

Dissertation

Diploma of Advanced Studies in Humanitarian Action

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*Changing practice: The role of law in protection activities.
An analysis of the use of the legal argument in humanitarian advocacy
aiming at the protection of health workers in emergencies.*

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“Acknowledgments”

Humanitarian action has a multidisciplinary essence. I would say that it is almost impossible or even ineffective to consider humanitarian action through only one scientific discipline. It is correct to examine legal framework or historical development. But it demands much more than that. In order to have a comprehensive understanding of humanitarian action, one should use anthropological, economic, political, legal, historical, sociological and many more lenses. Only in this way, one can see a rich diversity of the sense of the humanitarian action, but also its dynamic impacts. After all, the human being and society requires much more diverse reflection and it cannot be framed only by one scientific discipline.

I want to thank CERAH for equipping me with these multidisciplinary lenses which I will absolutely use in my professional path.

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Acronyms

CIHL	Customary International Humanitarian Law
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INGO	International Non-Governmental Organization
IRAC	Issue, Relevant law, Applicability, Conclusion
MSF	Médecins Sans Frontières
SCF	Save the Children Foundation
WHO	World Health Organization
UN	United Nations
UNHCR	United Nations High Commissioner on Human Rights
USFOR-A	United States Forces in Afghanistan

Terms and their definitions

Argument- “the name given to a passage designed to convince the reader or listener of the validity of some conclusion. To qualify as an argument, the passage must contain reasons why the reader or listener should accept the conclusion. A mere conclusion, unsupported by reasons, is not an argument. For example, the statement, we should not be at war”, is not an argument because it contains no reasons in support of the conclusion. The statement, “We should not be at war because the costs outweigh the benefits”, is a very simple argument because it does contain at least one reason in support of the conclusion.”(White 2009:108)

Healthcare – includes health workers and medical facilities. (authors’ definition)

Humanitarian advocacy – a concept of specific activities framed as a strategy, which is aimed at changing policies, behavior, practices to alleviate the suffering of people in complex humanitarian settings. Advocacy in humanitarian action – narrow understanding of advocacy as a tool used in humanitarian action for protection and assistance. There is a broader understanding of advocacy as a human-rights based approach aimed at addressing the root cause of poverty, misery, famine. (authors’ definition)

Legal argument – “an argument that cites at least one rule of law in support of the conclusion”(White 2009:108).

Protection – “reflects all the concrete measures that enable individuals at risk to enjoy the rights and assistance foreseen for them by international conventions...If these laws are not used, relief action risks weakening the framework of international legal protection set up for individuals in danger”(Francoise Bouchet-Saulnier 2007:349)

Abstract: Aero-bombings of hospitals amount to 52% of all types of attacks against health care facilities having the most damaging impact on public healthcare according to WHO. This alarming tendency triggered the need for critical analysis of this phenomenon and action to be taken by humanitarian actors in response. This paper examines the use of legal arguments in humanitarian advocacy campaigns, based on a case study with the ICRC and MSF. It proposes the IRAC (Issue; Relevant Law; Applicability; Conclusion) method that can help to make a legal analysis and to be used in designing a humanitarian advocacy strategy.

Keywords: protection, health care, legal argument, humanitarian advocacy, aero-bombings.

1. Introduction.

Medical personnel, facilities, and vehicles are under the protection of International humanitarian law since 1864, when the first Geneva Convention for the Amelioration of the condition of the wounded in armies in the field was adopted. Article 2 of the Convention says that “Hospital and ambulance personnel, including the quartermaster's staff, the medical, administrative and transport services ... shall have the benefit of the same neutrality [as military hospitals and ambulances] when on duty, and while there remain any wounded to be brought in or assisted” (ICRC IHL Database 1864). Later relevant provisions concerning the protection of medical personnel were developed in all conventions that are framed and known altogether as Geneva Conventions. Complimentary to written commitments warring parties are constrained by International Humanitarian Customary Law (CIHL). Thus, for instance, rule 35 of the Customary International Humanitarian Law prohibits “Directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities” (Henckaerts 2005). This is one of the “fundamental general principles of IHL” that is confirmed by the international judicial practice in the case concerning Military and Paramilitary Activities in and against Nicaragua (ICJ 1986).

Protection of humanitarian health workers emerged as a specific matter of concern and as a challenge of the past decade (Brooks 2016). There have been a number of discussions in humanitarian space regarding health workers to be under attack by the warring parties (Calain 2017; Irwin 2014; Neha Madhiwalla 2009; Rubenstein and Bittle 2010; WHO 2016). Even though different types of attacks against health care in emergencies took place much more before receiving global media attention and condemnation by the UN (Calain 2017; Neha Madhiwalla 2009; Service 1918). It is linked with the evolution of humanitarianism and character of conflicts (Lamont *et al.*, 2015). Before the warring parties were mostly States, nowadays a vast majority of conflicts are asymmetric (Geiß, 2006:757-758). Such asymmetry compromises the perception of involved stakeholders (that include warring parties and victims) towards humanitarian organizations, shrinking humanitarian space and blurred distinctive lines between combatants and civilians in the age of global anti-terroristic challenges (Collinson and Elhawary 2012; Giladi 2010).

Problem statement:

During the period from January 2012 – December 2014 around 2,398 attacks against medical personnel, facilities and vehicles had been recorded in 11 countries (ICRC 2011; Coalition 2016; WHO 2016). The World Health Organization (WHO) consolidated four years of

comparative data (from 2014 to September 2017) on attacks against health care which reveal the most damaging type of attack - 52% are bombing attacks (WHO 2017).

Those attacks generated a need for analysis of the causes and action to be taken for their prevention and response. As a result, the ICRC launched the project “Health Care in Danger”, characterizing the issue as “thematic” in 2011 (Gentile 2013). Even though the ICRC started the project in 2008, the aero-bombing of Trauma Center in Kunduz (Afghanistan) on October 3, 2015, became a turning point in public opinion and raised concern on the level of the UN Security Council. In 2015 MSF launched the “Medical care under fire” initiative and social media act of solidarity with the victims of Kunduz bombing with a key message “Not a Target”. The UN, ICRC, MSF publicly condemned the attacks on health facilities in Afghanistan, Yemen, Syria and other conflict zones (Nations 2016).

Aim of the research paper

The aim of this paper is to perform a literature review to reveal if humanitarian advocacy is used for protection of humanitarian health workers and the way it is articulated. Therefore, the two case studies by the ICRC and MSF mentioned above will be used to assess advocacy strategies used for the protection of humanitarian health workers. Finally, this paper will propose a practical method that can be used in designing a humanitarian advocacy strategy and it will identify avenues for further debates.

For the purpose of this paper, the focus will be narrowed specifically on “bombings” of health facilities among other types of violence. The stated problem is based on the application and respect to IHL as well as the complex issue of impunity in international relations. The questions of bringing responsible warring parties to be accountable for the war crimes layout of the scope of this paper.

This paper will add to the development of the concept of humanitarian advocacy by the use of legal argument based on IHL in the process of encoding and decoding messages, even though, still keeping accent on the idea that communication is a central element.

1.1. Methodology and limitations.

This paper proposes a review of academic literature, policy papers, and other relevant documents in order to understand how humanitarian actors determine and use humanitarian advocacy for the protection of health facilities in humanitarian settings. It also compares the use of “emotion” and “legal argument” in humanitarian advocacy.

Although there is a vast literature on the protection of civilians in conflicts, one can observe a scarce information about the protection of health facilities in emergencies. It is also linked with the fact that global media and public attention to the attacks against health care

started to be raised recently and resulted in the launch of "Healthcare in danger" project by the ICRC in 2008. The other limitation of the research is that even though there is plenty of literature on ethics in humanitarian action, one can hardly find anything about ethics in humanitarian advocacy. Therefore, the study is based on a literature review and analysis of advocacy policies of main humanitarian organizations, such as the ICRC and MSF. These two humanitarian organizations are chosen because of their specific mandates, their historical differences and nature. The first (ICRC) restrains from public speaking in favor of "behind-the door" diplomacy, while the second (MSF) has chosen testimony and public speaking in its very core mandate. Both organizations have a considerable experience in providing medical care in emergencies.

2. Literature review.

The literature review will examine three main subjects: the concept of humanitarian advocacy, its challenges and limitations, but also a tool to address the protection of public health care from bombings; the role of the ICRC and MSF in using advocacy and the use of IRAC method by humanitarian advocates. IRAC method is used mostly by lawyers for legal analysis. After introducing this method to humanitarian advocacy, it will be adapted for humanitarian objectives.

2.1. Protection of health care in humanitarian settings.

This section demonstrates how humanitarian advocacy could be exploited by humanitarian actors as a tool to address attacks against health care. There are at least two important factors to be considered in this regard. First is closely linked with the protection of health care in humanitarian settings and second is linked with opportunities and limitations of humanitarian advocacy.

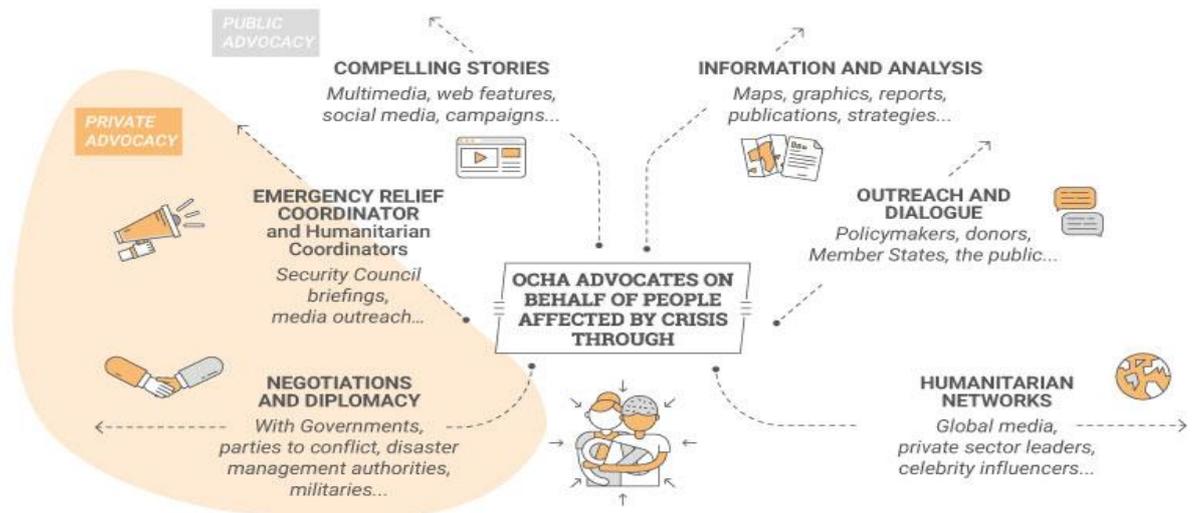
Aero Bombardment as a method of warfare was used during the Spanish Civil War (1936-1939) and was recognized as unlawful in theory of international law. The use of internationally recognized and protected symbols of the Red Cross and Red Crescent is strictly regulated. In order to gain protection while operating within the territory of a certain country, in practice, international humanitarian organizations legally frame their operational activities through Memorandums of Understanding or other types of agreements granting them access and ensuring protection. The same documents can include some restrictions as States in most cases want to ensure the confidential character of the findings on the field or by controlling a monitoring of the use of aid (Magone, Neuman, and Weissman Fabrice 2011). Geneva conventions provide a legal recognition and the protection of emblems of the ICRC and all Red Cross movement. Meanwhile, emblems of other international humanitarian organizations don't

enjoy the same level of internationally recognized duty to protect them. Thus, for example, one of the elements of the legal position of the Central Command of the United States of America in explanation of air bombing of Trauma Center in Kunduz is: “MSF Trauma center did not have an internationally recognized symbol to identify it as a medical facility, such as a Red Cross or Red Crescent that was readily visible to the aircrew at night” (Air and Base 2015). Here is the assumption: does this fact compromise the protection of other INGOs including MSF or other national medical units from further air-strikes? The question remains open.

In humanitarian settings, when a rapid emergency response is needed, advocacy is used as a tool to raise awareness about assistance, protection and access to the wounded, sick, other people in need of humanitarian aid (MSF, ICRC etc). Another approach suggests assistance in the development and therefore advocacy is a considerable part of policies and strategies of INGOs (OXFAM, SCF, UNHCR etc.). Whatever response approach is chosen, humanitarian actors can build effective response plan for advocating on behalf of people in need in order to change the policies, behavior, perception, practices to alleviate the suffering of all deprived people.

The “raison d’être” of advocates is their capacities to advocate on behalf of those who are in need of professional support. An advocate can change the life of his client or several clients. The number of the "beneficiaries" enjoying the result of advocating effort of a humanitarian actor can reach thousands. When an advocate builds his or her defense strategy by using legal argumentation to present in the court, humanitarian actors can build an effective plan for advocating on behalf of people in need in order to change the policies, perception, behavior, practices to alleviate the suffering of all deprived people. In most cases, such efforts are potentially impacting the lives of much more vulnerable people. However, it has some limitations as well, such as the “lack of shared understanding of protection threats” (Alnap 2015). Having deep roots in human – rights dimension, but being evolved in humanitarian action, humanitarian advocates use a full range of tools: from “behind-the-door” negotiations to public denunciation (Slim and Bonwick 2005).

The critical review of the literature regarding humanitarian advocacy reveals that most actors producing advocacy policies and campaigns closely relate to communication as a core element of it (UN OCHA; UNICEF). For others, for example, CARE, advocacy is not about communication, but rather about influence (CARE, 2014).



Title: UN OCHA humanitarian advocacy channels and tools with division: private and public advocacy (from the UN OCHA official web page)

Humanitarian advocacy has become popular in the 1990s, in the “surge of the debate between “classic” and “new humanitarianism” (Gorin, 2017). There are several points that are in favor of the conceptualization of humanitarian advocacy. First is linked with a clear “No Harm” approach (DuBois 2007). For humanitarian organizations, it is important to develop humanitarian advocacy strategies according to main humanitarian principles and ethics. So, following this line we could also talk about ethics of humanitarian advocacy. The literature dedicated to the ethics in humanitarian advocacy is scarce. Although there is a plenty of literature about ethics in humanitarian action (Slim and Bradley 2013; Smith 2016; Nolan and Mikami 2013; Calain 2013; Abu-Sada 2012). It might be linked with the difficulty to operationalize humanitarian ethic principles and to measure the impact. Even though it is of high importance that humanitarian organization (whatever identity and mandate it has) should take into consideration ethics while designing advocacy strategy. This assumption can be backed – up by the recognized fact that its highly politicized area of action and the very core target of it – is a change of policies and behaviors. Another relevant point is that humanitarian advocacy is generally regarded as a tool to gain access to the vulnerable population in complex emergencies and this is part of the protection as larger “umbrella”. As mentioned above, there are several approaches to advocacy in the humanitarian sector. Thus, for instance, advocacy is framed as “speaking out on behalf of people’s need for material help (assistance), defense of people’s safety and dignity (protection), economic support (livelihood)” (Slim 2005). It is a narrow definition of humanitarian advocacy because it implies only public statements, excluding other "private" advocacy means. Another example is MSF Access Campaign, launched in 1999 and

designed to push institutions, governments, business structures and INGOs in order to make access to medicines easier (MSF Access Campaign,1999). It targets developmental policies and creates a better access also for those caught in an emergency. Thus, we can observe a contiguous approach in an operational strategy of the organization. It mostly operates in emergencies but also considers long-term improvements.

“According to Keck and Sikkink (1998) advocacy work requires a clear cognitive frame within which an issue can be defined and explained to a target audience. A cognitive frame serves to show that a given state of affairs can be changed through identifying the responsible parties and suggesting credible solutions.” (M.Haug: 16). Credible solutions require legal reasoning based on arguments “knitted” in “cost-benefit calculus” in order to gain more receptivity in the dialogue and to change behavior or to have desired positive impact.

So, protection of health care from air bombings should not be an issue considered on the ad hoc basis. It deserves much more responsible attention and understanding by all States and actors of the level of damaging long-term impact on public health. There are two main reference points in humanitarianism: first is grounded on the assumption that humanitarian assistance is apolitical and neutral (Bouchet-Saulnier, 2006: xx). The second one is completely opposite, it is assumed as a politicized scope of activities (Audet, 2011:447-472; Egger, 2016). Everyone would agree that humanitarian relief, "short-term" act, in its nature, should have a "long-term" positive effect for people affected by a man-made or natural disaster, thus humanitarian advocacy is a needed puzzle that is bridging emergency and development.

One of the key indicators of the effective advocacy designed for the protection of healthcare is the UN Security Council resolution 2286 (United Nations 2016). This resolution recalls “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” (United Nations 2016). Even though it is not specified the typology of the attack. It would be more effective to “name” aero bombings particularly instead of providing a generic term. This is also linked with the emerging pattern of aerial warfare as a military tactic (Fouad et al. 2017). Thus, for instance, the Land-mines Ban convention (Ottawa Convention) was successful because of naming very specifically land-mines and the dangerous effect they cause. One could say that the UN Security Council resolution 2286 didn’t have immediate effect and attacks on health care still take place, but, nevertheless it records the clear stand of the international community against attacks on health care. Behavior changes take time and humanitarian advocacy in the case of protection of health care demands a long-term commitment.

2.2. The art to swim between two water: From discretion to denunciation.

This section analyses two different humanitarian organizations and their activities aimed at protecting humanitarian healthcare personnel. It also examines the nature of their mandates, operational constraints and the use of humanitarian advocacy for protection activities.

The literature review shed light on two different approaches and challenges for humanitarian advocacy. One is linked with the idea that as far as public advocacy is linked with the changes of policies, it has highly political nature and is perceived as a tool to increase visibility and sometimes even self-promotion (Piccinini, 2010).

The ICRC has a special institutional legal status recognized by all State parties to Geneva Conventions and Additional Protocols of 1977. One of the main duties of the ICRC is to ensure that the IHL is implemented by all parties. Protection of the victims of violence and humanitarian assistance in conflict areas is one of the core element of its activities.

The ICRC, by nature, has legal bonds with States and it tends to use often discreet advocacy. Public denunciation is a last resort used for protection (Kellenberger, 2004:601). The ICRC has a clear policy which includes several conditions to be met before taking the decision to speak-out: repeated grave violations of IHL; confidential measures are exhausted; the public denounce is in the interest of affected populations; the ICRC delegates must have witnessed the violations personally (Delorenzi, 1999:30). It must be said that the ICRC took the first initiative in preventing air bombing of hospitals in early January 1935 during Italo- Ethiopian war, by proposing an innovative approach broadening the scope of Geneva conventions and "improving the security of field hospitals" (Baudendistel, 2006:172). Notifications of the deployed hospitals by foreign National Red Cross Societies and movements of field hospitals in order to increase protection and respect to Red Cross emblem was first exploited by warring parties. This practice has been used, but it does not guarantee complete security for humanitarian actors and hospitals supported by them. Thus, for example, GPS coordinates of MSF Trauma Center in Kunduz were given to the USFOR-A (US Forces in Afghanistan) and were added to the "No Strike list". This didn't prevent the hospital from being bombed. According to the Geneva Conventions, warring parties should take all feasible precautions measures before to target civilian object (IHL customary rule 14). Military manuals of States include principles of precaution and proportionality. This is a very small "window" that allows escaping from legal consequences. It is up to fact-finding commission, international tribunal to collect all evidence and to determine if the war crime took place and the measures to be taken in response. These are the post-factum activities aimed at restoring truth and bringing those responsible to justice.

Humanitarian organizations contribute to the protection of their humanitarian health personnel exposed to danger by identifying the core problem and raising awareness between those who can change or stop those attacks. The ICRC public campaign “Healthcare in Danger” for protection of healthcare personnel designed for targeting three levels of involved stakeholders: medical personnel, NSAG and State Army.

Title: the three levels of stakeholders targeted by the ICRC advocacy. (graph by the author)



For its medical staff, the ICRC developed the e-learning module "The rights and responsibilities of healthcare personnel working in armed conflicts and other emergencies" and “Ensuring the Preparedness and Security of Health-Care facilities in Armed conflict” (ICRC 2015). For the level of armed group, they have developed a practical tool that provides armed groups on relevant IHL obligations and practical measures that armed groups can adopt to safeguard the provision of health care: “Safeguarding the provision of health care. Operational practices and relevant International Humanitarian Law concerning armed groups” (International Committee of the Red Cross 2015). For the national level, it provided recommendations and measures for "Promoting military operational practices that ensure safe access to and delivery of healthcare" (ICRC 2014).

MSF, on the other hand, is an international organization which has a very specific principle of independence which implies fund-raising from private sources, not governments. Not having a strict advocacy policy, MSF is more guided by common sense and gentlemen agreement when facing dilemma to make public certain cases. There are several factors to be discussed before taking decision on public statement. It is a sort of operational risk assessment which includes analysis of “impact on the security of MSF teams and beneficiaries, expected positive impact on the situation of the beneficiaries, importance of medical activities, replacement possibilities in case if MSF is denied access” (DuBois 2007). MSF does not “speak on behalf of a local population (and hence endangering that population), but speaks in its own voice about that population” (DuBois 2007). Both bottom-up and headquarters-down advocacy

requires a “delicate balance to be struck between using data/information from the field and safeguarding the security of beneficiaries and staff” (DuBois 2003).

Since the aero - bombing of MSF Trauma center in Kunduz (Afghanistan) on October 3, 2015 MSF started to use public humanitarian advocacy for raising awareness of the need of protection of medical facilities from aero-bombings and other types of acts of violence. It is the first time in the history of humanitarianism when the ICRC and MSF raise voice together against this problem. Mr. Peter Maurer, President of the ICRC and Ms. Joanne Liu, President of the MSF, joined the UN Secretary-General in addressing to the UN Security Council and bringing the problem of bombing hospitals into the UN Security Council agenda. “Bombing hospitals meant hundreds of thousands of people losing access to health care and the erasure in seconds of decades-long efforts to reduce child mortality, improve maternal health and fight disease” according to the President of the ICRC (United Nations 2016). When saying that “Such attacks were described as mistakes, but they amounted to a massive, indiscriminate and disproportionate targeting of civilians in urban settings”, the MSF President made a link to the principles of IHL prohibiting indiscriminate attacks (CIHL Rule 12), the principle of proportionality in attack (Article 51(5)(b) and 57 of Additional Protocol I) (United Nations 1977). The message has been passed. The impact of the message can be assessed by the fact that the UN Security Council adopted resolution 2286 (2016).

Since organizations have different identities and mandates, their operational activities and mode of delivering messages through humanitarian advocacy differ. Even if the ICRC uses the word “representation”, advocacy is embedded in the ICRC policy. Legal arguments within the dialogue are stronger with any supporting data. As, for instance, by showing that the majority of medical facilities and workers represent local medical capacity of the local health system being under attack, ICRC manages to increase its effectiveness in the area of protection. Other example is when the ICRC advocated for “An improvement in security conditions” because Somali population was at risk. Main stakeholders to whom the message was addressed were the Somali authorities and the international community. (Delorenzi and International Committee of the Red Cross., 1999, P.46).

Denunciation opens door to political realm, when humanitarian organization explicitly takes side. When ICRC, taking into consideration its nature, has the capacity to advocate on behalf of victims in order to alleviate sufferings and save lives in a more discreet way, MSF, having its media visibility and capacity to stay independent, can complement the efforts of the ICRC. These two organizations are complementing each other in humanitarian space.

The most important principle of humanitarian action is impartiality. When humanitarian organization denounce violations of the law it implicitly “takes side”. Witnessing in the criminal

tribunals is a matter of choice for humanitarian organizations. The ICRC has a special status and it keeps confidentiality as a main pillar of activities. Thus, for instance, a Trial Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia “afforded an absolute immunity from testifying to a former employee of the International Committee of the Red Cross (“ICRC”) in order to protect the impartiality of the ICRC” (Prosecutor v.Radoslav Brdjanin Momir Talic 2002). Close relation to state bodies in charge of prosecution or justice can have an impact on operational activities and security of humanitarian organizations. It is a matter of effectiveness and prioritization. If **the main objective is to reach people trapped in conditions of violence and to provide medical help**, so there should be a clear message to all stakeholders, that **“doctors are not prosecutors, neither investigators”**. It is a dilemma and a matter of choice for every humanitarian organization within the limits of mandate. Besides this is actual as for all types of violence against medical staff.

3. Discussion.

3.1. The use of IRAC by humanitarian advocates.

“If humanitarian action violates existing legal standards, it may, paradoxically, weaken humanitarian law and place victims at greater risk. Aid activities and acts of resistance to inhumanity must have a legal, intellectual, and material structure if they are to resist the awful balance of power in which they operate and seek to achieve their humanitarian goal” (Bouchet-Saulnier, 2007: xxiii).

This section states interpretation of IRAC method for humanitarian advocacy. It provides a case study on bombing Trauma Centre in Kunduz relating to key messages being passed by the ICRC and the MSF to UN Security Council. It demonstrates how the use of IRAC method can contribute to develop better advocacy campaign for protecting healthcare personnel from aero bombing.

The literature review reveals that attack on health care personnel in humanitarian settings is a grave violation of IHL and therefore it should be stopped. It also shows that there can be several ways to address those attacks. One is to bring warring parties into accountability. Other is to prevent those attacks by increasing awareness using humanitarian advocacy and to generate respect to established rules of engagement.

Summarizing the literature review one of the identified gap is the use of legal arguments for protection of healthcare personnel in humanitarian settings. The problem that this paper

address is the aerial bombings and protective activities of humanitarian actors facing directly impact of those attacks.

The solution of the stated problem can be twofold: preventive or judicial. The last is out of the scope of this paper. Humanitarian advocacy is considered as part of preventive measures with the core element – legal argument. Legal argumentation is important because it is one of the most appropriate "languages" that States understand. Use of the IRAC method can contribute to the development of humanitarian advocacy strategy by using legal arguments and passing them to key stakeholders.

A cornerstone of humanitarian advocacy is a core argument, mostly known as a key message. It is backed up by "humanitarian argument" built on moral, religious, cost-benefit, legal and other types of arguments (Slim, 2003:15).

As shown above, there is an assumption that the attacks on health care are done by States and NSAG and can have accidental (collateral damage) or deliberate character. In both cases, taking into consideration the complexity of conflict environment and power dynamics, the cross-cutting and core arguments of the advocacy campaigns should be based on the IHL and relevant bodies of law such as IHRL and national law. This approach can help to increase respect to IHL as well. This kind of argumentation is a domain of legal departments of humanitarian organizations. It requires specific competency to articulate issue in a proper legal language. But first and foremost, this allows building more solid statements to which States or NSAG have to pay attention.

Review of several manuals and policies reveals that:

One of the points in advocacy is to “Understand the relevant provisions of the normative framework, and the obligations and roles of the parties to armed conflict” (Practitioner’s Manual on Humanitarian access in situations of armed conflicts, by the Swiss Federal Department of Foreign Affairs, the UN OCHA and Conflict Dynamics International Version 2, December 2014; The CARE international advocacy handbook). There is a well-organized Compendium of the International legal frameworks for Humanitarian advocacy (UN OCHA 2011). This shows, that humanitarian practitioners work with a vast quantity of norms, but there is a lack of methodology. This section will cover the gap by introducing one of the methods of legal analysis.

To define a feasible objective of advocacy strategy in humanitarian action and to set up a plan of activities, one needs to understand the root causes of the problem. Is it linked with a gap in the regulations, laws, or there is a lack of implementation of those rules? It also depends on the context. IRAC is a method used mostly by lawyers. This method requires identification of 4 main points: Issue, Relevant Law, Applicability, Conclusion. It can be used as one of the tools

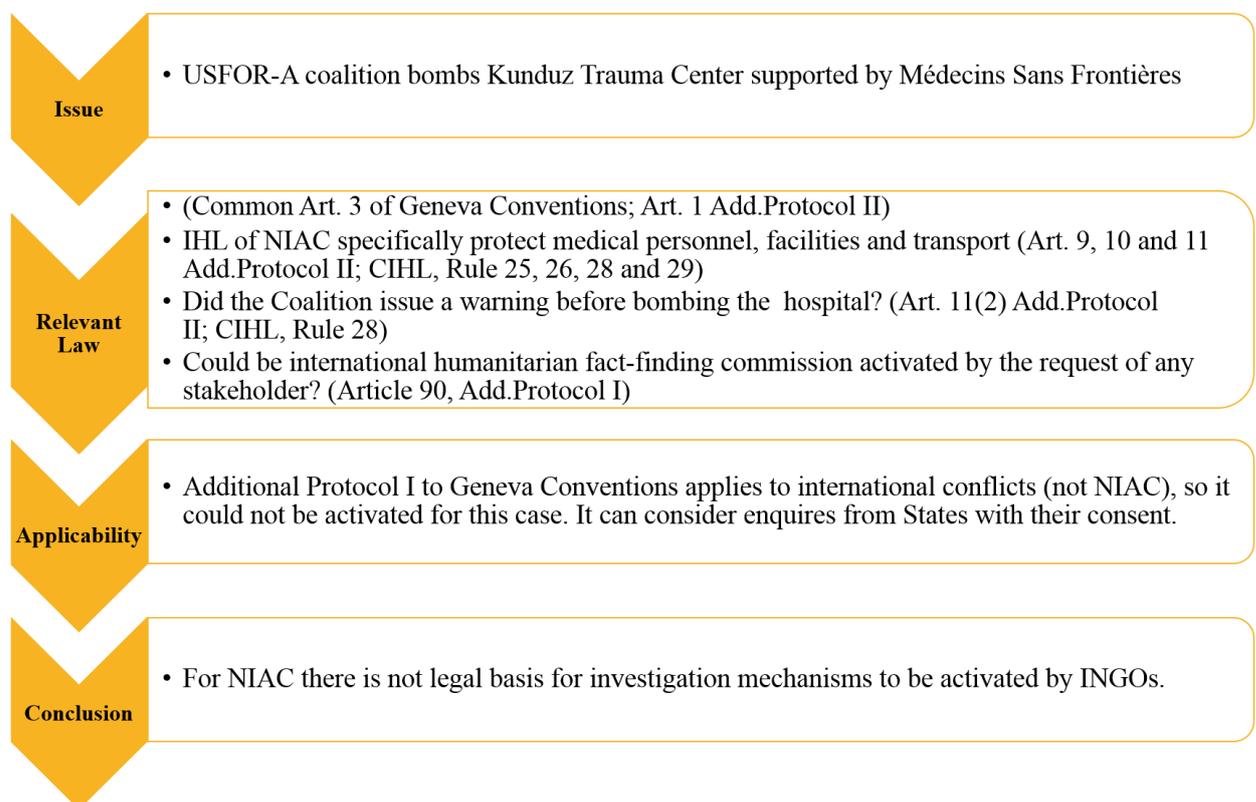
when designing humanitarian advocacy campaign. Why is it important? Because it allows to include legal norms for building arguments and making humanitarian advocacy more accurate, feasible and cogent. Other methods are not offering inclusion and reflection on legal norms even though one can find a lot of books with listed international humanitarian conventions and other norms of international law.

- **Issue:** description of the problem. For example access to vulnerable and conflict-affected people in need of humanitarian aid etc.
- **Relevant Law:** to do a list of laws, conventions to which the State is party
- **Applicability:** How this law is applied? This allows identifying the gap whether it is on the level of implementation or there are no regulations per se.
- **Conclusion:** Allows to have a more precise picture for action on the level of policy changes (identified target on local; regional; global level)

Thus, IRAC may be helpful in designing advocacy strategy as a method appealing to material elements of the argument rather than “emotions”.

Following example demonstrates how IRAC method can be used in the case of protection healthcare personnel from aerial bombings. It allows identifying gaps and constraints in current legal regulations.

This graph shows how IRAC method can be used in the case of aero-bombing of Kunduz Trauma Centre in Afghanistan in 2015, where Non-International Armed Conflict took place.



(Graph by the author)

Presented IRAC analysis allows to describe the current state of things from a legal perspective. This method allows to build a legal argument by linking statement to legal sources. IRAC method is not bringing a solution of the problem of aero-bombings of medical facilities. It rather shows how this problem can (or can not) be addressed.

To be able to pass message in UN Security Council is a great opportunity and humanitarian organization should use it to pass messages that can change things or make things work. In the case of aero-bombing of hospitals, the only one expected effect of the advocacy campaign is targeting political will of the States.

Humanitarian affairs officers or Advocacy officers could reinforce communication campaigns about the problem related to aero- bombing hospitals. For example, in the case of Kunduz Trauma Center attack in Afghanistan, one of the key messages of MSF in UN Security Council was clearly focused on International Humanitarian Fact-Finding Commission as an independent investigation mechanism of the promotion and enforcement of IHL. The message was lost. It was not irrelevant, but it was ineffective from the very beginning. IRAC could help to identify the gap which is the legal applicability of the Article 90 of the Additional Protocol I establishing the subjects with the right to file an inquiry. High Contracting Parties to Geneva Convention are not including INGOs and it is not applicable to non-international armed conflict (NIAC) (Sassòli 2017).

It was great preparational work done by the ICRC and MSF in terms of communication. It would be more effective if they would manage to pass a different message, taking into consideration IRAC analysis and the constraints of the fact-finding commission.

4. Conclusion.

This paper pointed out main challenges in the protection of healthcare personnel against aero-bombings. Aero-bombings of medical facilities results damaging and long-standing effects on the public health and lives of civilians.

The paper reasons that humanitarian advocacy is not something monolithic and nobody holds a monopoly in this area. By comparing two different humanitarian organizations and analyzing the way they addressed the need of protection of humanitarian medical personnel this paper highlighted the importance of humanitarian advocacy as an operational tool.

This paper has demonstrated that the essence of this problem affects humanitarian medical personnel, but the solution is not limited to humanitarian organizations. Humanitarian organizations participate in the solution of the problem within the limits of their capacities. What goes beyond their capacities is the other part of the solution which depends on the States and their political will. Humanitarian actors can pass their messages, but they cannot force the

solutions. IHL is a body of law written by States and there is no room for humanitarian organizations to set up imperative norms for States. IHL is not efficient and requires to be reconsidered regarding enforcement and responsibility for the protection of healthcare workers in emergencies.

In the meantime, the question of possible jeopardization of the protection of health remains open. In humanitarian action, there are many clusters except health care, but the health is becoming politicized. Other less sensitive grounds can be used by humanitarian actors for operations and access. If not, the risk is worsening perception of humanitarian organizations that will decrease operational efficacy and effectiveness and increase security risks.

In this regard, humanitarian organizations need to use different lenses and designing multi-layer humanitarian advocacy strategies, including IHL based argumentation, mobilization and cost-benefit calculus for all parties concerned using IRAC as one of the methods. “The effect of legal constraints is not to make criminal action impossible, but to make them more costly” (Elster 1989:14). IHL by its nature is a scope of legal constraints for warring parties in the war. Generation of respect is an attempt to influence (change) social behavior for positive acceptance and recognition. Generation respect to IHL requires time and humanitarian advocacy is a “soft” tool to be used versus accountability approach that for the moment, as we see, bring us nowhere.

Considering limitations and the timeline of the research process, there is a need for evidence-based research in order to identify best humanitarian advocacy practices and the need of conceptualization of humanitarian advocacy. Humanitarian actors can build an effective plan for advocating on behalf of people in need in order to change the policies, behavior, perception, practices to alleviate the suffering of all deprived people. There is no logic if international community tries to find solutions for protection of civilians as, for instance, "safe zones", but on the other hand still close eyes on aero-bombings of health facilities, that are, by nature, supposed to be a safe place for wounded and sick.

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