

Health Care in Danger workshop for academics

Workshop structure

I. Film: *Health care in danger: The human cost* 15 min

- Introduction to the film and the ICRC project
- In-class brainstorming on the issues touched upon in the film

II. Presentation: 75 min

- The issue of safe access to health care and the knock-on effects
- The legal framework protecting health care in armed conflicts and other situations of violence
- Other obligations and medical ethics
- The use of the emblems

III. Questions and discussion 30 min

Break and informal discussion 30 min

VI. Case studies¹

Based on the legal approach of the international humanitarian law (IHL) reference publication *How does law protect in war?*, the sole purpose of this workshop is to allow participants to identify which rules of international humanitarian law could or should have applied in practice. Hence, the discussion will only address legal issues and arguments.

A. Introduction to the cases and questions 15 min

B. Group discussion (three groups) 45 min

C. Group report and discussion 60 min

¹ Case studies and discussions taken from Marco Sassòli, Antoine Bouvier, and Anne Quintin, *How does law protect in war?*, 3rd. ed., ICRC, Geneva, 2011, also available online at:

<http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 02.05.2013)

According to the introduction to this IHL reference publication (Vol. I, p. 35–36), "[n]either the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents [...] The criteria for inclusion of a document is not whether historical facts are accurately described, but whether it allows a discussion of a particular aspect of IHL. No description of alleged historical facts in a reproduced document can therefore be construed as an opinion of the ICRC or of the authors."

Sri Lanka, Jaffna Hospital Zone (1990)²

Timeline:

- June The Liberation Tigers of Tamil Eelam (LTTE) breaks its peace agreement with the government and launches a military offensive in the north and east of the country. The nearby Jaffna Teaching Hospital closes due to heavy fighting.
- September Sri Lankan troops take over Jaffna fort from the rebels and, after two weeks, abandon it and offer it to the ICRC to allow the establishment of a safety zone. At the same time, the LTTE claims that the fort has actually fallen into their hands.
- November The ICRC establishes a hospital and safety zone to resume the Jaffna Teaching Hospital.

Group discussion:

1.
 - a. Is the conflict in Sri Lanka an international or a non-international armed conflict?
 - b. Is any kind of protected zone provided for in the law of non-international armed conflict?
 - c. On which legal basis could such a zone be established? (GC I-IV, Art. 3)
 - d. Assuming that IHL applicable to international armed conflict applied, may the emblem be used for the hospital compound?
 - e. Why, according to the rules, is only the hospital zone to be clearly marked with red crosses for easy identification from the ground and the air?
 - f. In non-international armed conflicts, when can the emblem be used? By whom? Under what conditions?
 - g. Could the emblem be used if the zones were not under ICRC control? (GC I and GC II, Art. 44; P II, Art. 12).
2.
 - a. What is the aim of the hospital zone? And of the safety area around it?
 - b. Which of the rules listed in the ICRC press release would apply anyway under IHL even if no hospital zone or safety area were established? (GC I-IV, Art. 3)

² Case study and discussion taken from Marco Sassòli, Antoine Bouvier, and Anne Quintin, *How does law protect in war?*, Vol. III, 3rd. ed., ICRC, Geneva, 2011, also available online at: <http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 02.05.2013)

Iraq, Care for Wounded Enemies (2007)³

Timeline:

- First incident: Three helicopters touch down at Camp Speicher near Tikrit carrying four men, all Iraqis, who are hurt badly. Two of them are insurgents, while the other two are bystanders caught in the crossfire.
- Medical assistance: The worst injured – one of the insurgents – goes immediately into surgery. The blood supply is soon running out and other major traumas are coming in.
- Blood donation: Volunteer blood donors are called and dozens of soldiers line up.
- Second incident: An Iraqi policeman shot in the head in the same incident is brought to the hospital, but his life cannot be saved.

Group discussion:

3. a. Does IHL provide for equal treatment between own wounded and enemy wounded?
 - b. What about between a wounded combatant and a wounded insurgent who does not have combatant status?
 - c. And between an insurgent who has committed violations of IHL and an insurgent who has not?
 - d. What do you need to know to determine whether the insurgents in this case violated IHL? Who should be taken care of first?
 - e. Does the nature of the conflict influence the answer to these questions? (GC I-IV, Art. 3; GC I, Art.12; P II, Art. 7; CIHL, Rule 10)
 - f. Would denying medical attention to the insurgents who have committed violations of IHL be a grave breach? (GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147)
4. Is it realistic to expect military medical personnel to make the same effort to save the lives of those who tried to kill their comrades and to save those of their comrades?

³ Case study and discussion taken from Marco Sassòli, Antoine Bouvier, and Anne Quintin, *How does law protect in war?*, Vol. II, 3rd. ed., ICRC, Geneva, 2011, also available online at: <http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 02.05.2013)

Sri Lanka, Conflict in the Vanni (2009)⁴

Timeline:

Attacks against hospitals:

During the fighting in 2009, the few hospitals that exist in areas controlled by the separatist Liberation Tigers of Tamil Eelam (LTTE) have repeatedly come under artillery attack, including the hospital in the town of Puthukkudiyiruppu (PTK). It seems that attacks against the hospital were due to the presence of LTTE forces.

Obstruction of the evacuation of the wounded and sick:

International organizations have been prevented from evacuating patients and medical staff from the war zone. In the case of PTK hospital, the ICRC was only able to evacuate sick and wounded patients requiring urgent medical attention, but safe passage for the other patients was not granted for a further two weeks by the parties to the conflict.

Group discussion:

5. a. Are hospitals protected against attacks during non-international armed conflict?
 - b. Do you agree with Human Rights Watch that the presence of wounded LTTE members did not turn the hospitals into legitimate targets?
 - c. Would the presence of LTTE members have turned a hospital into a legitimate target if they had not been wounded but were using it for military purposes?
 - d. Is it a war crime to attack a hospital during a non-international armed conflict? (P II, Art. 11; CIHL, Rule 28; ICC Statute, Art. 8(2)(e)(ii))
6. a. Was Sri Lanka under an obligation to allow access by international aid organizations to all those in need?
 - b. Is there an obligation to allow access by the ICRC? (GC I-IV, Art. 3; P II, Art. 18(2); CIHL, Rule 55)
 - c. May Sri Lanka restrict the movement of relief agencies? (GC I-IV, Art. 3; P II, Art. 18; CIHL, Rules 55-56)
 - d. Are the parties to the conflict under an obligation to ensure the safe passage of relief agencies when they are evacuating the wounded and sick?
 - e. If safe passage is not ensured, should the parties take into account the fact that wounded and sick patients are being evacuated? (GC I-IV, Art. 3; P II, Arts 7 and 18; CIHL, Rules 56 and 109-110)

⁴ Case study and discussion taken from Marco Sassòli, Antoine Bouvier, and Anne Quintin, *How does law protect in war?*, Vol. III, 3rd. ed., ICRC, Geneva, 2011, also available online at: <http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 02.05.2013)