Medical neutrality and solidarity in the Syrian armed conflict

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Abstract

Noninterference with health workers treating the sick and wounded during civil unrest and armed conflict is an ethical principle that has been legally recognized across the globe for 150 years, under the term "medical neutrality." However, in the Syrian conflict, now in its third year, the deliberate targeting of health workers, including students, and hospitals as a warfare tactic has become widespread. Consequently, work performed under dangerous circumstances by the international medical community's peers and colleagues deserves recognition, through declarations and demonstrations of international solidarity, in order to bolster the legitimacy of medical neutrality in diplomatic affairs. This article discusses the issue of medical neutrality as applied to the Syrian conflict and, furthermore, underscores the relevance of condemnation as a tactic for influencing policy.

Introduction

Syria's ongoing armed conflict has claimed over 115,000 lives (including over 41,000 civilians) and has left more than 6 million displaced, according to the latest figures. However, its war-torn medical infrastructure, characterized by a shortage of hospitals, physicians and medicines, threatens to claim even more lives than the violence.[1] Zaher Sahloul, president of the Syrian American Medical Society (SAMS), estimated that because of the lack of access to drugs and treatment, as many as 200,000 Syrians have succumbed to chronic conditions such as diabetes, hypertension and cancer.[2] The situation was poignantly described in a Lancet editorial published in 2012.[3] It was one of the earliest articles to highlight the targeted destruction of the health infrastructure in Syria and underscore the implications of such circumstances for the international medical community. The authors noted that modern conflicts are disturbingly characterized by "flagrant disregard for the Geneva Conventions, including targeting of civilians, persecution of health workers and attacks on hospitals, alongside the failure of the UN system to prevent these violations." The situations necessitating this assessment of the loss of the principle of "medical neutrality" in contemporary affairs remains an abundant reality to this day, particularly in Syria.

These violations are, indeed, quite significant, as they threaten the very foundations of international standards of war. The Geneva Conventions refer to a body of treaties and amendments which form the foundation of modern international humanitarian law regarding the protection of victims in armed conflicts. In addition to their critical role in jurisprudential scholarship and world order, they solidified the notion of respect for the life and dignity of the individual into global consciousness. The earliest implementation, at the 1864 Geneva Convention, outlined provisions for wounded or sick soldiers and civilians and officially recognized the International Red Cross' activities in war zones (making protection of health workers standard). These provisions were majorly updated in 1949 in response to the atrocities of the Second World War that had come to light during the Nuremberg Tribunals. Since then, the conventions are currently recognized by virtually the entire world, including Syria, and enforced by the United Nations (UN) Security Council.

Though the deliberate targeting of the sick and wounded and of health practitioners is specifically prohibited by international law, as codified in the Geneva Conventions, such targeting has become increasingly commonplace in the Syrian conflict.[4] The Independent International Commission of Inquiry on the Syrian Arab Republic, established through the UN Human Rights Council (UNHCR), has confirmed multiple instances of the shelling and bombardment of hospitals, attacking and kidnapping of hospital personnel and refusal of treatment for the sick and wounded.[5] In their report, the investigators listed specific examples including the bombing of state and field hospitals in and around Dara'a, Damascus and Aleppo; the positioning of snipers, tanks and artillery at the Al-Houlah hospital in Homs; and the rendition of Zarzor hospital employees to an Air Force Intelligence base in Aleppo. Other organizations have presented similar findings; SAMS, a humanitarian group of physicians that has been active during the conflict, released a report which stated "All of SAMS' doctors who attended medical missions and contributed to this report have personally witnessed attacks on hospitals, ambulances, health workers or rescue volunteers."[6] Additionally, Reuters recently reported that during its two-year occupation by state security forces, Syrian snipers fired on the sick and wounded trying to enter the National Hospital in Dara'a, until the occupation finally ended in March 2013. The same hospital was attacked in May by opposition forces because 50 patients were believed to be linked to the government.[7] These attacks are all explicit violations of international humanitarian law.

On the issue of human rights breaches in Syria, the world's attention is currently focused on the usage of chemical weapons in the conflict, particularly the sarin gas incident that took place on August 21, 2013 in Ghouta. It is important to recognize that the same body of laws that prohibits the use of chemical weapons in international armed conflicts also prohibits the targeting of the sick and wounded. As is discussed in what follows, violations of medical neutrality have regularly occurred since the beginning of the conflict, yet concern for these crimes has not been nearly as prominent. Syria's legal obligations in the context of chemical weapons dominated discourse in the elite media and scholarly literature, whereas discussion of the obligation to respect health workers, civilians and the wounded has been relatively sparse. This discrepancy is inappropriate, given that the respective death tolls of the crimes differ vastly: approximately 1400 civilian victims after the Ghouta attack versus the 200,000 estimated to have succumbed to chronic diseases since the beginning of the conflict.[8]

Accordingly, the authors of the Lancet editorial remark that the world's medical community "may feel hopelessness" while observing helplessly from the periphery of the quagmire. Neverthe-

less, the editorial correctly and encouragingly goes on to conclude that "there is much that it [the world's medical community] can do to monitor, report, and prevent the impact of conflict on the health of populations, as well as condemning attacks on civilians and breaches of medical neutrality." Indeed, an important lesson learned from the chemical weapons affair is that diplomatic and regulatory pressures from the U.S. and peacekeeping bodies such as the UN can be successful: the Syrian government has been compliant in destroying its chemical weapons stockpile.[9] Another recent example was the Bahraini government's decision to nullify the severe prison sentences issued to 20 medical workers during the 2011 civilian uprising, in response to international pressure and condemnation. Former secretary general of the United Nations, Ban Ki-moon, and Physicians for Human Rights (PHR), a human rights advocacy group had criticized the government for sentencing doctors and nurses for treating demonstrators wounded by security forces.[10] Thus, international pronouncements of solidarity and support for the principle of medical neutrality can generate the necessary diplomatic momentum to enforce the protection of health workers and patients.

An escalating health and humanitarian crisis

The frequency with which reports of conflict-related violence in the Middle East reach American and European audiences dulls the sting of such news via attrition. This phenomenon perhaps inspired another comment published in the Lancet by Mohamed Al-Khaled, a Syrian physician-scientist, who counts relatives amongst the list of casualties in Aleppo: "The Syrian people do not understand why the ongoing Syrian humanitarian and medical crises are being ignored by the world and why nothing is being done to protect civilians in Syria."[11] His declaration underscores the disparities between the moral and humanitarian posturing typical in political discourse and the world's failure to act decisively to prevent further human suffering in this conflict. Though the dismantling of Syria's chemical weapons program is counted as a success in a conflict plagued by failure and pessimism, it has done nothing to curtail the soaring mortality statistics that have resulted from continuous violence and a gutted health care system.

Before the crisis, Syria boasted a sturdy health system which provided free health services and subsidized drugs.[12] Inhabitants received constant care for the chronic conditions that now threaten their lives on a daily basis. The country had its own pharmaceutical industry, which provided 90% of its medicines and exported to over 50 countries. Furthermore, Syria's health indicators, such as life-expectancy, were on par with those of wealthier, developed countries.[2] With the ensuing civil war and chaos, however, local drug production has fallen 90%, medical supplies are low and remaining clinics are drastically understaffed, while patient numbers have escalated dramatically.[1] The decline of vaccination campaigns has led to the reintroduction of polio into a country which had previously been free of the virus since 1999.[13] Heavy contributors to this deterioration are the targeted destruction of medical facilities and the kidnapping and harassment of health workers: 469 workers have been imprisoned and 15,000 doctors forced to flee. Of the 5,000 physicians practicing in Aleppo prior to the conflict, only 36 remain.[14]

This situation is affecting the region's ability to provide adequate medical education, as well. In an e-mail exchange, Dr. Al-Khaled explained the deteriorating state of medical education: "After the revolution started, the regime bomb[ed] hospitals in the cities where a conflict between rebels and the Assad regime is going on because protesters and rebels received treatment." He noted that the institutions of health care and related services have more-or-less collapsed in Aleppo, Deir ez-Sor, Homs and Daraa, but there are still doctors working clandestinely out of their homes or hiding places. However, medical students from opposition-controlled cities do not dare go to university for fear of being arrested. According to him, medical students from the University of Damascus were arrested during a lecture in June for holding views that went against the regime (Personal communication, June 30, 2013). Thus, even physicians-in-training are not being spared from the illegal repression that fully fledged clinicians experience during attacks on hospitals.

The involvement of medical students extends beyond detention, however. In June of 2012, Amnesty International reported on the murder of three junior medical workers, two of whom were Syrian medical students; the other was an English literature student and first-aid medic.[15] They had been working with a team of doctors and nurses in provisional "field hospitals" set up to treat injured demonstrators. During a panel discussion on the medical crisis in Syria at the Center for Strategic and International Studies (CSIS), Dr. Sahloul, a critical care physician, lamented the ruined health infrastructure and relayed observations of first-year medical students performing surgeries in Aleppo because of the mass exodus of physicians fearing persecution.[16]

The absence of polity and economic vitality has also contributed to disastrous consequences for patients. Dr. Tarek Kteleh, vice-president of SAMS, has been involved with the medical relief effort for over two years. He noted that "half of Syria is now liberated to the opposition and there is no government in liberated areas" (Personal communication, June 24, 2013). Furthermore, "the hospitals are not really hospitals because only two of them have labs. You can't say they are hospitals if they do not have labs." The services provided by clinical laboratories, such as blood work and infectious disease screening, are critical for basic patient care. Additionally, since the electricity is down most of the time, hospitals require fuel to run ventilators, refrigerators, and other machines. He explained how essential this fuel is: "At one point, one doctor went to a hospital in Aleppo which ran out of fuel and at least 10 patients who were on ventilators died." However, fuel is very expensive and thus difficult to come by.

Principles of Medical Neutrality and Solidarity

The danger that health professionals face in Syria is one of the most alarming features of the conflict. The estimates vary given the chaotic conditions in the region, but the New York Times reported that more than 100 physicians have been killed and as many as 600 have been imprisoned, though estimates vary.[17] As described in the previous section, it has also become clear that medical students, too, have been affected. Nevertheless, the cause is one that the international community can rally around in an act of solidarity.

Leonard Rubenstein, Senior Scholar at the Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health and former president of PHR, discussed the significance of health worker solidarity and the principle of medical neutrality in a conversation over the phone. Medical neutrality and upholding it as a global norm have been the focus of his scholarly activities for many years. According to him, it is important for students of medicine and nursing to reaffirm the values and norms of the medical profession internationally by recognizing colleagues doing similar work under very difficult circumstances (Personal communication, July 2, 2013). Furthermore, professional solidarity demands "reinforcing these values by supporting those who are being punished for adhering to those values." He noted that the value most at risk is impartiality (i.e. taking no sides in a conflict) due to the punishing of those providing care for those who need it most, irrespective of their political division. It is important to note that this definition encompasses those practicing in non-conflict regions, such as the U.S. or Europe. Selecting patients based on creed or race violates the most basic principles of medical ethics, which are commonly taken for granted in the West.

Beyond the situation in Syria, he cited the arrest of doctors treating demonstrators in Turkey and Bahrain to further illustrate the worldwide threat to medical neutrality. Left uninvestigated and without condemnation, such actions have consequences both for the profession and for patients, as they discourage medical practitioners in conflict zones from adhering to ethical duties out of fear of being targets of violence or persecution. The inability of physicians and nurses to perform their function has an amplified effect across sick populations that depend on medical care. Underscoring this point, Rubenstein asked, "How many women die because a hospital is too damaged to provide emergency obstetric services or the staff has fled? How many children succumb to disease because insecurity precluded visits from vaccinators?"18 Stephen Cornish, executive director of Médecins Sans Frontiéres Canada, who was also present at the CSIS panel, used the term "silent casualties" to describe these indirect and unregistered casualties of war: "People with treatable diseases such as diabetes or cancer can no longer get the treatment they need…Children, especially babies under two years old, cannot access vaccinations

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and are particularly vulnerable to disease."[19] As academics and public figures, Rubenstein and Cornish are able to make clear and explicit just how important it is to protect health workers by upholding the principle of medical neutrality. In doing so, they do a service to humanitarian efforts worldwide by staying informed and engaging with the media in expressions of solidarity.

The International Committee of the Red Cross (ICRC) uses the term "the knock-on effect" to describe this phenomenon of downstream sequelae. The Committee notes that "a single violent incident against health-care infrastructure or workers can have immeasurable longer-term repercussions on entire communities with war-related or chronic health-care problems."[20] With this description, they make clear that the principle of medical neutrality extends beyond just a political concept grounded in ideology: it has tangible social value in terms of health outcomes in communities. For this reason, it is important to de-incentivize the targeting of health facilities and the exploitation of the desire for medical care, though admittedly they have strategic value, as they undermine and demoralize wounded enemies. These cruel tactics inherently disregard the well-being of innocent civilians, particularly in the context of the "knock-on effect". In Syria's civil war, the civilians and their communities are simply collateral damage in the pursuit of weakening the enemy: their survival, on the other hand, has no immediate strategic value in the battle for political power.

In the most comprehensive report to date on the assault on medical care in Syria, published in September of 2013, investigators from the UNCHR documented, in detail, discrete occurrences of attacks on hospitals and medical units, the use of hospitals for war purposes, the targeting of medical and humanitarian personnel and transport and ill-treatment of the sick and wounded.[21] The report, presented at the Council's 24th session in Geneva, further characterizes the phenomenon of "knock-on" casualties: "Violence against healthcare has significant compound effects, causing dramatic increases in mortality among the sick and wounded. The breakdown of medical services in wartime disproportionately affects vulnerable segments of the population, such as children under the age of five, nursing mothers, the disabled and elderly. In Syria, their suffering is exacerbated by the conduct of the parties to the conflict." Furthermore, in a nod to the Geneva Conventions, the authors note that the "first efforts to humanize warfare focused on the protection of sick and wounded and those providing them with care. The incidents and patterns recorded reveal that the actions of the Syrian government from 2011 to date have been a cynical betrayal of this fundamental principle." [21]

This investigation and subsequent compilation of crimes by the UNHCR along with their statement is a significant event that extends well beyond the report itself. The investigation symbolizes the official recognition and serious consideration of grassroots-level efforts led by humanitarian groups and scholars such as MSF, SAMS, and Rubenstein. In other words, solidarity and activism can make a difference. Furthermore, these impacts have a snowball effect: the official broadcast institution of the U.S. federal government, Voice of America, very recently published an editorial describing the reaction of Ambassador Samantha Power, U.S. permanent representative to the United Nations, to the UN inquiry into the assault on medical care in Syria.[22] She reiterated the importance of medical neutrality, condemned the destruction of health infrastructure and called for diplomatic pressure to bring about respect for medical neutrality: "This conflict is going to be remembered even 100 years from now for the obliteration of this core principle."[23]

These pronouncements and reports are recent developments, but, unfortunately, Dr. Al-Khaled's sentiments in the Lancet are still valid. Talking is not what he had in mind when he urged the world to take action. Meaningful engagement, as will be discussed in what follows, will have to occur through the judicial processes of the world's regulatory organs.

The Relevance of International Law

Confronted with the problem of incentivizing combatants to respect the health rights of the groups they seek to injure, both Rubenstein and PHR have advocated calling on the UN Security Council (UNSC) to refer these crimes to the International Criminal Court (ICC). At present, it cannot intervene independently, due to Syria having never ratified the Rome Statute, the agreement that would authorize the ICC to involve itself without UNSC consent.[24,25] Upon referral of the crimes, those found responsible would stand trial for war crimes or crimes against humanity and, if convicted, be punished accordingly.

Many have acknowledged the difficulty of a UNSC referral, given the veto power possessed by Russia and China, which have been the Assad regime's leading diplomatic supporters throughout the conflict. In response, Aryeh Neier, former director of Human Rights Watch, suggested the formation of a specialized Arab League tribunal to deal specifically with Syrian war crimes in a manner analogous to the ad hoc Balkan court established after the Bosnian war 20 years ago.[26] This strategy would circumvent the vetoes and bureaucratic obstacles within the UNSC. Due to the urgent need to stop the daily atrocities, he notes that the Arab League could stipulate that crimes committed after such an implementation would have prosecutorial priority, incentivizing a stop to the crimes.

Meanwhile, Betcy Jose, international law scholar and assistant professor of political science at the University of Colorado-Denver, advises caution and restraint in pursuing a referral for judicial intervention by the ICC.[27] She uses the UNSC referral for the Libyan conflict in 2011 to illustrate that restrictions imposed on an ICC investigation by veto-carrying members of the Security Council can delegitimize claims to impartiality and equality before the law. In the case of Libya, the court was barred from considering violations committed by non-parties to the ICC, which included some groups participating in the North Atlantic Treaty Organization (NATO) intervention. In order words, the states with the most power, i.e. NATO, immunized themselves from criminal investigation ex post facto. Such actions politicize processes that are supposed to embody neutrality and impartiality. Joce expresses concern that similar restrictions could be imposed by veto-carrying members of the UNSC (i.e. the U.S., the UK, France, China and Russia) which have independent, complex political interests that would conflict with the judicial process. Historical justification for her concern predates the Libyan conflict of 2011 as well as the ICC itself, which was established in 2002. The most prominent example of this situation occurred in 1999, when the (former) Federal Republic of Yugoslavia (FRY) instituted proceedings before the International Court of Justice (ICJ) against the U.S. in Yugoslavia v. United States of America.[28] The U.S. was charged with violating the Convention on the Prevention and Punishment of Genocide of 1948 due to its involvement in the NATO bombing of Yugoslav territory. Though the ICJ expressed "profound concern with the use of force in the Yugoslav territories," it could not rule on the issue due to a reservation made to the genocide convention by the U.S. mandating that "specific consent" is needed from the U.S. before any dispute is submitted to the ICJ. As it turned out, the U.S. only signed the genocide convention after the inclusion of a provision that requires U.S. permission to investigate charges of genocide brought against it.

Another example of politicizing the ICC's function was Hilary Clinton's claim that though investigating war crimes might be warranted in Syria, it could "complicate a resolution of a difficult, complex situation because it limits options to persuade leaders perhaps to step down from power."29 She was apparently alluding to Yemen, where the U.S. traded the outgoing president immunity from prosecution in exchange for stepping down from power: perhaps a similar tactic could be employed with Syrian president Bashar al-Assad. As

Jose points out, however, such use of the ICC as a "bargaining chip" can, broadly speaking, damage the legitimacy of international law. For global health practitioners, the primary aim is to enforce medical neutrality not only in Syria, but in all other armed conflicts both present and future. Thus, it is with this end in mind that any ICC intervention should be evaluated. If the Syrian regime can be convinced to step down by using immunity as a bargaining chip at the expense of the ICC's legitimacy, future attempts at enforcing medical neutrality could be impeded. It is important that these concerns also be voiced by students and professionals expressing solidarity for their counterparts in the region.

Indeed, undermining international law can have serious consequences for the civilian protections that medical professionals operating in conflict areas depend on. Instilling respect for international law, and—more importantly—the fear of violating it, is precisely the goal behind the codification of medical neutrality and other wartime protections. Though breaches of medical neutrality are being committed regularly in the Syrian conflict, documenting and verifying them are critical to compiling charges against perpetrators. In other words, the most pressing concern at present is to obtain any evidence that could potentially be brought against war criminals in any future tribunal. Any ICC intervention would be irrelevant without evidence and each day that passes without scrutiny is evidence lost. Subsequent prosecution and punishment for war crimes can serve as a warning and a deterrent to future combatants who have an a priori incentive to attack hospitals and personnel suspected of providing care to the enemy.

The mobilization of public opinion is also important for making moves toward criminal proceedings. Even though sick and wounded soldiers are protected under the Geneva Conventions, the protection of non-combatants, i.e. civilians, is a much more important and tenable issue around which the international medical community can assemble in solidarity. The crime of killing civilians has a stronger grip on public opinion than the crime of killing sick and wounded enemies, which predisposes the latter to exclusion or neglect. Moreover, world public opinion in this area could wield significant influence in diplomatic affairs and, consequently, in the application of procedural justice. Regardless, it is critical that the rights of both wounded soldiers and civilians be respected in order to apply the principle of medical neutrality, with regard to impartiality. In the effort to support medical neutrality by calling for the enforcement of international law, the two groups should not be separated. Harm to any individual not taking part in the hostilities of armed conflict should be prosecuted to the full extent of the law

Revealing breaches of medical neutrality to a global audience is, at present, a top priority, given the numerous occurrences in recent years despite establishments like the Geneva Conventions. A recent report published by the ICRC documented 921 violent acts committed against medical personnel, facilities, and sick and wounded civilians in 22 countries (unnamed due to ICRC's commitment to impartiality) during the year 2012.[30] Efforts by the UN or national governments to meaningfully address these violations have been absent. Though the Syrian conflict has been heavily covered in print and television media, violations of medical neutrality have similarly passed largely without official or mainstream acknowledgement. Although the above-referenced UNHCR report on the assault on medical care in Syria and statements by Samantha Power are exceptional developments, they are late: hundreds of thousands are dead and the violence has not abated. Furthermore, due to the rarity of these types of reports, such conduct is often not discussed at all. Reversing the "knock-on effect" will require bolstering the importance of medical neutrality in the public sphere. Only with public pressure on government and judicial bodies backing the effort of humanitarian groups will demands for legal accountability in this context carry any weight in the UN and its member states. Though the law is in place, it must be enforced, whether by UNSC-authorized intervention by the ICC, an ad hoc tribunal, or any other legislative concoction that the world community can agree upon. Adherence and compliance may follow accordingly.

Conclusion

Setting aside jurisdictional obstacles, condemnation and calls for accountability have important symbolic value, by publicly reaffirming universally accepted mores and by laying the groundwork for organized, meaningful action. For example, the governments of Norway and Switzerland, along with HRW and Physicians for Human Rights (PHR), another humanitarian group, recently sponsored an event in Geneva featuring prominent speakers and medical professionals. They urged the UNCHR to collaborate with other international agencies and develop strategies which facilitate the availability and safety of health personnel in conflict zones.31 Dr. Vincent Iacopino, senior medical adviser at PHR, stated that "Medical staff and facilities provide crucial services, and should never become targets or battlegrounds. We have to put mechanisms in place to document attacks, and hold those responsible accountable so that courageous doctors, nurses, ambulance drivers, and others are never again attacked for doing their job of caring for vulnerable people." [31]

Representative Jim McDermott of Washington has twice introduced a bill to elevate the protection of medical professionals abroad in times of war and civil unrest as a policy priority for the U.S. government. McDermott was "concerned that the United States was not doing enough to stop government forces from harming medical workers, who are some of the only unbiased eyewitnesses that we have on the ground." [27] Unfortunately, the Medical Neutrality Protection Acts of 2011 and 2013 have not made it through the House of Representatives.[32,33] If implemented, the bills would make it a policy of the U.S. government to "use its voice, vote, and influence in international fora to further define and codify the principle of medical neutrality and to establish accountability for violations of the principle of medical neutrality." His efforts need public awareness and support.

At the CSIS panel, Rubenstein addressed potential objections to the tactic of condemnation from the belief that it has no influence on state conduct: "All that means is that it's a guarantee that there will be no response. We know that if you say nothing, nobody will respond. If you say something, you don't know what the outcome will be."[16] He is giving voice to the elegance of a simple truth: you do not know until you try. For Western students and physicians observing the conflict from the periphery, the risks are negligible, while the stakes are dire.

Furthermore, discourse and condemnation are two of the few channels through which the international medical community can express solidarity and recognition of the work done by colleagues in Syria during the conflict. Dr. Kteleh, in our personal correspondence, agreed that political solutions to bring an end to the violence and displacement of refugees are necessary. When on the ground, however, the most pressing concern in what he refers to as "war medicine" is the availability of tangible supplies: "For now, what is needed is fuel to run the hospitals because electricity is down most of the time, materials used in hospitals on a daily basis such as cotton and gauze, medical devices, machines, and tools needed to diagnose medical conditions" (Personal communication, June 24, 2013). His assessment was strikingly earthly and underscored the reality behind the lofty rhetoric of international law and academic discourse: the volunteer physicians, nurses, and students that are already working courageously and at great personal risk to prevent further silent casualties are too busy to condemn crimes or pressure politicians. These are responsibilities that should continue to be assumed by fellow health workers around the world as a meaningful way to get involved with the humanitarian effort in this global health emergency. With a death toll exceeding 200,000 and a refugee population of over 6 million spilling into the heart of the Middle East, this war, "the worst humanitarian crisis since the end of the Cold War," has dramatically shifted the trajectory of international affairs and has ripple-effects that will be felt for generations to come.[34] In the world's frenzied push to restore equilibrium, it is imperative that respect for human dignity, powerfully symbolized by the Geneva Conventions, not be discarded in the process.

References available at **JGH Online, www.ghjournal.org**