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HUMAN RIGHTS IN ARMED CONFLICTS

RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

Report of the Secretary-General

Corrigendum

Replace the annex by the attached text.

ANNEX

DRAFT ADDITIONAL PROTOCOL TO THE FOUR GENEVA CONVENTIONS
OF 12 AUGUST 1949

PART II

WOUNDED, SICK AND SHIPWRECKED PERSONS

(submitted by Commission I to the plenary session
of the Conference)

Section I

GENERAL PROVISIONS

Article 11. Definitions

For the purposes of the present Part:

(a) the term "medical establishments and units" means hospitals and other fixed medical establishments, medical and pharmaceutical stores of such establishments, mobile medical units, blood transfusion centres and other installations used for medical purposes;*

(b) the term "medical transport" means the transport of wounded, sick, shipwrecked and infirm persons, expectant mothers, maternity cases and new-born infants, medical personnel, medical equipment and supplies;

(c) the term "medical personnel" means personnel regularly and exclusively engaged in the operation or administration of medical establishments or units, including personnel assigned to the search for, removal, transport or treatment of wounded, sick, shipwrecked, infirm persons, expectant mothers or maternity cases and new-born infants;*

(d) the term "distinctive emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background;

(e) the term "shipwrecked persons" means any person who is in peril at sea as a result of the destruction, loss, or disablement of the vessel or aircraft in which he was travelling, and who is in need of humanitarian assistance and care, and who refrains from any hostile act.

Article 12. Protection and care

1. All wounded and sick persons, whether non-combatants or combatants rendered hors de combat, and other persons who are or may be in serious need of medical attention such as maternity cases and new-born infants together with shipwrecked persons at sea, the infirm and expectant mothers shall be the object of particular protection and respect.

2. In all circumstances these persons shall be treated humanely and shall receive the medical care and attention necessitated by their condition with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion, political opinion, sex, birth, wealth or any other similar criteria.

* Add a mention of permanent or temporary character.

Article 13. Protection of persons

1. All* acts or omissions that endanger the health or the physical or mental well-being of a protected person are prohibited.

2. Accordingly it is prohibited to subject protected persons to physical mutilation or to medical or scientific experiments of any kind, including the removal or transplant of organs, which are not justified by the medical, dental or hospital treatment of the person concerned and carried out in his interest. This prohibition applies even in cases where the protected person gives his assent.

Article 14. Civilian medical establishments and units

1. Civilian medical establishments and units, whether permanent or temporary, shall in no circumstances be the object of attack. They shall at all times be respected and protected by the Parties to the conflict.

2. The appropriate Party to a conflict shall provide these medical establishments and units with a certificate identifying them for the purposes of the present Protocol.

3. With the authorization of the competent authority, medical establishments and units shall be clearly and visibly marked with the distinctive emblem.

4. The Parties to the conflict shall, as far as possible, make known to each other the location of fixed medical establishments and units.

5. The authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Article 15. Discontinuance of protection of civilian medical establishments and units

1. The protection to which civilian medical establishments and units 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 warning has been given, setting, wherever appropriate, a reasonable time-limit and after such warning has remained unheeded.

* Alternatives:

- (a) insert the word "unjustified";
- (b) insert the word "wrongful".

2. The fact that wounded, sick and shipwrecked members of the armed forces are in such medical establishments and units for medical treatment shall not be deemed to be an act harmful to the enemy; nor shall the presence of small arms and ammunition taken from such members of the armed forces and not yet handed over to the competent service.

Article 16. Civilian medical transports on land or water

1. Ambulances and other vehicles used exclusively as medical transport by civilian medical establishments and units shall be respected and protected at all times. They shall be furnished with a certificate issued by a competent authority and attesting to their medical nature.

2. Other means of transport, assigned temporarily for medical transport, whether used in isolation or in convoy with other medical transport, shall be respected and protected while being used for such purpose.

3. With the assent of the competent authority, all the foregoing means of transport shall be marked with the distinctive emblem. Those covered by paragraph 2 above may display the distinctive emblem only while they are carrying out their humanitarian mission.

4. The provisions of article 15 of the present Protocol shall likewise be applicable to medical transports.

Article 17. Requisition

1. The Occupying Power may requisition civilian medical establishments and units, their movable and immovable assets, and the services of their medical personnel only temporarily and only in case of urgent necessity for the care of military wounded and sick, including prisoners of war, and then on condition that suitable arrangements are immediately made for the care and treatment of the patients normally served by these establishments and units, and for the needs of the civilian population for medical treatment.

2. Medical equipment, material and stores other than those mentioned in paragraph 1, shall not be requisitioned so long as they are needed for the civilian population.

Article 18. Protected and civilian medical personnel

1. Civilian medical personnel, whether permanent or temporary, duly recognized or authorized by the competent authority of the Party to the conflict,

as well as the medical personnel of National Red Cross (Red Crescent and Red Lion and Sun) Societies, shall be respected and protected.*

2. In zones of military operations and in occupied territory, the above personnel shall be recognizable by means of an identity card, as per annex I of this Protocol, certifying their status, bearing the photograph of the holder, and embossed with the stamp of the competent authority of the Party to the conflict, and also by means of a stamped, water-resistant armband bearing the distinctive emblem which they shall wear on the left arm. The armband shall be issued by the competent authority of the Party to the conflict which embosses the identity card.

3. Temporary medical personnel shall be entitled to respect and protection and to wear the armband as provided in and under the conditions prescribed in the previous paragraphs, while they are employed on medical duties. The identity card shall state the duties on which they are employed.

4. The management of each civilian medical establishment and unit shall at all times hold at the disposal of the competent national or occupying authority an up-to-date list of its personnel.

5. During occupation every assistance shall be given by the Occupying Power to civilian medical personnel to enable them to carry out their humanitarian mission to the best of their ability. During invasion all assistance that is possible shall be given by the adverse forces to civilian medical personnel. In both cases, they shall have access to any place where their services are required, subject to such measures of supervision and security as the appropriate Party to the conflict may judge necessary, and in no circumstance shall they be required or compelled to carry out tasks unrelated to their mission.

Article 19. Protection of medical duties in general

1. In no circumstances shall any person be punished for carrying out medical activities compatible with professional ethics, regardless of the person benefiting therefrom.

2. In no circumstances shall any persons engaged in medical activities be compelled by any authority to violate any provision of the Conventions or of any Protocol thereto.

* Alternative:

1. Civilian medical personnel, whether permanent or temporary, as well as the medical personnel of National Red Cross (Red Crescent, Red Lion and Sun) Societies, all duly recognized or authorized by the competent authority, shall be respected and protected.

3. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to professional rules designed for the benefit of persons listed in article 12 of this Protocol or to abstain from acts demanded by such rules.

4. Any person engaged in medical activities shall not be compelled to inform an adverse Party of persons listed in article 12 who are under his care. An exception shall be made in the case of compulsory medical regulations for the notification of communicable diseases.

Article 20. Role of the population

1. The civilian population shall respect the persons listed in article 12 of this Protocol even if they belong to the adverse Party, and shall refrain from committing acts of violence against them. The competent civilian and military authorities of the Parties to the conflict shall permit inhabitants and relief societies, even in invaded or occupied areas, spontaneously to give them shelter and to tend them.

2. No one shall be molested or convicted for having sheltered or tended persons listed in article 12, even if they belong to the adverse Party.

3. The Parties to the conflict may appeal to the charity of commanders of merchant vessels, yachts or other craft, to take on board and care for persons listed in article 12, and to collect the dead. Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

Article 21.* Use of the distinctive emblem and distinctive signal

The High Contracting Parties shall adopt special measures for supervising the use of the distinctive emblem and distinctive signal and for the prevention and repression of their misuse.

Article 22. States not party to the conflict

States not party to the conflict shall apply, by analogy, the provisions of the present Protocol to persons listed in article 12 of this Protocol and to medical personnel.

* It is proposed that this article should become article 74 A (in part V, "Execution of the Conventions and of the present Protocol").

Section II

MEDICAL AIR TRANSPORT

Article 23. Definitions

1. For the purposes of the present Section:

(a) the term "medical aircraft" means any medical air transport under the direction of a competent authority of a Party to the conflict whenever used exclusively in the performance of a medical air mission. Medical aircraft may be either permanent or temporary;

(b) the term "permanent medical aircraft" means an aircraft assigned exclusively and indefinitely for use as a medical aircraft;

(c) the term "temporary medical aircraft" means an aircraft, other than a permanent medical aircraft, while exclusively employed on a medical mission;

(d) the term "medical air mission" means the evacuation or transport by medical aircraft of any person described in article 12 of this Protocol, medical personnel or medical equipment protected by the Conventions or any Protocol thereto, or any other activities exclusively intended for the performance of the mission. At sea, a medical air mission includes the search for and rescue of the shipwrecked. /On land and on water under the national jurisdiction of the adverse Party (or on internal waters), with the agreement of the competent authority of the Parties to the conflict, a medical air mission may include the search for and rescue of the persons listed in article 12 of this Protocol and persons exposed to grave danger.*/;

(e) the term "distinctive signal" means one or more of the devices recommended for signalling and identifying medical aircraft and designated for the exclusive use of medical aircraft in annex II of this Protocol. This annex may be amended from time to time pursuant to the procedures prescribed therein.

2. All medical aircraft shall carry a certificate issued by the competent authority of the Parties to the conflict and attesting to the medical nature of their functions.

* Proposal submitted by Iraq, Japan, Monaco and the United States of America.

Article 24. Protection

1. Permanent medical aircraft, when complying with the provisions of this Protocol, shall not be the object of attack but shall be respected and protected at all times.
2. Temporary medical aircraft, when complying with the provisions of this Protocol, shall not be the object of attack but shall be respected and protected throughout their mission.
3. The Parties to the conflict are prohibited from using their medical aircraft in order to acquire any military advantage over any other Party to the conflict. The presence of medical aircraft may not be used to render military objectives immune from military operations.
4. Medical aircraft shall not carry cameras or other intelligence-gathering equipment or intelligence personnel other than those who are wounded or sick. They are prohibited from transporting persons or equipment not included in the definition of medical air mission.
5. Medical aircraft shall contain no armament other than small arms and ammunition belonging to the wounded and sick and not yet handed over to the proper authorities, and such small arms as may be necessary to permit the medical personnel and crew members to defend themselves and the persons listed in article 12 of this Protocol.

Article 25. Removal of wounded from battle area

1. In the forward part of the battle area under the control of friendly forces, and in areas where such control is not clear, the protection against attack provided in article 24 of this Protocol can be effective only by agreement between the local military authorities of the Parties to the conflict. The agreement may be concluded in every possible way and may cover the routes, times, heights of flight, number of aircraft as well as other means of identification.
2. Even if prior agreement has not been obtained, a medical aircraft shall not be the object of attack by any person who has positively recognized it as a medical aircraft.
3. In the rear part of the battle area medical aircraft belonging to friendly forces may perform their medical air mission without prior agreement.
4. The medical air mission should be carried out with the utmost possible speed.
5. At the discretion of the appropriate commander the Party using medical aircraft may give an adverse Party notification of the fact that medical aircraft will operate in that part of the combat zone which is under the control of the Party using the medical aircraft and may provide such information as will aid an adverse Party in the identification of such aircraft.

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6. For the purposes of this article, the term "battle area" means an area where opposing ground forces are in hostile contact with each other.

Article 25 A. Search and rescue at sea

Alternative 1:

/At sea, but not over inland waters, /

Alternative 2:

/At sea, but not over waters under the national jurisdiction of the adverse Party, / ...

... the Parties to the conflict shall not, save in cases of imperative military necessity, interfere with the search for, or removal and evacuation of the persons listed in article 12 of this Protocol by medical aircraft. This provision shall apply especially in areas where opposing naval forces are in hostile contact with each other.

Article 26. Overflight of territories controlled by the adverse Party

Medical aircraft shall continue to enjoy the respect and protection provided under article 24 of this Protocol while they are flying over territory physically under the control of the adverse Party, provided prior agreement from the competent authority of the adverse Party has been obtained. The agreement shall cover in particular the routes, times, heights of flight, number of aircraft as well as the means of identification of medical aircraft. The Party employing the medical aircraft shall ensure that they comply with the requirements laid down in article 26 A and article 27 of this Protocol while flying over such territory.

Article 26 A. Procedure for agreements

1. In order to facilitate agreements under articles 25 and 26 of this Protocol, the Parties employing medical aircraft shall provide to the adverse Party timely notification of the particulars covered by those articles and any other information which will aid in the identification of the aircraft, together with an undertaking to comply with the provisions of paragraphs 4 and 5 of article 24 of this Protocol, and the means of identification proposed.

2. The adverse Party will acknowledge receipt of the information in paragraph 1 above and may condition clearance on reasonable alternative routes, times and heights of flight and other conditions, and the Party employing medical aircraft shall comply with such requirements.

/...

Article 27. Identification

1. With the assent of the competent authority of the Party to the conflict, medical aircraft may be marked with the distinctive emblem (red cross, red crescent, red lion and sun). When flights are undertaken under an agreement such as is provided for in article 26 of this Protocol, the aircraft shall always bear the distinctive emblem.

2. Apart from the distinctive emblem, medical aircraft may be fitted with one or more distinctive signals.

3. Each Party to a conflict shall do its utmost to adopt and implement reasonable methods and procedures designed to provide for the identification and protection of medical aircraft which are transmitting the distinctive signal and displaying the distinctive emblem.

Article 28. Landing

1. Medical aircraft flying over territory physically under the control of an adverse Party as provided in article 26 of the present Protocol may be ordered to land or, as appropriate, alight on water in order to permit inspection and verification of the character of the aircraft. Medical aircraft shall obey every such order.

2. In the event of a landing whether ordered, forced, or the result of fortuitous circumstances, an aircraft is subject to inspection to determine whether it is a medical aircraft within the meaning of article 23 of this Protocol. If inspection discloses that it is not a medical aircraft within the meaning of article 23 of this Protocol, or if it is in violation of the conditions prescribed in article 24 of this Protocol, or if it has flown without prior agreement, it may be seized and the crew and passengers shall be treated in accordance with the applicable provisions of the Conventions and of this Protocol. Such seized aircraft as are designed to serve as permanent medical aircraft may be used only as medical aircraft thereafter.

3. If inspection discloses that the aircraft is a medical aircraft within the meaning of article 23 of this Protocol, the aircraft, its crew, its medical personnel and its passengers shall not be subject to capture, detention or internment but shall be permitted to continue their mission.

4. Inspection shall be conducted expeditiously in order not unduly to delay any medical treatment.

Article 28 A. Flight crews

1. Persons permanently and exclusively assigned to duties as flight crew of medical aircraft shall have the status and protection of permanent medical personnel

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within the meaning, as appropriate, of article 24 of the First Convention (military medical personnel), article 26 of the First Convention (personnel of National Red Cross Societies and that of other Voluntary Aid Societies) and article 18 of this Protocol (civilian medical personnel) and shall benefit from the safeguards accorded to such persons under the Conventions and this Protocol. They may wear the distinctive emblem and shall carry the identity document prescribed by the Conventions and this Protocol.

2. While in the performance of their medical air mission, persons temporarily assigned to duties as flight crew of medical aircraft shall have the status and protection of temporary medical personnel under articles 25 and 29 of the First Convention or article 18 of this Protocol. They may wear the distinctive emblem and shall carry the appropriate identity card which shall state the duties on which they are employed as prescribed by the Conventions and this Protocol. If temporary military medical personnel fall into the hands of the adverse Party (unless allowed to continue their mission under paragraph 3 of article 28 of this Protocol), they shall be prisoners of war, but shall be employed in their medical duties in so far as the need arises.

Article 29. States not parties to the conflict

1. Except by prior agreement, medical aircraft shall not fly over or land on the territory of a State not party to the conflict. They shall be respected throughout their flights and also for the duration of any calls in the territory. Nevertheless they shall obey any summons to land or to alight on water.

2. The agreement shall cover in particular the routes, times and heights of flights, as well as the means of identification of the aircraft.

3. Should a medical aircraft, in the absence of an agreement, because of urgent necessity, be forced to fly over or land on the territory of a State not party to the conflict, the medical aircraft shall make every effort to give notice of the flight and to identify itself. The State not party to the conflict shall, to the extent possible, respect such aircraft.

4. In the event of a landing, on land or on water, in the territory of a State not party to the conflict, whether forced or in compliance with a summons, the aircraft, with its occupants, may resume its flight after examination, if any.

5. Any persons listed in article 12 of this Protocol disembarked from a medical aircraft with the consent of the local authorities on the territory of a State not party to the conflict shall, unless agreed otherwise between the State not party to the conflict and the Parties to the conflict, be detained by the State not party to the conflict where so required by international law, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the Power to which the wounded, sick and shipwrecked persons belong.

6. The States not parties to the conflict shall apply any conditions and restrictions on the passage or landing of medical aircraft on their territory equally to all Parties to the conflict.

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Article 29 A. Aircraft of relief societies of States
not parties to the conflict and of
organizations of an international
character

1. The provisions of article 27 of the First Convention shall apply to permanent medical aircraft and their flight crews and medical personnel furnished to a Party to the conflict by a recognized relief society of a State not party to the conflict.

2. The provisions of article 27 of the First Convention shall also apply to permanent medical aircraft, flight crews and medical personnel furnished for humanitarian purposes by an organization of an international character, on the condition that such an international organization carries out the same requirements as are to be performed by the Government of a State not party to the conflict under the aforesaid article 27.

Article ...* National Red Cross Societies and other
humanitarian bodies

1. The Parties to the conflict shall extend to the National Red Cross (Red Crescent, Red Lion and Sun) Societies and to International Red Cross bodies all facilities and assistance necessary for the performance of their humanitarian activities to be carried out in accordance with the Red Cross principles as defined by International Red Cross Conferences.

2. For the purposes of this article, the term "humanitarian activities" means medical relief and other purely humanitarian activities to be carried out impartially in favour of victims of armed conflicts.

3. Facilities and assistance similar to those mentioned in paragraph 1 of this article are also to be rendered to other civilian humanitarian organizations, which are duly recognized or authorized by their Governments and are performing exclusively humanitarian activities.

* It is proposed that this article should become article 65 A (in part IV "Civilian population") or article 73 A (part V "Execution of the Conventions and of the present Protocol").

Annex I

Model of the Identity Card referred to in
article 18 of the present Protocol

(to be prepared)

Annex II

Recommended International Standards, Practices and Procedures
for the Identification and Signalling of Medical Aircraft

Chapter 1. General

1.1 The following are standards, recommended practices and procedures for the signalling and identification of medical aircraft..

1.2 Adoption of some or all of these measures is likely to lead to a more positive identification of medical aircraft, thereby lessening the chance of their becoming the object of attack.

1.3 A joint international group of technical experts should periodically review and revise this annex and recommend improvements, where appropriate, in medical aircraft identification standards, practices and procedures.

1.4 The International Committee of the Red Cross is invited to convene the group whenever it deems it to be necessary, after having requested the Contracting Parties, if they wish, to nominate experts. International specialized organizations may also delegate representatives to meetings.

Chapter 2.

Recommended Standards, Practices and Procedures

2.1 Visual Identification

2.1.1 Emblem.

The distinctive emblem provided for in the present Protocol will be conspicuously displayed.

Colour: Red on a white field.

Location: Affixed so that it is visible in all directions..

2.1.2 Light Signal.

A distinctive light, affixed and operating as specified, should be provided.

Colour: Blue.

Type: Flashing or flashing strobe.

Flashing characteristics: Flash frequency should lie between 40 and 100 flashes per minute.

Location: The lamp(s) should be so located that light is visible in as many directions as possible.

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2.2 Non-visual Identification

2.2.1 Radio

A radio message, prefixed by the word "MEDICAL", can be used to transmit a position on an agreed or specified frequency at frequent intervals during a medical air mission. Pending adoption of a suitable form of speech for aeronautical radio-communication between Parties to the conflict, the English language shall be used.

2.2.1.1 Message content

- (a) MEDICAL (followed by aircraft identification).
- (b) Number(s) and aircraft type(s).
- (c) Route.
- (d) Altitude.
- (e) Timings.
- (f) Other information (for example, radio frequency(ies), language, secondary surveillance radar-mode and code).

2.2.1.2 Frequency Assignment.

States are urged to propose specific frequency(ies) for the transmission of medical messages. These proposals should be submitted to the International Telecommunication Union (ITU) for consideration and inclusion in the Radio Regulations annexed to the International Telecommunication Convention (Montreux, 1965). 1/

2.2.2 Secondary Surveillance Radar (SSR).

The SSR system, as specified by the International Civil Aviation Organization (ICAO), Annex 10 - Aeronautical Telecommunications, should be used in identification throughout a medical air mission.

2.2.2.1 Mode/Code

- (a) Mode: 3/A.
- (b) Code (to be agreed upon or specified by the Parties).

1/ The above is consistent with Recommendation No. 34 of the ITU Administrative Radio Conference (Geneva, 1959)..

2.2.2.2 Code Assignment.

A unique SSR code for ultimate universal use is recommended. Its designation should be co-ordinated through the International Civil Aviation Organization (ICAO) and subsequently included in the appropriate ICAO document(s). 2/

2/ Until such time as a universal world-wide code is established, States should allocate a unique national SSR code to designate medical missions.