

# Chapter 6

## THE LAW OF ARMED CONFLICT AND MILITARY MEDICINE

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## INTRODUCTION

The positive humanitarian impact of compliance with the medical law of armed conflict is great. The negative human, legal, political, and military impact of noncompliance can be even greater. Military medical officers (MMOs) need to understand not only the key humanitarian obligations of military medical personnel and units in armed conflict, but also their rationale, in order to ensure the law is effectively applied in varied, uncertain, and sometimes rapidly changing operational settings. In addition to the suffering that follows if the law is not applied, there can be serious legal consequences for medical personnel who fail to apply it—and long-lasting damage to the honor and credibility of the United States and the nation's armed forces.

To help impart the level of insight required to mesh medical operations with international law, this chapter provides a conceptual overview of key responsibilities and legal protection requirements for military medical personnel during armed conflict. It is not a detailed guide for implementation of the Geneva Conventions, nor a manual attempting a comprehensive survey of the wide and varied range of medical issues that may arise under the Geneva Conventions. Readers who want to explore these issues in depth can find guidance on additional resources later in this chapter. It is essential for MMOs to work closely with a staff judge advocate legal advisor in all phases of the planning and execution of the military medical mission. The legal requirements in all military operations must be considered with great care and implemented accordingly.

## THE EVOLVING CONTEXT OF INTERNATIONAL LAW AND MILITARY MEDICINE

International law is less familiar to most people than the rules found in national, state, and local law. However, international law plays a behind-the-scenes role shaping daily interactions that many people take for granted. It provides the framework for routine international travel, communications, trade, and cultural exchange. It is more challenging to apply international law during armed conflict, but there is a well-developed system of treaties and customary practice that applies to regulate war as well.

Customary international law is the earliest form of the law of armed conflict. It has been in use for centuries. The customary law of armed conflict (most widely known as the customary law of war) is made up of any “consistent practice of states” that comes to be accepted as a binding legal norm even if it has not been formalized in a written agreement.<sup>1</sup> The United States has implemented the law of war beginning with the application of customary law during the American Revolution. To seal the decisive American victory at Yorktown in 1781, General Washington negotiated an elaborate customary surrender process with General Cornwallis, and US military medical services have continuously honored the national commitment to the law of armed conflict by providing medical treatment for enemy prisoners of war into the modern age.<sup>2-4</sup>

The modern, treaty-based law of armed conflict first significantly emerged with the adoption of the first Geneva Convention for the Wounded and Sick in 1864. The principles embodied in that treaty still guide its signatories in the 21st century. Though President Lincoln and Secretary of State Seward were reluctant to commit to these Geneva negotia-

tions during the American Civil War, they did send a senior diplomat and a representative from the US Sanitary Commission, a major nongovernmental organization caring for the wounded and sick in the ongoing US conflict, to serve as observers at the conference.<sup>5</sup> The United States ratified the first Geneva Convention in 1882, and has ratified each of the Geneva Conventions that followed in later generations (see Chapter 1, History of the Military Medical Officer, Exhibit 1-2, for more background on the chronological development of the Geneva Conventions).

The modern law of armed conflict is primarily treaty based. The four Geneva Conventions of 1949 establish the responsibilities, status, and protection afforded to medical personnel; the wounded, sick, and shipwrecked members of armed forces; prisoners of war; and civilians under the law of armed conflict. Accordingly, they are the main focus of this chapter and are also explored in further detail in the Department of Defense (DoD) Law of War Manual.<sup>6</sup>

The terms “law of war,” “law of armed conflict” (sometimes abbreviated as LOAC), and “international humanitarian law” (frequently abbreviated as IHL) tend to be used interchangeably.<sup>7</sup> Though there is some disagreement on whether each term applies to precisely the same set of rules, for this chapter they can be considered identical. The focus for MMOs will be on the Geneva rules. (Sometimes a distinction is drawn between “Geneva law” for humanitarian protection, and “Hague law” for regulation of the means and methods of war, meaning rules governing targeting and the weaponry employed. MMOs fulfill Geneva law in their duties.)

The law of armed conflict has evolved from a specialized field known only to a handful of legal practitioners and scholars to one receiving constant, widespread media coverage and intense scrutiny by human rights organizations. Failure to implement the law of armed conflict raises the possibility of prosecution under the Uniform Code of Military Justice (see also Chapter 5, *Military Law and Ethics*) and opens the door to accusations that MMOs have breached medical ethics. Such failure—even mistaken or deliberately false accusations of violations of the law of war—might spur political backlash and international condemnation, undermining prospects for success in a military campaign.<sup>8</sup>

The DoD Law of War Manual includes the following cautionary observations: “For example, violations of the law of war in counter-insurgency operations may diminish the support of the local population. Violations of the law of war may also diminish the support of the populace in democratic States, including the United States and other States that would otherwise support or participate in coalition operations. Violations of the law of war committed by one side may encourage third parties to support the opposing side.”<sup>9</sup> By impartially and firmly carrying out humanitarian medical obligations for all protected persons under Geneva law, MMOs also protect the credibility of the armed forces and the nation as a whole.

## RESPONSIBILITIES AND PROTECTION OF MILITARY MEDICAL PERSONNEL

### **Application of the Law of Armed Conflict by Medical Officers**

The Geneva Conventions are a legal foundation for quiet, successful implementation of the law of armed conflict on an ongoing basis. For example, many prisoners of war around the world regularly receive protective visits to ensure their safety and well-being.<sup>10</sup> MMOs are responsible for successful implementation of the medical dimensions of the law of armed conflict. They are expected to fulfill this role both through direct leadership and indirectly through leadership by moral example. MMOs exercise such leadership in concert with other military and civilian leaders at all levels of the US government.

The United States’ commitment to application of the law of armed conflict takes many forms. US commanders are responsible for the law’s implementation. Alleged violations are investigated for possible prosecution or (depending on the level of severity of the alleged offense) for other disciplinary or corrective action. Judge advocates at all levels of command furnish legal advice on interpretation and implementation of the law of armed conflict.<sup>11</sup> Although every actual or potential enemy will not apply them in whole or even in part, US MMOs need to understand the rules and apply them regardless. It bears repeating that MMOs lead by example, and not only when serving in command assignments. They must not express cynicism about the law of armed conflict in any circumstances, regardless of how they may feel about enemies who commit war crimes. Any hint of such cynical or negative views about the law of armed conflict may help provoke negative action and conduct by other medical personnel.

### **War Crimes**

While US MMOs need to focus on the mission—including implementation of the medical requirements of the law of armed conflict—situational awareness requires some understanding of the scope and characteristics of war crimes as envisioned in international law. MMOs have a solemn responsibility to help ensure that the medical dimensions of the law of armed conflict are fully implemented in their command. This requires strong direct leadership and leadership by example. It requires careful monitoring to help ensure that US military and civilian personnel fulfill their obligations under the Geneva Conventions in all situations, including those where feelings may run high in the face of reports and evidence of war crimes.

Medical personnel may encounter evidence of war crimes in the field, or treat patients who are traumatized survivors of war crimes. Higher headquarters must be notified immediately if such issues or evidence should arise. Despite careful attention to the protection of medical units and personnel under the Geneva Conventions, urgent force protection requirements demand awareness that some enemies will deliberately target medical facilities, personnel, transport, patients, and supplies.

A sense of the potential scale and gravity of such challenges is presented by systematic, continuing violations of the law of armed conflict in Syria during the civil war. The Syrian government has deliberately targeted medical personnel in the ongoing conflict in that country. As reported in *The Lancet*, “The weaponisation of health care—a strategy of using people’s need for health care as a weapon against them by violently depriving them of it—has translated into hundreds of health workers killed, hundreds more incarcerated or tortured, and hundreds of health facilities deliberately

and systematically attacked.”<sup>12</sup> These crimes are not limited to the battlefield. The Syrian government has also used a network of hospitals, and hospital staff, to systematically torture, mutilate, and murder captives on a mass scale.<sup>13</sup> As one consequence, medical activities have been driven underground to avoid deliberate attack by the Syrian authorities. Efforts to provide medical care are driven by logistically challenging and costly requirements to set up very limited underground facilities.<sup>14</sup>

Some enemies may not only be willing to engage in deliberate attacks on protected medical sites, personnel, and patients, and to appropriate medical facilities to commit horrific crimes, they may even remain contemptuous of international law when efforts are made to provide them with the medical services they should receive after being captured. Dating back to at least the Korean War, US medical personnel have sometimes encountered situations where captured enemy wounded, rather than cooperating in their clinical care, have continued hostile conduct even in a medical setting.<sup>15</sup>

Application of the law in the face of war crimes committed by the enemy comports well with the ethos expected of physicians. In peacetime, fully professional application of the healing arts is expected, even when this benefits the most reprehensible members of society. The same principle applies by analogy in wartime. Addressing such challenges, maintaining situational awareness, and fostering a command climate in which medical personnel will unfailingly apply the Geneva Conventions, even in the face of understandable outrage and extreme provocation, requires some understanding of the international law of war crimes. A brief survey of the law is provided here, followed by a more extensive review of the rules that are positively applied by US medical personnel in all situations involving armed conflict.

There is no universal definition of war crimes, but one that focuses on medical issues comes from Geneva Convention I of 1949. Under this Convention, particularly serious war crimes, known as grave breaches, are described as follows:

Grave breaches . . . shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully or wantonly.<sup>16</sup>

A pattern of war crimes may constitute a distinctive category of offenses known as crimes against human-

ity. There is no universally accepted definition for such crimes, but MMOs must be alert in the field for medical evidence that points towards such systematic crimes. Though the United States has not ratified the Rome Statute of the International Criminal Court, the definition found in that treaty is a useful point of reference for these crimes:

For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>17</sup>

Genocide, the war crime potentially most far reaching, can also take place in peacetime. Genocide is a crime that was identified, defined, and expressly prohibited in a treaty adopted in 1948. The UN Convention on the Prevention and Punishment of the Crime of Genocide defines this crime as follows:

In the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group condi-

- tions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
  - (e) Forcibly transferring children of the group to another group.<sup>18</sup>

Some physicians were complicit in crimes on the scale of genocide and crimes against humanity during World War II. Some of the most shocking crimes ever documented in a courtroom were those involving vicious, lethal experimentation on human beings by doctors who supported the Nazi regime. The first in the series of trials of senior level Nazi officials that took place in Nuremberg, following World War II, is known as the “Doctors’ Trial.” It resulted in a number of convictions, and the presiding judges in this trial developed the Nuremberg Code, which remains an essential foundation for regulation of human medical experimentation into the 21st century. The war crimes and crimes against humanity committed during World War II were the impetus for adoption of the Geneva Conventions of 1949. Subsequent sections of this chapter will cover the basic medical protections addressed in those treaties and discuss some of the challenging settings in which the rules are applied.

### Intent of the Law of Armed Conflict in Relation to Military Medicine

The Geneva Conventions of 1949, which established the extensive modern-day rules on the roles and responsibilities of medical personnel during armed conflict, included four treaties:

- The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (GC I)
- The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (GC II)
- The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (GC III)
- The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (GC IV)

The United States is a party to the Geneva Conventions of 1949, which have been ratified by the US Senate, and therefore the nation is bound by the provisions of these treaties. Text from the Geneva Conventions is quoted frequently in this chapter to highlight key rules and concepts.

Though they have not been ratified by the United States and are therefore not binding on this country, it is worth noting that widely known legal instruments called the Protocols Additional to the Geneva Conventions were adopted at a diplomatic conference in Geneva in 1977. A number of countries, including the United States, participated in this conference for the purpose of adopting these Protocols to enhance and update the 1949 Geneva Conventions. They are known formally as the Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Conflicts (Protocol II), of 8 June 1977. This chapter makes reference to the Protocols where awareness of them could be useful in work with the armed forces of states that have ratified them.

The Geneva Conventions in their entirety “shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”<sup>19</sup> Requirements for MMOs are clear. “Members of the DOD Components comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations.”<sup>20</sup> This means MMOs must apply this Geneva law during armed conflict without exception. It is irrelevant to individual MMOs, and to their mission, as to whether or not a state of war or armed conflict is formally declared or recognized. The Geneva Conventions apply regardless.

The fastest route to understanding the ethos and functional purpose of the Geneva Conventions of 1949 is to read the concise provisions of the famous “Common Article 3,” which sets out the absolute minimum protections that must be applied in any armed conflict<sup>21</sup>:

ART. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- 1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall

remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - b) taking of hostages;
  - c) outrages upon personal dignity, in particular humiliating and degrading treatment;
  - d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- 2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.<sup>22</sup>

Article 3 is an exception to the other text found in each treaty of the four Geneva Conventions because it applies in all cases of armed conflict “not of an international character occurring in the territory of one of the High Contracting Parties.”<sup>22</sup> This means that Article 3 applies during civil wars and other forms of armed conflict taking place within the borders of a single country. All other articles of the Geneva Conventions of 1949 apply in their entirety during international armed conflict (meaning military conflict between two or more states, as countries are termed under international law), and MMOs must apply the provisions of the treaties in full, rather than the more limited provisions of Common Article 3.

Though Common Article 3 lacks the detailed guidance found in the other articles of the full Conventions, if read carefully, it provides a distillation of the core principles of the law of armed conflict. Common Article 3 should be read to provide MMOs an orientation to the basic purposes of the law of war. Then, studying the detailed description of the more complete medical requirements of the Geneva Conventions, which apply during international armed conflict, will provide a fuller picture of the MMO’s professional responsibilities.

## Status of Military Medical Units and Personnel

During international armed conflict, the Geneva Conventions for Wounded and Sick (GC I), and for Wounded, Sick, and Shipwrecked (GC II) identify “[f]ixed establishments and mobile medical units” of military medical services as the principal providers of medical assistance.<sup>23</sup> Hospital ships are authorized to provide these services at sea subject to requirements for advance notification of their status.<sup>24</sup> Medical aircraft “exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment” are recognized as protected under the Geneva Conventions. The same protection applies for aircraft transporting the shipwrecked.<sup>25</sup> (For further information, see Joint Publication 4-02.<sup>26</sup>) Activities essential for medical support are protected as well. On land, these include “transports of wounded and sick or of medical equipment.”<sup>27</sup> At sea, ships chartered “to transport equipment exclusively intended for the treatment of wounded and sick members of the armed forces or for the prevention of disease” are also protected if advance notice of their voyage is provided.<sup>28</sup>

Within military medical units, those medical personnel “exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces” hold protected status under the law of armed conflict.<sup>29</sup> The same status is provided for “religious, medical and hospital personnel of hospital ships and their crews”<sup>30</sup> and for the same category of personnel serving on other ships.<sup>31</sup> Coastal rescue craft are to be respected on the same terms “so far as operational requirements permit.”<sup>32</sup>

MMOs should keep in mind that under the Geneva Conventions, the only military personnel entitled to continuous medical standing, privileges, and protection are those “exclusively engaged” in medical duties as described above. Other military personnel “specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.”<sup>33</sup> To ensure continued protection of medical units, personnel, and activities, all staff should be managed in a manner that ensures no blurring of distinctions between work carried out by medical and other military personnel (cautionary guidance on activities that exceed medically protected roles is provided in Joint Publication 4-02<sup>26</sup>).

Though (if recent history is any guide) civilian volunteers and aid societies are unlikely to be recruited to assist US military medical units in care for the wounded and sick of US and friendly forces, this contingency is provided for by the Geneva Conventions. Given the changing context of military medicine in war zones, it is not beyond question that such assistance may someday be requested again. Medical status is provided for “staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their governments” providing the same support as full-time military medical personnel and also “subject to military laws and regulations.”<sup>34</sup> Analogous humanitarian support is also addressed in the maritime domain. “Hospital ships utilized by National Red Cross Societies, by officially recognized relief societies or by private persons” have the same protection as military hospital ships if commissioned for that role, and the same notification procedures that apply for military hospital ships would be complied with as well.<sup>35</sup>

Less formal relief efforts by civilians are also contemplated in Geneva law and have historical precedent. During the American Civil War, for example, individual and organized groups of civilians rendered extraordinary assistance to wounded and sick soldiers on and off the battlefield.<sup>36</sup> Under the Geneva Conventions, military authorities “may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities.”<sup>37</sup> Similarly, an appeal may be made to “the charity of commanders of neutral merchant vessels, yachts or other craft” to assist with rescue of the wounded, sick, and shipwrecked at sea. Protection will be provided to such vessels and others that render such assistance.<sup>38</sup>

### **Responsibilities and Protections of Military Medical Personnel and Units During Armed Conflict**

The units and personnel identified for protection under the Geneva Conventions assume challenging humanitarian responsibilities. They commit to strict limitations on their scope of activities. The scope of permitted duties is considered here in relation to potential harm that may follow if these requirements are not met.

The Geneva Conventions apply for protection of all wounded and sick “Members of the armed forces of a Party to the conflict as well as members of the militias or volunteer corps forming part of such armed forces.” There are also detailed provisions on other categories of combatants covered by the protections of the Geneva Conventions.<sup>39</sup> MMOs must, therefore, be ready for missions that differ conceptually in scope from their

peacetime support for US military personnel and their families. In addition to those continuing responsibilities, they must expand their medical support paradigm to render medical assistance to all combatants, including captured enemy wounded.<sup>40</sup>

The broad scope of medical assistance set out in the Geneva Conventions warrants verbatim inclusion here, as set out in GC I:

Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.<sup>40</sup>

The Geneva Conventions also highlight the extension of an MMO’s professional obligations beyond the wounded, sick, and shipwrecked members of armed forces. Though the Geneva Conventions focus on the role of military medical personnel and units in connection with medical care for these categories of personnel, there are also important provisions requiring medical treatment and careful attention to the public health needs of other categories of people as well. In fulfillment of those obligations, MMOs may be tasked to assist with public health needs and medical treatment for enemy who are prisoners of war, civilian detainees, civilians living under military occupation, and civilians who are wounded, sick, infirm or pregnant.<sup>41</sup> Other important humanitarian obligations set out in the Geneva Conventions relate to notification, disposition of human remains, and return of personal effects when a patient has died.<sup>42</sup>

Military medical units and establishments are protected from attack in order to ensure that medical work can be carried out for all wounded, sick, and shipwrecked combatants without distinction. "Fixed establishments" and "mobile medical units" of military medical services "may in no circumstances be attacked, but shall at all times be respected and protected" by all sides in the conflict.<sup>43</sup> Military hospital ships bear the same protection, and sick bays on other military ships "shall be respected and spared as far as possible."<sup>44</sup>

Medical services of armed forces are authorized to use a specific identifying emblem recognized under the provisions of the Geneva Conventions. Accordingly, the Red Cross or Red Crescent emblem, displayed on a white ground, may be employed for this purpose.<sup>45</sup> A Red Crystal emblem was also authorized more recently. Israel employs a Red Shield of David in lieu of a Red Cross or Red Crescent emblem. (The complex background to the development and use of these emblems is summarized in the DoD Law of War Manual.<sup>46</sup>) If a medical facility, establishment, or activity is known to the other side, it should be respected and thus spared from attack even if a protected emblem is not in use.<sup>46</sup> Military medical personnel covered by the Geneva Conventions are also identified by wearing, "affixed to the left arm, a water-resistant armband bearing the distinctive emblem, issued and stamped by the military authority."<sup>47</sup>

The "medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces"<sup>29</sup> are not deemed to be prisoners of war if captured. They are "retained personnel" and held "only in so far as the state of health, the spiritual needs and the number of prisoners of war require."<sup>48</sup> Medical hospital ships ("built or equipped . . . specially and solely with a view to assisting the wounded, sick and shipwrecked") may not be attacked or captured. Other hospital ships can also acquire protection where they have been authorized for such service and notice provided to all parties.<sup>49</sup> Similar status, authority to continue medical work, and provision for release apply to military medical personnel captured while serving at sea as applies to medical personnel serving on land.<sup>31</sup>

There are, however, strict requirements that must be met for medical personnel to sustain protected status. The Geneva Conventions anticipate situations in which protection may be lost. "The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts

harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded."<sup>50</sup> The same restrictions apply to employment of hospital ships and sick bays of other vessels.<sup>51</sup>

This discussion inevitably raises questions about practical security of military personnel and medical establishments and facilities. The law of war recognizes armed security requirements. Medical personnel may be armed for their own defense and that of their patients. Armed security for the unit or establishment may be posted by orderlies, sentries, picket, or escort. None of these measures jeopardize the legal protection of medical units or establishments.<sup>52</sup> Armed security is also authorized on hospital ships (and sick bays of other vessels), and it does not deprive them of protected status.<sup>53</sup>

### **Medical Operations Conducted in Cooperation With Coalition Partners**

The US armed forces have worked with international partners since the American Revolution, but this practice has accelerated in the 21st century. MMOs should expect many and perhaps most of their deployments to take place in partnership with the armed forces of international partners. Some of these forces have worked with US forces on a sustained basis in formal, treaty-based alliances. In such instances, there may be longstanding combined operational experience and logistical standardization. Other, less formal cooperative operations are called coalitions and often include newer partners. In either instance, important law of war responsibilities apply in armed conflict.

If enemy wounded and sick are transferred to an ally or coalition partner by US military authorities, the United States remains responsible for correction of any important medical or other failures of proper treatment when such are brought to the attention of US personnel. In fact, such transfer can only take place if the party receiving the enemy prisoners of war is itself a party to the applicable GC III on prisoners of war and has shown its "willingness and ability" to apply that treaty. If such deficiencies are not corrected, then the United States must request and secure return of the prisoners.<sup>54</sup> More nuanced issues may also arise that involve differing approaches to appropriate standard of care under the law of armed conflict.<sup>55</sup>

US military medical capabilities in most instances exceed those of allies and coalition partners. However, it should be kept in mind that though the United States has not ratified Additional Protocol I to the Geneva



Conventions of 1977, sometimes allies and coalition partners have. For example, this protocol merges the concept of wounded and sick to include military wounded, sick, and shipwrecked under GC I and GC II with civilians in need of medical care under GC IV.<sup>56</sup> US medical officers should be aware that dif-

ferences of interpretation may consequently arise in some circumstances regarding medical requirements and standards of care.<sup>55</sup> In some instances, the United States considers provisions of the Protocols Additional to reflect principles of customary law, and such customary principles are implemented.<sup>57</sup>

## PROTECTION OF CIVILIAN MEDICAL STAFF AND HOSPITALS IN ARMED CONFLICT

Historically, the missions of military medical units have overlapped with those of civilian medical staff and facilities only on an incidental basis. Greater expectations for coordinated care now exist, and deploying MMOs must be prepared for cooperation with healthcare professionals who are treating civilian patients.<sup>58</sup> As previously discussed in the War Crimes section, and as can be seen from monitoring world news, civilian hospitals and staff sometimes face extremely dangerous conditions in which medical staff and patients are deliberately targeted.<sup>59</sup>

During international armed conflict, civilian medical staff are protected in their work under GC IV on terms analogous to those that apply to military medical staff and facilities. During armed conflicts internal to a country, such as a civil war, civilian medical practitioners and activities are entitled at a minimum to the protections afforded by Common Article 3. During international armed conflict, under GC IV, "Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict."<sup>60</sup>

Regarding hospital staff, "Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected."<sup>61</sup> Such hospitals shall be marked by a protective emblem if authorized by a state that is party to the armed conflict, and authorized medical personnel shall wear on the left arm an armband displaying a protected emblem "while carrying out their duties."<sup>60-62</sup> Protections for such civilian hospitals "shall not cease unless they are

used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded."<sup>62</sup>

Other special protection arrangements can be made under GC IV. This treaty authorizes, by mutual agreement of all sides, the establishment of "hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven."<sup>63</sup> GC IV also provides that belligerents may agree to the establishment of "neutralized zones intended to shelter from the effects of war the following persons, without distinction:

- (a) wounded and sick combatants or non-combatants;
- (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character."<sup>64</sup>

MMOs may also come into contact with the International Committee of the Red Cross, a humanitarian organization recognized under the Geneva Conventions as bearing special responsibility to provide protective assistance to prisoners of war, civilians, and the wounded, sick, and shipwrecked during armed conflict.<sup>65</sup> Officially chartered and recognized National Red Cross and Red Crescent Societies, as well as other relief societies, sometimes broadly referred to as nongovernmental organizations (or NGOs or PVOs [private voluntary organizations]), may also provide civilian relief "subject to temporary and exceptional measures imposed for urgent reasons of security . . ."<sup>66</sup>

## APPLICATION OF INTERNATIONAL LAW IN PEACETIME MEDICAL DEPLOYMENTS

The medical dimensions of international law are most developed in relation to services provided for combatants and civilians during armed conflict. The extensive guidance and rules on medical operations contained in the Geneva Conventions of 1949 have no medical equivalent in treaties that apply in peacetime. However, some fundamental human rights and

humanitarian law protections must always be taken into account.

International human rights law provides important peacetime human rights protections and is a dynamic, developing field. Of particular note in connection with peacetime deployments is the Universal Declaration of Human Rights,<sup>67</sup> a resolution adopted by the

United Nations (UN) General Assembly in 1948. This resolution and the UN treaty called the International Covenant on Civil and Political Rights of 1966<sup>68</sup> are landmark instruments establishing a foundation for human rights protection that imposes rules on governments for their treatment of human beings.

Human rights treaties all apply in peacetime, and some of them apply in times of armed conflict as well. Prior reference was made to one such treaty, the UN Convention on the Prevention and Punishment of the Crime of Genocide. Torture is also prohibited, in both peacetime and wartime, by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, as it is during armed conflict by the Geneva Conventions.<sup>69,70</sup>

A full survey of international human rights law exceeds the scope of this chapter. However, it should be kept in mind that governments have international legal obligations to treat their populace humanely and ensure their human rights in peacetime as well as during armed conflict. Just as the law of armed conflict never excuses states from their obligation to fulfill humanitarian obligations in wartime, international human rights law similarly obligates them to do the same for their population during peacetime disasters and emergencies in which MMOs may deploy as part of a foreign humanitarian assistance mission.

MMOs must be highly alert for situations in which individuals or groups might face persecution, dis-

crimination, or mistreatment at the hands of host nation authorities, or may find themselves deprived of assistance by their government during medical and humanitarian relief operations. Higher headquarters must immediately be notified if such issues or evidence arises. The tragedy inherent in the consequential human suffering, and loss of life, could also further aggravate festering social and political problems and magnify security challenges. Additionally, potential goodwill could be thwarted through guilt by association. Just as a wartime crime by a coalition partner can tarnish the credibility and reputation of the United States, the same could happen if a host nation abuses or neglects all or portions of its population, or individuals who have been singled out, during a peacetime emergency.

Less traumatic but important issues may arise pertaining to the Constitution of the World Health Organization, which promises a “right to health,” and to a treaty that was widely ratified (but not by the United States to date) that “recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>71,72</sup> The term “right to health” is interpreted to mean “the highest attainable standard of health.”<sup>73</sup> However, interpretations of the full scope of the meaning and implementation of a right to health may vary. Allies and coalition partners in medical development initiatives may have differing views on what this means and promises.

## CONCLUSION

MMOs are responsible for ensuring medical personnel and units maintain protected legal status and fulfill service delivery requirements that the US government tasks to them in accordance with the Geneva Conventions. These are solemn national commitments that MMOs and other military medical personnel have fulfilled for generations. To continue this tradition, new MMOs should be able to visualize the medical dimensions of the law of armed conflict as an essential

component of the mission—a medical form of commander’s intent.

MMO leadership in ensuring compliance with the medical aspects of the Geneva Conventions serves a high calling that exceeds patient needs and the national commitment to honor these rules. By implementing medical ethics in wartime, MMOs help ensure the continued viability and credibility of the law of armed conflict for the present time and the generations to follow.

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