

TABLE OF CONTENTS

INTRODUCTION.....1

I. BACKGROUND.....9

 A. The Benghazi Six.....9

 B. Medical Workers in Crisis: Legal Rules and International Norms.....15

 1. Medical Workers in Peacetime: Exposed and Unprotected.....15

 2. International Committee of the Red Cross: Establishing the Fundamentals for Medical Personnel.....24

 3. Medical Personnel: Protections and Accountability.....27

II. Analysis.....33

 A. Libya Violated International Human Rights Laws in Its Treatment of the Benghazi Six.....33

 1. Article 9 of the International Convention on Civil and Political Rights.....34

 2. Libya Violated Article 14 of the ICCPR.....38

 3. Libya Violated Article 7 of the ICCPR and Article 2 of the Convention Against Torture and Other Cruel and Inhuman Treatment.....39

 4. Libya Violated the International Labour Organization's Convention on Protection of Migrant Workers and Their Families.....43

 B. The Failure of Medical Neutrality in the Case of the Benghazi Six.....45

 1. Conflict Neutrality Does Not Apply to the Case of the Benghazi Six.....45

2. Conflict Defined Neutrality Contravenes Historical Intent.....	48
3. Conflict-Defined Neutrality Fails to Protect Medical Personnel.....	50
4. Future of International Law: Conflict-Defined Neutrality Leads to a Clash Between International Sovereignty and Medical Ethics..	52
III. Recommendations.....	55
A. Bulgaria should bring violations to the United Nations under the ICCPR and Convention Against Torture.....	55
B. The European Union and the United States Should Sanction Libya.....	57
C. The United Nations Should Codify International Protections for Medical Personnel	58
D. Creation of international medical tribunal.....	64
IV. CONCLUSION.....	66

Abstract

This comment evaluates the legal protections and liabilities available to medical personnel in international conflict and non-conflict situations. This comment focuses on the plight of the six foreign medical workers who are currently on death row for allegedly causing the deliberate HIV infection in 426 Libyan children. This comment analyzes the legal recourse available to medical workers in international humanitarian and human rights law under the International Covenant on Political and Civil Rights and the Convention for the Protection of Migrant Workers and provide future recommendations to ensure that medical works have adequate protections and clear obligations under international law.

The "Benghazi Six": International Medical Neutrality in Times of
War and Peace

I. Introduction

On December 19, 2006, a Libyan court condemned six foreign medical workers to death by firing squad for allegedly infecting 426 Libyan children with the HIV virus.¹ Over the course of the

¹ See Laurie Garrett, *Six Imprisoned Health-Care Workers in Libya Are Pawns in a Far Larger Strategic Game*, **Council on Foreign Relations**, November 21, 2006,

http://www.cfr.org/publication/11821/six_imprisoned_health_care_workers_in_libya_are_pawns_in_a_far_larger_strategic_game_with_enormous_repercussions.html?breadcrumb=%2Fissue%2F89%2Fhuman_rights (asserting conviction of the "Benghazi Six" is the result of larger geopolitical issues between Libya and the western world as well a conflict between the scientific community and the international implications of the spread of HIV); see also Michael Thieron, *Libyan Justice: Medicine on Death Row* **Open Democracy**, December 19, 2006,

http://www.opendemocracy.net/globalization-vision_reflections/libya_bulgaria_4200.jsp (suggesting that the situation in Libya encapsulates fundamental questions about freedom and the protections available to international medical workers, the "legitimacy of international medical aid" and

past eight years, the foreign medical workers were tortured, suffered undue delays in judicial proceedings and faced biased tribunals.²

While some argue that Libya took these actions as reprisal for the international humiliation it suffered during the Lockerbie trial,³ Libya is not the first country to persecute medical personnel.⁴

Libya's struggle for retribution in the aftermath of the Lockerbie trial).

² See Thieron, supra note 1 (maintaining that the Benghazi Six endured a "judicial nightmare" which included proceedings where the Benghazi Six were without legal representation, prohibition on the introduction of evidence from international HIV demonstrating that the HIV strand which infected the children was present in Libya and West Africa before the medical personnel ever entered the country and accused of exaggerated charges such as engaging in non-marital sexual relations).

³ See Garrett, supra note 1 (proffering evidence that the six medical workers are retribution for the Libya's embarrassment and isolation after the Lockerbie bombing in that Colonel Muammar Gaddafi, the leader of Libya, requested the same amount of reparations for the children infected with HIV as those paid out in the Lockerbie trial).

⁴ See American Association for the Advancement of Science, AAAS Human Rights Action Network available at http://shr.aaas.org/aaashran/directory_2003.pdf (documenting 323 cases of human rights violations of medical professionals and scientists through out the world and issuing human rights violation alerts for science and medical professionals in 47 countries including Turkey, Burma, Peru, Mexico and Israel); **British Med. Association., The Medical Profession & Human Rights: Handbook for a Changing Agenda** 248-49 (Zed Books 2001) (asserting that violations of medical neutrality occur because health professionals appear to sympathize with dissident groups where in reality they simply are obligated to treat all individuals equally); James Welsh, Health Workers at Risk, **Lancet**, (August 5, 2000) available at 2000 WLNR 6404177 (documenting violations of medical neutrality in Burma, Peru and Turkey); see also **Physicians for Human Rights, Medicine under Siege in Former Yugoslavia, 1991-1995** 70-89 (1996) [hereinafter **Medicine Under Siege**] (documenting violations of medical neutrality during the Yugoslavia conflict that included firing on medical personnel and convoys, the execution of Muslim physicians and the removal of 400 individuals, including hospital staff, wounded soldiers and patients who were never seen again).

Medical personnel hold a unique place in the global community. Under international humanitarian law, specific protections grant neutrality to humanitarian and medical workers providing aid in conflict.⁵ In addition, in the aftermath of Nuremberg trials,⁶ the international community codified ethical

⁵ See Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field Art. 19, August 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention I] (allowing enemy parties to employ medical personnel to aid the wounded and sick, demonstrating that medical personnel's ability to heal outweighs their military affiliations).

⁶ See, e.g., World Medical Association, Regulations in Time of Armed Conflict, in **Ethical Codes and Declarations Relevant to the Health Professions** 7, 7-8 (Amnesty International, 1994) (reiterating that the physician has the same obligations during war as in peace and human experimentation is forbidden and physicians should be granted the protection necessary to carry out these obligations); See also George J. Annas and Michael A. Grodin, Medical Ethics and Human Rights: Legacies of Nuremberg, 3 **Hofstra L. & Pol'y Symp.** 111, 113 (1999) (concluding that the 1946 trial of Nazi doctors led to the creation of the Nuremberg Code which outlines ethics for the treatment of human being in medical experiments).

standards, enforcing the concept that medical personnel are subject to a higher level of international responsibility.⁷ These ethical guidelines often conflict with government and societal regulations and expectations.⁸

⁷ See **British Medical Association**, supra note 4, at 5 (noting that Nuremberg and its aftermath necessitated international codification of international medical ethics by the World Medical Association); see also Principle of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, Annex, U.N. Doc. A/37/51 (December 18, 1982) (emphasizing that it is a "contravention of medical ethics and international instruments" for medical personnel to engage in acts of torture, interrogation or retain a professional relationship with a detainee or prisoner that is not for the purpose of evaluating, improving or protecting their physical or mental health); Annas, supra note 6, at 118 (asserting there should be an independent body to evaluate use of humans in medical experimentation and independent tribunal to hold criminally liable).

⁸ See, e.g. Victor W. Sidel, The Roles and Ethics of Health Professionals in War, in **War and Public Health** 282 (Barry S.

The laws of war have changed and the Benghazi Six, along with other medical professionals would benefit from a new definition of medical neutrality, free from the confines of

Levy and Victor W. Sidel eds. 1997) (observing the conflict of interest between physicians as impartial healers and allegiance to their country); see also **British Medical Association**, supra note 4, at 250 (noting that physicians are obligated to treat individuals irrespective of the protections afforded to them under international humanitarian law); Roelf Padt, The Meaning of Medical Neutrality and its Consequences in **Violation of Medical Neutrality**, 48-54, at 49-50 (G.L. Wackers & C.T.M. Wennekes eds., 1992) (delineating examples where Medicines Sans Frontieres volunteers were the first to provide humanitarian assistance in Turkey to Kurdish refugees despite the fact that their presence was unauthorized by the Turkish government). Contra **Yves Beigbeder, The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance** 339, 271 (Martinus Nijhoff Publishers, Legal Aspects of Int'l Org. No. 12 1991 (affirming International Committee of the Red Cross intervention only at the consent of the parties to the conflict)).

armed conflict.⁹ Currently, no clear dividing line exists between conflicts of an international character and non-conflict situations.¹⁰ This leaves medical personnel extremely vulnerable in situations where no international laws guarantee neutrality.

Current international law only protects medical personnel and humanitarian societies who receive authorization by conflicts to the party to enter the country.¹¹ As a result, the

⁹ See **Beigbeder**, supra note 8, at 347 (emphasizing that conflict resolution has changed to include civilians as targets, particularly in cases of authoritarian regimes).

¹⁰ See Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 1(2), Dec. 7, 1978, 1125 U.N.T.S. 609 [hereinafter Protocol II] (reiterating that random acts of violence within a country does not fall within the definition of conflict in international law and its subsequent protections).

¹¹ See **Beigbeder**, supra note 8, at 348 (stressing that medical organizations are breaking the law when they enter a country without permission); International Committee of the Red Cross, International Humanitarian Law and Human Rights, http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/section_ihl_and_human_rights (last visited March 2, 2007) (comparing

Benghazi Six face a situation where they are at the whim of a national government, accused of violating Libyan law, despite the fact that they came to Libya to assist in the disaster created by HIV and prevent its spread throughout the region.¹²

This comment will discuss medical neutrality and the protections and requirements of medical personnel in international humanitarian and human rights law. Part IIA provides an overview of the status and history of the Benghazi Six. Part IIB outlines the protections and obligations available to medical workers under both international humanitarian law and human rights treaties. Part III analyzes the legal recourse that the "Benghazi Six" and medical workers have under both international humanitarian law and human rights law. Part IV recommends the stronger legal protections and a

international humanitarian law which exclusively regulates armed conflict and international human rights law which applies in both war and peacetime).

¹² See Laurie Garrett, HIV and National Security: Where Are the Links? 35 **Council on Foreign Relations** (2005) available at http://www.cfr.org/content/publications/attachments/HIV_National_Security.pdf [hereinafter HIV and National Security] (stating that HIV is "an instrument of terror or diplomatic stand-off").

definition of medical neutrality not linked to armed conflict to prevent further victimization of neutral medical personnel.

II. Background

This section provides an overview of the history and development of the legal concepts behind medical neutrality. The section also traces the series of events, which led to the imprisonment of the Benghazi Six and the international humanitarian and human rights laws applicable in their situation.

A. The "Benghazi Six"

The "Benghazi Six" consists of five Bulgarian nurses and one Palestinian physician who were imprisoned in 1999 for allegedly infecting 426 Libyan children with the HIV virus.¹³ Initially, the group of detained medical professionals included Libyan, Polish, Hungarian and Filipino health professionals who worked at the Al-Fateh Children's Hospital in Benghazi.¹⁴ The

¹³ See Garrett, supra note 1 (decrying the validity of the charges against the foreign workers given that local medical personnel believed hospital conditions were unsanitary and reuse of syringes caused the HIV transmission).

¹⁴ See Int'l Gay and Lesbian Human Rights Commission, Action Alert: AIDS Panic in Libyan Arab Jamahiriya: Medical Professionals Charged in "Doctors' Plot" Could Face Death

government later released all but the five Bulgarian medical workers and the Palestinian doctor.¹⁵

Libya postponed the trial for the workers 13 times.¹⁶ The workers did not have access to attorneys until after the hearings began.¹⁷ Libya charged the Benghazi Six with committing acts "leadings to uncontrollable killing with the aim of

Penalty, <http://www.bghelsinki.org/press/2000/en/11-03.htm>

[hereinafter IGLHRC] (noting that Libya released the Polish, Hungarian and Filipino workers based on agreements with their respective country representatives).

¹⁵ See id. (stressing that Libya released the Libyan medical workers and held the six foreign workers without bail).

¹⁶ See British Broadcasting Corporation, Timeline: Bulgarian Medics Trial (December 19, 2006)

<http://news.bbc.co.uk/2/hi/africa/6192439.stm> [hereinafter Timeline] (delineating the Bulgarian Medical workers' trials which began in February 2000, one year after they were arrested, in which there were 13 adjournments and a sentence was not reached until May 2004, which was then thrown out and the medics received a new trial beginning in December 2005).

¹⁷ See IGLHRC, supra note 14 (condoning the ten month period in which the Benghazi Six did not have access to legal representation).

assaulting the country” and “intentional killing with a lethal substance.”¹⁸ This is despite conclusive evidence that the strain of HIV in the Libyan children was already present and spreading in the 1990s, prior to the arrival of the Benghazi Six.¹⁹ Additional charges included violation of Islamic norms, such as “having sexual intercourse with persons whom are not in a lawful marital relationship” and producing alcoholic beverages.²⁰ The charges demonstrate the fear and ignorance that Libya harbors toward the HIV infection.²¹

¹⁸ See id. (observing Libya’s claim that the foreign medical workers were trying to compromise state security through the deliberate transmission of HIV).

¹⁹ See Declan Butler, Molecular HIV Evidence Backs Accused Medics 444 **Nature** 2006 658-59 (2006) (reiterating that the use of the independent genetic information tracing the mutations of the outbreak suggests that the strain is closely related to strains from West Africa, indicating that natural introduction combined with poor hygiene at the Al-Fateh hospital caused the HIV outbreak).

²⁰ See IGLHRC, supra note 14 (observing that the People’s Court of Libya enforces both Libyan penal code and Islamic law).

²¹ See HIV and National Security, supra note 12, at 35 (finding that Libya and other countries view HIV as a security threat

The United States and European Union perceive the situation in Libya as part of its determination of whether to re-establish relations with Libya.²² Most recently, the European Union

deliberately spread by other nations, including the United States evidenced by Libyan leader Muammar Quaddafi's allegations that HIV infection is a product of orders from the United States, Central Intelligence Agency and Israeli intelligence); see also Garrett, supra note 1 (attempt by Bulgaria and the United States CIA to introduce a "microorganism" into Libya); IGLHRC, supra note 14 (implying that charges are meant to "stigmatize and punish foreigners for violation of so-called Islamic norms" and show that the Bulgarians engaged in activities contrary to Muslim law).

²² See Garrett, supra note 1 (inferring that if Libya truly wanted to normalize relations with the United States and the European Union, it would have filed a claim under the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction, which both Libya and Bulgaria signed); see also Larry Miller, The Politics of Medicine **CBS News**, February 23, 2007, <http://www.cbsnews.com/stories/2007/02/23/london/main2507234.shtml> (equating the situation of the Benghazi Six to the pogroms in

Parliament adopted a resolution condemning the trial of the Benghazi Six.²³ In addition, Bulgaria filed charges in its court system against the guards allegedly involved in the torture of the medical personnel.²⁴

The situation of the Benghazi Six demonstrates the problems created by conflict-defined medical neutrality.²⁵ Medical

the Middle Ages where Jews were accused of deliberately spreading the plague by poisoning water wells).

²³ See European Parliament, Resolution on the Conviction and Imprisonment by Libya of Five Bulgarian Nurses and a Palestinian Doctor, Eur. Parl. P6-TA-2007 available at <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0007&language=EN> [hereinafter European Parliament Resolution] (questioning the validity of the charges against the Benghazi Six as well as consideration of a possible revision of European Union engagement with Libya).

²⁴ See News.bg Bulgaria Sues Nurses' Torturers (January 31, 2007) http://international.ibox.bg/news/id_137911897 (responding to the recent slander charges against the Benghazi Six as revenge for clear abuse and torture of the Bulgarian nurses).

²⁵ See, e.g., Amnesty Int'l, Harming the Healers: Violations of the Human Rights of Health Professionals, AI Index ACT 75/02/00c, May 2000 available at

personnel often find themselves compelled by medical ethics to deliver care without protection or in contravention of international law.²⁶

[http://web.amnesty.org/library/pdf/ACT750022000ENGLISH/\\$File/ACT7500200.pdf](http://web.amnesty.org/library/pdf/ACT750022000ENGLISH/$File/ACT7500200.pdf) (documenting physician persecutions for both support of human rights groups and providing medical treatment to opposition forces in Algeria, China, Cuba, Egypt, Ethiopia, Federal Republic of Yugoslavia (Kosovo), Lebanon, Libya, Myanmar, Nigeria, Syria, Turkey and Vietnam, noting specifically the case in Ethiopia where a Dr. Tassew Begashaw was arrested for allegedly providing medical treatment to a member of the Oromo Liberation Front).

²⁶ See International Commission on Medical Neutrality, Violations of Medical Neutrality, El Salvador: A Report (March 1991)

[hereinafter El Salvador] (investigating the disappearance of health workers in El Salvador when the government interpreted their health activities as actions in support of the opposition forces); cf. British Medical Association, supra note 4, at 248 (describing how the Turkish Medical Association documented ten health professionals missing or murdered by security forces for treating Kurdish dissidents); see also Welsh, supra note 4 (asserting that many health professionals are prosecuted solely for the providing medical treatment to opponents of the

B. Medical Workers in Crisis: Legal Rules and International Norms

This section outlines the legal protections available to medical personnel in both war and peacetime. It provides background on the origins of medical neutrality and its intersection with the fundamental rules governing international and non-international armed conflict.

1. Medical Workers in Peacetime: Exposed and Unprotected

government and that "providing medical care to armed opponents of the government should not in itself be a prosecutable offense since the most fundamental tenet of medical ethics is that a person in need of medical care should receive medical care irrespective of "age, disease, or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation or social standing"); See generally American Association for the Advancement of Science AAAS Science and Human Rights Action Network, Directory of Persecuted Scientists, Health Professionals and Engineers: Alerts from June 2001 - December 2002 available at http://shr.aaas.org/aaashran/directory_2003.pdf (documenting cases of medical and science personnel subject to human rights abuses).

In contrast to the laws of conflict, medical personnel²⁷ do not receive a designation of neutrality²⁸ during peacetime.²⁹

Despite the emergence of international human rights law, no

²⁷ See Protocol I Additional to the Geneva Conventions of 12, August, 1949, and Relating to the Protection of Victims of International Armed Conflict, art. 8(c) Dec. 7, 1978, 1125 U.N.T.S. [hereinafter Additional Protocol I] (defining medical personnel as “those persons assigned, by a Party to the conflict” including Red Cross personnel, medical transport units and other recognized volunteer aid societies).

²⁸ See, e.g., Frits Kalshoven, *International Humanitarian Law and Violation of Medical Neutrality in Violation of Medical Neutrality* 21, 21 (Eds. G.L. Wackers & C.T.M. Wennekes, Thesis Publishers, 1992) (emphasizing that neutrality relates both to the duty of medical personnel during wartime as well as the duty of others to respect and protect medical personnel in times of danger).

²⁹ See **British Medical Association**, supra note 4, at 250 (analyzing the limits of medical neutrality to non-traditional types of international and domestic conflicts).

treaties delineate special protections for medical personnel in non-conflict situations.³⁰

The medical profession has a universal obligation to help those in need that extends beyond state borders.³¹ If the

³⁰ See, e.g., International Convention on the Protection of Rights of All Migrant Workers and Members of their Families arts. 58, 59, 60, 61, 62, 63, July 1, 2003, G.A. res. 45/158, annex, U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (July 1, 2003) [hereinafter Convention on Migrant Workers] (failing to provide special designation for medical personnel under designations for special categories of migrant workers); see also Padt, supra note 8 (documenting violence against international medical teams in situations which do not fall under protection of international humanitarian law, leaving as remedies political pressure and public opinion to save the lives of medical personnel).

³¹ See Stephen Bach, International Migration of Health Workers: Labour and Social Issues 1 (International Labour Office, Working Paper No. 209, July 2003), available at <http://www.ilo.org/public/english/dialogue/sector/papers/health/wp209.pdf> (documenting international migration of health workers and the need for international standards); see also Padt, supra note 8, at 52 (noting that medical professionals often travel

situation does not fall under the Geneva Conventions, medical personnel are subject to the laws of states and protected solely as individuals by the compilation of United Nations human rights treaties.³²

internationally to aid in health crises regardless of whether they receive medical immunity).

³² See, e.g., Convention on Migrant Workers, supra note 30, art. 92 (codifying protections for migrant workers); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (June 26, 1987) [hereinafter Convention on Torture] (prohibiting all forms of torture against all individuals); International Covenant on Civil and Political Rights art. 9, March 23 1976, 999 U.N.T.S. 171 [hereinafter ICCPR] (outlining basic political and civil right such as the right to a fair and independent judiciary, the right to be free from arbitrary detentions and the right to counsel); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316, 993 U.N.T.S. 3 (January 3, 1976) (recognizing equality for men and women and asserting freedom from discriminatory practices); Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc.

Under the ICCPR, all individuals are entitled to basic political rights. Article 9(1) of the ICCPR prohibits arbitrary arrest and detention and unnecessary deprivations of liberty.³³ The United Nations Working Group on Arbitrary Detention defined arbitrary arrest as either procedures contrary to those defined by law or adherence to laws, which are incompatible with liberty and security.³⁴ Article 9(3) of the ICCPR mandates that detainees are entitled to a trial within a reasonable amount of time.³⁵

A/810 at 71 (1948) (delineating basic principles of equality, life and liberty for all individuals).

³³ ICCPR, supra note 32, art. 9(1).

³⁴ See Reed Brody, The United Nations Creates a Working Group on Arbitrary Detention 85 **Am. J. Int.'L** 709, 713 (quoting the United Nations Working Group on Arbitrary Detention that "arbitrary is not synonymous with illegal" and listing situations that constitute arbitrary arrest such as detention without a judicial warrant, kidnapping of national residents from abroad and forced return to homeland, prolongation of a detention after completion of a sentence or when individuals are detained by reason of their political views).

³⁵ See ICCPR, supra note 32, art. 9(3) (delineating that detainees should have a right to a speedy trial and noting that

Article 14 of the ICCPR delineates requirements for a fair and independent trial.³⁶ Article 14(3)b mandates that all

the general rule should not be to keep them in custody but should be released subject to guarantees that the individual will appear before the court); United Nations Human Rights Committee, General Comment 8, Article 9 in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶ 2, U.N. Doc. HR1\GEN\1\Rev.1\ at 8 (1994) [hereinafter General Comment 8] (defining reasonable amount of time as "within a few days"); Sherrie L Russell-Brown, Poisoned Chalice? The Rights of Criminal Defendants Under International Law, During the Pre-Trial Phase 8 **UCLA J. Int.'L & Foreign Aff.** 127, 164 n.143 (2003) (documenting case such as Silbert Daley v. Jamaica where the Human Rights Committee determined that six weeks of detention prior to seeing a judge violated Article 9(3) of the ICCPR); Derek P. Jinks, Respondent: The Legalization of World Politics and the Future of U.S. Human Rights Policy, 46 **St. Louis L.J.** 357, 370 (2002) (noting that individuals not only have a right to a speedy trial but also have the right to periodic judicial review).

³⁶ See ICCPR, supra note 32, art. 14(1) (stating that all individuals are entitled to a free, impartial and competent trial); United Nations Human Rights Committee, General Comment

individuals have access to counsel of their own choosing and adequate time to prepare for trial.³⁷ Article 14(3)g prohibits self-incrimination and compelled testimony at trial.³⁸

13, Article 14 in Compilation of General Comments and Recommendations Adopted by Human Rights Treaty Bodies ¶ 5, U.N. Doc. HR1\GEN\1\Rev.1 at 14 (1994) available at <http://www1.umn.edu/humanrts/gencomm/hrcom13.htm> (noting that the minimum guarantees outlined in Article 14(3) are minimum guarantees of fairness and justice).

³⁷ See ICCPR, supra note 32, art. 14(3)b; see also Amnesty Int'l, Fair Trials Manual, http://www.amnestyusa.org/international_justice/fair_trials/manual/3.html (last visited March 1, 2007) [hereinafter Fair Trials Manual] (citing the United Nations Special Rapporteur on Torture, requiring that individuals have access to counsel within 24 hours of arrest).

³⁸ ICCPR, supra note 32, art. 14(3)g; see Fair Trials Manual, supra note 37, § 9.2 (citing to Kelly v. Jamaica (253/1987), 8 April 1991, Report of the HRC, (A/46/40), clarifying self-incrimination under Article 14(3)g of the ICCPR as requiring the "absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt").

Both Article 7 of the ICCPR and Article 2 of the International Convention Against Torture and Other Cruel, Inhuman Treatment prohibit all forms of torture against individuals.³⁹ The Convention Against Torture requires all parties to the Convention to take judicial, legislative and administrative actions to prevent torture.⁴⁰

Medical personnel receive no special designation under International Labour Organization treaties but the Benghazi Six do fall under the definition of migrant workers under the International Covenant on the Protection of the Rights of all

³⁹ See Convention Against Torture, supra note 32, art. 2 (defining torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession"); ICCPR, supra note 32, art. 7; see also **Michael Garcia, U.N. Convention Against Torture (CAT):**

Overview and Application to Interrogation Techniques, 2

(Congressional Research Service, 2004)

<http://www.fas.org/irp/crs/RL32438.pdf> [hereinafter CRS Report]

(stating that the definition of torture under the Convention Against Torture connotes any type of severe, purposeful infliction of mental or physical abuse).

⁴⁰ Convention Against Torture, supra note 32, art. 2(1).

Migrant Workers and Members of their Families.⁴¹ This treaty entitles migrant workers to similar political and social rights embodied in the ICCPR.⁴² Article 16(2) ensures that all migrant workers are free from abuse and arbitrary detention.⁴³ Article 16(4) prohibits countries from exposing migrant workers to arbitrary arrest.⁴⁴ Article 16(7) guarantees migrant workers the right to communicate with representatives from their country.⁴⁵

⁴¹ See Convention on Migrant Workers, supra note 30, art. 2(1)a (defining “migrant worker” as an individual “who is engaged or has been engaged a remunerated activity in a State which he or she is not a national”).

⁴² See Convention on Migrant Workers, supra note 30, art. 92 (affording migrant workers basic human rights protections such as the right to an independent and impartial tribunal and minimum guarantees of fairness and equity during criminal proceedings).

⁴³ Convention on Migrant Workers, supra note 30, art. 16(3).

⁴⁴ See id. art. 16(4) (stressing that migrant workers should receive “effective protection by the State” from violence, abuse, torture from both public and private officials).

⁴⁵ See Convention on Migrant Workers, supra note 30, art. 16 (affirming that migrant workers have the right to request that their home state be informed of the detention, the individual

The treaty does not specifically address the unique role of medical or health professionals who are migrant workers.⁴⁶

Similar to the ICCPR and Convention Against Torture, Article 10 of the Migrant Workers' Convention prohibits all forms of torture against migrant workers and their family members.⁴⁷

Article 18 also reflects the ICCPR in its condemnation of arbitrary arrest and detention.⁴⁸

2. International Committee of the Red Cross: Establishing the Fundamentals for Medical Personnel

International humanitarian law sets out the guiding principles for states and actors embroiled in international

has the right to communicate with officials his country and gain access to an attorney).

⁴⁶ Contra id. art. 92 (ignoring the special needs and protections of health professionals within the categorization of migrant workers).

⁴⁷ See id. art. 10 (calling for elimination of all forms of torture against migrant workers and their families including cruel, inhuman and degrading treatment).

⁴⁸ See id. art. 18 (prohibiting arbitrary arrest of migrant workers).

conflict.⁴⁹ The International Committee of the Red Cross (ICRC) contributed significantly to the development of international humanitarian law and enforcement of protections for civilians, humanitarian workers and medical personnel during armed conflict.⁵⁰

⁴⁹ See generally International Committee of the Red Cross, International Humanitarian Law in Brief <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/ihl?OpenDocument> [hereinafter ICRC] (distinguishing between the laws of war and when a state may actually wage war and international humanitarian law which governs the conduct of war itself).

⁵⁰ See Francois Bugnion, The Role of the Red Cross in the Development of International Humanitarian Law: The International Committee of the Red Cross and the Development of International Humanitarian Law, 5 **Chi. J. Int.'l L.** 191, 191 (2004) (voicing the opinion that ICRC is the "driving force" in the creation of international humanitarian law); David P. Forsythe, International Humanitarian Assistance: The Role of the Red Cross 3 **Buff. Jour. Int.'l L.** 235, 235-37 (1996) (acknowledging that the ICRC and concern for human rights led to development of the Geneva Conventions, using the example of the French retaining more vets to attend to the horses than physicians to care for the soldiers); see also Marsha Mildon, International

The ICRC principles of neutrality, impartiality and independence are the basis of the original Geneva Conventions and later protocols governing the laws of armed conflict.⁵¹ The Geneva Conventions established international legal norms to govern war between states.⁵² These provisions applied exclusively to international armed conflicts.⁵³

Humanitarian Law: An Overview, **LawNow** (January 2002) available at 2002 WLNR 102511 (noting that the updated 1949 Conventions provide protections for individuals outside of combat.)

⁵¹ See Clara Barton, The Red Cross of the Geneva Convention: What it is (1878) reprinted in Medicine in the Americas 6-7 (National Library of Medicine, 2006) available at http://firstsearch.oclc.org.proxy.wcl.american.edu:2048/WebZ/FSP?pagetype=return_frameset:sessionid=fsapp10-41284-exyrl2iw-7nh69:entitypagenum=10:0:entityframedurl=http%3A%2F%2Fbibpurl.oclc.org%2Fweb%2F7981:entityframedtitle=WorldCat:entityframedtimeo ut=30:entityopenTitle=:entityopenAuthor=:entityopenNumber=: (defining the Red Cross conception of impartiality as treating "friend and foe" alike); Forsythe, supra note 50, at 235 (asserting that international humanitarian laws infer "a right to humanitarian assistance").

⁵² See Bugnion, supra note 50, at 193 (stating that the original Geneva Convention was adopted in 1864 for the purpose of the

3. Medical Personnel: protections and accountability

The history of medical neutrality demonstrates that since 1863, medical neutrality and provisions for protection of the sick and the wounded form the basis of international humanitarian law.⁵⁴ All four Geneva Conventions have a Common Article 3, which governs hostilities of a non-international character, prohibiting "violence to life and person, the taking

"Amelioration of the Condition of the Wounded in Armies in the Field" proclaiming the basic principles that wounded combatants and medical personnel treating those combatants should be given full protection during wartime).

⁵³ See Hans-Ulrich Baer, International Humanitarian Law: An Introduction 167 **Military Medicine** 8 (2002) available at 2002 WLNR 5453650 (defining international armed conflict as armed confrontation between two or more states).

⁵⁴ See Randall G. Anderson, Historical Analysis of the Geneva and Hague Conventions and Their Protection of Military Medical Personnel, Facilities, and Transport During World War I (1998) (unpublished Masters of Military Art and Science, United States Army Fort Leavenworth Kansas) (on file with the Canadian Agriculture Library) (asserting that the need for protection of medical personnel led to the development of the first Geneva Convention).

of hostages, outrages upon personal dignity and denial of judicial guarantees.”⁵⁵

⁵⁵ See Geneva Convention (I) Relative for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Oct. 21, 1950, 6 U.S.T. 3114, 75 U.N.T.S. 31 (noting that to achieve the goal of protecting the wounded, all individuals outside of combat are entitled to protection under international humanitarian law, including civilians, wounded or ill soldiers, and prisoners of war); United Nations Office for the Coordination of Humanitarian Affairs and Integrated Regional Information Network, Special Report: Civilian Protection in Armed Conflict, (April 1, 2003)

www.irinnews.org/webspecials/civilprotect/default.asp

(questioning the applicability of traditional international humanitarian laws regarding protection of civilians to modern day conflicts that usually involve non-State actors and deliberate engagement of civilians); see also Walter Gary Sharp, Sr. Symposium: The United Nations, Regional Organizations, And Military Operations: Article: Protecting the Avatars of International Peace and Security 7 **Duke J. Comp. & Int'l L.** 93, 119 (1996) (stressing that the four conventions deal with varying situations of armed conflict, including the wounded and sick in the armed forces in the field, wounded sick and ship-

The Additional Protocol II of the Geneva Convention activates only when civil conflict rises to the point where guerrilla or dissident armed forces gain sufficient control over a signatory to the Additional Protocol such that they prevent the government from carrying out "sustained and concerted military operations."⁵⁶ The Protocol does not apply to situations of isolated violence.⁵⁷ Article 9 mandates that

wrecked); Lisa L. Turner & Lynn G. Norton, Civilians at the Tip of the Spear, 51 **A.F.L. Rev.** 1, 70-71 (2001) (stating that Article 4 of the 1949 Geneva Convention identifies protected individuals including Prisoners of War, nationals of neutral state, general populations).

⁵⁶ Additional Protocol II, supra note 10, Art. 1(1).

⁵⁷ Id. Art. 1(2); see U.N. Econ. & Soc. Council [ECOSOC], Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Prot. of Minorities, Minimum Humanitarian Standards: Analytical Report of the Secretary-General Submitted Pursuant to Commission on Human Rights Resolution 1997/21, para. 10, U.N. Doc. E/CN.4/1998/97 (January 5, 1998) (reporting the difficulties of asserting international humanitarian protections when situations of internal conflict do not merit the protections available in international humanitarian law) see also **British Medical Association** supra note 4 at 250

medical personnel shall receive full protection while carrying out their professional duties.⁵⁸

Since the 1864 Geneva Convention, the international community has honored the neutrality of medical professionals during international armed conflicts.⁵⁹ The Geneva Convention gives medical personnel legal protection and neutrality while attending to the sick and the wounded but also requires them to adhere to ethical standards.⁶⁰

(acknowledging the limitations of applying current international humanitarian definition of war to situations of internal conflict and citing to the report by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities)

⁵⁸ Additional Protocol II, supra note 10, arts. 9, 10 (stating that no medical personnel should be punished for providing care according to medical guidelines).

⁵⁹ See Kalshoven, supra note 28, at 23-24 (stressing that medical neutrality was the driving force behind the development of the original Geneva Convention).

⁶⁰ See M.J. Gunn & H. McCoubrey, Medical Ethics and the Laws of Armed Conflict, 3 **J. Armed Conflict** L. 137, 137 (1998) (citing Article 11(1) of the 1977 Additional Protocol requiring medical personnel to treat individuals according to standards "applied

The original Geneva Conventions demonstrate that medical neutrality was not limited to combat situations.⁶¹ The convention evolved after the Italian War of 1859 to improve medical services during the war, which in turn, required providing protection to medical personnel in the field.⁶² The Geneva Conference of 1863 recognized full and absolute neutrality for official medical personnel, volunteers and

under similar medical circumstances to persons who are nationals of the Party conduct the procedure”).

⁶¹ See **Percy Bordwell, The Law of War Between Belligerents: A History and Commentary** 86 (Chicago Callahan & Co., 1908) (asserting the purpose behind the law of war and specifically neutrality was not a novel idea but rather driven by a “humanitarian spirit of the age.”); see also **Barton, supra** note 51, at 6-7 (explaining that the necessity of an American Red Cross is not limited to times of war but also to natural disasters in the United States such as protection against yellow fever, flood and fires).

⁶² See Kalshoven, supra note 28, at 23-24 (tracing the development of the souvenir de solférino, a set of principles of war including the formation of relief societies to give care to the sick and wounded and the formation of a convention to embody these principles).

civilians who aided the wounded.⁶³ These protections were codified in the Geneva Convention of 1864.⁶⁴ An important aspect of the original Geneva Convention was the neutrality of volunteer aid societies during war and during natural disasters.⁶⁵ This protection extended to both military and

⁶³ See **L.C. Green**, War Law and the Medical Profession, in **Essays on the Modern Law of War** 489, 492 (Transnational Publishers, 1988) (acknowledging that "the status of the medical profession during the war has never been looked at independently, but has always been considered from a functional point of view, that is to say, in regard to the need to protect the wounded.").

⁶⁴ See Convention for the Amelioration of the Condition of Wounded in Armies in the Field, Art. 2, August 22, 1864, 129 Consol T.S. 361 (declaring neutrality for all medical personnel so long as they are engaged in aiding the wounded).

⁶⁵ Compare **Bordwell**, supra note 61, at 256 (commenting on the approved use of protection under the insignia or emblem of volunteer aid societies during peacetime to render aid during floods, fires, earthquakes, famine and other natural disasters that occur during peacetime), with HIV and National Security, supra note 12, at 35 (asserting that HIV is both a natural disaster and national security threat).

civilian medical personnel.⁶⁶ Medical neutrality was included in the later Geneva Conventions and Additional Protocol I.⁶⁷

II. Analysis: Libya Violated Numerous International Human Rights and Humanitarian Laws

A. Libya Violated International Human Rights Laws in Its Treatment of the Benghazi Six

Unlike the protections available to medical personnel in international and non-international armed conflict, no special protections exist for medical workers under international human rights law.⁶⁸ Nonetheless, Bulgaria could bring multiple complaints to the United Nations for Libya's violations of human rights treaties to which both parties are signatories.⁶⁹

⁶⁶ See Jean-Marie Henckaerts & Louise Doswald-Beck, International Committee of the Red Cross: Customary International Humanitarian Law Volume I: Rules (asserting that states do not recognize differences between civilian and military medical personnel).

⁶⁷ See id. at 79 (distinguishing that article 15 of additional protocol changed slightly and was not adopted by all nations but the medical portion of it is upheld by states).

⁶⁸ See, e.g., ICCPR, supra note 32 (overlooking the necessity of special provisions for international medical personnel)

⁶⁹ See, e.g., id. art. 41(1)b (permitting state parties to the Convention to bring allegations of violations to the Human

1. **Article 9 of the International Convention on Civil and Political Rights**

Bulgaria could challenge the treatment of the medical workers as a violation of Article 9 of the International Covenant on Civil and Political Rights.⁷⁰ Both Libya and Bulgaria are signatories to this treaty without reservations.⁷¹ Libya violated Article 9(1) of the treaty by subjecting the

Rights Committee after first communicating with the offending party).

⁷⁰ See id. art. 9 (prohibiting arbitrary arrest, detention and deprivation of liberty); see also Press Release, American Association for the Advancement of Science, Lawyers for Medical Workers Call Plea for Independent Assessment (October 4, 2006) http://shr.aaas.org/aaashran/alert.php?a_id=328 (requesting letter to be sent to Muammar al-Gaddafi to respect international human rights law in regards to the treatment of the Benghazi Six).

⁷¹ See Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, 7 (June 9, 2004) available at <http://www.unhchr.ch/pdf/report.pdf> [hereinafter Ratification] (documenting Libya's accession to the ICCPR on March 23, 1976 and Bulgaria's ratification of the ICCPR on March 23, 1976).

Benghazi Six to arbitrary arrest and detention.⁷² Libya arrested the Benghazi Six for their contrary political and religious views, accusing them of engaging in non-Muslim activities.⁷³ Libya claimed that beyond the charge of deliberate infection, the Benghazi Six failed to respect their political and religious laws.⁷⁴ The arrest for failure to adhere to Libyan religious

⁷² ICCPR supra note 32, art. 9(1).

⁷³ See Brody, supra note 34, at 713 (providing examples which constitute "arbitrary arrest" by the United Nations Working Group on Arbitrary Detention); see also IGLHRC, supra note 14 (suggesting that the release of the Libyan workers illustrates that the motive behind their arrest was to punish foreign workers and seek retribution for the Lockerbie bombing trial and that favorable intervention by Polish, Hungarian and Filipino consulates led to their release).

⁷⁴ See European Parliament Resolution, supra note 23, ¶ 3 (voicing "serious concern with regard to the basis on which the defendants were prosecuted" and Libya's disregard of the findings of international experts on HIV demonstrating that the HIV virus was present prior to the Benghazi Six's arrival in Libya and that "strong evidence of the innocence of the defendants has been disregarded and ignored"); IGLHRC, supra

beliefs is synonymous to an arrest for holding contrary or different political beliefs, meets the definition of "arbitrary" promulgated by the United Nations Working Group.⁷⁵ Additional evidence that the charges were arbitrary was documentation brought forth by international observers demonstrating that the children contracted the illness before the medical workers arrived in Libya.⁷⁶

note 14 (stating that the charges label the workers as "murderers-poisoners").

⁷⁵ See Brody, supra note 34, at 713 (citing to the Human Rights Committee's belief that "arbitrary is not to be equated as against the law but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability").

⁷⁶ See Butler, supra note 19, at 658-59 (2006) (publishing a paper by international DNA forensics that show the strain of HIV contracted by the children in the Al-Fateh hospital were already present and spreading in the mid-1990s, whereas the Benghazi Six arrived in Libya in 1998); Calling on the Government of Libya to Review Legal Actions Taken Against Bulgarian Medical Workers H.R. Res. 733, 108th Cong. (2004) [hereinafter Congressional Resolution] (finding "inadequate and inconsistent evidence" used in the medical workers' trial); see also Bojan Pancevski,

Libya violated Article 9(3), which prohibits unnecessary delays in judicial proceedings by postponing the trial of the medical workers 13 times.⁷⁷ After their arrest, the medical workers did not have access to the Libyan judicial system for four months, which is significantly longer than the “few days” deemed reasonable by the Human Rights Committee.⁷⁸ The Benghazi Six have now endured eight years of imprisonment due to the delays of the Libyan justice system.

Retrial Ordered for Health Workers Imprisoned in Libya, 367

Lancet 292, 292 (1997) (quoting one of the imprisoned nurses that “we know very well we are hostages of a political witch hunt. We are exhausted, psychologically exhausted. Please don’t forget us”).

⁷⁷ See Congressional Resolution, supra note 76 (condemning delay in the trial of the Benghazi Six); Timeline, supra note 16 (noting that there were 13 adjournments and a series of trials which spanned from 1999 to 2006).

⁷⁸ See General Comment 8, supra note 35 (reiterating that reasonable detention is no more than a few days); see also Bulgarian News Agency, Chronology of Events available at <http://www.bta.bg/site/libya/en/02chronology.htm> (demonstrating that Libya did not grant access to defense attorneys until after the charges were filed).

2. **Libya Violated Article 14 of the ICCPR**

Libya violated Article 14(1) of the ICCPR by not creating a "fair, independent and impartial tribunal."⁷⁹ Libya violated Article 14(3)b by not giving the medical workers access to counsel until February 2000, after the initial trial in the People's Court started.⁸⁰ The three-month period between the arrest of the Benghazi Six and their access to counsel of their own choosing exceeded the reasonable 24-hour period dictated by the United Nations Special Rapporteur.⁸¹ Libya also violated

⁷⁹ See Butler, supra note 19 (stressing that the Libyan court prohibited the submission of evidence exonerating the Benghazi Six).

⁸⁰ See Bulgarian News Agency, supra note 78 (finding that after many negotiations, Libya finally agreed to allow the Benghazi Six choose their own lawyer); see also ICCPR, supra note 32, art.14(3)d (recognizing defendants' right to a counsel of their own choosing and be informed of that right).

⁸¹ See Fair Trial Manual, supra note 37, § 20.3 (emphasizing that the Human Rights Committee has held that in a capital case, the trial should not proceed if the defendant is without counsel, citing to Robinson v. Jamaica, Case No. 223/1987, Report of the HRC).

article 14(3)g by utilizing torture such as beatings and electrocution to extricate confessions from the Benghazi Six.⁸²

In addition, the Libyan court system violated ICCPR Article 14(1), which requires all individuals have access to a fair and independent judiciary. The Court ignored the weight of testimony of international researchers who presented evidence demonstrating the HIV infection occurred before the workers arrived in Libya and many of the infected children had Hepatitis B and C, indicating that unsanitary practices in the hospital and not the deliberate acts of the foreign medical workers caused the HIV outbreak.⁸³

3. **Libya Violated Article 7 of the ICCPR and Article 2 of the Convention Against Torture and Other Cruel and Inhuman Treatment**

Libya also violated both ICCPR Article 7 and Article 2 of the Convention Against Torture and Other Cruel, Inhuman

⁸² See Amnesty Int'l, Libya: Time to Make Human Rights a Reality, 34, AI Index MDE 19/002/2004, April 2004, available at <http://web.amnesty.org/library/index/engmde190022004> [hereinafter Libya] (describing how the nurses confessed in order to stop the electric shock torture).

⁸³ See Butler, supra note 19 (tracing the family tree of the HIV infection).

Treatment in its abuse of the Benghazi six.⁸⁴ The Convention Against Torture expressly proscribes the use of torture.⁸⁵ Libya engaged in torture by deliberately using physical and mental abuse to extricate information.⁸⁶ Interviews conducted by

⁸⁴ See Libya, supra note 82, at 34 (noting that the Benghazi Six were fearful of retribution for reporting the abuse); **Human Rights Watch, Words to Deeds: The Urgent Need for Human Rights Reform** 52 (2006), <http://hrw.org/reports/2006/libya0106/> [hereinafter **Human Rights Watch**] (stating that during the torture the police officers asked "where the AIDS came from" and what was the medical worker's role).

⁸⁵ See ICCPR, supra note 32, art. 7 (prohibiting all forms of torture); Convention Against Torture, supra note 32, art. 1 (defining torture as any physical or mental suffering for the purposes of obtaining a confession); see also Libya, supra note 82, at 35 (citing to the ICCPR and the Convention Against Torture that Libya violated its obligations by failing to provide "effective legislative, administrative, judicial or other measures to prevent acts of torture").

⁸⁶ See CRS Report, supra note 39, at 2 (noting definition of torture under the Convention Against Torture as interpreted by the United States Department of State as engaging in practices such as "systematic beating, application of electric currents to

Amnesty International and the Human Rights Watch document severe abuse that falls under the definition of torture including electric shocks, beatings, threats by barking dogs, rape, and falaga.⁸⁷ During the course of the abuse, the prisoners confessed to the alleged crimes.⁸⁸

Libya also violated Article 2(1) of the Convention against Torture by failing to adopt legislative measures to criminalize torture and in failing to investigate the allegations of

sensitive parts of the body, and tying up or hanging in positions that cause extreme pain”).

⁸⁷ See Libya, supra note 82, at 34 (describing falaga as beating the soles of the feet with electric cables).

⁸⁸ See **Human Rights Watch**, supra note 84, at 52 (interviewing nurse Kristian Valceva “stating that during the shocks and torture they asked me where the AIDS came from and what is your role...Libyan interrogators also her with an electric stick on her breast and genital area...she said, “my confession was all in Arabic without translation...we were read to sign anything just to stop the torture and quoting from interview with Valentina Siropulo regarding the use of electric shocks, “sometimes they put one on my thumb and another on my tongue, neck or ear”).

torture.⁸⁹ The prosecution appointed a Libyan doctor who examined the victims and in all cases found evidence of beating and torture.⁹⁰ However, the prosecutor ignored these findings and instead used another Libyan doctor to refute the conclusions of the original examinations.⁹¹ Libya's failure to fully investigate the claims of torture and circumvent proper judicial measures in response to those claims constitutes a violation of the Convention Against Torture.⁹² Ten Libyans involved in the torture of the Benghazi Six were tried in June 2005.⁹³ A Tripoli

⁸⁹ Convention Against Torture, supra note 32, art. 12; ICCPR, supra note 32, art. 2.

⁹⁰ See Libya, supra note 82, at 35 (stressing the lack of impartiality in the judicial treatment of the Benghazi Six).

⁹¹ See News.bg, supra note 24 (stating that Bulgaria filed charges against 11 Libyan police officers accused of torture).

⁹² See Libya, supra note 82, at 35 (noting that the doctor never actually examined the prisoners).

⁹³ See Human Rights Watch, supra note 84, at 53 (quoting Libyan policeman "they were treated well and enjoyed all legal rights"). Contra News.bg, supra note 24 (citing to Bulgarian authorities who believe that they have sufficient evidence to try the Libyan police for committing torture).

Court acquitted the eight police officers, doctor and translators of allegations of torture.⁹⁴

4. **Libya Violated the International Labour Organization's Convention on Protection of Migrant Workers and Their Families**

Both Bulgaria and Libya are signatories to the International Labour Organization's Convention on Protection of Migrant Workers and their families.⁹⁵ The Convention protects migrant workers who leave their home country. The Benghazi Six fall under the Convention's definition of migrant workers because they entered the country legally to work in the Al-Fateh hospital.⁹⁶ Libya violated Article 10 of the Convention, which prohibits all forms of torture against migrant workers, by subjecting the Benghazi Six to abuse and inhumane treatment.⁹⁷ In condoning the use of torture, Libya also violated Article 16(2), which grants migrant workers the freedom from injury by

⁹⁴ See **Human Rights Watch**, supra note 84, at 53 (emphasizing that a judge in the Benghazi case had already dismissed charges of torture).

⁹⁵ Ratification, supra note 71.

⁹⁷ Convention on Migrant Workers, supra note 30, Art. 10; see **Human Rights Watch**, supra note 84 at 53 (finding that some of the nurses were tortured by placing electronic wires to their thumbs, ears and tongue).

the state.⁹⁸ In subjecting the Benghazi Six to arbitrary arrest, Libya violated Article 16(4).⁹⁹ Libya violated Article 16(7)a, b, and c, which allow migrant workers to notify, communicate and meet with their consular representatives.¹⁰⁰ Libya did not notify the Bulgarian embassy of the detention of the medical workers until February 1999 and did not specify the reasons for the detention.¹⁰¹ Further, the Bulgarian medical workers were not granted free access to their consular representatives, violating Article 16(7)c.¹⁰²

⁹⁸ See Convention on Migrant Workers, supra note 30, art. 16(2).

⁹⁹ See Convention on Migrant Workers, supra note 30, art. 16(4).

¹⁰⁰ See Convention on Migrant Workers, supra note 30, arts. 16(7)a, 16(7)b & 16(7)c.

¹⁰¹ See Bulgarian News Agency, supra note 78 (stating that the Bulgarian embassy went a week without official notification of the detention of the Benghazi Six).

¹⁰² See Libya, supra note 82, at 33 (recounting that during the first nine months of the medical workers' imprisonment, they only met with the Bulgarian authorities three times and that two of the defendants did not attend these meetings because they had external signs of abuse).

Similar to the ICCPR, Libya also violated Article 18 of the Convention in the arbitrary arrest of the Benghazi Six.¹⁰³

Bulgaria could bring these violations before the Committee on the Protections of the Rights of All Migrant Workers and their Families, which can issue a report on the perceived violations.¹⁰⁴

B. The Failure of Medical Neutrality in the Case of the Benghazi Six

1. Conflict Neutrality Does Not Apply to the Case of the Benghazi Six

The Benghazi Six have no protection as medical personnel under current international law. If this was a conflict situation, the Benghazi Six could be protected as medical personnel under the Geneva Convention.¹⁰⁵

¹⁰³ See IGLHCR, supra note 14 (emphasizing that the Benghazi Six endured thirteen adjournments and delays in their trial and are currently still detained despite eight years of legal proceedings).

¹⁰⁴ See Convention on Migrant Workers, supra note 30, art. 76 (outlining procedures for issuing a decision from the Committee).

¹⁰⁵ See generally Geneva Convention I, supra note 5, arts. 24-27 (delineating protections for medical personnel in combat).

If Libya designated the medical workers as permanent civilian medical staff under Article 8(c) of the Additional Protocol I, they would receive full immunity.¹⁰⁶ If imprisoned, they would be subject to all protections available to prisoners of war including right to fair treatment and freedom from torture, rape and abuse.¹⁰⁷

If the Benghazi Six entered the country as part of non-governmental organization, they would be under international medical neutrality if Libya consented to their presence in the

¹⁰⁶ See **Beigbeder**, supra note 8, at 338 (articulating the justification for not granting immunity to medical personnel who do not receive special assignment from the State party because it ensures that the country can control and monitor any abuses of the medical privilege).

¹⁰⁷ See Additional Protocol I, supra note 27, art. 21 (citing to the protections in Geneva Convention I, art. 35, stressing that medical personnel could not be fired on nor prevented from carrying out their work in the hospital); Geneva Convention I supra note 5, art.28 (delineating that captured medical personnel are not considered prisoners of war but are entitled to all the protections afforded by the designation but should continue to provide medical services in "accordance with their professional ethics").

country and they were part of a recognized non-governmental agency.¹⁰⁸ Both international and non-international conflicts require humanitarian societies to obtain consent prior to entry.¹⁰⁹

2. Conflict Defined Neutrality Contravenes Historical Intent

Conflict-defined medical neutrality no longer meets the objectives envisioned by the founders of the Geneva Convention. The goal of medical neutrality as defined in the original Geneva Convention was to ensure that medical personnel had the necessary protection to eliminate suffering and deliver health

¹⁰⁸ See Geneva Convention I, supra note 5, art. 27 (requiring members of a neutral volunteer society to not only obtain consent prior to intervention but also notify the opposing party); **Beigbeder**, supra note 8, at 343 (emphasizing that the First Geneva Convention prohibits medical non-governmental organizations from entering a conflict situation without the consent of their home country and the receiving country).

¹⁰⁹ See **Beigbeder**, supra note 8, at 345 (noting that during internal conflicts, if a medical mission enters an area controlled by rebel forces, it must seek permission from the rebel leaders).

care in situations of mass casualties.¹¹⁰ This was intended to include both man-made and natural disasters.¹¹¹

The Benghazi Six could have recourse if the international community recognized that the origin of medical neutrality was to instill humanity in the population and not limited to the governance of war.¹¹² In Libya, it is clear that HIV has created

¹¹⁰ See **British Medical Association**, supra note 4, at 244

(affirming the origin of medical neutrality as to ensure non-discrimination in the provision of medical care).

¹¹¹ See Laura Lopez, Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflict 69 **N.Y.U.L. Rev.** 916, 919 (stating that the original intent behind international humanitarian law "lie in the suffering it seeks to prevent" and that the Geneva Conventions have failed in this purpose when it comes to civil wars and internal armed conflicts).

¹¹² See **Bordwell**, supra note 61, at 257 (interpreting the Geneva Convention of 1909 to assume that volunteer societies could use the protection and immunity of the Red Cross emblem in both war and peace where it is necessary, such as cases of pestilence, famine, flood, fires and earthquakes); see also **Barton**, supra note 51, at 6-7 (emphasizing the purpose of the Red Cross is not limited exclusively to wartime but also to disasters such as

a natural disaster, which the Benghazi Six confronted when they chose to leave their home country and work at the Al-Fateh hospital.

The Council on Foreign Affairs recently noted that similar to other African nations, Libya's struggle with HIV is both a health disaster and a security concern.¹¹³ Consequently, from a conflict perspective, the crisis of HIV in Libya could fall under the guise of international humanitarian law. Yet, this classification would still not grant medical neutrality to the Benghazi Six because they are not part of an official organization such as non-governmental organization or the Red Cross.¹¹⁴

"plagues, cholera, yellow fever and the like, devastating fires or floods, railway disaster, mining catastrophes).

¹¹³ See HIV and National Security, supra note 12, at 35

(documenting the use of HIV as a weapon and accusation such as in India where the government claimed that the "promiscuous Pakistanis" were use the deliberate infections of HIV as part of their "Islamic jihad").

¹¹⁴ See Beigbeder, supra note 8, at 343 (reiterating that medical volunteers must be attached to a neutral society recognized by the parties to the conflict).

3. Conflict-Defined Neutrality Fails to Protect Medical Personnel

International law does not recognize the current situation in Libya as within the confines of international humanitarian law. However, this is not the first time violations of medical neutrality occurred in non-conflict situations and demonstrates how the nature of conflicts itself has altered the protections for medical personnel.¹¹⁵

Conflicts are no longer limited to battles between armies but take place within countries, involve non-state actors and more often lead to civilian engagement and casualties.¹¹⁶ Guerrilla warfare causes large civilian casualties and often

¹¹⁵ See **British Medical Association**, supra note 4, at 249-50 (documenting violations of medical neutrality that are without recourse because they fell outside international humanitarian law such as the former Yugoslavia, Rwanda, former Soviet Union Republics, Turkey, South Africa, Somalia, Uganda, Sudan, Indonesia, India, Papua New Guinea and the Philippines).

¹¹⁶ See id. at 242 (emphasizing that civilian deaths in non-traditional conflicts such as in Rwanda, Bosnia-Herzegovina and Kosovo were greater than military personnel casualties)

proceeds without recognition by the international community.¹¹⁷

As a result, many conflicts do not invoke the protections of international medical neutrality because of the secrecy of the conflict and international law's emphasis on obtaining the consent of sovereign nations prior to entry.¹¹⁸

In the case of the Benghazi Six, the Additional Protocol II would not apply because there is no specific violence that would engage its protections. Libya is an unstable country but the amount of violence and the violation of human rights laws do no

¹¹⁷ See **Beigbeder**, supra note 8, at 348 (stating that this type of warfare is effective because it is covert and the international community does not find out about it because the country prohibits the entry of reporters, medical personnel and humanitarian groups into its borders).

¹¹⁸ See **British Medical Association**, supra note 4, at 250 (citing to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities that the "main difficulties are in determining which situations the rules regulating non-international armed conflict become operable and the fact that some situations of internal violations fall outside the law").

invoke international humanitarian laws under the Additional Protocol II.¹¹⁹

**4. Future of International Law: Conflict-Defined
Neutrality Leads to a Clash Between International
Sovereignty and Medical Ethics**

The only recourse the medical personnel may have if they adhere to state sovereignty and international law is to monitor international breeches of medical neutrality.¹²⁰ In El Salvador and Yugoslavia, independent agencies made efforts to document

¹¹⁹ See Libya, supra note 82, at 6-7 (documenting arbitrary arrests, detentions and disappearances in Libya in the late 1980s but noting the recent stabilization and Libyan efforts to normalize relations with the European Union and the United States); see also British Broadcasting Corporation, Country Profile: Libya, http://news.bbc.co.uk/2/hi/middle_east/country_profiles/819291.stm (last visited on March 2, 2007) (documenting 1969 coup in Libya).

¹²⁰ See **British Medical Association**, supra note 4, at 251 (voicing concern of the absence of international bodies available to report on medical neutrality violations that do not fall under the Geneva Convention and the Additional Protocols).

violations of medical neutrality.¹²¹ This is the only recourse available within the international law context to condemn persecution of medical professionals in non-conflict situations.

Medical neutrality, unlike other concepts in international humanitarian and human rights law, directly conflicts with international regulations.¹²² Consequently, organizations such as Médecins Sans Frontières choose to ignore international law and abide by the principles of medical ethics, which require medical personnel to deliver treatment to all individuals.¹²³ In

¹²¹ See, e.g., **Medicine Under Siege**, supra note 4, at 3

(documenting the multiple violations of medical neutrality during the conflict in the former Yugoslavia that were submitted to the International Criminal Tribunal as evidence of war crimes.); El Salvador, supra note 26, at 1-2 (documenting the violations of medical neutrality for the purpose of drawing international and domestic scrutiny and response to the documented violations).

¹²² See **Beigbeder**, supra note 8, at 348 (emphasizing that medical personnel's ethical obligations to take care of those in need directly conflicts with current international law's recognition of state sovereignty).

¹²³ See Padt, supra note 8, at 53 (asserting that Médecins Sans Frontières [MSF] believe that medical assistance prevails over

Turkey, Liberia, Somalia and Sudan, MSF physicians provided humanitarian aid without the consent of the government or separatist factions.¹²⁴ In many of these situations, MSF medical personnel practiced medicine without the protection of medical neutrality, resulting in death, torture and kidnapping of medical staff.¹²⁵ In contrast, the Benghazi Six entered Libya

the right of national sovereignty). Contra **Beigbeder**, supra note 8, at 257-59, 348 (emphasizing that the International Committee of the Red Cross's policy of non-intervention unless granted consent has led to the withdrawal of ICRC volunteers in disaster zones).

¹²⁴ See Padt, supra note 8, at 49-50 (describing situations where MSF volunteers entered countries without the protection of international medical neutrality).

¹²⁵ See **Beigbeder**, supra note 8, at 271 (noting instances where MSF volunteers entered countries without the consent of the government such as in Afghanistan where four of five MSF hospitals were bombed by the Soviets, in Angola where the ambassador declared the MSF volunteers "mercenaries in white frocks," and the case of Dr. Phillippe Augoyard, who was arrested by Soviet troops for his work in Kabul, accused and tried of spying and illegal entry and sentenced to eight years

legally, with consent to practice medicine in the country.¹²⁶
Despite adherence to international and domestic norms, the
Benghazi Six still find themselves victims in the current
conflict.¹²⁷

III. Recommendations

A. Bulgaria Should Bring Libya's Violations of the Convention Against Torture to the United Nations and the International Court of Justice

Bulgaria should bring the violation of the ICCPR and the
Convention Against Torture to the International Court of Justice

in jail without contact with the French embassy and without a
lawyer).

¹²⁶ See IGLHRC, supra note 14 (stressing that the Benghazi Six
entered Libya legally as guests for the purpose of working and
studying).

¹²⁷ See **Beigbeder**, supra note 8, at 348 (noting that medical
association who choose to adhere to ethics over international
sovereignty find themselves victims); Padt, supra note 8, at 51-
52 (stating that the absence of international law governing
universal medical assistance places medical volunteers in
danger); **British Medical Association**, supra note 4, at 250
(affirming that physicians must adhere to ethical standards over
that of international law).

under Article 30 of the Convention Against Torture.¹²⁸ Libya agreed to jurisdiction under the International Court of Justice when it challenged the sanctions levied by the United States and Britain in the aftermath of the Pan Am Flight 103 bombing.¹²⁹ However, Bulgaria recently decided to try the police allegedly involved in the torture of the Bulgarian medical workers in Bulgaria's domestic court system.¹³⁰

Bulgaria could also sue for violations under the Convention on the Protection of the Rights of All Migrant Workers and

¹²⁸ Convention Against Torture, supra note 32, art. 30.

¹²⁹ See Ken Roberts, Second-Guessing the Security Council: The International Court of Justice and Its Powers of Judicial Review 7 **Pace Int.'l L. Rev.** 281, 300 (1995) (noting Libya's desire to bring the claim against Britain and the United States in the International Court of Justice for their violation of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 1971 in demanding the extradition of the two Libyan national accused of bombing Pam Am Flight 103).

¹³⁰ See News.bg, supra note 24 (bringing charges against 11 police officers involved in the physical and psychological torture of the Benghazi Six).

Members of their Families to the International Court of
Justice.¹³¹

**B. The European Union and the United States Should Sanction
Libya**

The European Union issued a resolution condemning the trial of the Benghazi Six. This resolution, while bringing attention to the plight of the Benghazi Six, fails to influence the Libyan government.¹³² The European Union could take additional measures such as economic sanctions to place political pressure on Libya to release the Benghazi Six.¹³³ The European Union has already

¹³¹ See Convention on Migrant Workers, supra note 30, art. 92 (asserting that a party to the Convention may bring the complaint to the Committee and if necessary, to the International Court of Justice).

¹³² See European Resolution, supra note 23, ¶ 3 (condemning the unfair persecution of the Benghazi Six and threatening to sever ties with Libya).

¹³³ See Medical News Today, European Union Offers Relations with Libya if Medical Workers Are Released (Jan 25, 2007) available at www.medicalnewstoday.com/medicalnews.php?newsid=61427 (referencing Seif al-Islam Gaddafi's comment that "pressures by Europeans on Libya will have a negative impact on the situation of the nurses and the Palestinian doctor and will take the case

set up an international aid fund to assist the children who contracted the HIV virus.¹³⁴

C. The United Nations Should Codify International Protections for Medical Personnel

The international community needs to take additional measures to address the unique position of medical personnel and their role in international health and human rights.¹³⁵ In 1949, the World Medical Association developed the "Declaration of Geneva" which codified the ethical responsibilities detailed in the "Oath of Hippocrates."¹³⁶ This declaration requires medical

out of its legal and judicial context into the political arena").

¹³⁴ See European Parliament Resolution, supra note 23, § E (stating that the European Union created an "HIV Action Plan for Benghazi" which designated 2.5 million Euros to fund the plan and improve the medical infrastructure in Libya).

¹³⁵ See Padt, supra note 8, at 51 (finding that medical neutrality has no meaning without the consent of sovereign governments and that this mechanism of protection often fails medical personnel).

¹³⁶ See **Beigbeder**, supra note 8, at 339 (quoting the World Medical Association that doctors should adhere to principles such as "practicing profession with conscience and dignity" and

professionals to adhere to the same ethical standards in both war and peace.¹³⁷ The World Medical Association also adopted "International Code of Medical Ethics" to articulate international ethical standards in the wake of the Nuremberg disaster.¹³⁸

The United Nations General Assembly adopted the "Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading

"not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient").

¹³⁷ See **Beigbeder**, supra note 8, at 339 (contrasting the Geneva Conventions which apply only in wartime with the Declaration of Geneva which requires that medical professionals adhere to the same code of conduct in both war and peacetime).

¹³⁸ See **World Medical Association, International Code of Medical Ethics** (1949), reprinted in Health and Humanitarian Concerns, at 73 (Henryk Zielinski ed., Martinus Nijhoff Publishers 1994) (enforcing notion that physicians should act solely towards the best interests of the patient).

treatment and punishment.”¹³⁹ This resolution, while recognized by the international community, does not legally bind United Nations members and signatories.¹⁴⁰

In 1984, the Médecins Sans Frontières along with the International Federal of Human Rights developed the “Charter for

¹³⁹ See **Beigbeder**, supra note 8, at 340 (citing to United Nations’ adoption of the “Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” which did not address medical neutrality or protection of medical personnel).

¹⁴⁰ See id. at 349 (distinguishing between the principles of United Nations Resolution and the reality of medical practice where no universal standards apply and adherence to international humanitarian law is limited to agreement by the respective parties involved in the actual conflict.(citing to A. Baccino-Astrada, Manual on the Rights and Duties of Medical Personnel in Armed Conflicts International Committee of the Red Cross, League of Red Cross and Red Crescent Societies, Geneva, 1982))).

the Protection of Medical Missions.”¹⁴¹ This charter acknowledged the international right to health care and medical assistance, calling for a “no-border” policy where medical missions could freely carry out medical assistance without concern for their own safety and without violating national or local laws.¹⁴² Local governments accuse medical organizations of violating domestic jurisdiction but the medical personnel respond that they have higher obligation dictated by the Hippocratic Oath to assist those in need.¹⁴³ Thus, this charter would align the goals and obligations of the medical community with that of international law, outlining the obligations of medical personnel as well as the right to protection for medical

¹⁴¹ See id. at 348 (embodying both codes of medical ethics and the right of protection for medical personnel).

¹⁴² See id. (stressing the importance of adhering to medical principles of treating everyone versus obeying national sovereignty); Padt supra note 8, at 51-52 (decrying the lack of protections for voluntary medical agencies who are working without the state’s consent).

¹⁴³ See id. (finding that medical personnel should have a right to protection based on their roles as medical personnel rather than as individuals).

personnel during their missions.¹⁴⁴ The charter mandates countries, rebel groups and government organizations to release any medical personnel captured in the course of conflict.¹⁴⁵ The charter also reinforces the ICRC protections and medical personnel's ethical obligations. The Council of Europe approved the resolution on June 30, 1988.¹⁴⁶ As of now, the Charter has not been adopted but the World Health Assembly drafted a similar Charter, entitled "Protection of Medical Missions During Armed Conflict."¹⁴⁷ This resolution is more limited in scope,

¹⁴⁴ See **Beigbeder**, supra note 8, at 348 (calling for across the board protection for all humanitarian efforts).

¹⁴⁵ See id. (recognizing the necessity of dealing with non-state actors in modern conflict situations).

¹⁴⁶ See id. at 349 (noting that the resolution urges respect for the ICRC activities and urges medical missions to respect international sovereignty and obtain consent prior to entering a country).

¹⁴⁷ See World Health Assembly, Protection of Medical Missions During Armed Conflict, World Health Assembly Resolution A55/VR/9 http://www.who.int/gb/ebwha/pdf_files/WHA55/ewha5513.pdf [hereinafter Resolution] (reaffirming principles of medical neutrality in light of an increase in attacks on medical personnel).

reiterating the protections afforded to medical personnel under the Geneva Convention and the Additional Protocols.¹⁴⁸

The 49th World Medical Association General Assembly adopted a proposal for "A Rapportuer on the Independence and Integrity of Health Professionals."¹⁴⁹ This proposal acknowledges both the heightened dangers and accountability of international medical professionals and requests the establishment of a UN rapporteur to protect health professionals who are in danger due to their professional actions.¹⁵⁰ This proposal is the most comprehensive

¹⁴⁸ See id. (emphasizing the importance of adherence to the Geneva Conventions and the protective status of medical personnel during armed conflict).

¹⁴⁹ See **World Medical Association, Proposal for a United Nations Rapporteur on the Independence and Integrity of Health Professionals** (November 1997)

<http://www.wma.net/e/policy/h19.htm> [hereinafter **World Medical Proposal**] (stressing that physicians should have freedom of movement in both conflict and non-conflict situations).

¹⁵⁰ See id. (encouraging reporting of human rights violations by health professionals and protecting and enhancing the fundamental human right to health and ensure patients have the right to access medical treatment).

analysis and recognition of the need for international protections and obligations for medical professionals.

D. Creation of an International Medical Tribunal to Address Violations of Medical Neutrality

These resolutions recognize the necessity to have an international body regulating medical personnel. This body would go beyond the scope of the Special Rapporteur on Health Professionals and instead would create an international medical tribunal.¹⁵¹ Others have suggested the creation of an international medical tribunal to address abuses similar to those committed by medical personnel during the Nazi regime.¹⁵² This medical tribunal would not only address cases where physicians were criminally involved in medical negligence but also set forth international regulations and a code of ethics which all physicians would follow.¹⁵³ Further, the international

¹⁵¹ See Annas, supra note 6, at 119-20 (describing the formation of an international medical tribunal which would originate from the United Nations).

¹⁵² See id. at 120 (stressing the importance of using criminal sanctions against physicians who contravene international law and medical ethics).

¹⁵³ See id. (outlining the Tribunal's functions to include hearing cases, develop international regulations and if

tribunal would hear all allegations of violations of medical neutrality as well as abuses of medical neutrality and deliver independent findings, which would be binding on all countries who agree to its creation. More importantly, this international medical tribunal would provide structure and protection for groups such as Médecins Sans Frontières and others that often violate state sovereignty in the course of providing humanitarian aid.

While some might argue that blanket neutrality would give medical personnel too much immunity, an international tribunal would serve as both the protector and arbiter of justice in the delivery of international health and humanitarian aid. This would be a seamless transition considering that the international community has already tried Nazi physicians after World War II for their participation in torture and human experimentation.¹⁵⁴

necessary, spurring public condemnation where international law does not exercise jurisdiction).

¹⁵⁴ See Benjamin Mason Meier, International Protection of Persons Undergoing Medical Experimentation: Protecting the Right of Informed Consent 20 **Berkeley J. Int.'L** 513, 523 (noting that two hundred German physicians took part in the alleged medical experimentation and torture).

This medical tribunal could serve to hear both allegations of abuse, medical malpractice and violations of medical neutrality, creating a centralized depository for regulating international medicine. This would provide accountability for legal and ethical violations as well as protection for medical personnel. Further, it would create an international codification of medical ethics and medical neutrality so that the obligations and protections are delineated.¹⁵⁵

IV. Conclusion

Throughout history, medical personnel have played a unique and important role during wartime. The earliest versions of the Geneva Conventions recognized their fundamental role in aiding the sick and wounded in conflict. However, given the changing nature of health, war and international conflict, it is clear that having a line between the protections that apply during armed conflict and the lack of those that exist during non-armed conflict require a re-evaluation of the international legal protections for medical personnel.

¹⁵⁵ See Sidel, supra note 8 at 282 (stressing how ethical guidelines require physicians to treat all individuals while military and international codes reject such widespread impartiality and neutrality).

The international community must recognize that codification of international ethical obligations as well as protections for medical workers ensures that medical personnel have the necessary legal apparatuses to conduct their work. Without such protections, medical professionals find themselves in the situation of the Benghazi Six, without international legal recourse and subject to the political and legal whims of an unstable democracy. If the Benghazi Six meet their end in front of a firing squad, their deaths would send a grave message to the international medical community, revealing the weaknesses of the international safety net and crushing the spirit of humanitarian aid.

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Final Comment
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