

APPENDIX D

THE GENEVA CONVENTIONS AND COMBAT STRESS-RELATED CASUALTIES

D-1. Special Relevance to Medical Combat Stress Control

a. This appendix reviews the relationship of the Geneva Conventions to CSC and treatment of combat stress-related casualties.

b. The provisions of the Geneva Conventions afford the wounded and sick, medical personnel, and medical units protected status. The time-proven principles of treating BF casualties is to treat them as soldiers, not as patients. The BF casualties are treated in a nonpatient care tactical setting. This arguably creates a clear tension, perhaps even a contradiction.

c. The issue of the right to Geneva Conventions protection depends not upon what the CSC treater tells the BF soldier but rather on several issues:

(1) Does the BF soldier's behavior and duty status, in fact, meet the standards set by Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field (GWS)? A patient who meets these standards is considered a privileged patient, that is, one who is not contributing to the combat efforts by virtue of disability.

(2) Does the CSC staff's behavior conform to the GWS standard as personnel who are solely engaged in the care of the sick and wounded?

(3) Does the physical appearance of the CSC personnel, tents, vehicles, and so forth, sufficiently identify them as medical and entitled to GWS protection for this to be more than a moot point on the dispersed, fast-moving, long-range battlefield?

d. The CSC commander and the chain of command will have to decide whether—

(1) To risk the loss of protected status of specific personnel, activities, or facilities in the CSC program by having them strictly adhere to the nonpatient treatment principles and operate the CSC unit as a truly nonmedical activity.

(2) To accept the possible loss of protected status by not marking the unit as medical or by camouflaging the unit. Even if the unit is in technical compliance with the GWS, protection status may be lost.

(3) To seek the full benefit of protected status by limiting the application of the treatment principles and instead operating the CSC unit as a visibly obvious medical facility. This is done at perhaps the price of some reduction in therapeutic effectiveness.

e. Whether the CSC activity is operated as either a visibly obvious medical facility or is camouflaged, CSC personnel and soldiers being treated must adhere to the provisions of the GWS. This is required for them to maintain their protected status and the protected status for other medical units with which they are associated.

f. The remainder of this appendix will discuss special considerations for CSC activities and the application of these options based on the definitive Geneva Conventions information found in FM 8-10.

D-2. Special Considerations for Medical Combat Stress Control Activities

a. We will now reconsider the three questions raised in paragraph B-1(c) relating to

whether CSC activities are entitled to Geneva Conventions protection.

b. Issue #1: Do the battle-fatigued soldiers comply with the GWS criteria for patients?

(1) DUTY and REST cases of BF are clearly still combat soldiers and are not entitled to GWS status. They are still solely on their own unit's rolls. They can, therefore, perform any soldierly task, including offensive operations, without losing a protected status which they do not have. The treatment principle of treating them as soldiers is fully satisfied.

(2) HOLD and REFER BF cases may be told that they are "soldiers, not patients," but they are, in fact, medical patients. They are absent from their units because of a temporary disability that makes them unable to do their combat duties. They are receiving medical care and are under the control of medical personnel/units. As long as they are not set to performing tasks which contribute to the war effort, they fully meet the vague GWS criteria for a "sick and wounded" patient.

(3) To stay within the letter of the Geneva Conventions rules, the following limitations apply:

(a) Recovering BF casualty perform work projects only at and for medical units; for example—

- Filling sandbags and digging trenches for the medical unit's own protection only.

- Moving medical supplies, maintaining medical vehicles, and helping in the medical mess facility and laundry.

- Providing perimeter and air guard security for the medical unit only, not for the total base cluster.

(b) Round trip prerecovery visits to the unit are theoretically allowed, provided the visitors perform no combat-relevant work but only assist the CSC personnel in their rounds.

c. Issue #2: Does the CSC staff comply with the GWS criteria for protected medical personnel? That depends on what they do or do not do.

(1) To retain personal entitlement to Geneva Conventions privilege, CSC personnel, like medics, PVNTMED teams, and battalion aid stations, must—

(a) Not use weapons except to defend themselves and their patients when that defense is made necessary by enemy attack specifically directed at the medical facility.

(b) Not transport weapons or ammunition (except for the permissible personal small arms), nonmedical equipment, or combat-effective (nonpatient) troops.

(c) Not transport DUTY or REST BF cases or fully recovered BF casualties back to their units in CSC (medical) vehicles. Instead, call the unit to come for them.

(d) Not initiate offensive actions against the enemy.

(e) Not engage in labor which directly supports combat operations (as distinct from protecting or restoring health).

(2) If CSC personnel are rumored to do the above, that may endanger the Geneva Conventions status for all CSC personnel, if the

captors identify them specifically as CSC rather than simply as medical personnel.

d. Issue #3: Does the physical appearance of the CSC element sufficiently identify it as medical for it to benefit from theoretical privileged status? Combat stress control activities can be divided into—

(1) Combat stress control activities which take place in nonmedical units. Examples are—

- A CSC consulting team in its truck, visiting a line unit.

- A CSC reconstitution support team camped at the reconstitution site.

- A CSC reconditioning “cell” (team) attached to a corps CSS unit, providing ongoing treatment to the “REST BF casualty” who are performing limited therapeutic duty at that unit.

(a) The BF soldiers are, in fact, “soldiers” on DUTY status (however limited) and not “patients.” The BF casualty could perform work details for CS, CSS, and combat units in the vicinity under directions from those units (not CSC personnel). This includes pulling perimeter defense duty. They could be transported to and from work details in nonmedical vehicles.

(b) In this situation, the CSC unit provides the best “military tactical” therapeutic setting for the “REST” BF cases. The CSS vehicle, tents, and personnel themselves are not a legitimate target and, if captured, would still be eligible for the Geneva Contentions status of “retained personnel” rather than “prisoners of war,” provided they (collectively) have adhered to the rules for being medical noncombatants.

However, they do not confer immunity from attack to the legitimate target with which they are collocated, so they have no grounds for complaint if they suffer casualties.

(2) Combat stress control activities which are functioning as or with medical units, but under tactical circumstances where they are using camouflage, light discipline, perimeter watch, and not showing the distinctive emblem (red cross). Examples are—

- Combat stress control team tents/vehicles at a FSMC, under camouflage.

- The division fatigue center or a corps reconditioning center, separated somewhat from its supporting medical company or CSH, and camouflaged.

(a) Although the fatigue or reconditioning centers technically are “holding patients,” the tactical setting supports the therapeutic message that they are still soldiers receiving temporary rest and performing for a tactical medical unit, not a hospital.”

(b) The CSC personnel would not be legitimate targets and, if captured, would still have the status of “retained personnel,” provided they did not violate the limitation on medical noncombatants.

(c) They have little grounds to complain, however, if a fast-moving or distant enemy fails to recognize their protected status.

(3) Combat stress control activities which are collocated with medical units showing the red cross (as red on white and not under camouflage). Example: A corps reconditioning center which is intermixed with a CSH or medical holding company and well separated from any nonmedical units.

(a) To avoid possibly creating an appearance which might compromise the Geneva status of the other medical units which are under the red cross, the CSC units should show the red cross on all their tents and refrain from using camouflage.

(b) In this case, the BF soldiers can still be told that they are not “patients” but rather are on temporary fatigue or reconditioning duty. This duty is with the CSC unit as temporary medical soldiers. They could be provided with the armbands showing the small distinctive emblem which is given to litter bearers or other soldiers who are temporarily detailed to medical duties.

(c) Everyone must, of course, comply fully with the Geneva Conventions restrictions.

(d) Because of the substantial loss of military tactical atmosphere, this alternative is less desirable than locating slightly further away, closer to the nonmedical CSS units, and erecting camouflage. Issuing the armbands may still be helpful. The CSC personnel would also wear them in these situations.

e. In a conflict where the enemy does not respect the Geneva Conventions, the chain of command may decide that CSC activities will forego the claim to Geneva Conventions protection altogether.

(1) The distinctive emblem would not be shown at all.

(2) Recovering BF casualty could perform any military tasks they are capable of, under direct supervision of CSC personnel.

(3) Combat stress control vehicles could, if available, transport DUTY, REST, and

recovering and recovered BF casualties to their units.

(4) Combat stress control personnel could, when necessary, contribute directly to the general defense.

(5) They should still respect the Geneva status of enemy medical units which are identified as such and of enemy sick and wounded.

f. Combat Stress Control and Geneva Prisoners of War (GPW).

(1) Prisoners of war will not normally be brought to the attention of CSC elements at forward medical facilities unless they also have either wounds or disease, obvious signs of major NP disorders, or BF symptoms which resemble one of the above.

(a.) In WWI, it was noted that POW and EPW rarely showed dramatic “shell shock” symptoms. As with the wounded, there is a natural (if relative) relief from anxiety that comes from being relieved of the responsibility and danger of combat. Just being alive (having had your willingness to surrender be accepted) and having someone else make all decisions about where you go and what you receive is a big relief.

(b) It is also probable that language barriers and lack of concern for EPW “feelings” have left many psychiatric problems among EPW unreported. Probable symptoms include:

• Anxiety over how they will be treated.

• Shame, guilt, and depression at having failed their country by being captured (or “voluntarily” surrendered).

- Post-traumatic stress disorders related to the deaths of comrades, close calls with death, and horrible sights seen.

- Major psychiatric illness.

(2) If EPW are brought to CSC personnel for evaluation or are encountered by CSC, mental health section, or NP ward and consultation service personnel in the course of their consultation mission, the GPW requires that—

(a) The EPW receive the same stabilization for major, potentially life- or function-threatening mental illness as friendly soldiers receive. This will normally be provided on the NP ward of hospitals, with guards providing security as needed. Physical restraints can be used as needed, provided routine nursing care is protecting against injury and unnecessary discomfort.

(b) Treatment of EPW with adjustment disorders or PTSD symptoms will, of course, not aim to return them to combat duty but rather to help them adjust to their status as prisoners and minimize life-long disability following repatriation.

(c) Combat stress control/mental health personnel will not provide direct assistance to prisoner interrogation. This is the responsibility of military intelligence personnel. Combat stress control involvement could jeopardize Geneva-protected status.

(3) Combat stress control units should provide routine mental health consultation to EPW confinement facilities. This should include—

- Stress control advise to the command regarding the stressors of US

Army MP personnel and any allied or coalition personnel working at the confinement facility.

- Advise regarding the stressors and stress manifestation of the prisoners and how to best control them.

- Individual evaluation and intervention for guards or prisoners when indicated.

(4) If CSC personnel are themselves taken prisoner and are granted “retained personnel” status, they will—

- Provide NP/mental health support to the POW.

- Provide life-saving assistance, as requested, to enemy personnel.

- Remain true to the code of conduct for POW and not provide other aid, comfort, assistance, or propaganda to the enemy.

D-3. The Law of War

The conduct of armed hostilities on land is regulated by the law of land warfare. This body of law is inspired by the desire to diminish the evils of war by: protecting both combatants and noncombatants from unnecessary suffering; safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and civilians; and facilitating the restoration of peace. The law of war places limits on the exercise of a belligerent’s power in the interest of furthering that desire. It requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes, and that they conduct hostilities with regard for the principles of humanity and chivalry.

a. *Sources of the Law of War.* The law of war is derived from two principal sources: treaties (or conventions), such as the Hague and Geneva Conventions; and customs, practices which by common consent and long established, uniform adherence have taken on the force of law (see FM 27-10). Under the Constitution of the United States, treaties constitute part of the supreme “Law of the Land” and thus must be observed by both military and civilian personnel. The unwritten or customary law of war is also part of the law of the United States and is binding upon the United States, citizens of the United States, and other persons serving this country (see DA Pam 27-1).

b. *The Geneva Conventions.* The United States is a party to numerous conventions and treaties pertinent to warfare on land. Collectively, these treaties are often referred to as the Hague and Geneva Conventions. Whereas it may generally be said that the Hague Convention concerns the methods and means of warfare, the Geneva Conventions concern the victims of war or armed conflict. The Geneva Conventions are four separate international treaties, signed in 1949, and are respectively entitled: “Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field”; “Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” (GWS Sea); “Geneva Convention Relative to the Treatment of Prisoners of War”; and “Geneva Convention Relative to the Protection of Civilian Persons in Time of War” (GC). The Conventions, with amendments, are extremely detailed and contain many provisions which are tied directly to the CHS mission.

D-4. Protection of the Wounded and Sick

The essential and dominant idea of the GWS is that the person of the soldier who has been

wounded or who is sick, and for that reason is out of combat, is from that moment protected. Friend or foe must be tended with the same care. From this principle, numerous obligations are imposed upon parties to a conflict.

a. *Protection and Care.* Article 12 of the GWS imposes several specific obligations regarding the protection and care of the wounded and sick.

(1) The first paragraph of Article 12, GWS, states “Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.”

(a) The word “respect” means “to spare, not to attack,” whereas “protect” means “to come to someone’s defense, to lend help and support.” These words make it unlawful to attack, kill, ill-treat, or in any way harm a fallen and unarmed enemy soldier while at the same time imposing an obligation to come to his aid and give him such care as his condition requires.

(b) This obligation is applicable “in all circumstances.” The wounded and sick are to be respected just as much when they are with their own army or in no-man’s-land as when they have fallen into the hands of the enemy.

(c) Combatants, as well as noncombatants, are required to respect the wounded. The obligation also applies to civilians, in regard to whom Article 18 specifically states: “The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.”

(d) The GWS does not define what is meant by “wounded or sick”; nor has there ever been any definition of the degree of severity

of a wound or a sickness entitling the wounded or sick combatant to respect. Any definition would necessarily be restrictive in character and would thereby open the door to misinterpretation and abuse. The meaning of the words "wounded and sick" is thus a matter of common sense and good faith. It is the act of falling or laying down of arms because of a wound or sickness which constitutes the claim to protection. Only the soldier who is himself seeking to kill may be killed.

(e) The benefits afforded the wounded and sick extend not only to members of the armed forces but to other categories of persons as well, classes of whom are specified in Article 13, GWS. Even though a wounded person is not in one of the categories enumerated in the Article, we still must respect and protect that person. There is a universal principle which says that any wounded or sick person is entitled to respect and humane treatment and the care which his condition requires. Wounded and sick civilians have the benefit of the safeguards of the Geneva Conventions.

(2) The second paragraph of Article 12, GWS, provides that the wounded and sick "... shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction found on sex, race, nationality, religion, political opinions, or other similar criteria. . . ."

(a) Adverse distinctions of any kind are prohibited. Nothing can justify a belligerent into making any adverse distinction between wounded or sick who require his attention, whether they be friend or foe. Both are equal in their claims to protection, respect, and care. The foregoing is not intended to prohibit concessions, particularly with respect to food, clothing, and shelter, which acknowledge the different habits and background of the wounded and sick.

(b) The wounded and sick shall not be made the subjects of biological, scientific, or medical experiments of any kind which are not justified on medical grounds and dictated by a desire to improve their condition.

(c) The wounded and sick shall not willfully be left without medical assistance; conditions exposing them to contagion or infection shall not be created.

(3) The only reasons which can justify prioritized treatment are reasons of medical urgency. This is the only justified exception to the principle of equality of treatment of the wounded. For example, this means that EPW who are triaged as "immediate" must be cared for before our own wounded who have been triaged as "delayed".

(4) Paragraph 5 of Article 12, GWS, provides that, if we must abandon wounded or sick, we have a moral obligation to, "as far as military considerations permit," leave medical supplies and personnel to assist in their care. This provision is not related to the absolute obligation imposed by paragraph 2 to care for the wounded. A belligerent can never refuse to care for enemy wounded he has captured because adversary has abandoned them without medical personnel and equipment.

b. *Enemy Wounded and Sick.* The protections accorded the wounded and sick apply to friend and foe alike without distinction. Certain provisions of the GWS, however, specifically concern enemy wounded and sick. There are two provisions in the GPW which also apply to enemy wounded or sick because they generally apply to POW.

(1) Article 14 of the GWS states that persons who are wounded and then captured have the status of POW. However, that wounded soldier also needs treatment. Therefore,

a wounded soldier who falls into the hands of an enemy who is a party to the GWS and the GPW will enjoy protection under both Conventions until his recovery. The GWS will take precedence over the GPW where the two overlap.

(2) Article 16 of the GWS requires the tabulation and sending of information regarding enemy wounded, sick, or dead.

c. Search For and Collect Casualties. Article 15 of the GWS imposes a duty on combatants to search for and collect the dead and wounded and sick as soon as circumstances permit. It is left to the tactical commander to judge what is possible and to decide to commit his medical personnel to this effort. If circumstances permit, an armistice or suspension of fire should be arranged to permit this effort.

d. Assistance of the Civilian Population. Article 18, GWS, is the only one therein which addresses the civilian population. It allows a belligerent to ask the civilian to collect and care for wounded or sick of whatever nationality. This provision does not relieve the military authorities of their responsibility to give both physical and moral care to the wounded and sick. The GWS also reminds the civilian population that they must respect the wounded and sick and must not injure them.

e. Enemy Civilian Wounded and Sick. Certain provisions of the Geneva Conventions are relevant to the CHS mission.

(1) Article 16 of the Geneva Conventions provides that enemy civilians who are “wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.” The Article also requires that, “As far as military considerations allow, each Party to the conflict shall *facilitate* the steps taken to search for the killed and wounded [civilians], to assist . . . other

persons exposed to grave danger, and to protect them against pillage and ill-treatment [emphasis added].”

(a) The “protection and respect” to which wounded and sick enemy civilians are entitled is the same as that accorded to wounded and sick enemy military personnel.

(b) While Article 15 of the GWS requires parties to a conflict to search for and collect the dead and the wounded and sick members of the armed forces. Article 16 of the Geneva Conventions states that the parties must “facilitate the steps taken” in regard to civilians. This recognizes the fact that saving civilians is the responsibility of the civilian authorities rather than that of the military. The military is not required to provide injured civilians with medical care in a CZ. However, if we start providing treatment, we are bound by the provisions of the GWS. Provisions for treating civilians (enemy or friendly) will be addressed in COMMZ regulations.

(2) In occupied territories, the Occupying Power must accord the inhabitants numerous protections as required by the Geneva Conventions. The provisions relevant to medical care include—

- The requirement to bring in medical supplies for the population if the resources of the occupied territory are inadequate.

- A prohibition on requisitioning medical supplies unless the requirements of the civilian population have been taken into account.

- The responsibility of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health, and hygiene in the occupied territory.

- The requirement that medical personnel of all categories be allowed to carry out their duties.

- A prohibition on requisitioning civilian hospitals on other than a temporary basis and then only in cases of urgent necessity for the care of military wounded and sick and after suitable arrangements have been made for the civilian patients.

- The requirement to provide adequate medical treatment to detained persons.

- The requirement to provide adequate medical care in internment camps.

D-5. Protection and Identification of Medical Personnel

Article 24 of the GWS provides special protection for “Medical personnel *exclusively engaged* in the search for, or the collection, transport, or treatment of the wounded or sick, or in the prevention of disease, [and] staff *exclusively engaged* in the administration of medical units and establishments . . . [emphasis added].” Article 25 provides limited protection for “Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses, or auxiliary stretcher-bearers, in the search for or the collection, transport, or treatment of the wounded and sick . . . *if they are carrying out those duties at the time when they come into contact with the enemy or fall into his hands* [emphasis added].”

a. *Protections.* There are two forms of protection, and they are separate and distinct.

(1) The first is protection from intentional attack if medical personnel are identifiable as such by an enemy in a combat

environment. Normally, this is facilitated by medical personnel wearing an arm band bearing the distinctive emblem (a red cross or red crescent on a white ground) or by their employment in a medical unit, establishment, or vehicle (including medical aircraft and hospital ships) that displays the distinctive emblem. Persons protected by Article 25 may wear an arm band bearing a miniature distinctive emblem only while executing medical duties.

(2) The second protection provided by the GWS pertains to medical personnel who fall into the hands of the enemy. Article 24 personnel are entitled to “retained person” status. They are not deemed to be POW, but otherwise benefit from the protection of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War. They are authorized to carry out medical duties only, and according to Article 28, GWS, “shall be retained only in so far as the state of health . . . and the number of prisoners of war require.” Article 25 personnel are POW, but shall be employed on their medical duties in so far as the need arises. They may be held until a general repatriation of POW is accomplished upon the cessation of hostilities.

b. *Specific Cases.* Some medical personnel may fall into each of the categories identified in Articles 24 and 25, depending on their duties at the time.

(1) While only Article 25 refers to nurses, nurses are Article 24 personnel if they meet the “exclusively engaged” criteria of that Article.

(2) The AMEDD officers and non-commissioned officers serving in positions that do not meet the “exclusively engaged” criteria of Article 24 are not entitled to its protection but, under Article 25, are entitled to protection from intentional attack during those in which they are performing medical support functions. Examples

of medical personnel who would not meet the “exclusively engaged” criteria of Article 24 are—

(a) The AMEDD officers serving as commanders of FSBs with responsibility for base/base cluster defense as well as command and control of medical and nonmedical units.

(b) The AMEDD officers and noncommissioned officers serving in staff positions within the FSB with responsibility for planning and supervising the logistics support for a combat maneuver brigade.

(c) A medical company commander, a physician, or the executive officer, an MS officer, detailed as convoy march unit commander with responsibility for medical and nonmedical unit routes of march, convey control, defense, and repulsing attacks.

(d) Medical Service officers and other Army officers and warrant officers who are qualified helicopter pilots but who are not permanently assigned to a dedicated medical aviation unit. These officers devote part of their time to flying medical evacuation missions but primarily fly helicopters not bearing red cross markings on standard combat missions.

(e) The GWS does not preclude the use of AMEDD personnel in perimeter defense of nonmedical units. While manning the perimeter defense of nonmedical units, AMEDD personnel would forfeit their special protected status under Article 24 of the GWS. They would be subject to being intentionally attacked, and if captured, would be POW and not necessarily allowed to perform any medical duties. If they had returned to their medical duties, they would possibly be entitled to the protection of Article 25, GWS. That is, if identifiable as performing medical duties, they would not be subject to intentional attack, and if captured, would be allowed to perform medical duties as needed.

c. *Identification Cards and Arm Bands.* Medical personnel who meet the “exclusively engaged” criteria of Article 24, GWS, are entitled to wear an arm band bearing the distinctive emblem of the red cross and carry the medical personnel identification card authorized in Article 40, GWS (in the US armed services, DD Form 1934). Article 25 personnel and medical personnel serving in positions that do not meet the “exclusively engaged” criteria of Article 24 are not entitled to carry the medical personnel identification card or wear the distinctive emblem arm band. Such personnel carry a standard military identification card (DD Form 2A) and under Article 25, may wear an arm band bearing a miniature distinctive emblem when executing medical duties.

D-6. Protection and Identification of Medical Units and Establishments, Buildings and Material, and Medical Transports

a. *Protection.* There are two separate and distinct forms of protection.

(1) The first is protection from intentional attack if medical units, establishments, or transports are identifiable as such by an enemy in a combat environment. Normally, this is facilitated by medical units or establishments flying a white flag with a red cross and by marking buildings and transport vehicles with the emblem.

(a) It follows that if we cannot attack recognizable medical units, establishments, or transports, we should allow them to continue to give treatment to the wounded in their care, as long as this is necessary.

(b) All vehicles employed exclusively on medical transport work are protected on the field of battle. Vehicles being used for

both military and medical purposes, such as ambulances being used to move wounded personnel during an evacuation and carrying retreating belligerents as well, are not entitled to protection.

(c) Medical aircraft, like medical transports, are protected from intentional attack but with a major difference: They are protected only "while flying at heights, times and routes specifically agreed upon between the belligerents concerned." Article 36, GWS. Such agreements may be made for each case or may be of a general nature, concluded for the duration of hostilities. If there is no agreement, belligerents will be able to use medical aircraft only at their own risk and peril.

(d) The second paragraph of Article 19 imposes an obligation upon belligerents to "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." Hospitals should be sited alone, as far as possible from military objectives. The unintentional bombardment of a medical establish or unit due to its presence among or proximity to valid military objectives is a violation of the GWS. Legal protection is certainly valuable but it is more valuable when accompanied by practical safeguards.

(2) The second protection provided by the GWS pertains to medical units, establishments, material, and transports which fall into the hands of the enemy.

(a) Captured mobile medical unit material is to be used first to treat the patients in the captured unit. If there are no patients in the unit, or when those who were there have been moved, the material is to be used for the treatment of other wounded and sick persons.

(b) Generally the buildings, material, and stores of fixed medical establishments will continue to be used to treat wounded and sick. However, after provision is made to care for remaining patients, tactical commanders may make other use of them. All distinctive markings must be removed if the buildings are to be used for other than medical purposes.

(c) The material and stores of fixed establishments and mobile medical units are not to be intentionally destroyed, even to prevent them from falling into enemy hands. The actual buildings may in certain extreme cases have to be destroyed for tactical reasons.

(d) Medical transport which falls into enemy hands may be used for any purpose once the medical care of the wounded and sick they contain is otherwise provided for. The caveat as to removal of distinctive marking applies here also.

(e) Medical aircraft are supposed to obey a summons to land for inspection. If it is performing its medical mission, it is supposed to be released to continue its flight. If examination reveals that an act "harmful to the enemy" (such as if the aircraft is carrying munitions) has been committed, it loses the protections of the Conventions and may be seized. If a medical aircraft makes an involuntary landing, all aboard, except the medical personnel, will be POW. A medical aircraft refusing a summons to land is a fair target.

b. Identification. The GWS contains several provisions regarding the use of the red cross emblem on medical units, establishments, and transports (the identification of medical personnel has been previously discussed in paragraph D-5).

(1) Article 39 of the GWS reads as follows: "Under the direction of the competent

military authority, the emblem shall be displayed on the flags, armlets, and on all equipment employed in the Medical Service. ”

(a) There is no obligation on a belligerent to mark his units with the emblem. Sometimes a commander (generally no lower than a brigade commander for US forces) may order the camouflage of his medical units in order to conceal the presence or real strength of his forces. The enemy must respect a medical unit if he knows of its presence, even one which is camouflaged or not marked. The absence of a visible red cross emblem, however, coupled with a lack of knowledge on the part of the enemy as to the unit’s protected status, may render that unit’s protection valueless.

(b) The distinctive emblem is not a red cross alone: it is a red cross on white ground. Should there be some good reason, however, why an object protected by the Conventions can be marked only with a red cross without a white ground, belligerents may not make the fact that it is so marked a pretext for refusing to respect it.

(c) Some countries use the red crescent or the red lion and sun on a white ground in place of the red cross. Those emblems are recognized as authorized exceptions under Article 38, GWS.

(d) The initial phrase of Article 39 shows that it is the military commander who controls the emblem and can give or withhold permission to use it; moreover, he alone can order a medical unit to be camouflaged. He is at all times responsible for the use made of the emblem and must see that it is not improperly used by the troops or by individuals.

(2) Article 42 of the GWS specifically addresses the marking of medical units and establishments:

(a) "The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities," paragraph 1, Article 42, GWS. Although the Convention does not define "the distinctive flag of the Convention," what is meant is a white flag with a red cross in its center. Also, the word "flag" must be taken in its broadest sense. Hospitals are often marked by one or several red cross emblems painted on the roof. Finally, the military authority must consent to the use of the flag (Article 39) and must ensure that the flag is used only on buildings entitled to protection.

(b) "In mobile units, as in fixed establishments, [the distinctive flag] may be accompanied by the national flag of the Party to the conflict to which the units or establishment belongs," paragraph 2, Article 42, GWS. This provision makes it optional to fly the national flag with the red cross flag. On a battlefield, the national flag is a symbol of belligerency and is therefore likely to provoke attack.

D-7. Loss of Protection of Medical Units and Establishments

Medical assets lose their protected status by committing acts "harmful to the enemy," Article 21, GWS. If such an act occurs, a warning must be given to the offending unit and a reasonable time allowed to cease such activity.

a. *Acts Harmful to the Enemy.* The phrase "acts harmful to the enemy" is not defined in the Conventions but should be considered to include acts the purpose or effects of which are to harm the enemy, by facilitating or impeding military operations. Such harmful acts would include the use of a hospital as a shelter for able-bodied combatants, as an arms or ammunition dump, or as a military observation post. Another

instance would be the deliberate siting of a medical unit in a position where it would impede an enemy attack.

b. Warning and Time Limit. The enemy has to warn the unit to put an end to the harmful acts and must fix a time limit, at the conclusion of which he may open fire or attack if the warning has not been complied with. The phrase "in all appropriate cases" recognizes that there might obviously be cases where a time limit could not be allowed. A body of troops approaching a hospital and met by heavy fire from every window would return fire immediately.

D-8. Conditions Not Compromising Medical Units and Establishments of Protection

a. Article 22 of the GWS reads as follows: "The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

"(1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defense, or in that of the wounded and sick in their charge.

"(2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.

"(3) That small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, [sic] are found in the unit or establishment.

"(4) That personnel and materiel of the veterinary service are found in the unit or establishment, without forming an integral part thereof.

"(5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick."

b. These five conditions are not to be regarded as acts harmful to the enemy. These are particular cases where a medical unit retains its character as such and its right to immunity, in spite of certain appearances which might have led to the contrary conclusion or at least created some doubt.

c. A medical unit is granted a privileged status under the laws of war. This status is based on the view that medical personnel are not combatants and that their role in the combat area is exclusively a humanitarian one. In recognition of the necessity of self-defense, however, medical personnel may be armed for their own defense or for the protection of wounded and sick under their charge. To retain this "privileged status," they must refrain from all aggressive action and may employ their weapons only if attacked in violation of the Conventions. They may not employ arms against enemy forces acting in conformity with the laws of war and may not use force to prevent the capture of their unit by the enemy. (It is, on the other hand, perfectly legitimate for a medical unit to withdraw in the face of the enemy.) Medical personnel who use their arms in circumstances not justified by the law of war expose themselves to penalties for violation of the law of war and, provided they have been given due warning to cease such acts, may also forfeit the protection of the medical unit or establishment which they are protecting.

(1) Medical personnel may carry only small arms, such as rifles or pistols or authorized substitutes.

(2) The presence of machine guns, grenade launchers, booby traps, hand grenades.

light antitank weapons, or mines in or around a medical unit or establishment would seriously jeopardize its entitlement to privileged status under the GWS. The deliberate arming of a medical unit with such items could constitute an act harmful to the enemy and cause the medical unit to lose its protection regardless of the location of the medical unit. See the previous discussion of loss of protection of medical units.

d. Guarding of medical units, as a rule, is performed by its own personnel. However, it will not lose its protected status if the guard is performed by a number of armed soldiers. The military guard attached to a medical unit may use its weapons, just as armed orderlies may, in order to ensure the protection of the unit. But, as in the case of orderlies, the soldiers may act only in a purely defensive manner and may not oppose the occupation or control of the unit by an enemy who is respecting the unit's privileged status. The status of such soldiers is that of ordinary members of the armed forces. The mere

fact of their presence with a medical unit will shelter them from attack. In case of capture, they will be POW.

e. Wounded arriving in a medical unit may still be in possession of small arms and ammunition, which will be taken from them and handed to authorities outside the medical unit. Should a unit be visited by the enemy before it is able to get rid of these arms, their presence is not of itself cause for denying the protection to be accorded the medical unit under the GWS.

f. The presence with a medical unit of personnel and material of the Veterinary Corps is authorized, even where they do not form an integral part of such unit.

g. Establishments protected by the GWS may take in civilians as well as military wounded and sick without jeopardizing their privileged status. This clause merely sanctions what is actually done in practice.