

**Panel 9: Reverberating Harm and the Protection of Health in War:
Rethinking Proportionality, Precaution, and Accountability**

CLE Reading Material:

- UN Security Council Resolution 2286 (2016)
- How can the protection of medical personnel and facilities under international humanitarian law be strengthened? Mohammad Abir Mamun, *Medicine, Conflict and Survival* Vol. 40(3) 2024



Security Council

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Resolution 2286 (2016)

**Adopted by the Security Council at its 7685th meeting, on
3 May 2016**

The Security Council,

Reiterating its primary responsibility for the maintenance of international peace and security and, in this context, the need to promote and ensure respect for the principles and rules of international humanitarian law,

Recalling all relevant Security Council resolutions, including resolutions 2175 (2014) and 1502 (2003) on the protection of humanitarian personnel, resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006), 1894 (2009) and 2222 (2015) on the protection of civilians in armed conflict, resolutions 1539 (2004) and 1612 (2005) relating to the establishment of a monitoring and reporting mechanism on children and armed conflict, and resolution 1998 (2011) on attacks against schools and/or hospitals, as well as relevant statements of its President related to the protection of civilians in armed conflict and to the protection of medical personnel and humanitarian personnel in conflict zones,

Recalling all relevant General Assembly resolutions, including resolution 70/104 entitled Safety and security of humanitarian personnel and protection of United Nations personnel, 70/106 entitled Strengthening of the coordination of emergency humanitarian assistance of the United Nations, and 69/132 entitled Global health and foreign policy,

Recalling the Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005, as applicable, as well as relevant customary international law concerned with the protection of the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and the obligation of parties to armed conflict to respect and ensure respect for international humanitarian law in all circumstances,

Recalling the Convention on the Safety of United Nations and Associated Personnel, and its Optional Protocol,

Recognizing the particular challenges faced by humanitarian personnel exclusively engaged in medical duties and medical personnel and *reaffirming* that all humanitarian personnel are entitled to respect and protection under international humanitarian law,



Stressing that identification of medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities may enhance their protection, and in this regard, *recalling* also the obligations, in situations of armed conflict, pertaining to the use and the protection of the distinctive emblems under the Geneva Conventions of 1949 and where applicable, their Additional Protocols,

Recalling further the specific obligations under international humanitarian law to respect and protect, in situations of armed conflict, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, and hospitals and other medical facilities, which must not be attacked, and to ensure that the wounded and sick receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required,

Recalling also the obligation under international humanitarian law to distinguish between civilian populations and combatants, and the prohibition against indiscriminate attacks, and the obligations to do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection, including medical personnel their means of transport and equipment, and hospitals and other medical facilities, and *recalling further* the obligation to take all feasible precautions with a view to avoiding and in any event minimizing harm to civilians and civilian objects,

Deeply concerned that despite these obligations, acts of violence, attacks and threats against medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, are being perpetrated in situations of armed conflicts and that the number of such acts is increasing,

Recalling that locally recruited medical personnel and humanitarian personnel exclusively engaged in medical duties account for the majority of casualties among such personnel in situations of armed conflict,

Further concerned that the delivery of humanitarian assistance, including medical assistance, to populations in need is being obstructed by parties to armed conflicts in many conflict situations,

Recalling that under international humanitarian law, persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and the sick,

Convinced that acts of violence, attacks and threats against medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and obstructing the delivery of humanitarian assistance, including medical assistance, may exacerbate ongoing armed conflicts and undermine the efforts of the Security Council to maintain international peace and security under the Charter of the United Nations,

Reaffirming the need for all parties to armed conflict to respect the humanitarian principles of humanity, neutrality, impartiality and independence in the provision of humanitarian assistance, including medical assistance, and

reaffirming also the need for all actors engaged in the provision of such assistance in situations of armed conflict to promote and fully respect these principles,

Urging States to ensure that violations of international humanitarian law related to the protection of the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflicts do not remain unpunished, *affirming* the need for States to ensure that those responsible do not operate with impunity, and that they are brought to justice, as provided for by national laws and obligations under international law,

Recalling that, under international law, attacks intentionally directed against hospitals and places where the sick and wounded are collected, provided that they are not military objectives, as well as attacks intentionally directed against buildings, material, medical units and transport and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law are war crimes,

Stressing that the fight against impunity and to ensure accountability for war crimes and other serious violations of international humanitarian law has been strengthened through the work on and prosecution of these crimes in the international criminal justice system, and in this regard *reiterating* the importance of State cooperation with international courts and tribunals in accordance with States' respective obligations,

Noting that medical personnel, and humanitarian personnel exclusively engaged in medical duties, in an armed conflict situation, continue to be under a duty to provide competent medical service in full professional and moral independence, with compassion and respect for human dignity, and always to bear in mind human life and to act in the patient's best interest and *stressing* the need to uphold their respective professional codes of ethics, and *further noting* the applicable rules of international humanitarian law relating to the non-punishment of any person for carrying out medical activities compatible with medical ethics,

Reaffirming the primary responsibility of States to protect the population throughout their whole territory and *recalling* in this regard that all parties to armed conflict must comply fully with the obligations applicable to them under international humanitarian law related to the protection of civilians in armed conflict and medical personnel,

1. *Strongly condemns* acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and *deplores* the long-term consequences of such attacks for the civilian population and the health-care systems of the countries concerned;

2. *Demands* that all parties to armed conflicts fully comply with their obligations under international law, including international human rights law, as applicable, and international humanitarian law, in particular their obligations under the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 and 2005, to ensure the respect and protection of all medical personnel and humanitarian personnel exclusively engaged in medical

duties, their means of transport and equipment, as well as hospitals and other medical facilities;

3. *Demands* that all parties to armed conflicts facilitate safe and unimpeded passage for medical personnel and humanitarian personnel exclusively engaged in medical duties, their equipment, transport and supplies, including surgical items, to all people in need, consistent with international humanitarian law;

4. *Strongly urges* States and all parties to armed conflict to develop effective measures to prevent and address acts of violence, attacks and threats against medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflict, including, as appropriate, through the development of domestic legal frameworks to ensure respect for their relevant international legal obligations, the collection of data on obstruction, threats and physical attacks on medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and medical facilities, and to share challenges and good practice in this regard;

5. *Underlines* the important role that education and training in international humanitarian law can play in supporting efforts to halt and prevent acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities;

6. *Calls* upon States to ensure that their armed forces and security forces, within their respective competencies under domestic law, make or, where relevant, continue their efforts to integrate practical measures for the protection of the wounded and sick and medical services into the planning and conduct of their operations;

7. *Emphasizes* the responsibility of States to comply with the relevant obligations under international law to end impunity and to ensure those responsible for serious violations of international humanitarian law are held to account;

8. *Strongly condemns* the prevailing impunity for violations and abuses committed against medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflict, which in turn may contribute to the recurrence of these acts;

9. *Strongly urges* States to conduct, in an independent manner, full, prompt, impartial and effective investigations within their jurisdiction of violations of international humanitarian law related to the protection of the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflict, and, where appropriate, take action against those responsible in accordance with domestic and international law, with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims;

10. *Expresses its intention* to ensure that the mandates of relevant United Nations peacekeeping operations can, where appropriate and on a case-by-case

basis, help to contribute to a secure environment to enable the delivery of medical assistance, in accordance with humanitarian principles;

11. *Encourages* the Secretary-General, in accordance with his prerogatives under the Charter of the United Nations, to bring to the attention of the Security Council situations in which the delivery of medical assistance to populations in need is being obstructed by parties to the armed conflict;

12. *Requests* the Secretary-General to include in his country-specific situation reports, and other relevant reports which address the protection of civilians, the issue of the protection of the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, including recording specific acts of violence against them, remedial actions taken by parties to the armed conflict and other relevant actors, including humanitarian agencies, to prevent similar incidents, and actions taken to identify and hold accountable those who commit such acts;

13. *Further requests* the Secretary-General to promptly provide the Security Council with recommendations on measures to prevent incidents of the kind described in the above paragraph and to better ensure accountability and enhance the protection of the wounded and sick and medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities;

14. *Further requests* the Secretary-General to brief the Security Council every twelve months on the implementation of this resolution.

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Mohammad Abir Mamun

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ESSAY



How can the protection of medical personnel and facilities under international humanitarian law be strengthened?

Mohammad Abir Mamun

Brighton and Sussex Medical School, Brighton, UK

Introduction

The sanctity of medical care in armed conflict is a cornerstone of International Humanitarian Law (IHL). This framework seeks to mitigate the suffering of war by protecting the wounded, the sick, and those providing essential medical aid. The Geneva Conventions of 1949 and their Additional Protocols enshrine this principle, explicitly safeguarding medical personnel, facilities, and transports (International Committee of the Red Cross 2010). Nonetheless, a disturbing contradiction persists: despite IHL's mandate for strict medical neutrality, attacks on healthcare infrastructure and practitioners remain a tragic hallmark of modern conflict.

In the volatile context of armed conflict, medical personnel and facilities are intended to be neutral zones where aid can be delivered regardless of affiliation. Sadly, this vital principle is frequently violated, with severe consequences for healthcare workers, patients, and the stability of entire communities. IHL provides a framework for protecting medical personnel and facilities. However, its effectiveness is tragically undermined by persistent attacks and breaches of neutrality.

Legal framework for protection

The principle of medical neutrality, obligates healthcare providers to treat all injured individuals regardless of affiliation (International Committee of the Red Cross 2023), however violations against them which prevent them from doing so remain disturbingly commonplace. In Syria, government forces and their allies systematically targeted medics in opposition-controlled territories, responsible for 92% of

CONTACT Mohammad Abir Mamun  mohammadmamun050@gmail.com

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deaths of medical personnel in incidents such as the attack on Al-Shifaa Hospital on 12 June 2021 (Physicians for Human Rights 2023). Similarly, Sudanese rebel factions were recorded to have 52 attacks on healthcare facilities based in Darfur and South Kordofan in 2021, damaging facilities and directly endangering medical workers (ReliefWeb 2022).

The lack of a precise definition for an ‘attack’ within IHL and the blurred lines surrounding ‘dual-use’ facilities create significant room for misinterpretation (Sassòli 2003). This allows perpetrators to justify attacks on medical care with flimsy pretexts, blurring the distinctions between direct and indirect targeting to portray civilian casualties as unavoidable consequences of military operations (Dinstein 2022). The 2015 US-led airstrike that destroyed the Médecins Sans Frontières (MSF) trauma hospital in Kunduz, Afghanistan, killing 42 patients, staff, and caregivers, is a stark example of how states with advanced military capabilities exploit legal ambiguities to evade accountability. Despite MSF providing the hospital’s GPS coordinates, the US military claimed it was a ‘mistake’ (The Guardian 2015). This atrocity forced MSF to withdraw from Kunduz, leaving the region lacking severely in trauma care.

It is crucial to confront the inherent biases within IHL. A decolonizing approach to international law (Pahuja 2011) spotlights how the current IHL system primarily reflects Western legal traditions and transcends a purely legalistic approach to violations of medical neutrality. Recognizing this Western-centric origin is essential to ensuring that accountability mechanisms do not inadvertently perpetuate unequal power dynamics, particularly relevant to cases like Kunduz, where Western military powers have been implicated in severe violations but often face limited consequences. To address breaches of medical neutrality, IHL’s decolonization demands centring perspectives, experiences, and voices from the Global South (Anghie 2007) – prioritizing diverse representation and local ownership of justice to counter Western-centric biases, building capacity in affected states, developing innovative accountability mechanisms, and fostering nuanced contextual understanding.

Accountability requires robust consequences, including individual criminal liability. Clarifying the obligations of states regarding healthcare in conflict would be beneficial, as the existing IHL framework needs a comprehensive approach to ensure states meet their duties to respect and protect medical neutrality (Footer and Rubenstein 2013). This includes outlining precise steps states must take to uphold the protected status of healthcare providers and facilities during the conflict – from refraining from attacking or interfering with medical care to proactively facilitating neutral medical missions.

Accountability mechanisms

Existing accountability mechanisms designed to punish violations of IHL remain insufficient, impeding justice for attacks on medical personnel and facilities. A persistent challenge involves the complexities of gathering reliable evidence within active conflict zones because of limited access due to ongoing hostilities, security risks for those documenting abuses, and witness displacement from forced migration, significantly hindering thorough and credible investigations (Alston, Philip, and UN 2011). The 2021 bombing of a primary healthcare clinic in Beit Hanoun during the Israeli invasion of Gaza provides a stark example. Despite meticulous documentation by the Al Mezan Centre for Human Rights, the negligible consequences highlight the challenge of holding perpetrators accountable even when IHL violations are well-evidenced and illustrate that thorough documentation alone is often insufficient to trigger meaningful action from the international community, feeding directly into a culture of impunity.

Even when sufficient evidence exists, international tribunals like the ICC often face complex jurisdictional hurdles, such as whether particular states fall under the court's authority or if alleged crimes meet the threshold for ICC prosecutions (Schabas 2011). Moreover, legal proceedings within international institutions tend to be protracted, with years potentially passing between an attack and a verdict (Sands 2006), undermining the deterrent effect and eroding the sense of justice sought by affected communities. While convictions by the ICC and other bodies are essential, most attacks on medical care in conflicts go unpunished (International Review of the Red Cross 2022). Israeli invasion in the Gaza Strip and West Bank resulted in disturbingly regular attacks on medical facilities (OCHA 2023) with comparatively minor consequences for perpetrators, exemplifying this dynamic. Similarly, the war in Yemen underscores the widespread lack of accountability for attacks on hospitals and medical centres. The UN Security Council and other multilateral bodies must decisively wield their power to deter future attacks and disrupt the culture of impunity. This means moving beyond mere condemnations and actively mandating investigations into specific attacks. Forming special commissions empowered to collaborate with NGOs and victims for credible evidence-gathering is crucial. These investigations must culminate in binding resolutions explicitly naming and shaming perpetrators, significantly increasing the political and reputational costs of perpetrating violations. Additionally, sanctions targeting individuals and governments, including arms embargoes and asset freezes, can alter the cost-benefit analysis for perpetrators (Reisman and Stevick 1998). This linkage between awareness campaigns, thorough investigations, and decisive consequences is a powerful deterrent, demonstrating that IHL violations will not be

tolerated. While sanctions are a powerful tool, their potential for collective punishment and unintended harm to civilians raises ethical concerns. These risks necessitate a careful approach, including targeted sanctions focused on leaders and arms suppliers, explicit carve-outs for humanitarian aid, and continuous monitoring to minimize negative consequences (Crawford and Klotz 1999). This demonstrates a commitment to both justice and upholding humanitarian principles.

Beyond the ICC, diplomatic pressure and targeted sanctions, like the ambassador recall imposed by Brazil and South Africa against Israel, can be effective. A coalition could even consider automatic downgrades in diplomatic relations with any nation designated a repeat violator of medical neutrality by the UNSC. While the political will to form such a coalition may be limited, there is precedent for individual nations to take decisive action. Following the example set by Brazil and South Africa, a state could pledge to automatically downgrade diplomatic ties or suspend cooperation agreements with any nation designated a repeat violator of medical neutrality by the UNSC. While less impactful than a multilateral coalition, this unilateral approach avoids the political complexities of coalition-building while maximizing pressure on the offender.

Finally, NGOs, civil society, and victim groups must act strategically alongside these diplomatic measures. Meticulous documentation of attacks and consistent advocacy for resolutions and sanctions remain vital. This evidence-gathering by NGOs and the medical community provides the crucial foundation for accountability efforts by the international community. Additionally, highlighting the broader security implications of such violations could garner more comprehensive support within the international community. Attacks on healthcare infrastructure often exacerbate conflicts, worsen humanitarian crises, and fuel cycles of extremism (Debarre 2018). Thus, framing the issue as a critical security risk, not solely a moral failing, can help build a broader consensus for decisive action against the worst offenders.

Awareness and training initiatives

While localized IHL training programmes in conflict zones show promise, broader implementation and a stronger focus on IHL knowledge are crucial for reducing attacks on medical care (ICRC 2023). States must prioritize comprehensive IHL education for their armed forces (Bates 2014), collaborating with the ICRC and Red Crescent Movement to develop effective global training programmes. While training cannot eliminate all attacks on medical personnel in volatile combat zones, expanding programmes beyond local initiatives remains crucial. Case studies and simulations using technology to analyse past attacks on medical facilities or simulations mirroring complex battlefield dilemmas force a deeper understanding of the long-term

repercussions of actions. They can offer the most effective IHL education, demonstrating the severe consequences of violations.

Additionally, partnering with journalists and filmmakers can help create impactful portrayals of the consequences of IHL violations. It is crucial to prioritize IHL training, including acknowledging its unavoidable limitations, during the pre-deployment phases for all peacekeeping missions or military forces entering conflict zones. It must be considered a fundamental, compulsory component of military preparation at all levels (Sassòli and Bouvier 1999). Despite the challenges, a greater emphasis on preventive training can create a foundation for better-informed decision-making and potentially lessen incidents of disregard for medical neutrality incrementally. Moreover, creating environments where compliance with IHL is consistently expected establishes a baseline for evaluating combatant conduct, justifying more robust accountability measures when violations occur.

A critical shift requires moving beyond viewing IHL training as a short-term intervention limited to the battlefield. Integrating comprehensive IHL awareness within broader military doctrines reinforces its non-negotiable nature within all phases of operations with continuous refresher courses, and incorporating IHL knowledge within promotion criteria demonstrates long-term institutional commitment. These structural transformations help normalize respect for IHL, embedding it within military personnel's core values and decision-making processes. Thorough training and comprehensive IHL awareness are vital preventative measures. However, they alone cannot eliminate IHL breaches. Robust accountability mechanisms are essential to deter violations indeed. By establishing a clear connection between IHL education and the expectation of consequences for misconduct, states and military institutions send a powerful message reinforcing the non-negotiable nature of protecting medical neutrality.

Countries with significant military presence stand to gain significantly by implementing robust measures to ensure strict adherence to IHL protocols within their armed forces, particularly carrying strategic benefits for Western nations. Beyond the immediate humanitarian imperative, such a commitment would position them as principled actors on the global stage. Demonstrating unwavering respect for IHL, even in complex conflict scenarios, reasserts their commitment to core values and enhances their moral leadership. Images of Western troops intentionally targeting medical facilities or civilians fuels extremism and hinders long-term peacebuilding efforts. Conversely, consistent IHL compliance means fewer civilian casualties during military operations, helping build trust among local populations, increasing the potential for successful interventions and bolstering alliances vital in the global landscape. This commitment to the laws of war plays a crucial role in successful post-conflict reconstruction, a key element of Western foreign policy agendas. Thorough and ongoing IHL training for Western militaries would directly

counteract negative stereotypes often associated with their international deployments. While the media may focus on isolated incidents, a deliberate emphasis on respecting IHL creates a powerful counter-narrative.

The medical community must actively fight against the normalization of attacks on healthcare. Frontline providers, institutions, and professional bodies can advocate for stronger protections by documenting attacks, partnering with human rights organizations, and launching awareness campaigns (Rubenstein and Bittle 2010). Collaborations with NGOs amplify voices, putting a human face on IHL violations and highlighting the long-term consequences. Leveraging medical associations, like the World Medical Association, is crucial for policy change and integrating IHL into medical ethics. Ultimately, the medical community's advocacy for protection must be viewed as a long-term commitment, particularly in protracted conflicts. Building ongoing relationships with human rights organizations and policymakers ensures that attacks on medical neutrality remain squarely on the international agenda, laying the groundwork for a future where the sanctity of healthcare in conflict is genuinely upheld. A fundamental shift in mindset is required. Combatants in the field must be extensively trained and held accountable for respecting medical neutrality, with awareness of IHL provisions integrated into military doctrine and rules of engagement.

Furthermore, states and armed groups need to recognize that attacks on healthcare ultimately impede long-term recovery and reconciliation efforts post-conflict (Debarre 2018). Recognizing the strategic ramifications of these attacks may help create positive incentives to ensure the sanctity of medical care. By implementing these multifaceted legal, operational, and educational measures, we can see tangible improvements in upholding medical neutrality during armed conflict. Such efforts ultimately safeguard the vital work of those on the frontlines of providing care, protecting their ability to offer hope and relief in the face of immense human suffering.

Conclusion

Protecting medical personnel and facilities is a test of our collective humanity; frequent attacks on healthcare during conflict expose a profound failure of IHL and human rights. This essay argued that more than merely tinkering with the existing framework is required. Bold transformation, a revamping of IHL, decisive accountability measures, and an unwavering commitment to awareness and training are needed. A more robust, precise legal framework and a specialized IHL court that centres justice for victims are imperative. Crucially, decolonizing IHL demands dismantling the Western-centric bias that too often shapes legal narratives. Justice cannot be impartial to power imbalances, nor can it be a tool to perpetuate them. Where documentation of IHL violations exists, accountability still needs to be discovered. Investigations

must lead to swift, binding UNSC resolutions, sanctions that bite, and the unwavering use of diplomatic pressure against violating states and armed groups. NGOs and victims' groups are indispensable – their meticulous documentation bears the human cost of these crimes. Awareness and training are vital, but we must think beyond mere survival tips for medics under fire. IHL education must be woven into the fabric of every military institution – mandatory, pre-deployment, and tied to career advancement.

Ultimately, protecting medical care means choosing to value life over cynical expediency. It is about recognizing that when we allow the wounded to be targeted and the healthy to be denied care, we erode the very foundations of civilization. By analysing legal ambiguities, failures of accountability, and the necessity of training, this essay demonstrates the profound weaknesses within the current IHL system. It highlights the urgent need for improvement to ensure the sanctity of medical care in conflict, a vital step in preserving the basic tenets of our shared humanity.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributor

Mohammad Abir Mamun is a medical student with a keen interest in the intersection of medicine and humanitarian issues. Currently pursuing his medical degree, Mohammad is passionate about exploring the impacts of conflicts on health and survival, focusing his research on maintaining and improving medical care in challenging environments. Mohammad aims to contribute to the global medical community by addressing critical health issues and advocating for those affected by conflict.

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