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Attacks on Healthcare in the Ethiopia-Tigray Armed Conflict: Making a Case for Accountability under International Humanitarian Law

Dr. Olusola Babatunde Adegbite[1]

Ethiopia's war in Tigray, in its northern region, stands as one of the gravest African armed conflicts of the 2020s. Beyond threatening regional stability in the Horn of Africa, the conflict gave rise to troubling allegations of International Humanitarian Law (IHL) violations, notably attacks on healthcare facilities, personnel, and medical transport. These attacks were allegedly committed by both sides to the conflict, i.e., the Ethiopian government and the Tigray People's Liberation Front (TPLF). While international action towards ensuring that attacks on healthcare in armed conflict do not become a global norm remains in top gear, the actions of actors in the Ethiopian conflict, seem to have significantly slowed down these efforts. It is essential that these atrocities receive the attention they deserve. Accordingly, this article examines these issues through the prism of IHL, especially the rules governing the protection of medical units, medical personnel, and humanitarian relief. It evaluates the obligations of the Ethiopian government and the TPLF, linking the facts of the conflict with relevant provisions of the law. It also focuses on two key incidents of attacks on healthcare during the conflict, analysing these against the law. It concludes that the Tigray conflict represents not only a regional tragedy but a critical stress test for the global legal architecture protecting healthcare in war.

Keywords – Healthcare, Armed Conflict, Accountability, Humanitarian Law, Tigray, Ethiopia.

Introduction

The protection of healthcare in armed conflict has long been recognised as a cornerstone of International Humanitarian Law (IHL). Rooted in the earliest Geneva Conventions and

[1] The Author is a Visiting Lecturer,York St John University,Lord Mayor Walk, York,United Kingdom. He completed his LL.B (Hons.) (*Ife, Nigeria*), LL.M (*Ife, Nigeria*), LL.M (*Cardozo School of Law, Yeshiva University, New York, United States*), PhD (*University of Hertfordshire, United Kingdom*). The author can be reached at: olusolaadegbite@gmail.com

refined through decades of state practice and jurisprudence, the principle is clear, i.e., medical services must be respected and protected at all times. Yet, contemporary conflicts increasingly demonstrate the fragility of these norms. In the twentieth century, healthcare has increasingly become the direct and indirect subject of attacks in armed conflict. Whether in Africa, where armed conflicts are fast becoming a trademark, or in faraway eastern Europe, where Russia is waging a devastating war in Ukraine, attacks on healthcare are becoming disturbingly normalised. Undervaluing international law in crises has made healthcare increasingly open to attacks.[2] The direct impact of armed conflict on healthcare is not breaking news.[3] What is attention-catching is the increasing international spotlight on the importance of affording adequate protection and ensuring compliance in times of war. With the colossal damage done to healthcare protection in recent conflicts, the need to be creative about healthcare protection in wars is more pressing than ever before. From extensive protection in IHL rules to the 2016 UN Security Council (UNSC) Resolution 2286,[4] the "Safeguarding Health in Conflict" Initiative, as well as renewed International Committee of the Red Cross (ICRC) engagements, attempting to stem the global erosion of respect for medical neutrality in wars, it is clear that the international community is not ready to tolerate attacks on healthcare in armed conflicts. Notwithstanding these efforts, such attacks, which violate IHL, challenge human rights, and imperil public health, continue unabated.[5]

The 2020-2022 armed conflict in Ethiopia's northern Tigray region joins this troubling catalogue. Initially triggered by political breakdown between the Abiy Ahmed-led Ethiopian government and the Tigray People's Liberation Front (TPLF), the confrontation rapidly escalated into a large-scale armed conflict, drawing in multiple armed actors. As the fighting intensified, so too did reports of widespread violations, including systematic targeting of healthcare infrastructure. In particular, the conflict brings to the fore issues regarding the scope of IHL obligation of States and Non-State Armed Groups (NSAGS),[6] concerning healthcare protection in armed conflict. The health and humanitarian crisis that these attacks generated was so serious that thousands of civilians were significantly impacted. During the

[2] Benjamin M. Meier, Hannah Rice and Shashika Bandara, "Monitoring Attacks on Healthcare as a Basis to Facilitate Accountability for Human Rights Violations" (2021) 23 (1) *Health and Human Rights Journal*, 55 – 70 at 56.
[3] Daniel Shapiro and Catherine Hua, "Mitigating the Global Health Threat of Violent Conflict: A Preventive Framework" (2020) *BMJ Nutrition, Prevention and Health*, 2.
[4] UNSC, Resolution 2286 (2016), May 3, 2016, S/RES/2286 (2016).
[5] Meier, "Monitoring Attacks" 56.
[6] Generally, under the rules of IHL, the obligation of States and NSAGs are covered by Common Article 3 to the Four Geneva Conventions as well as Additional Protocol 2. *See e.g*., Ezequiel Heffes, 'Armed Groups and Protection of Health Care' (2019) 95 *International Legal Studies*, 227.

war, both sides failed to demonstrate a consciousness and respect for their obligations under IHL as it relates to the protection of healthcare facilities. While the TPLF considered its action to be self-defence, the government, on its part, consistently maintained that it was simply conducting a domestic law enforcement operation against individuals it referred to as "criminals".

These attacks have global significance. The Ethiopia-Tigray armed conflict constitutes not only a humanitarian tragedy but a crucial case study for evaluating the robustness of IHL norms. In light of the above, this article aims to examine the issue of attacks on healthcare facilities during the war. It examines the existing norms relating to healthcare protection under IHL rules and how attacks on healthcare implicated the obligation of both the Ethiopian government and the TPLF during the war. It highlights two (2) standout incidents of such attacks, analysing how specific rules of IHL apply in each context. Furthermore, it examines the potential challenges likely to militate against efforts at accountability. Somewhat, there has been a level of obscurity about the Ethiopia-Tigray armed conflict, with most of the atrocities committed in the war largely ignored and overshadowed by other developing issues in the international space. Whereas a ceasefire has since been signed between both parties, thus bringing active hostilities to an end, however, the atrocities committed by both sides have remained unresolved. This is not just a disservice to the civilian population who were caught in between the warring parties, but it is also fatal to the final resolution of the conflict, as well as the global effort at strengthening accountability for these kinds of actions. It is therefore worth noting that this article is not just a matter of academic interest, but more about spotlighting an issue directly touching the lives of a people, especially as healthcare holds a central place in armed conflict situations. The goal of this article, therefore, is to deepen the conversation on the accountability framework concerning the protection of healthcare in armed conflicts.

Allegations of attacks on healthcare in the ethiopia/ tigray armed conflict

Ethiopia's war in the Tigray region commenced on November 3, 2020, when the Federal government led by Prime Minister Abiy Ahmed,[7] launched massive military operations, consisting of air strikes and troop deployments, in the restive Tigray region of the country.[8]

[7] Abiy Ahmed, 44 years old, is Africa's youngest leader. In 2019, the Norwegian Nobel Committee awarded him the Nobel Prize for Peace, for his effort in ending the 20-years war between Ethiopia and Eritrea.

[8] Eoin McSweeney, 'A Full-Scale Humanitarian Crisis is Unfolding in Ethiopia, the UN Says' *CNN* (17 November 2020), https://edition.cnn.com/2020/11/17/africa/un-humanitarian-crisis-ethiopia-intl/index.html

This was after accusing the region's ruling party, the TPLF, of conducting an illegal election, attacking a federal military camp, attempting to loot military assets, as well as armed revolt.[9] Prime Minister Abiy, in ordering his offensive, said the "last red line had been crossed".[10] The TPLF, on its part, asserted that these accusations are simply trumped-up charges by the government, made to justify its military assault against the region.[11] It also labelled the Abiy government as illegal, after it postponed national elections on the excuse of the COVID-19 pandemic.[12] The fighting later pitted the government's military forces as well as allied militias against troops loyal to the TPLF.[13] Following the declaration of war against the TPLF, the government stepped up military operations, carrying out air strikes as part of a domestic law enforcement action.[14] The fighting later moved from being a full-blown war to a protracted insurgency, accounting for a massive humanitarian crisis. Thousands of people became Internally Displaced Persons (IDPs) as well as refugees outside the country.[15] A dimension of the humanitarian catastrophe was the case of wanton attacks on health care and health facilities by both sides.

Before the war broke out, the Tigray region of Ethiopia was reputed as having one of the best health systems in the whole of the country.[16] There were health posts in villages, health centres in towns, as well as referral systems, transporting sick people to the hospital.[17] The health system in the region, however, collapsed following targeted and sustained attacks. According to Médecins Sans Frontières (MSF), health facilities in the region were looted and destroyed in premeditated and widespread attacks.[18] The organisation notes that of the 106 facilities it visited between mid-December 2020 and early March 2021, close to 70% had been looted, 30% damaged, with just 13% still operating.[19] For instance, in some facilities in Debre Abay and May Kulhi in north-west Tigray, equipment were destroyed, while

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[9] *Ibid.*
[10] BBC, "Ethiopia Tigray Crisis: Abiy Issues 'Ultimatum' as Civilians Flee Fighting" *BBC News*, https://www.bbc.co.uk/news/world-africa-54960150
[11] Jason Burke, "Could Tigray Conflict Turn Ethiopia a 'Libya of East Africa?"*The Guardian* (17 November 2020), https://www.theguardian.com/world/2020/nov/17/could-tigray-conflict-turn-ethiopia-into-a-libya-of-east-africa
[12] *Ibid.*
[13] *Ibid.*
[14] McSweeney, "A Full-Scale Humanitarian" .
[15] NA, 'Ethiopia – Only African Solution Can Resolve Crisis' *New African* (August 5, 2021), https://newafricanmagazine.com/26534/
[16] MSF, 'People Left with Few Healthcare Options in Tigray as Facilities looted, destroyed' *Médecins Sans Frontieres (MSF)* (March 15, 2021), https://www.msf.org/health-facilities-targeted-tigray-region-ethiopia
[17] *Ibid.*
[18] 'Tigray Violence Scatters People Across Two Countries' *Médecins Sans Frontieres (MSF)* (June 22, 2021), https://www.msf.org/ethiopia-tigray-crisis-update
[19] *Ibid.*

medicines were scattered all over.[20] These attacks occurred in different forms. For instance, troops and armed groups are accused of using hospitals as military facilities, attacking ambulances and medical transport, etc.[21] The MSF team reports of a health facility in Mugulat, east of Tigray, which Soldiers used as a military base, while also noting that a Hospital in Abiy Addi in Central Tigray was, until March 2021, still used as a military base.[22] Also, in Adigrat, east of Tigray, about 20 ambulances were seized from the hospital and health centres and later converted into transport at the Eritrean border. [23]

According to the MSF Emergency Coordinator Kate Nolan "*the army used Abiy Addi Hospital as a military base and to stabilise their injured soldiers*", during which time the public didn't have access to it.[24] Affirming the same, Oliver Behn, MSF General Director, noted that "*the attacks on Tigray health facilities are having a devastating impact on people. Health facilities and health staff need to be protected during a conflict, in accordance with international humanitarian law. This is not clearly not happening in Tigray*".[25] Speaking further, Behn noted that "*Health facilities need to be rehabilitated and receive more supplies and ambulances, and staff need to receive salaries and the opportunity to work in a safe environment. Most importantly, all armed groups in this conflict need to respect and protect health facilities and staff*".[26] There were also reports of armed attacks on health personnel. For instance, in the course of the war, the UN condemned targeted attacks that killed 12 humanitarian workers, 3 of whom were members of the MSF.[27]

These attacks all had a severe impact on healthcare delivery in the country. Maternal and paediatric care were slowed down, such that a lot of children were not vaccinated, leading to a rise in preventable diseases such as measles. In one of its reports, the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA) noted that "*the health system in Tigray is reportedly nearing collapse*".[28] It further added that only 3 of the 11 hospitals in the region were functioning.[29] During a visit to healthcare facilities in Tigray and Amhara, the

[20] MSF, 'People Left"
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*
[27] '400, 000 in Tigray Cross Threshold into Famine, with nearly 2 million on the brink, Security Council told' *UN News* (July 2, 2021) https://news.un.org/en/story/2021/07/1095282
[28] Reuters, "People Die at Home: Tigray Medical Services Struggle After Turmoil of War" *Reuters* (8 February, 2021), https://www.reuters.com/article/uk-ethiopia-conflict-health-idUSKBN2A80M2
[29] *Ibid.*

ICRC discovered that these facilities were in need of medical supplies for the wounded.[30] It equally noted that more than 1,000 persons had contacted the ICRC hotline and visited its offices in Addis Ababa and Mekelle, seeking help to reach their family members.[31] Oliver Behn, Director-General of MSF, further added that "*the attacks on Tigray health facilities are having a devastating impact on the population*".[32]

In June 2021, it was reported that Eritrean forces assaulted a vaccination team, just as 3 MSF health workers were later murdered.[33] The 3 medical workers who were killed are Maria Hernandez, a Spaniard and MSF's emergency coordinator; Yohannes Halefom Yeda, assistant coordinator and Tedros Gebremariam Gebremichael, their driver and an Ethiopian.[34] The reaction to the murder of the 3 MSF staff was one of shock and devastation. Reacting to the incident, the UN Secretary General, António Guterres, stated that he was "*deeply shocked by the murder*".[35] The ICRC, in a statement, has also stated that "*attacks against humanitarian and health workers seriously undermine the capacity of humanitarian organisations to deliver urgent assistance in the Tigray region, where humanitarian needs continue to grow*".[36] There were also reports that in the course of this war, sexual violence was deployed as a weapon of war,[37] as well as a tool of sexual slavery.[38] For instance, there were reported cases of the rape of medical students and patients,[39] as well as women being gang-raped, drugged and held hostage.[40] In August 2021, Amnesty International reported that troops loyal to the Ethiopian government had used rape, sexual mutilation, and sexual slavery

[30]ICRC, 'Operational Update on Escalating Fighting in Tigray and Northern Ethiopia' *International Committee of the Red Cross (ICRC)* (18 November 2020), https://www.icrc.org/en/document/escalating-fighting-tigray-and-northern-ethiopia
[31] *Ibid.*
[32] "Widespread Destruction of Health Facilities in Ethiopia's Tigray" *Médecins Sans Frontieres (MSF)* (15 March 2021) https://www.doctorswithoutborders.org/what-we-do/news-stories/news/widespread-destruction-health-facilities-ethiopias-tigray-region
[33] Leonard Rubenstein and Mulugeta Gebregzibher, "The Assault on Healthcare in Tigray"*The Hill* (14 August 2021) https://thehill.com/opinion/international/567825-the-assault-on-health-care-in-tigray
[34] Margaret Besheer, '3 Aid Workers Killed in Ethiopia's Tigray' *Voice of America (VOA)* (27 June 2021) https://www.voanews.com/a/africa_3-aid-workers-killed-ethiopias-tigray/6207473.html
[35] *Ibid.*
[36] *Ibid.*
[37] Michelle Nichols, 'Sexual Violence Being used as a Weapon of War in Ethiopia's Tigray, UN Says' *Reuters* (15 April 2021) https://www.reuters.com/world/africa/sexual-violence-being-used-weapon-war-ethiopias-tigray-un-says-2021-04-15/?utm_source=twitter&utm_medium=Social
[38] Katherine Houreld, 'Health Officials Alleges Sexual Slavery in Tigray' *Reuters* (15 April 2021) https://www.reuters.com/world/special-report-health-official-alleges-sexual-slavery-tigray-women-blame-2021-04-15/
[39] Rubenstein and Gebregzibher, *supra* (note 32).
[40] Bethlehem Feleke, et al, "Practically this has been a Genocide" *CNN* (22 March 2021) https://edition.cnn.com/2021/03/19/africa/ethiopia-tigray-rape-investigation-cmd-intl/index.html

as a weapon against Tigrayan women and girls.[41] This was after the UN High Commissioner for Human Rights, Michelle Bachelet, called for an independent investigation into human rights violations that may amount to war crimes, given reports of sexual and gender-based violence as well as extrajudicial killings.[42] Indeed, there are reports that even after the ceasefire was signed, Eritrean and Ethiopian soldiers still continued a systematic and widespread campaign of rape in the Tigray region.[43]

Applying international humanitarian law in the context of the ethiopia/tigray armed conflict

The attacks on the civilian population during this war raise critical issues to which the rules of IHL are applicable. As an armed conflict between a State (Ethiopia) and an armed group (the TPLF) operating within its territory, the conflict qualifies as a Non-International Armed Conflict (NIAC). More importantly, the significance of the analysis in this section of the Article lies in its usefulness to ongoing debate in this area, especially with regard to determining accountability.

The intersection between healthcare and armed conflict is in two parts, i.e., the first being the effect of armed conflict on health,[44] and the second, the protection of healthcare during hostilities. While the former is outside the scope of the article, the latter has remained a most pressing issue in the global effort to entrench the rules of IHL in armed conflicts. In recent times, medical personnel as well as medical facilities have been made subjects of violent attacks, threats, and all manner of intimidation in armed conflicts.[45] Hospitals, health centres, transports and ambulances have been ambushed, bombed, looted and subjected to serious

[41] Caroline Kapp, 'The Devastating Use of Sexual Violence as a Weapon of War' *Think Global Health* (1 November 2022) https://www.thinkglobalhealth.org/article/devastating-use-sexual-violence-weapon-war; 'Ethiopia: Troops and Militia Rape, Abduct Women and Girls in Tigray Conflict – New *Report' Amnesty International* (10 August 2021) https://www.amnesty.org/en/latest/news/2021/08/ethiopia-troops-and-militia-rape-abduct-women-and-girls-in-tigray-conflict-new-report/

[42] Niamh Kennedy, "UN Rights Chief Says War Crimes May Have been Committed in Ethiopia After CNN Reveals Tigray Massacre" *CNN* (4 March 2021) https://edition.cnn.com/2021/03/04/europe/ethiopia-tigray-un-independent-probe-war-crimes-intl/index.html

[43] Sarah Johnson and Lucy Kassa, 'Rape Still a Weapon of War in Tigray After Months of Peace Deal' *The Guardian* (25 August 2023) https://www.theguardian.com/world/2023/aug/25/still-a-weapon-of-war-in-tigray-months-after-peace-deal

[44] For an extensive read on the extent to which armed conflicts impact health *see generally*, Barry S. Levy and Victor W. Sidel, 'Documenting the Effects of Armed Conflicts on Population Health' (2016) 37 *Annual Review of Public Health*, 205 – 218 at 213, 214, 215, and 216; G. Hassan, et al, 'Mental Health and Psychological Wellbeing of Syrians Affected by Armed Conflict' (2016) 25 *Epidemiology and Psychiatric Sciences*, 129 – 141 at 131; S. Gary and F. Checchi, 'Armed Conflicts and Public Health: Into the 21st Century' (2019) 42 (3) *Journal of Public Health*, 287 – 297 at c288; C.J.L. Murray, et al, 'Armed Conflict as a Public Health Problem' (2002) 324 *British Medical Journal*, 346.

[45] Rohini J. Haar, et al, 'Violence Against Healthcare in Conflict: A Systematic Review of the Literature and Agenda for Future Research' (2021) 15 *Conflict and Health*, 2.

destruction, while medical personnel and patients have also been killed, harassed, arrested and sometimes prevented from receiving medical care.[46] In a detailed 16-country ICRC study, covering two and a half years in which 1,342 reports containing 655 events of violent attacks on healthcare were collected and processed, the following was observed – in 462 events representing 70.5%, healthcare facilities were affected through damage or armed entry; In 189 cases representing 28.8% both people and the facilities were affected while in 115 representing 17. 5% only the health facilities were harmed. In 216 cases, i.e., 33%, State armed forces were responsible for the violence, while in 242 cases, representing 36.9%, armed groups were responsible. In 148 events, i.e., 22.8%, some kind of explosive weapon was used to attack the health facility, while in 224 cases, i.e., 34.2%, firearms were deployed in the attack.[47]

Whereas an ICRC report states that between 2012 and 2014, 2,398 attacks were launched on health services in 11 countries, the Safeguarding Health in Conflict Coalition, on its part, notes that in 2016, 108 were carried out against medical facilities in the Syrian Armed Conflict.[48] Within the same breadth, the World Health Organisation (WHO) reports that in 2019, 403 attacks were perpetrated against healthcare in armed conflicts.[49] Aside from the war that occurred in the Tigray region of Ethiopia, the Syrian armed conflict was another such environment where this was most prevalent. According to Ri et al, from 2011 to 2017, a total of 110,504 civilian casualties were recorded, and during the same period, an average of 6.24 health facilities were attacked per month.[50]

In response to these issues, international law has, over the years, developed standards derived from IHL, IHRL and Medical Ethics for the protection of healthcare in armed conflict.[51] In the context of the war that took place in Tigray, the applicable legal regime is the rules of IHL. As a branch of international law, IHL comprises a set of rules that seek to limit the effects of armed conflicts by protecting persons who are not, or are no longer, taking direct or

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[46] *Ibid.*
[47] ICRC, "Healthcare in Danger" *International Committee of the Red Cross (ICRC)* https://www.icrc.org/en/doc/assets/files/reports/4073-002-16-country-study.pdf
[48] Dalia Sofer, 'Health Workers Continue to be Targeted in Conflict Zones' (2019) 119 *American Journal of Nursing*, 12.
[49] *Ibid.*
[50] Sayaka Ri, et al, 'Attacks on Healthcare Facilities as an Indicator of Violence Against Civilians in Syria: An Exploratory Analysis of Open-source Data' (2019) 14 *Plos One* 5.
[51] Leonard S. Rubenstein and Melanie D. Bittle, "Responsibility for Protection of Medical Workers and Facilities in Armed Conflict"(2010) 375 *LANCET*, 330.

active part in hostilities, as well as imposing limits on the means and methods of warfare.[52] These rules afford protection and respect for the wounded and the sick, as well as medical personnel, facilities and equipment in both International Armed Conflicts (IACs) and Non-International Armed Conflicts (NIACs).[53] The obligations provided under these rules are binding on both States and NSAGs,[54] but only apply in an armed conflict situation and do not extend to other situations of violence, such as political unrest, riots, and internal disturbances.[55]

Protection of the Wounded and the Sick

The rules of IHL protecting healthcare in armed conflicts are concerned with the immediate effect of war on the "wounded and the sick", and do not extend to the long-term impact of war, which is likely to come under the protection of IHRL.[56] IHL rules focus on protecting the rights of the wounded and sick in armed conflicts, which must be afforded at all times. This protection falls into two parts, i.e., protection of wounded and sick members of the armed forces and protection of wounded and sick members of the civilian population. These protections are enshrined in the four Geneva Conventions, the two Additional Protocols, and Customary IHL rules.[57] Article 12 of the Geneva Convention I states that "*members of the armed forces and other persons mentioned in the following article, who are wounded or sick, shall be respected and protected in all circumstances*".[58] The understanding of "wounded and sick" is to mean the wounded and sick on the side of both parties to the conflict. Indeed, Article 13 of the Geneva Conventions I and II notes that the wounded, sick and shipwrecked all fall into the class of persons to be accorded Prisoners of War (POWs) status. Articles 29 - 34 of the Geneva Convention III also contain provisions detailing the measures to be taken to protect the health of POWs.[59] Specifically, it imposes an obligation on the detaining party to

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[52] 'What is International Humanitarian Law' *International Committee of the Red Cross (ICRC)* https://www.icrc.org/sites/default/files/document/file_list/what_is_ihl.pdf

[53] Katherine H.A. Footer and Leonard S. Rubenstein, "A Human Rights Approach to Health Care in Conflict", (2017) 95 889 *International Review of the Red Cross*, 167 – 187 at 168.

[54] ICRC, "Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law" *Advisory Services on International Humanitarian Law – International Committee of the Red Cross* https://www.icrc.org/en/doc/assets/files/2012/health-care-law-factsheet-icrc-eng.pdf

[55] Footer and Rubenstein, above at note 52. Scholars have canvassed that IHL rules be extended to these developing instances of violence, i.e., civil unrest, riots, internal disturbances, etc. *See generally* Olusola B. Adegbite and Olutunji S. Oyelade, 'Intra-states Armed Conflicts, Violence, Disturbances and International Humanitarian Law: Call for and Additional Protocol' (2017) *Lesotho Law Journal*, 75 – 111.

[56] *ICRC* "What is International"

[57] *Ibid*, at 5.

[58] *Ibid.*

[59] *Ibid.*

ensure that camps are clean and free from epidemics,[60] allow POWs in need of surgery access to medical facilities,[61] and ensure regular inspection of detention facilities.[62]

Article 16 of the Geneva Convention IV provides for the protection of wounded and sick civilians, stating that "*the wounded and the sick, as well as the infirm, and expectant mothers, shall be objects of particular protection and respect*".[63] Appreciably, the notion of "wounded and sick" is well expanded under Article 8 of Additional Protocol 1, which states that:

> *Wounded and sick mean persons, whether military or civilians, who, because of trauma, disease, or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, newborn babies, and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility*.[64]

Parties on both sides are therefore under an obligation to respect and protect the wounded and sick under all circumstances and without distinction.[65] In line with Article 15 of the Geneva Convention I, parties to the conflict have an obligation to 'search for' and 'collect' the wounded and sick from centres of hostilities and ensure their 'adequate care'.[66] Any deprivation of access to medical treatment would be considered cruel, inhumane and degrading treatment.[67] Acts of wilful killings or causing great harm are considered a part of grave breaches of the Geneva Conventions.[68] Relevant in this regard are core principles of IHL, namely distinction and proportionality. The principle of distinction is one of the foundation principles of the law of war,[69] which the International Court of Justice (ICJ)

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[60] Geneva Convention 3, art. 29.
[61] *Ibid*, art. 30.
[62] *Ibid*, art. 31.
[63] Geneva Convention 4.
[64] Additional Protocol 1, art. 8.
[65] Additional Protocol 1, art. 16.
[66] Geneva Convention 1, art. 15. This obligation is further circumscribed on the rules governing humanitarian assistance in armed conflicts, covered by Article 23 and 59 of Geneva Convention 4; and Article 69 – 71, Additional Protocol 1 for International Armed Conflicts IACs. See also Common Article 3 2 of the four Geneva Conventions and Article 18 of Additional Protocol 2 for rules applicable to Non-International Armed Conflicts NIACs. Additionally, Rule 55 of the ICRC Study on Customary IHL provides that, "*parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction subject to their right of control*". Bellal, above at note 51 at 6.
[67] ICRC, "Respecting and Protecting".
[68] *Ibid.*
[69] Gray Solis, *The Law of Armed Conflict-International Humanitarian law in War* (Cambridge University Press, 2010) at 122.

regards as a 'cardinal principle'.[70] It demands that parties to a conflict distinguish between civilians and combatants, as well as between civilian objects and military objects at all times, directing their attacks at combatants and military objects alone.[71] General principles of IHL recommend far-reaching protection for the civilian population and civilian objects in an armed conflict.[72] As medical personnel are deemed a part of the 'Civilian population', or 'Non-Combatants', IHL rules state that individual civilians and the civilian population *shall not be the object of attack*'. While civilians are not to be made subject to attacks, "*unless and for such time as they take part in direct hostilities*",[73] combatants may be targeted at any place or any time, as long as they have not been rendered *hors de combat* by sickness, wounds, detention, or any other cause.[74] Once civilians take direct part in hostilities, they lose their protected status and become open to targeted attacks at any time, not as 'combatants', but as 'unlawful combatants'.[75] Even though IHL provides a framework governing civilian protection, in reality, this is often not the case. This loss of protected status underscores how IHL tries to strike a balance between the principle of distinction and the principle of military necessity.

The focus of the principle of distinction is on military actions aimed at decimating the enemy.[76] It prohibits the carrying out of such actions indiscriminately,[77] such as bombing an area with a cluster of civilians and civilian objects.[78] This principle can be traced to early IHL treaties such as the St. Petersburg Declaration of 1898,[79] the Hague Conventions of 1899 and 1907, along with the annexed Hague Regulations, which all agreed that conduct of hostilities

[70] See Advisory Opinion on Legality of the Threat or Use of nuclear weapons of 8 July 1996, paragraph 78.
[71] Article 48, Additional Protocol I. Military objects are defined as "*those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage*". See Article 52(2) Additional Protocol I.
[72] Salvatore Zappala, "Conflict Related Hunger, Starvation Crimes and UN Security Council Resolution 2417 (2018)"(2019) 17 *Journal of International Criminal Justice*, 881 – 906 at 894.
[73] Article 51 (3), Additional Protocol I; Article 13 (3), Additional Protocol II; Rule 6, Customary International Humanitarian Law, ICRC, Volume I, 2005.
[74] Article 3, Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.
[75] Olusola B. Adegbite, "The Cloak, The Turban, and Slippery Slopes: The Cleric as a Direct Participant in Hostilities and Right to Protected Status under International Humanitarian Law" (2018) 26 (1) *Lesotho Law Journal*, 79 – 104 at 88; Benjamin R Farley, "Targeting Anwar Al-Aulaqi: A Case Study in US Drone Strikes and Targeted Killing" (2012) 2 (1) *American University National Security Law Brief*, 57 - 87 at 75.
[76] Attack here is defined as "*acts of violence against the adversary either in offence or in defence*". See Article 49, Additional Protocol I.
[77] Article 51 (4), Additional Protocol I.
[78] Article 51 (5) (a), Additional Protocol I.
[79] The Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, of 29 November 1898.

must be subject to certain legal standards and boundaries[80]. The Preamble to the St. Petersburg Declaration also states that "*the military forces of the enemy*" are "*the only legitimate*" targets for attack. The principle has found its broadest expression in the four Geneva Conventions, which apply to all IACs by parties to the conventions.[81] These conventions have been strengthened by two Additional Protocols in 1977, i.e., Additional Protocol I, which applies to IACs, and Additional Protocol II, which deals with NIACs.[82] Specifically, Additional Protocol I is made up of codifications such as the principle of distinction,[83] precautions in attack,[84] and provisions regarding the general protection awarded to the civilian population.[85] In all, Additional Protocol I appears to be a much more comprehensive addendum to the Geneva Conventions than Additional Protocol II. Under Article 48 of AP I, it is provided that, "*parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations only against military objectives*".[86]

The principle of distinction is structured on a tripod requirement viz the prohibition of targeted attacks on civilians, the prohibition of targeted attacks on civilian objects, and the prohibition on indiscriminate attacks.[87] Essentially, the principle calls on parties to an armed conflict to distinguish between combatants and non-combatants and only launch an attack on the former.[88] This principle prescribes that in any operation regarding targeting, the party concerned must make a clear separation between what can be an object of target attack and what cannot. It is a primary rule of IHL that parties in any armed conflict must establish a distinction between military objects subject to attacks and non-military objects.[89] Though such persons or objects may be victims in any military operations via collateral damage,[90]

[80] The Preamble to the St. Petersburg Declaration, Hague Regulations Articles 22 and 25, and Preamble to the Hague Convention IV of 1907.
[81] Common Article 2(1) and (2), Geneva Conventions I-IV.
[82] These Protocols are only supplementary and do not override the provisions of the Geneva Conventions. See Article 49(4), Additional Protocol I.
[83] Articles 48 and 43 (2), Additional Protocol I.
[84] Articles 57 and 58, Additional Protocol I.
[85] Part IV
[86] AP I.
[87] R. Kolb and R. Hyde, *An Introduction to the International Law of Armed Conflicts* (Oxford: Hart Publishing, 2008), 126.
[88] Laurie R. Blank, "After 'Top Gun': How Drone Strikes Impact the Law of War" (2012) 33 (3) *University of Pennsylvania Journal of International Law*, 675 – 718 at 681.
[89] J. M. Henckaerts & L. Doswald-Beck, *Customary International Humanitarian Law: Volume I: Rules* (Cambridge: Cambridge University Press, 2009), 19 - 24.
[90] Sandesh *Sivakumaran, The Law of Non-International Armed Conflict* (Oxford: Oxford University Press, 2012), 336-338.

they cannot be matters of targeted strikes.[91] Therefore, in achieving distinction, the understanding is that IHL prohibits indiscriminate effects in warfare. Indiscriminate effect encompasses the ban on indiscriminate weapons, as well as the prohibition on the use of otherwise lawful weapons in an indiscriminate manner, which is deemed as indiscriminate attacks.[92]

The principle of proportionality essentially laid down standards that would guide parties to a conflict in ensuring that, where force is used, it is adequately measured against the foreseeable consequences. It is a principle which operates as a bridge between the principle of humanity and necessity. In an armed conflict, the principle of proportionality, which is embedded in the customary law of war, forbids excessive death or injury and is relevant in determining the arbitrary taking of human lives.[93] It seeks to reduce the resulting casualties of warfare and imposes limitations on the means and methods of warfare.[94] Where a planned military strike would cause significant civilian casualties, the military is expected to abandon such a move.[95] In reaffirming this principle, the manual on NIACs provides that, "*an attack is forbidden if it may be expected to cause incidental loss to civilians' life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated*".[96] The principle of proportionality imposes an obligation on parties to an armed conflict to refrain from any attack where the expected military advantage would be insignificant compared to the civilian casualties.[97] The implication of this principle is that unexpected collateral damage with regard to the civilian population is permissible, as long as it does not outweigh the military goals. The Rome Statute has a similar provision, which states that:

> *Intentionally launching an attack in the knowledge that such an attack will cause incidental loss of life or injury to civilians or damage to civilian objects or*

[91] E.D. Roosen, "Targeting Enemy Forces in the War on Terror: Preserving Civilian Immunity" (2009) 42 *Vanderbilt Journal of Transnational Law*, 683 - 749.
[92] Blank, *supra* (note at 87 at 684).
[93] Jordan J. Paust, "The Right to Life in Human Rights Law and the Law of War" (2002) 65 (2) *Saskatchewan Law Review*, 411 – 425 at 416.
[94] Blank, "After Top Gun".
[95] *Ibid.*
[96] J.M. Henckaerts, 'Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict' (2005) 87 *International Review of the Red Cross*, 175 – 199; See also Article 51 (5) (b), Additional Protocol I.
[97] The rules forbid such attacks, "*which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated*". Article 51(5) (b) and Articles 57(2) (a) (iii) and 57(2) (b) of Additional Protocol I.

> *widespread, long-term, and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated*.[98]

The principle of military necessity is structured towards granting some form of room to military authorities to enhance their chances of achieving certain military objectives. It allows the military of a party to an armed conflict to use a degree of force as may be required to achieve set goals. It simply means that military authorities may be allowed to make the most of momentum in hostilities in their favour, by targeting members of enemy forces, in a manner that can end hostilities. So long as those methods are not prohibited by the law of armed conflict, they would be deemed justifiable.[99]

Under the law of war, combatants are entitled to engage in hostilities and so become legitimate targets of direct attacks.[100] The law provides that combatants are "*entitled to attack enemy combatants and military objectives, causing death, injury and destruction*".[101] Given their status as combatants, if they are captured, they are correspondingly entitled to POW status.[102] This is what is called 'combatant privilege', which is rooted in their right as armed forces of parties to an IAC, to engage in hostilities and contingent on their acting in consonance with the customs of the law of war.[103] This privilege grants them immunity from domestic prosecution for lawful acts of war.[104] Though privileged to directly participate in hostilities, some combatants do not necessarily have a function requiring them to do so, for example, cooks, administrative personnel, etc.[105] Individuals who assume continuous combat function outside the privileged categories of persons, as well as in NIACs, are not entitled to combatant privilege under IHL.[106] In the course of the conflict, if it is established that they have acted outside the permitted bounds of warfare, they can be charged and prosecuted for grave violations of IHL, such as war crimes.[107]

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[98] Article 8 (2) (b) (IV) of the Rome Statute of the International Criminal Court adopted in Rome 17 June 1998 and entered into force 1 July 2002.
[99] Blank, "After Top Gun".
[100] Noelle Quenivet & Shilan Sha-Davis (eds), *International Law and Armed Conflict: Challenges in the 21st Century* (T.M.C. Asser Press, 2010) at 3-4.
[101] Article 43 (2), Additional Protocol I.
[102] Article 44 (1), Additional Protocol I
[103] Article 43 (2), Additional Protocol I
[104] Henckaerts/Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press, 2005), Vol. I, Rule 25); Article 43(1) Additional Protocol I.
[105] *Ibid.*
[106] *Ibid.*
[107] Article 8, Statute of the International Criminal Court (Hereinafter 'The Rome Statute').

Protected Status for Medical Personnel

In any armed conflict, IHL rules provide that medical personnel and other related services must be accorded protected status, and they do not lose this protection, notwithstanding that they may have to carry arms, either to protect themselves or patients in their care.[108] Article 24 of the Geneva Convention I[109] affords this protection, extending the same to the administration of medical units and establishments, and chaplains attached to military units engaged in the search, collection and treatment of the wounded and sick.[110] Generally, under Customary International Law (CIL), they are accorded protected status, insofar as they are civilians, until such a time when they take direct part in hostilities.[111] While IHL offers protection under relevant rules, parties to armed conflicts are expected to identify medical personnel as well as medical facilities through distinctive emblems. Parties to the conflict also have an obligation to facilitate access of such personnel to places where the wounded and sick are located and are forbidden from impeding their work in any way.[112] The principles of medical ethics are deemed to remain the same, both in peacetime and in armed conflict situations.[113] Thus, parties to the conflict are not to compel medical personnel to carry out acts contrary to the ethics of their professional calling, and are also not allowed to prosecute them for acting in line with such ethics.[114]

Furthermore, medical units, facilities and hospitals must be respected at all times and cannot be subjected to attacks.[115] While Article 19 of the Geneva Convention I covers military hospitals,[116] Article 18 of the Geneva Convention IV deals with civilian hospitals.[117] These rules have also become part of the norms of Customary IHL in IACs and NIACs.[118] In the same vein, medical transports conveying medical personnel, supplies, or the wounded and sick cannot be attacked.[119] The obligation forbidding attack simply means that they cannot be

[108] ICRC, "Respecting and Protecting"
[109] Geneva Convention 1, art. 24.
[110] ICRC, "What international".
[111] Additional Protocol 1, art. 51 (3); Additional Protocol 2, art. 13 (3); CIL, Rule 6.
[112] ICRC, "Respecting and Protecting".
[113] *Ibid.*
[114] *Ibid.*
[115] Geneva Convention 1, art. 19; Geneva Convention 4, art. 18; Additional Protocol 1, art. 12; Additional Protocol 2, art. 11 (1); CIL, Rule 28.
[116] Geneva Convention 1, art. 19.
[117] Geneva Convention 1, art. 23; Geneva Convention 4, art. 14 & 18; CIL Rule 35.
[118] Rules 109, 110 and 111, ICRC Customary International Humanitarian Law Study.
[119] Geneva Convention 1, art. 35; Geneva Convention 4, art. 21; Additional Protocol, art. 21; Additional Protocol 2, art. 11 (1); CIL, Rule 29.

fired at or harmed.[120] For instance, intentionally attacking a hospital where the wounded and sick are being cared for, not being a military object, is considered a war crime under the Rome Statute,[121] as well as attacking an Ambulance carrying a distinctive emblem.[122] In line with Article 21 of the Geneva Convention I, a medical facility will lose its protected status where it is used for non-humanitarian purposes, such as sheltering combatants or storing arms and ammunition.[123] IHL rules, however, provide that before such a facility becomes the subject of attack, the attacking party must issue sufficient warnings and ensure to mitigate the harm to civilians that may be housed in such a place.[124] The above forms part of the notion of medical neutrality, a globally accepted principle of IHL, IHRL and Medical Ethics.[125] This allows physicians and other healthcare personnel to care for the wounded and the sick.

It is worth noting that many of the provisions explained above relate to the protection of healthcare in IACs, and this is not strange. Under IHL, provisions dealing with the protection of medical personnel and facilities in IACs are far more extensive than those concerning NIACs.[126] Nonetheless, the protection of medical personnel and medical facilities under NIACs, the category where the Ethiopia-Tigray armed conflict falls, is also covered by the existing rules. In particular, Article 3 common to all four Geneva Conventions states that "*the wounded and sick shall be collected and cared for*".[127] This obligation binds both the Ethiopian government and the TPLF. In the same light, Articles 7 and 8 of Additional Protocol II obligate parties to an armed conflict to protect medical care as well as search for and collect the wounded and sick as circumstances permit.[128]

Aside from the IHL framework, there have also been increasing global governance efforts aimed at affording further protection to medical facilities in armed conflict situations. Notable instruments in this regard include the 2012 World Health Assembly Resolution

[120] ICRC Customary Law Study, Vol. 1, Commentary of Rule 28.
[121] Rome Statute of the International Criminal Court, art. 8 (2) (b)(ix) and 8 (2)(e) (4).
[122] *Ibid*, art. 8 (2) (b) (xxiv) and 8 (2) (b) (e) (ii).
[123] See also Geneva Convention 1, art. 21; Additional Protocol 1, art. 13; Additional Protocol 2, art. 11.
[124] Geneva Convention 1, art. 21; Geneva Convention 4, art. 19; Additional Protocol 1, art. 13 (1); Additional Protocol 2, art. 11 (2).
[125] Phillipa Druce, et al, "Approaches to Protect and Maintain Health Care Services in Armed Conflict – Meeting SDGs 3 and 16" (2019) 13 (2) *Conflict and Health*, 1 – 4 at 1.
[126] Rain Liivoja, "Biomedical Enhancement of Warfighters and the Legal Protection of Military Medical Personnel in Armed Conflict" (2017) 26 (3) *Medical Law Review*, 421 – 448 at 428.
[127] Geneva Conventions I – IV, Common art. 3.
[128] ICRC, "What international".

(WHA65.20), the 2014 UN General Assembly Resolution (A/69/L.13), and the 2016 UN Security Council Resolution 2286.[129] In particular, resolution 2286 states that:

> *States and all parties to armed conflict to develop effective measures to prevent and address acts of violence, attacks and threats against medical personnel and humanitarian personnel exclusively engaged in in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflicts, including, as appropriate through the development of domestic legal frameworks to ensure respect for their relevant international legal obligations, the collection of data on obstruction, threats and physical attacks on medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and medical facilities, and to share challenges and good practice in this regard*.[130]

These resolutions may end up unenforceable during the conflict or subsequently thereafter. This is largely due to how much political support any of the parties to the conflict can garner from powerful nations.[131] Again, through the 'Geneva Call', there has been increased advocacy on the need to respect and protect the wounded and sick, healthcare personnel engaged in the provision of healthcare, healthcare facilities, health transport, as well as the distinctive emblem, in armed conflict situations.[132]

Examining key incidents of attacks on healthcare during the ethiopia-tigray armed conflict

As established in the earlier part of this Article, there are well-documented reports of attacks on healthcare during the Ethiopia-Tigray armed conflict; however, two (2) emblematic incidents stand out, for the clarity of their factual record, the scale of harm inflicted, and the gravity of the legal implications. Though not the only incidents of attacks on healthcare, they serve as representative case studies, reflecting broader patterns of violations. This section of

[129] Preeti Patel, et al, "Documenting Attacks on Health Workers and Facilities in Armed Conflicts" (2017) 95 *Bulletin of the World Health Organisation*, 80.
[130] UN SC RES. 2286, (2016) S/RES/2286, 3 May 2016, para. 4.
[131] M.C. Van Hout and J.S.G. Wells, "The Right to Health, Public Health and COVID-19: A Discourse on the Importance of the Enforcement of Humanitarian and Human Rights Law in Conflict Settings for the Future Management of Zoonotic Pandemic Diseases"(2021) 192 *Public Health*, 3.
.[132] Geneva Call, "Deed of Commitment under Geneva Call for the Protection of Healthcare in Armed Conflict", https://www.genevacall.org/wp-content/uploads/2019/07/Deed-of-Commitment-for-the-protection-of-health-care-in-armed-conflict-final-version-4.pdf

the Article will focus on these two (2) incidents, while also examining how IHL rules apply in the context.

Between November 2020 and March 2021, credible reports from humanitarian agencies, foreign diplomats, and independent investigators indicated that hospitals and clinics across Tigray were systematically looted, occupied, or repurposed for military use by the Ethiopian National Defence Forces (ENDF), Eritrean Defence Forces (EDF) and various Amhara regional militia units. These extended to other incidents such as the looting of medicine, surgical equipment, and ambulances from both public and private medical centres, destruction of diagnostic equipment, removal or intimidation of medical personnel, including beating and detentions, as well as the prevention of civilians from accessing hospitals that remained functional under occupation. Hospitals in places such as Axum, Adigrat, Wukro, Shire, and Humera were among the most seriously affected. Some facilities were reportedly converted into command posts. Crucially, the pattern of the attacks suggests systematic rather than random actions. This is legally significant as the systematic nature of the attacks implies that they weren't simply isolated violations by rogue soldiers but rather command tolerated misconduct. These incidents implicate IHL rules, which provide that medical units "shall be respected and protected".[133] The law not only protects medical units, but it also prohibits turning them into military objects. Occupying a hospital for military use automatically strips it of its civilian character. Thus, even if the ENDF or EDF claim that hospitals became legitimate military objectives because they were used as barracks or command posts, this only underscores their own breach of IHL rules, given that they created the situation that removed the protection. The crucial legal point is that repurposing it for military use is itself an IHL violation. Such protection only ceases if the facilities in question are used "outside their humanitarian function".[134] These incidents also represent a violation of IHL's prohibition on pillage,[135] the requirement of medical neutrality, as well as the requirement to facilitate medical relief.[136] Looting of hospitals and other medical facilities during an armed conflict is a war crime, and reports of systematic removal of medical supplies satisfy the constitutive elements of the offences of pillage. Medical equipment is highly protected due to its humanitarian function, and such looting of medical supplies or broader acts of militarisation ultimately create a situation where civilians lose access to care. Given the

[133] Article 11 (1) of AP II, Rule 28, Customary IHL.
[134] Article 19, Geneva Convention I.
[135] Rule 52, Customary IHL. It is also worth noting that under Article 8 (2) € (v) of the Rome Statute, pillage in a Non-International Armed Conflict (NIAC) is considered a war crime.
[136] Article 18 (2) AP II.

involvement of ENDF and allied Eritrean military units, acting with the consent or acquiescence of Ethiopia, this conduct engages state responsibility for wrongful conduct under IHL and individual criminal liability for commanders under the doctrine of command responsibility.

By mid-2021, Tigray's largest hospital, the Ayder Referral Hospital, serving over 6 million people, reported that its dialysis unit had shut down due to a lack of supplies, that its surgical wards were unable to perform trauma operations, that its neonatal and pediatric wards were suffering severe medicine shortages, and that it lacked fuel for ambulances and generators. While this was happening, aid convoys from Addis Ababa were reportedly restricted or blocked. Also, medical supplies stored in Mekelle were requisitioned or seized by competing armed groups, while the TPLF forces were reported as having diverted medical aid for its own fighters. These actions created a medical siege environment, with catastrophic consequences, including reports of preventable deaths. These actions amounted to a violation of relevant IHL rules. For instance, when it comes to humanitarian relief, parties to an armed conflict have obligations to allow relief actions essential for survival.[137] They must equally allow and facilitate rapid and unimpeded humanitarian relief.[138] Legal doctrine increasingly recognises that healthcare can be attacked through both kinetic and non-kinetic means. Whereas a blockade is not illegal *per se* in NIACs, blockades that disproportionately affect civilians or deny essential medical supplies are unlawful. Thus, the prolonged obstruction of medical aid to Ayder Referral Hospital, solely to gain military leverage, constitutes a violation of humanitarian access. Similarly, the TPLF's diversion of medical supplies for perceived military advantage violates IHL rules on the protection of medical objects and the prohibition on confiscation of medical materials.[139] The cumulative effect of blocked aid routes, seizure of medical supplies, and denial of access is legally significant. IHL recognises collective forms of attack on healthcare in armed conflicts, where no single act constitutes a dramatic strike. It is, however, important to state that the aggregate consequence is comparable to that of a direct attack on a hospital. The collapse of Ayder Referral Hospital meets this modern doctrinal threshold.

[137] Article 18 (2), AP II.
[138] Rule 55 and 56, Customary IHL.
[139] Rule 28 and 29, Customary IHL.

Potential challenges on the road to accountability

Accountability serves as the cornerstone of the modern IHL system. Whenever the law is violated, a broad range of mechanisms are expected to respond by ensuring that perpetrators are identified, investigated and prosecuted. As already established in this Article, all parties to an armed conflict are bound by the rules of IHL. Against the backdrop of the facts and analysis provided above, this means that the rules of IHL protecting healthcare in armed conflict are binding on both the Ethiopian government as well as the TPLF. In *Prosecutor v. Sam Hinga Norman*,[140] the Appeals Chamber of the Sierra Leone Special Court noted that, "*it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties*".[141] Specifically, both sides are bound to respect and comply with the provisions of Common Article 3 and AP II, as well as relevant humanitarian principles. The obligations in Common Article 3 are reflected in one key and important prohibition i.e., that both sides shall afford, as a minimum standard, the necessary humane treatment to all persons not "*taking active part in the hostilities*" which refers to civilians and other non-combatants, those who though combatants have surrendered, as well as those that have become incapacitated because of sickness, diseases and those detained.[142] Specifically, concerning this class of persons, actors on both sides are prohibited from committing any form of violence to life as well as torture, hostage taking, assault on human dignity, including humiliating and degrading treatment, extrajudicial killings, etc.[143]

However, the Ethiopia-Tigray armed conflict tests these mechanisms severely. First, there is the issue of inadequacy in the IHL protective mechanism. As correctly observed by Rubenstein, whereas IHL requires parties to refrain from attacking medical personnel, facilities, as well as transports, it does not provide a clear enough obligation for States to provide accessible, acceptable and quality healthcare that will be suitable to the condition of the civilian population.[144] Second, there is the issue of the unnecessary politicisation of IHL by parties to armed conflicts, which often undermines its legitimacy.[145] Recent developments have seen an increasing disdain for IHL rules, to the extent that not only are these rules

[140] Case No. SCSL-2004-14-AR72 (E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) Decision of 31 May 2004, 22.
[141] *Ibid.*
[142] *See generally* Common Article 3 to the Four Geneva Conventions, 12 August 1949.
[143] *Ibid.*
[144] Leonard Rubenstein, "War, Political Conflict, and the Right to Health" (2020) 22 *Health and Human Rights*, 340.
[145] Druce, "Approaches to Protect"2

sometimes disregarded, but there have been instances of parties to armed conflicts launching attacks on medical personnel as well as medical facilities. As well captured by Kooter and Rubenstein, "*in circumstances of armed conflicts, health care providers and their beneficiaries have increasingly become highly vulnerable as they are either targeted directly as a means of state action or as a part of activities of armed groups, or suffer indirectly on account of the failure of states to live up their obligations under the right to health*".[146]

Third, there is the challenge of collateral damage in armed conflicts. Whereas distinguishing a medical facility and a non-medical facility may present a challenge in terms of military tactics, States and NSAGs are often admonished to carry out a sufficient threat assessment before launching an attack on any facility.[147] With the development in military technology and increasing access to sophisticated intelligence gathering, forces in armed conflicts are developing more capacity in mitigating such indiscriminate attacks.[148] Fourth, there is the issue of the fragmented nature of most NSAGs, in which groups splinter into different factions, making it difficult to determine those with capacity and those lacking capacity when it comes to complying with IHL. Heffes notes that the ICRC has identified this challenge in its recent Commentary on Common Article 3 to all Four Geneva Conventions, particularly on the point that, with respect to the obligation to care for the wounded and sick, while some groups can provide advanced health care, others can only muster the most basic of care.[149] He, however, notes that since this obligation is one based on available resources, groups must ensure to provide care based on their ability.[150]

The above points are instructive given how much the Ethiopia-Tigray armed conflict has impacted healthcare in the areas where hostilities were predominant. Trapped in the conflict were thousands of Ethiopians, who, not being direct and active parties to the fighting, were subjected to all manner of humanitarian abuses. Since the toning down of gunfire and the signing of a ceasefire agreement,[151] not much has been heard concerning holding actors accountable for these atrocities. This is despite the fact that even after the ceasefire, parties to the conflict are alleged to still be committing varying degrees of atrocities, including war

[146] Footer , "A Human Rights" 187
187). Katherine H.A. Footer and Leonard S. Rubenstein, "A Human Rights
[147] Patel, "Documenting Attacks" 80
[148] *Ibid.*
[149] [149] UNSC, Resolution
[150] *Ibid.*
[151] 'Agreement for Lasting Peace Through a Permanent Cessation of Hostilities Between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF)' *African Union (AU)* (2 November 2022) https://igad.int/wp-content/uploads/2022/11/Download-the-signed-agreement-here.pdf

crimes and crimes against humanity.[152] Whereas IHL considers both parties as bound by the relevant rules, this article, however, notes that the Ethiopian government carry a weightier burden than the TPLF. Under the international system, States have the primary legal responsibility for the protection of their citizens, which is both a duty of the State and a right of the citizens. The duty, which is an extensive one, goes as far as deploying the full powers and resources of the State to preserve the life of just one citizen. This is, however, not to excuse the TPLF, given the capacity the organisation also has to comply with IHL rules.

Conclusion

This article has examined the issue of attacks on healthcare in the Ethiopia-Tigray armed conflict and the scope of IHL rules. It also narrowed its examination to two (2) notable incidents of such attacks, analysing how each engages relevant rules of IHL, as well as potential challenges on the road to accountability. Going forward, the time is ripe for credible investigations and prosecution of alleged violations of IHL in this conflict, in particular, cases of attacks on healthcare. First, as an important contribution to the process of accountability and peacebuilding, there is a need for domestic investigation and prosecution of alleged perpetrators. Interestingly, in April 2024, the Ethiopian government approved a policy setting up a special prosecutor as well as a court to deal with the most serious abuses during the war and a truth commission to grant reparation to victims.[153] This is a welcome development. Indeed, before this time, i.e., in 2022, the UN Human Rights Council (HRC) had welcomed the establishment by the Ethiopian government of such an accountability framework.[154] It had reiterated the importance of such a framework in providing accountability measures in response to human rights violations and other abuses committed during the conflict.[155] It is important to emphasise the need for the Ethiopian government to demonstrate fidelity with regard to this framework, so as to achieve some form of redress for victims of these horrific acts. In line with international standards, it must, as a matter of urgency, provide needed assistance to ensure that the framework delivers on its mandate.

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[152] 'Ethiopia: Nearly One Year After Ceasefire, UN Experts Warn of Ongoing Atrocities, Including War Crimes and Crimes Against Humanity' *United Nations (UN)* (18 September, 2023) https://www.ohchr.org/en/press-releases/2023/09/ethiopia-nearly-one-year-after-ceasefire-un-experts-warn-ongoing-atrocities

[153] Fred Harter, 'Rounded Up, Massacred, and Posted on Social Media: Can Ethiopia Bring Justice for Atrocities in Tigray?' *The Guardian* (7 November 2024) https://www.theguardian.com/global-development/2024/nov/07/ethiopia-justice-tigray-atrocities-crimes-violence

[154] 'Situation of Human Rights in Ethiopia' Resolution adopted by the Human Rights Council on 7 October 2022, A/HRC/RES/51/27, https://docs.un.org/en/A/HRC/RES/51/27

[155] *Ibid.*

Finally, aside from the accountability framework announced by the Ethiopian government, there is also need for an international investigative mechanism. This would involve a prompt, effective, and thorough investigation by an unbiased and independent agency, obviously under the oversight of the UN. This agency would collect evidence on very grave breaches of IHL committed during this conflict and also develop a case for possible criminal prosecution of alleged perpetrators. The investigation and ultimate prosecution of perpetrators of these crimes must be taken as a priority, with victims as well as their family members involved in the process. Overall, the Ethiopia-Tigray armed conflict illustrates the fragility of IHL norms in the face of political fragmentation, military opportunism, and weakened international enforcement. Attacks on healthcare, whether through direct strikes, looting, militarisation, or obstruction of medical supplies, represent some of the most egregious violations of the law of war, as they strike at the heart of human survival. The attacks on healthcare in the Ethiopia-Tigray armed conflict should not become another chapter in the long history of wartime atrocities. Rather, it must serve as a catalyst for renewed global commitment to protecting healthcare in armed conflicts. Without accountability, the erosion of these norms will accelerate globally, leaving civilians in all future wars more vulnerable. A robust response is therefore needed to ensure that the atrocities witnessed in Tigray are neither denied nor repeated.