



United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

October 27, 2015



The Honorable Ashton Carter
Secretary
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Carter:

I write today concerning the bombing by U.S. forces of a Doctors Without Borders (MSF) hospital in Kunduz Province, Afghanistan on October 3, 2015.

I recently had the occasion to speak with former MSF President, Dr. James Orbinski, about the bombing. I asked him to have Doctors Without Borders prepare a letter about the incident, which I have attached for your consideration.

During my conversation with Dr. Orbinski, I was dismayed to learn of some of the details of the attack. For instance, according to Dr. Orbinski, U.S. aircraft repeatedly bombarded the facility even after MSF staff contacted U.S. military officials in the country. The bombing lasted for at least thirty minutes, killed 23 individuals and wounded more than three dozen others.

I understand that there are three separate investigations underway into this incident, and that the Department of Defense is actively participating and supporting these investigations. However, Doctors Without Borders is seeking an independent review conducted by the International Humanitarian Fact-Finding Commission, which is complicated by the fact that the United States and Afghanistan are not parties to this Commission.

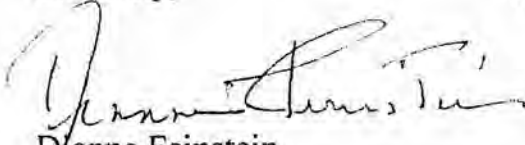
I am sympathetic to the call for an independent review; however, I will reserve judgment on whether to publicly call for such an independent review until the results of the three investigations are completed. I hope that they will be comprehensive and unbiased in uncovering how this bombing occurred and what



changes are needed to prevent such a mistake in the future. I trust that anyone responsible will be held to account.

I strongly believe that the United States must lead the world in adhering to the laws of war. We must never fail to distinguish between civilians and combatants or take insufficient precautions to avoid civilian casualties. I look forward to reviewing the investigations as they are completed.

Sincerely,



Dianne Feinstein
United States Senator

Enclosure: Letter from Executive Director Cone to Senator Feinstein



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The Honorable Senator Diane Feinstein
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October 20, 2015

Dear Senator Feinstein,

Thank you for your support of Doctors Without Borders/Médecins Sans Frontières (MSF). We greatly appreciate the opportunity to share with you more details on the bombing of our hospital in Kunduz, Afghanistan by repeated U.S. airstrikes, and to provide some clarification regarding MSF's call for an independent investigation by the International Humanitarian Fact-Finding Commission (IHFFC).

For four years, the MSF trauma center in Kunduz was the only facility of its kind in northeastern Afghanistan offering essential medical and surgical care. On Saturday, October 3rd, this came to an end when the hospital was deliberately bombed. Twelve MSF staff and 10 patients, including three children, were killed, and 37 people were injured, including 19 members of the MSF team.

In the days leading up to the bombing of our hospital, MSF had been in direct contact with U.S. authorities in both Washington and Kabul. As MSF does in all conflict settings, we regularly communicate with all parties of the conflict in order to facilitate our work and to protect our staff and patients. In this case, it was no different. Not only were the specific coordinates of our hospitals and facilities shared, but perspectives from the ground were shared as well. We had treated over 400 patients in the days since the Taliban had entered Kunduz, and our staff were working day and night to cater to the many more wounded that continued to seek out assistance at our facility.

In the early hours of October 3rd, local time in Kunduz, the bombing began. MSF immediately contacted relevant U.S. military representatives to inform them of the ongoing bombardment. However, the airstrikes continued, and MSF doctors, nurses and other staff were killed as they worked; patients were burned in their beds; our colleagues had to operate on each other. It was an unspeakable tragedy.

In the hours and days following the attack, the U.S. military's accounting of the attack kept changing: from "collateral damage", to a "tragic incident", to attempting to pass responsibility to the government of Afghanistan, to conceding it "mistakenly struck" MSF's hospital which "was a U.S. decision made within the U.S. chain of command."

In spite of the changing accounts of the attack, MSF has made it clear orally and in writing that we will cooperate with the joint U.S., NATO, and Afghan investigation insofar as procedural standards are respected and other security or logistical constraints allow. Among these standards is that MSF is given prior notice before each step of the investigation that implicates our personnel and facilities.

Unfortunately, on October 15th, apparently as part of the joint investigation, an armed vehicle forced its way past the gates of MSF's Kunduz hospital, damaging property and destroying possible evidence.

In the wake of this tragedy, MSF has consistently called for an independent and impartial investigation to shed light on the facts and determine exactly what happened in light of the grave breaches of international humanitarian law (IHL) witnessed in Kunduz.

MSF has specifically called for the International Humanitarian Fact-Finding Commission (IHFFC) to take the lead in an independent investigation. The IHFFC was established in the Additional Protocols of the Geneva Conventions and is the only permanent body set up specifically to investigate violations of IHL.

MSF's appeal is neither focused solely on the events in Kunduz nor directed only at the United States. This concerns respect for the laws of war, and acknowledges the need for impartial and independent investigations in places where IHL has been breached. This extends to the many conflict zones where MSF teams find themselves, from Afghanistan to Yemen, to Syria and South Sudan.

Investigations carried out by parties to the conflict are not, by nature, impartial. The changing story recounted by the many levels of the Department of Defense, and the continued disrespect for our medical facility in Kunduz, solely reinforces the need for the IHFFC investigation.

On October 14th, the IHFFC was activated, and stands ready to initiate an independent investigation. However, an IHFFC investigation cannot proceed without the consent of the governments of United States and Afghanistan. Thus, the decision to pursue an independent investigation is now in their hands.

The United States has an opportunity to set a new precedent and demonstrate its leadership in the conduct of hostilities and the respect for the rules of war. By doing so, the U.S. will express its commitment to international humanitarian law, and will support the right of organizations such as MSF to provide medical care independently and impartially in conflict zones.

If not for the recognition of the humanitarian principles that protect and preserve health facilities as neutral spaces, MSF and other humanitarian organizations cannot work in conflict zones and other places rife with violence. When these conventions break down, it is the populations themselves that suffer.

Today, the 300,000 citizens of Kunduz bear this burden, and remain without access to emergency medical care in the face of instability and increasing violence.

I look forward to discussing this matter with you further, and would be available to meet in person, at your convenience.

Sincerely,



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