

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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IN THE SHADOW OF WAR: SECURING HEALTH AS A HUMAN RIGHT

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Abstract

Right to Medical care is a fundamental human and humanitarian right that is protected by the international human rights (IHRL) and international humanitarian rights law (IHL). But the armed conflicts between Russia and Ukraine, Israel and Palestine and Iran etc., poses a threat to the protected rights and health care is serious violated by both the parties to the conflicts. This paper will study about the complicated exchanges happened between the IHRL & IHL. In every international or non-international armed conflict, the pursuit of observing the international humanitarian or human rights law shall prevails. In particular, the protection guaranteed by the War Crimes and Crimes against Humanity related instruments such as protection from inhumane treatment, health care, protection of women and children will be at the stake. The Four Geneva Conventions, 12th August 1948 and its Additional Protocols are the source and legal mechanism for the IHL and IHRL and International Criminal Law is governed by the Rome Statute, 2000 imposing obligation on the State Parties to adhere the rights governed. This paper will focus on the responsibilities of both the State parties to the conflict in sanctioning and accessing the healthcare, medical emergencies, women health issues etc.,. The study will focus on the source of IHL and IHRL international instruments, international judicial bodies judgements, Resolutions and Reports of the UN organs. This paper will also formulate the suggestion for the requirements to advance strategies in providing

medical assistance for the sick and wounded soldiers and the civilians during armed conflicts.

Keywords: Right to Health care, Armed Conflicts, International Humanitarian Law (IHL), International Human Rights Law (IHRL), International Criminal Law, War Crimes, State Responsibility

In the Shadow of War: Securing Health as a Human Right

I: Introduction

Right to Medical care is a fundamental human and humanitarian right that is protected by the international human rights (IHRL) and international humanitarian rights law (IHL). But the armed conflicts between Russia and Ukraine, Israel and Palestine and Iran etc., poses a threat to the protected rights and health care is serious violated by both the parties to the conflicts. This paper will study about the complicated exchanges happened between the IHRL & IHL. In every international or non-international armed conflict, the pursuit of observing the international humanitarian or human rights law shall prevails. In particular, the protection guaranteed by the War Crimes and Crimes against Humanity related instruments such as protection from inhumane treatment, health care, protection of women and children will be at the stake. The Four Geneva Conventions, 12th August 1948 and its Additional Protocols are the source and legal mechanism for the IHL and IHRL and International Criminal Law is governed by the Rome Statute, 2000 imposing obligation on the State Parties to adhere the rights governed.

International humanitarian law (IHL) further requires the healthcare institutions, workers, and transports to be protected from attacks and interference during armed hostilities. This protection, which guarantees healthcare is delivered equitably and without prejudice, is based on concepts like distinctiveness, proportionality, and humanity. Attacks on healthcare facilities continue to occur in spite of these legal protections, underscoring the necessity of more adherences to these regulations.¹ Despite their vital role during armed conflicts, health systems and professionals are often targeted, under-resourced, or limited. With an emphasis on international humanitarian law (IHL), international human rights law (IHRL), and pertinent treaties, this essay explores the legal frameworks that safeguard medical care during times of conflict. It looks at recent conflict case studies, enforcement difficulties, and the changing role

¹Alva Stener Karlsson 2023, “*The Protection of Healthcare in Armed Conflict-The different kinds of protection for medical persons and objects in international and non-international armed conflicts*”, UMEA Universitet, pp.11 & 12

of non-state players. Recommendations to improve accountability, compliance, and health protection in conflict areas are included in the paper's conclusion. Further, this study will focus on the source of IHL and IHRL international instruments, international judicial bodies' judgements, Resolutions and Reports of the UN organs. This research paper will be devised into 2 Parts, Part 1 deals with the rights and protection assured by the IHL and IHRL and Part 2 dealt with the contemporaneous scenario of armed conflicts and violations of right to health by the occupied territory citizens.

PART – I: Health Rights and Protection guaranteed by the IHL and IHRL and its Repercussions

1: IHL and Sources

Understanding the function of international humanitarian law (IHL) and international human rights law (IHRL) as well as their interfaces are crucial. Divergent views exist regarding the proper interpretation of the relationship between IHL and IHRL. In general and majority opinion states that IHL is the superior legal instrument than the IHRL due to its *Specific Law* status.² The sources of IHL are customary international law, Geneva Conventions, Treaty Laws. The Lieber Code of 1863, which was applied to soldiers during the American Civil War, is acknowledged as the first contemporary codification of these traditions and regulations. Since then, a comprehensive legal framework governing contemporary conflict has emerged from the development of legal treaties and customary practice. The protection of civilians, POWs, hostilities, the injured and sick, shipwrecked, weapons, occupation, detention, cultural property, and naval warfare are just a few of the topics covered by this framework.

1.a: IHL – Hague Law and Geneva Law

According to Art. 38 (1)(a-d) of the Statute of the International Court of Justice (ICJ), the sources of international law or IHL may interpreted with the aid of treaty laws, customary laws, general principles of law, jurisprudence evolved by the decisions of the international judicial bodies etc.,.In addition to that, the provision also permitted to accept the teachings of highly qualified academicians of varied countries and these teachings shall be considered as subsidiary means of international law.³ IHL is a fragment of international law that governs the

²United Nations 2011, “*International Legal Protection of Human Rights in Armed Conflicts*” United Nations Publications, New York pp.6

³Art. 38 of the Statute of International Court of Justice. The full text of Statute is available at <https://www.icj-cij.org/statute> accessed on 3.8.2025

armed conflicts. IHL protects the persons, properties, arms and ammunitions and warfare techniques.⁴ But primarily 4 Geneva Conventions, Hague Convention 1907 and customary international law are considered to be the sources. The split of Hague Law (Hague Conventions 1889 and 1907) and Geneva Law is an evident of progressive development of international law. Hague Laws regulated the activities of armed forces during hostilities while the Geneva Conventions guarantees the protection of human rights of people of both the States and issue directions to treat people. In addition to the mail Conventions, the Additional Protocols extended the protection by including traditional rights under Hague Laws also.⁵

1.b: Basic Principles of International Humanitarian Law

- Protecting the persons those who are nor directly participated and not participated in hostilities;
- Limiting the usage of force to achieve the aim of conflict to weaken the military powers of the enemy country;
- Distinguish civilians and combatants;
- Prohibits the attacks on *hors de combat*;
- Prohibits unnecessary usage of force;
- Maintaining the basic principles of Necessity and Proportionality⁶

1. c: Four Geneva Conventions, 12 August, 1949 and IHL

In 1949, an international assembly of diplomats built upon previous treaties aimed at the protection of war victims, revising and enhancing them into four new conventions consisting of 429 legal provisions which referred to as the “Geneva Conventions of August 12, 1949” (Four Geneva Convention). The Additional Protocols established in 1977 and 2005 serve to supplement the Geneva Conventions.⁷ These conventions are applicable in all instances of declared warfare, or in any other armed conflict between countries. They are also

⁴*Supra Footnote No:10*, pp.10

⁵International Humanitarian Law Centre, 2025, “Sources of international humanitarian law: The foundations of international humanitarian law (IHL) in treaty and customary law”. To view the full text, visit <https://www.diakonia.se/ihl/resources/international-humanitarian-law/sources-international-humanitarian-law/> accessed on 3.8.2025

⁶Main Sources of International Humanitarian Law, Materials for Media Professionals, ICRC. The view the full document visit https://www.icrc.org/sites/default/files/document/file_list/handout_2_-_the_main_sources_of_international_humanitarian_law.pdf accessed on 3.8.2025

⁷Four Geneva Conventions and Additional Protocols are available at <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0173.pdf> accessed on 3.8.2025

relevant in situations where a country is either partially or fully occupied by the military forces of another country, even in the absence of armed resistance to such occupation. Nations that ratify the Geneva Conventions are required to adhere to specific humanitarian principles and to enforce legal penalties against those who breach these conventions.

- **1st Geneva Convention:** for the Amelioration of the Condition of Wounded and Sick in the Armed Forces in the field. It protects the soldiers of *hors de combat* those who are sick, wounded medical personnel, protection of medical equipment and civilians took the arms to defend themselves from attack.
- **2nd Geneva Convention:** for the Amelioration of the condition of wounded and sick and shipwrecked members of armed forces at Sea. The protection under 1st Geneva Convention is the same and applicable for the wounded and sick at sea.
- **3rd Geneva Convention:** related to Treatment of Prisoners of War. This Convention necessitate humanely treatment of Prisoners of War with sufficient food, clothing and medical care. Further this Convention also provides guidelines for the same.
- **4th Geneva Convention:** related to protection of Civilians during armed conflicts. Civilians in the occupied territories and in the armed forces area should be protected
- **Protocols Additional to the Four Geneva Conventions, 1977:**
 - **First Protocol Additional to the Geneva Convention-** Relating to the Protection of Victims of International Armed Conflicts
 - **Second Protocol Additional to the Geneva Convention** – Relating to the protection of Victims of Non-International Armed Conflicts
 - **Third Protocol Additional to the Geneva Convention** – Emblems under IHL – Red Cross, Red Crescent and Red Crystal to be used Protectively or Indicatively; Red Shield of David used as Indicatively

Any serious violations of the above protections and obligations are graded as serious international crimes under the Rome Statute 2000 as War Crimes.⁸

1. d: Other Sources of IHL

Four Geneva Conventions are not the exhaustive sources of IHL. The other sources based on the armed conflicts are as follows:

⁸Art. 8(2)(a)-(e) of the Rome Statute penalising the serious violations of Geneva Conventions as War Crimes. To read the full Statute visit <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> accessed on 4.8.2025

- United Nations Convention on Prevention and Punishment of Crime of Genocide, 1948
- The Treaty on the Non-Proliferation of Nuclear Weapons, 1970
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1972
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1975
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1977
- Rome Statute of International Criminal Court, 2000
- The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 2001
- The Convention on Cluster Munitions, 2008

1.2: International Human Rights Law (IHRL) and sources

IHRL is a comprehensive legal system that covers the rights guaranteed not only under the Treaties or Conventions and also extends to protect the rights covered under customary international law. The primary source of IHRL is Universal Declaration of Human Rights, 1948 (UDHR). In the framework of fulfilling human rights obligations, the treaty bodies designated to oversee the enforcement of fundamental human rights treaties, including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, consistently issue general comments. These comments serve to interpret and elucidate the specific norms, principles, and obligations outlined in the pertinent human rights conventions.⁹

1.2.a: Sources of IHRL

The core IHRL Treaties are:

- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocol, 1966

⁹*Supra Footnote No.2, pp.8*

- The International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, 1966
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol, 1979
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, 1984
- The Convention on the Rights of the Child and its two Optional Protocols, 1989
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol, 2006
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2010

Under the UDHR, the rights of persons includes right to life, freedom and security are protected during the time of war or peace.¹⁰ Art. 12 of the ICCPR promote the enjoyment of highest attainable standard of physical and mental health.

1.2.b. Right to Health during Armed Conflicts and Geneva Conventions:¹¹

The significant provisions on Right to health under the 1st Geneva Convention are,¹²

Article	Geneva Convention	Significance
9	1 st Geneva Convention	<ul style="list-style-type: none">• Assistance to wounded and sick in battle field. Further it also urged to use Red Cross Emblem such as Red Cross and Red Crescent and authorises relief organisation under humanitarian services.¹³
12	-Do-	<ul style="list-style-type: none">• Wounded and sick shall be treated and protected without any discrimination

¹⁰Art.3 of UDHR

¹¹American Redcross, 2011 “*Summary of the Geneva Conventions of 1949 and Their Additional Protocols*”, www.redcross.org/ihl accessed on 4.8.2025

¹²Advisory Service on International Humanitarian Law 2012, *Respecting and Protecting Health Care in Armed Conflicts and in Situations Not Covered by International Humanitarian Law*, ICRC, Geneva

¹³Art.9 of the 1st Geneva Convention, 1949

15	-Do-	<ul style="list-style-type: none">• The wounded and sick shall be protected against pillage and ill treatment.
12 and 18	2 nd Geneva Convention	<ul style="list-style-type: none">• Take all possible measures to search, and treat shipwrecked soldiers• This Convention mandates that parties in battle take all possible measures to search, bring together and care for the wounded, sick and shipwrecked.
36 & 37	-Do-	<ul style="list-style-type: none">• Religious, medical and hospital personnel serving on combat ships must be respected and protected. If captured, they are to be sent back to their side as soon as possible.
13, 14 & 16	3 rd Geneva Convention	<ul style="list-style-type: none">• Prisoners of War (PoW) shall not be subjected to torture or medical experimentation
50 & 54	-Do-	<ul style="list-style-type: none">• PoW should be kept in cleaned house with proper food, clothing and medical care required for good health. Further, PoWs shouldn't kept in the Combat area to prevent exposure to fire or heat
14	4 th Geneva Convention	<ul style="list-style-type: none">• Hospitals and protected areas by the ICRC or other NGOs shall be established to treat and protect the wounded, sick, aged persons, children, pregnant women and mothers of children under 7
18	-Do-	<ul style="list-style-type: none">• Protecting Civilians hospitals and staffs
55	-Do-	<ul style="list-style-type: none">• Provide food and medical facilities to the civilians and maintain medical care.• Medical supplies should not be objected by the Occupying powers
91 & 92	-Do-	<ul style="list-style-type: none">• Hygiene and Medical Attention• Medical Inspection
12 – 16	1 st Additional	<ul style="list-style-type: none">• Protection of medical units.

21 - 31	Protocols	<ul style="list-style-type: none"> • Discontinuance of protection of civilian medical units • Limitations on requisition of civilian medical units • Protection of civilian medical and religious personnel • General protection of medical duties • Special protection to civilian medical personnel • Arts. 21- 30 – Medical Transportation
76,77 & 79	-Do-	<ul style="list-style-type: none"> • Protection of Women, Children and Evacuation of Children
9, 10 & 11	2 nd Addl Protocol	<ul style="list-style-type: none"> • Protection of medical and religious personnel • General protection of medical duties • Protection of medical units and transports

1.2.b: Repercussions of Violation:

Advisory Services of IHL has published a Fact sheet on the ***Penal Repression: Punishing War Crimes*** discussed about the measures to be implemented by State Parties for an effective mechanism to prosecute and punish the perpetrators committed serious violations and suppression of rights provided under Geneva Conventions. Any such violations against the wounded, sick, medical personnel, medical teams and conveys of medical facilities should fixes the individual criminal responsibility for War Crimes.

The Four Geneva Conventions and its Additional Protocols established that any grave and serious violations of the rights shall be punished. As IHL being international instruments, the question arises whether State or Domestic Laws shall punish the perpetrators without proper Legislations. Hence the United Nations (UN) and International Committee for the Red Cross (ICRC) expressed their demand that the State Parties should enact laws to prosecute and punish them. The next quest is on jurisdiction. Whether the State legislation shall be given power to try offenders of another State Party and the response is, irrespective of the nationality of the perpetrator, IHL possess the *Universal Jurisdiction* as key element.

1.2.c.: National and International Statutory Bodies

The United Nations Security Council (UNSC) has established several national and

international criminal tribunals to prosecute and punish the offenders for international crimes *inter alia* Crime of Genocide, Crimes against Humanity, War Crimes, Serious Violations of Four Geneva Conventions and its Additional Protocols. The International Criminal Tribunal for the Former Yugoslavia (ICTY)¹⁴ and The International Criminal Tribunal for Rwanda (ICTR)¹⁵ were constituted by the UNSC. In 2000, the Rome Statute was adopted by the UN General Assembly for the establishment of Permanent International Criminal Court (ICC).¹⁶ The ICC is competent to try and punish the offenders of serious violations of IHL as War Crimes under Art.8 of Rome Statute 2000. The other Tribunals¹⁷ also recognised violations of IHL amounts to War Crimes.¹⁸

1.2.d: Rome Statute of the ICC and Armed Conflicts and right to health

Part 2 of the Rome Statute of ICC discuss about the Jurisdiction, Admissibility and Applicable Laws and Arts. 5 to 21 cover this Chapter. The jurisdiction of the Court is discussed under Art.5 Crimes within the jurisdiction of the Court such as (i) Genocide; (ii) Crimes against Humanity; (iii) War Crimes and (iv) Crime of Aggression.¹⁹

Art. 8- War Crimes: if any of the punishable acts enumerated in Sub clause 2 committed as a part of plan or policy or as part of a large-scale. Art.8 (2) elaborate about the punishable acts in Sub section (a) to (e) of Art.8, the punishable acts are classified such as (a) grave breaches

¹⁴UNSC in its 827th Resolution , S/Res/827/1993 dated 25 May 1993, establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report. The Resolution is available at https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf accessed on 3.8.2025

¹⁵UNSC in its resolution S/Res/955/1994 dated 8 November 1994 established establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994. The full text is available at https://unictr.irmct.org/sites/unictr.org/files/legal-library/941108_res955_en.pdf accessed on 3.8.2025

¹⁶Rome Statute of the International Criminal Court was adopted on 17 July 1998 and is open for signature in New York at United Nations Headquarters until 31 December 2000, and taking note of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court done at Rome on 17 July 1998. Full text of the Resolution A/Res/55/155 dated 19 January 2001 available at <https://docs.un.org/en/A/RES/55/155> accessed on 2.8.2025

¹⁷Mixed Tribunals such as Special Court for Sierra Leone and Special Tribunal for Lebanon and Extraordinary Criminal Chambers of Cambodia also acknowledged repression of IHL will be construed as War Crimes.

¹⁸Fact Sheet submitted by the Advisory Services of IHL, ICRC, on “*Penal Repression: Punishing War Crimes*”, New York.

¹⁹Art.6 of the Rome Statute defines crime of genocide – the definition is the verbatim of the definition under Art.2 of UN Genocide Convention, 1948 ; Art. 7 defines Crimes against Humanity and its elementary aspects; Art.8 elaborately discussed about the elements of War Crimes if committed during international, non-international and against the ICRC personnel which are punishable acts of War Crimes and Art.8 *bis* define Crime of Aggression – crime of aggression was inserted by resolution RC/Res.6 of 11 June 2010. The Rome Statute is available at <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> accessed on 2.8.2025

of Geneva Conventions and the acts committed against person or property protected under the provisions of Geneva Conventions; (b) serious violations of Customary international law applicable in international armed conflict; (c) serious violations of Art.3 Common to Four Geneva Conventions during non-international armed conflicts against persons not taking active part in the hostilities, *hors de combat*, wounded and sick; (d) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law. The precise provisions relating to health and medical ethics under of Art.8(2)(a)(b)and (e) are as follows:²⁰

Art. 8(2) of Rome Statute of ICC	Art.8 (2)(a)(ii) & (iii)	Art.8 (2)(b)(ix)(x)(xviii)(xiv)	Art.8 (2)(e)(ii)(iv)(xi)(xiii)(xiv)
	<ul style="list-style-type: none"> • (i) – War Crimes means and includes: • (ii) Torture or inhuman treatment, including biological experiments; • (iii) Wilfully causing great suffering, or serious injury to body or health 	<ul style="list-style-type: none"> • (ix) intentionally attacking the protected buildings like religious places, educational institutions, art, science or charitable units, historic or monuments, hospitals and places where wounded and sick are collected • (xvii)Employing poison or poisoned weapons; 	<ul style="list-style-type: none"> • (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law • intentionally attacking the protected buildings like religious places, educational institutions, art, science or

²⁰Art.8 of the Rome Statute of ICC, 2011, “*Rome Statute of the International Criminal Court*”, published by Published by the International Criminal Court ISBN No. 92-9227-386-8, pp-5 to 10.

		<ul style="list-style-type: none">• (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices• (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law	<p>charitable units, historic or monuments, hospitals and places where wounded and sick are collected</p> <ul style="list-style-type: none">• (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons
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			<ul style="list-style-type: none">• (xvii) Employing poison or poisoned weapons;• (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices
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1.2.e: Crime of Genocide and armed conflict:

The nature of Genocide Convention, 1948 is of mixed in nature of both IHL and IHRL. Art.I of the Genocide Convention, 1948 reads as follows:

*“[The] Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”*²¹

Hence, if any State Party failed to prevent the crime of Genocide in their jurisdiction or failed to punish the perpetrator of crime of Genocide whether it is committed in the time of peace or war, shall be liable for the punishment. As it is mentioned as *whether committed in time of peace or war*” it has the colour of both IHL and IHRL. If any such committed during time of peace, it shall be considered as violation of protection under IHRL and if the same is committed during armed conflict, it is clearly fixes under IHL. Art.II of the Genocide Convention, 1948 and Art.6 of the Rome Statute of ICC discuss about the definition and elements of Genocide such as, (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

²¹Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII. To read the full document visit https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf accessed on 3.8.2025

Art.II (c) and Art.6 (c) are the provisions that can be interpreted as violation of right to health during armed conflicts. Definition of genocide under Art.II of the Genocide Convention was recognised and accepted by the Members of UN in 1948 and the same definition was applied in the Rome Statute of the ICC under Art.6.²²

PART –II

2.1: Armed Conflicts in current scenario and violations of right to health

According to the report submitted by the World Health Organisation, there are more than 120 armed conflicts are happening internationally which involves more than 60 States and 120 non-State armed groups. From 2000 onwards, non-international armed conflicts have increased affecting the civilians. In addition to economic inability, suppression of rights, this type of armed conflicts also escalates pandemics and other health hazards which resulted in a massive impact on public health and challenges for providing healthcare assistances.²³ In the recent scenario, the most prominent international armed conflicts and non-international armed conflicts happening between Russia & Ukraine; Israel & Palestine; Myanmar & Rohingya etc., The majority of attacks in the years have been happened between 2022 and 2024 is Ukraine and Palestine Gaza Strips.²⁴

The primary armed conflict medical care norms towards the wounded and sick, are to get all feasible medical care and after care. The medical care should be provided at the earliest as practicable and guided by medical team without adverse effect or discrimination. Wilfully neglecting the sick without medical attention and care are strictly prohibited and penalised.²⁵

²²“*Definitions of Genocide and Related Crimes*” United Nations Office on Genocide Prevention and the Responsibility to protect. The same was again reiterated in the Factsheet submitted by UN Office on Genocide prevention and the Responsibility to Protect. The document is available in <https://www.un.org/en/genocideprevention/documents/Genocide%20Convention-FactSheet-ENG.pdf> accessed on 3.8.2025

²³Richard Brennan *et el* 2024, “*In The Line of Fire Protecting Health in Armed Conflict*”, World health Organisation. Full text is available at [https://cdn.who.int/media/docs/default-source/health-workforce/hwp/in-the-line-of-fire-\(1\).pdf?sfvrsn=5d437b90_3&download=true](https://cdn.who.int/media/docs/default-source/health-workforce/hwp/in-the-line-of-fire-(1).pdf?sfvrsn=5d437b90_3&download=true) accessed on 3.8.2025

²⁴*Ibid* pp.4

²⁵Dustin A. Lewis *et el* 2015, “*Medical Care In Armed Conflict International Humanitarian Law And State Responses To Terrorism*” Harvard Law School Program on International Law and Armed Conflict, pp. 73-74.

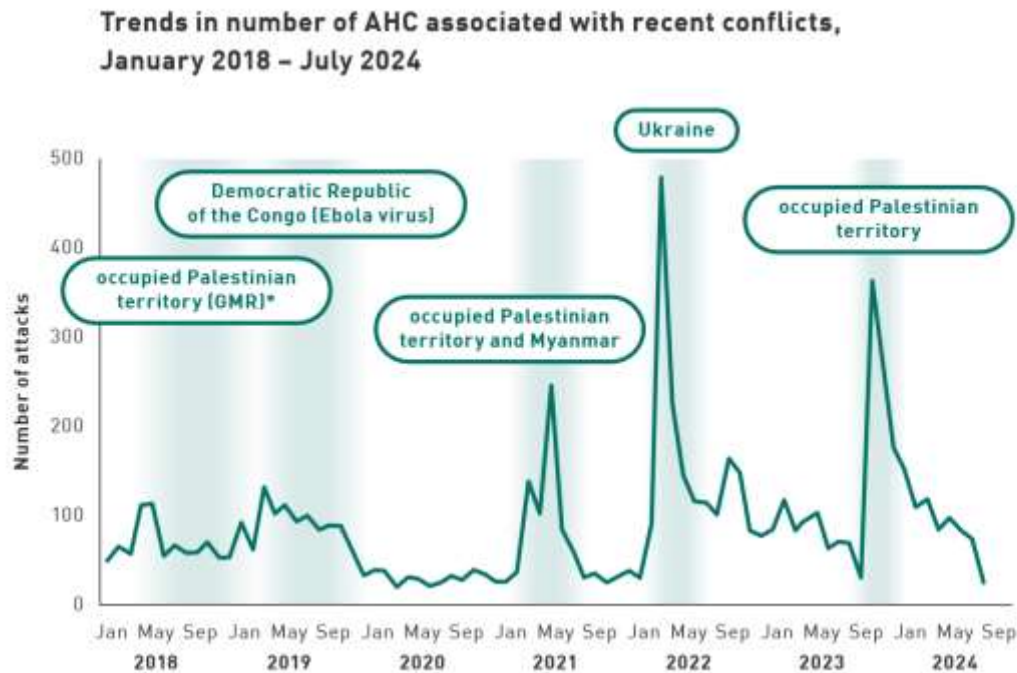


Image Courtesy: WHO SSA World Health Organization. Surveillance System for Attacks on Health Care (SSA) Methodology Version 1.0. Geneva: World Health Organization. 2019.²⁶

1.2. Case Study: Israel v. Palestine Armed Conflict

Hamas launched missile attack on Israel on October, 2023 which triggered the Israel Defence Force (IDF) responded to the aerial attack within the Gaza Strips. Even after the intervention of United States, Egypt and Qatar, Israel refused for cease fire and started the attack again in the month of March, 2025. Israel totally blocked the humanitarian aid to Gaza sent by various countries and UN and ICRC etc.,. This caused severe famine condition and serious humanitarian issues. The UN condemned the Israel's action of restriction of distribution of aids.²⁷

2.2.a: Human Rights and Health situation in Gaza²⁸

Nearly 25,000 people have been and according to the Gaza Ministry of Health, more than 65,000 people are wounded. Most of the people are living in the rubbles; nearly 1 million people were displaced. There is no safe place in Gaza. IDF is continuously bombarding in the

²⁶Supra Footnote No;23, pp.7

²⁷ "Israeli – Palestine Conflict", Centre for Preventive Action, Report of the Council on Foreign Relations 2025, on the historical background of Israel and Palestine conflict.

²⁸Report submitted by Ajith Sunghay, who is the head of the UN Human Rights Office in the Occupied Palestinian Territory in 30 January, 2024 titled "Gaza is a massive human rights crisis and a humanitarian disaster" to the UN Human Rights Office of the High Commission. Full report on the situation in Gaza is available at <https://www.ohchr.org/en/stories/2024/01/gaza-massive-human-rights-crisis-and-humanitarian-disaster> accessed on 4.8.2025

north and west of Gaza Strips. There is a clear evidence of scarcity of water, food, medicines and medical assistances and other basic needs. The condition of shelters is very perilous condition and the sanitation was totally absent.

2.2.b: Living conditions of Civilians in Gaza

Due to the scarcity of safety, food, water, health and hygiene civilians are persistently involving in displacement. The living conditions of children are too miserable. No education, food, proper clothing, adequate medical facilities etc.,. In particular, hospitals, health care units have been attacked and not in a position to provide medical assistances. In particular, expecting or pregnant mothers are in trauma to give birth. The International Rescue Committee warned about the possibility of outbreak of infectious diseases in Gaza due to poor sanitation. NGOs are concerning about children, aged and pregnant women are susceptible to such outbreak.

2.2.c: Attacks targeted hospitals and health care centres in Gaza v. Right to Health

Hospitals in Gaza are also not spared by the Israel DF from attacks. Due to military attack, hospitals are functioning with limited medicines and equipment. Under the IHL, ICRC and Geneva Conventions and AP I & II, hospitals and places where wounded and sick are collected should not be attacked and they are protected under the IHL. But the Israel military responded to this allegation in such a way that, Hamas militants are using the hospitals as their quattrus or hiding places. Further, Hamas militants are using civilians as human shields.²⁹ Attacking hospitals and other medical facility centres, ambulances shall be considered to an international crime of War Crimes. But the exception for such attack is, if it is used as shield by the militants. Such exceptions should also be used narrowly by giving sufficient time to the medical personnel, patients and civilians to evacuate the hospital.

According to the Geneva Conventions, prior to launching an attack on a military objective located within a hospital, the attacking party is required to notify the doctors and patients present that the hospital will be targeted, and subsequently allow them a reasonable period to evacuate. Israel military defended the attack that, they gave sufficient of time for evacuation, but the doctors stated that some patients are very fragile to transport or there was no sufficient assistant to move them which causes the delay. The IHL still protecting the

²⁹*Gaza Israeli Humanitarian Crisis*, 2024 – Centre for Disaster Philanthropy. Overview of the humanitarian situation in Gaza was documented by CDP. To view visit https://disasterphilanthropy.org/disasters/gaza-israeli-humanitarian-crisis/?gad_source=1&gad_campaignid=20707281828&gbraid=0AAAAADNjAVxzyvRc7xfhSj-5gEsKCHYYP&gclid=CjwKCAjwhuHEBhBHEiwAZrvdcrWp1S7xU8sS48FX_i4WxgN5-6D8YI36XRkzuyaQszcTgUJv2EU6_RoC1gMQAvD_BwE accessed on 4.8.2025

civilians and medical personnel inside the hospital as civilians under the Geneva Conventions even after the warning,. Rule of Proportionality should be applied to ascertain whether the act of attack is legal or illegal.³⁰

2.2.d: Role of UN in addressing the Right to Health during armed conflict in Israel v. Palestine case

The UNGA in its Tenth Emergency Special Session on 26 October, 2023 regarding *Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory* discussed and resolved on the of *Protection of civilians and upholding legal and humanitarian obligations*. Nearly 43 State Parties were present in the draft resolution. In the Resolution *A/ES-10/L.25*³¹ discussed and resolved as follows:

- Expressed grave concern on the escalation of military attack by Israel in the Gaza Strips since 7 October 2023 and the situation in the region;
- Expressed fullest support for the efforts of UNGA personnel on the immediate reaction of unrestricted access of humanitarian aid to the civilian populations of Palestine and Gaza Strip. In particular the supply of food, water, medicine, fuel by Egypt were highly appreciated;
- UNGA strongly demanded for unhindered supply of essential commodities to the civilians of Gaza Strips in particular water, food, medical supplies, fuel, electricity according to the IHL and to ensure that civilians are not deprived of essential objects needed for survival;
- Calls for annulling the order by Israel for the Palestinian civilians, UN personnel, and medical personnel to evacuate the Gaza Strip and to relocate to Southern Gaza.

³⁰Amanda Taub writes the Interpreter, an explanatory column and newsletter about world events. She is based in London. The article was published in *New York Times* titled “How International Law Views Military Action at a Hospital Human rights laws prohibit harming or interfering with a hospital like Gaza’s Al-Shifa, with very narrow exceptions, or using it as a human shield. Attacking one can be a war crime” published on 16 November, 2023. To view the publication visit <https://www.nytimes.com/2023/11/16/world/middleeast/israel-hamas-al-shifa-hospital-law.html> accessed on 4.8.2025

³¹UNGA Tenth Emergency Special Session with Agenda Item 5 for the Protection of civilians and upholding legal and humanitarian obligations. Bahrain, Bangladesh, Belize, Bolivia (Plurinational State of), Botswana, Brunei Darussalam, Comoros, Cuba, Democratic People’s Republic of Korea, Djibouti, Egypt, El Salvador, Indonesia, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Maldives, Mauritania, Morocco, Namibia, Nicaragua, Oman, Pakistan, Qatar, Russian Federation, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Somalia, South Africa, Sudan, Türkiye, United Arab Emirates, Venezuela (Bolivarian Republic of), Yemen, Zimbabwe and State of Palestine, were present in the Session and signed the draft resolution. To view the full Resolution visit <https://documents.un.org/doc/undoc/ltid/n23/319/20/pdf/n2331920.pdf> accessed on 4.8.2025

- UNGA calls for due respect and protection in consistent with IHL, all civilians should get humanitarian facilities like medical facilities, hospitals, means of transport etc., in the armed conflict region.

Even after passing the resolution by the UNGA, Israel continued the attack against Palestine

2.3: Role of International Court of Justice in recognising violation of IHL as State sponsored War Crimes which includes Right to health

Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel) Request for the Indication of Provisional Measures, Advisory Opinion and Orders dated 26 January, 2024³²

The Republic of South Africa by invoking Art. 41 of the Statute of the ICJ and 41-43 of the Rules of Court filed an application against Israel for the serious and grave violations in the Gaza Stripes under Arts. II, III, IV, V & VI of the Genocide Convention, 1948. In the application, Republic of South Africa alleged as follows and requested the ICJ to declare and adjudge – (i) both the Petitioner State and Israel are obliged to act in accordance with the provisions of Genocide Convention on preventing and punishing the perpetrators of crime of genocide; (ii) respondent State has breached the provisions of Arts. II, III, IV, V and VI of the Genocide Convention; (iii) Israel must cease forthwith any acts and measures in breach of those obligations; (iv) Israel must ensure that it prosecute, punish the persons responsible for the serious violations of above mentioned provisions; (v) respondent State should collect evidence and preserve the collected evidence on the commission of crime of genocide against the Palestinian in Gaza and the displaced members of Gaza; (vi) must perform the obligations of reparation in the interest of Palestinian victims; (vii) State of Israel should submit a report on all the measures taken to give effect to this Order within a period of Week and (viii) Israel shall refrain from any actions that aggravate the dispute.³³

2.3.a: South Africa's request to the Court for Provisional Measures against Israel

- Israel shall immediately suspend the military operations in Gaza
- Access to adequate food and water

³²*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, p. 3

³³APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE IN THE GAZA STRIP (SOUTH AFRICA v. ISRAEL), 26 JANUARY 2024, Paras 2-7. To visit the full Order visit <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf> accessed on 1.8.2025

- Access to humanitarian assistance
- Access to medical assistance and supplies

The request includes further more measures and indicated that the Israel should submit a report to the ICJ on the implementation of the Orders in intervals until final decision is rendered.³⁴

The ICJ examined the rights of person raised in the application and the link between rights and measures requested.

For such examinations, the ICJ relied on the statements of United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mr Martin Griffiths, on 5 January 2024. Mr. Martin stated as follows, “...Gaza has become a place of death and despair. . . . Families are sleeping in the open as temperatures plummet. Areas where civilians were told to relocate for their safety have come under bombardment. Medical facilities are under relentless attack. The few hospitals that are partially functional are overwhelmed with trauma cases, critically short of all supplies, and inundated by desperate people seeking safety. A public health disaster is unfolding. Infectious diseases are spreading in overcrowded shelters as sewers spill over. Some 180 Palestinian women are giving birth daily amidst this chaos. People are facing the highest levels of food insecurity ever recorded...”³⁵

The Court also relied on the Report submitted by the World Health Organisation after the mission to North Gaza on 21 December, 2023. The Report reads as, “...[WHO] Lethal combination of hunger and disease to lead to more deaths in Gaza”, 21 December 2023...)

The Court also noted the statement issued by the Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Mr Philippe Lazzarini, on 13 January 2024, as “...[This] war affected more than 2 million people the entire population of Gaza. Many will carry lifelong scars, both physical and psychological. The vast majority, including children, are deeply traumatized. Overcrowded and unsanitary UNRWA shelters have now become ‘home’ to more than 1.4 million people. They lack everything, from food to hygiene to privacy. People live in inhumane conditions, where diseases are spreading, including among children...”³⁶

The Court also noted the statements made by the Mr Yoav Gallant, Defence Minister of Israel, Mr Isaac Herzog, President of Israel, Mr Israel Katz, Minister of Energy and Infrastructure of Israel delivered in public meeting spreading hate among Israel civilian and against Palestine people. Through their speeches, the South Africa drew the attention on the elements of crime

³⁴*Ibid* Paras. 11(1)(2)(5)&(8)

³⁵Para - 47

³⁶Para 49, pp.22

of genocide under Art.I of the Genocide Convention on State Responsibility for the prevention of crime of genocide.³⁷

2.3.b: Health Condition and Right to Life in Gaza:

From the analyses of the statements of WHO representatives and United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, it is evident that the protected right of right to access health care and hospitals, providing medical treatment are absolutely violated in the occupied area of Gaza. Further the ICJ also noted that during the armed conflict, the UN Officials repeatedly invited the attention on the condition in Gaza and also referred the letter dated 6 December 2023 from the UNSC relating to “...[The] health-care system in Gaza is collapsing . . . Nowhere is safe in Gaza. Amid constant bombardment by the Israel Defense Forces, and without shelter or the essentials to survive, I expect public order to completely break down soon due to the desperate conditions, rendering even limited humanitarian assistance impossible. An even worse situation could unfold, including epidemic diseases and increased pressure for mass displacement into neighbouring countries.” The WHO also estimated that 15% as on 2023, of women have given birth in the Gaza Strip are confronting complications like post maternal issues, new born deaths due unhygienic deliveries or no proper medical facilities to assist post-delivery complication and due to lack of access to medical care.³⁸ On considering the situations and statements submitted and documents submitted the ICJ considers that there were serious violations of international humanitarian law happened in the Gaza Strip. Further that there was urgency in issuing the Provisional Order to Israel before passing final decision.

2.3.c: Right to health in armed conflict zone and right to health of pregnant women in armed conflict zone

On the basis of study conducted by human rights activists and other personnel in the warfare zone of Palestine reported as follows. The frustration, fear, physical pain, exhausted nature, made the victims to voice out their difficulties in very less decibels. The narratives of bought out the struggles and fight for giving birth to their child in the war zone. The restriction of movement, long wait in the road blocks while expecting the delivery, waiting in the scorching sun or extreme cold, giving birth to the children near the field or damaged building

³⁷Para 52, pp. 22& 23

³⁸Paras 67 & 71, pp. 26 & 27

posed severe life threat to the pregnant women. The victims also revealed their attempt to save themselves and their foetus from inhaling the tear gas. They also deliberated on the political pressure on military forces to treat the pregnant women inhumanely without providing proper medical facility, food or water or clothing etc., Some expectant mothers revealed that they were forced to stay in Jerusalem to get Jerusalem Resident Card for their new-born. Finally, the author states that violence against pregnant women by the military forces to control the legal status of the new-born, cruelty faced by them in the war zone are the colonial ideology.³⁹

2.2.d: Jurisprudence evolved on Right to Health during Armed Conflicts in *South Africa v. Israel* Provisional Order by the ICJ

After 2015 decision passed by the ICJ in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* considered the State Responsibility for the failure to prevent the commission of Genocide under Art.IX of the Genocide Convention⁴⁰. Croatia filled an application before the ICJ alleging that Serbia failed to prevent the crime of Genocide in its jurisdiction under Art.I of the Genocide Convention and hence responsible for the same under Art.IX. The ICJ rejected claim of Croatia on the ground that, Croatia failed to substantiate the allegation that genocide was committed within the territory of Serbia and Croatia and failed to prove the *dolus specialis* in the act committed. Hence the International Court of Justice decided that issue of responsibility under Art.I was not proved by Croatia and accordingly dismissed Croatia's claim.⁴¹ Though the ICJ rejected the claim, but the acceptance of the application and consideration of arguments placed by Croatia evolved the jurisprudence that State Responsibility is possible under IHL and international criminal law.

In following the same, in 2022 Ukraine filled an application against Russia *Allegations of Genocide under the Convention on the Prevention and Punishment of the crime of Genocide (Ukraine v. Russian federation)* Request for the Indication of Provisional Measures Order of

³⁹Nadera Shalhoub-Kevorkian, *The Politics of Birth and the Intimacies of Violence Against Palestinian Women in Occupied East Jerusalem*, 55 BRITISH JOURNAL OF CRIMINOLOGY (2015).; Z. Bodalal et al., *Pregnancy Outcomes in Benghazi, Libya, before and during the Armed Conflict in 2011*, 20 EAST MEDITERR HEALTH J 175 (2014).; Valentina Azarova (2017), "Israel's Unlawfully Prolonged Occupation: Consequences under an Integrated Legal Framework", European Council on Foreign Relations

⁴⁰*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3

⁴¹*Ibid* Paras 440 & 441, pp.29 & 30

16 March 2022⁴² and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* request for the indication of Provisional Order on 22 July 2022⁴³ filled applications before the ICJ for the failure of Russian Federation and Myanmar to prevent international crime of genocide in the territory of Ukraine and against Rohingya Muslims.

In the *South Africa v. Israel* Provisional Order decision, the ICJ has deliberately accepted uninterrupted service of medical and health care services are highly protected by the IHL and IHRL. The consideration has effected in ordering the Provisional Measures to be followed by Israel as asked by South Africa is a remarkable jurisprudence. Acceptance and recognition of medical assistance, health care, supply of essential medicines are protected right IHL and any such violations also considered as international crime of genocide or War Crimes. In the Provisional Order, para no.80: the Court ordered that "...[The] Court further considers that Israel must take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip" as one of the Provisional measures to be fulfilled by Israel and the fulfilment also reported to the ICJ periodically.⁴⁴

Further the Additional Provisional Measures ordered in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024, I.C.J. Reports 2024. In the application South Africa requested the ICJ to indicate further Provisional Order in addition to Orders passed on 26 January, 2024.⁴⁵ One of the modified Provisional Order includes "the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary". On hearing of the

⁴²Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar) full text of the Order is available at <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220316-ord-01-00-en.pdf> accessed on 4.8.2025

⁴³APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (THE GAMBIA v. MYANMAR) PRELIMINARY OBJECTIONS JUDGMENT OF 22 JULY 2022, <https://www.icj-cij.org/sites/default/files/case-related/178/178-20220722-jud-01-00-en.pdf> accessed on 4.8.2025

⁴⁴*South Africa v. Israel* Provisional Order dated 26 January 2024, Para – 80, pp.129

⁴⁵*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024, I.C.J. Reports 2024, p. 649. To read full Order, visit <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf> accessed on 3.8.2025

submission of South Africa and the objections raised by Israel, the ICJ considered and confirmed the catastrophic situation in Gaza and ordered the modified Provisional Order that includes the “*unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance*”. The steps taken by Israel in executing the Provisional Order was intimated to the ICJ within a period of one month.⁴⁶

From the jurisprudence evolved in *Croatia v. Serbia*, *South Africa v. Israel*, *Ukraine v. Russian Federation* and *Gambia v. Myanmar*, it is evident that international judicial bodies are started to recognise that right to health and ethical medical process for the wounded and sick civilian and *hors de combatant* in any armed conflict zone. Any wilful and voluntary violation or wilful neglect in providing such medical care and medical assistance shall be construed as international crime according to the nature of the violations either crime of Genocide or War Crimes or Crimes against Humanity under IHL or IHRL or international criminal law. This Universal Jurisdiction shall impose both Individual Criminal Liability and State Responsibility also.

3.1: Suggestions and Recommendations for Policy making

A: Challenges in achieving the protecting Right to Health during armed conflicts:

- **Lack of Accountability:** Few perpetrators of attacks on health care are prosecuted.
- **Impunity of Non-State Actors:** Militias and insurgent groups often ignore IHL norms.
- **Weaponization of Health Care:** Denial of medical services as a tactic of war.
- **Access Barriers:** Bureaucratic hurdles and insecurity block humanitarian efforts

B: Enforcement strategies:

- Strengthen international monitoring mechanisms like WHO, ICRC etc.,
- Enhance use of satellite and digital evidence for international crimes documentation.
- Support Universal Jurisdiction laws for prosecuting attacks on health care.
- Integrate health protection into peacekeeping and diplomatic efforts.
- Enact either Regional or Domestic Law on IHL to prosecuting and punishing the perpetrators of violating health rights during non-international armed conflicts.
- Promote IHL education among armed groups.
- Enhance visibility of health protection norms in peace negotiations.
- Support UN fact-finding missions and commissions of inquiry.

⁴⁶*Ibid* Paras 9, 9(a) and 52, pp. 652, 653 and 664

Conclusion:

Healthcare systems are not passive observers; they are, in fact, active victims in contemporary warfare. Even with strong legal safeguards in place, violations continue to occur because of inadequate enforcement and political interference. To strengthen the legal framework that protects health during conflicts, we need international collaboration, enhanced accountability, and a commitment to political action. As the nature of warfare changes, our legal and ethical approaches must also adapt to ensure the protection of health and humanity.

