

## Challenges and Implications of Military Attacks on Hospitals: A Critical Analysis of International Legal Standards and the Pursuit of Accountability

### Défis et implications des attaques militaires contre les hôpitaux : Une analyse critique des normes juridiques internationales et de la recherche de responsabilité

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In recent years, attacks on hospitals during armed conflicts have taken on a systematic nature (1). Despite the extreme gravity of the acts committed (eg; bombardments, attacks on staff and patients, destruction of infrastructure) (1, 2), these 'war crimes' (3) have garnered little public attention and largely gone unpunished (4, 5). The aim of this editorial was to recall the legal status of hospitals in situations of armed conflict and, secondarily, to explain the causes of the repeated attacks against them.

#### THE STATUS OF HOSPITALS IN INTERNATIONAL HUMANITARIAN LAW (IHL)

The international legal standards dedicated to the protection of the right to health during armed conflicts date back more than 160 years (1). These standards draw their origins from IHL, human rights law, and medical ethics (1). They impose the duty on warring parties to refrain from interfering with medical care and to not attack, threaten, or impede medical functions (1) (Table 1). Despite the protection afforded to hospitals in situations of armed conflict, IHL does not categorically prohibit attacks against them (1, 3). In fact, a hospital loses its protected status if it is used for acts deemed 'harmful to the enemy' (1, 3). This provision refers to the use of healthcare facilities for military purposes (1). In such cases, it would be 'justifiable' to target the hospital, however, this should only occur after issuing a warning and providing sufficient time for the evacuation of patients and staff (3).

Although IHL mandates, in the event of an attack, to adhere to the principles of proportionality and precaution

in the action to be taken, these 'technical' terms are not defined in detail (eg; procedures, duration, conditions for suspending the operation) (3). Additionally, damages are expected to be kept to a minimum: 'keep harm to civilians to a minimum' (1).

#### MILITARY OBJECTIVES

Military objectives are 'recognized' in IHL as one of its five fundamentals: the 'Principle of military necessity' (7). In fact, the entire logic of IHL lies in finding a balance between the principle of military necessity and that of humanity by modulating the principles of distinction, precautions, and proportionality (7). There is no consensus definition of 'military necessity'; however, it would relate to 'measures which are indispensable for securing the ends of war' (7).

In practice, 'military necessity' is often misused to 'justify' attacks against hospitals and to gain 'advantages' on the battlefield (1). This involves depriving populations (including combatants) of care and shelter in order to subsequently force them to leave the area (1). Healthcare workers, seen as sources of information, are arrested and tortured (1).

#### THE IMPUNITY AND SILENCE OF THE INTERNATIONAL COMMUNITY

Despite the age of international legal standards and the illegal and repeated nature of military attacks on hospitals, only two perpetrators have been prosecuted to date (8).

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History has shown that the outcome of hypothetical prosecutions for attacks on hospitals remains 'almost impossible' (4).

The silence of the scientific community has become a form of 'morality of convenience', in line with the impotence of the international community, which has lost its moral authority as well as its executive power to enforce the cessation of hostilities (4). Not to mention that the repeated and massive attacks on hospitals are often carried out within the context of wars waged by states, bolstered by their military and geopolitical might 4.

## THE CHALLENGE OF INITIATING LEGAL PROCEEDINGS

While they may constitute war crimes under IHL and could even be part of genocide, initiating prosecutions for attacks on hospitals remains challenging due to the cumbersome and slow judicial system (8, 9). Investigators face numerous difficulties, including:

- i) Lack of coordination among investigating agencies due to 'sectorization' issues (1, 8).
- ii) Documentation problems (evidence collection) (8): The lack of documentation is striking in this regard, as incidents are not systematically recorded and may even be 'absent' in over half of conflict zones (1).
- iii) Difficulty in establishing causality links between the entity or person to be prosecuted and the crime (8). The challenges are exacerbated when it comes to incriminating the true perpetrators of the crime, such as high-ranking officials in the chain of command (eg;

politicians, generals) (8). Given their physical absence on the ground, determining the extent of their decision-making contribution is difficult (judgments based on circumstantial information) (8). Additionally, states or armed groups are not obliged to share information on how they conduct their operations (3). Military action, governed by vague standards, occurs without transparency, compromising accountability (3).

iv) Difficulty in establishing the deliberate (intentional) nature of the attack (8) (denial by the accused, accident, estimation error, collateral damage during an ongoing operation (3)). In this context, it is common for different parties to accuse each other of violating international law and to incriminate the hospital as a command center, shield for fighters, arms storage location, or missile launch pad (3).

v) Non-consensual ratification of IHL: While IHL is considered obligatory, not all of its texts are ratified by the international community as a whole (1,8). Consequently, there is no real legal constraint to compel non-signatory countries to cooperate with international bodies and adhere to the requirements of IHL(8).

To conclude, despite its humanitarian function and protected status, hospitals in conflict zones remain vulnerable to military attacks.

**DECLARATIONS:** To enhance the academic writing of our paper, we employed the language model ChatGPT 3.5 (10)

**CONFLICT OF INTEREST STATEMENT.** None

**DATA AVAILABILITY STATEMENT.** Data sharing not applicable to this article as no datasets were generated or analyzed during the current study.

**Table 1.** Main texts relating to the status of hospitals in International humanitarian law (IHL) in the context of armed conflicts.

| Conventions and treaties   | Mains articles discussed   | Comments  |
|--|--|---|
| IHL= law of armed conflicts  | "IHL is a set of rules, which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare" <sup>1</sup> .   | .Is not concerned with the justification of in going war, but only with the conduct of hostilities once they commence.<br>.It binds a state with respect to the actions of its armed forces.<br>.The violation of international humanitarian law by one party does not justify violations by the other <sup>1</sup> .<br>.IHL includes the Geneva Conventions (1949), its 2 additional protocols (1977), treaties and states parties <sup>1</sup> . |
| The Geneva conventions 1949<br><br>A set of treaties defining the obligations of governments engaged in armed conflict towards non-combatants. | <b>Article 18- Protection of hospitals</b><br><i>'Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.'</i><br><br>Link: <a href="https://ihl-databases.icrc.org/fr/ihl-treaties/gciv-1949/article-18">https://ihl-databases.icrc.org/fr/ihl-treaties/gciv-1949/article-18</a><br><br><b>Article 21-Medical vehicles</b><br><i>'Medical vehicles shall be respected and protected in the same way as mobile medical units'</i><br><br>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-21">https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-21</a> | .Medical facilities are afforded protection due to their function (providing care)<br>.The protection of hospital infrastructure, premises, and ambulances constitutes one of the fundamentals of IHL (civil and non-military objective).<br>.The fourth Geneva convention stipulates that in case of violation, the acts committed may be characterized as war crimes subject to prosecution before international bodies <sup>5</sup> .            |

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| Conventions and treaties | Mains articles discussed   | Comments   |
|--------------------------|--|--|
|                          | <p><b>Article 19-Discontinuance of protection of hospitals</b></p> <p><i>'The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.'</i></p> <p>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-19">https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-19</a></p>   | <p>.Hospital protection is not absolute.</p> <p>.In IHL, these structures lose their specific protection when they are used to directly or indirectly interfere with military operations.</p> <p>.Under these conditions, military action against the hospital is justified (while being proportional and precautionary) <sup>5</sup>.</p> <p>.The expression '<i>acts harmful to the enemy</i>' is not defined under IHL.</p> <p>.The party intending to attack the hospital is required to warn its occupants of the imminent operation to allow for evacuation.</p>   |
|                          | <p><b>Article 13-Protection of the civilian population</b></p> <p><i>'1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations in all circumstances'.</i></p> <p><i>'3. Civilians shall enjoy protection, unless they take a direct part in hostilities'</i></p> <p>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-13">https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-13</a></p>   | <p>.The protection of civilians can extend to combatants who have laid down their arms or who are wounded and being treated within the confines of hospitals.</p> <p>.The presence of these wounded individuals (even if they retain possession of their non-functioning weapons) should not be considered as 'harmful to the enemy' and does not justify military attacks against the hospital.</p> <p>.Healthcare workers who respect medical neutrality are protected by IHL.</p>   |
|                          | <p><b>Article 48-Basic role (Additional Protocol I)</b></p> <p><i>'In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly, shall direct their operations only against military objectives'.</i></p> <p>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48">https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48</a></p>  | <p><b>The principle of distinction in IHL</b></p> <p><b>.Rule 1:</b> «The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians ».</p> <p>.The term 'combatant' refers to any person engaged in armed conflict who does not enjoy the protection afforded by IHL.</p> <p>Link: <a href="https://ihl-databases.icrc.org/en/customary-ihl/v1/rule1">https://ihl-databases.icrc.org/en/customary-ihl/v1/rule1</a></p> <p>.Numerous military manuals, stipulate that a distinction must be made between civilians and combatants and that it is prohibited to direct attacks against civilians (eg; 1) the US Air Force Pamphlet: in order to insure respect and protection for the civilian population and civilian objects, the parties to the conflict must at all-time distinguish between the civilian population and combatants". 2) Section 86 of the UK Military Manual (1958): "the division of the population of a belligerent State into two classes, namely, the armed forces and the peaceful population").</p> <p>.A number of states have not ratified Additional Protocol I.</p> |
|                          | <p><b>Article 51-Protection of the civilian population (Additional protocol I)</b></p> <p><i>'Indiscriminate attacks are prohibited. Indiscriminate attacks are:</i></p> <p><i>4.(a).those which are not directed at a specific military objective</i></p> <p><i>4.(b).those which employ a method or means of combat which cannot be directed at a specific military objective'.</i></p> <p>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51">https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51</a></p>   | <p><b>The Principle of proportionality in IHL</b></p> <p>.A fundamental principle that requires a balance to be struck between military necessity and the protection of civilians when assessing the legality of any attack <sup>6</sup>.</p> <p>.It requires to be strictly limited and proportionate to the danger. (IHL does not authorize States to use armed force except in cases of self-defense or aggression) <sup>6</sup>.</p> <p>.It may trigger military commanders' individual criminal responsibility for possible war crimes <sup>6</sup>.</p>  |
|                          | <p><b>Article 51-Protection of the civilian population (Additional protocol I)</b></p> <p><i>'5.(b). an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.</i></p> <p>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51">https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51</a></p>  | <p><b>The Principle of precaution in attack in IHL</b></p> <p><b>.Rule 15.</b> 'In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects'.</p> <p>.Obligation to take precaution is now included in a large number of military manuals.</p> <p>.Precaution is based on available information: military commanders and others responsible for planning, deciding upon or executing attacks necessarily have to reach decisions based on their assessment of the information from all sources, which is available to them at the relevant time.</p> <p>Link: <a href="https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15">https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15</a></p>   |
|                          | <p><b>Article 57- Precautions in attack (Additional protocol I)</b></p> <p><i>'1.In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian object'.</i></p> <p><i>'2.a.(i).do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection'.</i></p> <p><i>'2.b.an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection'.</i></p> <p>Link: <a href="https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-57">https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-57</a></p> |  |

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| Conventions and treaties  | Mains articles discussed  | Comments  |
|---|---|---|
|   | <p><b>Article 6-Genocide</b></p> <p><i>'Genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:</i></p> <p><i>(c). Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part'</i></p> <p><b>Link:</b> <a href="https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-6">https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-6</a></p>   | <p>.Attacks against hospitals can constitute serious violations of IHL, falling within the scope of war crimes or genocide.</p> <p>.War crime is defined as 'a serious violation of IHL, for which an individual bears individual criminal responsibility.</p> <p>.Criminal intent is an essential element to prove that a war crime has been committed 5.</p> <p>.Article 8 of the Rome Statute is also one of the cornerstones of the International Criminal Court (ICC) 5.</p> <p>.Some countries are not signatories to the Rome Statute and do not recognize the authority of the ICC, in part because Article 8 implies recognition of elements of Protocols I and II of the Geneva Conventions, which these countries have not ratified.</p> |
|   | <p><b>Article 8- War crimes</b></p> <p><i>'war crimes' means , in particular when committed as part of a plan or policy:</i></p> <p><i>a.(iv). Extensive destruction, not justified by military necessity</i><br/> <i>b.(ii). Intentionally directing attacks against civilian objects, which are not military objectives'</i></p> <p><b>Link:</b> <a href="https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-8">https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-8</a></p>  | <p><b>Link:</b> <a href="https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998">https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998</a></p>   |
| <p><b>Rome Statute of the International Criminal Court,</b></p> <p>17 July 1998</p> | <p><b>The Rome statute, defines the following as a war crime:</b></p> <p><i>"Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."</i></p> <p><b>Link:</b> <a href="https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-8">https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-8</a></p> |   |

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