



# Legal Protection for Medical Personnel in International Armed Conflict; International Humanitarian Law Perspective

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**Abstract.** This legal research aims to find out the regulation on legal protection for medical personnel in international armed conflicts and how sanctions can be applied to perpetrators of violations against medical personnel and to find out the factors that prevent the rules of international humanitarian law from being obeyed by the parties to the dispute. This research method uses normative juridical and through a statute approach and a case approach, namely an approach to legislation and a case approach. In the case of the shooting of the humanitarian aid ship for Gaza Palestine by Israel on the Mavi Marmara ship in which there were medical personnel and volunteers from various countries, all kinds of attacks should be carried out by the parties to the dispute against medical personnel and medical units and become the object of attacks for the sake of military, political advantage is a violation of International Humanitarian Law. The conclusion of this legal writing is that in an armed conflict, medical officers and medical units and facilities have received protection as regulated in International Humanitarian Law, namely in the 1949 Geneva Conventions and the 1977 Additional Protocol. Lack of strict implementation of international humanitarian law by the UN Security Council against violators thus ignoring the protection of medical personnel in international armed conflicts.

**Keywords:** international humanitarian law · medical personnel · international armed conflict

## 1 Introduction

International armed conflict is regulated in the Geneva Conventions of 1949 and the Additional Protocol of 1977 where it is explained about the protection of people who participate or do not take part in hostilities, namely the wounded, sick, civilians, medical officers and people detained in connection with the existence of armed conflict. Armed conflict. In its development, there have been violations of the 1949 Geneva conventions due to non-compliance with the rules of International Humanitarian Law, resulting in suffering and victims in armed conflicts. In an atmosphere of armed conflict, there are also medical personnel consisting of combatants as medical officers who are volunteers

from a humanitarian association or organization such as the International Committee of The Red Cross (ICRC).

The International Committee of the Red Cross (ICRC) is the International Red Cross known as an organization that provides assistance to international armed conflicts and internal violence. The ICRC does not only operate in the health sector as does the Red Cross at the national level of countries in general. The ICRC has a special task, especially in enforcing the socialization of International Humanitarian Law. The ICRC's special role is the role assigned to it by states through several instruments of International Humanitarian Law. The ICRC as an organization and non-state actor is mandated by the international community to be the guardian and bearer of International Humanitarian Law through the 1949 Geneva Conventions. Humanitarian Law allows the ICRC to ensure that humanitarian rules in warfare are respected. This makes the implementation of International Humanitarian Law important and relevant to the ICRC, which acts as a promoter in efforts to minimize the impact of armed conflict or make wars more humane. The ICRC has the nature of customary law which means it can apply anywhere without the need for ratification [1].

ICRC's efforts to minimize the impact of international armed conflict is to provide protection to medical personnel who are attacked in international armed conflicts. Medical personnel, namely people or groups who must not be attacked and must receive protection and honor from armed conflicts that occur. In order to guarantee the safety and dignity of medical personnel in armed conflicts, on 21 April-12 August 1949 the International Committee of the Red Cross (ICRC) succeeded in formulating and stipulating four conventions, which were named the 1949 Geneva Conventions. The protection of medical personnel in armed conflict is regulated in Articles 24, 25, and 26 of the Geneva Conventions I 1949 and articles 9 and 10 of Additional Protocol II 1977 which provide special protection for medical personnel and must be respected under all circumstances.

One of the examples of cases of violations that have been published by BBC News Indonesia against the protection of medical workers in international armed conflicts is the shooting conflict of the humanitarian aid ship Mavi Marmara on May 31, 2010. Israeli military personnel boarded the ship overnight, and clashed with demonstrators on board. The incident occurred in international waters, 64 km on the high seas. The convoy of ships was carrying 10,000 aid to try to break through Israel's long-standing blockade. Around 600 people from various countries joined the sea convoy, including 12 volunteers and journalists from Indonesia [2].

The actions taken by Israel in cases of violations of the protection of medical officers as shooters on humanitarian aid ships in which there are medical personnel and volunteers from various countries clearly violate the existing provisions of international humanitarian law. Almost all countries in the world condemned the attack on the humanitarian mission. Two days after the military action on Wednesday, June 2, 2010, the United Nations (UN) passed a resolution The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy. The United Nations has also established an International Independent Fact-Finding Mission to investigate the Israeli military attack on the Mavi Marmara [2].

This legal research focuses on the issue of how the legal protection for Indonesian medical personnel in international armed conflicts according to the 1949 Geneva Conventions and the 1977 Additional Protocol and the sanctions that can be applied to Israel for violations of attacks on medical personnel by the UN Security Council.

## 2 Method

This legal research uses a normative juridical research method that uses a method by examining the rules or norms, rules relating to legal issues to be discussed and the approach using laws and regulations or international conventions and case studies.

## 3 Results and Discussion

Legal protection can be interpreted as all efforts to provide assistance to provide a sense of security to victims, legal protection of crime victims as part of community protection, can be realized in various aspects, such as providing assistance [2].

The definition of medical personnel in Article 8(c) Additional Protocol I of the Geneva Convention 1949, and Relating of the Protection of Victims of International Armed Conflict June 8, 1977, reads:

“Medical personnel” who means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph e) or the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary”.

Based on the definition of health workers or medical personnel in Article 8(c) Additional Protocol I of the Geneva Convention 1949, and Relating of the Protection of Victims of International Armed Conflict on 8 June 1977, it can be studied that what is meant by medical personnel are people from parties who fighting in armed conflict, serving for health purposes, or for the administration of health, the performance of health work, or the administration of health transport, whether temporary or permanent.

International humanitarian law also divides medical personnel into three categories, including:

- 1) Medical personnel from conflicting or conflicting parties
- 2) Medical personnel who are personnel of the National Societies or other national voluntary aid agencies have been recognized and authorized by the belligerent parties.
- 3) Medical personnel from humanitarian organizations such as the ICRC or from neutral countries [3].

The International Committee of the Red Cross is known as an organization that provides assistance to international armed conflicts and internal violence. The ICRC is not only engaged in the health sector as the Red Cross at the national level of countries in general. The ICRC has the main task of enforcing the dissemination of International

Humanitarian Law. International Armed Conflict is a form of event that is almost as old as human civilization. Where is a condition of individuals or groups of people trying to fulfill their goals by opposing other parties accompanied by threats or violence. The form of armed conflict is usually identified through a condition of a group of people in which it consists of different ethnic, ethnic, cultural, religious, economic, political, social groups [4].

Arrangements related to international armed conflict have been regulated and stipulated in article 2 of the 1949 Geneva Conventions and also Article 1, paragraph 94) jo. Article 96 paragraph (3) additional protocol 1 of 1977. And for non-international armed conflicts. And for non-international armed conflicts, it has been regulated in Article 1 of Protocol I 1977. As far as armed conflict (Armed Conflict) and non-armed conflict (Non Armed Conflict) there are differences between Jus ad Bellum and Jus in Bello, namely:

1. Jus ad bellum regulates in terms of how a State is justified in using armed violence.
2. Jus in bello regulates the laws that apply in war, divided into two namely;

The legal provisions governing the way in which the war itself is carried out. This section is also referred to as the rules and regulations of The Hague Law. Legal provisions governing the protection of people who are victims of war, both civil and military. This section is also called the rules or provisions of Geneva law [5].

### **3.1 Legal Protection for Indonesian Medical Workers in International Armed Conflict in the 1949 Geneva Conventions and Additional Protocol I 1977**

Legal protection for medical personnel in international armed conflicts has been regulated in the Geneva Convention I dated August 12, 1949 in chapter IV which reviews members of the Health Service. Protection of medical personnel has been regulated in the articles of the Geneva Conventions and additional protocols, as regulated in Article 11, Article 24–27, Article 36, Article 37 of the Geneva Convention which are summarized in:

*“Medical personnel who exclusively engaged in the search for, or the collection, transport or treatment of the wounded and sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and their establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances”.*

That members of the health service specially employed to search for or collect, transport or care for the wounded and sick, or to prevent disease, and staff specially employed in the administration of medical units and buildings, as well as clergy serving in the armed forces, must be respected and protected in all circumstances. Members of the Red Cross and Red Crescent Societies strive to be neutral so that they have equal rights, provided that members of these associations comply with military laws and regulations.

According to International Humanitarian Law in the 1949 Geneva Conventions and Additional Protocols I and II 1977, it does not only regulate the protection of the civilian population. However, in the discussion of Chapter III of Geneva Convention IV the focus

is on regulating the Position and Treatment and Persons Who Must Be Protected, namely in articles 27, 28 and 30. The symbol of this protection is the Red Cross emblem. The use of the emblem is controlled by the states parties to the Geneva Conventions, and is intended primarily for the medical services of the Armed Forces. Other medical services, units and personnel assigned to a party to the conflict (such as the National Red Cross Society), may use the Red Cross with the approval of the military authorities, as well as by civilian hospitals providing care to the wounded and sick., cases of pregnant and debilitated women, if permitted by the relevant country [6].

It can be concluded that attacks on medical personnel bearing the health symbol must always be respected and protected by the parties to the conflict in international armed conflicts. So that medical officers can carry out their duties in assisting and providing first aid to victims in conflict situations. This regulation regarding the protection of medical personnel and the obligation to comply with it is related to the *jus cogens* norms and the obligation *erga omnes*. According to M. Cherif Bassiouni, *jus cogens* holds the highest hierarchical position among all other norms and principles [7].

An example of a case of violation of the protection of medical personnel in armed conflict on the Mavi Marmara ship in this case is the conflict on the shooting of the humanitarian aid ship Mavi Marmara that occurred on May 31, 2010. This gave rise to a new movement for humanitarian partnership called the Gaza Freedom Flotilla which was monitored by the Free Gaza Movement. The Gaza Freedom Flotilla movement has the aim of providing humanitarian assistance to the Palestinian Gaza Strip by breaking through the blockade that has been tightened by Israel since 2007. The humanitarian mission is in the form of sending material aid for the daily needs of Gaza residents by sea using ships, because other routes are considered not to be possible. Gaza has three land lines located at three Israeli border posts, one of which is the route to Rafah in Egypt. The sea lane is the right choice to enter the Gaza area. The Palestinian Authority has control over twenty nautical miles of the coastline, the area also under Israeli control. Based on this, breaking the blockade is an illegal method chosen by the Gaza Freedom Flotilla to send humanitarian aid directly to Gaza [8].

The actions taken by Israel in cases of violations of the protection of medical officers as shooters on humanitarian aid ships in which there are medical personnel and volunteers from various countries clearly violate the existing provisions of international humanitarian law. Almost all countries in the world condemned the attack on the humanitarian mission. Two days after the military action on Wednesday, June 2, 2010, the United Nations (UN) passed a resolution *The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy*. The United Nations has also established an Independent International Fact-Finding Mission to investigate the Israeli military attack on the Mavi Marmara. In situations of such international armed conflict, medical personnel became disorganized and medical facilities on board were mostly destroyed, while on the other hand many other volunteers were injured and needed first aid and treatment.

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### **3.2 Israel Sanctions Against Violations of Assaulting Medical Personnel in International Armed Conflict By UN Security Council**

According to R. Subekti and Tjiptrosoedibyo, sanctions are tools of coercion, where sanctions compel to enforce the law or force to heed legal norms. Sanctions as a law enforcement tool can also consist of the cancellation of an act that is a violation of the law. Both null and void after this has been declared by the judge [9].

The types of justice in the international world are:

- a. International Court of Justice  
The main function of this MI is to resolve cases of international disputes, the subject of which is the state. Article 34 of the MI Statute stipulates that in the International Court of Justice it is the legal subjects of the state, including UN member states, non-UN member states that are members of the statutes of the International Court of Justice.
- b. The International Criminal Court (ICC)  
ICC (International Criminal Court) In July 1998 the international community noted an important development, namely when the Rome Statute was agreed on the establishment of an international criminal court (International Criminal Court, hereinafter referred to as the ICC). Unlike the ad hoc courts that were previously established (for example, the Nuremberg, Tokyo, ICTY and ICTR courts), the ICC is a permanent court. This Court was also formed as a complement to the National Criminal Court.

### **3.3 The Role of the United Nations in Providing Sanctions for Violations of International Humanitarian Law**

The United Nations is the biggest and universal international organization. This organization aims to maintain international peace and security. As an inter-governmental organization, the United Nations has access and abundant resources to provide humanitarian assistance to communities affected by conflicts over violations of International Humanitarian Law.

The UN Security Council can absolutely impose sanctions against individuals or countries that are perpetrators of crimes against international humanitarian law and/or war crimes. Individual perpetrators of crimes against International Humanitarian Law.

The duties of the security council include, as regulated in article 24 paragraph 1 of the UN charter:

“In order to ensure prompt and effective action by the United Nations, its members confer on the security council primary responsibility for the maintenance of

international peace and security, and agree that in carrying out its duties under the responsibility the Security Council acts on their behalf”.

Which means that the task of the Security Council is to provide recommendations in any dispute resolution peacefully.

In the case of human rights violations committed by Israel on the Mavi Marmara ship, the UN Human Rights Council established the formation of the IIFM (Independent International Fact Finding Mission) which was decided in the “Urgent Debate” session at the UN Human Rights Council session through a resolution entitled The Grave Attacks by Israeli Forces against the Humanitarian Boat Convoy. IIFM is tasked with investigating human rights violations committed by Israel in the attack. And the results stated that Israel violated human rights in the case of the attack on humanitarian volunteers on the Mavi Marmara ship.

Violations of humanitarian law or declarations and resolutions issued by the United Nations must be fully accounted for in accordance with the provisions of international law, because this case has not been fully resolved based on the Mavi Marmara report and ICC-01/13 the final decision stated that Israel was not subject to sanctions. The sanctions that should be obtained by Israel according to the elements of crime in the Rome Statute of the International Criminal Court which means actions with the aim of destroying a group by killing, torturing, and ill-treating a group. Then the sanctions imposed are diplomatic sanctions, economic sanctions, military sanctions, sports sanctions, environmental sanctions [10].

### **3.4 Obstacles and Challenges in Resolving the Mavi Marmara Ship Case**

The UN Security Council consists of 15 members, five of which are permanent members, namely China, France, the Soviet Union (now Russia), Britain, and the United States. The other ten are non-permanent members and are elected for a term of 2 years through the General Assembly. Apparently, these five permanent members have extraordinary status (exceptional) not only in terms of their permanence, but also the power of ‘veto power’. The veto rights in the history of the United Nations (1945–1990) show that the permanent members of the UN Security Council have cast the US veto 279 times on issues that threaten international peace and security so that these problems drag on and cannot be resolved. This shows that UN member states do not obey the decisions made by the UN Security Council, so the conflict does not end in peace, especially in terms of US defense of Israel.

## **4 Conclusion**

Based on the above discussion regarding legal protection for medical personnel in international armed conflicts, it can be concluded that:

In the international armed conflict on the Mavi Marmara ship, medical personnel who were victims of the shooting received protection as provided for in the 1949 Geneva Conventions and the 1977 Additional Protocol, medical personnel are neutral parties who must always be protected and respected in any situation and should not be objected to in

any way a war. Thus, if anyone violates the rules that have been set, they will be subject to sanctions by the UN security council. The obstacle in implementing the provisions of humanitarian law in international armed conflict in this case is due to the existence of great powers in which the United States uses its veto power to defend Israel and thwarts a decision by the UN Security Council to prioritize the interests of its country, thereby causing Israel to be freed from sanctions imposed by the United Nations has been established.

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