescent Societies, *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, 2nd ed., Geneva, 2016, online: <https://www.icrc.org/en/publication/0880-management-dead-bodies-after-disasters-field-manual-first-responders>
- [55] See GC I, Art. 17; P I, Art. 34(1); CIHL Rule 115
- [56] See CIHL Rule 113
- [57] See GC II, Art. 20
- [58] See P I, Art. 34(2) and (4) and CIHL Rule 114
- [59] See ICRC and IPU, *Missing Persons: A Handbook for Parliamentarians*, Geneva, 2009