

Medical personnel and the law of armed conflict

Flight Lieutenant Hyder Gulam, BA, BN, LLB, LLM, GD-Advanced Clinical Nursing, RN, FRCNA, AIAMA

JEAN HENRI DUNANT, a Swiss businessman and humanitarian, visited Louis-Napoleon on the battlefield near Milan in Italy and witnessed the thousands of wounded soldiers left to die without assistance. As a result, he proposed an international network of volunteer relief agencies, in what became known as the Nine Articles. In 1863, Switzerland's Federal Council sponsored an international conference to develop Dunant's ideas, and a year later 12 nations agreed to implement them. The resulting document led to the first Geneva Convention, which forms the basis of the law of armed conflict, and the formation of the International Committee of the Red Cross.

The law of armed conflict

The law of armed conflict (LOAC) applies to both internal and international armed conflicts. Among other things, it serves to:

- protect and ensure respect of human dignity in armed conflicts;
- prevent unnecessary suffering of combatants and non-combatants;
- guarantee certain basic rights to people in the hands of their enemies; and
- facilitate the return to peace.

The LOAC is based on three principles:¹

Military necessity: This principle is the legitimate application of force to obtain a legitimate military objective. It permits all measures that are not prohibited by international law and are necessary to terminate hostile resistance within the shortest time possible.



Flight Lieutenant Hyder Gulam was born in Singapore and educated in Melbourne. He is a qualified lawyer, a registered nurse, and an accredited mediator. He is currently posted to Headquarters 396 Combat Support Wing, RAAF Base Darwin, where he is the Wing Legal Officer. He is able to communicate in Hindi, Urdu, Arabic, Malay, Bahasa and Japanese. His legal interests include Islamic law, human rights and animal law.

HQ 396 CSW, Royal Australian Air Force, Darwin, NT.

Hyder Gulam, BA, BN, LLB, LLM, GD-Advanced Clinical Nursing, RN, FRCNA, AIAMA, Registered Nurse, Barrister and Solicitor, Accredited Mediator.

Correspondence: Flight Lieutenant H Gulam, HQ 396 CSW, Royal Australian Air Force, RAAF Darwin, Darwin, NT 0820. hyder.gulam@defence.gov.au

Abstract

- ◆ The law of armed conflict, as defined by the Geneva Conventions and the Additional Protocols, provides specific rights and obligations for medical personnel.
- ◆ Medical personnel (including ancillary staff), facilities and transports are protected from attack so long as they do not act outside their humanitarian purpose. They are permitted to act in self-defence.
- ◆ Captured permanent military medical personnel are not prisoners of war. Temporary medical personnel are prisoners of war, but should be engaged in medical support. Civilian medical personnel have the full protection of other civilians.
- ◆ Medical personnel have a right to means and facilities to treat wounded and sick people.
- ◆ Medical personnel have a duty to treat all people according to medical need, making no distinction between enemy and friendly forces.

ADF Health 2005; 6: 30-33

Avoidance of unnecessary suffering and unnecessary damages: The LOAC prohibits the use of certain weapons and means which cause unnecessary suffering. It also prohibits the use of permitted weapons and means when unnecessary suffering is planned or tolerated.

Proportionality: Military actions are only permissible if the damages caused or the expected loss of human lives and damages to non-military objects are not excessive in relation to the anticipated military advantage.

The fundamental documents defining the LOAC are the Geneva Conventions²⁻⁵ and the Additional Protocols^{6,7} (Box). Under the Geneva Conventions, medical personnel have specific rights and obligations to ensure they can fulfil their duty to treat the wounded and sick in their care.

The LOAC must be observed by states and their civil and military authorities, as well as by civilian and military individuals. Australia has signed and ratified the major international conventions on the LOAC and humanitarian law.⁸ Thus, these laws are binding on the Australian Defence Force.

The documents defining the law of armed conflict

Geneva Convention 1:² *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.* 12 August 1949.

Geneva Convention 2:³ *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.* 12 August 1949.

Geneva Convention 3:⁴ *Geneva Convention relative to the Treatment of Prisoners of War.* 12 August 1949.

Geneva Convention 4:⁵ *Geneva Convention relative to the Protection of Civilian Persons in Time of War.* 12 August 1949.

Additional Protocol I:⁶ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.* 8 June 1977.

Additional Protocol II:⁷ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.* 8 June 1977.

The ADF strongly recommends the use of the protective emblem, because of the protection it provides under the LOAC. Nevertheless, not displaying a symbol does not automatically leave a protected facility or person open to attack. If a belligerent has knowledge that a person or facilities are protected under the Geneva Conventions, then that protected status must be respected.⁹ Similarly, civilian medical facilities, transports and supplies are not to be made the target of attack or unnecessarily destroyed.⁹ Additional Protocol I also provides protection for civilian medical personnel, as well as a general protection for medical duties.⁶

In armed conflict, the Red Cross or Red Crescent emblem is to be worn by military and civilian medical personnel authorised by their government's policy. It is also to be shown on medical facilities, vehicles, stores and equipment. This serves as a protective sign that must not be attacked under any circumstances. However, this immunity may cease if the medical facility, transport or equipment is used for purposes hostile to the adversary and outside their humanitarian purpose.⁹ Before this protection of medical personnel and facilities is lost, a warning should be provided and reasonable time permitted to allow for the improper activities to cease. In extreme cases, overriding military necessity may preclude such a warning. Protection will not be lost if medical members act in self-defence.⁹

Situation of medical units

Medical sites should be situated, as far as possible, away from military objectives.^{2,6} There are no specific distances laid down under the Geneva Conventions. The discretion is on the commander, who must weigh up a number of factors, including the nature of the unit (eg, medical aid post, field ambulance unit); geography/terrain; the need for the unit to be near troops it supports; and the type of weapons or radius of effects of weapons being used by the enemy. The ADF recognises that overriding military considerations may dictate concealment on a military deployment.⁹ Thus, a commander may choose not to display the Red Cross or Red Crescent symbol on field ambulances or medical facilities that must be located close to a military objective, such as a medical transit post adjacent to a military airfield.²

Use of arms by medical personnel

Medical personnel are entitled to carry arms and to defend themselves and those in their protection.⁶ This includes light individual weapons, which in the ADF includes the

Medical personnel

According to the Geneva Conventions and the Additional Protocols, "medical personnel" are all personnel required for adequate treatment of the wounded and sick, especially doctors, dentists, nurses, physiotherapists, and medical assistants. This includes people integral to the medical service (such as cooks, administrative staff, mechanics, and transport drivers). The latter group will be specially authorised for their medical roles and/or connected to medical units. These personnel may be permanent or temporary (length/period of duty), but their attachment to the medical unit will be an exclusive assignment during that time.⁶

Medical personnel are considered "protected persons". They are "non-combatants". This is because medical personnel pose no threat so long as they do not participate in hostilities. They are not to be made legitimate targets of attack, but are to have their status respected, as well as their inherent right to perform their medical role and care for patients without hindrance.

Protective emblems

As a matter of ADF policy, medical personnel are to wear a protective emblem while performing legitimate, exclusive medical duties.⁹ In addition, personnel are to carry an identity card with specific details. A sample card is illustrated in Additional Protocol I, Article 1 of Annex I.⁶

F88 Austeyr. Medical personnel may use their weapons in self-defence. For example, this may include opening fire against enemy soldiers who enter a medical facility and start killing staff and patients. Medical personnel may also carry and use light individual weapons when serving sentry or on guard duty — when such use is limited to protecting the medical installation, medical personnel and patients.² The ADF recognises this right, as well as the right to take small arms and ammunition from wounded and sick people within a medical unit.⁹

Medical transport

Medical transport includes all means of transport, military or civil, temporarily or permanently used, while exclusively assigned to medical transportation and subject to a responsible authority of a party to the conflict.⁶ Means of medical transport are permanent if they are used exclusively for medical transportation for an indefinite period, temporary if they are used exclusively for medical transportation for definite and limited periods (eg, a military truck that is occasionally used for medical transports and is then marked with the distinctive emblem).

Means of medical transport may not be equipped with integrally mounted arms or carry arms other than for self-defence or the protection of patients. However, medical transports may have an armed escort. The behaviour of the escort is prescribed under the Geneva Conventions.² The commander must ensure that medical transports are sufficiently distant from other military traffic whenever possible. The commander can assign separate routes for medical transportation, such as medical aircraft and hospital ships. In all cases, the distance between medical transports and military convoys must be appropriate. Medical routes should also be sufficiently distant from military targets.

Status of captured medical personnel

Captured permanent military medical personnel are not considered prisoners of war (POWs). Instead, they should be held only as long as there is vital medical work to do and, if not repatriated, they may not be forced to do tasks other than medical services. They are to be engaged exclusively for medical tasks, preferably in support of their imprisoned fellow nationals.^{2,6}

Temporarily engaged medical military personnel do have POW status after capture. They shall be engaged for medical support as the situation requires.² Members of a

military guard guarding a medical unit become POWs without exception.

Civilian medical personnel who fall into the hands of the enemy, together with medical installations or means of transport, enjoy the full protection of a civilian; they must be respected, protected and given support in performing their medical duties.^{2,6}

The Geneva Conventions also allow for seriously ill and severely injured POWs to be repatriated as soon as their condition and the situation allows for their safe transportation.⁴

Rights and duties in providing care

Medical personnel can demand that the parties to a conflict provide the means and facilities to ensure victims are given the best possible care. The medical personnel should have freedom of movement, including the right of access to the battlefield, besieged areas, prison camps, etc.

Under the LOAC, people considered *hors de combat* and not taking a direct part in hostilities must be provided with medical care. Medical personnel must protect and treat them humanely.² In this regard, there must be no distinction between enemy and friendly forces: medical need alone decides priority.⁶ The ADF recognises that no person may be punished for carrying out medical activities in accordance with medical ethics, regardless of the nationality or status of the person treated.⁹

Under the auspices of medical care, searching for and collecting the wounded and sick may be undertaken. A ceasefire may be arranged for such a search. If wounded or sick people engage in hostile acts, they lose protection and immunity from attack.

When providing treatment or care, it is vital to obtain consent of the patient before treatment, where possible.^{6,7} In addition, there is an obligation to only perform medical procedures that are necessary when considering the patient's condition (the exceptions to this are blood donors and skin donors).⁶

If a party to a conflict is compelled to retreat, some medical personnel and/or equipment is to be left for the care of the sick and wounded — as far as military necessity permits.⁶ This obligation to remain behind is not absolute. It is up to the medical personnel themselves to decide in accordance with their conscience. The preferable option is a planned evacuation from the combat zone.

National information bureaus

The Geneva Conventions also provide for a national information bureau (NIB) for each party to a conflict.²⁻⁵

The International Committee of the Red Cross has a Central Tracing Agency (CTA) database. Medical personnel collect information on the status of sick, injured or deceased people and forward this to the NIB. Information is transmitted from NIBs to the CTA. This is not regarded as a breach of privacy. The information that is required includes a list of all patients, a brief description of their medical condition, and a list of deceased people (including death certificates and information on exact locations of graves). In addition, items to be forwarded to the NIB include a will or documents of value to next of kin, and money or articles of intrinsic or sentimental value found on the deceased.

Disposal of bodies

Burial is generally preferred for the disposal of bodies.² Cremation is only acceptable for hygiene or religious reasons, or at the request of the deceased.² The graves are to be clearly marked and identifiable on a plan. Before disposal, the bodies are to be examined by the most appropriate authority to determine identity, and most likely cause, time, date, and place of death.

Violations

Medical personnel can be charged for violations of the Geneva Conventions as well as the *Defence Force Discipline Act 1982* (Cwlth). Some heads of culpability are:

- injuring or killing any *hors de combat* personnel;
- failing to provide essential care as required;
- exposing sick or wounded people to infection or contagion;
- affronting the dignity of protected people; and
- subjecting protected people to humiliating, intimidating or degrading treatment.

Conclusion

I have attempted to provide a brief overview of the LOAC and how it relates to medical personnel. If you have any queries, you are urged to contact your local ADF Legal Officer. In addition, interested readers may wish to take note that the ADF, through the Asia Pacific Centre for Military Law¹⁰ and the ADF Warfare Centre,¹¹ runs short courses on operational law, which includes matters pertaining to LOAC. In addition, the Australian Red Cross runs a 5-day course on international humanitarian law in

Melbourne, which is regularly attended by ADF personnel, and is highly recommended.

Acknowledgements

For their assistance and comments, I thank Group Captain Paul Cronan AM and Squadron Leader Rebecca Lewis, Directorate of Operations and International Law — Defence Legal; Squadron Leader Michael Penman, Health Services Training Flight, RAAF Williams; Mr Jim Backwell, formerly of Australian Red Cross; and Mrs Jan MacGowan, Legal Services, HQTC-AF.

Competing interests

None identified.

References

1. Australian Air Publication 1003. Operations law for RAAF commanders. 2nd ed. Canberra: Air Power Development Centre, 2004: Chapter 6. Available at: <http://www.raaf.gov.au/airpower/html/doctrine/aap1003-main.asp> (accessed Feb 2005).
2. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention 1). 12 August 1949. Available at: http://www.unhchr.ch/html/menu3/b/q_genev1.htm (accessed Feb 2005).
3. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention 2). 12 August 1949. Available at: http://www.unhchr.ch/html/menu3/b/q_genev2.htm (accessed Feb 2005).
4. Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention 3). 12 August 1949. Available at: <http://www.ohchr.org/english/law/prisonerwar.htm> (accessed Feb 2005).
5. Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention 4). 12 August 1949. Available at: <http://www.ohchr.org/english/law/civilianpersons.htm> (accessed Feb 2005).
6. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I). 8 June 1977. Available at: <http://www.unhchr.ch/html/menu3/b/93.htm> (accessed Feb 2005).
7. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II). 8 June 1977. Available at: <http://www.unhchr.ch/html/menu3/b/94.htm> (accessed Feb 2005).
8. Kewley G. Even wars have limits: the law of armed conflict. Melbourne: Australian Red Cross, 2000.
9. Australian Defence Force Publication 37. Law of armed conflict. Chapter 9.
10. Asia Pacific Centre for Military Law [website]. Available at: <http://www.apcml.org/> (accessed Feb 2005).
11. Australian Defence Force Warfare Centre [website]. Available at: <http://www.defence.gov.au/adfwc/> (accessed Feb 2005).

(Received 13 Apr 2004, accepted 18 Jan 2005)

□