

EDITORIAL

Bombing medical facilities: a violation of international humanitarian law

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Recently, hospitals in Sri Lanka and Gaza were bombed. In January 2009, a week after being declared a United Nations Relief and Works Agency area for humanitarian goods for displaced Palestinians in Gaza City, the facility was bombed by the Israeli military. This bombing killed civilians in a declared hospital zone.

Closer to home, in February 2009, the Sri Lanka Air Force bombers cluster bombed and fully destroyed the Ponnampalam Memorial hospital in Puthukkudiyiruppu. The Ponnampalam hospital was a modern non-governmental medical facility, named after Dr Ponnampalam who provided medical relief in the Jaffna district in the conflict situation.

These events did receive media attention, but not widespread condemnation. Why have these direct violations of Article 14 of the Geneva Convention been tolerated, in recent times, by physicians, the media and society at large?

Hospitals as a lifeline for the injured

The Geneva Convention's Article 14 relative to the Protection of Civilian Persons in Time of War states: "In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven." (1)

Article 14, if upheld, is a significant humanitarian agreement that gives hope and a safe zone to civilians caught in the crossfire of war. However, these safe zones for unarmed civilians and the injured are also easy targets. If hospitals are bombed in order to be physically destroyed, the attackers also cause psychological damage, by snatching away the only areas that the injured perceive as safe. Historically, this situation has been the ethical basis for providing immunity and protection to hospitals and safety zones; such protection enables healthcare personnel to care for injured civilians or sick military personnel, who are not involved in the conflict.

This movement for the neutrality of medical services during the conflict started some time in the 19th century but was organised in the early 20th century around the International Committee of the Red Cross. The consensus was most effective in the post-second World War period. The Geneva Convention endured by consensus for some years (with few but relatively insignificant violations), but started breaking down around the 1980s. Over the past three decades there has been an erosion of the protection of medical services which is attributable, in part, to the super-powers supporting ultras and extremist groups and changing the very nature of conflict and war.

Is this war?

It is interesting that most of the documented attacks on hospitals have taken place in internal conflicts, resulting in the killing of the state's "own" citizens. In most cases, the aggressor has been an organised state army and the target has been a section of the civilian population which is seen to be challenging /attacking the state. This group of civilians become designated as the enemy even though they may not be armed and organised in the conventional sense. This takes away their identity as citizens (because they are either "terrorists" or "anti-national") and their rights to the protection of the state. The destruction of hospitals which are catering specifically to these "hostile" civilians in conflict signifies a withdrawal of citizenship rights of this group.

When internal conflict is not labelled war, international law is often flouted. Recognising this, a provision was made within the Geneva Convention in 1977. The amendment states, "In the case of intensive fighting, and in the absence of the acknowledgement of a state of war involving the application of the entire law of war, the provisions of the common Article 3 still apply. In addition, the rules of the second additional Protocol must be observed." (2)

However, the status of hospitals in civilian conflict is a hazy area in international law. The Pulitzer Prize winning journalist Roy W. Gutman reported an interesting interpretation of the Convention: "In November 1994, Bihac, in town in northern Bosnia, a UN declared 'safe area', was threatened with attack. To gain entry into the town, a municipal hospital would come under attack.

Invoking the Geneva Convention, the commander in charge countered the attack and defended the hospital. A legal officer however opined that the United Nations had no obligations under the Geneva Conventions, for the world body is not a party to the 1949 Conventions; and that the commander was bound only by Security Council mandates." (3)

Lawful attacks on hospitals

When hospitals, medical units and transport are used for hostile purposes, attacks on them will be tolerated under international law. However, there needs to be adequate proof that the hospital is indeed being used for strategic military purposes. Once this is established, enough time and warning needs to be given to the hospital to evacuate its patients and staff, before striking it. Furthermore, Article 19 of the Fourth Geneva Convention states that hospitals shall not lose their protections under international humanitarian law "unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy." Examples of such acts are "the use of a hospital as a shelter for able-bodied combatants or fugitives, as an arms or ammunition store, as a military observation post, or as a centre for liaison with fighting troops." (2) These transgressions can lead to withdrawal of protection.

The other provision in international humanitarian law under which damage to hospitals is tolerated is when there is "collateral damage" to the hospital as a result of nearby military targets. However, a direct hit to the hospital is not permitted. Further, the nearby military targets have to be of vital military importance in order to justify damage to the hospital. But all too often, this is the standard excuse and needs to be challenged. In March 2003, during the war on Iraq, a paediatric hospital in Rutbah was bombed by the US. This was not accepted by international law as collateral damage.

Hospitals in times of conflict

Conflicts in today's changing world are wars against populations rather than against armies. It is important to renew immunity for medical facilities and personnel when the definitions of military warfare and civilian conflict become blurred, when the conflict is internal and the opponent is often not a soldier but a civilian. The absence of any response from professional bodies to these recent attacks is complemented by the growing power of states which are choosing military solutions to resolve long-standing civilian conflicts. Given the impunity with which these states have been able to use their military forces against their own people, it is not surprising that few are moved by the fact that hospitals, the last refuge of a besieged population, have also come under attack.

Destroying hospitals and interrupting health delivery systems to demoralise people need to be widely condemned and labelled as war crimes, by physician and media groups. It is time that nations, army personnel and politicians who order attacks on hospitals are punished for violating medical neutrality in conflict. Since the UN Convention works only when there is self regulation by nations, perhaps we need to work towards giving the Convention teeth or making new laws. There is a need to relaunch the campaign for neutrality of medical care in conflict situations by the international medical community, particularly by international associations of health professionals and human rights organisations.

Acknowledgement: *The authors thank Amar Jesani for his comments on this editorial.*

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3. Gutman RW. Spotlight on violations of international humanitarian law: the role of the media. *International Review of the Red Cross*. 1998. 325:619-25.

CORRECTION:

In the obituary of Dr Wishwas Rane (Phadke A. Dr Wishwas Rane (1930-2008). *Indian J Med Ethics* 2009 Jan-Mar; 6(1): 54-5), it is stated that 'Ratnagiri Drugs was the harbinger of the successful LOCOST experiment launched later by a collective.' The author corrected this statement as LOCOST had already been formed when Ratnagiri Drugs was being launched.