Under the Global Initiative to Galvanize Political Commitment to International Humanitarian Law (global IHL initiative), the International Committee of the Red Cross (ICRC), Nigeria, Pakistan, Spain and Uruguay cordially invite participants to the:

WORKSTREAM 5

FIRST STATE CONSULTATION ON HOSPITALS: ACHIEVING MEANINGFUL PROTECTION IN ARMED CONFLICT

WEDNESDAY, 28 MAY 2025
9:00-12:00 AND 13:00-17:00 (UTC+2)
FORMAT: ONLINE/IN-PERSON

According to the World Health Organization's Surveillance System for Attacks on Health Care, between January 2023 and April 2025 over 2,000 medical facilities were damaged or destroyed or saw medical services obstructed. Many of these cases were linked with armed conflict. This indicates that, rather than enjoying specific protection, hospitals too often are subject to attack, are misused for military purposes or experience other military interference with their medical functions. The humanitarian consequences are often tragic: not just the deaths of patients, family members and medical personnel but damage to and destruction of the hospitals themselves, which cripples their ability to function at a time when medical needs are dire and disrupts medical services for the local population over the long term.

Protecting the wounded and sick has been one of the foundational principles of IHL since the origin of the Geneva Conventions in 1864. Because of that, and the life-saving role of hospitals and other medical facilities, such facilities enjoy specific protection under IHL above and beyond the general protection of civilian objects. This means hospitals must be respected and protected in all circumstances: they must be allowed to provide medical services without interference in their work, they must be protected against attacks, and parties to the armed conflict must take active measures to facilitate their functioning.

While such protection is never absolute, the rules of IHL were conceived to ensure the greatest possible protection for medical services. This means that any loss of protection for hospitals or other medical facilities, while taking into consideration military necessity, can only happen as a rare exception, and parties to armed conflict must always do their utmost to preserve the facilities' medical functions.

The specific protection granted to hospitals may be lost only if a set of cumulative conditions is fulfilled. First, the protection may only cease if a medical facility is used to commit an act harmful to the enemy, outside of its humanitarian function; second, a warning must be given, setting a reasonable time limit to stop such acts, and the protection may cease only if such warning remains unheeded. In addition to these strict conditions, under IHL the loss of specific protection does not automatically turn a medical facility into a military objective. Indeed, even when the conditions are met for a hospital to lose specific protection under IHL, the attacking party remains under the obligation to ensure that the rules on the conduct of hostilities are also complied with, starting with the principle of distinction. Therefore, if a party to the armed conflict comes to the conclusion that a hospital is being used by the enemy to commit acts harmful to it, that party must still determine whether the hospital meets the two-pronged test for a military objective. Only once the party has issued a warning that remains unheeded may the extreme decision of a military response to the loss of specific protection be considered. Even then, the principles of proportionality and precautions must be respected.

One of the current challenges in applying the rules protecting hospitals in practice is that IHL does not define "acts harmful to the enemy" or the consequences of such acts. The Geneva Conventions single out a few acts that are expressly recognized as *not* being harmful to the enemy, such as the carrying or using of individual light weapons in self-defence or in defence of the wounded and sick; the use of armed personnel to guard a medical facility; or the presence in a medical facility of sick or wounded combatants no longer taking part in hostilities. By contrast, acts that have been recognized by states as harmful to the enemy include the use of a hospital as: a base from which to launch an attack; an observation post; a weapons depot; a command-and-control centre; and a shelter for able-bodied combatants. In practice, there has been a worrying tendency to consider a wide range of acts as being harmful to the enemy. An additional challenge lies in the difficulty of verifying assertions made by parties to an armed conflict that hospitals are used by their enemy to commit acts harmful to them. Such claims are rarely accompanied by information about how the existence of an act harmful to the enemy was identified and what process was then used to determine the consequences of such acts. Concretely, this has led to a dangerous situation where the exception is becoming the rule, hollowing out the specific protection afforded to hospitals.

A second practical challenge concerns the question of the warning that must be given before specific protection may cease. Despite the stringency of the obligation to issue such a warning, it is currently unclear whether parties to armed conflict systematically issue them and, when they do so, how they apply the rule. For instance, there is insufficient information on whether and how warnings meet the requirement for specificity, on how parties to armed conflict adapt the format of these warnings to ensure their accessibility, and on the parameters guiding the timing and expiry time granted for ceasing acts harmful to the enemy. Further clarity on the practical implementation of this requirement, and on what is necessary to enable such warnings to serve their purpose, is highly desirable.

Another practical challenge is that parties to armed conflict frequently take military action in response to a hospital's loss of specific protection without taking sufficient steps to verify whether the hospital has turned into a military objective. Even after a medical facility loses specific protection, it does not turn into a lawful target unless it meets the two-pronged definition of a military objective.

Lastly, another challenge is how the rules of proportionality and precautions should be interpreted when a hospital becomes liable to attack. Given the life-saving functions of hospitals, and the usual presence of a high number of protected persons, including wounded and sick individuals, medical personnel and other civilians, the immediate incidental harm of an attack against a hospital is likely to be very high. In addition, the foreseeable reverberating effects of an attack, including the loss of the hospital's vital functions and its inoperability, must be taken into account in the proportionality assessment. Today however, it is unclear how belligerents weigh these elements when comparing the expected incidental civilian harm and the concrete and direct military advantage anticipated from the attack. It is also unclear what measures are taken by parties to minimize harm to patients, medical personnel and equipment, in keeping with the obligation to take all feasible precautions in attack.

Taken together, these challenges highlight the many questions that remain today about what is required in practice to comply with the specific protection granted to hospitals and medical personnel and to fulfil the overarching obligation to collect and care for the wounded and sick. This first state consultation is intended to shed light on solutions and practical recommendations that can help close the alarming gap between the law and the grim reality of damage and destruction to medical services.

OBJECTIVE

Given the legal and humanitarian concerns outlined above in relation to protecting hospitals, participating states will have an opportunity to:

- be informed of and weigh in on the issues discussed during the expert workshop held on 26 and 27 May 2025
- identify measures to improve respect for and implementation of existing IHL norms protecting medical facilities
- develop a shared understanding of key concepts such as acts harmful to the enemy leading to a loss of specific protection; warnings; and the relationship between acts harmful to the enemy and the notion of "military objective"
- understand how the rules of proportionality and precautions should be interpreted in the event that a hospital becomes liable to attack, in order to limit the harm done and so that belligerents can continue to fulfil their obligation to collect and care for the wounded and sick.

NEXT STEPS

- The results of the state consultation will be shared in the general progress report of the global IHL initiative, to be released in September 2025.

- This consultation will inform discussions during the next round of state consultations and the expert workshop.

DESIRED PROFILE OF PARTICIPANTS

- All states are welcome to participate and register up to two representatives well versed in IHL as well as the protection of medical facilities. There is a strong preference for legal advisers from the ministries of foreign or external affairs, defence and health based in their capital city.
- Kindly register **no later than 12 May 2025** at https://forms.office.com/e/XTGWwZiQn9.

PROCEDURE

- The working languages will be Arabic, Chinese, English, French, Russian and Spanish, with simultaneous interpretation.
- The substance of the workshop will be summarized in a progress report, to be published in September. The discussions will be recorded to facilitate the preparation of the report, but the recording will not be made public, and the report will not attribute remarks.
- The inclusive, constructive, non-politicized and solution-oriented nature of the discussions will be maintained throughout the consultation.
- While participants are encouraged to refer to their states' domestic practice during the consultations, participants are kindly asked to refrain from discussing specific circumstances or the practice of other states.
- While preparing their talking points, states may wish to consider the guiding questions below.

GUIDING QUESTIONS

The following guiding questions are provided to frame the discussions during state consultations. Please note that a similar list of questions was shared as part of the expert workshop. States are welcome to share their views on these questions during the consultation; however, if preferred, during the consultation states may share more-general remarks and practice related to the protection of hospitals in armed conflict. In parallel, we encourage all states to share a written response with further reflections on these questions by the end of June 2025 by emailing gva_ihl_initiative_mailbox@icrc.org. Unless confidentiality is expressly requested, these statements will be published on the ICRC website.

For ease of reference, the annex to this document contains the legal framework under IHL on the protection of the wounded and sick as well as on the protection of medical personnel, medical units and transports and the use of the distinctive emblems.

I. Misuse of medical facilities leading to a loss of specific protection

(a) Acts harmful to the enemy

Under IHL, the specific protection granted to a medical facility ceases if it is used to commit, outside its humanitarian function, acts harmful to the enemy and if a warning provided by the opposing party setting a reasonable time limit for ceasing such acts has gone unheeded.

- What factual indications are relevant to concluding that a medical facility has been or is being used to commit acts harmful to the enemy outside its humanitarian function?
- Are there examples from existing military practice on avoiding using medical facilities for military purposes?
- How could communication or coordination between personnel in charge of health facilities and the parties to the conflict help address cases of misuse of medical facilities for military purposes, and what form could such coordination take in practice?
- How could it be ensured that health care providers are aware of what could lead to a loss of specific protection?

(b) The warning requirement

- Who should the warning be addressed to, and how can it be ensured that it is accessible to the addressee?
- What factors need to be considered in fixing a reasonable time limit for the warning?

- How can a party issuing a warning determine that the warning has been heeded and be assured that the medical facility will henceforth be exclusively dedicated to medical purposes?

II. Relationship between acts harmful to the enemy and the notion of a "military objective"

- What factors are relevant to concluding whether a medical facility – having lost specific protection because it was used to commit acts harmful to the enemy and did not cease such acts following a warning – also meets the definition of a military objective under Article 52(2) of Additional Protocol I? (1) The medical facility under the circumstances ruling at the time must make an effective contribution to military action; and (2) there must be a definite military advantage in destroying, capturing or neutralizing the facility.

- In such circumstances, does the hospital building as a whole qualify as a military objective or is it limited only to the part of the hospital that is used to commit acts harmful to the enemy? What factors influence this assessment and decision?

- What measures short of destroying the medical facility, such as capturing or seizing it, can be taken to terminate military use of the facility while also preserving its medical function? Are there certain circumstances in military operations that would be conducive to taking such measures and thereby enabling both these objectives to be met?

III. When medical facilities become liable to attack or may be subject to incidental harm

(a) Interpreting the rule of proportionality

- When a medical facility has lost its specific protection and becomes liable to attack, what kind of impact – both direct and indirect – is factored into the proportionality assessment?

- How would the proportionality assessment differ in the case of medical facilities from that of other civilian objects that become liable to attack?

- For a commander to decide to refrain from an attack or to cancel or suspend an attack, how would the elements of the proportionality assessment – i.e., expected incidental civilian harm and the reverberating effects of the attack – have to be assessed against the anticipated concrete and direct military advantage?

(b) Interpreting the rule of precautions

- In planning military operations what steps can be taken to avoid and, in any event, minimize the indirect impact on the delivery of health care, such as the breakdown of electricity, water supply and access routes for patients, health-care providers and delivery of medical supplies?

- Are there certain means and methods of attack (for example, air strikes or the use of heavy explosive weapons) which should be avoided in attacks against hospitals in order to comply with the obligation to take all feasible precautions, including in the choice of means and methods of warfare, to avoid or minimize incidental civilian harm? What are examples of military and humanitarian considerations that may place a limitation on the choice of weapons?

- What are approaches for best managing the evacuation of medical personnel and patients (including post-operative patients, patients in intensive care, and patients facing specific risks or with specific needs) in order to ensure the continued delivery of health care?

AGENDA

28 May 2025

Time	Agenda item	Discussion leads
9:00–9:15	**Coffee**	
9:15–9:30	**Welcome address**	ICRC
9:30–12:00	**Misuse of medical facilities leading to a loss of specific protection** - **Acts harmful to the enemy** - **The warning requirement**	ICRC and experts to present States contribute from the floor
12:00–13:00	**Lunch**	
13:00–15:00	**Loss of specific protection** - **Acts harmful to the enemy and the notion of a "military objective"**	
15:00–15:15	**Tea/coffee break**	
15:15–17:00	**When hospitals become liable to attack or may be subject to incidental harm** **Interpreting the rule of proportionality and precautions**	ICRC and experts to present States contribute from the floor
17:00	**Closing**	

The names of speakers for the welcome, presentations and closing will be provided at a later date.

Annex

This section outlines the legal framework under IHL for the protection of the wounded and sick, the protection of medical personnel, medical units and transports, and the use of the distinctive emblems.

THE WOUNDED AND SICK

Attacking, harming or killing

The wounded and sick must be respected in all circumstances; attempts upon their lives and violence against their person are strictly prohibited (First Geneva Convention (GC I), Art. 12; Second Geneva Convention (GC II), Art. 12; Fourth Geneva Convention (GC IV), Art. 16; Additional Protocol I (AP I), Art. 10; Additional Protocol II (AP II), Art. 7).

Wilfully killing them or causing great suffering or serious injury to their bodies or to their health constitutes war crimes as grave breaches of the Geneva Conventions (GC I, Art. 50; GC II, Art. 51).

In certain circumstances, the denial of medical treatment may constitute cruel or inhuman treatment, an outrage upon human dignity, in particular humiliating and degrading treatment, or even torture if the necessary criteria are met.

Searching for and collecting

Parties to an armed conflict must take all possible measures to search for and collect the wounded and sick without delay. If circumstances permit, parties must make arrangements for the removal or exchange of the wounded and sick (GC I, Art. 15; GC II, Art. 18; AP II, Art. 8; ICRC Study on Customary International Humanitarian Law (Customary IHL Study), Rule 109; see also AP I, Art. 17, on the role of the civilian population and aid societies in relation to the wounded, sick and shipwrecked).

Protection and care

All parties to an armed conflict must protect the wounded and sick from pillage and ill-treatment. They must also ensure that adequate medical care is provided to them as far as practicable and with the least possible delay (GC I, Art. 15; GC II, Art. 18; GC IV, Art. 16; AP II, Arts 7 and 8; Customary IHL Study, Rule 111).

Treatment without discrimination

The wounded and sick must be treated without discrimination. If distinctions are to be made among them, it can be only on the basis of their medical condition (GC I, Art. 12; GC II, Art. 12; AP II, Art. 7(2); Customary IHL Study, Rule 110).

MEDICAL PERSONNEL

Protecting and respecting

Medical personnel exclusively assigned to medical duties/purposes must always be respected and protected, unless they commit, outside of their humanitarian function, acts that are harmful to the enemy (GC I, Art. 24; AP I, Art. 15; Customary IHL Study, Rule 28).

When they carry and use weapons to defend themselves or to protect the wounded and sick in their charge, medical personnel do not lose the protection to which they are entitled (GC I, Art. 22(1); GC II, Art. 35(1); AP I, Art. 13(2)(a)).

The wounded and sick under their care remain protected even if the medical personnel themselves lose their protection.

Provision of care

Parties to an armed conflict may not impede the provision of care by preventing the passage of medical personnel. They must facilitate access to the wounded and sick, and provide the necessary assistance and protection to medical personnel (GC I, Art. 15; GC II, Art. 18; GC IV, Art. 17; AP I, Art. 15(4)).

HEALTH-CARE PROFESSIONALS

Impartial care

No health-care professional may be punished for having carried out activities compatible with medical ethics, such as providing impartial care (AP I, Art. 16(1); AP II, Art. 10(1); see also GC I, Art. 18, on the role of the population; Customary IHL Study, Rule 26).

MEDICAL UNITS AND TRANSPORTS

Medical units

Medical units, such as hospitals and other facilities organized for, and exclusively assigned to, medical purposes, must be respected and protected in all circumstances. Medical units may not be attacked, and access to them may not be limited.

Parties to an armed conflict must take measures to protect medical units from attacks, such as ensuring that they are not situated in the vicinity of military objectives (GC I, Art. 19; GC II, Art. 22; GC IV, Art. 18; API, Art. 12; AP II, Art. 11; Customary IHL Study, Rule 28).

Medical units will lose the protection to which they are entitled if they are used, outside their humanitarian function, to commit acts harmful to the enemy, such as sheltering able-bodied combatants or storing arms. However, this protection can be suspended only after due warning has been given with a reasonable time limit and only after that warning has gone unheeded (GC I, Arts 21 and 22; AP I, Art. 13; AP II, Art. 11; Customary IHL Study, Rule 28).

Medical transports

Any means of transportation that is assigned exclusively to the conveyance of the wounded and sick, medical personnel, and/or medical equipment or supplies must be respected and protected in the same way as medical units. If medical transports fall into the hands of an adverse party, that party becomes responsible for ensuring that the wounded and sick in their charge are cared for (GC I, Art. 35; GC II, Arts 38 and 39; AP I, Arts 21–31; AP II, Art. 11; Customary IHL Study, Rules 29 and 119).

Perfidy

Parties to an armed conflict who use medical units or transports with the intent of leading the opposing parties to believe they are protected, while using them to launch attacks or carry out other acts harmful to the enemy, commit acts of perfidy. If such an act of perfidy results in death or injury to individuals belonging to an adverse party, it constitutes a war crime (AP I, Arts 37 and 85(3)(f); Customary IHL Study, Rule 65).

USE OF THE DISTINCTIVE EMBLEMS

When used as a protective device, the emblem – the red cross, the red crescent or the red crystal – is the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on medical personnel, medical units and medical transports. However, no such emblem confers as such protection; it is the fact that persons or objects meet the requirements for qualifying as medical personnel and objects and the fact that they discharge medical functions that are constitutive of protection (GC I, Art. 38; GC II, Art. 41; AP I, Art. 8(l); AP II, Art. 12; Additional Protocol III; Customary IHL Study, Rule 30).

During an armed conflict, the authorized users of a protective emblem include military medical personnel, units and transports; National Red Cross and Red Crescent Societies' medical personnel, units and transports that have been recognized by the state and authorized to assist the medical services of the armed forces; state-certified civilian medical units authorized to display the emblem; and medical personnel in occupied territory. The emblem used as a protective device should be large enough to ensure visibility so that an adversary could recognize medical units from a distance on the battlefield. Medical units and transports may also use distinctive signals (such as light and radio signals) (GC I, Arts 39–44; GC II, Arts 42 and 43; AP I, Arts 39–44; AP II, Art. 12).

When used as an indicative device, the emblem links the person or object displaying it to an institution of the International Red Cross and Red Crescent Movement. In this case, the sign should be relatively small (GC I, Art. 44).

Attacking buildings, material, medical units and transports or personnel displaying the distinctive emblems is a war crime.

Misuse of the emblem

Any use of the emblem not prescribed by IHL is considered to be improper (GC I, Art. 53; AP I, Arts 37, 38 and 85; AP II, Art. 12; Customary IHL Study, Rule 59).