

Syria: Medical support for ISIS

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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.

A. New test for British policy: will the Syria nine be labelled as terrorists?

[Source: “New test for British policy: will the Syria nine be labelled as terrorists?”, *The Guardian*, 21 March 2015. Available at: <http://www.theguardian.com/world/2015/mar/21/uk-medics-syria-test-for-british-policy>]

[1] At first it seemed that another group of young Britons had slipped across the border to help Islamic State fighters consolidate and expand their caliphate. Yet the latest updates from the shifting frontline of the fiercely contested north Syrian border pose a problem for UK authorities. Can the Britons be classified as combatants? Are they terrorists? Have the nine British recruits to the barbarous regime even committed an offence?

[2] Government counter-terrorism officials conceded that their apparent role as medics meant there was an apparent humanitarian aspect to the case. The source added: “It’s a difficult judgment to make, it really does depend on the nature of their involvement and whether that constitutes a form of terrorist activity.”

[3] The Home Office said taking part in a conflict abroad could be an offence under criminal and anti-terrorism laws. It added that “fighting in a foreign war is not automatically an offence, but will depend on the nature of the conflict and the individual’s own activities”.

[4] So a scenario in which people can travel to Syria, join Isis and return without prosecution does exist, but seemingly operates in favour of young British women. Police have been eager to distinguish girls who go to Syria to become jihadi wives and homemakers from men eager to take up arms.

[...]

[5] In other words, by the simple virtue of being medics, the students may be viewed by Scotland Yard as very distinct from the hundreds of British men who have previously crossed the Syrian border to join Isis. Intelligence experts, however, will also be acutely aware that this reading of the situation hide [sic] their true motives under the cloak of humanitarian work.

[6] Some experts believe that the British medics should feel the full force of UK counter-terror legislation, arguing that offering medical assistance to wounded Isis fighters was as militarily effective as being an actual frontline soldier.

[7] Shashank Joshi, senior research fellow at the Royal United Services Institute, said: "They appear to be providing material support which is just as combat effective as if they were providing direct assistance on the battlefield. They should be treated in the same way as if they belonged to a fighting unit."

[8] Yet it is pertinent to note that Britons have been freely allowed to give medical assistance to designated terror groups in the recent past, with Red Cross staff in Afghanistan teaching the Taliban basic first aid. This initiative was introduced in 2010, the deadliest year for British forces in the Afghan campaign, with 103 UK service personnel killed. Explaining its decision, the International Committee of the Red Cross (ICRC) made reference to the Geneva conventions, which stipulate that medical care should be given to all people injured in a conflict, regardless of which side they are on.

[9] The medical students, who are thought to be in the Syrian border town of Tel Abyad, could also potentially claim that they were abiding by the conventions' internationally recognised treaties governing the humane treatment of soldiers rendered *hors de combat*, or incapable of fighting.

[10] Crucially, the ICRC made the point that providing medical assistance to the Taliban was an opportunity to educate and civilise "non-state actors" – groups which are involved in a conflict but are not an official state and therefore not formally signed up to the Geneva conventions; groups like Isis.

[...]

[11] Britons openly fighting on the same soil against Isis, often on behalf of Kurdish rebels – some linked to terrorist groups proscribed by Britain – are generally lauded. David Cameron insists there is a fundamental difference between fighting for the Kurds and fighting for Isis.

[12] Others have travelled to Syria to fight for groups rebelling against President Assad, only to be arrested. The UK's decision not to intervene in tackling Assad as thousands of civilians were murdered or targeted with chemical weapons was the catalyst for many Britons to travel to Syria, on what they saw as a humanitarian mission against a brutal regime.

[13] Many have been arrested under counter-terrorism laws on their return to the UK, despite insisting they are not terrorists and are opposed to Isis. The medical students will hope that their humanitarian instincts are viewed very differently.

[...]

[14] Government sources suggest that, whatever happens now, it may take considerable time to ascertain the motives, movements and modus operandi of the students. It is also possible that the group may even retreat from frontline hospitals to Isis strongholds such as Raqqa, where Isis is accused of running a segregated health service, with hi-tech hospitals for fighters while the local populace struggles with basic medical amenities.

Discussion

I. Classification of the conflict and applicable law

1. (*Para. [1]*) What is the nature of the armed conflict between Syria and the Islamic State (ISIS)? Is it a NIAC or an IAC? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)

II. Medical personnel and medical duties

2. (*Paras [8] - [10]*) Who is entitled to medical treatment under IHL of NIACs? What is the extent and content of such treatment? Can a full analogy be drawn in this respect between IHL of NIACs and IHL of IACs? (GC I-IV, Art. 3; P II, Art. 7; CIHL, Rule 110)

- 3.
- a. Who qualifies as medical personnel in NIACs? Do medical personnel have to be authorized by a party to the conflict to have this status? May they use the distinctive emblem of the Geneva Conventions? May persons other than authorized medical personnel administer medical treatment? Do the nine Britons in question qualify as medical personnel? (P II, Art. 9-12; CIHL, Rules 25, 26 and 30)
 - b. (*Para. [14]*) May ISIS compel medical personnel to treat only its own fighters? To give priority to its own fighters? Would persons giving such priority lose protection as medical personnel under IHL? Would it turn them into legitimate targets of attacks? Are there grounds on which giving prioritized medical treatment is authorized? (P II, 9(2) and 10(2); CIHL, Rule 26)

III. Prosecution of war-related acts

4. (*Para. [5] - [7], [9]*) May a person be punished for carrying out medical activities? Does it depend on the motives of the person? Even if the beneficiaries of the treatment are members of a terrorist group? Do you agree with the specialist from the Royal United Service Institute that the nine Britons in question provide material support to terrorists which is comparable to direct assistance in the battlefield? (P I, 16(1) and 17(1);

P II, 10(1); GC I, Art. 18) Would the UK violate the above provisions if they prosecuted the medics?

5. (*Para. [3]*) What do you think the UK Home Office meant in stating that prosecution for taking part in a foreign war under criminal and anti-terrorism legislation will depend on the nature of the conflict? Was it referring to the qualification of the conflict as international or non-international? To the nature of the parties involved (for ex., whether one is a terrorist group)? Does IHL of IACs provide for combatant immunity against prosecution in a state not party to the IAC in question? (P I, 43(2))

6. (*Para. [11] - [13]*) Are there legal differences between situations which find foreign nationals joining Kurdish rebels on the one hand, and situations in which foreign nationals join ISIS on the other? In your opinion, do you think there are good reasons for these situations to be considered differently under the law? Why/Why not? Should our evaluations depend on the compliance of the particular individuals with IHL rather than on the side on which they fight? Does international law limit the ability of the territorial state to prosecute people for taking up arms despite their compliance with IHL of NIACs? What about third states having jurisdiction over the acts? Is there or should there be a reward for such compliance?

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