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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
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AFFAIRS
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SUBJECT: Principles Related to the Protection of Medical Care Provided by Impartial
Humanitarian Organizations During Armed Conflict

Today, I sent to the U.S. Executive Director of Doctors Without Borders/Médecins Sans Frontières (MSF) the attached statement of principles related to the protection of medical care provided by impartial humanitarian organizations.

Drafted by military and civilian lawyers within the Department, the statement reflects legal principles related to the protection of the wounded and sick and of impartial humanitarian organizations during armed conflicts. Where the principles were not already legally binding as a matter of treaty or custom, the statement conveys the United States' support for the recognition of the principles as customary international law.

Although I expect that all DoD orders and guidance are already consistent with the principles, I nonetheless request the prompt review of all relevant orders, rules of engagement, directives, regulations, policies, practices, and procedures under your purview to ensure that they are consistent with these principles. I also request that you continue to ensure that all DoD personnel adhere to these principles during all armed conflicts, however such conflicts are characterized, and in all other military operations.

Please direct any questions to the Office of the General Counsel of the Department of Defense.

Attachment:
As stated



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Principles Related to the Protection of Medical Care Provided by Impartial Humanitarian Organizations During Armed Conflicts

As reflected in the Geneva Convention for the Amelioration of the Wounded in Armies in the Field of August 22, 1864, the protection of medical care during armed conflict is one of the oldest principles in law of war treaties. The United States is party to a number of treaties that address the protection of medical care during armed conflict, including the 1949 Geneva Conventions. The United States has also long supported the fundamental guarantees in 1977 Additional Protocol II for the protection of and appropriate care for the sick and wounded, and medical units that assist them during non-international armed conflict.

The U.S. Department of Defense reaffirms the following principles related to the protection of medical care provided by impartial humanitarian organizations during international and non-international armed conflicts. Where not already applicable as a matter of treaty obligations or customary international law, the United States supports the recognition of these principles as customary international law and expects all parties to an armed conflict to respect them:

- I. Medical care during armed conflict is an activity that is fundamentally of a neutral, humanitarian, and non-combatant character. Ensuring that medical care during armed conflict is protected requires that parties refrain from acts that undermine its protection, and take affirmative steps to distinguish medical care from activities of a combatant character.
- II. All the wounded and sick, whether or not they have taken part in the armed conflict, shall be respected and protected. The wounded and sick are persons placed *hors de combat* by sickness or wounds.
 - A. The wounded and sick must not be made the object of attack.
 - B. Combatants must not use the presence or movement of the wounded and sick: (1) to attempt to make certain points or areas immune from seizure or attack; (2) to shield military objectives from attack; or (3) otherwise to shield or favor one's own military operations or to impede the adversary's military operations.
 - C. Considerations of humanity, proportionality, and honor should guide combatants in all their interactions with the wounded and sick.
- III. Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, and to ensure their adequate care.
- IV. In all circumstances, the wounded and sick shall be treated humanely without adverse distinction founded on race, color, religion or belief, sex, birth, wealth, political opinion, or any other similar criteria.
- V. The wounded and sick shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.
- VI. Impartial humanitarian organizations may offer their services to any of the parties to the conflict.
 - A. States should not arbitrarily withhold their consent to the activities of humanitarian organizations.

- B. Where a State has accepted the services of an impartial humanitarian organization, it must not regard such services, including the provision of medical care, as unlawful and subject to punishment.
- VII. Personnel, units, transports, and facilities belonging to impartial humanitarian organizations providing medical care shall be respected and protected. Such personnel, units, transports, and facilities of impartial humanitarian organizations are those that are exclusively engaged in humanitarian functions.
- A. Such personnel, units, transports, and facilities must not be made the object of attack or unnecessarily prevented from discharging their proper functions.
 - B. The protection to which such units (including units composed of personnel and facilities) and transports are entitled shall not cease unless they are used to commit hostile acts outside their humanitarian function. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.
 - C. Any attack must comply with all applicable rules and principles of international humanitarian law, such as the prohibition on attacks that are expected to cause excessive incidental harm and the requirement to take feasible precautions in conducting the attack.
 - D. Combatants must not use the presence or movement of such personnel, units, transports, and facilities: (1) to attempt to make certain points or areas immune from seizure or attack; (2) to shield military objectives from attack; or (3) otherwise to shield or favor one's own military operations or to impede the adversary's military operations.
- VIII. Personnel belonging to impartial humanitarian organizations providing medical care shall be granted all available help in the performance of their duties, including by establishing appropriate channels of communication with such organizations.
- A. They shall not be subject to harassment or attacks for having performed their humanitarian duties for the wounded and sick.
 - B. They shall not be compelled to carry out tasks that are not compatible with their humanitarian mission.
 - C. In the performance of their duties, they may not be required to give priority to any person except on medical grounds.
- IX. Impartial humanitarian organizations may take appropriate measures to distinguish their personnel, units, transports, and facilities from military objectives, including by marking such personnel, units, transports, and facilities and, where feasible, by situating healthcare facilities away from military objectives.
- A. Under the direction of the competent authority concerned, the distinctive emblem of the red cross or other distinct emblem shall be displayed by medical and religious personnel and medical units of impartial humanitarian organizations, and on their medical transports. The distinctive emblem shall be respected in all circumstances and shall not be used improperly.
 - B. If personnel, units, transports, and facilities that are entitled to protection are recognized as such, they remain entitled to such protection even if the distinctive emblem or other appropriate markings are not displayed.
- X. These principles must be interpreted in the light of conventional and customary international humanitarian law.

- A. These principles must be understood in light of the spirit, object, and purpose of international humanitarian law.
- B. These principles are without prejudice to the protection of noncombatant personnel, units, transports, and facilities not belonging to impartial humanitarian organizations, or other applicable protections under conventional and customary international humanitarian law.