

## Afghanistan, Attack on Kunduz Trauma Centre

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**N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

### A. INITIAL MSF INTERNAL REVIEW OF KUNDUZ HOSPITAL ATTACK

[Source: MSF, "Initial MSF internal review: Attack on Kunduz Trauma Centre, Afghanistan", 5 November 2015, available at: [http://www.msf.org/sites/msf.org/files/msf\\_kunduz\\_review\\_041115\\_for\\_pub...](http://www.msf.org/sites/msf.org/files/msf_kunduz_review_041115_for_pub...) (Footnotes omitted)]

[...]

[1] The following document is an initial MSF internal review of the events leading up to, during and in the immediate aftermath of the airstrikes on the MSF hospital in Kunduz on Saturday 3 October 2015. [...]

Background to MSF in Kunduz (2011-2015)

[2] MSF had been working in Kunduz since August 2011 when the Kunduz Trauma Centre (KTC) was opened. The KTC is the only facility of its kind in north-eastern Afghanistan. The Trauma Centre provided high-quality, free surgical care to victims of general trauma like traffic accidents, as well as those presenting with conflict-related injuries such as from bomb blasts or gunshots. [...]

[...]

[3] MSF activities in Kunduz were based on a thorough process to reach an agreement with all parties to the conflict to respect the neutrality of our medical facility. In Afghanistan, agreements were reached with the health authorities of both the government of Afghanistan and health authorities affiliated with the relevant armed opposition groups. These agreements contained specific reference to the applicable sections of International Humanitarian Law including: - Guaranteeing the right to treat all wounded and sick without discrimination - Protection of patients and staff guaranteeing non-harassment whilst under medical care - Immunity from prosecution for performing their medical duties for our staff - Respect for medical and patient confidentiality - Respect of a 'no weapon' policy within the hospital compound

[4] These commitments were discussed and endorsed by the militaries involved in the conflict, including all international military forces such as the United States, both the regular and special forces branches, ISAF and later Resolute Support command structures, Afghan National Army, National Police and National Security agencies as well as the military command structures of armed opposition groups. The local military hierarchy of all warring parties endorsed compliance by agreeing to a no-weapons policy within the MSF facility.

[5] These agreements were brought into practice through the implementation of the no-weapons policy in the KTC, relying on civilian, MSF-employed unarmed guards as well as an ongoing process of bilateral discussions with the community and all parties to the conflict.

The week before the airstrikes (28 September – 02 October 2015)

Monday 28 September

[6] Heavy fighting between Afghanistan government and Taliban forces took place in Kunduz city in the early morning on Monday 28 September. The MSF team launched a mass casualty plan in preparation to receive an expected large number of wounded patients.

[...]

[7] As is standard practice, MSF teams did not ask which armed group patients belonged to. It was clear however, based on observation of uniforms or other distinctive identification, that a number of wounded combatants were being brought to the hospital.

[8] As was the case since the opening of the Trauma Centre, the vast majority of the wounded combatants were observed to be government forces and police. In the week starting 28 September, this shifted to primarily wounded Taliban combatants. The proportion of wounded combatants from both sides varied according to the intensity of the fighting, the position of the frontline and the accessibility of the hospital and availability of alternative medical facilities.

[9] When fighting intensified, MSF proposed to patients to remove any military identification or clothing from the hospital, as is our standard practice to reduce possible tensions in the hospital with both parties to the conflict being treated within the facility. MSF team received a visit of a representative from the Afghan government forces to organise the rapid referral of wounded government patients to another hospital. While the majority of the wounded Afghan government forces were referred, the most critical patients remained in the hospital. As far as our teams are aware, after this time, no more wounded Afghan government forces were being brought to the Trauma Centre.

[10] At 6pm, two Taliban combatants arrived at the hospital gates to inform MSF that they were in control of the area.

[...]

Tuesday 29 September

[...]

[11] An MSF vehicle on the way to the airport to collect urgent medical supplies was shot at while crossing a frontline. The MSF staff in the car abandoned the vehicle for their own safety. The following day, the vehicle was retrieved with the medical supplies still intact.

[12] Due to the increased intensity of fighting in Kunduz, MSF reaffirmed the well-known location of the KTC by once again emailing its GPS coordinates to US Department of Defense, Afghan Ministry of Interior and Defense and US army in Kabul. [...]

[13] Confirmation of receipt was received from both US Department of Defense and US army representatives, both of whom assured us that the coordinates had been passed on to the appropriate parties. Oral confirmation was received from the Afghan Ministry of Interior. MSF also shared the GPS coordinates with a UN intermediary who confirmed transmission directly to Operation Resolute Support.

Wednesday 30 September

[14] Out of 130 patients in the KTC on Wednesday, there were approximately 65 wounded Taliban combatants that were being treated. Starting this same day a large number of patients discharged from the hospital, including some against medical advice. It is unclear whether some of these patients discharged themselves due to the discussion to free some beds between MSF and the Taliban representative or whether there were general concerns about security as rumours were circulating of a government counter-offensive to reclaim Kunduz city. [...]

[15] By Wednesday, MSF was aware of two wounded Taliban patients that appeared to have had higher

rank. This was assumed for multiple reasons: being brought in the hospital by several combatants, and regular inquiries about their medical condition in order to accelerate treatment for rapid discharge.

Thursday 1 October

[16] MSF received a question from a US Government official in Washington D.C., asking whether the hospital or any other of MSF's locations had a large number of Taliban "holed up" and enquired about the safety of our staff. MSF replied that our staff were working at full capacity in Kunduz and that the hospital was full of patients including wounded Taliban combatants, some of whom had been referred to the MSF medical post in Chardara. MSF also expressed that we were very clear with both sides to the conflict about the need to respect medical structures as a condition to our ability to continue working. A UN civilian/military liaison advised MSF to remain within the GPS coordinates provided to all parties to the conflict as "bombing is ongoing in Kunduz."

Friday 2 October

[17] On Friday, two MSF flags were placed on the roof of the hospital, in addition to the existing flag that was being flown at the entrance to the Trauma Centre. The KTC was also one of the only buildings in the city that had full electricity from generator power on the night of the airstrikes.

[...]

[18] Throughout the night before the airstrikes began, all MSF staff confirm that it was very calm in the hospital and its close surroundings. No fighting was taking place around the hospital, no planes were heard overhead, no gunshots were reported, nor explosions in the vicinity of the hospital. [...] All staff confirm that the gate of the hospital was closed and that the MSF unarmed guards were on duty.

[19] From approximately 12.20 am to 1.10 am, the MSF coordinator conducted the nightly security round of the hospital compound. The coordinator reported that the KTC was calm, with no armed combatants present, nor any fighting on the hospital grounds or within the audible vicinity. All MSF guards were on duty and MSF was in complete control of the compound.

[20] All of the MSF staff reported that the no weapons policy was respected in the Trauma Centre. In the week prior to the airstrikes, the ban of weapons inside the MSF hospital in Kunduz was strictly implemented and controlled at all times and all MSF staff positively reported in their debriefing on the Taliban and Afghan army compliance with the no-weapon policy.

[21] From all MSF accounts, there was no shooting from or around the Trauma Centre and the compound was in full MSF control with our rules and procedures fully respected.

[...]

The US aerial attack (early AM 3 October 2015)

[22] According to all accounts the US airstrikes started between 2.00 am and 2:08 am on 3 October.

[23] Despite it being in the middle of the night, the MSF hospital was busy and fully functional at the time of the airstrike. Medical staff were making the most of the quiet night to catch up on the backlog of pending surgeries. When the aerial attack began, there were 105 patients in the hospital. MSF estimates that between 3 and 4 of the patients were wounded government combatants, and approximately 20 patients were wounded Taliban. One hundred and forty MSF national staff and nine MSF international staff were present in the hospital compound at the time of the attack, as well as 1 ICRC delegate.

[24] It is estimated that the airstrikes lasted approximately one hour, with some accounts saying the strikes continued for one hour and fifteen minutes, ending approximately 3am-3.15am.

[...]

[25] A series of multiple, precise and sustained airstrikes targeted the main hospital building, leaving the rest of the buildings in the MSF compound comparatively untouched. This specific building of the hospital correlates exactly with the GPS coordinates provided to the parties to the conflict [...].

[...]

[26] Those who survived the US airstrikes were direct witnesses of the attack from the different locations inside the MSF compound.

[...]

[27] The airstrikes continued with many staff referring to a propeller plane, which could be heard throughout. This sound is consistent with the reported AC-130 circling the MSF hospital. Many of those interviewed describe massive explosions, sufficient to shake the ground. These bigger explosions were most frequently described as coming in concentrated volleys. MSF staff also described shooting coming from the plane.

[28] Many staff describe seeing people being shot, most likely from the plane, as people tried to flee the main hospital building that was being hit with each air strike. Some accounts mention shooting that appears to follow the movement of people on the run. MSF doctors and other medical staff were shot while running to reach safety in a different part of the compound.

[...]

[29] Though it is clear [...] that the main hospital building was the principal target of the attack, other locations within the MSF compound were also struck, including in the southern area of the hospital compound where two unarmed MSF guards were found dead as a result of shrapnel wounds.

[...]

[30] Not a single MSF staff member reported the presence of armed combatants or fighting in or from the hospital compound prior to or during the airstrikes.

[31] The US airstrikes stopped between approximately 3am and 3.13am.

[32] The total number of dead from the attack is known to be at least 30 [...]. One MSF staff member and two patients are still missing [...]. These may not be the final numbers – additional human remains may also be found in the rubble of the hospital.

After the US airstrikes (3 October)

[...]

[33] Immediately after the airstrikes, some of the MSF medical team began life-saving medical interventions on the wounded. MSF staff collected what medical material they could and converted one of the administrative rooms into a make-shift emergency room, performing surgery on an office desk and a kitchen table. The medical team quickly tried to organise the patients and to triage the critical from the non-critical patients. Patients in a critical condition included MSF staff with traumatic amputation of the leg, open chest injury and ruptured abdominal blood vessel, amongst other injuries. [...]

[34] The MSF coordinator contacted ambulances from the Ministry of Public Health (MoPH) provincial hospital in Kunduz city to collect the wounded.

[35] The MoPH ambulance and MSF ambulance conducted two rounds of transferring patients to the MoPH hospital. At the moment of transferring patients, the atmosphere was chaotic as there were a large number of patients to be transferred and Afghan Special Forces had just arrived at the hospital amidst ongoing clashes in the area outside of the hospital compound. Some Afghan Special Forces started to search for Taliban patients in the MoPH and MSF ambulance on leaving the hospital. At approximately 6 am, an ambulance was caught in the crossfire while exiting the main gate of the Trauma Centre. [...]

[...]

[36] Since 3 October, the hospital has remained closed following the destruction by US airstrikes.

[...]

## **B. SPEECH DELIVERED BY MSF INTERNATIONAL PRESIDENT ON THE KUNDUZ ATTACK**

[Source: MSF, "Afghanistan: Enough. Even war has rules", Speech delivered by Dr Joanne Liu, MSF International President, Palais des Nations, Geneva, 7 October 2015, available at: <http://www.msf.org/article/afghanistan-enough-even-war-has-rules>]

[1] On Saturday morning, MSF patients and staff killed in Kunduz joined the countless number of people who have been killed around the world in conflict zones and referred to as 'collateral damage' or as an 'inevitable consequence of war'. International humanitarian law is not about 'mistakes'. It is about intention, facts and why.

[2] The US attack on the MSF hospital in Kunduz was the biggest loss of life for our organisation in an airstrike. Tens of thousands of people in Kunduz can no longer receive medical care now when they need it the most. Today we say: enough. Even war has rules.

[...]

[3] This was not just an attack on our hospital – it was an attack on the Geneva Conventions. This cannot be tolerated. These Conventions govern the rules of war and were established to protect civilians in conflicts – including patients, medical workers and facilities. They bring some humanity into what is otherwise an inhumane situation.

[4] The Geneva Conventions are not just an abstract legal framework – they are the difference between life and death for medical teams on the frontline. They are what allow patients to access our health facilities safely and what allows us to provide healthcare without being targeted.

[5] It is precisely because attacking hospitals in war zones is prohibited that we expect to be protected. And yet, ten patients including 3 children and 12 MSF staff were killed in the aerial raids.

[6] The facts and circumstances of this attack must be investigated independently and impartially, particularly given the inconsistencies in the US and Afghan accounts of what happened over recent days. We cannot rely on only internal military investigations by the US, NATO and Afghan forces.

[7] Today we announce that we are seeking an investigation into the Kunduz attack by the International Humanitarian Fact-Finding Commission. This Commission was established in the Additional Protocols [sic] of

the Geneva Conventions and is the only permanent body set up specifically to investigate violations of international humanitarian law. We ask signatory States to activate the Commission to establish the truth and to reassert the protected status of hospitals in conflict.

[8] Though this body has existed since 1991, the Commission has not yet been used. It requires one of the 76 signatory States to sponsor an inquiry. Governments up to now have been too polite or afraid to set a precedent. The tool exists and it is time it is activated.

[9] It is unacceptable that States hide behind 'gentlemen's agreements' and in doing so create a free for all and an environment of impunity. It is unacceptable that the bombing of a hospital and the killing of staff and patients can be dismissed as collateral damage or brushed aside as a mistake.

[10] Today we are fighting back for the respect of the Geneva Conventions. As doctors, we are fighting back for the sake of our patients. We need you, as members of the public, to stand with us to insist that even wars have rules.

## **C. STATEMENT BY PRESIDENT OBAMA ON THE CASUALTIES IN KUNDUZ**

[Source: White House, "Statement by the President on the Casualties in Kunduz", 3 October 2015, available at: <https://www.whitehouse.gov/the-press-office/2015/10/03/statement-president-casualties-kunduz>]

On behalf of the American people, I extend my deepest condolences to the medical professionals and other civilians killed and injured in the tragic incident at a Doctors Without Borders hospital in Kunduz. The Department of Defense has launched a full investigation, and we will await the results of that inquiry before making a definitive judgment as to the circumstances of this tragedy. I have asked the Department of Defense to keep me apprised of the investigation and expect a full accounting of the facts and circumstances. [...] We will continue to work closely with President Ghani, the Afghan National Defense and Security forces as they work to secure their country.

## **D. UNITED STATES INVESTIGATION INTO THE AIRSTRIKE ON KUNDUZ TRAUMA CENTRE**

[Source: United States Central Command, "Summary of the Airstrike on the MSF Trauma Center in Kunduz, Afghanistan, on October 3, 2015; Investigation and Follow-on Actions", 29 April 2016, available at: [https://www6.centcom.mil/FOIA\\_RR\\_Files/5%20USC%20552\(a\)\(2\)\(D\)Records/1.%20Airstrike%20on%20the%20MSF%20Trauma%20Center%20in%20Kunduz%20Afghanista n%20-%203%20Oct%202015/00.%20CENTCOM%20Summary%20Memo.pdf](https://www6.centcom.mil/FOIA_RR_Files/5%20USC%20552(a)(2)(D)Records/1.%20Airstrike%20on%20the%20MSF%20Trauma%20Center%20in%20Kunduz%20Afghanista n%20-%203%20Oct%202015/00.%20CENTCOM%20Summary%20Memo.pdf)]

[...]

THE INVESTIGATION



[1] On Oct. 3, 2015, members of U.S. Forces-Afghanistan (USFOR-A) supporting a partnered Afghan force, conducted a combat operation that struck a Trauma Center in Kunduz operated by Médecins Sans Frontières (MSF), also known as "Doctors Without Borders."

[2] U.S. Army Gen. John Campbell, then the Commande [sic] of USFOR-A, directed an investigation to determine the cause of this incident. The lead investigating officer was Army Maj. Gen. William Hickman. He was assisted by Air Force Brig. Gen. Robert Armfield and Army Brig. Gen Sean Jenkins. All three generals were brought in from outside Afghanistan in order to provide an objective perspective. The investigation team included over a dozen subject matter experts from several specialty fields.

[3] The investigative team visited the MSF Trauma Center site and several other locations in the city of Kunduz. The team interviewed more than 65 witnesses including personnel at the Trauma Center, members of U.S. and Afghan ground forces, members of the aircrew and representatives at every echelon of command in Afghanistan. The team had full access to classified information, and the investigation includes more than 3,000 pages of documentary evidence, much of it classified. Gen. Campbell approved the investigation on Nov. 21, 2015.

[...]

#### DETAILED SUMMARY

[4] On Sep. 30, 2015, Afghan forces and a small element of U.S. Special Forces attempted to re-take the City of Kunduz, which had been seized by the Taliban. [...]

[5] On the night of Oct. 2, 2015, the Afghan forces decided to attack an insurgent-controlled site, and requested air support from the U.S. Special Forces element on the ground. An AC-130 Gunship was directed to provide the requested support. The AC-130 launched from its airfield in Afghanistan 69 minutes earlier than the crew had originally planned due to an emergency call, so they did not get all the information they would normally have received before a mission. While enroute to Kunduz, one of the AC-130's critical communications systems failed, resulting in an inability to receive updates from and transmit information to multiple command headquarters. Additionally, after arriving in the operating area, due to significant threats to aircraft in Kunduz, the AC-130 took defensive measures that degraded its ability to locate ground targets. These factors all contributed to the incident.

[6] When the aircrew arrived near Kunduz in the early morning on Oct. 3, 2015, they attempted to locate the Taliban-controlled target site. The Afghan forces provided the correct grid coordinates for the target site to the U.S. Special Forces commander on the ground, who then relayed them to the aircrew through a Joint Terminal Attack Controller (JTAC). Due to distance of the aircraft from the location at issue, the aircrew was initially unable to locate the target structure. When the grid coordinates were entered, the system directed the

aircrew to an open field. The aircrew then attempted to visually identify the target structure based on a description relayed from the Afghan forces, through the JTAC. Based on this discussion over communications systems, the aircrew identified a structure that they believed to be the Taliban-controlled target structure, but was actually the MSF Trauma Center. Before the engagement, one aircrew member, the TV Sensor Operator, identified the correct structure as possibly fitting the described target. However, following several attempts to clarify which structure was the actual target requested by the Ground Force Commander and the JTAC, the aircraft's weapons systems were redirected to the originally viewed structure (MSF Trauma Center). The MSF Trauma Center generally matched the general physical description of the Taliban-controlled target structure which was approximately 400 meters away.

[7] The investigation identified several human errors by the aircrew and ground personnel that contributed to this tragic incident, including poor communication, coordination, and situational awareness. The investigation confirmed that MSF officials provided the correct grid coordinates for the MSF Trauma Center to several U.S. government officials and that the location was properly entered on the U.S. military's "No Strike List" database, but that the aircrew did not have ready access to this database during the strike. The investigation also concluded that the MSF Trauma Center did not have an internationally recognized symbol to identify it as a medical facility, such as the Red Cross or Red Crescent that was readily visible to the aircrew at night. Throughout the course of the engagement, all members of the ground forces and the aircrew was firing on a medical facility and mistakenly believed that it was firing on the intended target, an insurgent-controlled structure approximately 400 meters away from the MSF Trauma Center.

[8] At approximately 2:08 a.m. local time on Oct, 2015, the aircrew began firing on the MSF Trauma Center under the mistaken belief that it was the Taliban-controlled target compound. Starting at approximately 2:19 a.m. MSF personnel notified several U.S. government representatives that the MSF Trauma Center was being engaged. Due to the fighting around Kunduz, it was initially unclear who was engaging the MSF Trauma Center. Following a series of relayed messages through multiple echelons of command, the U.S. Special Forces commander on the ground eventually realised that the AC-130 was engaging the MSF Trauma Center – not the Taliban controlled structure the crew believed it was engaging – and halted the strike at approximately 2:38 a.m. The investigation determined that the steps taken by several U.S. military personnel during this period were inadequate. [...]

[9] The investigation identified 16 U.S. service members whose conduct warranted consideration for appropriate administrative or disciplinary action. The Commander of U.S. Forces-Afghanistan concluded that certain personnel failed to comply with the law of armed conflict and rules of engagement. However, he did not conclude that these failures amounted to a war crime. The label "war crimes" is typically reserved for intentional acts – intentionally targeting civilians or intentionally targeting protected objects.

[10] The comprehensive investigation concluded that this tragic incident was caused by a combination of human errors, compounded by process and equipment failures. The investigation found that this combination

of factors caused both the Ground Force Commander and the air crew to believe mistakenly that the air crew was firing on the intended target, which was an insurgent-controlled site approximately 400 meters away from the MSF Trauma Center.

#### FOLLOW-ON ACTIONS:

[...]

#### [11] Military Personnel Accountability Actions:

- The investigation identified sixteen U.S. service members whose conduct warranted consideration for appropriate administrative or disciplinary action, [...]. The actions included suspension and removal from command, letters of reprimand, formal counselling, and extensive retraining. Five personnel involved were directed out of theatre.

[...]

- [...] In light of the report's conclusion that the errors were unintentional, and after considering other mitigating factors, such as equipment failures, that affected the combat mission, those senior commanders decided administrative measures were appropriate to address the errors made by the service members.
- Some actions taken in these cases may have severe repercussions on the individual's career. For example, receipt of a reprimand can limit an officer's potential for career advancement. Also, further action can be taken by the Service that can impact an individual's career – including denial of promotion and separation from the Service.

#### [12] Operational Improvements: Gen. Campbell directed a series of actions to improve operations in Afghanistan as a result of this incident:

- Gen. Campbell issued an order to conduct supplemental training on the applicable authorities framework, rules of engagement, and the Commander's tactical guidance, all of which were designed to minimize the risks that a tragedy like this would occur. [...]
- Gen. Campbell directed a comprehensive review of the targeting process and published an order reinforcing the application of the NSL, including use of the U.S. Central Command-maintained NSL database.
- Coordinates for MSF and similar facilities in Afghanistan were verified. Aircraft systems are now pre-loaded with key information – including the NSL database – to minimize the reliance on post-launch communications.

- Gen. Campbell issued a revised "Tactical Directive" and "Targeting Standard Operating Procedure" for U.S. Forces-Afghanistan. These classified documents emphasize tactical procedures to minimize the risk to civilians and civilian sites.

- The U.S. Forces-Afghanistan provided MSF leadership with detailed information to facilitate direct contact with the U.S. Forces-Afghanistan Command Center.

[...]

[13] Engagements: Senior U.S. representatives have spoken with MSF officials, including the MSF Executive Director, over two dozen times to express condolences, explain how the tragic incident occurred, and outline future steps.

[14] Condolence Payments: U.S. Forces Afghanistan leaders have offered their sympathies and provided condolence payments to more than 170 individuals and families affected by this tragedy.

[15] Medical Capability: The Department of Defense has approved \$5.7 million in funds to reconstruct the facility that MSF was using and is working closely with the Afghan government, which owns it, to return the building to its previous condition and help restore a medical capability for the residents of Kunduz.

## Discussion

### I. Classification of the Conflict and Applicable Law

1. (Document A, para. [6]; Document D paras [4]-[5])

- a. How would you qualify the situation in Afghanistan? Which rules of IHL apply? (GC I-IV, Art. 3; P II, Art. 1)
- b. Does the US's involvement in Afghanistan influence the classification of the conflict? What rules of IHL apply to the US in Afghanistan?
- c. Does the classification of the conflict matter for determining whether IHL was violated in this case?

### II. Protection of the Wounded and Sick

2. (Document A, paras [2], [6]-[9], [14]-[15])

- a. Do the parties to a NIAC have an obligation to treat the wounded and sick? Does this obligation apply to civilian hospitals such as the Kunduz Trauma Centre? (GC I-IV, Art. 3(2); P II, Art. 7; CIHL, Rule 110)
- b. Does the obligation to respect and protect the wounded and sick apply to combatants? Civilians? Members of armed groups?

3. (Document A, paras [3]-[5]) What is the effect of the agreement between MSF and the parties to the conflict on the protection of the hospital, its staff and patients?

4. (Document A, paras [7]-[9]) Does the obligation to distinguish himself or herself apply to a wounded combatant/fighter? Why do you think MSF concerned itself with removing military clothing from its facility in Kunduz?

5. (Document A, para. [33])

- a. Does IHL permit any differences in treatment of the wounded and sick?

- b. Under IHL, is it permissible for the Afghan Special Forces to search for Taliban members among patients in the ambulances that were leaving the Kunduz Trauma Centre in the aftermath of the airstrikes?
- c. If the Afghan Special Forces arrested injured Taliban suspects who were being transferred from Kunduz Trauma Centre and detained them, would it still have an obligation under IHL to treat them? (P II, Art. 5(1)(a); CIHL, Rule 118)

### **III. Medical Personnel, Facilities and Transport**

6. (Document A, para. [3]; Document B, paras [3]-[5])

- a. Does IHL of NIAC specifically protect medical personnel, facilities and transport? (P II, Art. 9, 10 and 11; CIHL, Rule 25, 26, 28 and 29)
- b. Why are attacks on hospitals and medical personnel in wartime so strongly condemned?
- c. (Document A, paras [10], [15], [18]-[31], [30]; Document B, paras [4]-[9]) When can medical transports and hospitals be targeted under IHL? Was the MSF hospital in Kunduz being used to commit hostile acts outside its humanitarian function? Does the presence of armed combatants, weapons or fighting in a hospital mean that it loses its protection from attack?
- d. Does the fact that the Taliban was in control of the area around the hospital affect whether it could be targeted? (P II, Art. 11(2); CIHL, Rule 28 and 29)
- e. In your opinion, was the Kunduz Trauma Centre a legitimate military objective? By virtue of the presence of wounded and sick Taliban fighters? What if the wounded Taliban fighters were of a high rank? (P I Art. 52(2); CIHL, Rule 8)
- f. How can a hospital be targeted under IHL? Did the United States issue a warning before bombing the Kunduz hospital? (P II, Art. 11(2); CIHL, Rule 28)

7. (Document B, para. [9]) Do you agree with MSF that “it is unacceptable that the bombing of hospital and the killing of staff and patients can be dismissed as collateral damage?” What does IHL have to say about “collateral damage”?

8. (Document D, paras [5] and [7])

- a. In your opinion, did the US do everything feasible to verify that the object of the attack was a military objective? Was the attack suspended when it became apparent that the US was targeting a hospital? (CIHL, Rule 14, 15, 16 and 19)
- b. Given that the AC-130 bomber had launched without its crew receiving the information required for its sortie, that one of its critical communications systems had failed, and noting the inability of the crew to access the “No Strike List” which contained the GPS coordinates of the MSF hospital, do you think that the airstrikes should have been called off in line with the principle of precautions?

9. (Document A, para. [17]; Document D, para. [7])

- a. The US investigation concludes that the MSF Trauma Centre “did not have an internationally recognised symbol to identify it as a medical facility, such as the Red Cross or Red Crescent that was readily visible to the aircrew at night”. What emblems are protected by IHL? What is the purpose of the emblem? Who or what objects can display the emblem? Could this hospital have been marked with the emblem? Under what conditions? Does a civilian hospital have an obligation to display the emblem? By omitting to display the emblem, does a civilian hospital lose its special protection or general protection as a civilian object? Is the answer different if we are dealing with a military medical unit? (GC I, Art. 38, 39, 40, 41, 42 and 44; GC II, Art. 41, 42 and 43; GC IV, Art. 18, 20, 21 and 22; P I, Art. 18; P II, Art. 12; CIHL, Rule 30)
- b. Is a known hospital less protected under IHL if it is not marked with the Red Cross or the Red Crescent?

c. Is it conceivable that the attack could have been avoided if the hospital had been marked with the Red Cross emblem instead of the MSF emblem?

#### **IV. Implementation of IHL**

10. (Document B, paras [6]-[9])

a. "Today, we announce that we are seeking an investigation into the Kunduz attack by the International Humanitarian Fact-Finding Commission". What is the role of the International Humanitarian Fact-Finding Commission? Can MSF ask the Commission to undertake an investigation? Does the Commission have a mandate to investigate violations of IHL in NIACs? Why has this body not yet been used? (P I, Art. 90)

b. Do you agree with MSF that circumstances of the Kunduz attack must be investigated "independently and impartially" and that "we cannot rely on internal military investigations by the US, NATO and Afghan forces"?

11. (Document C; Document D, paras [1]-[3], [9]-[15])

a. Was the US under an obligation to investigate the airstrikes against the Kunduz Trauma Centre?

b. What were the results of the US inquiry? Why did the US inquiry find that its servicemen could not be prosecuted for war crimes? What particular war crimes were being considered in this case? (CIHL, Rule 156 and 158; ICC Statute, Art. 8(2)(e)(i), 8(2)(e)(ii) and 8(2)(e)(iv))

c. What measures did the US adopt in response to the inquiry? Do these satisfy its obligations under IHL? (P II, Art. 19; CIHL, Rule 139, 142, 143, 149 and 150)

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