

Geneva Call and the APCLS, Deed of Commitment on Health Care

INTRODUCTORY TEXT: 'Deeds of Commitment' are standardized documents on a number of armed conflict-related issues prepared by the NGO Geneva Call and signed by various armed non-state actors in an effort to increase these groups' respect for IHL. The Deeds are unilateral declarations by the armed groups whereby they commit to renounce certain means and methods of warfare or accept certain positive obligations mirrored in IHL. Geneva Call, which engages with armed groups to help them establish self-regulation mechanisms, also reserves the right to publish its findings regarding the respect or lack thereof by its interlocutors. This case considers the Deed of Commitment on health care, which was first signed by the 'Alliance of Patriots for a Free and Sovereign Congo' (APCLS) group in 2019.

For other Deeds of Commitment, please consult the Geneva Call and the Chin National Front or the Puntland State of Somalia Adhering to a Total Ban on Anti-Personnel Mines cases in this Casebook.

Case prepared by Mr. David Wenk, student at the University of Geneva, under the supervision of Professor Marco Sassòli and Mr. Pavle Kilibarda, research assistant, both at the University of Geneva.

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. APCLS and Geneva Call

[**Source:** Geneva Call, 'Democratic Republic of Congo: the armed non-State actor APCLS signs Geneva Call's Deed of Commitment on protecting health care in armed conflict', 27 August 2019, available at: <https://www.genevacall.org/democratic-republic-of-congo-the-armed-non-state-actor-apcls-signs-geneva-calls-deed-of-commitment-on-protecting-health-care-in-armed-conflict/>]

[1] On 18 August 2019, the military leaders of the Alliance of Patriots for a Free and Sovereign Congo (APCLS) signed the Deed of Commitment on protecting health care in armed conflict.

[2] By signing this document, the group is making the commitment to respect and protect the sick and wounded- whether they are civilians or military- health care workers, and health facilities and transport.

[3] “This commitment to better protect health care, the first of its type in Africa and the world, is absolutely central to and necessary for the well-being of the civilian population in the east of the DRC. We commend the decision taken by APCLS and strongly encourage them to put this commitment into practice. Geneva Call will support APCLS in doing so.” said Mr. Alain Délétroz, Director General of Geneva Call.

[4] The signature of the Deed of Commitment on protecting health care in armed conflict is essential in a context like the DRC, which is particularly affected by attacks on medical facilities and personnel, especially since the 10th Ebola epidemic was confirmed in the country. Numerous Ebola treatment centres and their staff have been attacked, since the pandemic began.

[5] Thanks to sustained contact between Geneva Call’s Goma office and the APCLS, since 2014, the armed non-State actor also signed the Deed of Commitment for the protection of children from the effects of armed conflict, in 2016. More recently, the group also formally committed to facilitate humanitarian access in the region under its control.

[6] The Deed of Commitment is a formal humanitarian commitment that armed non-State actors (ANSA) sign to ensure respect for humanitarian norms. The signature of this commitment does not give any political or legal recognition to these actors. Geneva Call respects the principles of neutrality and impartiality in its work, and strictly limits itself to increase compliance with humanitarian norms by armed non-State actors in order to ensure a greater respect for the civilian populations.

B. APCLS, Deed of Commitment under Geneva Call for the Protection of Health Care in Armed Conflict

[Source : Alliance des Patriotes pour un Congo Libre et Souverain, ‘Acte d’engagement auprès de l’Appel de Genève pour la protection des soins de santé pendant les conflits armés’, 18 August 2019, available at: http://theirwords.org/media/transfer/doc/acte_d_engagement_apcls_mission_medicale-6bbc5bec4fea511a9c5894d9a0af1bb5.pdf; English translation based upon the standard document of Geneva Call, available at :<https://www.genevacall.org/wp-content/uploads/2019/07/Deed-of-Commitment-for-the-protection-of-health-care-in-armed-conflict-final-version-4.pdf>]

[1] We, Alliance des Patriotes pour un Congo Libre et Souverain (APCLS), through our duly authorized representative(s),

[2] *Concerned* with the immediate and long-term impact that attacks against health care personnel, facilities and medical transports have on the wounded and sick, the civilian population and health services at large, and the threat that they present for the right of everyone to enjoy the highest attainable standard of physical and mental health;

[3] *Affirming* our determination to protect the civilian population and other persons no longer taking part in hostilities from the effects or dangers of military actions, and to respect their fundamental rights;

[4] *Reaffirming* our obligation to collect and care for the wounded and sick, and to treat all of them humanely and without distinction on any grounds other than medical ones;

[5] *Recognizing* the importance of the neutrality and inviolability of health care personnel, facilities and medical transports to ensure the security and continuity of health care services to all, without discrimination;

[6] *Rejecting* the notion that any cause, for whatever reason, may justify the unlawful treatment of the wounded and sick and attacks against health care personnel, facilities and medical transports;

[7] *Accepting* that international humanitarian norms apply to and oblige all parties to armed conflict;

[8] *Taking due account* of our international legal obligations with regards to the respect and protection of health care personnel, facilities and medical transports, and the wounded and sick, in particular those enshrined in International Humanitarian Law and International Human Rights Law, as well as in the principles of medical ethics;

[9] *Mindful* that the Statute of the International Criminal Court criminalizes violence to life and person of the wounded and sick and the acts of intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law, as well as against hospitals and places where the sick and wounded are collected, provided they are not military objectives; Hereby solemnly commit ourselves to the following terms:

1. TO RESPECT AND PROTECT the wounded and sick, whether civilian or military, friend or enemy, in all circumstances. This includes not attacking, harming or killing them, protecting them from unlawful treatment and pillage of their personal property, and providing them with the health care and attention required by their condition, based solely on medical grounds with the least possible delay.

2. TO TAKE all possible measures to search for, collect and evacuate the wounded and sick without delay or adverse distinction, including by allowing civilians and impartial humanitarian organizations to assist in these tasks.

3. TO RESPECT AND PROTECT health care personnel engaged in the provision of health care. This

includes not attacking, threatening or pressuring those who provide health care, respecting the obligation of health care personnel to treat all wounded and sick persons without distinction on any grounds other than medical ones, and not otherwise unduly interfering with the work of health care personnel. It includes also not punishing health care personnel for performing medical duties, not compelling them to perform acts contrary to their medical ethics or to disclose information covered by medical confidentiality.

4. TO RESPECT AND PROTECT health care facilities. This includes not attacking health care facilities performing medical functions, taking all feasible measures to spare health care facilities from the effects of attacks, and not depriving them from the vital resources needed for their functioning. It also includes facilitating the work carried out in health care facilities; refraining from any behaviour that disrupts the functioning of health care facilities, in particular not using them for military or other non-medical purposes, and respecting the no weapon policy inside health care facilities.

5. TO RESPECT AND PROTECT medical transports. This includes not attacking them, facilitating the medical evacuation of the wounded and sick, and allowing for the unimpeded and fast passage of all vehicles used for health care. It also includes not interfering with the functioning of medical transports, in particular not using them for military or other non-medical purposes, and respecting the no weapon policy inside medical transports.

6. TO GIVE due warning in the case that health care personnel, facilities or medical transports are used outside their humanitarian functions to commit harmful acts, allowing them necessary time to remedy the situation or to safely evacuate.

7. TO RESPECT the distinctive emblems of the red cross, red crescent and red crystal and not to use them for purposes not related to the provision of health care.

8. TO FURTHER ENDEAVOUR, in areas where we exercise authority, to:

i) Ensure, maintain and provide access for affected populations to essential health care facilities, goods and services, without adverse distinction;

ii) Facilitate the provision of health care by impartial humanitarian organizations.

9. TO ISSUE the necessary orders and directives to our political and military organs, commanders and fighters for the implementation and enforcement of our commitment, including measures for information, dissemination and training. Commanders and superiors are responsible for their subordinates. In case of non-compliance, we will take all necessary measures to cease violations immediately, initiate appropriate investigations and impose sanctions in accordance with international standards.

10. TO ALLOW AND COOPERATE in the monitoring and verification of our present commitment by Geneva Call and other independent international and national organizations and associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where we operate, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

11. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in the field practice as well to the further development of humanitarian norms in armed conflict.

12. This *Deed of Commitment* shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of 1949.

13. We understand that Geneva Call may publicize our compliance or non-compliance with this *Deed of Commitment*.

14. We see the desirability of attracting the adherence of other such armed actors to this *Deed of Commitment* and will do our part to promote it.

15. This *Deed of Commitment* complements, or supersedes, as the case may be, any existing unilateral declaration of ours on the protection of health care in armed conflict.

16. This *Deed of Commitment* shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such *Deeds*.

[...]

Discussion

1. Assuming that it is a party to an armed conflict, is the APCLS bound by the provisions of IHL? If so, then what provisions? Is the fact that the Democratic Republic of the Congo ratified the Additional Protocol II in 2002 relevant for your answer? (P II, Art. 1; GC I-IV, Art. 3; CIHL, Rule 139)

a. Is an expression of willingness to be bound by IHL necessary for non-state armed groups to be bound by it? If not, why might it nevertheless be useful to obtain its commitment?

b. Does it make any difference for the application of IHL if the APCLS has control over a part of Congolese territory?

2. Is the APCLS bound by International Human Rights Law (IHRL)? If no, can a non-state armed group submit itself voluntarily to IHRL?
 - a. (*Document B, paras [2]-[3]*) What do you make of the mention in the Deed of Commitment of fundamental rights or the highest attainable standard of physical and mental health and its link to Art. 12 of the ICESCR?
 - b. Does it make any difference for the application of IHRL if the APCLS has control over a part of Congolese territory? Does coming within the control of an armed group deprive a population of its human rights? If not, who is obliged to respect their human rights?
 - c. Do armed groups have the obligation to protect public health and hygiene in territories under their control? If so, does this obligation come from IHL, IHRL or both? (GC IV, Arts 56, 57, 63)
3. In your opinion, does signing a Deed of Commitment confer some form of legitimacy on an armed group? If so, how?
4. Are the Deeds of Commitment formal sources of international law for the armed group? Are groups obliged under international law to respect the Deeds of Commitment? If so, should they be considered agreements? Unilateral declarations?
5. What is the interest of an armed group to sign this Deed of Commitment? To respect the rules it contains?
6. How is health care protected by IHL? Is this protection different in international and non-international armed conflicts?
 - a. What about the health of the wounded and sick? (GC I-IV, Art. 3; GC I, Chapter II; GC II, Art. 12; GC III, Art. 30; GC IV, Arts 16, 91; API, Arts 10, 11, 44 (8); APII, Arts 7, 8; CIHL, Rules 109, 110, 111)
 - b. What about health infrastructure, medical transports and health-care personnel? (GC I, Chapters III, IV, V, VI; GC II, Chapters III, IV, V; GC IV, Arts 18, 19, 20, 21, 22, 57; API, Arts 12, 13, 14, 15, 16, Part II, Section II; APII, Arts 9, 10, 11; CIHL, Rules 25, 26, 28, 29)
 - c. What about the protection and regulation of the emblem of the red cross, crescent or crystal? (GC I, Chapter VII, Arts 53, 54; GC II, Chapter VI; GC IV, Arts 18, 20, 21, 22; API, Annex 1; APII, Art. 12; APIII; CIHL, Rules 30, 59)
 - d. What about the general protection of the health of the civilian population? (GC IV, Part II, Arts 55, 56, 57, 59, 60, 61, 62, 91)

7. (*Document B, paras [9], 1-16*) What is the basis of the rules contained in the Deed of Commitment? Are the rules in the Deed of Commitment part of IHL? Do these rules form part of customary law? Do any of the rules expressed in the Deed of Commitment go beyond the obligations of the APCLS under IHL? Under IHRL?

8. Do the following obligations exist under IHL of non-international armed conflicts? If not, may they be based upon IHRL?

a. (*Document B, paras [9] and 3*) Not to compel health care personnel to disclose information covered by medical confidentiality?

b. (*Document B, paras [9] and 4*) To take all feasible measures to spare health care facilities from the effects of attacks, and not to depriving them from the vital resources needed for their functioning?

c. (*Document B, paras [9] and 4*) To respect the no weapon policy inside health care facilities?

d. (*Document B, paras [9] and 9*) As a commander of an armed group to impose sanctions in accordance with international standards in case of violations?

9. Does the Deed of Commitment that the APCLS has signed also bind the Democratic Republic of the Congo? Do Deeds of Commitment have an impact on the principle of equality of belligerents before IHL?

10.

a. Does the Deed of Commitment provide for any enforcement mechanisms? How may respect for the terms of the Deed of Commitment be monitored? Does Geneva Call bear any responsibility for supervising its implementation?

b. Does the Deed of Commitment provide for any reporting or sanctions mechanisms? What can be done if the Deed of Commitment is violated?

11. What are the advantages and disadvantages of Deeds of Commitment as opposed to special agreements concluded by parties under Common Article 3 of the Geneva Conventions?

In your view, does this Deed of Commitment – which is the first one signed that deals with health care – improve respect for the law of armed conflict? Is there any difference in this respect between the current Deed and others Deeds of Commitments, such as those on the protection of children in armed conflict, the prohibition of sexual violence in armed conflict or the prohibition of anti-personnel mines?

