

Argentina/United Kingdom, The Red Cross Box

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Junod, S.-S., *Protection of the Victims of Armed Conflict Falkland-Malvinas Islands (1982): International Humanitarian Law and Humanitarian Action*, ICRC, 2nd ed., December 1985, pp. 23-24 and p. 26]

CHAPTER III: THE WOUNDED, SICK AND SHIPWRECKED

[...]

3. METHODS OF ACTION

Respect by the parties for the obligations to protect and assist the wounded, sick and shipwrecked depends of course on the instructions received by the officers responsible and other ranks, but above all on the measures taken to organize relief and assistance. The circumstances and the nature of the armed clashes during the conflict in the South Atlantic gave vital importance to medical transports, in particular to ships and helicopters.

Indeed, not only did the hostilities partly take place at sea, but the geographical distance of the British fleet from its home port meant that soldiers wounded in the archipelago had to be treated on hospital ships.

[...]

3.1.3 A neutral zone on the high seas: the Red Cross Box

[Article 30 of Convention II] stipulates that “such vessels shall in no way hamper the movements of the combatants”.

At Britain's suggestion, and without any special agreement in writing, the parties to the conflict established a neutral zone at sea. This zone, called the Red Cross Box, with a diameter of approximately twenty nautical miles, was located on the high seas to the north of the islands. Without hampering military operations, it enabled hospital ships to hold position [...], and exchange British and Argentine wounded.

Such an arrangement, for which no provision is made in the Second Convention, is perfectly in keeping with the spirit of this Convention and shows that international humanitarian law must not claim to be exhaustive. When the desire to respect the obligations of protection is present, such measures as the establishment of this neutral zone at sea can be improvised as circumstances permit and require, and a certain flexibility remains in the application of the law. Inside the Red Cross Box, and between the hospital ships in general, radiocommunications were an important factor in efficiency and good functioning: on one hand [sic], the classical use of radiocommunications between the ships and, on the other, the use by the British – for the first time in the history of medical transports – of radiocommunications by satellite.

For whereas the Argentine hospital ships were able to use coastal radio stations on the Argentine shore, the British had no similar facilities, but instead established radiocommunications between their hospital ships and with their bases in Britain via the INMARSAT satellite system. [...]

It must be stressed here that the Second Convention forbids hospital ships to use a secret code for their transmissions. The use of secret codes is considered an act harmful to the enemy and can deprive a hospital ship of protection (Article 34). This amounts to forbidding a hospital ship to communicate with the military fleet of the party to which it belongs, because if it communicates in clear, the incoming messages would reveal the position of the vessels of its own fleet.

This ban has humanitarian consequences, however, since it prevents a hospital ship from being notified of the arrival of a contingent of wounded and does not enable it to prepare to receive them. [...]

Discussion

1.
 - a. Can any ship be used as a hospital ship? Is a ship considered a hospital ship from the moment it begins transporting wounded? Are the criteria necessary for protected status the same in an emergency situation? (GC II, Arts 22, 33 and 43; P I, Art. 22) Can a hospital ship lose its protected status? (GC II, Arts 34 and 35; P I, Art. 23)
 - b. Under IHL, do means exist to ensure that the enemy does not use a hospital ship for purposes that are not purely medical? (GC II, Art. 31(4))
2.
 - a. May hospital ships navigate in the centre of a combat zone? (GC II, Art. 30) Does this explain the need for the Red Cross Box? Which conventional provisions provide for the establishment of such a zone?

- b. For the creation of which zones does IHL provide? Which persons are those zones designed to protect? (GC I-IV, Art. 3(3); GC I, Art. 23; GC IV, Arts 14 and 15; P I, Arts 59 and 60) Was the Red Cross Box established by analogy to the provisions of the law of land warfare? If so, to which?
- c. How does one accurately assess whether such an innovation is in keeping with the spirit of the Convention? Does the Red Cross Box not merely demonstrate the flexibility of IHL but also its inadequacy? Yet do not the Conventions provide for and actually encourage special agreements between parties to conflict regarding protected zones? (GC I and GC IV, Annex I)

3. Should the prohibition of the use of secret codes by hospital ships be considered as obsolete due to technical developments? Or should it be respected despite such developments? What new regulation would you suggest for this problem? (GC II, Art. 34(2))

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