CHAPTER-IV

GENEVA CONVENTION I: WOUNDED AND SICK IN THE FIELD

The term "Wounded and Sick" is not defined in the GWS. Concerned that any definition would be misinterpreted, the drafters decided that the meaning of the words was a matter of "common sense and good faith."[22]. However, Article 8(a), Protocol I, contains the following widely accepted definition: "Persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility." GWS (Sea) applies same protections to those "shipwrecked" at sea - shipwrecked meaning "shipwreck from any cause and includes forced landings at sea by or from, aircraft." (Art. 13). Article 8(5),Protocol provides a more detailed definition of "shipwrecked" which is similar to the "wounded and sick" definition above. Once put ashore, "shipwrecked" forces become "wounded and sick" forces under the GWS. (GWS (Sea), Art.4). For the protected persons who have fallen into the hands of the enemy, the GWS applies until their final repatriation. GWS, Art. 5. (1949 Convention). There are some guidelines in regard to the treatment of "wounded and sick" in the 1864 Geneva Convention which includes inter alia as under[23]- (a) Military ambulances and hospitals are to be considered neutral; (b)Personnel and Chaplains are neutral; Repatriation is the rule; (c)Wounded- (i) Must be cared for, (ii) Repatriation if (a) Incapable of further service, (b) Agree not to take up arms again.

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[22] Pictet at 136

[23] Henry Dunant: A Memory of Solferino.

CATEGORIES OF WOUNDED AND SICK.

A. **Protected Persons** (Article 13) -same as Article 4, GPW

1. Members of armed forces of a Party to the conflict, militias and volunteer corps forming part of such armed forces.

2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict provided they fulfill the following conditions:

a. that of being commanded by a person responsible for his subordinates;

b, that of having a fixed distinctive sign recognizable at a distance;

c. that of carrying arms openly;

d. that if conducting their operations in accordance with the laws and customs of war.

3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

4. Persons who accompany the armed forces without actually being members thereof provided they have received authorization from the armed forces which they accompany

5. Members of crews of the merchant marine and civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.

6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces provided they carry arms openly and respect the laws and customs of war.

B. **Civilians**

1. Not expressly covered by GWS -but have general protection as noncombatants -may not be targeted (unless they abrogate their status by their actions.)

2. Express coverage is found, however, in the Geneva Conventions on Civilians (GC), Article 16: "The wounded and sick, as well as the

infirm, and expectant mothers, shall be the object of particular protection and respect."[24]

3. Article 8(a), Protocol I (GP I) expressly included civilians within its definition of "wounded and sick."

4. Thus, as a practical matter, all wounded and sick, military and civilian, in the hands of the enemy must be respected and protected.[25]

THE HANDLING OF THE WOUNDED AND SICK.

A. Protection (Article 12).

1. General -"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."

a. **Respect -to spare, not to attack.**

(1)During the Vietnam conflict there were several examples of violations of this prohibition, e.g., during the November 1965 battle in Ia Drang Valley pitting regular North Vietnamese (NVA) units against units of the lst Cavalry Division there were several accounts of NVA personnel shooting wounded Americans lying on the battlefield. Moore, WE WERE SOLDIERS AND YOUNG(1993).

(2)During the Falklands War, international humanitarian law was generally well followed but there was an incident where two lightly armed British helicopters accompanying a supply ship were shot down

and Argentinean forces continued to fire on the helicopter crewmen as

they struggled in the water. Three of the crewmen were killed, and the

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[24] See G.I.A.D. Draper, THEREDCROSS CONVENTIONSOF 1949 74 (1958).

[25] FM 27-10, at para. 208; FM 4-02, para. 4-4.

fourth was wounded. Soon after this incident an Argentinean flyer was shot down. British leadership ensured proper treatment despite some reprisal suggestions.[26]

b. Protect -to come to someone's defense; to lend help and support.

(1)An excellent example of this concept occurred in the Falklands when a British soldier came upon a gravely wounded Argentinean whose brains were leaking into to his helmet. The British soldier scooped the extruded material back into the soldier's skull and evacuated him. The Argentinean survived. Higginbotham at 50.

(2) Extent of Obligation -It is "unlawful for an enemy to attack, kill, ill

treat or in any way harm a fallen and unarmed soldier, while at the same time the enemy has an obligation to come to his aid and give him such care as his condition require[s]." [27]

B. **Care** (Article 12).

1. Standard is one of humane treatment -"Each belligerent must treat his Fallen adversaries as he would the wounded of his own army." [28]

C. **Abandoning Wounded and Sick to the Enemy** (Article 12).

1. If, during a retreat, a commander is forced to leave behind wounded and sick, he is required to leave behind medical personnel and material to assist in their care.

2. "As far as military considerations permit" -provides a limited military necessity exception to this requirement. Thus a commander need not leave behind medical personnel if such action will leave his unit without adequate medical staff. Nor can the enemy refuse to provide medical care to abandoned enemy wounded on the grounds that the enemy failed to leave behind medical personnel. The

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[26] Robert Higginbotham, Case Studies in the Low of Land Warfare TI. The Campaign in the Falklands. Military Review 52-53 (Oct 1984).

[27] Pictet at 135.

[28] Pictet at 137.

detaining power ultimately has the absolute respect and protect obligation. [29]

D. **Order of Treatment** (Article 12).

1. Determined solely by reasons of medical urgency. Designed to strengthen the principle of equal treatment articulated above.

a. Treatment is accorded using triage principles which provide the greatest medical assets to those with significant injuries who may benefit from treatment, while those wounded who will die no matter what and those whose injuries are not serious are given lesser priority.

b. The US applies this policy at the evacuation stage, as well as at the

treatment stage. "Sick, injured, or wounded EPWs are treated and evacuated through normal medical channels, but are physically segregated from US or allied patients. The EPW patient is evacuated from the combat zone as soon as his medical condition permits." [30]

c. During Operation JUST CAUSE, wounded Panamanian Defense Force

personnel were evacuated on the same aircraft as US personnel and provided the same medical care as US forces. [31]

d. In the Falklands the quality of medical care provided by the British to the wounded, without distinction between British and Argentinean, was remarkable. More than 300 major surgeries were performed, and 100 of these were on Argentinean soldiers. Higginbotham at 50.

e. Unfortunately, as pointed out by Professor Levie citing the example of the Japanese during World War 11, "this humanitarian

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[29] Pictet at 142.

[30] Dep't of Army Field Manual 8-10-6, Medical Evacuation in a Theater of Operations, appendix A- 1 (31 October 1% 1).

[31] Lessons Learned: Operation JUST CAUSE, Unclassified Executive Summary, p. 7 (24 May 1990) (on file at TJAGSA).

procedure [referring to treating enemy wounded like your own] is far from being universally followed." [32]

2. Medical personnel must make the decisions regarding medical priority on the basis of their medical ethics. Baccino-Astrada at 40. This standard is reiterated in Article 10, Protocol I for emphasis.

3. Triage Categories[33]:

a. Immediate. Condition demands immediate resuscitative treatment. Generally the procedures are short in duration and economical in terms of medical resources. Example: control of a hemorrhage from an extremity.[34]

b. Delayed. Treatment can be delayed for 8-10 hours w/o undue harm.

Examples: Soft tissue injuries requiring debridement; maxillofacial injuries without airway compromise; eye and central nervous system injuries.

c. Minimal (or Ambulatory). Next to last priority for medical officer care; but head of the line at the battle dressing station. (Can be patched up and returned to the lines in minutes.) (Major difference with civilian triage.)

d. Expectant. Injuries are so extensive that even if they were the sole

casualty, survival would be unlikely.

4. No adverse distinctions may be established in providing care.

a. May not discriminate against wounded or sick because of "sex, race,

nationality, religion, political opinions, or any other similar criteria."

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[32] Howard S. Levie, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT,100 (1976).

[33] (FM 8-42 at para. J-3)

[34] NATO divides this category into two groups: Urgent: quick short duration life saving care, which is first priority; and Immediate: which require longer duration care to save a life.

b. Note the use of the term "adverse" permits favorable distinctions, e.g., taking physical attributes into account, such as in the case of children, pregnant women, the aged, etc..

5. The wounded and sick "shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created."

a. The first prohibition stems from a recognition that wounded personnel, who had not yet received medical treatment, "were profitable subjects for interrogation." Draper at 76. Professor Draper cites the German practice during World War II at their main aircrew interrogation center. They frequently delayed medical treatment until after interrogation. Such conduct is now expressly forbidden.

b. The second prohibition was designed to counter the German practice of sealing off Russian PW camps once typhus or tuberculosis was discovered.

E. **Status of Wounded and Sick** (Article 14).

1. The wounded or sick soldier enjoys the status of a PW. Actually the soldier will be protected under both the GWS and the GPW until recovery is complete, at which time the soldier is exclusively governed by the GPW.

2. While the conventions overlap, i.e., during the treatment and recovery phase, the GWS takes precedence. But, as Pictet states, this is an academic point as the protections in both are largely the same.[35]

F. **Search for Casualties** (Article 15).

1. Search, Protection, and Care.

a. "At all times, and particularly after an engagement." Parties have an

ongoing obligation to search for the wounded and sick as conditions permit. The commander determines when it is possible to do so. This mandate applies to all casualties, not just friendly casualties.

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[35] Pictet at 147

(1) The drafters recognized that there were times when military operations would make the obligation to search for the fallen impracticable.[36]

(2) By way of example, US policy during Operation DESERT STORM was not to search for casualties in Iraqi tanks or armored personnel carriers because of concern about unexploded ordnance.

(3) Similar obligations apply to maritime operations (Article 18, GWS (Sea)). It was through this military necessity exception that HMS Conqueror did not assist the shipwrecked members of the Argentinean

cruiser General Belgrano after its torpedo attack against it. The Conqueror was reasonably concerned about the threat of a destroyer attack if it lingered in the area.[37] Professor Draper explicitly states that

"it is apparent that submarines will rarely be in a position to search for and collect the wounded or shipwrecked. Neither has such a craft the facilities for ensuring their adequate care. Further, the search for shipwrecked by even larger ships is operationally a very dangerous proceeding, exposing the search vessel to the grave risk of submarine

attack by day or night and to air attack by day." Draper at 87.

b. The protection requirement refers to preventing pillage of the wounded by the "hyenas of the battlefield."

c. Care refers to the requirement to render first aid.

d. Note that the search obligation also extends to searching for the dead, again, as military conditions permit. During the Falklands War the Argentineans were scrupulous in handling of the dead. A Harrier pilot was killed over Goose Green and buried with military honors.[38]

2. Suspensions of Fire and Local Agreements.

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[36] Pictet at 151.

[37] Admiral Sandy Woodward, ONE HUNDREDDAYS162 (1992).

[38] Higginbotham at 51.

a. Suspensions of fire are agreements calling for cease-fires that are sanctioned by the Convention to permit the combatants to remove, transport, or exchange the wounded, sick and the dead (note that exchanges of wounded and sick between parties did occur to a limited
extent during World War II.[39]

b. Suspensions of fire were not always possible without negotiation and, sometimes, the involvement of staffs up the chain of command. Consequently, local agreements, an innovation in the 1949 convention to broaden the practice of suspensions of fire by authorizing similar agreements at lower command levels, are sanctioned for use by local on- scene commanders to accomplish the same function.

c. Article 15 also sanctions local agreements to remove or exchange wounded and sick from a besieged or encircled area, as well as the passage of medical and religious personnel and equipment into such areas. The GC contains similar provisions for civilian wounded and sick in such areas. It is this type of agreement that has been used to permit the passage medical supplies to the city of Sarajevo during the siege of 1992.

G. **Identification of Casualties** (Articles 16-17).

1. Parties are required, as soon as possible, to record the following information regarding the wounded, sick, and the dead: name, ID number, DOB, date and place of capture or death, and particulars concerning wounds, illness, or cause of death.

2. Forward information to Prisoners of War Information Bureau (See Article 122, GPW). Information Bureaus are established by Parties to the conflict to transmit and to receive information/articles regarding PWs to/from the ICRC 's Central Tracing Agency. The US employs the National PW Information Center (NPWIC) in this role.

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[39] Pictet at 155.

3. In addition, Parties are required to forward the following information and materials regarding the dead:

a. Death certificates.

b. ID disc.

c. Important documents, e.g., wills, money, etc., found on the body.

d. Personal property found on the body.

4. Handling of the Dead.

a. Examination of bodies (a medical examination, if possible) to confirm death and to identify the body. Such examinations can play a dispositive role in refuting allegations of war crimes committed against individuals. Thus, they should be conducted with as much care as possible.

b. No cremation (except for religious or hygienic reasons).

c. Honorable burial. Individual burial is strongly preferred; however, there is a military necessity exception which permits burial in common graves,e.g., if circumstances, such as climate or military concerns, necessitate it.[40]

d. Mark and record grave locations.

H. **Voluntary Participation of Local Population in Relief Efforts**[41]

1. Commanders may appeal to the charity of local inhabitants to collect and care for the wounded and sick. Such actions by the civilians must be voluntary. Similarly, commanders are not obliged to appeal to the civilians.

2. Spontaneous efforts on the part of civilians to collect and care for the wounded and sick is also permitted.

3. Ban on the punishment of civilians for participation in relief efforts. This provision arose from the fact that the Germans prohibited German civilians from aiding wounded airmen.

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[40] Pictet at 177.

[41] Article 18.

4. Continuing obligations of occupying power. Thus, the occupant cannot use the employment of civilians as a pretext for avoiding their own responsibilities for the wounded and sick. The contribution of civilians is only incidental. [42]

5. Civilians must also respect the wounded and sick. This is the same principle discussed above (article 12) vis-a-vis armed forces. This is the only article of the convention that applies directly to civilians. [43]

STATUS AND PROTECTION OF PERSONNEL AIDING WOUNDED AND SICK.

A. Categories of Persons Protected Based Upon Rights Possessed.

1. **The first category**: (Article 24) 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; chaplains; and personnel of national Red Cross/Crescent Societies and other recognized relief organizations (Article 26).

a. Respect and protect (Article 24) -applies "in all circumstances." In Vietnam US soldiers claimed that the NVA and Vietcong targeted medical personnel because of their importance in maintaining morale. They'd shoot medics even if they were giving care. Consequently medics often avoided wearing armbands which acted as bulls-eyes. There were even reports that the Vietcong paid an incentive for killing medics. [44]

b. **Status upon capture** (Article 28)- Retained Personnel, not PWs.

(I)A new provision in the 1949 convention. The 1864 and 1906 conventions required immediate repatriation. The 1929 convention also required repatriation, absent an agreement to retain medical

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[42] Pictet at 193.
[43] Pictet at 191.
[44] Eric M. Bergerud, REDTHUNDER, TROPIC LIGHTNING: THE WORLD OF A COMBAT IN VIETNAM DIVISION 20 1-03 (1 993).

personnel. During World War 11, the use of these agreements became

extensive, and very few medical personnel were repatriated. Great Britain and Italy, for example, retained 2 doctors, 2 dentists, 2 chaplains, and 12 medical orderlies for every 1,000 PWs.

(2) The 1949 convention institutionalized this process. Some government experts proposed making medical personnel straight PWs, the idea being that wounded PWs prefer to be cared for by their countrymen, speaking the same language. The other camp, favoring repatriation, cited the traditional principle of inviolability-that medical personnel were non-combatants. What resulted was a compromise: medical personnel were to be repatriated, but if needed to treat PWs, they were to be retained and treated, at a minimum, as well as PWs.[45]

(3) Note that medical personnel may only be retained to treat PWs. Under no circumstances may they be retained to treat enemy personnel. While the preference is for the retained persons to treat PWs of their own nationality, the language is sufficiently broad to permit retention to treat any PW.[46]

c. **Repatriation of Medical Personnel**(Artic1es 30-3 1).

(1) Repatriation is the rule; retention the exception. Medical personnel are to be retained only so long as required by the health and spiritual needs of PWs and ,then are to be returned when retention is not indispensable.[47]

(2) Article 31 states that selection of personnel for return should be irrespective of race, religion or political opinion, preferably according to chronological order of capture-first-in/first-out approach.

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[45] Pictet at 238-40.

[46] Pictet at 241.

[47] Pictet at 260-61.

(3) Parties may enter special agreements regarding the percentage of

personnel to be retained in proportion to the number of prisoners and the distribution of the said personnel in the camps. The US practice is that retained persons will be assigned to PW camps in the ratio of 2 doctors, 2 nurses, 1 chaplain, and 7 enlisted medical personnel per 1,000 PWs. Those not required will be repatriated.[48]

(4) Since World War 11, this is one of the least honored provisions of the convention. US medical personnel in Korea and Vietnam were not only not repatriated, but were also denied retained person status.[49]

d. **Treatment of Medical Personnel**(Article 28).

(1) May only be required to perform medical and religious duties.

(2) Receive at least all benefits conferred on PWs, e.g., pay, monthly allowances, correspondence privileges. AR 190-8.

(3) Are subject to camp discipline.

e. **Relief** (Article 28). Belligerents may relieve doctors retained in enemy camps with personnel from the home country. During World war II some Yugoslavian and French doctors in German camps were relieved.[50]

f. Continuing obligation of detaining power (Article 28). The detaining power is bound to provide free of charge whatever medical attention the PWs require.

2. **The second category**: Auxiliary medical support personnel of the Armed Forces (Articles 25 & 29).

a. These are personnel who have received special training in other medical specialties, e.g., orderlies, nurses, stretcher bearers, in addition to performing other military duties. (While only Article 25

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[48] AR 190- 810PNAVINST 346 1.6lAFJI 3 1-3O4MCO 3461.1, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, 1 November 1997.

[49] Memorandum of W. Hays Parks to Director, Health Care Operations

reprinted in The Army Lawyer, April 1989, at 5.

[50] Pictet at 257.

specifically refers to nurses, nurses are Article 24 personnel if they meet the "exclusively engaged" criteria of that article.).

b. Respect and protect (Article 25) -when acting in medical capacity.

c. Status upon capture (Article 29) -PWs; however, must be employed in medical capacity insofar as a need arises.

d. Treatment (Article 29).

(1)When not performing medical duties, treat as PWs.

(2) When performing medical duties, they remain, PWs, but receive treatment under Article 32, GPW, as retained personnel; however, they are not entitled to repatriation.

(3) Auxiliaries are not widely used, but see W. Hays Parks memorandum, supra, for discussion of certain US personnel, who de facto, become auxiliary personnel. See also FM 4-02 at para. 4-5b (discusses this same issue and points out that Article 24 personnel switching between medical and non-medical duties at best places such individuals in the auxiliary category.).

(4)The US Army does not have any personnel who officially fall into the category identified in Article 25.[51] Air Force regulations do provide for these personnel.[52]

3. The third category: Personnel of aid societies of neutral countries (Articles 27 & 32).

a. Nature of assistance: procedural requirements (Article 27).

(1) Consent of neutral government.

(2) Consent of party being aided.

(3)Notification to adverse party.

b. Retention prohibited (Article 32) -must be returned "as soon as a route for their return is open and military considerations permit."

c. Treatment pending return (Article 32) -must be allowed to perform

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[51] FM 4-02 at para. 4-5b.

[52] Bruce T. Smith, Air Force Medical Personnel and the Law of Armed Conflict, 37 A. F. L. Rev. 242 (1994).

medical work.

MEDICAL UNITS AND ESTABLISHMENTS.

A. Protection.

1. Fixed Establishments and Mobile Medical Units (Article 19).

a. May not be attacked, provided they do not abrogate their status.

(1) In Afghanistan, the Soviets engaged in a campaign to destroy hospitals and dispensaries operated by non-governmental organizations (Medecins sans Frontieres, Medecins du Monde, Aide Medicale International -all NGOs comprised of French doctors and nurses). In September of 1980, the Soviets sacked the hospital at Yakaolang, even destroying all medical supplies and equipment. In late 1981 the Soviets systematically bombed hospitals operated by French medical organizations. At least 8 hospitals of the three NGOs above were hit. One was rebuilt with a prominent red cross, but was still bombed again by Russian helicopters.[53]

(2) In Vietnam during the 1968 Tet offensive, communist forces attacked the 45th MASH at Tay Ninh, killing one doctor and two medics. [54]

b. Commanders are encouraged to situate medical units and establishments away from military objectives. See also Article 12, GP I, which states that medical units will, in no circumstances, be used to shield military objectives from attack.

c. If these units fall into the hands of an adverse party, medical personnel will be allowed to continue caring for wounded and sick.

2. Discontinuance of Protection (Article 2 1).

a. These units/establishments lose protection if committing "acts harmful to the enemy." Pictet cites as examples such acts as using a

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[53] Helsinki Watch, TEARS, BLOOD,AND CRTES, HUMANRIGHTSIN AFGHANISTAN SINCE THE INVASION 1979- 1984, at184-6.

[54] Bergerud at 206.

hospital as a shelter for combatants, as an ammunition dump, or as an observation post.[55]

b. Protection ceases only after a warning has been given and it remains unheeded after a reasonable time to comply. A reasonable time varies on the circumstances, e.g., no time limit would be required if fire is being taken from the hospital.[56]

c. Article 13, GP I, extends this same standard to civilian hospitals.

3. Conditions not depriving medical units and establishments of protection (Article 22).

a. Unit personnel armed for own defense against marauders and those

violating the law of war, e.g., by attacking a medical unit. Medical personnel thus may carry small arms, such as rifles or pistols for this purpose. In contrast, placing machine guns, mines, LAAWS, etc., around a medical unit would cause a loss of protection.[57]

b. Unit guarded by sentries. Normally medical units are guarded by its own personnel. It will not lose its protection, however, if a military guard attached to a medical unit guards it. These personnel may be regular members of the armed force, but they may only use force in the same circumstances as discussed in para 3(a) above. [58]

c. Small arms taken from wounded are present in the unit.

d. Presence of personnel from the veterinary service.

e. Provision of care to civilian wounded and sick.

B. Disposition of Captured Buildings and Material of Medical Units and Establishments.

1. Mobile Medical Units (Article 33).

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[55] Pictet at 200-01.
[56] Pictet at 202.
[57] FM 4-02 at para. 4-8.
[58] FM 4-02 at para. 4-8.

a. Material of mobile medical units, if captured, need not be returned. This was a significant departure from the 1929 convention which required mobile units to be returned.

b. But captured medical material must be used to care for the wounded and sick. First priority for the use of such material is the wounded and sick in the captured unit. If there are no patients in the captured unit, the material may be used for other patients. [59]

2. Fixed Medical Establishments (Article 33).

a. The captor has no obligation to restore this property to the enemy -he can maintain possession of the building, and its material becomes his property. However, the building and the material must be used to care for wounded and sick as long as requirement exists.[60]

b. Exception -"in case of urgent military necessity," they may be used for other purposes.

c. If a fixed medical establishment is converted to other uses, prior arrangements must be made to ensure that wounded and sick are cared for.

3. Medical material and stores of both mobile and fixed establishments "shall not be intentionally destroyed." No military necessity exception.

MEDICAL TRANSPORTATION.

A. **Medical Vehicles -Ambulances** (Article 35).

1. Respect and protect -may not be attacked if performing a medical function. During the Bosnian conflict, there were several reports of attacks on medical vehicles, e.g., on June 24, 1992, Bosnian Serb machine gunners fired on two ambulances killing all six occupants. [61]

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[59] Pictet at 274; see also FM 4-02 at para. 4-6.

[60] Greenspan at 85.

[61] Helsinki Watch, WAR CRIMESIN BOSNIA-HERCEGOVINA 115 (1992).

2. These vehicles may be employed permanently or temporarily on such duties and they need not be specially equipped for medical purposes.[62] Professor Draper states that "as ambulances are not always available, any vehicles may be adapted and used temporarily for transport of the wounded. During that time they will be entitled to protection, subject to the display of the distinctive emblem. Thus military vehicles going up to the forward areas with ammunition may bring back the wounded, with the important reservation the emblem must be detachable, e.g., a flag, so that it may be flown on the downward journey. Conversely military vehicles may take down wounded and bring up military supplies on the return journey. The flag must them be removed on the return journey." [63]

3. Key issue for these vehicles is the display of the distinctive emblem, which accords them protection.

a. Camouflage scenario: Belligerents are only under an obligation to respect and protect medical vehicles so long as they can identify them.

Consequently, absent the possession of some other intelligence regarding the identity of a camouflaged medical vehicle, belligerents would not be under any obligation to respect and protect it.[64]

b. Display the emblem only when the vehicle is being employed on medical work. Misuse of the distinctive symbol is a war crime.[65]

4. Upon capture, these vehicles are "subject to the laws of war."

a. Thus, the captor may use them for any purpose.

b. If the vehicles are used for non-medical purposes, the captor must ensure care of wounded and sick they contained, and, of course, ensure that the distinctive markings have been removed.

B. **Medical Aircraft** (Article 36).

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[62] Pictet at 281

[63] Draper at 83.

[64] FM 4-02 at para. 4-6. See also Draper at 80.

[65] FM 27-10 at para. 504.

1. Definition -Aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment.

2. Protection.

a. Marked with protected emblem.

b. However, protection ultimately depends on an agreement: medical aircraft are not to be attacked if "flying at heights, times and on routes

specifically agreed upon between the belligerents." The differing treatment accorded to aircraft, as opposed to ambulances, is a function of their increased mobility and consequent heightened fears about their misuse. Also "the speed of modem aircraft makes identification by colour or markings useless. Only previous agreement could afford any real safeguard." [66]

c. Without such an agreement, belligerents use medical aircraft at their own risk.[67]

(1)This was certainly the case in Vietnam where "any air ambulance pilot who served a full one year tour could expect to have his aircraft hit at least once by enemy fire." "Most of the Viet Cong and North Vietnamese clearly considered the air ambulances just another target."[68] (although the authors note the pilot error and mechanical failure accounted for more aircraft losses than did hostile fire).

(2) Medical aircraft (and vehicles) took fire from Panamanian paramilitary forces (DIGBATS) during Operation just cause.[69]

(3) By contrast, in the Falklands each of the hospital ships (British had 4; Argentineans had 2) had one dedicated medical aircraft with Red Cross emblems. Radar ID was used to identify these aircraft

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[66] Draper at 84.

[67] Pictet at 288; FM 4-02 at para. 4-6.

[68] Dorland & Nanney, DUST OFF: AMY AEROMEDICALIN EVACUATION VIETNAM85-86 (1982)

[69] Center for Army Lessons Learned, Operation JUST CAUSE: Lessons Learned, p. III- 14, (October 1990).

because of visibility problems. Later it was done by the tacit agreement of the parties. Both sides also used combat helicopters extensively, flying at
their own risk. No casualties occurred.[70]

d. Aircraft may be used permanently or temporarily on a medical relief
mission; however, to be protected it must be used "exclusively" for a medical mission during its relief mission.[71] This raises questions as to whether the exclusivity of use refers to the aircraft's entire round trip or to simply a particular leg of the aircraft's route. The point is overshadowed, however, by the ultimate need for an agreement in order to ensure protection. Pictet also says exclusively engaged means without ally armament.[72] (the mounting or use of offensive weapons on dedicated Medevac vehicles and aircraft jeopardizes the protection afforded by the conventions. Offensive weapons include, but are not limited to, machine guns, grenade launchers, hand grenades, and light anti-tank weapons).

e. Reporting information acquired incidentally to the aircraft's humanitarian mission does not cause the aircraft to lose its protection. Medical personnel are responsible for reporting information gained through casual observation of activities in plain view in the discharge of their duties. This does not violate the law of war or constitute grounds for loss of protected status.[73] For example, a Medevac aircraft could report the presence of an enemy patrol if the patrol was observed in the course of their regular mission and was not part of an information gathering mission outside their humanitarian duties.

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[70] Junod, PROTECTION OF THE VICTIMSOF THE ARMED IN THE ALKLANDS,CONFLICT ICRC, p. 26-27.
[71] Pictet at 289.
[72] See also article 28(3)in Protocol I; and FM8-10-6 at A-3
[73] Dep't of Army Field Manual 8-10-8, Medical Intelligence in a Theater of Operations para. 4-8 (7 July 1989).

f. Flights over enemy or enemy-occupied territory are prohibited unless agreed otherwise.

3. Summons to land.

a. Means by which belligerents can ensure that the enemy is not abusing its use of medical aircraft -must be obeyed.

b. Aircraft must submit to inspection by the forces of the summoning Party.

c. If not committing acts contrary to its protected status, may be allowed to continue.

4. Involuntary landing.

a. Occurs as the result of engine trouble or bad weather. Aircraft may be used by captor for any purpose.

b. Personnel are Retained or PWs, depending on their status.

c. Wounded and sick must still be cared for.

5. Inadequacy of GWS Article 36 in light of growth of use of medical aircraft prompted overhaul of the regime in GP I (Articles 24 -31).

a. Establishes three over flight regimes:

(1) Land controlled by friendly forces (Article 25): No agreement between the parties is required; however, the article recommends that

notice be given, particularly if there is a SAM threat.

(2) Contact Zone (disputed area) (Article 26): Agreement required for

absolute protection. However, *enemy is not to attack once aircraft identified as medical aircraft.*

(3) Land controlled by enemy (Article 27): Over flight agreement required. Similar to GWS, Article 36(3) requirement.

6. Optional distinctive signals[74], e.g. radio signals, flashing blue lights, electronic identification, are all being employed in an effort to improve identification.

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[74] Protocol I, Annex I, Chapter 3.

DISTINCTIVE EMBLEMS.

A. Emblem of the Conventions and Authorized Exceptions (Article 38).

1. Red Cross. The distinctive emblem of the conventions.

2. Red Crescent. Authorized exception.

3. Red Lion and Sun. Authorized exception employed by Iran, although has since been replaced by the Red Crescent.

B. Unrecognized symbols. The most well-known is the red "Shield of David" of Israel. While the 1949 diplomatic conference considered adding this symbol as an exception, it was ultimately rejected. Several other nations had requested the recognition of new emblems and the conference became concerned about the danger of substituting national or religious symbols for the emblem of charity, which must be neutral. There was also concern that the proliferation of symbols would undermine the universality of the Red Cross and diminish its protective

value.[75] In the various Middle East conflicts involving Israel and Egypt, however, the "Shield of David" has been respected.[76]

C. **Identification of Medical and Religious Personnel** (Article 40).

1. Note the importance of these identification mechanisms. The two separate and distinct protections given to medical and religious personnel are, as a practical matter, accorded by the armband and the identification card.[77]

a. The armband provides protection from intentional attack on the battlefield.

b. The identification card indicates entitlement to "retained person" status.

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[75] Pictet at 301.

[76] FM 4-02 at para. 4- 6.

[77] FM 4- 02 at para. 4-5.

2. Permanent medical personnel, chaplains, personnel of National Red Cross and other recognized relief organizations, and relief, societies of neutral countries (Article 40).

a. Armband displaying the distinctive emblem.

b. Identity card -U.S. uses DD Form 1934 for the ID cards of these personnel.

c. Confiscation of ID card by the captor prohibited. Confiscation renders determination of retained person extremely difficult.

3. Auxiliary personnel (Article 41).

a. Armband displaying the distinctive emblem in miniature.

b. ID documents indicating special training and temporary character of medical duties.

D. Marking of Medical units and Establishments (Article 42).

1. Red Cross flag and national flag.

2. If captured, fly only Red Cross flag.

E. Marking of Medical Units of Neutral Countries (Article 43).

1. Red Cross flag, national flag, and flag of belligerent being assisted.

2. If captured, fly only Red Cross flag and national flag.

F. Authority over the Emblem (Article 39).

1. Article 39 makes it clear that the use of the emblem by medical personnel, transportation, and units is subject to "competent military authority." The commander may give or withhold permission to use the emblem, and the commander may order a medical unit or vehicle camouflaged. [78]

2. While the convention does not define who is a competent military authority, it is generally recognized that this authority is held no lower than the brigade commander (generally 0-6) level. [79]

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[78] Pictet at 308.

[79] FM 4-02 at para. 4-6.

Sum up: War always has been and still remains a problem and puzzle from many points of view. we does believe that war must in all circumstances be a bad thing or the worst of all conceivable things, but he is among those who believe that there has often been and that there continues to be more war and armed struggle than there should be, and that much of it is more deadly, destructive, and cruel than it need be. What happens in war is one thing; why war happens is another. (onside red as a political institution, as 'organized violence carried on by political units against each other' and as an inherently normative phenomenon distinct from mere violence, war can look less formless. This is war's less an acceptable aspect, which lends a degree of respectability to its place in international history and in the study of international relations. Seen in this light, war (which for the political scientist includes the threat and capability of it) is simply an irreducible matter of historical and political fact of which it is sensible to make the best rather than the worst because it can be seen as indispensable to the making of necessary change in the relation of States and the maintenance of desirable order among them. No wonder, then, that international law from its earliest days - when of Course it went under other names, e.g. in Romano - Europe, jus gentium, more or less translatable as the law of nations - had close to its heart of the war and customs of war.

Law is far from being the only means by which human kind and its civilizations have sought to reduce the incidence and to mitigate the effects of public and political violence, but it is—not least because of its ties to religion and ethics - one of the most interesting of them; one moreover which contemporary preoccupations with humanitarianism and human rights have made rather fashionable. The purpose this research to examine its place and usefulness in this global context. The Romans, who knew a lot about both, left a broad hint that indeed they were so: inter arma silent leges. If law signifies

the calm hearing of ordered arguments and the settlement of disputes nor by violence but by lights of justice and reason, how can it be consistent with an institution which represents the turning from rational discourse in order to settle disputes by a trial of armed strength? Resort to the violence of armed conflict, with all its usual chances and accidents, its frequent furies and inhumanities, its lists of casualties, trails of desolation, and legacies of hatred, looks like the antithesis of everything comprised in that ark of civilization's covenant, the rule of law. War unquestionably has those unruly, disreputable and horrid attributes. They are a truth-telling and legitimate way of representing it. They are among the reasons why pacifists decide to have nothing to do with it and why cocientious non-pacifists hesitate before resorting to war or (supposing that they have any choice) letting it be forced upon them. But they are not the whole of the story. There is a more acceptable version of it; the other side of the coin, bearing another dimension of its paradoxical meaning.