Chapter 46
International Humanitarian Law and Violation of Medical Neutrality*

1 Introduction

"Medical neutrality" is a term one will look for in vain in all of the conventions on international humanitarian law in force. Nor is the term free from all ambiguity: perhaps especially to the expert, it suggests a focus on the duty of medical personnel to perform their wartime functions without discrimination, rather than on the real topic of this paper, which is their desire, or need, to be protected from the effects of war. Yet, as we shall see, in days long past the word “neutrality” was used for a brief while in a sense directly relevant to our subject; and, it may be added, it was a Dutchman who appears to have introduced the term in that sense. Prior to coming to that, however, some remarks are in order about the notion of international humanitarian law, as the other half in the title of my present subject.

As a term identifying a distinct branch of international law, “international humanitarian law” came into common use in the post-World War II era and thus represents a fairly recent addition to the international vocabulary. It also has remained a term with a somewhat uncertain content. For some, it is just another name for general international law, as a body of law that they feel is (or should be) entirely designed to serve the interests of human beings. Others (among whom I count myself) prefer to give the notion a rather more restricted scope, but they split up when it comes to defining its precise limits. I need not go into these doctrinal disputes, for one thing because I think they are of strictly limited importance, and for another, because none of the experts will contest that no matter how defined, the notion contains a hard core that may simply be described as the law relating to the protection of the victims of armed conflicts, or more specifically as the law codified in the four Geneva Conventions of 19491 and further

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1 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) Relative to the Treatment of Prisoners of War; Convention (IV) Relative to the Protection of Civilian Persons in Time of War; all four Conventions signed at Geneva, 12 August 1949; authentic texts in I Final Record of the Diplomatic

developed in the two Additional Protocols adopted in 1977.\textsuperscript{2} It is precisely this body of law that is relevant to today’s discussion, and for present purposes I may therefore use international humanitarian law as a synonym of this part of the law of armed conflict.

At this stage of the proceedings I shall confine my comments to some striking aspects of this so-called law of Geneva. One is that from a modest start it has developed over the years into a very comprehensive body of law, dealing with all conceivable aspects of the protection of an ever growing circle of persons. Another point concerns its scope of application and notably the distinction between international and non-international armed conflicts. And a final comment will touch upon a fundamental characteristic of humanitarian law, as a body of law specifically designed to govern conduct in situations of armed conflict.

As regards the first point, while at the outset (\textit{i.e.}, in 1864) the wounded and sick soldiers of armies in the field were the only persons protected under Geneva law,\textsuperscript{1} the classes of protected persons successively came to include their brethren at sea (1899),\textsuperscript{4} prisoners of war in 1929,\textsuperscript{5} and wounded and sick civilians and other especially vulnerable groups among the civilian population in 1949.\textsuperscript{6} Again, the two Additional Protocols of 1977 do not just improve the law relating to the protection of these categories of persons: they add rules for the protection of civilian populations of countries at war against the effects of hostilities. With this, however, we probably leave the safe ground of the hard core of Geneva law, and so we may leave it at that.

The Geneva Conventions of 1949 stand out not only for their broad scope as far as classes of protected persons are concerned, but for another novel element as well: it is the introduction of rules specifically applicable in non-international

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\item \textsuperscript{1} Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, signed at Geneva, 22 August 1864, text in Schindler & Toman, pp. 279.
\item \textsuperscript{2} Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II); both Protocols adopted at Geneva, 8 June 1977; text also in Schindler & Toman, pp. 621, 689.
\item \textsuperscript{3} Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, signed at The Hague, 29 July 1899; text in Schindler & Toman, p. 289.
\item \textsuperscript{4} Convention Relative to the Treatment of Prisoners of War, signed at Geneva, 27 July 1929; text in Schindler & Toman, p. 339.
\item \textsuperscript{5} Convention Relative to the Protection of Civilian Persons in Time of War, \textit{supra} note 1.
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