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Armed Conflict: A Peril to Health Care System

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ABSTRACT

Warfare has existed in society since the dawn of time. People engaged in it for a variety of reasons, including survival and hegemony. As society develops into modern state nations, the methods of war have modernised. Armed conflicts obliterate the lives of millions. It displaces thousands of people, rendering them homeless. International Humanitarian law (IHL) is a set of legal frameworks that aim to mitigate the effects of armed conflict for humanitarian reasons. It imposes restrictions on the ways in which war is perpetrated and protects those who are not engaged or have ceased to be directly or actively engaged in hostilities, without forgetting the hazards faced by the healthcare system during such confrontations. The main focus of this paper is how the healthcare system is hit worse during times of armed conflict, followed by the laws of warfare and their development, and key observations made while analysing different conflicts, the implementation, or the tactics and loopholes played by various parties to Armed conflict and International Authorities.

I. INTRODUCTION

Attacks on healthcare facilities during armed conflict have been outlawed by International Humanitarian Law (IHL) and are against the underlying principles of human rights. On several occasions, health-related structures, including hospitals, clinics, and even private medical offices, as well as ambulances and supply trucks, have been pillaged, ransacked, bombed, damaged, blocked, or occupied over the years. Healthcare professionals and patients have been the targets of physical attacks in addition to being arrested, locked up, threatened, intimidated, or prohibited from receiving or delivering treatment. Current conflicts are often drawn out and increasingly take place in towns and cities, which may aggravate their effects on health. Armed conflicts have been estimated to claim the lives of thousands of people annually, although this estimate does not take into account mortality, which is also directly responsible. Access to civilian health care may be intentionally damaged and restricted by combatants, or it may be collateral damage as a result of their military strategies. One of the most important yet overlooked humanitarian challenges of the present is violence, both actual and threatened,

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against the sick and injured, as well as against medical facilities and staff. Violence interrupts health-care services when they are most desperately required in wars and upheavals across the world. Because they are denied access to timely medical care, both combatants and civilians perish from wounds that they could have survived.

(A) What is Armed Conflict

Armed warfare, or wars, obliterate the lives of millions of people every year. Many of these confrontations occur within states boundaries. Some of the contemporary confrontations occur between Russia and Ukraine, Azerbaijan and Armenia, or Palestine and Israel, but some of the confrontations occur within the country as well. For example, as the Syrian government troops struggle to maintain control over the nation's borders, Russia has long supported them. Al-Shabaab insurgents continue to obstruct attempts by the government to extend its control over the nation of Somalia.² Regardless of its genesis, the repercussions of warfare are always the same. Armed conflicts result in horrendous violations of international humanitarian law and human rights, as well as extensive evictions and civilian fatalities. Political conflicts that result in at least 25 deaths directly connected to war occur when two parties, one of which is the government of a State, use military force. A "major armed conflict" is a war between states or an ongoing political dispute inside a State in which armed combat or conflicts between the government's forces and its adversaries result in at least 1,000 fatalities throughout the duration of the conflict.³

(B) Difference between war and armed conflict

The Kellogg-Briand Pact provided for the renunciation of war as an instrument of national policy, was concluded and signed by their respective Plenipotentiaries at Paris, also known as Paris Pact⁴ and hence the word war is no longer used in international law. When referring to a war involving two or more States, the phrase "international armed conflict" is used, whereas "non-international armed conflict" is used to describe civil wars. Before a scenario is deemed to constitute a "armed conflict," a particular threshold must be crossed in terms of the amount and severity of the violence. Violent circumstances are referred to as "internal disturbances" or "tensions" below that line. Armed confrontations do not include riots, occasional, isolated acts

² AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/what-we-do/armed-conflict/> (last visited on 29th September, 2022)

³ ARMED CONFLICT, <https://www.un.org/esa/socdev/rwss/docs/2001/15%20Armed%20Conflict.pdf> (last visited on 29th september, 2022)

⁴ KELLOGG-BRIAND PACT, https://avalon.law.yale.edu/20th_century/kbpact.asp (last visited on 29th september)

of violence, or other comparable behaviours.⁵

II. POSSIBLE CAUSES OF ARMED CONFLICT

Armed conflict within States is triggered by a variety of complex circumstances. The failure of governments to provide fundamentally basic administration and security for their own populations is one of the factors that raises the likelihood of war. In many cases, ineffective governments have little ability to halt the outbreak and spread of violence that more competent, well-organised governments could have stopped or contained.

Armed conflicts can also be understood as a fight for power. Economic decline and mismanagement are also associated with violent conflicts. Not least because the politics of a collapsing economy are inevitably conflict-prone in comparison to those of economic growth. Racial and religious tensions, extensive infringements on minority and human rights, and ethnic cleansing caused by radical nationalism that is supported by nasty media all worsen conflict. Another contributing aspect is the relative ease with which weapons are transported around the world, particularly in nations and regions where civil wars are raging.

Many researchers have tried to propound theories consistent with the reason for armed conflict or come up with a cause to explain why armed conflict happens, but so far no result has flourished. However, it is now a common consensus that a conflict cannot be reduced to a single cause or single explanation.

III. IMPACT OF ARMED CONFLICT ON HEALTH-CARE SYSTEM

Billions people globally live in unstable and conflict-affected areas, according to the World Bank. Considering the repercussions are widespread across the healthcare system, severe, protracted conflicts pose a significant threat to universal healthcare. Armed conflict is a problem for global health because it causes excessive violence, forced displacement, destroyed institutions and infrastructure, and violent attacks on personnel and facilities.

The detrimental impacts of armed wars in Africa are amplified by the continent's pervasive poverty and shoddy healthcare infrastructure. There are staffing shortages in the health sector, underfunded facilities, and sporadic access to medical supplies in nations that are suffering lengthy regional hostilities.⁶

⁵ FRANCOISE BOUCHET SAULNIER, *THE PRACTICAL GUIDE TO HUMANITARIAN LAW*, (Rowman and Littlefield, 2013)

⁶ **Eposi C. Haddison, Chia E. Julius, Benjamin M. Kagina,** *Health Services Utilization before and during an Armed Conflict; Experiences from the Southwest Region of Cameroon*, 13, *THE OPEN PUBLIC HEALTH JOURNAL*, 547,548, (2020)

Beginning in Nigeria in 2010, the Boko Haram insurgency later moved to Northern Cameroon in 2013. The effects of the insurgency on Nigeria's public health sector have been studied and documented. Health services in the impacted areas were less accessible and available as a result of the conflict. In the Far North of Cameroon, at least eight of the thirty health districts suffered significant damage. As health professionals and communities left for safety, many healthcare facilities closed. Due to the insurgency's disruption of regular life and healthcare facilities, infectious diseases were able to spread more easily. The poor health services in the country were also impacted by the migration of Nigerian refugees into Cameroon which put a strain on the already weakened health sector.⁷

Due to Yemen's continuous humanitarian catastrophe, many people lack access to basic medical treatment. Even fewer than half of the hospitals are operating, and those that are still open lack the most basic supplies. As a result, in Yemen, Chronic conditions now account for more than half of all illness-related deaths.⁸ Conflict-related healthcare breakdowns have a significant negative impact on those who have sustained bodily injuries. In areas of conflict, this is a substantial and rampant issue.

In 2016, there were over 25000 injuries every month in Syria. These individuals need immediate and often long-term care, which can be difficult to obtain securely. Insecure environments present significant challenges for both mental health care and services. The bulk of conflicts occur in low and middle-income nations, when risk factors including deprivation, unemployment, and social isolation already significantly enhance psychological distress vulnerability. Together with exposure to conflict and violence, they have a serious negative effect on people's mental health. 80% of those who reside in conflict zones with symptoms of mental illness do not receive proper medical care and one in five have serious mental health issues.⁹

During a conflict, medical services are not only nearly challenging to obtain, but they are also actively targeted for attack. Health infrastructure is ravaged by plundering and vandalism that targets healthcare facilities and targets them with airstrikes. As a result, patients and healthcare workers are also subjected to danger. Access to crucially required surgical supplies is restricted, there are shortages of medicines and healthcare workers, and financial resources which often

⁷ Julienne Stéphanie Nouetchognou, *Boko-Haram Insurgency: Health and social implications for Cameroon*, DENIS & LENORA FORETIA FOUNDATION, (December 7th, 2015) <https://www.foretiafoundation.org/boko-haram-insurgency-health-and-social-implications-for-cameroon/>

⁸ Faith Everett, *Under threat: healthcare in conflict zones*, THE HEALTH POLICY PARTNERSHIP (7th October, 2022, 8:32 PM) <https://www.healthpolicypartnership.com/under-threat-healthcare-in-conflict-zones/>

⁹ *Id*

put patients and professionals in jeopardy.

The gravity of this issue is highlighted by the protracted civil war in Syria. The International Rescue Committee discovered that 49% of citizens were afraid to access healthcare due to assault fear, while 68% of healthcare personnel reported being inside a facility during an attack.¹⁰ The conflict in Syria has placed an unprecedented burden on the healthcare system of the country. More than 90% of medicines were produced locally before the start of the civil war, but after years of fighting, there is now a severe lack of life-saving drugs. In certain hospitals, nurses warm fluids before transfusion using their own body heat while surgeons work under torches. Consequently, it is not surprising that the fighting has resulted in a 20-year drop in life expectancy in Syria.¹¹ The effects on pregnant women can be felt across generations. Unborn children can suffer from food hardship, a lack of prenatal care, increased stress, and anxiety.

According to research, chronic malnutrition can affect a child's growth and development, as well as their mental health and neurological growth, if they are born in a conflict zone.¹² Even after a conflict is over, the atmosphere is still unstable. Chemical and radioactive weapons have lasting effects, while other weapons' leftovers, such as landmines, make it risky to use whatever health services that are still available.

The bombing of Hiroshima and Nagasaki resulted in an estimated 140,000 deaths in Hiroshima and 74,000 additional deaths in Nagasaki by the end of 1945. In the years that followed, many of the survivors would go on to suffer leukaemia, cancer, or other terrible radiation-related side effects. In 1945, the scale of the damage in Hiroshima and Nagasaki rendered efforts to provide medical assistance all but impossible. In Hiroshima, 42 out of 45 hospitals were destroyed, 90% of the medical staff perished or were injured, and 70% of the victims had multiple wounds, the bulk of which were severe burns.¹³

Data on the targeting of medical and humanitarian personnel during conflict, sometimes known as "irregular violence," was presented by Professor Scott Gates and Dr. Hvard Nygrd . Over 1500 medical professionals have been attacked since 2014 many more have also been intimidated, hurt, or the victims of kidnapping and torture.¹⁴ Armed organisations now

¹⁰ *Id*

¹¹ *Id*

¹² *Id*

¹³ INTERNATIONAL CAMPAIGN TO ABOLISH NUCLEAR WEAPONS, https://www.icanw.org/hiroshima_and_nagasaki_bombings (last visited on 11th october, 2022)

¹⁴ Philippa Druce, Ekaterina Bogatyreva, Frederik Francois Siem, Scott Gates, Hanna Kaade, Johanne Sundby, Morten Rostrup, Catherine Andersen, Siri Camilla Aas Rustad, Andrew Tchie, Robert Mood, Håvard

purposefully target medical personnel and deprive particular communities of healthcare, according to Dr. Rostrup.¹⁵

IV. LAWS PERTAINING TO WARFARE

International Armed Conflict may mean an armed clash between two or more states, or between the armed forces of the national liberation movement and the metropolis. Armed conflicts consist of the mutual application of violence and coercion by the armed forces of the contesting states.¹⁶

Most of the Rules of war were evolved during the middle ages, though some of them were practiced by the States even in the ancient period. By the end of the 19th century, these rules, which had acquired the character of customary rules of international law, began to be transformed into conventions, declarations and treaties.

(A) International Humanitarian Law

The phrase ‘Humanitarian Law’ may have been used for the first time in Resolution XXVIII of the XXII, in International Red Cross Conference in 1965 held in Vienna. Humanitarian law deals with issues that affect how armed conflicts affect people's right to life, personal integrity, and liberty. Thus, the corpus of law defining the principles and regulations that restrict the use of violence during war may be referred to as humanitarian law. The objectives are to: (a) safeguard those who are not or are no longer directly involved in hostilities, such as the injured, shipwrecked, prisoners of war, and civilians; and (b) mitigate the negative impacts of fighting violence on achieving the conflict's goals.¹⁷

(B) Historical development

The first convention to establish guidelines for the treatment of injured troops in land armies was the Geneva Convention of 1864. The Convention guaranteed all facilities for the care of injured and ill troops, as well as their staff, immunity from capture and destruction. the fair treatment of all combatants, the safety of civilians, the provision of help to the injured, and the acceptance of the Red Cross emblem as a method of identifying those protected by the agreement. In 1899, the so-called Peace Conference at the Hague was convened The Conference resulted in the adoption of three important conventions and in addition to them, three

Mokleiv Nygård, Henrik Urdal and Andrea Sylvia Winkler, *Approaches to protect and maintain health care services in armed conflict – meeting SDGs 3 and 16*, 13, CONFLICT AND HEALTH, 1, 2, (2019)

¹⁵ *Id* at 3

¹⁶ 5th DR. H.O. AGGARWAL, A CONCISE BOOK ON INTERNATIONAL LAW AND HUMAN RIGHTS, 332 (Central Law Publications, 2021)

¹⁷ *Id* at 481

declarations of minor value were also adopted by the Peace Conference. The Second Hague Peace Conference was held in 1907 and produced thirteen conventions.¹⁸

Serious crimes against humanity were perpetrated during the Second World War. Belligerents frequently violated the precepts set forth in the earlier Conventions, including the deliberate destruction of civilian targets like residential areas hundreds of miles from the frontlines, the use of long-range rockets and atomic bombs against the enemy, etc. As a result, it was decided to expand and codify the existing provisions in an international red cross conference. The Conference produced four Conventions, which were accepted on August 12, 1949, in Geneva. These Conventions were:¹⁹

- (1) Convention for the Amelioration of the Condition of the Wounded, Sick in Armed Forces in the Field.
- (2) Convention for Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea.
- (3) Convention Relative to the Treatment of the Prisoners of War.'
- (4) Convention Relative to the Protection of Civilian Persons in Time of War.'

The aforementioned Conventions all became effective on October 21, 1950. The four aforementioned conventions only apply to international armed conflicts, which are defined as all instances of declared war or of any other armed conflict that may occur between two or more of the High Contracting Parties even if the state of war is not recognised by any of them in Article 2 of all four conventions.²⁰

International humanitarian law is now based on the four 1949 Geneva Conventions and their three Additional Protocols.

(C) International humanitarian law pertaining to health- personnel or pertaining to protection of the health care system

The Geneva conventions related to the protection of victims of International Armed Conflicts (Protocol I), under its part II deals with the aspect of protection of health care during an armed conflict. In its various provisions of articles it has condemned the violence or destruction of the healthcare system. Hospitals cannot be attacked, and medical workers must be able to do their jobs without any sort of discrimination.

¹⁸ *Id* at 483

¹⁹ THE GENEVA CONVENTIONS AND THEIR COMMENTARIES, <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> (last visited on 15th october, 2022)

²⁰ *Supra* note 15

When used as a protective measure, the emblem—the red cross, the red crescent, or the red crystal—signifies the protection provided by the Geneva Conventions and its Additional Protocols for medical personnel, medical units, and medical transports. Perfidy constitutes war crime and would be treated like that.²¹

Apart from IHL, other conventions that provides for right to health are:-

- According to Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), States are required to take action to guarantee that everyone has access to a range of facilities, goods, services, and conditions that are required to realise the highest standard of physical and mental health.²² (the right to health).
- According to the United Nations Economic and Social Council's General Comment No. 14, the right to health includes the fundamental duties of maintaining primary healthcare, ensuring access to the bare minimum of food, providing basic shelter, housing, and sanitation, and ensuring a sufficient supply of safe and potable water, in addition to the duty to provide necessary medications. States are required to respect, safeguard, and uphold the right to health under these fundamental commitments, which are non-negotiable.²³
- Article 25 of the Universal Declaration of Human Rights, which is widely regarded as international common law, also guarantees the right to medical treatment²⁴
- According to Article 56 of the Fourth Geneva Convention, the Occupying Power must, in occupied territory, ensure and maintain medical and hospital establishments and services, as well as public health and hygiene, and take the prophylactic and preventive measures required to stop the spread of contagious diseases and epidemics, with the cooperation of national and local authorities.²⁵
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 10, 12, and 14 of the Convention on the Rights of the Child, and Article 24 of the Convention on the Elimination of All Forms of Discrimination Against

21 ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW <https://www.icrc.org/en/doc/assets/files/2012/health-care-law-factsheet-icrc-eng.pdf> (last visited on 16th october, 2022)

22 INTERNATIONAL COVENANT ECONOMIC SOCIAL AND CULTURAL RIGHTS <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited on 16th october, 2022)

23 UN Economic and Social Council, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, REFWORLD,(11 August 2000) <https://www.refworld.org/docid/4538838d0.html>

24 UNIVERSAL DECLARATION ON HUMAN RIGHTS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on 17th october, 2022)

25 ADDITIONAL PROTOCOLS TO GENEVA CONVENTION, https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf (last visited on 17th October, 2022)

Women all prohibit discrimination against women.

V. KEY OBSERVATIONS

1) The very ethics of the International Humanitarian Law is that humanity is the greatest. And everyone is to be treated same irrespective of the any base for discrimination. The Geneva Convention under its Protocol-I also says that a medical practitioner or anyone associated with that field should provide health care indiscriminately. But there are instances where these key provisions have been ignored. For instance;⁻²⁶

- The Peruvian government prosecuted doctors for providing medical assistance to the members of the Sendero Luminoso also Known as The Shining Path, during its internal armed conflict.
- Syria detained doctors who treated wounded opposition fighters deemed terrorists, and it attacked medical facilities in terrorist-controlled areas.
- Colombia punished a physician who was in charge of providing more extensive, specialised treatment to members of the Fuerzas Armadas Revolucionarias de Colombia (the Colombian Revolutionary Armed Forces).

In these circumstances, as in times of armed conflict, States should not penalise medical personnel for engaging in medical activities that are compatible with medical ethics or compel them to take steps that are against these standards, according to Resolution 37/194 of the UN General Assembly on the Principles of Medical Ethics yet we see gross violations of such provisions.

2) Direct attacks on the healthcare system, the most contemporary being the Ukraine and Russia, where according to The World Health Organization verified 43 attacks have been made on health care in the three weeks since Russia invaded Ukraine and says hundreds more facilities remain at risk.²⁷ In prior wars, including the present civil war in Syria and the 1999–2009 Chechen War, Russia has deliberately attacked hospitals²⁸

3) The third observation was that if the attack is not direct on the health-care system, keeping in mind the provisions of International Laws, it has been done indirectly. For example,

²⁶ Dustin A. Lewis, Naz K. Modirzadeh, and Gabriella Blum, *Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism*, Harvard Law School Program on International Law and Armed Conflict (September, 2015) <https://pilac.law.harvard.edu/medical-care-in-armed-conflict-international-humanitarian-law-and-state-responses-to-terrorism>

²⁷ Rachel Treisman, *The WHO says Ukrainian health care is under attack, and it needs more funds to help*, NATIONAL PUBLIC RADIO, (March 17, 2022:15 PM ET) <https://www.npr.org/2022/03/17/1087209901/world-health-organization-ukraine>

²⁸ *Ibid*

- The paucity of gasoline required to run the electrical generators in hospitals and healthcare institutions throughout Gaza has led to warnings from Palestinian health experts that the provision of medical services would soon come to an end. Days after Israel halted the scheduled delivery of gasoline into the region, the lone power plant in the Strip had shut down.²⁹ According to the director of the Shifaa Hospital, located in Gaza, said that the 15-year Israeli siege of the Gaza Strip was a necessary consequence of the collapse of the health system.³⁰

4) Wars-related disabilities put a significant burden on the healthcare system. Overcrowded hospitals may force "normal" patients to be discharged in favor of injured combatants and civilian casualties. Massive quantities of crucial goods, which are currently in low supply (such as consumables, blood, blood products, and medications), are also urgently needed. Clinical staff members furthermore experience severe emotional stress due to working in hazardous situations to treat challenging injuries brought on by combat. These issues add to the burdens already placed on the hospital and health management systems which leads to their breakdown. But majority of this happens in underdeveloped and countries with poor economy because there the medical staff and facilities are already in very less number due to there financial strain. though overburdening and shortage of drugs and other essentials can also be witnessed in developed countries.

5) Many times to establish one's own hegemony over the weak, armed conflicts occur in the name of self-defense. For example- More recently the attack by Israel on Lebanon, in the name of self-defense.³¹ Or America's attack on Vietnam. Though the latter turned out to be the other way around.

VI. CONCLUSION

Every Human being possesses the right to life and liberty as their inherent right, but when their life is being taken away at the mercy of an armed conflict in which local populations, healthcare populations have no role to play, who should be held responsible for that? Their access to their right to health gets curtailed the moment their healthcare services are being subjected to destruction. The perpetrators of such crimes should be heavily sanctioned. Punitive fines and punishments should be followed.

The issue in today's armed conflicts and other emergencies is not the absence of international regulations, but rather the enforcement of pertinent IHL and international human rights law

²⁹ Maram Humaid, *Gaza Hospitals on Breakpoint after Israeli Bombardment*, ALJAZEERA (8, August, 2022) <https://www.aljazeera.com/news/2022/8/8/gaza-hospital-on-breakpoint-after-israeli-bombardment>

³⁰ *Ibid*

³¹ Reema Roy, *Health Care during Armed Conflict*, LEGAL SERVICES INDIA, <http://www.legalservicesindia.com/article/677/Health-Care-During-Armed-Conflict.html>

(IHRL), which together provide a framework for regulating this matter. The most serious violations of the Additional Protocols and Geneva Conventions, which are regarded as war crimes, must be punished by law. States must also enact legislation protecting the Red Cross and Red Crescent emblems, violations of which should result in punishment. In addition, worldwide initiatives have been made: tribunals have been set up to prosecute crimes committed during two recent conflicts. (the former Yugoslavia and Rwanda).³²

Local population must also be made aware and sensitized about Geneva Conventions and its protocols. Special Hospitals or additional facilities should also be constructed as a safety measure in all countries with extra equipment and also everyone should, from the school level, be given the training of giving themselves first and then others first aid.

³² *Ibid*