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Humanity on the Battlefield

Between Law and Practice: Exploring the Protection of Medical Units and Healthcare Personnel in Armed Conflicts.

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A C K N O W L E D G M E N T S

After half a decade of academic pursuit, this chapter can finally be closed. My academic focus on human rights advocacy fuels my aspirations on aiming for a global impact on the rights I hold dear. The outcome, whether significant or subtle, rests in the hands of my future accomplishments. I extend heartfelt appreciation to my parents, sister, friends, mentors, and colleagues, whose influence has shaped my journey and made me realise my capabilities. Gratitude also extends to the faculties of law at Örebro, Graz, Uppsala, and the Swedish Defence University. Additionally, I would like to dedicate this thesis to the unsung heroes – the healthcare professionals, first responders, and researchers – who tirelessly dedicate themselves to saving lives worldwide, often at great personal risk. Their unwavering commitment deserves boundless gratitude from every corner of the world. *Thank you.*

A B S T R A C T

The aim of this thesis has been to address the obligations of sovereign states under two different bodies of law. Namely, IHL and IHRL, which are two sets of rules providing a number of legal rights to medical units and healthcare personnel in times of conflict.

A legal dogmatic method with the inclusion of the theory of normative coherence has been applied throughout the essay to answer the question this thesis poses.

In armed conflict, when hospitals are damaged or destroyed and healthcare personnel are deliberately attacked, it has an impact that extends beyond the destruction of just physical infrastructure. Following the different scholars of law, the thesis has come to the conclusion that during an armed conflict, there is a clear overlap and also a parallel line between these two bodies of law. Meaning that states have the legal obligation to respect and protect medical units and healthcare personnel under the IHL body of law, and additionally, under IHRL, states have also the obligation to fulfil the right to access to health facilities, goods, and services. Thus, this thesis has shown that the international legal regimes, together, applied through the theory of normative coherence, satisfactorily address the obligations of sovereign states. However, the thesis has also come to the conclusion that a legal regime is only as effective as its enforcement. This thesis shows that there is a legal structure to prevent medical units and healthcare personnel from being attacked, however, such attacks still face a multitude of operational challenges that require immediate attention.

Ultimately, the thesis concluded by addressing pressing needs that the international community should address and advocate for in order to promote greater adherence to IHL and IHRL, and additionally pursue criminal prosecutions for unjustified attacks on medical units and healthcare personnel.

Keywords: International Humanitarian Law, International Human Rights, Law, Targeted Attacks, Hospitals, Medical Units, Healthcare Personnel, Right to Health.

List of Abbreviations

ACHPR	African Charter of Human and People's Rights
ACHR	American Charter of Human Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CESCR	Committee on Economic Social and Cultural Rights
DoD	The US Department of Defense.
ECHR	European Convention on Human Rights
GC	General Comment
IAC	International Armed Conflict
NGO	Non-Governmental Organization
NIAC	Non-International Armed Conflict
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross and Red Crescent Movement
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MSF	Médecins Sans Frontières (English: Doctors Without Borders)
OSCE	Organisation for Security and Co-operation in Europe
The Charter	The Charter of the United Nations
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UN	United Nations
UNSC	United Nations Security Council
US	United States of America
WHO	World Health Organization

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1. I N T R O D U C T I O N

i. Medical Lawfare

Assaults on medical personnel, facilities, and transports, denial of access to medical services, and misuse of medical facilities and emblems have become prominent features of armed conflicts despite their prohibition by the laws of war. International humanitarian law (IHL) provides specific protection for medical units and healthcare personnel whose mission is to save lives and provide care for civilians and combatants alike during armed conflicts.[1]

During the past 20 years, violations have been documented in varied conflicts, e.g., in Kosovo, Nepal, the occupied Palestinian territory, Iraq, Afghanistan, Ukraine, and Colombia, which have shown extensive violence against medical functions. Such actions cause death and injury and intensify the suffering of the populations that are already devastated by war. Thus, the topic remains relevant and grows in importance every single day.[2]

The Geneva Conventions provide special protection to medical personnel and facilities to ensure that they can operate without military interference. Because of increasing attacks, in 2016, many humanitarian and human rights organisations launched an international advocacy initiative in an effort to restrain the spread of attacks on medical facilities. In this initiative, they called upon the United Nations Security Council (UNSC) to intervene, which resulted in the unanimous adoption of UNSC Resolution 2286. In this resolution, states came together to condemn very strongly all those acts of violence, attacks and even threats against medical personnel and humanitarian personnel that are solely engaging in fulfilling their medical duties.[3] The UNSC additionally demanded that all parties to armed conflict should fully comply with their obligations under international law, including International Human Rights Law (IHRL), when applicable, and consequently, even IHL. The resolution highlighted the obligations of parties under the Geneva Conventions and their Additional Protocols, to ensure the respect and protection of all medical personnel and humanitarian personnel that are

[1] Robin Coupland "*Health Care in Danger: A Sixteen-Country Study"* (ICRC, 2011); Len Rubenstein "*Breaking the Silence: Advocacy and Accountability for Attacks on Hospitals in Armed Conflict"* (International Review of the Red Cross, 2016) p.1205 and Alexander Breitegger "*The Legal Framework Applicable to Insecurity and Violence Affecting the Delivery of Health Care in Armed Conflicts and Other Emergencies"* (International Review of the Red Cross, 2013) p.90.

[2] MAP Action, Insecurity Insight, Safeguarding Health in Conflict, *Attacked and threatened: health care at risk*.

[3] UNSC Res 2286 on Protection of the Wounded and Sick, Medical Personnel and Humanitarian Personnel in Armed Conflict (2016) para 1.

exclusively engaged in medical duties during an armed conflict, including their means of transportations, equipments, hospitals, and other medical facilities used to fulfil their duties.[4]

Despite states signing and agreeing to both binding and non-binding legal instruments to prevent such incidents, countless attacks on hospitals, medical units, and healthcare personnel fulfilling their duties in armed conflicts around the world are today still met with impunity. As of the date of submission, 17388 incidents were reported globally from 2016 till today; in which 4088 health facilities were damaged, 3469 health workers were killed, 1456 workers were kidnapped, and 2780 workers were arrested in at least 20 countries.[5]

In light of the issue, the International Committee of the Red Cross and Red Crescent Movement (ICRC)'s work in this field has been relevant. The organisation has published studies on the insecurity of healthcare and violence against medical services in armed conflict, demonstrating that these incidents are not isolated events, but part of a broader and more complex humanitarian crisis.[6] This issue is a complicated humanitarian problem that requires a comprehensive response that is rooted in law, politics, and dialogue. A report by the ICRC documents widespread patterns of violence against healthcare systems across sixteen countries, suggesting that such incidents are part of broader structural failures in conflict zones.[7]

ii. Thesis Statement and Research Question

The present global crisis in many parts of the world highlights the urgency of addressing this issue. Armed conflicts, which are marked by insecurity and violence for the populations involved in them, generate the responsibility of states to ensure that their citizens have access to healthcare services. It can be understood that without the knowledge of the law, one might assume that the primary rule of both the IHL and IHRL framework is that medical units and healthcare personnel are protected and should not be attacked, but this is not always the case. This thesis critically examines the extent to which current frameworks under IHL and IHRL impose and enforce state responsibility for the protection of medical units and healthcare

[4] *ibid*, para 4.
[5] MAP Action, Insecurity Insight, Safeguarding Health in Conflict, *Attacked and threatened: health care at risk* Status as at: 10th October 2025.
[6] Alexander Breitegger *"The Legal Framework Applicable"* p.88; and ICRC "*Violent Incidents Affecting Health Care: January 2012 to December 2014"* (2015) p. C.
[7] Robin Coupland "*Health Care in Danger"*; Len Rubenstein "*Breaking the Silence"*.

personnel during armed conflict, and what significant legal and operational gaps remain in ensuring accountability and adherence. By analysing case studies of Afghanistan, Syria, Ukraine, and Gaza, it identifies where existing norms fall short in preventing violations and proposes channels for strengthening compliance, enforcement, and normative coherence between IHL and IHRL.

Thereby, this thesis poses the following question:

What multifaceted legal and operational challenges hinder the effective protection of medical units and personnel under IHL and IHRL during armed conflicts, and where do gaps remain in ensuring state accountability?

iii. Method and Materials

The question this thesis poses will be answered with a legal dogmatic method. This method focuses on interpreting the relevant legal spaces to find the solution to a problem. In general, the method is usually described as a method for analysing, systematising and interpreting applicable law in a specific, concrete context. The main task of the legal method is to describe how a certain solution might look for an existing problem.[8] The task of the legal dogmatic method is to establish the law,[9] which is not primarily aimed at solving a concrete problem but operates at a more abstract level. It is a qualitative method in which thinking is a prominent feature.[10]

A narrower definition of the method claims that it can only be used to answer questions that focus on how the law is, from the Latin term a *de lege lata* nature. However, the purpose of the legal dogmatic method can also include critically examining the law and arguing for how the law should be, as in a *de lege ferenda* nature. The method can be used to highlight shortcomings and contradictions in current law, and can be used to criticise the legal situation as well as propose future changes. The purpose of a *de lege ferenda* argumentation is to analyse whether the law should be changed e.g., from a certain perspective, so that a certain purpose or a certain value is better served, i.e. the starting point is that *lex lata* is deficient in that perspective. This type of argumentation cannot be deduced from the authoritative

[8] Jan Kleineman, *Rättsdogmatisk metod* in Maria Nääv and Mauro Zamboni (eds.), *Juridisk metodlära* (Studentlitteratur, 2018), p.26.
[9] i.e. *lex lata*.
[10] Claes Sandgren, *Rättsvetenskap för uppsatsförfattare* (Norstedts Juridik, 2015), s.43.

material that constitutes current law, but goes one step further and analyzes the law instead of stopping at establishing it.[11]

This essay will argue from both *de lege lata* and *de lege ferenda* nature. The aim will be to give the reader a basic understanding of how IHL and IHRL are protecting medical workers and facilities in times of conflict. To argue from a *de lege ferade* nature, this question requires firstly to recognize the applicable law in order to later analyse how the rights should be interpreted in the light of human rights. Arguments based on established law will be used to highlight shortcomings and contradictions in the current legal situation as well as propose future changes.[12] Thus, the starting point for the question and the essay in general is that it is possible to be critical in the legal dogmatic method as long as the argument is based on established law.

To answer the questions, legislation, principles of international law, case law, and legal comments by scholars will be the sources to be analysed. The supporting arguments will consist of rational motivations and conclusions. Art. 38 of the International Court of Justice (ICJ) formally recognised the sources of international law. The article remains silent as to the hierarchy between the different norms, however, treaties and international customary law are the most important in practice.[13] Thus, the materials and instruments of law this thesis explores are the following: General Principles of International Law, Customary International Law, and the Geneva Conventions. In addition, jurisprudence from courts will constitute an important source of law that will also be referred to. Treaty interpretation is central to the work of this thesis, thus, the general rule of interpretation as coded in the Vienna Convention on the Law of Treaties (VCLT) will be applied.[14]

Some secondary literature advocates a formal view of IHL and the Geneva Convention, while other doctrines are more flexible and dynamic, allowing for a continuous reinterpretation of the sources in light of present developments. Many international organisations[15] have highlighted the problems of attacks on hospitals thus they have made their own research and

[11] *ibid* s.48.
[12] Jan Kleineman "*Rättsdogmatisk metod"* in Maria Nääv and Mauro Zamboni (eds.), "J*uridisk Metodlära"* (Studentlitteratur, 2018), p. 24.
[13] UN, Statute of the International Court of Justice, Art. 38(1); hereafter referred as the 'ICJ Statute'.
[14] UN, Vienna Convention on the Law of Treaties (1969) Art. 31-33.
[15] e.g ICRC, Amnesty International, Médecins Sans Frontières, Human Rights Watch etc.

data on how to prevent them/hold countries accountable, which makes it an attractive source to listen to and draw inspiration from.

When addressing the case studies and the relevant obligations, official documents published by the governments will be reviewed, as well as their national military legislation available in English, in order to understand each state's perspectives on these situations. Additionally, news publications will be presented and analysed to provide further context and clarity from the human and operational perspective for a better and clearer understanding of these events.

iv. Legal Theory: "Normative Coherence"

In recent years, the protection of medical units and healthcare personnel in armed conflict has emerged as a critical issue within the framework of IHL. However, ensuring the effective implementation of protection measures necessitates a coherent and harmonised approach between both IHL and IHRL bodies of law. Thus, this thesis aims to investigate the integration of the legal theory of "normative coherence"[16] in safeguarding medical units and healthcare personnel; it explores and examines how alignment and consistency between IHL and IHRL can strengthen the responsibility of states.

Normative coherence in international law refers to the general principle that international legal rules should be consistent with one another and non-contradictory to form and uphold the integrity of a unified legal justice system. This is achieved by ensuring that norms and principles of law, including treaties and general principles, are applied and interpreted in a harmonized way.[17]

The need for coherence in international law has become increasingly relevant as the creation and interpretations of treaties, court cases, and other legally binding sources have generated interpretative overlaps and potential contradictions between these legal frameworks since the establishment of these rules. The International Law Commission's Report on the Fragmentation of International Law emphasised that such diversification must be reconciled through the principle of systemic integration, which is also reflected in Art. 31(3)(c) of the

[16] Raphaël van Steenberghe "*The Impacts of Human Rights Law on the Regulation of Armed Conflict: A Coherency-Based Approach to Dealing with Both the "Interpretation" and "Application" Processes"* (ICRC, 2022) p.1368.
[17] *ibid.*

VCLT.[18] This VCLT article guides legal scholars that, when interpreting treaty provisions, relevant rules of international law applicable between the parties should be taken into account, to promote consistency across different legal regimes.[19] Legal scholars such as Martti Koskenniemi and Bruno Simma have further developed this idea, arguing that the coherence of international law is essential for both legal certainty and legitimacy in global governance.[20] A more coherent international law provides a more reliable basis for states to settle their international disputes. It can be argued that states are more willing to comply with a predictable and consistent body of law because coherence promotes a sense of justice by ensuring that legal obligations are clear. Therefore, a lack of coherence leads to uncertainty and fragmentation, which in turn can hinder the development and application of international law by undermining it.

For the purpose of this research, the theory of normative coherence offers a frame of reference for addressing the relationship between IHL and IHRL, two regimes that often overlap in armed conflict situations. While IHL serves as the *lex specialis*[21] governing conduct during hostilities, IHRL provides a complementary general framework that continues to apply even in times of war. Thus, the challenge for state parties to a conflict lies in ensuring that the application of these two different legal frameworks does not produce conflicting obligations but rather operates coherently to reinforce the protection of human life and dignity.

Finally, by grounding the analysis of the questions this thesis poses in this theoretical perspective, the author seeks to examine whether current state practices and accountability mechanisms comply with a coherent interpretation of international law.

v. Definitions

For the purposes of this thesis, the terms *medical units* and *healthcare personnel are* defined as the following: (1)*'Medical units'* is defined in Art. 8(e) of Additional Protocol I of the

[18] The International Law Commission's Report on the Fragmentation of International Law (2006) p. 88.
[19] VCLT Art. 31(3)(c).
[20] Martti Koskenniemi *"The Politics of International Law – 20 Years Later"* (The European Journal of International Law, 2009) p.8-9; Bruno Simma and Dirk Pulkowski *"Of Planets and the Universe: Self-contained Regimes in International Law"* (The European Journal of International Law, 2006) p.508.
[21] Juliet Chevalier-Watts "*Has Human Rights Law Become Lex Specialis for the European Court of Human Rights in Right to Life Cases Arising from Internal Armed Conflicts?"* (The International Journal of Human Rights, 2010) p. 584.

Geneva Conventions as facilities and other units, whether they are military or civilian, and are organised for medical purposes. Medical purpose is explained as follows: to search for, collect, transport, diagnose, treat, and provide first aid to the wounded and sick.[22] The term includes hospitals and any other similar facilities;[23] and (2) *'Healthcare personnel'* has been regarded in this thesis in the broadest possible sense, covering all individuals that are engaged in taking care of the wounded and sick in an armed conflict zone, such as nurses, physicians, first-aid workers, and ambulance drivers.[24] It is important to note that under IHL, in Art 8 (c) of Additional Protocol I specify that special protection as medical personnel is granted to those who have been formally designated for these particular duties by one of the parties to the conflict.[25] If those medical units or personnel are not assigned or recognized by a party to a conflict, they generally enjoy the protection granted by IHL as ordinary civilians.

vi. Delimitations and Outline

Due to space limitations, this thesis deliberately focuses on analyzing the commonalities between the two international legal regimes, providing a selective rather than exhaustive overview. This thesis has mainly focused on the analysis of the Geneva Conventions together with their Additional Protocols or addressing the protection of medical units and healthcare personnel in conflict crises, and whether the framework under IHRL can present additional obligations for sovereign states to fulfill. Within the IHRL framework, because of the question the thesis poses, the focus has been on the right to health, as articulated in Art. 12 of the Covenant on Economic, Social and Cultural Rights (ICESCR).[26] This specific article is closely linked to the right to life as enshrined in Art. 3 of the Universal Declaration of Human Rights (UDHR) and Art. 6 of the Covenant on Civil and Political Rights (ICCPR),[27] thus

[22] Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims of IAC (1977) Art. 8(e), hereafter referred to as 'Additional Protocol I'.

[23] Jean-Marie Henckaerts and others (eds), Commentary on the First Geneva Convention: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (ICRC 2016) para 1775–1776.

[24] Additional Protocol I Art. 8(c) definition.

[25] *ibid*.

[26] Access to health care is also mentioned in other important international UN conventions of the IHRL body of law such as the International Convention on the Elimination of All Forms of Racial Discrimination Art. 5 (e)(iv); the Convention on the Elimination of All Forms of Discrimination against Women, Art. 11 (1)(f), 12 and 14(2)(b); the Convention on the Rights of the Child Art. 24; the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 28, 43(e) and 45(c) and the Convention on the Rights of Persons with Disabilities, Art. 25.

[27] The right to life is also explicitly protected in the three major regional human rights conventions: Art. 2 of the European Convention on Human Rights; American Convention on Human Rights Art. 4 and the African Charter on Human and Peoples' Rights Art. 4.

these two articles are also taken into consideration. Subsequently, the thesis shifts its attention to the examination of past and recent ongoing armed conflicts and the treatment of medical units and healthcare personnel for a critical evaluation of their effectiveness and gaps identified.

Additionally, due to space constraints, this thesis looks at analysing four main places: Afghanistan, Syria, Ukraine, and Gaza. The selection of these case studies was based on several factors. They were selected because they all occurred within the past decade, allowing for the author to examine state patterns in a close near time-frame rather than relying on incidents not very well documented from the distant past. The accident in Afghanistan and Syria involved two permanent members of the UNSC, the US and the Russian Federation, and reflects patterns that have persisted over time. More recently, the ongoing wars, one within Europe's borders, Ukraine, and in Gaza, unfolding in real time before a global audience, highlight the continued relevance of addressing these issues. By examining these specific cases, the author seeks to demonstrate the continuing operational and perhaps legal challenges surrounding the protection of healthcare in armed conflicts.

vii. Previous Research

The ICRC has accomplished remarkable work on the issue of violence and insecurity of health care in conflict, which will be discussed and analysed as soft law.[28] E.g., at the 32nd conference of the Red Crescent, a report on safer practical measures for the delivery of health care in armed conflicts was developed.[29] Till today, the ICRC continues to increase understanding of the issue by collecting information on their databases regarding state practice and their customary international law study, which would be of great significance during the writing of the thesis.

While the protection of medical personnel and facilities in armed conflict has been discussed both by legal scholars and in humanitarian reports, much of the existing literature focuses on either the theoretical framework of IHL or on broad human rights obligations of states during peacetime. Existing research on IHL examines the rules protecting medical personnel and

[28] Soft law sources, defined as non-binding legal instruments, such as: resolutions, principles and guidelines, documents created by international bodies, such as the UN organs documents or the ICRC that have a lower level of legal authority than hard law, but are nevertheless relevant for the understanding of this thesis.

[29] ICRC "*Health Care in Danger: Continuing to protect the delivery of health care together, Resolution 4 adopted by the 32nd International Conference of the Red Cross and Red Crescent"* (2015).

facilities, the obligations of conflict parties and issues such as proportionality, distinction, and perfidy, with topic areas ranging from legal commentaries and Geneva Convention analysis to ICC rulings and military manuals. However, much of this work remains theoretical, with fewer studies that link the legal rules to the practical challenges of enforcement on the ground. Similarly, research on IHRL tends to focus on peacetime obligations, non-discrimination, and the positive duty of states to ensure access to healthcare.

Research on the applicability of IHRL together with IHL in conjunction with an armed conflict remains limited. There have been reports on documented attacks in conflict such as Afghanistan, Syria, Gaza, and Ukraine, however, there is comparatively little analysis linking these incidents to state obligations, operational contrast, and most importantly, accountability mechanisms.

Thus, this thesis seeks to address these gaps by combining a legal examination of IHL and IHRL obligations with an empirical analysis of recent case studies. This thesis aims to combine detailed legal analysis with real-world case studies to identify gaps. It explores how IHL and IHRL interact, and also highlights where these frameworks complement one another, overlap in safeguarding healthcare during armed conflict. The study also examines the practical challenges that allow attacks on medical facilities to continue, including unclear legal rules, weak enforcement, the uncertain status of healthcare sites, the involvement of non-state actors, limited resources, and political considerations. By doing this, this thesis highlights persistent operational and enforcement challenges, demonstrating the need to succeed and follow these rules over the last decade, and thus identifies where state accountability remains insufficient.

2. THE MATERIAL SCOPE OF APPLICATION

The conduct of state forces, individuals, and organisations in armed conflict is subject to regulation by international law. The body of law particular to armed conflict is known as the law of armed conflict or IHL. This body of law emerged in the 19th century, when the first piece of legislation regulating the issue was signed in 1864.[30] IHL is concerned exclusively with *jus in bello*[31], and *jus ad bellum*[32] *is* regulated by the Charter of the United Nations (The Charter), in which, the Charter prohibits all wars of aggression,[33] and permits only wars of self-defence and/or those approved by the UNSC.[34]

IHL regulates conduct *in bello* specifically. Broadly founded, IHL can be seen to fall into two distinct categories: (1) the *"law of Geneva"* is the body of law designed to protect victims of armed conflict, including soldiers who *are hors de combat*[35] and civilians who are not, or no longer, directly involved in hostilities; and (2) the *"law of The Hague"* sets the rules and duties of those actively participating in warfare, focusing on regulating how hostilities are conducted and restricting the means and methods of warfare.[36]

Additionally, states and other actors involved in armed conflict are also bound by Customary International Law. The ICJ Statute describes customary international law as *"a general practice accepted as law"*.[37] It is generally agreed that the existence of a rule of customary international law requires the presence of two elements, namely *usus*[38] and *opinio juris.*[39] This means that the practice may be required, forbidden, or permitted depending on the type of rule applicable. Between 1995 and 2005, the ICRC put together the Study of Customary IHL. This study was based on extensive consultation with academic and government experts, nearly 50 national reports of individual states' practice, research on the practice of international organisations, and archival research pursued by the ICRC itself. The study indicates that the

[30] Alexander Breitegger *"The Legal Framework Applicable"* p. 90; and The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1950).
[31] Latin term for *'the law that governs the way in which warfare is conducted'*.
[32] Latin term for *'the right to wage war'*.
[33] UN, Charter of the United Nations and Statute of the International Court of Justice (1945) Art. 2 para 4; hereafter referred to as the 'ICJ Statute'.
[34] ICRC *"IHL and Other Legal Regimes– Jus Ad Bellum and Jus in Bello"*; and UN Charter, Chapter VII.
[35] *hors de combat* i.e. meaning awarding protection to soldiers out of conflict.
[36] ICRC "*How is the Term "Armed Conflict" Defined in International Humanitarian Law?"* (2014) p.5.
[37] ICJ Statute, Art. 38(1)(b).
[38] Latin term for *'state practice'*.
[39] Latin phrase meaning *'an opinion of law or necessity'*.

rules it presented concerning respect and protection of healthcare apply in both IAC and NIAC.[40]

2.1 The Relationship Between IHL and IHRL

In times of armed conflict, either IAC or NIAC, IHL provides rules to protect access to health care. These rules bind States and Non-State Armed Groups.[41] In cases where these conflicts fall short and are under the threshold of armed conflict, only IHRL applies. Hence, IHRL applies at all times, even in situations of armed conflict,[42] but states may, in exceptional circumstances, derogate from IHRL provisions. The relationship between the two bodies of law is "*described as a relationship between the general and specialised law"*, in which IHL is applied as *lex specialis*[43] providing a conflict-solving method[44] for situations where norms cannot be reconciled.

Though less specific than IHL, IHRL contains several rules protecting access to health care. The key application differences on the scope of IHL and IHRL when it comes to safeguarding healthcare during armed conflict can be summarised as follows:

(1) Firstly, IHL specifically protects medical units and personnel, but IHRL does not enshrine such specific functioning protections to any special functioning person or group. Instead, IHRL protects all individuals under a state's jurisdiction without

[40] Commentary on Customary IHL Study on Rule 55 in para 197.

[41] The international community broadly accepts that the law of IHL can be binding on organised armed groups, however it is disputed on *how* and *why* these rules can be established, since organised armed groups are not signatories to any treaties or conventions it created confusion. One approach would be that non organised armed groups are bound by customary international law, thus they must abide by IHL rules since they are born out of customary law. See Michelle Mack "*Increasing Respect for IHL in Non-International armed conflicts"* (ICRC, 2008); Jann K. Kleffner "*The applicability of international humanitarian law to organized armed groups"* (International Review of the Red Cross, 2011).

[42] *inter alia* see case from the ICJ on Legal Consequences of the construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (2004) para. 106; Commentary on Customary IHL Study, Vol. 1, p. Xxxvii; and Alexander Breitegger *"The Legal Framework Applicable"* p.90.

[43] Cordula Droege "*The Interplay between international humanitarian law and international human rights law in situations of armed conflict"* (Israel Law Review, 2007) p. 340; Alexander Breitegger *"The Legal Framework Applicable"* p. 90.

[44] Noëlle Quénivet, "*The history of the relationship between international humanitarian law and human rights*" in Roberta Arnold and Noëlle Quénivet (eds), "*International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law"* (2008) p. 7.

discrimination.[45] Thus, IHRL does not specifically protect medical personnel on the basis of their function of providing health care, but IHL does;

(2) Secondly, IHL is binding on all parties to the conflict, including Non-State Armed Groups.[46] However, IHRL applies to states because they are signatories to the treaties. There are differences of opinion among the international community as to whether, and if so, to what extent, Non-State Armed Groups also possess the obligations to fulfill IHRL obligations;[47]

(3) And Thirdly, contradictory to IHL, IHRL enables states to derogate from specific rights if some key criteria are fulfilled. Such as in times of public emergencies that threaten the security of the nation to a remarkable extent.[48] Both IHL and IHRL can become applicable in armed conflicts, however, if a conflict does not pass the threshold of an armed conflict under the IHL framework of law, those other forms of state emergencies are governed only by IHRL, and not IHL.

2.2 Specific Protection Covered by IHL

The four Geneva Conventions provide protections to distinct groups found in war-military personnel on land, military personnel at sea, prisoners of war, and civilians[49] in cases of IAC. Those affected by NIAC, at the time of drafting in 1949, received only the protection

[45] Art. 2(1) of the ICCPR imposes obligations on state parties to protect and fulfill the rights of individuals within their territory and jurisdiction, see Art. 1 on jurisdiction.

[46] For armed hostilities to reach the threshold of an NIAC, the conflict must reach a certain level of intensity and the groups involved in the conflict must be sufficiently organized within themselves. The IHL body of law establishes a distinction between NIACs relating to Common Art. 3 to all Geneva Conventions and a NIACs definition in Art. 1 of Additional Protocol II, see ICRC *"How is the Term "Armed Conflict" Defined in International Humanitarian Law?"* (2014) p.19.

[47] ICRC's position is that non-state armed groups are not legally obligated to follow IHRL, because they are not signatories of the treaties. Only states can formally agree to human rights obligations through treaties. The one exception is when a non-state armed group exercises control similar to that of a government (i.e. *de facto* authority) where its responsibilities might be recognized because it effectively acts like a state authority.

[48] ICCPR, Art. 4; ECHR, Art. 15; HRC, General Comment No. 29: States of emergency (2001), hereafter referred to as "GC No.29".

[49] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field of 12th August 1949 (1950), hereafter referred to as 'Geneva Convention I'; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12th August 1949 (1950), hereafter referred to as 'Geneva Convention II'; Geneva Convention Relative to the Treatment of Prisoners of War of 12th August 1949 (1950), hereafter referred to as 'Geneva Convention III'; and lastly Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12th 1949 (1950), hereafter referred to as 'Geneva Convention IV'.

contained within Art. 3, which is common to all four Conventions,[50] and which essentially defines the minimum legal obligations owed to those injured or *hors de combat* in conflict. While IHL certainly applies to state actors since they are the signatories of the treaties, Non-State Actors also have to abide by these rules through Customary International Law, Common Art. 3 and Protocol Additional to the Geneva Conventions II, where applicable.[51] Medical units get protection no matter what kind of armed conflict it is, but the laws that apply can change slightly depending on the classification of the conflict.[52]

The basic obligation under IHL to respect the wounded and sick entails, most importantly not to attack, kill, ill-treat, or harm them in any way.[53] IHL grants specific protection to medical units and healthcare workers who are officially assigned to fulfill their duties by an authority party to the conflict.[54] These obligations imply that they may not be attacked or harmed when they are pursuing their tasks under an armed conflict. Even if they are not currently treating any wounded and sick, they are and/or have any wounded soldiers or civilians on site.[55] The obligations to respect and to protect medical units and healthcare personnel go further than just prohibiting direct and indiscriminate attacks. The rules also prohibit attacks that could be expected to cause excessive harm, another layer of protection, because of their non-combat role during the conflict.[56]

Furthermore, obligations to respect and protect depend upon the parties to the conflict to take all feasible precautions to protect the wounded and sick, as well as medical units and healthcare personnel, *in* attacks and *from* the aftermath of those attacks.[57] Thus, parties in a

[50] Art. 3 of Geneva Convention I, Geneva Convention II, Geneva Convention III and Geneva Convention IV, Hereafter referred to as 'Common Art. 3'.

[51] Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims of NIAC (1977), hereafter referred to as 'Additional Protocol II'; Len Rubenstein "*Breaking the Silence*" p. 1203.

[52] Analyzing and outlining the legal criteria used to determine the type of conflict falls outside the scope of this paper because of thesis limits.

[53] Geneva Convention I, Art. 12; Geneva Convention II, Art. 12; Geneva Convention IV, Art. 16; Additional Protocol I, Art. 10; Additional Protocol II, Art. 7; Commentary on Additional Protocol I of Art. 10 in para 446.

[54] Additional Protocol I Art. 8(c): Alexander Breitegger *"The Legal Framework Applicable"* p. 85.

[55] Geneva Convention I, Art. 19(1), 24–26 and 35; Geneva Convention II, Art. 23 and 36; Geneva Convention IV, Art. 18, 20 and 21; Additional Protocol I, Art. 12(1), 15 and 21; Additional Protocol II, Art. 9 and 11(1); See also ICRC Database regarding Customary IHL Study, Rules 25, 28, 29, pp. 79, 84–85, 91, 97–98, 102; the study's state practice part is being updated on regular basis, hereafter referred to as 'Customary IHL Study'.

[56] Commentary on Geneva Convention IV, Art. 18 in paras 147–148; Commentary on Additional Protocol I of Art. 12 in paras 539-540.

[57] Commentary on Geneva Convention IV of Art. 18 in para 148; Commentary on Additional Protocol I, Art. 12, para. 540.

conflict have the general responsibility to do everything they reasonably can to make sure that what they're targeting is actually a military objective, not civilians, civilian property, or anything that has special protection, like medical staff or facilities. If it turns out that the target is not military or is an object that IHL has granted special protection to, they're required to stop or call off the attack.[58]

2.3 Justified Use of Force Covered by IHL

Medical units and healthcare personnel can lose their specific protection if they commit acts that are considered harmful towards the enemy outside of their medical duties. *'Acts harmful to the enemy'* are presumed to be actions that help one side's military operations or interfere with the other's, by aiding or hindering military operations.[59] The reasoning behind this rule is simple: medical workers are supposed to stay neutral and provide care to anyone in need, no matter which side they're on. If medical and healthcare personnel, by committing such acts, are involved in military activities, it may foster a wider climate of distrust, affecting other healthcare personnel in the conflict, making fulfilling their duties even harder by facing greater hardships of insecurity and violence during their duties. It can also mean the wounded and sick might not get the care they need. Thus, medical units and healthcare personnel should at all times continue and deliver impartial health care throughout the armed conflict.[60]

The addition of the phrase *'outside of their humanitarian functions'* as a requirement clarifies that if a medical action seems to harm the enemy but is part of legitimate medical work, protection is not lost. For instance, just being near a military target does not count as harmful if the presence is for humanitarian reasons.[61] On the other hand, real violations, like using a hospital to hide fighters or shielding a military position, would be considered acts that deprive medical units of their protection.[62]

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[58] Additional Protocol I, Art. 57(2)(a)(i) and 57(2)(b); Customary IHL Study, Rules 16 and 19.

[59] The Commentary on Geneva Convention I of Art. 24 in para 1999; Commentary on Geneva Convention IV of Art. 20 in para 161.

[60] Alexander Breitegger *"The Legal Framework Applicable"* p. 125.

[61] Commentary on Additional Protocol I, Art. 13, p. 175; see also ICTY P*rosecutor v. Stanislav Galić,* para 346.

[62] Commentary on Geneva Convention I of Art. 21 in para 1999; Commentary on Geneva Convention IV of Art. 19 in para 154; Commentary on Customary IHL Study on Rule 28 in para 97. There is an explicit prohibition to use medical units to shield military objectives in Additional Protocol I, Art. 12(4).

Some acts that are not considered to be an act harmful to the enemy include, e.g., using and/or carrying '*light individual weapons'*. That said, the use of light weapons is only permitted when it is strictly for self-defense or for protecting the wounded and sick. This includes defending against illegal attacks, since doing so doesn't make someone a combatant, since it lacks the fulfilment of *belligerent nexus*[63] and does not constitute direct participation in hostilities.[64] But if those weapons are used to actively resist enemy military advances or to stop the enemy from taking over a medical unit, that crosses a line. In those cases, it would be seen as helping or interfering with military operations, which *would* count as harmful to the enemy and could lead to losing protected status.[65] Other actions that aren't considered harmful include holding onto small arms or ammunition taken from wounded patients and yet to be handed over to authorities, treating enemy soldiers, or simply wearing enemy uniforms or insignia, none of these actions alone mean medical units and healthcare personnel are acting against the enemy.[66]

Committing acts harmful to the enemy can give rise to other or even serious IHL violations, i.e. war crimes, and the medical personnel lose their protection against attacks on themselves. E.g. if medical personnel use one of the badges as a protective device while executing acts against the enemy, they are violating the IHL restriction on the improper use of the insignia.[67] Furthermore, when a protective emblem is misused to gain the trust of the enemy by creating a false narrative of being medical personnel with the clear intention to kill or harm him/her, resulting in the enemy's death or injury, it constitutes a war crime of perfidious killing or wounding.[68]

There are further conditions under IHL that are to be fulfilled before medical units and personnel lose their protection and may become a legitimate target. A warning must first be given, along with a reasonable time limit where appropriate, to give them a chance to stop any

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[63] *belligerent nexu*s i.e the objective connection between an act and the conduct of hostilities.

[64] Alexander Breitegger *"The Legal Framework Applicable"* p.112; and ICRC "*Interpretive Guidance on the Notion of Direct Participation in Hostilities"* (2009) p. 58.

[65] *ibid* para. 69-71 explain the modalities on the temporal scope of loss of protection; see also Commentary on Geneva Convention I of Art. 22 in para 1864.

[66] Geneva Convention I, Art. 22; Additional Protocol I, Art. 13; Customary IHL Study, Rules 25 and 29.

[67] Additional Protocol I, Art. 38; Additional Protocol II, Art. 12; Customary IHL Study, Rule 59.

[68] *Perfidy* is defined in Art. 37 of the Additional Protocol I and In Customary IHL Study, Rule 65 states that the perfidious use of the distinctive emblem which leads to death or serious injury leads to a grave breach, in line with Art. 85(3)(f) of Additional Protocol I; see also Art. 8(2)(b)(vii) of the Rome Statute of the International Criminal Court of 17th July 1998 (ICC Statute) where perfidious acts are also recognised as a war crime in IAC.

harmful actions.[69] The obligation to give a warning before opening fire is intended to allow those who are harming the enemy the opportunity to correct and/or stop their actions. If they continue, then the warning could also ensure that the sick and wounded, who are not to blame for their actions, can be evacuated from the premises and their lives spared.[70]

Even if medical units and personnel have lost their specific protection and can be lawfully legitimate targets of an attack, the people they are caring for, those who are wounded or sick, still have to be protected. That means efforts must be made to avoid harming them, and steps should be taken to keep them safe. That being said, attacks against units and personnel that have lost their protection must adhere to the principle of proportionality, necessity, and military advantage. All reasonable steps must be undertaken to limit civilian casualties and damage as much as possible.[71] The ICRC has pointed out that if there is doubt about whether a hospital is being used for military purposes, it should be assumed that it is not.[72]

2.4 Complementing Obligations of States under IHRL

IHRL, drawing from the foundations laid in the UDHR,[73] the ICCPR,[74] and the ICESCR[75] imposes long-term obligations on the states that have ratified the treaties to the full realisations of all the rights listed.[76] Art. 12 of the ICESCR outlines in a non-exhaustive

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[69] Geneva Convention I, Art. 21; Geneva Convention II, Art. 34(1); Geneva Convention IV, Art. 19(1); Additional Protocol I, Art. 13(1); Additional Protocol II, Art. 11(2); Customary IHL Study, Rules 25, 28, 29; Alexander Breitegger *"The Legal Framework Applicable"* p. 113.

[70] Jean Pictet (eds.), Commentary on the Geneva Conventions of 12th August 1949 (ICRC, 2016) Art. 21 of Geneva Convention I para 1859; Geneva Convention IV Art.19; Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), Commentary on the Additional Protocols (ICRC, 1987) See Additional Protocol I Art 13; and Additional Protocol II Art. 11.

[71] Alexander Breitegger *"The Legal Framework Applicable"* p. 105; Alexandra Boivin "*The Legal Regime Applicable to Targeting Military Objectives in the Context of Contemporary Warfare*" (University Centre for International Humanitarian Law, 2006) p. 56; Jann K. Kleffner, "*Protection of the wounded, sick and shipwrecked*" in Dieter Fleck (ed.), *"The Handbook of International Humanitarian Law"* (OUP, 2008) p. 344.

[72] Amanda Taub *"How International Law Views Military Action at a Hospital"* (The New York Times, 17th November 2023).

[73] UDHR Art.25 establishes the right to medical care.

[74] ICCPR Art. 2(1), 6 and 9.

[75] ICESCR Art. 2(1) and Art.12.

[76] The ICESCR being the main instruments of law in this particular area but there other international and regional legal instruments that also address the right to health such as: African Charter of Human and People's Rights, Art. 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) Art. 10; International Convention on the Elimination of All Forms of Racial Discrimination (1965) Art. 5(e)(iv); Convention on the Elimination of All Forms of Discrimination against Women (1979) Art. 11(1)(f) and 14(2)(b); Convention on the Right of Persons with Disabilities (2006) Art. 25. Additionally, key UN Res. and ICRC and state declarations have reiterated and clarified the commitment to

manner the goals to be successfully achieved by states under the right to health.[77] The Committee on Economic, Social and Cultural Rights (CESCR),[78] has provided a detailed interpretation of the nature of the general obligation of state parties obligations under Art. 2(1) of the ICESCR in its General Comment (GC) No. 3 to fulfill the rights in the covenant by undertaking all necessary steps.[79] In addition, Art. 12 of the ICESCR, as interpreted in GC No. 14, sets out the specific state conditions concerning the right of every individual to enjoy the highest attainable standard of physical and mental health.[80]

The CESCR outlines some key obligations that states must put into action right away. These include ensuring that everyone can access the right to health without discrimination and that governments take intentional, practical, and focused steps to make this right a reality.[81] The Covenant also emphasised the existence of obligations characterised as *'core obligations'*, which are the basic minimum standards that must be met, like providing essential primary health care. While other obligations under the Covenant can be fulfilled gradually depending on a country's resources, these core obligations must be addressed immediately, taking into account the available resources of the country.[82] Regarding the fundamental duties pertaining to the rights of health, the CESCR declared that a state party is not permitted to excuse itself from fulfilling these duties under any circumstances.[83] The provision of essential medications, the equal distribution of all health facilities, products, and services, and the guarantee of non-discriminatory access to essential health facilities, goods, and services are among the fundamental duties relevant to the right to health.[84] The ICESCR also mentioned additional obligations that should be read in relation to the right to health, such as, availability, accessibility, acceptability, and the quality, which would depend on the capabilities of the states.[85]

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making the right to health a reality, highlighting its wide recognition in international law. However, due to word constraints and the specific focus of this thesis, only a few key instruments will be examined.

[77] ICESCR Art. 12.

[78] The treaty monitoring body of the ICESCR.

[79] CESCR, GC No. 3: The nature of States parties obligations (1990), hereafter referred to as the 'GC No. 3'; and Alexander Breitegger *"The Legal Framework Applicable"* p. 93.

[80] CESCR, GC No. 14: On the right to the highest attainable standard of health (2000), hereafter referred to as the 'GC No. 14'; and Alexander Breitegger *"The Legal Framework Applicable"* p.102.

[81] GC No. 3, paras 1-2 and 9; GC No. 14 paras 30-31

[82] GC No. 14 para 43; GC No. 3, para 10.

[83] GC No. 14 para 47.

[84] *ibid*, para 43.

[85] GC No. 3 para 12.

Additionally, the right to health can be divided into three obligations of states *to respect, to protect,* and *to fulfil*. States have an obligation to protect the right to health by, among other things, refraining from interfering actions that are directly or indirectly with the enjoyment of the right to health. This includes, for instance, even practices that deny or restrict fair access to health services for anyone.[86] It would not seem unrealistic to expect that during active hostilities in an armed conflict, there would be a significant overlap between the the obligations of states under the IHRL body of law to respect, protect, and fulfil the right of access to health facilities, goods, and services, and the obligations under IHL to safeguard and protect the wounded and sick as well as medical personnel, units, and transports.

Regarding the responsibility to uphold the right to health, the CESCR has placed particular emphasis on the value of collaboration in the provision of humanitarian aid during emergencies and the expectation that each state will make every effort to fully participate in this effort.[87] Under IHL, it does not set specific rules for states that address the availability and quality of public healthcare services. Thus, under IHRL obligations, states ensuring equal access to health care and making real, concrete efforts to fully realize the right to health take a major importance,[88] making them complementary to each other.

One difference in the legal regimes of IHL and IHRL is the topic of derogation which is only applicable in IHRL, in which certain treaties do foresee the possibility for signatory states to derogate from certain rights in times of armed conflict and other emergencies that pose a threat to the survival of a nation.[89] CESCR in GC No. 14 has expressly declared that this is a *'non-derogable'* right,[90] meaning it cannot be suspended even in emergencies. It is important to understand that derogations (temporary suspensions) are different from limitations, which allow some flexibility in restricting rights for public interests such as maintaining public safety and order, public health and morals, national security, or to balance the exercise of equal rights with the rights of others.[91] Most human rights aren't absolute and can be limited to balance individual rights with the public interest.

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[86] GC No. 14 para 30-37.
[87] *ibid*, para. 40.
[88] Tristian Ferrero "*Expert Meeting Occupation and Other Forms of Administration of Foreign Territory"* (ICRC, 2012) p. 63-65; Alexander Breitegger "The Legal Framework Applicable" p. 91.
[89] ICCPR, Art. 4; ECHR, Art. 15; ACHR, Art. 27; See also HRC, GC No. 29 (2001).
[90] GC No. 14, para. 47.
[91] ICCPR, Art. 12, 18, 19, 21 and 22.

Unlike civil and political rights, the ICESCR includes a general rule in Art. 4 that any limitations on these rights must be set by law, must fit the nature of the rights, and must aim to promote the *'general welfare in a democratic society'*.[92] The phrasing of this article means that states cannot easily use national security as an excuse to limit economic, social, and cultural rights. This is particularly pertinent regarding challenges to healthcare delivery due to insecurity and violence. States might attempt to hinder healthcare access, such as by obstructing medical transports by referring to national security reasons. However, such justifications are only valid if they directly contribute to safeguarding the economic and social well-being of the population.[93] Regardless, states must bear the burden of proving the legitimacy of any limitations concerning these aspects. They must demonstrate that the measures taken are proportional, temporary, and subject to scrutiny.[94]

Additionally, under IHRL, states also have the obligation, in addition to the right to health, to not arbitrarily take the lives of anyone under their jurisdiction, which includes the wounded and sick and healthcare personnel.[95] State security/military officials may only use justified force against healthcare personnel in law enforcement situations where it is absolutely necessary. This could include defending someone from an immediate threat to life or serious injury, stopping a serious crime that poses a grave danger to life, arresting someone who is dangerous and resisting, or preventing them from escaping, or dealing with a riot or insurrection.[96] Force might only be used under the standard of *'absolute necessity'*, meaning that if less extreme means are insufficient to achieve the goal.[97] In most simple cases during an armed conflict, neither healthcare personnel nor the wounded or sick would pose the kind of immediate threat that would justify using force against them.

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[92] ICESCR, Art. 4.

[93] The ICJ in its Wall Advisory Opinion clearly rejected Israel's use of Art. 4 of the ICESCR to justify limiting the economic, social, and cultural rights of Palestinians. See ICJ on Legal Consequences of the construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (2004) para 136.

[94] GC No. 14, paras. 28–29.

[95] ICCPR, Art. 6(1); ECHR, Art. 2; American Convention on Human Rights (ACHR) Art.4.; African Charter on Human and People's Rights (ACHPR) (1981) Art. 4; The UDHR however only mentions that everybody has the right to life, liberty and security, see Art.3.

[96] ECHR, Art. 2(2); HRC, *Guerrero v. Colombia*, (1992), para 13.2 and 13.3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 9 and 10.

[97] Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) Principle 9 and 16.

If healthcare workers do commit violent acts that go beyond self-defense, law enforcement officers must first give a clear warning before using firearms, allowing enough time for the warning to be followed, unless giving that warning would put others or themselves in serious danger.[98] The principle of proportionality under IHRL also applies, meaning that in most situations the force must be proportionate to the use in a way that causes the least possible harm to the person targeted, and under IHL military, officials must weigh the anticipated harm to civilians against the potential military gains before launching an attack.

Lastly, some civil and political rights are non-derogable, *jus cogens*, e.g., the right to life as well as the right to freedom from torture and ill-treatment.[99] Under IHRL, states have the obligation to refrain from subjecting anyone under their jurisdiction to cruel, inhuman, or degrading treatment.[100] Meaning any use of force that causes severe pain or suffering and is out of proportion in relation to a legitimate purpose. Regarding the right to life, the Human Rights Committee (HRC)[101] in its GC No. 6 on the right to life, emphasised how in legal terms the obligations deriving from the right to life have often been narrowly interpreted.[102] The Committee takes a broader view, stating that the general scope of state obligation to ensure the right to life under Art. 6 of the ICCPR isn't just about protecting people from arbitrary killings, it also includes protecting against other serious threats to life, such as life-threatening illness.[103] Additionally, individuals have the right to security under Art. 9 of the ICCPR.[104]

2.5 Prosecution for Accountability

Under international law, both states and individuals can be held accountable for violations of IHL and IHRL. However, individual criminal liability before the International Criminal Court (ICC) requires the intent of a deliberate attack.[105] IHL and IHRL designate responsibility to

[98] *ibid*, Principles 9 and 10.
[99] ICCPR, Art. 4(1).
[100] ICCPR, Art. 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Art. 16.
[101] The treaty monitoring body of the ICCPR.
[102] HRC, GC No. 6: The right to life (1982) para. 1.
[103] *ibid*, para. 5; see also ECtHR, *Cyprus v. Turkey*, Judgement of 10 May 2001, para. 219 in which the scope of state's positive obligations under the right to life has also been recognised, meaning that a State has the duty to take appropriate measures to safeguard life, even when it's not directly threatened by State actions; Alexander Breitegger *"The Legal Framework Applicable"* p. 99.
[104] ICCPR Art. 9.
[105] *"Meas rea*" as in a guilty mind.

States parties to armed conflicts, while international criminal law holds individual perpetrators accountable for war crimes, crimes against humanity, etc.[106]

The ICC is the first permanent international court that has the right to investigate and bring to justice individuals who commit the most serious violations of IHL, including war crimes. Art. 8 of the ICC Statute sets the preconditions that need to be fulfilled for the court to have jurisdiction and prosecute grave breaches of the Geneva Conventions, including intentionally directing attacks against infrastructure specially intended for hospitals and areas where the sick and wounded are gathered, conditioned that they are not considered military targets.[107] However, the court can only investigate alleged crimes if some preconditions are met. Art. 12 sets the foundational legal framework for when and how the ICC can assert its jurisdiction over crimes, emphasising the need for either territorial or national links to State Parties or specific acceptance by non-party states. This ensures that the ICC operates within a defined legal scope, respecting the sovereignty of states while addressing international crimes.[108]

Regarding proceeding against sovereign states. All UN member states parties to the ICJ Statute have the right to initiate legal cases against other sovereign states for not fulfilling their obligations under any international human rights instruments, such as the ICESCR.[109] Advisory proceedings can be submitted only by specific UN organs and agencies regarding matters involving sovereign states, these proceedings carry legal and moral authority, however they are political statements and not binding legal instruments to pressure and influence state behaviour.[110]

Additionally, the Optional Protocol to the ICESCR is an international treaty that allows victims of violation of economic, social, and cultural rights to present complaints at the

[106] For IAC see ICC Statute Art. 8 (2)(b)(ix); and for conflict of non-international character see ICC Statute Art. 8(e)(iv).
[107] *ibid* Art. 8 (2)(b)(ix); and for conflict of non-international character Art. 8(e)(iv).
[108] ICC Statute Art. 12, Para. 1 explains that any state joining the Rome Statute automatically accepts the ICC's jurisdiction. Para 2 sets the jurisdictional preconditions for the Court to act under Art. 13, whether through a referral by a State Party (Art. 13a) or by initiation from the Prosecutor (Art. 13c). These conditions are: (1) Territorial Jurisdiction, the crime must have occurred on the territory of a State Party, or on a vessel or aircraft registered to one; or (2) Personal Jurisdiction, the accused must be a national of a State Party. Para. 3 allows for acceptance of jurisdiction by non-party states. If a situation involves a non-State Party, that state may still accept the Court's jurisdiction over a specific case by submitting a formal declaration to the ICC. This declaration serves as consent to the Court's jurisdiction for that particular situation.
[109] ICJ Statute, Art. 34 (1).
[110] See Art. 96, para 1 and 2 of the UN Charter.

international level.[111] Individuals can bring a complaint to the CESCR. However, the state concerned must first become a party to the optional protocol through ratification or accession.

2.6 Legal Reflections and Framework Assessment

This chapter presented a *lex lat*a analysis of how IHL and IHRL are applied to the provision of the delivery of impartial health care in the context of armed conflict. The chapter demonstrated that these two international legal regimes, applied together with the theory of normative coherence, satisfactorily address the violence that is identified within the thesis question. In times of conflict, there is a clear intersection between a state's obligations under IHL to respect and protect medical units and healthcare personnel and its responsibilities under IHRL to ensure access to health facilities, goods, and services for its population. Applying this theoretical lens to the protection of healthcare in armed conflict allows for a comprehensive examination of how IHL and IHRL operate together in practice. While IHL functions as the *lex specialis* governing conduct during hostilities, IHRL provides a broader, continuing framework for safeguarding fundamental rights, including the right to health and life. This harmonised interpretation of these legal regimes not only enhances the protection of medical units and personnel but also ensures that states cannot invoke military necessity or national security to evade their international obligations. For instance, while IHL protects medical personnel and facilities through the principles of distinction and proportionality during an armed attack, IHRL establishes positive obligations for states to ensure that individuals continue to have access to health care and to prevent arbitrary deprivation of life during that time. Thereby, applying normative coherence enables a harmonised interpretation in the global legal regime that recognises these obligations as mutually reinforcing rather than mutually exclusive from each other.

The commonalities between IHRL and IHL can be summarized as follows:

1. There is a basic understanding of the obligation of sovereign states to provide essential medical care and attention;
2. This includes the prohibition against attacking, arbitrarily killing, or ill-treating medical personnel;

[111] UNGA, Optional Protocol to the ICESCR: resolution / adopted by the General Assembly (2009) See Art. 1 and 2 ; and UN Treaty Collection, Optional Protocol to the ICESCR, Status as at: 1st October 2025.

3. The prohibition against arbitrarily restricting or denying the passage of medical personnel and supplies in and out of conflict zones;
4. The prohibition on harassing or punishing healthcare personnel for carrying out activities in line with medical ethics; and
5. The duty to protect healthcare personnel and infrastructure facilities from harmful actions by third parties that could hamper the delivery of healthcare.

Under IHL, military operations may be directed only against military objectives and combatants. Deliberately targeting civilian objects or civilians is entirely prohibited. Parties to the conflict can offer *"special protection"* under IHL to medical units. When such protection has been provided, they shall be protected, respected, and may not be the object of attack. This obligation applies at all times, even when the medical unit or hospital is not being used to accommodate wounded or sick patients, provided that the medical unit is used exclusively for medical purposes. Parties are obligated to do *"everything feasible"* to *"cancel or suspend an attack"* if the party learns that the target is either:

(i) not a military objective; or

(ii) the attack would violate the principle of proportionality.

The other provision in IHL under which damage to hospitals is tolerated is when there is a considerable amount of casualty to the hospital as a result of an attack on a nearby military targets, but even during those operations, a direct hit to the hospital is not permitted. Furthermore, the nearby military targets have to be of vital military importance in order to justify damage to the hospital. But all too often, this is the standard excuse by states, and thus it needs to be challenged. Additionally, the principle of proportionality, necessity, and military advantage must at all times be weighed when launching an attack.

Under the body of IHL, this chapter has shown that all parties to armed conflicts, including Non-State parties, even if there are some legal scholars who do not agree on the fact of non-state armed parties having any IHL obligations, have a fundamental duty to provide the wounded and sick with medical care as far as practicably possible and without unnecessary delay, in an impartial manner. The criterion states in the Geneva Conventions of *'as far as practicable and with the least possible delay'* indicating that this is not an absolute obligation. Instead, it requires parties to a conflict to take all feasible measures considering the available resources to them and the reality of the hostilities. Nevertheless, in the end, no one may wilfully be left without medical assistance by the parties to the conflict, as the objective

should not be to not provide any medical aid. Furthermore, in IHRL terms, the core obligations arising from the right to health, particularly as articulated in Art. 12 of the ICESCR and reinforced by various regional treaties presented earlier, form a strong legal foundation for asserting that all states have a fundamental duty to take all feasible measures to provide and facilitate access to essential healthcare for the wounded and sick, without discrimination.

Since we have established that the international legal frameworks adopted for states address the issue of targeting and attacking medical units and personnel, the priority of states and international actors such as the UN, ICRC and NGOs should not necessarily lie in creating new legal norms. Instead, efforts should be directed toward enhancing the implementation of existing rules. Ensuring accountability when states, regardless of their power or influence, fail to uphold their obligations is critical to preventing impunity.

The main difference showcased in the material scope of IHL and IHRL, even though these two frameworks share many key principles, is a bigger issue centred around whether IHRL applies to Non-State Armed Groups. Achieving a broad consensus on this issue remains unlikely, largely due to political concerns among states. Many governments fear that applying IHRL to such groups might be perceived as granting them political legitimacy or recognizing their control over territory. Nevertheless, non-state armed groups have a big role to play in the violence and insecurity facing healthcare workers, facilities, and also medical transportation, and in this particular issue, their perspectives must be taken into account in order to find solutions to ensure security for medical units and personnel.

Some approaches that could lead Non-State Armed Groups to follow some degree of IHRL are through the help of neutral organisations such as the ICRC or other NGOs. These organisations, on the basis of practical cooperation with Non-State Armed Groups through commitment or informal arrangements, can ensure respect for medical neutrality and access to healthcare. Another approach would be through international and regional institutions that can exert indirect influence by holding state sponsors accountable for the actions of groups they support, thereby encouraging those groups to comply with minimum IHRL standards.

Although these strategies fall short of establishing formal legal obligations, they represent a tool to promote compliance and safeguard healthcare in armed conflict.[112]

The way healthcare workers act is also very important in making sure they can reach and treat people who are wounded or sick. Their ability to do so often depends on being trusted by all sides in a conflict. To keep this trust, they must follow IHL and medical ethics, especially the rule to give care fairly and without discrimination. Healthcare workers must uphold and also stay focused only on medical work. If they take part in military actions or are linked to violence, they could lose the legal protection meant for them, which puts them, their colleagues, and their patients in danger. That's why it's important for medical staff to understand the laws that apply to them and to be ready for the tough ethical choices they may face in conflicts.

With that being said, it is crucial to provide healthcare workers with their rights under the IHL and IHRL framework, following the theory of normative coherence, especially when it comes to the difficult ethical choices that can arise in crisis situations. One major ethical challenge for healthcare providers is finding the right balance between protecting their own safety and the urgent need to deliver life-saving medical care in a battlefield. Looking from the other side, it also becomes a challenge for military personnel to successfully gather evidence to assess if an attack on medical units and healthcare personnel is necessary, proportionate, and a military advance for the operation without arbitrary killings or committing a war crime.

Although the ICC and other mechanisms exist to prosecute war crimes, including attacks on medical units, the enforcement of these laws remains inconsistent. The ICC requires a high threshold of evidence and jurisdictional conditions that often prevent action. Likewise, international human rights mechanisms may lack binding force or state cooperation. For instance, while the ICC Statute criminalises intentional attacks on hospitals, prosecutions are rare, and states often resist international scrutiny. Similarly, complaints under the ICESCR Optional Protocol are limited to those countries that have ratified it.

To summarise, there is a difference between the theory and practice of the protection of medical units and healthcare personnel during armed conflict. By applying the theory of normative coherence, it can be argued that during armed conflicts, IHL and IHRL collectively

[112] Due to space constraints, a more in depth analysis of this controversial issue is beyond the scope of this paper.

provide a robust framework for protecting medical units and healthcare personnel. However, in practice, the protection is often undermined by political interests, gaps in enforcement, and interpretive flexibility in applying the rules. There is also a clear need for stronger implementation mechanisms and increased pressure on state and non-state actors to respect their legal obligations. Moreover, as seen in recent case studies, the distinction between legitimate military targets and protected medical facilities remains a contentious and often abused area of the law.

3. CASE STUDIES

This chapter will focus on concretizing and discussing how the relevant IHL and IHRL rules and principles are actually applied in practice, or not applied, in armed conflicts.[113] As previously analyzed, medical units such as hospitals, trauma centers, medical camps, or any infrastructure conducting medical activities are afforded special protection under IHL, taking into consideration that they are recognized by parties to the conflict and have the necessary emblem indicating their purpose. However, if hospitals are used for purposes beyond their humanitarian role in armed conflict, then they may lose their legally protected status. E.g., when hospitals are used to carry out acts harmful to the enemy that fall outside their medical duties, then they may become lawful targets. But, even in such cases, any attacks on hospitals also need to comply with the principles and rules of proportionality and precaution, and military necessity.

While the laws proscribing attacks on hospitals are clearly defined in IHL, the rules do not impose a clear obligation on states to investigate alleged war crimes. Nor does it set out how such an operational investigation can be carried out by states or other actors. Art. 90 of Additional Protocol I provides rules for the establishment of an international fact-finding commission[114] to *"inquire into any facts alleged to be a grave breach"* of the Geneva Conventions.[115] States, by adhering to Art. 90 recognizes the authority of the IHFFC to investigate allegations during an armed conflict. However, since adherence to Art. 90 is optional: out of the 179 states that have signed Additional Protocol I, only 76 have formally accepted the IHFFC's competence to investigate alleged violations.[116]

Regarding accountability for violations of IHL, as aforementioned, the ICC can only investigate alleged violations if the preconditions of Art. 12 of the ICC Statute are met.[117] As of today, the United States of America (US),[118] Syria, Russia, and Israel have yet to ratify the

[113] The chapter focuses on cases significant for the thesis in the 21st century, including both IAC and NIAC.
[114] Called the International Humanitarian Fact-Finding Commission (IHFFC).
[115] Additional Protocol I, Art. 90.
[116] The United States, Israel, Ukraine, Russia (has withdrawn in 2019) are notable exceptions from accepting Art. 90 of Additional Protocol I, Afghanistan and Syria have no reservation, see ICRC Database, available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties?activeTab=default>. Additionally, out of the five permanent members of the UNSC, only the UK has accepted the terms of Art.90.
[117] ICC Statute, Art 12; Only Afghanistan and the State of Palestine out of the case studies have ratified the Rome Statute of the ICC.
[118] Hereafter referred to as the 'US'.

convention. Only Afghanistan and the State of Palestine has ratified the ICC statute.[119] Additionally, the US has also not yet ratified the ICESCR, even though it was signed in 1977, but has never been ratified by the Senate. This lack of ratification means that the US is not legally bound by the provisions of the ICESCR.[120] On the other hand, the Syrian Arab Republic, Israel, and the Russian Federations have ratified the ICESCR[121] making them legally bound to fulfil the obligations of Art.12 regarding the right to health. Regrettably, neither Russia, the US, Syria, nor Israel are parties to the Optional Protocol to the ICESCR.[122] Having outlined the key legal obligations of states during armed conflict, this chapter now turns to four case studies from the past decade that show how some states have carried out attacks on hospitals and medical personnel, and how they responded to those actions afterward.

3.1 Afghanistan: *Kunduz Trauma Centre* (2015)

On the 3rd of October 2015 the US conducted a combat operation that struck and led to an aerial bombardment of a trauma hospital operated by Médecins Sans Frontières (MSF)[123] in Kunduz, Afghanistan. Since 2011, the Trauma Centre has been the only available facility in the northern region, successfully providing emergency care under the MSF to all in the region, including civilians and military patients, both from the Afghan government as well as the Taliban fighters.[124] Furthermore, the Afghan government and the non-state armed groups had mutually agreed to respect the neutrality of the medical facility since the establishment of the Trauma Centre, as well as agreed to abide by certain IHL regulations, including safeguarding the medical personnel and patients.[125] The agreement specifically promised that there would be no weapons inside the clinic and that all injured and ill patients would receive treatment without discrimination. In return, MSF was committed to ensuring that individuals inside the trauma center would receive care without discrimination based on ideological beliefs. The building would also not be used for military purposes.[126]

[119] ICC, States Parties to the Rome Statute, available at: <https://asp.icc-cpi.int/states-parties> Status as at: 1st October 2025.
[120] Extraterritorial jurisdiction might apply to the US forces to comply with ICESCR when they ratify the convention; see ICC Statute, Art 12.
[121] UN Treaty Collection Website, ICESCR, Status as at: 1st October 2025.
[122] UN Treaty Collection, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Status as at: 1st October 2025.
[123] as in Doctors Without Borders.
[124] MSF "*Initial MSF Internal Review: Attack on Kunduz Trauma Centre, Afghanistan"* (2015) p. 4.
[125] *ibid*, p. 3.
[126] Len Rubenstein "*Breaking the Silence"* p. 1218.

By late September, the centre began to see an increase in wounded Taliban patients because of the intensified fighting near the territory of Kunduz. On the 1st of October, a message was sent by a US Government official that there was a big group of Taliban fighters gathered in the Trauma Centre.[127] MSF responded that they were treating wounded Taliban fighters in accordance with the principles of medical neutrality adopted with the hospital's mandate to operate in that zone. The US military responded by advising that all medical personnel should remain within the GPS coordinates of the hospital.[128]

During the night of the 3rd October 2015, the US airstrikes hit and destroyed the trauma centre. The US Department of Defense (DoD) reaffirmed after all levels of military command had been notified of the Trauma Center's location via the MSF or other U.S. chain-of-command.[129] The DoD and MSF reports conflict in terms of casualties and injuries. MSF reported that of the 105 patients being treated, approximately 20 were wounded Taliban fighters.[130] After the attack, US officials initially justified their action by claiming that its military forces had come under attack in an area near the hospital, to excuse their action and label the center as a military target, however, this claim was later retracted.[131]

The MSF, by conducting their own internal investigation, concluded that the attack was purposely intended by the US , and that the US forces were positively aware that they were striking the trauma centre because evidence indicated that the US knew Taliban fighters were nearby the hospital and believed that they were hiding in the building. MSF came to the conclusion that no armed fighters were inside the compound of the hospital and that there were no signs of any active fighting in or near the trauma centre. Additionally, hospital staff had complete control over the institution both before and after the attack.[132]

MSF called for an independent investigation into the accident, to which the US General Cambell, responsible for the strike at the time, responded to the allegations by initiating an

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[127] *ibid*

[128] *ibid*.

[129] *ibid* p. 1219; US Central Command "*Summary of the Airstrike on the MSF Trauma Center in Kunduz, Afghanistan on October 3, 2015: Investigation and Follow-On Actions"* (2016) p. 27.

[130] Len Rubenstein "*Breaking the Silence"* p. 1218-1219; and MSF "*Initial MSF Internal Review"* p. 7-9.

[131] Alissa J. Rubin "*Airstrike Hits Doctors Without Borders Hospital in Afghanistan"* (New York Times, 3rd October 2015).

[132] Len Rubenstein "*Breaking the Silence"* p. 1218-1219; and MSF "*Initial MSF Internal Review"* p. 6.

investigation to determine if the use of force during the attack complied with international law.[133] The US investigation team came to the conclusion that the attack did not amount to the threshold of a war crime under international law, although the experts acknowledged in the report that it breached the applicable rules of engagement under IHL.[134] The investigation found that the DoD was unaware of the fact that their missiles were striking a medical facility. The DoD has previously received the coordinates of the trauma centre, which was then listed in a non-strike list. However, it was stated that the aircrew proceeding with the strike did not have access to the list due to a failure in their communications system. Resulting in the aircrew mistaking the trauma center for a lawful military target, and thus the argument was made that none of the individuals involved in the attack should be liable for war crimes,[135] because of the lack of intent.

The MSF did claim that there were three MSF flags surrounding the building, however, the US report counterclaimed that the trauma center did not have a symbol that is an internationally recognized identification of its function as a medical facility, such as the ICCRC Red Cross or Red Crescent logo. The US reports also claimed that the symbols were not that visible to the aircrew at night, reinforcing their claim that the aircrew involved in the strike were not aware and thereby dismissing MSF's claim that the US forces had committed a war crime.[136]

The report did however, confirm that the US forces failed to comply with the rules of engagement by not pre-determining the fact that the Kunduz Trauma Centre was a lawful military objective before attacking,[137] and additionally, the US forces did not adhere to the Pentagon's Law of War Manual, which additionally reinforces the IHL principle of proportionality.[138] In the end, the US report came to the conclusion that the airstrike attack

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[133] U.S. Department of Defense Releases Report of Investigation Finding that October 2015 Air Strike on Doctors Without Borders Hospital in Kunduz, Afghanistan, Was Not a War Crime (American Journal of International Law, 2016) p. 579.

[134] '*Rules of Engagement'* are guidelines that regulate the conduct of military personnel during armed conflict, ensuring compliance with IHL principles.

[135] Len Rubenstein "*Breaking the Silence"* p. 1219; *U.S. Central Command Releases U.S. Forces-Afghanistan Investigation into Airstrike on Doctors Without Borders Trauma Center in Kunduz, Afghanistan*, Press Release (29th April 2016); and Nick Turse "*Why Bombing the Kunduz Hospital Was Probably a War Crime"* (The Intercept, 6th October 2015)

[136] Len Rubenstein "*Breaking the Silence"* p. 1218.

[137] *ibid*; and American Journal of International Law "*Use of Force and Arms Control"* (2016) p. 584.

[138] *ibid,* p. 585.

was not a war crime because it was not intentional. As a result, no US military members involved in the attacks were considered for criminal prosecution. The US conclusion on the attack also raised questions on whether attacks on hospitals should amount to war crimes, even if they are not intentional. The ICC Rome Statute recognizes criminal liability if they are *"intentional"*, although some scholars argue that customary international law and international case law do not follow this strict standard set by the ICC.[139]

The US Naval Handbook, comparable to IHL obligations, also outlines special protections for medical personnel in the armed forces, including doctors, nurses, and medical support staff, when they are exclusively engaged in medical duties. However, this protection requires that they do not commit acts harmful to the enemy, and violating this condition by taking part directly in hostilities can make them legitimate targets.[140] The Handbook also reaffirms that medical establishments should not be intentionally bombarded. If medical facilities are used for military activities contrary to their humanitarian mission, and warnings to cease such use are ignored, they may be targeted.[141] Additionally, it is stated in the handbook that examples of war crimes that could be considered as grave breaches of the Geneva Conventions include deliberate attacks upon medical personnel.[142]

The US Manual for Military Commissions defines *"protected property"* as property that the law of war specifically protects, such as hospitals, provided that they are not used for military purposes. The manual mentions that the list of crimes that can be trailed by military commissions needs to meet the following elements: (1) the accused conducted an attack; (2) the target was protected property; (3) the accused intended to attack protected property; (3) the accused knew or should have known about the property's protected status; and (4) the attack occurred in the context of hostilities. Furthermore, the intent required for this offence excludes cases of collateral damage or injury incidental to a lawful attack.[143]

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[139] See ICTY, Prosecutor v. Galić, Judgment (Trial Chamber II), (16th November 1998) paras 437-439.
[140] The Commander's Handbook on the Law of Naval Operations, issued by the Department of the Navy, Office of the Chief of Naval Operations and Headquarters, US Marine Corps, and Department of Homeland Security, US Coast Guard (2007) para 6.2.6.
[141] *ibid*, para 8.9.1.4
[142] *ibid*, para 6.2.6(7).
[143] US, Manual for Military Commissions, published in implementation of Chapter 47A of Title 10, United States Code, as amended by the Military Commissions Act of 2009, (27th April 2010), para 5(4), p. IV-5.

3.2 Syria: A *Weapon of War* (2011-2019)

Given the scale of violence in the Syrian Civil War, it was challenging to focus and analyse only one attack targeting units and medical personnel. Syria has been one of the worst examples of violence affecting health care worldwide. Between 2016 and 2019, 494 attacks on health were confirmed.[144] The total death toll during this period was 470 deaths, culminating in 2016 with 241 confirmed deaths.[145]

At the beginning of the civil war, the Syrian Government attacked medical facilities in areas not under their control, already in early 2012 in places such as Aleppo, Damascus, Latakia, and many others, which, according to a UN investigator at that time, the systematic attacks were labelled as a weapon of war.[146] According to the UN Commission of Inquiry, *"much of the situation was a result of pro-Government forces systematically targeting medical facilities"*.[147]

China and Russia, as permanent members of the UNSC, blocked a 2014 attempt to refer the Syrian government to the ICC.[148] Since 2015, after Russia joined the military operations in Syria, the campaign against hospitals intensified with reports of Russian and Syrian government forces repeatedly targeting hospitals in rebel-held areas. Russian and Syrian government officials have denied ever targeting hospitals, and the reports of being biased.[149] Already in late 2016, the late UN Secretary-General Ban Ki-Moon had said that attacks on

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[144] Two different systems of attacks on health care were used for the collection of data covering the year 2016-2017, see Mohamed Elamein, Hilla Bower and other(s) *Attacks against health care in Syria, 2015–16: results from a real-time reporting tool* (Lancet, 8th June 2017).

[145] International Rescue Committee "*A Decade of Destruction: Attacks on health care in Syria"* (3rd March 2021).

[146] Stephanie Nebehay "*Syria attacks hospitals, denies healthcare as 'weapon of war'"* (Reuters, 13th September 2013); and Nick Cumming-Bruce "*U.N. Reports Syria Uses Hospital Attacks as a 'Weapon of War'"* (New York Times, 13th September 2013).

[147] UN, Human Rights Council twenty-fourth session "*Human rights situations that require the Council's attention: Assault on medical care in Syria"* (2013); U.N. Independent International Commission of Inquiry on the Syrian Arab Republic "*As global pandemic reaches Syria, fighting must stop and urgent steps taken to prevent an even greater tragedy"* (2020).

[148] UNSC 7180th Meeting: *Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution* (22nd May 2014).

[149] Jesselyn Cook "*Syrian Medical Facilities Were Attacked More Than 250 Times This Year*" (The World Post. New York City: Huffington Post and Berggruen Institute, 27th December 2016) and Patrick Reevel *Report suggests Russia tried to conceal airstrikes on Syrian hospitals* (ABC News, 13th February 2017).

hospitals in Aleppo constituted war crimes,[150] and the UN repeatedly accused the Syrian government and Russian warplanes of conducting a deadly campaign that appears to target medical facilities.

Unfortunately, there is no recorded practice of the Syrian Arab Republic by the ICRC regarding their state practice on protection of healthcare units and medical personnel during conflict. Furthermore, it has also been challenging to collect enough data to verify information to know the intended target of these strikes. Detailed investigations, which have yet to be published, are required to determine this. The available information, however, indicates a clear pattern of significant direct and indirect civilian harm from the use of these explosive weapons with a wide impact in the vicinity of health facilities, creating disproportionate, collateral damage, which is a clear violation of IHL, prohibiting indiscriminate and disproportionate attacks, and a war crime under Art. 8 of the ICC Statute.

3.3 Ukraine: *Maternity Hospital No. 3* (2022)

On the 9th March 2022, the Russian Air Force bombed Maternity Hospital No 3, which was a complex functioning both as a children's hospital and maternity ward in Mariupol, Ukraine, killing four, injuring 16, and leading to at least one stillbirth.[151] The hospital was bombed while it was clearly identifiable and operational at the time of the hit, which was confirmed and verified by many aerial pictures, sources, and testimonies.[152] Many international actors deemed the strike a war crime.[153]

On the 10th of March, the Russian Minister of Foreign Affairs and the Ministry of Defence claimed the news of the attack as being a provocation staged by the Ukrainian authorities.[154] However, later on, the Russian Minister of Foreign Affairs Sergey Lavrov and the Ministry of

[150] UN "*Condemning Attacks on Hospitals as War Crimes, Secretary-General says Security Council Must Press All Parties to Respect Humanitarian Obligations"* (2016).
[151] UN, Office of the High Commissioner for Human Rights, U*kraine: grave concern,* Press Briefing Note (2022).
[152] Wolfgang Benedek, Veronika Bílková, Marco Sassòli (eds) "*Report on Violations of international Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022"* (OSCE, 2022).
[153] Especially the Ukrainian president *Volodymyr Zelenskyy*, as well as the European Union head of Foreign Affairs *Josep Borrell* and British armed forces minister *James Heappey* took to their social media to condemn the attack.
[154] Interfax "*Russian troops don't hit the hospital in Mariupol, it's Kyiv's information provocation - Russian Defense Ministry"* (2022).

Defence publicly claimed that the bombing was justified. Russia claimed that the hospital facility was used by the Azov Battalion[155] and that all patients had been evacuated following a warning given to them. This warning by Russia was mentioned to come from the Russian representative in the UNSC on the 7th of March 2022, which they argued was enough given time to evacuate the premises.[156]

Furthermore, on the 11th of March, at the UN, the Permanent Representative showed both inside and outside pictures of Maternity Hospital No.3 claiming, that the building was not destroyed by a bomb or missile strike, but was caused by an underground explosion.[157] The representative further repeated that the UN had already been informed about the seizure of the building on the 7th of March, so a warning and time had been given to surrender or evacuate. The statement by the Russian representative in the UNSC on the 7th of March 2022 were later debunked by the media house Meduza[158] claiming that the Representative was referring to Maternity Hospital No. 1 as a hospital that he claimed was used by Ukrainian armed forces as a firing point, not Maternity Hospital No. 3 Meduza described the foreign minister as having confused Hospital No. 1, referred to on the 11th of March, with the hospital that was bombed, Hospital No. 3.[159]

On 13th April 2022, the Organization for Security and Co-operation in Europe (OSCE) published a report on the attack that concluded that the hospital was destroyed by a Russian attack, and based on the previous explanations by the Russian Ministry, the attack by the Russian authorities was deliberate. However, it was claimed by the OSCE that there was no effective warning given and no time limit was set. It is unclear whether the attack was allowed because of unclear and confusing evidence of the hospital being used for military purposes.

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[155] According to Russian media The Russian Defense Ministry Spokesman Major General Igor Konashenkov stated that the Azov and Aidar nationalist battalions engaged in hostilities against militia units from within civilian infrastructure, including schools, hospitals, and kindergartens in the city see TASS, "*Nationalists in Mariupol setting up emplacements in schools, hospitals - Russian top brass"* (5th March 2022).

[156] European Pravda, *Lavrov confirms Russia deliberately bombed maternity hospital in Mariupol* (10th March 2022).

[157] Permanent Mission of the Russian Federation to the UN, Statement by Permanent Representative Vassily Nebenzia at UNSC briefing on biological laboratories in Ukraine (2022).

[158] A Russian, and English language independent news website with headquarters in Riga, Latvia.

[159] Meduza "*Definitely not 'staged' – False allegations about the maternity hospital airstrike in Mariupol, debunked"* (12th March 2022)

Since the beginning of this armed conflict, there have been a number of war crimes reported, majorly by the Russian army, both also a few crimes committed by the Ukrainian authorities. The UN, EU, international organisation, and numerous non-governmental organisations have repeatedly condemned these violations, and attacks, however, when the ICC started to investigate Russia's annexation of Crimea for possible violations of international law, Russia withdrew its membership in 2016.[160] It is also very important to note that the Russian Federation has tried to effectively block or prevent any kind of international prosecution of its role in suspected war crimes by international courts, using its seat at the UNSC to veto resolutions that called for an investigation and bringing accountability. Nevertheless, Ukraine brought a case before the ICJ against Russia. In 2022, a ruling was reached, and the ICJ ordered Russia to immediately suspend its military operations in Ukraine.[161] It should be noted that the ICJ lacks the enforcement measures necessarily to make Russia follow its decisions.

The Russian Federation's Military Manual also explicitly prohibits attacks on medical personnel and the bombardment or destruction of medical facilities as methods of warfare,[162] which was reiterated in the 2001 Regulations on the Application of IHL.[163] According to the manual, medical personnel are to be respected and protected, provided they do not engage in acts beyond their professional duties or participate in hostilities. Their protection can only be revoked after a warning is issued, allowing a reasonable time for compliance.[164]

3.4 Gaza Strip: *Al–Shifa Hospital* (2023–2024)

After the 7th of October 2023 attack by Hamas, Israel, attempting to eliminate Hamas, began a blockade of the Gaza Strip.[165] In November 2023, Al Shifa Hospital in northern Gaza, which

[160] BBC News *"Russia withdraws from the International Criminal Court treaty"* (16th November 2016)
[161] ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*).
[162] Russian Federation, Instructions on the Application of the Rules of International Humanitarian Law by the Armed Forces of the USSR, Appendix to Order of the USSR Defence Minister No. 75 (1990) para 5(g).
[163] Russian Federation, Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation, Ministry of Defence of the Russian Federation, Moscow (8th August 2001) para 1.
[164] *ibid*, para 58.
[165] The author is aware of the fact that classification of the Israel-Gaza Conflict under the Laws of War has been the topic of various forms of discussion. The decision to include this conflict is for its relevance on this day and time, which led to the writing of this thesis. The classification is a complex matter that this thesis will not be subjected to, for further reading of the matter see Ayesha Malik "*Classification of the Israel-Palestine Conflict under the Laws of War"* (Opinio Juris, 2023).

hosted at that time tens of thousands of displaced people, was besieged and invaded by Israeli forces, after stating that the hospital contained a Hamas command and control centre beneath it.[166]

Before the siege, on the 27th of October, the Israeli military released a 3D video depicting the hospital's underground area as a complex network of tunnels which were functioning as a *"Hamas command centre"*.[167] On the 2nd of November, a legal document was published by the Ministry of Foreign Affairs officially classifying the hospital as a military centre.[168] Thereby, the hospital was placed under siege and later invaded in mid–November, with the Israeli government accusing Hamas of using medical personnel as *"human shields"*.[169] On the 15th of November, Israeli forces stated that they entered the hospital after killing militants outside, and had discovered a Hamas command centre, weaponry, and tactical gear.[170] After days of attacks, the hospital was turned into a *"death zone"*.[171]

What later followed was a media war with reports that challenged Israel's allegations that Hamas was using hospitals as shields,[172] claiming that there was no evidence to suggest that the rooms connected to the hospital had been used by Hamas.[173] In addition, the Israeli army

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[166] Human Rights Council Fifty-fifth session, Agenda item 7: Human Rights situation in Palestine and other occupied Arab territories, *Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 by* Francesca Albanese (2024).

[167] Twitter, Israel Defence Forces (IDF) (27th October 2023).

[168] Ministry of Foreign Affairs of the State of Israel "*Hamas-Israel Conflict 2023 – Some Factual and Legal Aspects – Israel Ministry of Foreign Affairs"* (2023).

[169] Jason Burke "*Battle for al-Shifa hospital in Gaza fraught with diplomatic risk for Israel"* (The Guardian, 2023).

[170] Nidal Al-Mughrabi, *Hamas command center, weapons found at Gaza hospital, Israeli military says* (Reuters, 15th November 2023).

[171] Oliver Slow "*WHO Says Gaza's Al-Shifa Hospital a Death Zone, as Hundreds Leave"* (BBC News, 18th November 2023); Abir Al Ahmar and Nidal Al-Mughrabi "*Too close and too cold, premature babies in grave peril at Gaza's Al Shifa hospital"* (Reuters, 2023); and WHO "*oPt Emergency Situation Update*" (15th November 2023).

[172] The use of medical facilities as a shield for military objectives is prohibited inAdditional Protocol I, Art. 12(4).

[173] Louisa Loveluck, Evan Hill, Jonathan Baran, Jarrett Ley and Ellen Nakashima "*The case of al-Shifa: Investigating the assault on Gaza's largest hospital"* (The Washington Post, 2023); Youtube, Middle East Eye, "*BBC Verify casts doubt on Israel evidence"* (18th November 2023); Dov Lieber and Omar Abdel-Baqui "*Inside Israel's Campaign to Prove a Gaza Hospital Was a Hamas Command Center"* (The Wall Street Journal, 22nd November 2023); Dan Sabbagh "*Israel arrests Gaza hospital director and bombs 300 targets amid truce delay*" (The Guardian, 23rd November 2023).

reportedly rearranged weaponry at the Al Shifa before news crew's visits[174] as well as edited inaccurate videos, which weakened Israel's credibility.[175] After the Israeli army had claimed that they had found a list of names of terrorists inside the hospital, which out to be a calendar with the days of the week written on it in Arabic,[176] raising further suspicions of fabrication.

The incident was then later followed by a second major raid by Israeli forces in March 2024, following intel that Hamas had regrouped itself inside the hospital.[177] The Israeli military reported that upon entering the compound, they encountered gunfire and responded accordingly. They claimed to have killed Faiq al-Mabhouh, identified as the head of operations in Hamas's internal security force, and arrested approximately 200 individuals.[178] The World Health Organization (WHO) expressed deep concern over the raid, stating that the hospital was sheltering thousands of individuals, including patients and medical staff, at the time of the raid. Reports indicated that the Israeli military actions led to significant destruction within the hospital complex.[179]

International law prohibits the targeting of hospitals unless used for a military purpose that is *"harmful to the enemy"*, as well as the use of human shields for combatants; both constituting war crimes, as previously analysed. However, regardless of the veracity of Israel's allegations regarding hospital shielding at Al Shifa, which is still up for debate, the patients' rights to be shielded from military attack and siege should have been upheld. The South African government has initiated court proceedings at the ICJ pursuant to the Genocide Convention, to which both Israel and South Africa are parties to, alleging that Israel is committing

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[174] Chris Lau, Andrew Raine, Lauren Said-Moorhouse, Thom Poole, Christian Edwards, Adrienne Vogt and Tori B. Powell "*CNN analysis: Video suggests IDF might have rearranged weaponry at Al-Shifa prior to news crew visits"* (CNN, 19th November 2023).

[175] Julian Borger "*IDF evidence so far falls well short of al-Shifa hospital being Hamas HQ"* (The Guardian, 17th November 2023); and Sophie Tanno "*What we know about what Israel says it has found at Al-Shifa"* (CNN, 20th November 2023).

[176] Vedika Bahl "*IDF found a calendar in Arabic, not a Hamas 'names list' at hospital"* (France24, 17th November 2023).

[177] Jessie Edwards and Christian Yeung "*Israeli troops end Al-Shifa hospital raid, leaving behind bodies and trail of destruction"* (CNN, 1st April 2024); see also news of mass graves findings raising raising concerns about possible wars crime Nick Robertson "*Reports mount of mass graves at Gaza hospitals, some bodies found 'without heads'"* (The Hill, 8th April 2024); and UN News "*Mass graves in Gaza show victims' hands were tied, says UN rights office"* (23rd April 2024).

[178] Joel Gunter and David Gritten *"Israeli forces raid Gaza City's al-Shifa hospital"* (BBC News, 18th March 2024)

[179] UN Office for the Coordination of Humanitarian Affairs "*Hostilities in the Gaza Strip and Israel | Flash Update #149"* (1st April 2024).

genocide, war crimes, and crimes against humanity against the Palestinian people in the Gaza Strip.[180]

Israel's 1998 Manual on the Laws of War states that medical personnel cannot be attacked, as long as they are unarmed, marked with clear signs, and not involved in fighting. They are considered non-combatants and must help all wounded people, even from the enemy side, and should not be harmed or captured. However, the manual explicitly mentioned that this protection is often not to be observed in the Middle Eastern conflicts because of the recurrence of medical teams not wearing identification and taking part in hostilities.[181] Additionally, the 1986 Law of War Booklet states that medical facilities are protected as long as they are clearly marked and not used for military purposes.[182] In 2006, the Israeli Government, in its rules of warfare, reiterated the prohibition against attacking enemy medical facilities and personnel as respected and interpreted by IHL. With one again explicitly mentioning that in Middle Eastern conflicts, medical teams often lack special insignia, carry arms, and participate in fighting, thus forfeiting their protected status.[183] The 2006 Manual emphasised that hospitals and medical installations, whether civilian or military, must not be targeted, stating additionally that it is absolutely forbidden to attack medical facilities of the enemy, including military ones. A military base converted into a medical clearing station should not be attacked and must remain protected unless they are used for military actions.[184]

3.5 Operational Gaps and Accountability Challenges

In all four field cases, the attackers were identified as states, thus the cases highlight the urgent need for states to recognise and uphold the rules under which healthcare access should operate in armed conflicts. These attacks have been openly criticised by various international organisations and news outlets over this last decade.

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[180] ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip *(South Africa v. Israel)* See Proceedings instituted by South Africa against the State of Israel on 29 December 2023 (2023).

[181] Israel, Laws of War in the Battlefield, Manual, Military Advocate General Headquarters, Military School, (1998) p. 32-33.

[182] Report on the Practice of Israel, Chapter 2.7, referring to Conduct in the Battlefield in Accordance with the Law of War, Israel Defense Forces 1986 (1997) p. 7.

[183] Israel, Rules of Warfare on the Battlefield, Military Advocate-General's Corps Command (IDF School of Military Law, 2006) p. 24.

[184] *Ibid*, p. 24, 27 and 49.

State interpretation becomes particularly relevant when states parties invoke military necessity or national security to justify attacks on healthcare infrastructure. Under the theory or normative coherence, this approach requires that such justifications remain compatible with both humanitarian and human rights norms, ensuring that derogations or limitations to rights do not undermine obligations or fundamental principles such as the principles of humanity and proportionality. Thus adopting the framework of normative coherence allows for a deeper exploration and understanding of the operational and legal gaps that persist despite the existence of robust international norms. This theory also enables a critical evaluation of whether the failure to prevent or investigate attacks on healthcare personnel of medical units arises from legal gaps, interpretative inconsistency of the laws, or deliberate avoidance of responsibility by sovereign states. By promoting a harmonised application of IHL and IHRL, this theoretical approach contributes to identifying ways to enhance accountability, strengthen the rule of law, and ensure the consistent protection of healthcare units and personnel in armed conflict. As Martti Koskenniemi and Bruno Simma have pointed out, the coherence of international law is essential for both legal certainty and legitimacy in global governance.

The international community has the responsibility to assess the biased intentions of state actors whenever they seek to justify their assaults based on an alleged misuse and behind the shield of non-intentional attacks. As evidenced by our case studies, those responsible for attacking hospitals often seek to defend their actions by citing misuse. Even in situations where hospitals are misused and thus become legitimate military targets, as potentially seen in Kunduz and Al-Shifa if armed fighters were truly using the facilities as shields, however, by applying the theory or normative coherence, the principles of IHL and IHRL still demand that parties take every possible precaution to minimise harm to civilians. Moreover, the principle of proportionality dictates that any attack on a hospital situation around a densely populated area may not be justified if the civilian casualties outweigh the military advantages.

While there were indications that could have implied misuse, there were also conflicting pieces of evidence. Although current IHL rules offer protection to hospitals during armed conflicts, there is a need, not only for greater compliance by states with the laws of war, but also for stronger systems to investigate and hold accountable those who commit violations. Comprehensive, impartial, and transparent investigations are crucial and essential to either convict or clear alleged perpetrators of hospital attacks during armed conflicts. These types of

robust, if possible, investigative mechanisms must be reinforced on all levels. As demonstrated by the cases of Al-Shifa and Kunduz, a proper understanding of the incidents and any possible individual criminal liability cannot be achieved without comprehensive and transparent inquiries by a third party. Despite the absence of accountability in both scenarios, accurate and precise investigations into IHL violations can reveal legal norms and reinforce the expectation of states to conduct formal investigations into alleged attacks. One might suggest that by advocating to states, international organisations and/or non-governmental organisations to provide technology resources to protect health care in conflict zones can also be beneficial. If, e.g., advanced surveillance systems are deployed in the form of satellite imaging, it will provide for some accurate data to support investigations, facilitate prosecutions, and strengthen the evidence base for holding perpetrators accountable.

While states are obligated to investigate potential IHL breaches, investigations conducted by a third independent Non-Governmental Organizations (NGO) also hold great value. Civil society also plays a crucial role in bringing violations of IHL and IHRL to public attention and possibly initiating investigations. In instances where formal legal mechanisms or state actions are not sufficient, public exposure through *"naming and shaming"* may represent the only available channel to pursue some form of accountability. For instance, the rise of mobile technology and social media has enabled more civil society organizations to carry out investigations using publicly accessible online information to document and raise awareness about attacks on hospitals and medical units during armed conflicts, which has been evident in the case of the Al Shifa hospital in Gaza. Therefore, civil society serving as guardians of IHL and IHRL can ensure that the suffering of victims and their communities does not go unnoticed or forgotten, and is always documented to always review and evaluate. These organisations can uphold both IHL and IHRL principles by advocating for the immediate and long-term advantages of respecting international legal regimes and by advancing persuasive non-legal arguments, especially within policymaking circles. The tactic of "naming and shaming" could eventually effectively encourage compliance, as it exposes and pressures various stakeholders into adhering to the law and thereby fostering respect for these laws.

The obligation to warn hospitals prior to an attack is intended to clarify the attacker’s intent on the harmful act directed against the enemy. In the case illustrated above, the state officials, being the persons who ordered the attack or the ones who launched the missiles, everyone involved, neither verified whether the hospital was being misused nor provided the required

warnings beforehand. While the Russian Federation claimed to have issued a warning, it was reportedly confusing and unclear. Therefore, the international community, as a third party, should investigate any claims of hospital misuse used to justify attacks, especially when military officials claim that there is no clear evidence of intent. Additionally, it is equally important that when parties to a conflict agree to grant protection to hospitals and medical units, a regularly updated and transparent list of protected entities is maintained and respected by all sides. This ensures clarity and prevents miscalculations regarding the status of such facilities. Failure to adhere to this can undermine the protection afforded under IHL, as illustrated by the case of Al-Shifa Hospital in Gaza, where allegations of military misuse complicated its protected status, and not having access to the list containing Kunduz Trauma Centre as a protected site led to an unjustified attack.

Establishing individual criminal responsibility before the ICC requires proof of a deliberate and knowing attack, which differs from the Geneva Conventions' approach that holds states accountable for violations during armed conflicts. State actors must be transparent about the intentionality behind such attacks, however, there is reason to remain skeptical about the extent to which states are willing to embrace such transparency, as doing so may risk damaging their reputations and exposing them to increased public scrutiny. It is essential to verify the intentionality behind alleged attacks because of a limited understanding on how military decision-makers verify activities within healthcare facilities in various states. Therefore, as aforementioned, comprehensive independent investigations, but conducted with due consideration of national security implications, become once again crucial and essential to expose how these decisions are made and subsequently justified.

Additionally, given the rareness and lengthy nature of criminal prosecutions for alleged violations of IHL and state proceedings for IHRL violations, the international community should explore alternative accountability channels. This could include initiating public advocacy campaigns aimed at ending impunity for offenders, because despite the infrequent prosecution of attacks on hospitals, the legal framework safeguarding healthcare facilities remains robust within IHL, together with additional obligations of states under the ICESCR and the right to health. One might suggest that the establishment of an international tribunal dedicated to addressing crimes against health care would facilitate investigations and ensure timely prosecutions, sending a clear message that attacks on health care will not go unpunished.

As aforementioned, the responsibility and protection of medical units and personnel under IHL is understood by states, since they have written it in their national military manuals to which state military shall abide by. The protection is given to the medical units and healthcare personnel along with criteria that need to be fulfilled when that protection becomes void. However, to have an effective implementation may also require additional clarification of current international legal obligations, particularly through the adaptation of military doctrine and operational practices. This would entail, for exampel, revising military manuals and standard operating procedures to prevent unjustified delays or denials of medical transport and to avoid unauthorized intrusions into healthcare facilities. In the case of Israel it is damaging that they do not grant the specific protection to medical personnel in conflicts in the Middle East because of the nature of security, one might argue that this is not a holdable argument since there is a clear prohibition of direct attacks on hospitals and healthcare personnel if it is not a military objective and unproportionate regardless of the territorial scope of the armed conflict.

Sovereign states should also include, in their military manuals, a deeper understanding of the principles of medical neutrality and the legal obligations to protect health-care facilities under the IHRL framework, through adequate training, which in turn can help to prevent attacks and minimise their unproportionate mistake and consequences. Thus, regarding IHRL responsibilities, the Syrian Arab Republic, Israel, and the Russian Federation have ratified the ICESCR, making them legally bound to fulfil the obligations of Art. 12 regarding the right to health. The case studies however, have shown that there is a lack of fulfilling these obligations when in conflict, especially in the case of systematic attacks in Syria. The CESCR has declared that a state party is not permitted to excuse itself from fulfilling these duties under any circumstances and that state parties shall value the collaboration with humanitarian aid during emergencies for the delivery of healthcare. Even though the ICESCR contains a general limitation clause, such limitations should be prescribed by law, to the extent that they are consistent with the nature of these rights and should be imposed solely for the purpose of promoting the general welfare in a democratic society. These case studies have shown that the attacks on hospitals in Syria have occurred systematically, disproportionally, and with the intent of destroying healthcare in conflict zones, which is a clear violation of IHL and constitutes a war crime. These attacks should be prosecuted at the level of the ICC in The Hague.

However, Russia and China vetoed a UNSC resolution that would have referred those and other crimes in Syria to the court, complicating matters. When permanent members of the UNSC veto resolutions, violations of international law shift from legal grounds to political grounds, especially when violations are attributed to the most influential state powers. Criminal prosecutions for perpetrators of violations are essential to reinforce adherence to the laws of war. However, despite the imperative to hold perpetrators accountable, attacks on hospitals frequently go unpunished.

What is also lacking and of importance is the urgent need to advocate to sovereign states for the ratification of additional protocols and the establishment of alternative fact-finding missions or reporting mechanisms to probe alleged breaches, those that have yet to ratify. In this regard, the UN holds a crucial responsibility in addressing the issues raised by the commissions of inquiry and other independent monitoring and reporting bodies in place.

Israel might not claim it as of yet, however, the US has claimed attacks on health care as *'mistake'*. One might ask the question: how long can a sovereign use the same excuse of having committed a mistake when unproportionally and unintentionally attacking medical facilities? How far can you reach with that excuse before it becomes a war crime? The conclusion the US came to regarding the attack also brought into the discussion the tension surrounding the determination that attacks on hospitals should be considered as a war crime, even if they are not deliberate. While the ICC Statute only imposes criminal liability for war crimes if they are *"intentional"*, one of the key requirements of this crime, some legal scholars argue that customary international law and international case law do not adhere strictly to this standard. States are responsible for internationally wrongful acts, including violations of IHL, whether these acts are intentional or due to negligence. Mistakes can happen. However, the excuse of mistake is only valid if the mistake was reasonable and made in good faith. Repeated reliance on this excuse can indicate either a lack of due diligence or recklessness, both of which contradict the validity of the excuse.

States are required to take all feasible precautions to avoid attacks on medical facilities, this includes proper identification and verification of the military targets, together with continuous updating of intelligence, and clear rules of engagement. Even if a mistake occurs, the principles of proportionality and necessity must be adhered to. An attack resulting from a

mistake must not be disproportionate to the military advantage anticipated. One isolated incident may be excused if it meets the criteria of being an honest mistake made despite taking all feasible precautions. However, repeated incidents, as in the case of Syria, indicate systemic issues such as inadequate training, poor intelligence, or failure to implement effective measures to protect medical units. This undermines the credibility of the mistake excuse.

Finally, by applying the theory of normative coherence in these case studies, it has been shown that one of the issues for why these attacks are carried out is not the absence of law but the inconsistency of its application. The recurrent targeting of hospitals in Kunduz, Al-Shifa, Syria. and Ukraine, as well as other sites, reflects a pattern of sovereign states failing to uphold coherent legal obligations. Even where claims of "misuse" are raised, the principles of IHL and IHRL still require that all feasible precautions be taken to minimise harm to civilians and to protect medical neutrality. The integration of normative coherence into the analysis therefore, strengthens the argument that attacks on healthcare cannot be excused by vague or self-serving interpretations of military necessity. Instead, it calls for states to harmonise their conduct with both humanitarian and human rights norms, ensuring transparency, accountability, and the preservation of the human dignity of all. In doing so, the theory provides a legal and ethical foundation to reinforce state responsibility and to develop more effective mechanisms to investigate, prevent, and punish attacks on healthcare in armed conflict.

4. C O N C L U S I O N

In armed conflict, when hospitals are damaged or destroyed and healthcare personnel are deliberately attacked, the impact extends beyond the destruction of physical infrastructure; safe spaces disappear, health outcomes deteriorate, and trust in healthcare institutions is severely undermined.

During conflict, there is a clear overlap between IHL obligations to respect and protect medical units and healthcare personnel and, under IHRL, to fulfil the right to access to health facilities, goods and services. Thus, it is shown that the international legal regimes, together as per the theory of normative coherence, satisfactorily address the violence that is identified within the thesis question. However, the legal regime is not enough to prevent medical units and healthcare personnel from being attacked. Attacks on medical units and healthcare personnel still face a multitude of challenges that require immediate attention. Although the ICC prosecutes individual war crimes and the ICJ, state violations of obligations, the process is lengthy and in some ways subject to political views. Thus, there are three pressing needs that the international community should address and advocate for in order to promote greater adherence to IHL and IHRL and pursue criminal prosecutions for such attacks:

(1) Firstly, to promote and ensure state accountability, investigations into attacks on medical units and healthcare personnel, both at national and international levels, must be conducted in an independent, robust, and transparent manner. Alternatively, if an international tribunal is established dedicated to addressing crimes against health care, it would facilitate investigations and ensure timely prosecutions, sending a clear message that attacks on health care will not meet impunity. To promote accountability, it is also important to advocate to sovereign states for the ratification of additional protocols and the establishment of alternative fact-finding or reporting mechanisms to probe alleged breaches of IHL and IHRL violations. Advocating to various stakeholders to provide technology resources to protect health care in conflict zones can also be immensely beneficial to promote accountability.

(2) Secondly, there is also a pressing need for increased civil society involvement and public attendance to drive for investigations into serious violations. Without public awareness or calls for investigations by all stakeholders, the likelihood of achieving

accountability is significantly reduced. All stakeholders must collaborate, efforts among governments, human rights organisations, journalists, and regional judicial bodies can lead to enhanced intelligence gathering, better coordination, and a more comprehensive response to attacks on medical units and healthcare facilities.

(3) Thirdly, to include a deeper understanding of the principles of medical neutrality under the IHL-framework, and the legal obligations to protect health-care facilities under the IHRL-framework, by adequately training state military forces, which in turn can help to prevent attacks and minimise their disproportionate mistake and consequences.

Taking everything into consideration, impunity appears to be the ultimate obstacle within international law. When international law is violated and there are no consequences, the international law system is ultimately the one that loses out. Reckless legal justification and behaviour undermine the standard established through constant and uniform state practice, especially by the most influential powers, leaving lawyers with a bitter taste in their mouths.

Bibliography

Treaties and Conventions

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, OAS Treaty Series No. 69 (17th November 1988) (Protocol of San Salvador)

African Charter on Human and People's Rights ("Banjul Charter"), OAU Doc. CAB/LEG/67/3 rev. 5 (27th June 1981) (ACHPR)

American Convention on Human Rights ('Pact of San Jose'), OAS Treaty Series No. 36, 1144 UNTS 123 , Costa Rica (22nd November 1969) (ACHR)

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5 (4th November 1950) (ECHR)

Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (18th December 1979) (CEDAW)

Convention on the Rights of the Child, 1577 UNTS 3 (adopted 20th November 1989, entered into force 2nd September 1990) (CRC)

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2220 UNTS 3 (adopted 18th December 1990, entered into force 1st July 2003) (CMW)

Convention on the Right of Persons with Disabilities, UN Doc. A/61/611 (13th December 2006) (CRPD)

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field of 12th August 1949, 75 U.N.T.S. (1950) (Geneva Convention I)

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12th August 1949, 75 UNTS (1950) (Geneva Convention II)

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12th 1949, 75 UNTS (1950) (Geneva Convention IV)

Geneva Convention Relative to the Treatment of Prisoners of War of 12th August 1949, 75 UNTS (1950) (Geneva Convention III)

ICRC, Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims of International Armed Conflicts , 1125 UNTS 3, 8 June 1977 (Protocol I)

ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts , 1125 UNTS 609 (8th June 1977) (Protocol II)

International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, (21st December 1965) (CERD)

UN, Charter of the United Nations, 1 UNTS XVI (24th October 1945) (The UN Charter)

UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171 (16th December 1966) (ICCPR)

UN General Assembly, International Covenant on Economic, Social and Cultural Rights, Treaty Series, vol. 993, p. 3 (16th December 1966) (ICESCR)

UN General Assembly, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights : resolution / adopted by the General Assembly, A/RES/63/117 (5th March 2009) (Optional Protocol to ICESCR)

UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, UN General Assembly (17th July 1998) (ICC Statute)

UN General Assembly, Universal Declaration of Human Rights, Res 217 A(III) (10th December 1948) (UDHR)

UN, Statute of the International Court of Justice (18th April 1946) (ICJ Statute)

UNs, Vienna Convention on the Law of Treaties, Treaty Series, vol. 1155, p. 331, (23rd May 1969) (VCLT)

UN Treaty Collection, Chapter IV, (3) International Covenant on Economic, Social and Cultural Rights

UN Treaty Collection, Chapter IV, (3.a) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Court Cases

European Court of Human Rights (ECtHR), *Cyprus v. Turkey*, App. No. 25781/94, Judgement of 10th May 2001 (10th May 2001)

International Court of Justice (ICJ), *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation*) Judgment of 2nd February 2024, Case 182, (2nd February 2024)

International Court of Justice (ICJ), *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel*) See Proceedings instituted by South Africa against the State of Israel on 29 December 2023 (29th December 2023)

International Court of Justice (ICJ), *Legal Consequences of the construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004 (9th July 2004)

The International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Galic´,* Case No. IT-96-21-T, Judgment (Trial Chamber II) (16th November 1998)

The International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Stanislav Galic´*, Case No. IT-98-29-A, Judgement (In the Applied Chamber) (30th November 2006)

National State Legislation

Russian Federation, Instructions on the Application of the Rules of International Humanitarian Law by the Armed Forces of the USSR, Appendix to Order of the USSR Defence Minister No. 75, (1990)

Russian Federation, Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation, Ministry of Defence of the Russian Federation, Moscow (8th August 2001)

United States Department of the Navy, *The Commander's Handbook on the Law of Naval Operations* (NWP 1-14M/MCWP 5-12.1/COMDTPUB P5800.7, July 2007)

United States of America, Manual for Military Commissions, published in implementation of Chapter 47A of Title 10, United States Code, as amended by the Military Commissions Act of 2009, 10 U.S.C, para 948a, et seq. (27th April 2010)

Report on the Practice of Israel, Chapter 2.7, referring to Conduct in the Battlefield in Accordance with the Law of War, Israel Defense Forces 1986 (1997)

State of Israel, Laws of War in the Battlefield, Manual, Military Advocate General Headquarters, Military School (1998)

State of Israel, Rules of Warfare on the Battlefield, Military Advocate-General's Corps Command, IDF School of Military Law, Second Edition (2006)

Commentaries and Policy

Henckaerts J-M. and Doswald-Beck L. (eds), *Customary International Humanitarian Law,* Vol. I: Rules (ICRC/Cambridge University Press, Cambridge, 2005) (Customary IHL Study)

ICRC, Commentary on the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12th August 1949. Commentary of 2016

ICRC, Commentary on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Geneva, 12th August 1949 Commentary of 1958

Sandoz Y., Swinarski C., and Zimmermann B. (eds) *Commentary on the Additional Protocols of 8th June 1977 to the Geneva Conventions of 12th August 1949* (ICRC, Geneva, 1987)

UN, Economic and Social Council, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, UN Committee on Economic, Social and Cultural Rights, (14th December 1990)

UN, Economic and Social Council, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), E/C.12/2000/4, UN Committee on Economic, Social and Cultural Rights (11th August 2000)

UN, Human Rights Committee, CCPR General Comment No. 29: Art. 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11 (31st August 2001)

UN, Human Rights Committee, CCPR General Comment No. 6: Article 6 (Right to Life), (30 April 1982)

UN, Human Rights Committee, General Comment No. 29: States of emergency, (31st August 2001) UN Doc. CCPR/C/21/Rev.1/Add.11

UN, Human Rights Committee, *Guerrero v. Colombia*, Communication No R.11/45, UN Doc. Supp. No. 40 (A/37/40) (31st March 1992)

UN: The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (27th August - 7th September 1990) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (7th September 1990)

Documents from International Organisations

Benedek W., Bílková V. and Sassòli M., *Report on Violations of international Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022* (OSCE, Warsaw, 13th April 2022)

Human Rights Council Fifty-fifth session, Agenda item 7: Human Rights situation in Palestine and other occupied Arab territories, *Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967* by Francesca Albanese (26 February–5 April 2024)

ICRC Database, International Humanitarian Databases, Customary IHL Study, Rules, available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

ICRC, *Health Care in Danger: Continuing to protect the delivery of health care together,* Resolution 4 adopted by the 32nd International Conference of the Red Cross and Red Crescent (Geneva, 8-10th December 2015),

ICRC, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?* (Geneva, December 2014)

ICRC, *Increasing Respect for International Humanitarian Law in Non-International armed conflicts* (Geneva, February 2008)

ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities* (ICRC, 11th June 2009)

ICRC, *Violent Incidents Affecting Health Care: January 2012 to December 2014*, (ICRC, Geneva, 2015)

International Rescue Committee, *A Decade of Destruction: Attacks on health care in Syria,* (3rd March 2021)

International Law Commission, *Report of the Study Group of the International Law Commission on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law,* UN Doc A/CN.4/L.682 (13th April 2006)

MSF, I*nitial MSF Internal Review: Attack on Kunduz Trauma Centre*, *Afghanistan* (November 2015)

United Nations, Human Rights Council twenty-fourth session, *Human rights situations that require the Council's attention: Assault on medical care in Syria* A/HRC/24/CRP.2 (13th September 2013)

UN, Independent International Commission of Inquiry on the Syrian Arab Republic, *As global pandemic reaches Syria, fighting must stop and urgent steps taken to prevent an even greater tragedy* (28th March 2020)

UN Office for the Coordination of Humanitarian Affairs, Hostilities in the Gaza Strip and Israel | Flash Update #149 (1st April 2024)

UN, Office of the High Commissioner for Human Rights, *Ukraine: grave concern,* Press Briefing Note (12th March 2022)

United Nations, Secretary General – Statements and Messages, SG/SM/17729-SC/12348 (3rd May 2016)

UNSC Res. 2286 *on Protection of the Wounded and Sick, Medical Personnel and Humanitarian Personnel in Armed Conflic*t (3rd May 2016)

UNSC SC/11407, 7180th Meeting: *Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution* (22nd May 2014)

WHO, *oPt Emergency Situation Update,* Issue 13 (15th November 2023)

Books Journal Articles

American Journal of International Law, *Use of Force and Arms Control: U.S. Department of Defense Releases Report of Investigation Finding that October 2015 Air Strike on Doctors Without Borders Hospital in Kunduz, Afghanistan, Was Not a War Crime,* Vol. 110, No. 3 (2016)

Breitegger A., *The Legal Framework Applicable to Insecurity and Violence Affecting the Delivery of Health Care in Armed Conflicts and Other Emergencies*, (International Review of the Red Cross, 2013)

Boivin A., *The Legal Regime Applicable to Targeting Military Objectives in the Context of Contemporary Warfare*, Research Paper Series No. 2 (University Centre for International Humanitarian Law, 2006)

Chevalier-Watts J., *Has Human Rights Law Become Lex Specialis for the European Court of Human Rights in Right to Life Cases Arising from Internal Armed Conflicts?* (The International Journal of Human Rights, 2010)

Coupland R., *Health Care in Danger: A Sixteen-Country Study* (ICRC Report, July 2011)

Droege C., *The interplay between international humanitarian law and international human rights law in situations of armed conflict,* Vol. 40, No. 2 (Israel Law Review, 2007)

Ferrero T., *Expert Meeting Occupation and Other Forms of Administration of Foreign Territory*, (ICRC, 2012)

Kleffner K.J., *Protection of the wounded, sick and shipwrecked*, in Fleck D. (ed.), *The Handbook of International Humanitarian Law*, 2nd ed. (Oxford University Press, Oxford, 2008)

Kleffner K.J., *The applicability of international humanitarian law to organized armed groups* (International Review of the Red Cross, Volume 93 Number 882, June 2011)

Kleineman J., *Rättsdogmatisk metod* in Nääv M. and Zamboni M.(eds.), *Juridisk Metodlära* (Studentlitteratur, 2018)

Koskenniemi M., *The Politics of International Law – 20 Years Later* (European Journal of International Law, 2009)

Quénivet N., *The history of the relationship between international humanitarian law and human rights*, in Arnold R. and Quénivet N. (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* (Martinus Nijhoff, Dordrecht, 2008)

Rubenstein L., *Breaking the Silence: Advocacy and Accountability for Attacks on Hospitals in Armed Conflict,* 97(900), (International Review of the Red Cross 1157, 2016)

Sandgren S., *Rättsvetenskap för uppsatsförfattare: ämne, material, metod, argumentation och språk* (5th edition,Stockholm: Nordstedts Juridik, 2021)

Simma B. and Pulkowski D., *Of Planets and the Universe: Self-contained Regimes in International Law* (European Journal of International Law, 2006)

Van Steenberghe R., *The Impacts of Human Rights Law on the Regulation of Armed Conflict: A Coherency-Based Approach to Dealing with Both the "Interpretation" and "Application" Processes* No. 919 (ICRC, 2022)

News and Web Sources

Al Ahmar A. and Al-Mughrabi N., *Too close and too cold, premature babies in grave peril at Gaza's Al Shifa hospital* (Reutersn, November 13th 2023) available at: <https://www.reuters.com/world/middle-east/too-close-too-cold-premature-babies-grave-peril-gazas-al-shifa-hospital-2023-11-13/> accessed October 2025

Al-Mughrabi N., *Hamas command centre, weapons found at Gaza hospital, Israeli military says* (Reuters, 15th November 2023) available at: <https://www.reuters.com/world/middle-east/israel-raids-gazas-al-shifa-hospital-2023-11-15/> accessed October 2025

Bahl V., *IDF found a calendar in Arabic, not a Hamas 'names list' at hospital* (France 24, 17th November 2023) available at: <https://www.france24.com/en/tv-shows/truth-or-fake/20231116-idf-claims-to-find-list-of-hamas-names-but-it-s-the-days-of-the-week-in-arabic> accessed October 2025

BBC News, Russia withdraws from the International Criminal Court treaty (16th November 2016) available at <https://www.bbc.com/news/world-europe-38005282> accessed October 2025

Borger J., *IDF evidence so far falls well short of al-Shifa hospital being Hamas HQ* (The Guardian, 17th November 2023) available at: <https://www.theguardian.com/world/2023/nov/17/idf-evidence-so-far-falls-well-short-of-al-shifa-hospital-being-hamas-hq> accessed October 2025

Burke J., *Battle for al-Shifa hospital in Gaza fraught with diplomatic risk for Israel* (The Guardian, 2023) available at: <https://www.theguardian.com/world/2023/nov/12/control-of-al-shifa-hospital-in-gaza-is-a-key-israeli-military-and-political-aim> accessed October 2025

Cook J., *"Syrian Medical Facilities Were Attacked More Than 250 Times This Year"* (The World Post, New York City, Huffington Post and Berggruen Institute, 27th December 2016) available at: <https://www.huffpost.com/entry/syria-hospital-attacks_n_56c330f0e4b0c3c550528d2e> October 2025

Cumming-Bruce N., *U.N. Reports Syria Uses Hospital Attacks as a 'Weapon of War'* (New York Times, 13th September 2013) available at: <https://www.nytimes.com/2013/09/14/world/middleeast/un-panel-accuses-syria-of-attacking-hospitals.html> accessed October 2025

Edwards J. and Yeung C. *Israeli troops end Al-Shifa hospital raid, leaving behind bodies and trail of destruction* (CNN, 1st April 2024) <https://edition.cnn.com/2024/04/01/middleeast/israel-idf-withdraws-al-shifa-hospital-intl-hnk/index.html> accessed October 2025

European Pravda, *Lavrov confirms Russia deliberately bombed maternity hospital in Mariupol* (5th March 2022) available at: <https://www.pravda.com.ua/eng/news/2022/03/10/7330042/> accessed October 2025

Gunter J. and Gritten D., Israeli forces raid Gaza City's al-Shifa hospital (BBC News, 18th March 2024) available at:<https://www.bbc.com/news/world-middle-east-68594153> accessed October 2025

Interfax, *Russian troops don't hit the hospital in Mariupol, it's Kyiv's information provocation – Russian Defense Ministry* (10th March 2022) available at: <https://interfax.com/newsroom/top-stories/76302/> accessed October 2025

Lau C., Raine A., Said-Moorhouse L., Poole T., Edwards C., Vogt A., and Powell B.T., *CNN analysis: Video suggests IDF might have rearranged weaponry at Al-Shifa prior to news crew visits (*CNN, 19th November 2023) available at: <https://edition.cnn.com/middleeast/live-news/israel-hamas-war-gaza-news-11-18-23/h_1d70c190adde686e6a2b59e963499e82> accessed October 2025

Lieber D. and Abdel-Baqui O., *Inside Israel's Campaign to Prove a Gaza Hospital Was a Hamas Command Center* (The Wall Street Journal, 22nd November 2023) available at: <https://www.wsj.com/world/middle-east/inside-israels-campaign-to-prove-a-gaza-hospital-was-a-hamas-command-center-65e655ee> accessed October 2025

Loveluck L., Hill E., Baran J., Ley J., and Nakashima E., *The case of al-Shifa: Investigating the assault on Gaza's largest hospital* (The Washington Post, 21st December 2023) available at: <https://www.washingtonpost.com/world/2023/12/21/al-shifa-hospital-gaza-hamas-israel/> accessed October 2025

Meduza, *Definitely not 'staged' – False allegations about the maternity hospital airstrike in Mariupol, debunked* (12th March 2022) available at: <https://meduza.io/en/feature/2022/03/12/definitely-not-staged> accessed October 2025

Nebehay S., *Syria attacks hospitals, denies healthcare as 'weapon of war': U.N.* (Reuters. 13th September 2013) available at: <https://www.reuters.com/article/us-syria-crisis-health-idUSBRE98C0NG20130913/> accessed October 2025

Reevel P., *Report Suggest Russia tried to conceal airstrikes on Syrian hospitals* (ABC News, 13th February 2017) available at: <https://abcnews.go.com/International/report-suggests-russia-conceal-airstrikes-syrian-hospi> accessed October 2025

Robertson N., *Reports mount of mass graves at Gaza hospitals, some bodies found 'without heads'* (The Hill, 8th April 2024) available at: <https://thehill.com/policy/international/4652018-reports-mount-of-mass-graves-at-gaza-hospitals-some-without-heads/> accessed October 2025

Rubin J.A, *Airstrike Hits Doctors Without Borders Hospital in Afghanistan* (New York Times, 3rd October 2015) available at: <www.nytimes.com/2015/10/04/world/asia/afghanistan-bombing-hospital-doctors-without-borders-kunduz.html> accessed October 2025

Sabbagh D., *Israel arrests Gaza hospital director and bombs 300 targets amid truce delay* (The Guardian, 23rd November 2023) available at: <https://www.theguardian.com/world/2023/nov/23/israels-army-arrests-gaza-hospital-director-and-bombs-300-targets-amid-truce-delay> accessed October 2025

Slow O., *WHO Says Gaza's Al-Shifa Hospital a Death Zone, as Hundreds Leave* (BBC News, 18th November 2023) available at: <https://www.bbc.com/news/world-middle-east-67462615> accessed October 2025

Tanno S., *What we know about what Israel says it has found at Al-Shifa* (CNN, 20th November 2023) available at: <https://edition.cnn.com/2023/11/17/middleeast/israel-al-shifa-gaza-what-we-know-intl/index.html> accessed October 2025

TASS, *Nationalists in Mariupol setting up emplacements in schools, hospitals — Russian top brass* (5th March 2022) available at: <https://tass.com/world/1417155> accessed October 2025

Taub A. *How International Law Views Military Action at a Hospital* (The New York Times, 17th November 2023) available at: <https://www.nytimes.com/2023/11/16/world/middleeast/israel-hamas-al-shifa-hospital-law.html?smid=url-share> accessed October 2025

Turse N., *Why Bombing the Kunduz Hospital Was Probably a War Crime* (The Intercept, 6th October 2015) available at: <https://theintercept.com/2015/10/06/why-bombing-kunduz-hospital-was-probably-a-war-crime/> accessed October 2025

UN News, Mass graves in Gaza show victims' hands were tied, says UN rights office (23rd April 2024) available at: <https://web.archive.org/web/20240424005326/https://news.un.org/en/story/2024/04/1148876> accessed October 2025

YouTube, Middle East Eye, *BBC Verify casts doubt on Israel evidence* (BBC News, 18th November 2023) available at: <https://www.youtube.com/watch?v=NlBtJhI1fIw> accessed October 2025

Miscellaneous

ICC, Assembly of States Parties to the Rome Statute, available at: <https://asp.icc-cpi.int/states-parties> Status as at: 1st October 2025.

ICC, Situation in the Islamic Republic of Afghanistan, available at: <https://www.icc-cpi.int/victims/situation-islamic-republic-afghanistan>

ICC, Palestine Declares Acceptance of ICC Jurisdiction since 13 June 2014, press release, 5th January 2015, available at: <https://www.icc-cpi.int/news/palestine-declares-acceptance-icc-jurisdiction-13-june-2014> accessed October 2025

MAP Action, Insecurity Insight, Safeguarding Health in Conflict, *Attacked and threatened: health care at risk*, available at: <https://mapaction-maps.herokuapp.com/health> accessed October 2025

Permanent Mission of the Russian Federation to the United Nations, Statement by Permanent Representative Vassily Nebenzia at UNSC briefing on biological laboratories in Ukraine (11th March 2022) available at: <https://russiaun.ru/en/news/110322n_u> accessed October 2025

State of Israel, Ministry of Foreign Affairs, *Hamas-Israel Conflict 2023 – Some Factual and Legal Aspects* (2nd November 2023) Key Legal Aspects, available at: <https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel%20Conflict%202023%20-%20Some%20Factual%20and%20Legal%20Aspects%20-%20Israel%20Ministry%20of%20Foreign%20Affairs%20(2%20NOV%202023).pdf>

Twitter, Israel Defence Forces (IDF) (27th October 2023) available at: <https://twitter.com/IDF/status/1718010359397634252?s=20> accessed October 2025

US Central Command, *Summary of the Airstrike on the MSF Trauma Center in Kunduz, Afghanistan on October 3, 2015: Investigation and Follow-On Actions 1* (29th April 2016)

US Central Command, *U.S. Central Command Releases U.S. Forces-Afghanistan Investigation into Airstrike on Doctors Without Borders Trauma Center in Kunduz, Afghanistan*, press release (29th April 2016) available at: <www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/904574/april-29-centcom-releases-investigation-into-airstrike-on-doctors-without-borde/> accessed October 2025