The Documents by the World Medical Association (WMA)

In attempts to qualify and interpret the reference to medical ethics in articles 16 AP I and 10 AP II, most legal scholars and national medical associations refer to the documents of the World Medical Association (WMA). When discussing the explicit reference to medical ethics in articles 16 AP I and 10 AP II, the ICRC Commentary refers to documents by the WMA, namely the Declaration of Geneva (1948), the International Code of Medical Ethics (1949), the Regulations in Times of Armed Conflict (1956), and the Rules to ensure Aid and Care for the Wounded and Sick, particularly in Time of Armed Conflict (1962). In the analysis of article 16 AP I, the relevant documents are largely reproduced in the footnotes. As ‘duties [...] defined by the [...] international corps of the medical profession’, the Commentary refers to them as the international counterpart to the rules ‘decreed by the medical corps of a State’. The Commentary specifies that:

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1 For example, the German Bundesärztekammer and the European Standing Committee of European Doctors endorse the documents by the WMA. Some medical associations do not even publish their own rules but refer to the WMA documents only, for example the Israeli Medical Association (stating: ‘As a WMA member, the IMA accepts the contents of the Tokyo Declaration and ratifies its most recent version from May 2006, as specified below’. See its Position Paper on the Prohibition of Physician Participation in Interrogations and Torture).

2 Sandoz, et al. (eds), Commentary to the Additional Protocols, para. 656. See also the paragraphs in the ICRC Commentary concerning article 10 AP II. Sandoz, et al. (eds), Commentary to the Additional Protocols, para. 4685–4691. When commenting on the phrase ‘generally accepted medical standards’ in the second sentence of article 11 (1) AP I, the ICRC Commentary states that it is impossible to exhaustively list the medical standards applicable in an armed conflict, but that ‘it is possible to mention certain instruments which give some indications of this matter’. In the footnote to this statement, the Commentary lists the above mentioned WMA documents. Sandoz, et al. (eds), Commentary to the Additional Protocols, para. 476.

3 The Rules to ensure Aid and Care for the Wounded and Sick, particularly in Time of Armed Conflict have not been updated or amended and are no longer part of WMA policy.

4 Sandoz, et al. (eds), Commentary to the Additional Protocols, para. 4688 and 655 et seq.
These rules have not been adopted by states and have no binding force in international law. Nevertheless, they constitute a valuable instrument of reference and no one contests the principles on which they are laid down. There is no doubt that these are the rules of medical ethics referred to in the context of the provision under consideration here.\(^5\)

Hence, the ICRC suggests that these are ethical guidelines that do not legally bind physicians. Nonetheless, it emphasizes the relevance of these rules by implying that the reference to medical ethics in article 16 AP I should be filled in with these rules.\(^6\) It views the rules as ‘common sense’ and exclaims that they provide the basic ethics of treatment that no physician would violate without ‘being aware of being in the wrong’.\(^7\) Despite their advisory character, according to the ICRC, the WMA documents represent universal, generally recognized principles of medical ethics. These principles, as established by the ICRC, entail:

It is never to act in conflict with the wounded person’s interests, to help him to the fullest extent of the means available, whoever he is (principle of non-discrimination), to be discreet regarding his condition and never to abuse his sense of dependence on the person administering care, particularly not with a view to gaining an advantage from him.\(^8\)

Like the ICRC Commentary, Baccino-Astrada regards the WMA documents as important indicators for medical ethics in armed conflict despite their lack of legal bindingness. She states that ‘c’est bien à ces texts qu’il faudra essentiellement se référer pour interpréter les dispositions de ce Protocol sur le sujet’.\(^9\) The WMA documents should be relied upon to determine the meaning of medical ethics in international humanitarian law. Similarly, Perrin states that physicians and ‘health staff’ should have ‘recourse to the recommendations of the WMA’. He believes that the legal framework of international humanitarian law is supplemented by the WMA’s ethical framework.\(^10\) Kleffner classifies the

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\(^5\) Ibid. para. 656.
\(^6\) In comparison, concerning article 10 AP II, the Commentary states that the WMA rules ‘serve as a point of reference’. Ibid. para. 4688, fn. 11.
\(^7\) Ibid. para. 657.
\(^8\) Ibid. para. 658.