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From Geneva to Reality: The Unlawfulness and Impact of Attacks on Medical Facilities in Armed Conflicts

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This article explores the challenges and failures of International Humanitarian Law to protect medical facilities during the armed conflict through critical analyses of historical case studies of the Vietnam War, the Chechnya conflict, and recent events in Palestine - the article illustrates how these violations not only exacerbate human suffering but also undermine the foundational principles of International Humanitarian Law. Furthermore, the article examines the gaps between IHL's legal provisions and their implementation on the ground level while arguing that these challenges are compounded by geopolitical considerations and strategic alliances. It also emphasises issues such as inadequate documentation, lack of accountability, and the manipulation of legal terms such as 'acts harmful to the enemy' as a loophole to justify attacks on protected medical facilities. The article also called for a strong political commitment and suggested interconnected efforts to close the gap between the ideals of International Humanitarian Law and the real world.

Keywords: *humanitarian law, medical facilities, war crimes, Geneva Convention.*

INTRODUCTION

In the world of conflict, healthcare facilities stand as the backbone to support the civilian population during war. Throughout the armed conflicts, is health care itself safe? Under the principle of International Humanitarian Law, medical personnel and healthcare facilities exclusively assigned to medical duties must be protected in all circumstances¹. Any breach of this protection-including assaults or harm on the body or health of the individuals or destroying property safeguarded by International Humanitarian Law (IHL) will be considered a war crime². In reality, is such International Humanitarian Law getting implemented at ground level? Throughout the years, attacks on health facilities in Vietnam (1965), Bosnia and Herzegovina (1992-1995)³, Kosovo (1998-1999), Chechnya (1999-2000), Iraq (2003-2011), Syria (2011), Yemen (2015)⁴, Afghanistan (2015), and recently in Palestine⁵ can be observed. The destruction of medical infrastructure cripples the healthcare system and exacerbates human suffering, which results in ultimate chaos. This paper critically examines why International Humanitarian Law fails to protect healthcare facilities in conflict zones by conducting a thorough historical review with contemporary case studies and examining the gap between the legal framework and its implementation, along with the consequences of such attacks.

HISTORICAL REVIEW

International humanitarian law, also known as *jus in bello* which means 'law in war', is the branch of public international law that regulates between states, international organisations, and other subjects of international law for humanitarian reasons in armed conflict⁶. IHL

¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume 1, Rules* (1st edn, Cambridge University Press 2005)

² Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War 1949

³ Lara Hakki et.al., 'Breaking the Silence: Advocacy and Accountability for Attacks on Hospitals in Armed Conflict' (2020) 102(915) *International Review of the Red Cross* <<https://doi.org/10.1017/S1816383121000382>> accessed 10 June 2024

⁴ Carolyn Briody et. al., 'Review of Attacks on Health Care Facilities in Six Conflicts of the Past Three Decades' (2018) 12(1) *Conflict and Health* <<https://conflictandhealth.biomedcentral.com/articles/10.1186/s13031-018-0152-2>> accessed 10 June 2024

⁵ Mat Nashed, 'Medics in Gaza risking their lives to save people hurt by Israel's war' *Al Jazeera* (23 May 2024) <<https://www.msn.com/en-us/news/other/medics-in-gaza-risking-their-lives-to-save-people-hurt-by-israel-s-war/ar-BB1mV6lw?ocid=BingNewsSearch>> accessed 10 June 2024

⁶ 'International Humanitarian Law Answer To Your Questions' (*International Committee of the Red Cross*, 20 January 2015) <<https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc-002-0703.pdf>> accessed 10 June 2024

protects wounded and sick individuals as well as those who are not participating or have ceased to participate in conflict. In 1859, Henry Dunant, a Swiss businessman, travelling in Italy, witnessed the harrowing aftermath of the Battle of Solferino, which he shares in his book entitled ‘A Memory of Solferino’ published in 1862⁷. It motivated him to create a voluntary organisation of professionals who would provide medical assistance on the battlefield⁸, and finally, in 1863, together with Guillaume-Henri Dufour, Gustave Moynier, Louis Appia and Theodore Maunoir founded the ‘Committee of Five’ (International Committee for the Relief of the Military Wounded), which would in 1876 become the International Committee of the Red Cross.

The diplomatic convention of 1864, which was organised by the ‘Committee of Five’ with the help of the Swiss government, was attended by 16 states that adopted the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field⁹. This was considered the birth of International Humanitarian Law. After that convention, medical personnel and medical infrastructure, such as hospitals and ambulances, are protected under the International Humanitarian Law; however, the protection gets forfeited by the IHL when they act beyond their humanitarian function¹⁰. Today IHL has evolved through a series of conventions and treaties. Notably, the Geneva Convention of 1949 stands as the primary agreement and foundational pillar of modern International Humanitarian Law.

HISTORICAL CASE STUDIES

Vietnam (1965): During the Vietnam War, hospitals, schools, and churches were listed as ‘psycho-social targets’ by US Air Force manuals¹¹. In this context, ‘psych-social targets’ typically involve the targeting of the psychological and social dimensions of the enemy by attacking hospitals. This war saw numerous violations of the Geneva Convention and International Humanitarian Law and the intentional bombing of hospitals and medical facilities is one of the most egregious violations in the history of mankind, committed by the US Air Force during the Vietnam war. On the night of June 12, 1965, the US Air Force started bombing the premises of

⁷ *Ibid*

⁸ Neve Gordon and Nicola Perugini, ‘Hospital Shields’ and the Limits of International Law’ (2019) 30(2) The European Journal of International Law <<https://doi.org/10.1093/ejil/chz029>> accessed 10 June 2024

⁹ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field 1864

¹⁰ Alma Baccino-Astrada, *Manual on the Rights and Duties of Medical Personnel in Armed Conflicts* (1st edn, International Committee of the Red Cross 1982)

¹¹ Marvin E. Gettleman et.al., *Vietnam and America: A Documented History* (2nd edn, Grove Press 1995)

Quynh Lap Hospital, which is located in north Vietnam. The hospitals were subject to multiple attacks for the next ten days. During this attack, one-third of the buildings in the healthcare complex were destroyed¹², along with the deaths of 139 patients and nine medical personnel¹³. It is the duty of the parties to the conflict to take all possible measures to search for and collect the wounded and sick without any delay to protect them against pillage and ill-treatment and ensure their adequate care¹⁴. However, reports from the Vietnam War indicate that medical evacuation teams were targeted, and no effort was facilitated by the US Army for the safe removal and treatment of the injured. Forget safe removal; the US army started attacking the injured civilians while targeting civilian hospitals.

In 1966, Bertrand Russell, a sesquipedalian philosopher and Nobel Prize winner, organised a private, independent tribunal to evaluate the US military intervention in Vietnam. This Tribunal's final report indicates the US imperialistic aggression against Vietnam and how all rules of the International Humanitarian Law, which is recognised by the whole world, are violated. But this tribunal was largely ignored by the US authorities because it had neither the legal authority nor the means to carry out a formal investigation¹⁵.

During the critical analysis of the Vietnam War, it was discovered that obtaining unbiased reports from the conflict zones proved challenging and severely hindered the efficacy of International Humanitarian Law because Article 16 of the Geneva Convention I clearly states that the parties to the conflict are required to record and transmit information regarding the wounded and sick to facilitate their identification and care¹⁶, but the claim of attack on medical personnel went unnoticed due to the failure of proper documentation and reporting of attacks. Due to this lack of transparency, the International Community's ability to respond effectively and hold violators accountable is impeded. This is the situation when the attack goes unnoticed, but even when IHL violations are identified, there often exists a significant gap in the ability to enforce accountability, despite numerous documented cases of attacks on hospitals like Quynh Lap Hospitals. The investigation conducted by the USA for the attack on

¹² John Duffett and Bertrand Russell, *Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal* (1st edn, Bertrand Russell Peace Foundation 1968)

¹³ Peter Limqueco et.al., *Prevent the Crime of silence: Reports from the sessions of the International War Crimes Tribunal* (1st edn, Allen Lane 1971)

¹⁴ Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War 1949, art 15

¹⁵ Hakki (n 3)

¹⁶ Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War 1949, art 16

Quynh Lap Hospitals did not describe how the investigation had been conducted or by whom, and the result of this investigation is that one is held accountable for this war crime committed by the US Air Force. The inability to hold violators accountable perpetuates a cycle of impunity and undermines the very foundation of IHL.

Chechnya (1999-2000): During the Chechnya War, medical neutrality (medical neutrality means the protection of medical personnel, patients, facilities, and transport from attack, as well as unhindered access to medical care and treatment of ill persons without any discrimination¹⁷) was violated by Russia's federal forces in several ways between September 1999 and March 2000. The hospitals and clinics were repeatedly bombed, and patients and doctors were brutally murdered in this war, but the Chechnya side also violated some norms, due to which, in some cases, attacks on hospitals do not come under the protection of IHL and Geneva conventions. However, according to the interviewees conducted by PHR, it was found that Russia committed those violations on a much larger scale¹⁸. According to the testimonies and survey of Dr Khassan Baiev and Dr Estamirova (head physician at Grozny Ambulatory Clinic), at least 24 separate medical facilities were damaged by federal forces¹⁹. Between October 1999 and November 1999, the federal forces bombed so heavily that the children's health facility in the Chernorechie district of Grony became nothing but a necropolis ruin²⁰.

During the war, there was a pattern in which Russian forces systemically targeted medical facilities, which indicates a deliberate strategy rather than isolated incidents. The most heinous thing is that Russian forces not only destroyed medical facilities but also obstructed medical personnel and killed them²¹. In some cases, reports also indicated that medical personnel were prevented from reaching the wounded, which unlimitedly exacerbated the suffering of the civilian population.

It is observed that the war crimes were committed by the Russia during Chechnya war but still, there is no or minimal international accountability or effective legal repercussions taken by the

¹⁷ 'Introduction to Medical Neutrality' (*Physicians for Human Rights*, 12 April 2017) <<https://phr.org/wp-content/uploads/2019/11/Introduction-to-Medical-Neutrality-Fact-Sheet-2013.pdf>> accessed 10 June 2024

¹⁸ Physicians For Human Rights, *Endless Brutality: War Crimes in Chechnya* (2001)

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Ibid*

world organizations or international communities. This kind of thing undermines the authority of the Geneva Convention and International Humanitarian Law.

By reviewing both case studies, it can be seen that there is a huge gap between the legal framework and the implication of the Geneva Convention on a ground level. There is no proper documentation or registration of the war crime that can be seen, and if clear evidence can be found, then the international communities and world organisations mutated their response due to geopolitical considerations or strategic alliances, which clearly shows how political will is taking over the humanitarian need. Let's review the legal framework in light of the recent events in Palestine.

OVERVIEW OF THE RECENT EVENT IN PALESTINE

In the recent conflict between Israel and Palestine, the al-Ahila Arab Hospital in the besieged Gaza Strip has been bombed, and according to Gaza's health ministry, 471 Palestinians have been killed and 314 wounded in this attack²². According to a CNN report, at least 20 out of 22 hospitals in northern Gaza were damaged or destroyed in the first two months of this conflict²³. These attacks have affected 98 healthcare facilities, including more than 90 ambulances, on account of 'being used by a Hamas terrorist cell' for transferring militants and weapons, but not a single piece of evidence has been offered by the IDF²⁴. On December 21, WHO said that there are no functioning hospitals in north Gaza, and injured patients are just waiting to die. These ongoing attacks on hospitals and medical personnel in Palestine reflect a dangerous erosion of the principles of the Geneva Convention and International Humanitarian Law. Article 19 of Geneva Convention IV, which provides immunity to civilian hospitals²⁵, is openly violated by the IDF. According to this article, the protection can only be revoked where the hospitals are used to commit acts harmful to the enemy, but up to now, no evidence indicates that the hospitals in Gaza are used for harmful acts. Also, while critically analysing this article, it can be found that the definition of acts harmful to the enemy remained ambiguous. Well, the

²² Paul Brown et. al., 'Gaza hospital: What video, pictures and other evidence tell us about Al-Ahli hospital blast' *BBC* (19 October 2023) <<https://www.bbc.com/news/world-middle-east-67144061>> accessed 10 June 2024

²³ Katie Polglase et.al., 'How Gaza's hospitals became battlegrounds' *CNN* (12 January 2024) <<https://edition.cnn.com/interactive/2024/01/middleeast/gaza-hospitals-destruction-investigation-intl-cmd/>> accessed 10 June 2024

²⁴ 'Gaza: UN health agency warns over continuing attacks on healthcare' *UN News* (9 February 2024) <<https://news.un.org/en/story/2024/02/1146387>> accessed 10 June 2024

²⁵ Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War 1949, art 19

phrase ‘outside their humanitarian duties’ was inserted in 1949, but still, what constitutes harmful acts remains problematic. This insertion serves as a vital clarification but does not eliminate the potential for subjective judgment and misuse. The IDF attack on those hospitals is a clear example of it.

CONCLUSION

The ongoing attacks against healthcare facilities in conflict zones only further underline the vast chasm between idealistic International Humanitarian Law (IHL) on paper and its implementation on the ground. Historical case studies including the Vietnam War, and the Chechnya conflict, are matched by current events in Palestine demonstrating that despite comprehensive legal protections being stipulated to protect medical staff and health facilities from harm they are too often violated without accountability. Chosen attacks on hospitals and medical workers which are seldom undertaken for transparent reasons further not only inflame human misery but also corrupt the core of humanitarian principles. The absence of implementation and accountability for IHL breaches leads to a situation where an endless cycle of impunity persists and undermines the core principles of International Humanitarian law. Closing this gap ought to start by instituting more effective forms of global accountability, recording and documenting violence transparently, even as unflagging political will must be mobilized against allowing humanitarian concerns to die at the altar of power politics. In the end, it will require such interconnected efforts to secure health care amidst conflict and with that uphold International Humanitarian Law.