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Editorial

Health humanitarian aid organizations and the protection thereof[☆]



Organizaciones de asistencia humanitaria en salud y su protección

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The recent events in Afghanistan that involved an air strike against a Doctors Without Borders Hospital attracted the attention of the world opinion. It is then essential to revisit the protection that these exemplary and courageous healthcare professionals working in conflict areas deserve, and Colombia's domestic environment is no exception.

Pope John Paul II in his address on the World Day of Peace 2004 stated: History teaches that peace building cannot forgo respect for an ethical and judicial order, in accordance with the old adage: "Serva ordinem et ordo servabit te" (preserve order and order will preserve you).¹ The evolution of mankind has always been based on order; an order that may be as natural as the laws of evolution, the survival of the fittest, and several others. However, the change from small nomad families of collectors and hunters, to urban clusters doing business, manufacturing, and economic activities, required an agreed upon a written and disseminated order that is drafted in norms and codices, in addition to local, community, national, and later international treaties.

The first reference to these topics in a text on military strategy before year 1 is in "The Art of War"²: "And consequently, The general who advances without coveting fame and retreats without fearing disgrace, whose only thought is to protect is people and do good for his sovereign, is the jewel of the kingdom". "Therefore, taking care of the troop's health the army holds a strong position. It

is said that any army free from countless illnesses is certain of being victorious."

The evolution of order that protects people during armed conflict keeps evolving throughout mankind's history until it consolidates into the current set of rules and treaties that comprise International Humanitarian Law: The Four Geneva Conventions of 1949 and its Additional Protocols known as Geneva's Law aimed at protecting armed conflict victims. Whilst prior to these treaties there were country or army rules and codes, and occasionally bilateral agreements of the forces involved in hostile actions, when countries around the world become signatories of this multilateral convention, this sets the foundations that currently protect individuals during armed conflicts.³

The concept of Medical Mission and protection

There is no exact or specific definition of this term in the Conventions or Protocols; however, it is mentioned under articles 16 of Protocol I⁴ and 10 of Protocol II⁵:

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

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2. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families.

The inaccurate definition of the term Medical Mission may lead some people to assume that this protection only covered physicians and the practice of medicine, but the concept is perfectly clarified in Comment⁶ to the Protocols that provide the doctrine foundations in paragraphs 4678, 4679, 4680, 4681, 4682, 4686, 4687, and 4689, specifying that the term Medical Mission is applicable to the civil and military healthcare staff and every healthcare individual that independently is able to offer or provides care to ill and wounded persons, since the standard was developed to ensure that wounded and ill persons benefit for any available medical care. In addition to physicians, the broad definition encompasses any individual that practices a professional medical activity, including nurses, pharmacists, or medicine trainees. The way the concept is expressed represents an example rather than the only option comprised in the definition.

This comment also reflects that medical activity entails a broad interpretation: “*The physician not only cares for, but may be called upon to confirm a demise, administer a vaccine, make a diagnosis, give advice, etc.*” So as an example every medical activity is then comprised within the realm of Medical Mission.

The reference to aspects pertaining to medical deontology is intended to secure that all ethical issues related to the wounded and sick care, professional secrecy, and every duty or right comprised in the concept, contributes to providing protection to the victims of armed conflicts.

The broad meaning of the prohibition to punish the practice of medical activities consistent with deontology, including all kinds of criminal and administrative sanctions such as ordering to shut down a doctor’s office. Furthermore, the decision to remain silent shall not be construed as adopting a stance in a situation of conflict; and should a new legislation be passed, the parties in conflict are required to comply with all the legal guarantees under article 6 of the Protocol.

The comment further anticipates that in order to receive special protection, any medical or healthcare practitioner in a country, not necessarily a formal member of the healthcare staff, the only requirement is to take care of sick or wounded “in armed conflicts beyond the scope of article 1 of the Protocol, additional to the Geneva conventions of August 12, 1949, regarding the protection of victims of international armed conflicts (Protocol I) that develop in the territory of a High Contracting Party among their armed forces and dissident armed forces or organized armed groups that, under responsible command, control part of such territory to the extent that they will be able to carry out sustained and concerted military operations.”

In summary, by virtue of the norm and the jurisprudence, the International Humanitarian Law gives the Medical Mission a broad scope embracing all the health-related activities and establishes specific protection rules that provide for the

minimum and due guarantees to care for the protected persons that include: the civil population, non-combatants (i.e., the members of the armed forces in conflict that are wounded, shipwrecked, sick, and prisoners) and any other people not participating or have stopped participating in the hostilities. Additionally, under the current Colombian legislation, there is a broad and specific set of constitutional rules not discussed herein.

International organizations and Medical Mission

The International Humanitarian Law does not differentiate between the nature of the entity and the affiliation of the person caring for these sick persons; the role of the care provider determines the classification, and hence the protection. Therefore the international organizations in the exercise of their humanitarian role such as Healthcare, obtain the special protection referred to hereunder in the territory of a signatory country of the Geneva Conventions and its Additional Protocols.

Medical care in conflict zones is critically important to reduce the number of deaths, the burden of disability, and the complications of wounded and sick; usually when Humanitarian Organizations provide that care, they focus on the most vulnerable population. This is strongly evidenced in the article published in this issue of the journal “*Reducing Maternal Mortality in areas of conflict: surgical-anesthetic experience at the Boost Hospital – Afghanistan*”⁷ that documents a relevant experience of the Doctors Without Borders practice.

The link between humanitarian aid and compliance with the norms of humanitarian international law is essential for victims to be able to access medical care, food, water, their usual production means and, if necessary, humanitarian aid. Any violation of the international humanitarian norms shall be promptly controlled and the offenders punished.⁸

All of the above confirms that medical efforts in conflict zones become a right of the organizations and the population affected and a duty that has to be respected and protected, in addition to an ethical and legal imperative that shall be mandatory to both, the parties in combat and the States.

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