

LEGAL STATE OF DOCTORS WITHOUT BORDERS (MÉDECINS SANS FRONTIÈRES) IN THE INTERNATIONAL LAW

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Abstract

Médecins Sans Frontières (MSF) is a non-profit organization that offers health and medical services to people based on their requirements irrespective of race, gender, beliefs, religion, and political origins. Physicians, as the MSF's most important members, assist people in their greatest need. They provide services ranging from consultations, vaccinations, and primary care to the most complex surgeries. Given that the doctors in the organization are very active members of the MSF and understand the risk of their presence in dangerous regions with prevalent epidemic and contagious diseases or under distress, insecurity, and war in underdeveloped or third world countries, research into the legal status of this self-giving and venture group of the international society is critical. The legal status of humanitarian aid workers such as the physicians in doctors without borders in international law has not been studied and recognized. This is due to the absence of a complete definition of “humanitarian aid workers” in international humanitarian law. Furthermore, the issue of the status of humanitarian NGOs in international law is novel. Therefore, studying the legal status of the humanitarian aid workers is an essential case because they are exposed to many potential risks in facing armed conflicts. This research planned a web-based survey as part of our study to find articles, books, reports, or studies in relationship with national and international humanitarian organizations and workers, NGOs, and the legal status of these organizations and their workers. We did normative legal research using secondary data from

the internet, references, etc. While the operation of the MSF is mainly aimed at supporting the survival and recovery of people within a war or disease outbreak-afflicted country, its efforts put the lives of its personnel at risk. Herein, we will investigate how the MSF can adequately support its primary staff, the physicians. We can get the response to this question by studying the legal status of the doctors without borders in international law.

A. Introduction

Humanitarian activities have been one of the most challengeable issues in the international society for many years (1). However, given progressively-increased prevalence of illnesses, malnutrition, extrajudicial performances and tortures, harassment and forcible displacement of people for ethnical or religious causes, international and national armed conflicts, etc., the role of these activities in meeting the essential needs of people has become highlighted. Evidence of their significance is seen in the fact that global aid expended by governments and private actors in this field has showed an increase by 400% from 2000 to 2014 (2).

The international humanitarian system is a large financial and human resource which, based on statistical estimation in 2014, consisted of 4,480 aid organizations, over \$25 billion expenditure, and 450,000 aid workers (3). Within this system, the Médecins Sans Frontières (MSF) or the Doctors Without Borders is an international non-governmental organization (NGO) that provides medical and humanitarian activities in war-torn, underdeveloped or developing countries afflicted by epidemics or endemic diseases, natural disasters and lack of access to healthcare systems (4-6). This organization is one of the five biggest aid organizations in the world and which spends 31-38% of NGOs' budget, altogether (3, 7). Among this group, the MSF is the only one which works specifically in the field of health (7).

Following the Biafra secession (5, 15) (1967–1970), in 1971 the MSF was founded in Paris by a team of French doctors and journalists who wanted to expand health care accessibility beyond national boundaries (4). From its beginning, this organization showed some conflicted relationships with other aid organizations such as United Nations' agencies, the military services, and the Red Cross committee. The position of the MSF has changed over time in response to the international context and needs (7). The MSF was awarded the Nobel Peace Prize in 1999 (6, 8).

The MSF is a non-profit organization which offers health and medical services to people based on their requirements irrespective of their race, gender, belief, religion and political origin (5, 9). Independence, neutrality, impartiality and witness are the most important principles of this organization (5, 8). The principles of this organization were defined in its founding charter (Legend-1). Doctors, nurses and other medical and health professionals, logistical teams, and water and sanitation engineers comprise most of its personnel (4).

The MSF offers assistances ranging from basic healthcare to higher-level services among which the most important ones include surgical procedures, fighting epidemics, providing vaccination services, offering rehabilitation, running hospitals, operating medical clinics and nutrition centers, offering mental healthcare, supplying safe drinking water, setting up sanitation systems and giving humanitarian aids (5). Regarding funding, the policy of the MSF is based on receiving only marginal financial support from governments and intergovernmental organizations (5). On the other hand, communication with governments is necessary for this organization to maximize the quality of the services offered (8). Approximately 90% of the organization's funding is provided by private donors, and the rest is given by corporate donations (4). The United Nations High Commissioner for Refugees has considered funds for

the MSF and has attracted its assistance in refugee camps (7). Annual budget of the MSF is estimated about US\$1.63 billion (4).

About 90% of MSF workers are from the host countries, while the remainder are from international expatriots. The terms “Médecins Sans Frontières” and “Doctors Without Borders” are misnomers because only 25-35% of its staff are physicians (6). Physicians, as the most important members of the MSF, help people in greatest need. They offer their activities ranging from consultation, vaccination and basic healthcare to the most complicated surgeries (5).

In recent years, the environment where the humanitarian organizations like the MSF work has drastically changed (2, 10). Most of these new environments, which mostly are civil wars, are situations in which there is disregard for rules, and involve belligerents who cannot comprehend the situation (10). For these reasons, understanding the activity field of the doctors without borders as very active members of the MSF, and understanding the risks of their presence in dangerous regions with prevalent epidemic and contagious diseases, or under distress, insecurity and war in underdeveloped or third world countries, study about the legal status of this self-giving group of is very important. Particularly, with the worsening of the status of civil wars, the role of the doctors without borders has been highlighted. The legal status of the doctors without borders in international law hasn't yet been studied already; hence, herein we decided to investigate in this regard. Before speaking about this issue, to clarify the topic, we shall study about the place of the MSF in the chart of international organizations through which we can understand the place and role of the doctors without borders in the international law. While the operation of MSF is mainly aimed at supporting the survival and recovery of people of war- or disease outbreak-afflicted countries, it puts the lives of its personnel at risk. Herein, we investigate how MSF can support its main staff, the doctors without borders. We can develop a response to this question by studying the legal status of the doctors without borders in international law.

We planned a web-based survey as part of our study for finding articles, books, reports or studies in relationship with national and international humanitarian organizations and workers, NGOs, legal status of these organizations and their workers. We did normative legal research by using the secondary data from internet, references, etc. To be clear, throughout this manuscript, the term “Doctors without Borders” refers to the volunteer physicians as workers of the MSF, while the term “Médecins Sans Frontières” or MSF refers to the relevant organization. Herein, we have considered the doctors without borders as individuals, separated from the MSF, and outlined their legal status in the international law.

B. Discussion

1. Place of the organization “Médecins Sans Frontières” in the chart of international organizations

International organizations are defined as organizations with international presence, membership, or field of activity. They are divided in two main groups including international non-governmental organizations (INGOs) and intergovernmental or international governmental organizations (IGOs) (11, 12). In another classification, NGOs are divided into local NGOs and international NGOs (13). Other class of organizations are non-profit organizations. As definition, these organizations are ones which don't use their assets, income or profits to any individuals such as founders, directors, officers, members, employees, donors, their family members or relatives, etc., except for pursuing stated objectives (14). Legend-2 provides a list of international organizations based in Geneva, Switzerland (15). In sum, according to the information acquired from website of the MSF, the chart of organizations based in Geneva, and other references, the MSF is classified within the group of non-profit, non-governmental organizations (4, 5, 11, 15). Our knowledge about the placement of the MSF within the chart of international organizations can help us in clarifying and defining the legal status of this

organization and its members. On the other hand, through the comparison of the MSF with other national and international organizations with the similar, relevant scope of interest, we may be able to understand better the legal situation of this organization and its members in the international community. One of these international organizations which has some shared scope with the MSF is the ICRC.

Since the early 1990s, the organizations of MSF and ICRC have mostly closely collaborated with each other, particularly in war-afflicted regions. These two organizations have similarities in terms of their origins, their fund, and neutrality in facing political interests. Regarding the field of activities, while the main aim of the MSF is based on offering medical cares, the ICRC has many other aspects. Additionally, the structure of the MSF organization differs from that of the ICRC. Hence, comparison of these two organizations can be difficult. On the other hand, the activity of the MSF in war-torn zones is approximately 3 times more prevalent than that of ICRC and this supports the significance of the role of the MSF. In his article entitled “Médecins Sans Frontières and the International Committee of the Red Cross: matters of principle”, Dr. Rony Brauman (the president of the MSF in 1982-1994) compared these two international organizations. He explained that the formation of the MSF prevented repeating the mistakes made by the ICRC in World War II regarding genocide because of its culture of silence (8). Although the MSF obeys the principles of neutrality and impartiality in their interactions with governments, it appears as witness and speaks out and stands up for victims against their executioners (5, 8). This policy puts its members in worse, riskier and more dangerous situations compared with ICRC workers. This is another fact that makes the MSF more invaluable than the ICRC in the international society (8). We should notice to this point in evaluating the legal status of the doctors without borders as very active members of the MSF.

2. Law On Non-Governmental Organizations

The issue of legal study of NGOs is not new, though these organizations have recently received increasing attention of scholars of the fields of international law and international relations (12). Summarily, NGOs such as MSF have no defined international status as a subject in international law (1). However, these organizations should be regulated by international law because of the following reasons:

- a. Preservation of international general interest toward these organizations (12)
- b. Effectuation of the formation and activation of these organizations (12): International immunities and privileges are necessary for protecting and facilitating international activities by the NGOs (1).
- c. Preservation of independence (12): This presents an opportunity in which no single state is able to interact with the scope and activities of these organizations and would be guaranteed by international law (12).

For NGOs, having a legal standing is a mainstay in recognizing their rights and immunities and standing before courts. Their legal personality is accounted for in municipal law, but not in international law (12). In contrast, the formation of NGOs is an appropriate way for assigning judicial persons under private international law. The common characteristics of these organizations are their non-governmental structure and their non-profit goals (9).

Concerning humanitarian NGOs, it is said that international agreements between these organizations and the state in which armed conflicts are happening and/or international agreements between these organizations and insurrectional or liberation movements dictate the rights and tasks of humanitarian aid workers. Hence, considering some recommendations for optimizing good and secure conditions in these agreements for the humanitarian aid workers would enable us to propose suitable situations for them (2). The Ministry of Economy of every country is the body responsible for registration, supervision and coordination of either domestic,

foreign or international NGOs in each respective country. All of these organizations must observe provisions of the Constitution (14) and other applicable legislation of the relevant country while performing their activities and pursuing their objectives (9, 14). The assets of NGOs must be expended solely in the way of non-profit objectives (14). These notes can be generalized to the MSF.

NGOs can establish branch offices in other provinces of a given country. All of these branches must observe the law of the central office (14). NGOs can be established for limited or unlimited time duration. Their objectives and activities must be transparent and clear and should be stated in their Statute. In order to achieve public trust, these organizations must justify spending money for salaries to employees, renting working and housing places, and other logical performances. They must have their own name, logo, symbol, and address (14). To expand, improve or change the activities and objectives, NGOs must prepare a working plan to attain confirmation by the High Evaluation Commission. Coordination and cooperation of three or more NGOs with relevant governmental agencies necessitates the formation of a coordinating organization that receives confirmation by the High Evaluation Commission. This commission is comprised of authorized representatives from the Ministry of Economics, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice, and Ministry of Labor and Social Affairs (14). To carry out their activities in pursuing their objectives, international NGOs register volunteer members. The presidents, vice presidents, ministers, deputy ministers, chair-persons and the members of the National Council, the chief justices and members of the Supreme Court, heads of independent commissions, members of the leading body of the Attorney General, heads of independent governmental departments, and heads of political parties are forbidden to found or join NGOs (14).

The sources of funding for NGOs include donations, gifts, grants, legacies, bequests, registration fees, movable and immovable properties, and income from legal economic activities (14). According to the article 71 of the UN Charter, the UN Economic and Social Council can grant consultative status by NGOs (12, 16). This article has also influenced institutional developments in other international organizations and highlighted the role of NGOs in the international decision-making processes (16). NGOs must save financial records and audit its annual statements to the Ministry of Economy, Ministry of Finance, and donor agencies. They are exempt from any kind of tax and customs duty in relationship with any non-profit and charitable performance (14).

The following activities are prohibited and illegal for the NGOs. These can be generalized to the MSF as a non-governmental body:

- a) Political activities and holding political campaigns
- b) Expending or fundraising in the way of political objectives
- c) Promoting violence, taking part in military services and military educational programs
- d) Production and transferring weapons
- e) Supporting terrorism
- f) Production and importing narcotic agents
- g) Expending financial resources against national and religion willingness
- h) Taking part in construction projects, with the exception of cases under permission of Minister of Economy at response to request of the Chief of the Diplomatic Agency of the donor country
- i) Commercial activities (import and export)
- j) Other illegal activities (14)

3. Place Of Doctors Without Borders Among International Workers

Doctors without borders are classified in the group of international workers, as opposed to national workers. International workers consist of staff who do not belong to the country in

which they work. They are made up of a variety of nationalities belonging to neighboring or distant countries. All international staff are employed under the same conditions and terms of employment. In contrast, national humanitarian staff include paid personnel who work in national and international organizations within their home countries. They are employed under different terms and conditions of employment (17).

On the other hand, the doctors without borders are classified as humanitarian aid workers, who provide aid to support survival and recovery in many crises secondary to contagious infectious disorders' outbreaks or war. This presents the opportunity for conflicts and complications between the role of the doctors without borders and that of other aid workers in the field of offering health services. The latter is related to their common role in providing relief situations for people who need them. The MSF has provided a wide range of career opportunities ranging from a single mission to a long term career. Programs of ongoing professional development have been established by this organization for field workers. These programs provide opportunities for advancing skills and knowledge required for working in the field. These educational programs include training in language, medical protocols, management of critical events, etc. Hence, this organization trains professional persons for responding to urgent and critical situations all over the world and helping people who need medical and support care (18).

Although the majority of NGOs provide first-line humanitarian aid within their own scope, just five organizations (3, 7) which consist of 0.1% of humanitarian NGOs worldwide (3), represent approximately 31-38 % of NGO humanitarian expenditures (3, 7). In order of the level of expenditure, these organizations include the MSF, Save the Children, Oxfam, and World Vision and International Rescue Committee (3). Among these organizations, the MSF is the only one which specifically works on health (7). This fact shows the significance of the MSF among other humanitarian organizations.

Doctors without borders often work in complicated and insecure conditions, some of which are inherent to humanitarian activities. Most of them don't benefit from support under the international laws (19). In the following, we have listed some of the most important conditions that have put doctors without borders into risky and dangerous situations and made their jobs most complicated and hazardous:

- a) Serious violation of human rights and international humanitarian law (2)
- b) Targeting the civilians in modern wars (20)
- c) In most of combats, there is no clarity in situations in fight zone
- d) Trend toward radicalization and polarization (10)
- e) Expansion of armed conflict civil wars around the globe (2, 10, 20)
- f) Globalization phenomenon and its consequent deregulation which lead to appearance and increased scope of non-state armed groups (10, 20)
- g) Appearance of failed states which have lost their central government having authorities for providing basic services for people's well-being
- h) Formation of global fight against the terrorism phenomenon (10)
- i) Difficulty in access to armed conflict zones (2, 10, 20)
- j) Increased risk of misused or rejected humanitarian services (10)
- k) Increased threat against workers of humanitarian organizations (2, 10, 20)
- l) Ignorance of governments and the World Health Organization to alarms announced by the MSF or other humanitarian organizations regarding the risk of contagious disease spreading, resulting in threatening the life of humanitarian aid workers (3)

It is within such situations that MSF does most of its work. Furthermore, in most war zones, we can't rely on a great degree of willingness to execute international humanitarian laws. These

conditions highlight the hazardous role of doctors without borders in providing humanitarian services and necessitate a study on the legal state of these workers in international law.

To highlight these points, we cite a thoughtful description of the increase of adverse events toward humanitarian aid workers during one year, from 2012 to 2013. According to a documented report, in 2013 about 155 humanitarian aid workers were killed, 178 were seriously wounded and 141 were kidnapped, throughout the world, while in 2012, these statistics were estimated 70, 115, and 92, respectively (20). Most of these events in 2013 occurred in Afghanistan, Syria, South Sudan, Pakistan, and Sudan, in decreasing order (20-22). Most of these victims were workers of national NGOs and Red Cross/ Crescent committee working in the service of international aid (21). In addition to the mentioned statements, studies have shown inadequacy of security sources for international humanitarian aid workers in spite of emphasizing on their importance by international organizations (17).

4. Person's Own Security

According to data regarding the security status of humanitarian aid workers that have systemically been collected in 1990s, a steady growth is seen in the rate of security risks (20, 27). Because of their occupational situations, the doctors without borders face dangerous environments that put them into insecure conditions. We list some of the most important ones:

- a) Formation of a verity of political and economic groups or powers which have different benefits or harms from current combats
- b) Appearance of states without central government capable for saving law and order
- c) Lack of access to raw materials resulting in sever struggles
- d) Increased growth rate of poverty and social distress in the context of collapsed states resulting in formation of inter ethnical combats
- e) Unprecedented levels of terrorism phenomenon and its hazardous consequences for innocent people
- f) Appearance of wars as consequence of a given war resulting in complexity of situations accompanying with disregard to the international warfare rules
- g) Enhanced erosion in distinction between combatants and civilians in international humanitarian law
- h) Ignorance and disregard to international humanitarian law by non-governmental armed protagonists (10)

The aforementioned points result in devaluation of international humanitarian laws and place workers of humanitarian organizations including the doctors without borders at increased security risk. Hence, providing individual personal security for workers of humanitarian organizations can help them to perform their jobs in the best way. Herein, we want to analyze the legal status of the doctors without borders in the field personal security in international law. In this respect, we must study the issue in different directions and respond to the following queries:

- 1- What is the definition of personal security in the international law?
- 2- Do the doctors without borders have the right of personal security? If yes, who or which authorities are responsible for providing and supporting this right?
- 3- How will the legal situation of the doctors without borders be, if their personal security is threatened or disturbed by combat parties?
- 4- What would the reference authorities for making decision regarding recognizing guilty party and determining fine?
- 5- Is there any conflict between giving the right of personal security to the doctors without borders and the scope and policy of the MSF in terms of activity, independency, impartiality and neutrality?

By answering these questions, we can get clarity with regards to the legal status of the doctors without borders in international law; then we would be able to respond to any query or to clarify any obscure point we may face in this way. The “person’s own security” is one of the basic rights of human beings, guaranteed by Universal Declaration of Human Rights which, in 1948 was initially adopted by the United Nations. By definition, this term is associated with liberty, banning of torture, cruel and unlawful punishment and includes the right of the remedy of habeas corpus when this security is threatened illegally (28).

The Geneva Conventions and their Additional Protocols delineated the right of security for civilians (1, 2). Regarding this, differentiation of civilians and combatants is necessary. It seems that wearing war-specific uniforms is the distinction factor for recognizing combatants from noncombatants. This principle is a mainstay in the international humanitarian law (1). “Threat” and “Risk” are terms which are used closely with “Security”. By definition, “Threat” consists of factors which have a potential for causing harm, loss, and damage to organizations’ assets, personnel and activities. “Risk” is defined as a combination of impact and likelihood of harm, loss, and damage to organizations’ assets, personnel and activities, secondary to exposure to a threat (23).

The context in which humanitarian workers are working can determine their perception of the type and severity of threats and dangers. For instance, in Iraq, Afghanistan and Pakistan, suicide bombings and kidnappings constitute the largest threats, while in Democratic Republic of Congo, Chad and Sudan, common crimes and car-jacking, and in occupied Palestinian territories and Sri Lanka, armed conflicts and collateral violence are prevalent. Additionally, in their survey, Stoddard et al showed that in comparison with national staff, international counterparts overestimate the severity of insecurity. It seems that duration of activity and access to a local frame of reference for reporting insecure conditions are effective in reconciling these discrepancies; longstanding national workers work in their positions in their home country can easily report cases of insecurities to local references. Although, this survey didn’t reveal statistically significant differences between males and females in this regard, we can’t ignore the importance of gender in some countries such as Pakistan, Somalia and Afghanistan, in which females are exposed to more risk because of local cultural norms (17). Hence, regarding the aforementioned statements, the doctors without borders face a variety of insecurities and dangers with a different range of severity based on their operational environment.

There is no way to discuss that security is a vital right for all of NGOs’ staff including the doctors without borders (23). The rules for supporting the security of the doctors without borders are widely scattered. What is clear is that the doctors without borders should not be considered as military targets and should not be attacked (2). Although support of the right of security cannot be guaranteed absolutely, to achieve relatively high levels of security for the aid staff, threats and risks can be identified and assessed in a standardized way. The security risk management setting gives a practical method to identify and analyze the issues surrounding security for achieving the best way for mitigating risks (23).

The question arises as to whether MSF is responsible for offering the right of person’s own security for the doctors without borders or is this right to be provided by other resource(s)?

In order to answer this question, we primarily see the MSF as a NGO and refer to studies and works that have been done in the field of security management for NGOs.

Today, some organizations are attempting to state their responsibilities, obligations and limitations in providing security for their staff (17). Regardless of factors effective in security risks, humanitarian organizations are legally and ethically responsible to protect security of their staff, particularly ones in the field (20). Summarily, it seems that organizations are responsible for offering person’s own security to staff. For instance, the United Nation (UN) has an detailed approach for providing security for their staff through the United Nation’s Security Management System. As another example, one international organization in South

Africa spends about \$ 26,000 to provide security measures for every international worker in very dangerous zones. NGOs provide the security budget from financial profits acquired from their bilateral programs or from project grants, predominantly (17). In the “Law on Non-Governmental Organizations” which has been prepared for domestic and foreign NGOs in Afghanistan, NGOs have been described as responsible bodies for providing personnel with safe working environment in performing their activities and projects (14). This fact is true for the MSF, too.

Although it is expected that humanitarian organizations assume the responsibility in preparing security for all of their workers in the same way, disparities have been seen within and among humanitarian agencies in this field. Individual attributes and status of workers such as nationality, gender and organization affiliation play a great role in these disparities (20). The following list itemizes some of the most important points of these disparities:

- **Disparities between national and international workers:** Generally, international workers in comparison with national workers are in the better situations in terms of security training, security measures and resources. Although international workers make up approximately less than 10% of humanitarian aid workers, in comparison with national workers, they are exposed to more attacks. For instance, in 2014, 13% of attacks were against them. The trend of international workers having higher living standards, emergency evacuation in cases of dangerous threats, and so on can justify this disparity (20).

On the other hand, because of the higher proportion of national workers among the humanitarian aid workers in the field (more than 90%), they make up more cases of victims of serious security threats. For instance, in 2013, 87% of attacks affected national workers. Additionally, because of reasons such as financial factors, expulsion of international staff by host states, evacuation of international workers from dangerous zones, etc., national workers have been the main workforce in humanitarian organizations (20). All of these are reasons that altogether can justify differences between national and international staff in getting security measures.

It should be noted that national workers are more familiar with local context, can move more freely and have more connection to local networks of protection mechanisms via communal, familial or tribal communications. It seems that because of the latter points, organizations have under-estimated serious security threats toward international workers and under-prioritized their security issue (20).

- **Disparities secondary to gender:** Generally, information in terms of the proportion of victimized men and women and kinds of security threats and risks regarding the gender are not conclusive. For instance, gender-related information is not available for about 56% of victims reported by the Humanitarian Outcomes' Aid Worker Security Database. According to different studies, it appears that the kind of security risks toward men and women is gender-related because of difference between men and women in the context where they are working, and in the kind of humanitarian services which are offered by them. Men, in comparison with women, have greater impact on decision-making operations and work more in the field. Given the documented reports, men are vulnerable to violent confrontation, being injured or killed, and vehicle accidents on the road, particularly in mostly rural areas; while women are vulnerable to petty crimes (such as burglary and theft), sexual assault or harassment, especially mostly in urban areas, places of their work and residence (20).

- **Disparities enforced by law:** The international laws itself enforces disparities among humanitarian aid workers of different organizations. It said that the personnel of the United

Nations and Red Cross/ Crescent Committee are in the superior position in term of security in comparison with other humanitarian aid organizations. In addition, differences among organizations regarding operating places, kind of activities, type of security strategies, and organizational trends toward doing dangerous risks dictate different security regimens for their staff. Hence, humanitarian aid workers' organizational affiliation is important for appropriate legal regimens that offer security mechanisms (20).

In a paper written by the InterAction Security Unit, the host government has been stated as the main responsible authority for the safety and security management of NGO staff. This responsibility rests with all governmental managers in all levels, not only with security focal points. In an interaction between security focal points and management officials, technical security inputs and advice are offered by the former, while decisions on security management are made by the latter (23).

The role of military forces dispatched to a foreign country in protecting humanitarian aid workers from epidemics, famine, oppression, massacre, etc. is controversial. In the 1990s, application of military forces in rescuing populations from dangerous situations was investigated under the topic "right or duty to intervene" which was replaced by "responsibility to protect" in 2001. In addition to military forces, humanitarian organizations also invoke the "responsibility to protect" to deploy foreign troops for protection of civilians and humanitarian aid workers. Now, the main question is whether the MSF considers the "responsibility to protect" in order to support civilians and the doctors without borders. At present, this organization refuses to pursue the "responsibility to protect" to call for military forces to protect civilians and the doctors without borders because it cannot pronounce upon the legitimacy of the war aims followed by war parties (29). This is a negative point which shall be argued more.

Both of "Speaking loudly" or "Being silent" against cruelty of combat parties are highly associated with security of the MSF staff, particularly that of doctors without borders who are in close relationship with victims. Generally, the protection regimens for the doctors without borders under the humanitarian and international laws are inadequate (2). Moreover, the poor relationship between security management setting and human resource professionals within organizations is one of the most important problems in addressing security for staff (17). The doctors without borders must be aware of their security needs and costs specialized in this field.

The process of security risk management includes identification and assessment of the operational environment, analysis of security risk and finding a pathway to the solution. This process offers standardized and logical measures for facing all insecure conditions and incorporating their solution paths in NGOs' programs (23).

The security risk assessment (SRA) is an important part of the security risk management process. It is defined as a tool for determining the factors which threaten the organization's staff, assets or operations, assessing their impact on organizations, and planning to prioritize the risks and introducing mitigation measures. Hence, an impressive SRA is a necessary prerequisite for managing risks and providing security effectively. Because of changes in security situations following changes in political conditions, operational contexts and so on, the SRA should be frequently revised and updated. The assessment of security situations should be interpreted according to the geographical location, operational context and the timeframe. In Legend-3, the table for the assessment of risk levels has been stated. This table has been organized by InterAction members in the spring 2007SAG meeting (23).

The Security Management Team consists of persons in charge of the NGO country program and finance that approves the SRA and takes responsibility to plan mitigation measures for enhancing security and safety organizations' staff, assets and activity (23).

The MSF, as a humanitarian NGO whose personnel are in dangerous and insecure conditions, should organize its security management team in the best way, and consider a budget for assessing and managing security risk and planning mitigation measures. The doctors

without borders should be aware of their right of having security and safety in their operational environment and inquire of the MSF about its program to achieve secure conditions.

As recommendations for the doctors without borders in complex security conditions when their security is threatened:

- 1- **Knowing the security resources and policies:** It is expected the doctors without borders know the security resources and policies. As a duty and responsibility, the MSF should introduce a comprehensive and detailed list of security resources and policies to which the doctors without borders can refer for answering all of potential queries that may be raised in this issue (17).
- 2- **Referring to local partners of the MSF for getting explicit security support:** The MSF should be in a close relationship with local partners to assess the security support needs for offering good support services to the doctors without borders (17). It is expected the doctors without borders will refer to the local partners in insecure conditions for getting explicit security support.
- 3- **Participation in assessment of security level:** The MSF should assess the security status of working environments by engaging the staff to report their opinions about this issue (17). It is expected the doctors without borders would participate in this assessment and report their concern of security status.

Humanitarian organizations play great role in managing security-related strategies. In the following, different operational approaches of these organizations in facing security issues have been summarized. These strategies make up the “Security Triangle” (20):

1. **Acceptance:** Acceptance is a mainstay in strategies of humanitarian security management and which is required for humanitarian access under the international laws and protecting humanitarian aid workers. Based on this approach, to remove or decrease threats, a consent for humanitarian organizations’ presence or work shall be gained. This strategy is not a passive one, but an active and dynamic process. As long as humanitarian aid workers are wearing emblems and acting based on humanitarian principles, they are under a protective umbrella with this approach. Additionally, states have responsibility to prepare security for humanitarian aid workers and can’t refuse the consent on an arbitrary basis. Although this consent establishes a legal basis for humanitarian aid workers to be under the international law, it doesn’t necessarily guarantee security of workers from attacks or acceptance by all of workers (20).
2. **Protection and deterrence:** Whenever acceptance-based approaches are insufficient due to progressively increasing security threats, humanitarian organizations employ more ardent security approaches based on protection and deterrence policies. Based on protection strategy, instead of mitigating threats themselves, organizations try to prepare safe situations and conditions for their workers by using protective measures and devices, such as security walls, bulletproof vests, armored vehicles, etc. In opposition, according to deterrence-based approaches, humanitarian organizations pose counter-threat performances such as using armed guards, military or diplomatic forces, etc (20).

In most aid organizations, national staff have mostly been assigned to leading and coordinating posts in security management settings. In deteriorating security conditions, “remote management” approach would be a better solution. This control consists of international staff withdrawal, leaving security management mostly with national and local staff who are working more with local partner organizations. But in practice, most aid organizations are routinely working in concert with local partner organizations both in secure and insecure conditions (17).

Using national workers in this field let these organizations get better information and analysis of situations in place. Additionally, the policy of choosing national and local staff for

offering security provides other benefits such as decision-making responsibilities for security cases, increased awareness about situations, and better communications with local authorities for controlling distress and insecurity in insecurity cases (17).

The inevitable existence of insecurity cases in the working environments of the doctors without borders necessitates a complaint mechanism through which issues of security can be addressed and analyzed.

According to the Article 37 of the Second Geneva Convention, if medical staff are captured by an enemy, they shall be protected and respected, and be sent back as soon as the Commander-in-Chief finds it possible under his/her authority. During imprisonment, they will be able to carry out their duties freely (2, 25). It seems that this rule can be true for the doctors without borders.

Additionally, international agreements between the MSF and the state in which armed conflicts are happening and/or international agreements between this organization and insurrectional or liberation movements dictate the rights of security for the doctors without borders in the field. To consider some notes for optimizing security conditions in these agreements for the doctors without borders, suitable situations would be provided for them (2).

On the other hand, in recent years security coordination fora such as Saving Lives Together (SLT), and context-specific security platforms including ANSO (Afghanistan) and GANSO (Gaza) have been organized (17).

In a discussion of humanitarian security in 2006, SLT was presented by the Inter-Agency Standing Committee (IASC) as a framework organized for improving security coordination among IGOs, NGOs and UN in the context. SLT is a revised and updated version of the Menu of Options for UN/NGO/IGO Security Collaboration (MoO) which had been introduced by the IASC in 2001 (30).

Although SLT appears efficacious in theory, it hasn't been successful in practice because bringing all agencies under the umbrella of this framework is not possible (8). As a proposal for removing this problem, NGOs can develop a NGO-specific version of the SLT framework which offers a guideline for responsibilities, limitations and obligation specific to the related organization (17).

The Geneva Convention and their Additional Protocols also have considered protections for civilians (1, 25) and humanitarian aid workers (25) which can include the doctors without borders. In addition, the ICRC plays great role in preparing secure conditions for civilians (1, 25). Whether the protection of the doctors without borders can be supported by the ICRC or not is debatable.

Stoddard et al in their survey concluded that adequacy of available security resources for staff of NGOs, including both national and international workers, was rated "fair" to "poor". In spite of the importance of organizing programs for security training to aid workers and specifying some funds for these programs, deficits are still present in this regard (17). Based on this report, we conclude that the doctors without borders aren't being provided with adequately accessible security resources and this issue again highlights the significance of providing person's own security for the doctors without borders.

Good teamwork between those who found and manage NGOs and those who are responsible for offering security measures is important to guarantee secure conditions for staff (23). Unfortunately, the poor relationship between security management setting and human resource professionals within organizations is one of the most important problems in covering security for staff (17). The doctors without borders should be aware about their security needs and costs specialized in this field.

Promotion of humanitarian principles of impartiality, independence and neutrality by organizations is effective in providing secure conditions for staffers. Studies have shown that two main factors, incompetence of organizations in taking unnecessary risks and lack of

experience and cultural awareness are the leading causes allowing for increased risk for workers. The lack of respect for humanitarian principles is considered as the third most prevalent cause for putting staffers in unsecure conditions (17). Attention to these principles can improve the quality of aid services offered by workers by providing a safe working environment. Hence, it seems that MSF as a NGO devoted to humanitarian rules, can provide a relatively safe and secure environment for the doctors without borders to work efficaciously in different cultural settings.

On the other hand, using a standardized security risk management makes NGOs capable to manage their security duties and responsibilities in an effective way and let their staff work in a secure operational environment (23).

Generally, providing a secure operational environment for the doctors without borders present no conflict with scope of the MSF, but also it prepares ideal conditions for this group of doctors to do their job in the best way.

While the operation of the MSF is mainly aimed at supporting survival and recovery of people of war- or disease outbreak- afflicted countries, it puts the life of workforce personnel at risk (2). According to the data on security status of humanitarian aid workers which have systemically been collected in 1990s, a steady increase in the rate of security risks has been identified (20). Up to now, because of lack of a complete definition of humanitarian aid workers like the doctors without borders in international humanitarian law, their legal status in international law has not been investigated. Moreover, the issue of the status of humanitarian NGOs in international law is a novel one. Therefore, study of the legal status of the humanitarian aid workers is very important because they are exposed to many potential risks in facing armed conflicts (2).

According to the aforementioned comments, there is a great gap concerning the status of humanitarian aid workers in humanitarian and international laws (2, 20). The source of laws dictating rights and responsibilities of these workers in the international society are summarized in the following cases:

- **International humanitarian laws:** These laws include the four Geneva Conventions of 1949 and their Additional Protocols of 1977 which are in association with supporting victims of armed conflicts (2, 25), including people who don't attend war (civilians, humanitarian aid workers, etc.) or people who can't take part in war more (wounded, prisoners, etc.). They are a series of international treaties which consist of the most significant rules for restricting savagery of wars. Summarily, these conventions and their protocols are the main core of international humanitarian laws which regulate the currency of armed conflicts and limit their effects (25). These laws are able to provide a legal guarantee for protecting only special categories of the humanitarian aid workers, including religious and medical/hospital personnel. Hence, this law can be generalized to the doctors without borders (2).
- **International agreements:** International agreements between humanitarian NGOs, and states in which armed conflicts are happening and/or international agreements between these organizations and insurrectional or liberation movements dictate the rights and tasks of humanitarian aid workers. Hence, upon consideration of some recommendations for optimizing good and secure conditions in these agreements for the humanitarian aid workers, we would be able to provide suitable situations for them (2).
- **National or domestic laws:** All NGOs, in the way of performing their activities and pursuing their objectives, shall observe provisions of the Constitution (14) and other applicable legislation of the relevant country (9, 14). The assets of NGOs are expended only in the way of non-profit objectives (14). These notes are true about the MSF.

Based on the previously mentioned notes, it seems that the MSF should play a great role in managing security-related strategies by using “Security Triangle” in facing serious security threats including:

- **Acceptance:** Acceptance shall be mainstay in strategies of humanitarian security management by the MSF which is required protecting the doctors without borders. Based on this approach, to remove or decrease threats, a consent for the MSF’s presence or work shall be gained. Additionally, states have responsibility to prepare security for the doctors without borders and can’t refuse the consent on an arbitrary basis. Although this consent establishes a legal basis for the doctors without borders to be under the international law, it doesn’t necessarily guarantee security of these workers from attacks (20).
- **Protection and deterrence:** Whenever acceptance-based approaches are insufficient under presence of progressively increasing security threats, the MSF shall try harder security approaches based on protection and deterrence policies. Based on these approaches, instead of mitigating threats themselves, the MSF shall prepare safe situations and conditions for the doctors without borders by using protective measures and devises, and posing counter-threat performances (20).

C. Conclusion

In recent years, security management approaches have been significantly improved for protecting humanitarian aid workers, but more work is needed to improve these workers’ security in facing progressively increasing violence in the world. With inclusion of essential notes regarding optimization of security conditions for the doctors without borders in the agreements between the MSF and states in which armed conflicts are happening and/or the agreements between this organization and insurrectional or liberation movements, the right of security for the doctors without borders can be guaranteed.

The doctors without borders should be aware of their right for having security and safety in their operational environment and inquire of the MSF about its program to achieve secure conditions. To offer security for the doctors without borders, the MSF should organize its team of security management in the best way, and consider an appropriate budget for assessing and managing security risk and planning mitigation measures.

The legal status of the doctors without borders is not defined in international law. This is due to the lack of a clear definition of these workers or volunteers in the international humanitarian laws including the four Geneva Conventions of 1949 and their Additional Protocols. Hence, the definition of term “doctors without borders” shall be priority. In addition to international humanitarian laws, international agreements between the MSF and relevant states in which armed conflicts are happening, or between the MSF and insurrectional or national liberation movements can dictate the rights and responsibilities of the doctors without borders. Hence, ideal conditions for activity of the doctors without borders should be considered in these agreements. However, the legal status of the doctors without borders is obscure yet in the international law. Therefore, lawyers have great responsibility in clarifying the legal place of these humanitarian aid workers.

We believe that the MSF can have a great role in improving international law with the objective of protecting the doctors without borders and providing good welfare facilities for them. It is expected that the humanitarian communities such as MSF address the gaps in the protection status of their staff in international law and improve their knowledge and practice in protecting their aid workers in complex and insecure situations (20). The disparities in security of humanitarian aid workers and their effects on operational security necessitate a serious degree of attention and great interactions working with lawyers.

Regarding the mentioned notes, we suggest:

- 1- The term “Doctors without borders” shall be defined in the international law.

- 2- The MSF is expected to prepare a statute offering security for the doctors without borders and express it to the other international organizations and states. The statute shall consider all of occupational, financial, and economical factors, welfare and security and guarantee them.
- 3- To prepare the mentioned statute, the MSF shall invite prestigious and experienced lawyers worldwide, who will develop the best approach for achieving the relevant objectives.
- 4- This statute shall be constructed in a manner that has an operational arm and be able to be dictated to states and other international, governmental and non-governmental organizations.

We hope to achieve the best possible situation in which the doctors without borders work by paying considering the recommendations put forth in this manuscript

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