The loss of protection of medical units and personnel

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In times of armed conflict, attacks against hospitals, ambulances, and medical personnel remain a constant reality. These attacks are frequently justified by invoking the limits of the special protection afforded to medical units and personnel under IHL, which may cease when acts harmful to the enemy (AHTTE) are committed. Still, more considerations need to be taken into account when considering the lawfulness of an attack against medical units. The paper presented focuses on one of them: how the loss of its special protection may not always lead to a medical unit becoming a military objective.

The central argument is that medical units benefit from two cumulative and independent layers of protection. The first, special protection, obliges parties to the conflict to respect and protect medical units and is lost upon AHTTE, subject to a prior warning having remained unheeded. The second, a general protection against the effect of hostilities, follows from the civilian status of medical units and is lost only when the unit qualifies as a military objective under Article 52(2) AP I – requiring both an effective contribution to military action and a definite military advantage from its destruction. Because the two protections operate independently, the loss of one does not entail the loss of the other: an attack is only lawful when both have been lost.

The paper proceeds in two parts. The first examines the legal consequences of losing special protection alone before defining AHTTE and applying it to hospital shielding. It argues that only active shielding (positioning a medical unit near a military objective with shielding intent) can constitute AHTTE, while passive shielding (bringing a military objective near a fixed hospital) does not, because AHTTE presupposes an active use of the unit itself.

The second part identifies two structural gaps between the AHTTE standard and the military objective definition. The first concerns the military contribution: AHTTE encompasses indirect contributions to military operations, whereas a military objective requires a direct link. The second concerns the definite military advantage requirement: even where a unit commits AHTTE, its destruction may yield no concrete or non-speculative advantage. These gaps are illustrated through concrete scenarios and applied to active hospital shields, which satisfy neither prong of Article 52(2) AP I.

The presentation will try to extend this framework to medical personnel, where the same two-layer structure applies but raises additional difficulties. Military medical personnel are part of the armed forces but are not combatants under IHL – raising the question of whether they benefit from the general protection afforded to civilians for the purposes of proportionality and targeting. Preliminary conclusions on this point, including on the detention regime applicable when they lose their special protection, will serve as the basis for discussion.