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Focus

**Geneva Convention IV,
Article 19**

Misuse of hospitals, misuse of the emblems are very serious allegations.

A hospital loses its protected status if it is „used to commit, outside its humanitarian duties, acts harmful to the enemy.“.

**Pictet Commentaries to
GC IV**

There is no doubt: „...use of a hospital...as an arms or ammunition store, as a military observation post, or as a center for liaison with fighting troops“ are harmful acts. A hospital must not take part in military operations.

A warning must be given prior to attack. **(GC IV, Art. 19)**. How can this be done today in the war situation as it exists? By loud-speaker. By appeal to the commander of the enemy forces. By any method possible under the circumstances.

Misuse of the emblems is perfidy **(Hague Convention IV, 1907, Article 23 (f))** and a war crime **(Statute of the ICC, Art. 8.2 (b)(vii))**.

Nasiriya hospital: protected or legitimate target?

CNN 26.03.03. „US Marines on Tuesday seized a hospital in Nasiriya and captured nearly 170 Iraqi soldiers who had been staging military operations from the facility, US authorities said.“ The report continues that the hospital was clearly marked by a flag with a Red Crescent. There were no civilians in the hospital. 200 weapons were seized. There was a T-55 tank in the hospital compound.

Are these violations of the law of war?

The protection from attack for hospitals already appeared in the Hague Conventions of 1899 (II) and 1907 (IV), Article 27.

Article 12 of Additional Protocol I (AP I) provides that medical units, both military and civilian, shall be respected and protected and not be the object of attack. This is one side of the coin: protection to the medical unit, in this case a hospital. The other side of the coin is the obligation not to misuse the hospital and its protected status. Subparagraph 4 of Article 12 provides that medical units shall not be used to shield military objectives from attack. AP I, Article, 13, provides that the protection can be lost if the location is used outside its humanitarian function in a way to harm the enemy. But before the ill-used hospital can be attacked, a warning must be given.

The news article also mentioned that the marines had taken fire from the hospital on the preceding day. There was no mention of a warning being given.

Of course, these provisions of AP I, as conventional law, do not bind either the US or Iraq, because neither is a state-party to the Protocol.

However, virtually the same language appears in Geneva Convention I of 1949 (GC), in Articles 19, 21 and 22, regarding military medical units and in GC IV, Articles 18 and 19, regarding civilian hospitals. In Nasiriya this was a civilian hospital and so, Articles 18 and 19 of the 4th GC apply and bind the parties to the conflict. Both Iraq and the US are states-parties to all four Geneva Conventions of 1949.

The location of a tank on the hospital grounds is a clear violation of Article 12 of AP I. However, the final paragraph of Article 18, GC IV contains only a recommendation that hospitals be located away from military objectives.

Further, if the US troops were fired on from the hospital, this would also be an act of perfidy, involving misuse of the flag of the Red Crescent, a banner which confers protected status. (Article 23 (f) of the Hague Convention IV of 1907, which is customary international law). This provision is also found in Art 37 (1) of AP I. Though not spelled out as a specific example, it is clearly within the language of (1). The US and Iraq are bound by this principle as set out in customary international law.

Art 8.1(b)(vii) of the statute of the International Criminal Court also classifies misuse of the emblem of the GCs as a war crime, if such misuse results in serious injury or death.

Since the Iraq is not a party to AP I, its location of a tank on the hospital grounds is only a failure to follow the „recommendation“ of GC IV, Art. 18. It is not a breach of the convention. Firing on the enemy from a hospital which is marked by a flag of the Red Crescent, however, is perfidious and, if it results in serious bodily harm or death, is a war crime.

Responsibility

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