House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
Protecting Health Care During Armed Conflict
October 30, 2019

Statement of Leonard Rubenstein, Chair
Safeguarding Health in Conflict Coalition

Thank you, Chairmen McGovern and Smith for holding this important hearing on protection of health care in conflicts and emergencies and inviting me to address the Commission. This is a pressing issue for global health, human rights, and security that has long been neglected and we are grateful to you for seeking ways to address it.

I chair the Safeguarding Health in Conflict Coalition, a group of 40 health provider, humanitarian, human rights, civil society organizations, and academic centers that promote the security of health workers and services threatened by war or civil unrest.[1] I also am a faculty member of the Johns Hopkins Bloomberg School of Public Health. My statement today does not represent the views of the Bloomberg School or Johns Hopkins University and may not reflect the views of all members of the Safeguarding Health in Conflict Coalition.

The Coalition has urged international organizations and governments to follow their expressed commitments to the protection of health care in conflict through concrete actions such as collecting data on violence inflicted on health workers, facilities and the wounded and sick; investigating violations; holding perpetrators to account; adopting military protocols and training procedures to better ensure protection of health care; and reform nationals laws to conform to the requirements of international humanitarian and human rights law.

The Coalition supported Member States of the World Health Organization in securing a resolution at the World Health Assembly in 2012 to require the WHO systematically to collect and disseminate data on violence and attacks against health care in conflicts and other emergencies. We supported the UN Security Council's expansion of the mandate of the Special Representative on Children in Armed Conflict to include accountability for attacks on school and hospitals. We were active with other organizations in promoting the adoption of UN Security

[1] The Coalition's web site is www.safeguardinghealth.org

Council resolution 2286 on protection of health care in conflict.[2] We support civil society groups across the world in seeking to protect health workers and facilities from attack. For the past six years we have produced a global report on the problem of violence and attacks against health care in conflict, which is now relied upon by governments, UN agencies, and the media.

It is worth recalling that the very first Geneva Convention, in 1864, originated with the protection of the wounded and sick in war. That Convention was concerned with ensuring care for wounded soldiers in battle, and the facilities and health workers—whether military or civilian—that offer them care. Since then the Geneva Conventions have expanded those protections, which remain at the core of the modern Conventions and Protocols.

The bedrock requirements of the Conventions, based on the principle of humanity, are clear and have been affirmed by governments innumerable times. Hospitals and health workers may not be attacked. Parties to conflicts must provide care to the wounded and sick and do so impartially. Health workers must not be punished for offering health care to someone in need, no matter what the affiliation of the patient or the acts the patient committed. Parties to conflicts must distinguish between civilian and military objects in their military operations and take special precautions to avoid harm to medical facilities and other civilian objects.

Human rights law also protects health care, not only in conflict but in volatile situations well short of war, including in responses to demonstrations and protests and political upheaval, such as during the Arab Spring protests across the Middle East. The two sources of law have converged to strengthen protection of health care.

These principles are widely affirmed, including at the international level through UN Security Council resolution 2286 in 2016. But we know that principles and the laws that reflect them are all too frequently breached. Because collection of data globally was absent in the past, we don't know for sure whether the number of attacks is increasing, but they are many and they are extremely serious. They are committed by state militaries and by increasing numbers of non-state armed groups, in chaotic multi-party wars and in more conventional combat, in urban warfare, and in rural conflicts. The violations may be a result of targeting health facilities or attacks that are indiscriminate or fail to take precautions required by law. Sometimes they are a result of recklessness.

In the Coalition's annual report for calendar year 2018, issued in May 2019,[3] we found almost 1,000 documented attacks in 23 countries. At least 167 health workers were killed and 710 were injured as a result of these attacks. We found that hospitals were bombed or shelled in 15 countries. Among the attacks of 2018 were the following:

[2] United Nations Security Council, Resolution 2286 (2016), "On Protection of the Wounded and Sick, Medical Personnel and Humanitarian Personnel in Armed Conflict," Available at: https://www.un.org/press/en/2016/sc12347.doc.htm

[3] Safeguarding Health in Conflict Coalition, Impunity Remains: Attacks on Health Care in 23 Countries in Conflict, http://unscr.com/files/2016/02286.pdf

- In Afghanistan in January, a suicide bomber drove an ambulance packed with explosives through a busy checkpoint then detonated a bomb that killed at least 95 bystanders. It was one of 98 attacks in Afghanistan during the year.
- In Syria in February, 13 Médecins Sans Frontières-supported hospitals and clinics in East Ghouta were hit by bombs or shells. The assaults were among 257 recorded attacks on health care in Syria in 2018, in which more than 100 hospitals and clinics were damaged by Syrian and Russian airstrikes and missile attacks and 21 of them were destroyed. One characteristic of the attacks in Syria is the use "double tap" attacks on emergency responders after the initial bombing.
- In Yemen , there were at least seven aerial attacks on health facilities last year, as well as 15 cases of surface shelling on health facilities and transports. There were also at least two incidents of "double-tap" strikes—at least five health workers were killed and one injured in these strikes.
- In March in the northern Nigerian state of Borno, Boko Haram insurgents armed with automatic weapons, rocket-propelled grenades, and gun trucks attacked an internally displaced persons camp, killed two Nigerians working for the International Organization for Migration and a doctor working for UNICEF, and kidnapped two midwives and a nurse. The two midwives were executed in September and October.
- In a mass demonstration in the occupied Palestinian territory in April, at least 33 health workers were injured. Four paramedics were struck by direct fire and 29 health workers suffered from tear gas inhalation. Three were killed during the demonstrations in 2018.
- In May and June, armed men entered Bambari Hospital in the Central African Republic, firing shots, pillaging the hospital, and threatening Muslim patients, who were forced to flee. Armed groups inflicted at least 47 attacks on health care in 2018 in the Central African Republic, looting and destroying clinics and assaulting patients inside hospitals.
- In November in the Democratic Republic of the Congo (DRC), the Allied Democratic Forces group attacked near the Ebola Emergency Operations Center and hotels where many Ebola responders were staying, killing seven UN peacekeepers and 12 members of the DRC military. Ebola treatment centers in the area were closed for two days as a result.

In six countries—Afghanistan, the Central Africa Republic, the Democratic Republic of Congo, Pakistan, Somalia, and Sudan—community health workers vaccinating children against disease were attacked. At least six vaccination workers were killed and at least six were injured.

The effects of such violence are incalculable. Violence against health workers and clinics has severely impeded the Ebola response in the Democratic Republic of Congo and likely prolonged the epidemic. Health systems in Libya, South Sudan, Syria, Yemen, and elsewhere have been reduced to a patchwork of clinics and hospitals that cannot begin to meet human needs. The result is that infectious diseases that are easily prevented or treated are proliferating, causing suffering and death. Because of the war and the destruction and damage to health and water systems, Yemen had the largest cholera epidemic on record in 2018, affecting more than one million people at a time when the health system had been decimated by the violence.

Health workers in these conflicts who courageously remain seek to adapt to the violence and the resulting departure of many staff and shortages of supplies and medication while often burdened

with meeting the needs of large numbers of severely wounded people with complex injuries. I have spoken to dozens of these health workers and have been amazed by their willingness and ability to provide care in such difficult circumstances. But it is wrong to ask them to put their lives at risk for serving their patients. They need support and—most of all—protection.

Many of the violations of the Geneva Conventions against health care acts are war crimes, yet there is no accountability. The last prosecution for war crimes involving patients or hospitals took place two decades ago. Domestic procedures for accountability are so inadequate that punishment of any kind is a rarity. Impunity has reigned.

The direct attacks are not the only violations. Threats, intimidation, and arrests of health workers are common, often for the "crime" of adhering to their ethical duty of impartial care of all. A report on the criminalization of health care published by the Coalition, along with the University of Essex in the UK, in 2018 showed that despite the prohibition under international law of punishing health workers for treating all in need, many countries' laws permit authorities to arrest and prosecute doctors for providing medical care to a person designated as a subversive or terrorist.[4] The laws significantly impede access to people in need and the work of humanitarian organizations.

In other circumstances, clinics are forced to close for not adhering to demands to give priority to certain patients or deny treatment to others. The World Health Organization reported that as of last week, 181 health facilities in Afghanistan were forced to close and only 27 have re-opened.[5]

As we meet today the assaults continue. The joint Russian-Syrian campaign in Idlib has included the bombing of 51 hospitals in the last five months, according to the UN.

It is critical to understand the dynamics of attacks in each context—why they take place, who engages in them—and then devise strategies for preventing and stopping them. What is essential as a matter of policy is to ensure attacks are properly documented and reported, to reform laws that allow enemies to be denied health care and their caregivers punished, to develop military operational rules and training procedures to strengthen protection of health care, to conduct independent investigations of alleged violations, and to hold perpetrators to account. It is also essential to stop military or arms support to governments or non-state armed groups that engage in such attacks.

The United States has often been a leader in seeking to end these terrible assaults on people in need of care and their caregivers. In 2012 it helped push a resolution through the World Health Assembly that requires the World Health Organization to collect and disseminate data on violence against health care. The WHO's Surveillance System for Attacks on Healthcare went into effect in 2018. The U.S. also strongly supported Security Council resolution 2286, which called on states to take concrete actions to prevent attacks on health care and hold perpetrators accountable. When U.S. forces committed terrible errors that led to the bombing of an Médecins

[4] University of Essex, Center for Public Health and Human Rights, and Safeguarding Health in Conflict Coalition, Criminal of Health Care (2018). https://www1.essex.ac.uk/hrc/documents/54198-criminalization-of-healthcare-web.pdf

[5]

Sans Frontières trauma hospital in Afghanistan in 2015, the Pentagon conducted a credible investigation. The U.S. has supported referral of Syria to the International Criminal Court and joined a request to the Secretary-General this year to investigate attacks by Syria and Russia on health facilities in northwestern Syria that were on the deconfliction "do not attack" list.

Yet the record of the U.S. also shows that it has at times been inactive when action is needed. On occasion it has been an impediment to protection of health care in conflict. I would like to share with the Commission some gaps in U.S. policy and practice and what Congress can do to address them.

1. Harmonize counter-terrorism law with the Geneva Conventions and human rights law.

Through three administrations, the executive branch has interpreted U.S. counter-terrorism law to deem health care to be a form of material support to terrorists, a crime. Contrary to the principles of humanity and human dignity and the requirement of impartiality of medical care under the Geneva Conventions and international human rights law, these counter-terrorism laws deem some human beings unworthy of health care. Additionally, the laws force doctors and nurses and other health workers to breach their ethical duties to provide care for all in need. There is no evidence that these laws make us safer, but a lot of evidence that they deny people access to essential care and creates jeopardy for health workers for doing their duty.

U.S. laws have also been interpreted to preclude asylum to health workers who have offered care to terrorists unless there is a specific waiver. Twenty years ago, the life of a Chechen surgeon who treated those wounded in war—whether soldiers or civilians—was threatened by both Russian and Chechen combatants because he had saved the saved the lives of their enemies. He escaped to the United States and was granted asylum. Today, though, he might well have been denied refuge because some of his patients were designated as terrorists.

The posture of the current administration goes beyond interpreting U.S. laws in a manner contrary to fundamental values and international treaties. At the UN, the United States this year staunchly opposed or succeeded in watering down resolutions in the General Assembly and Security Council to ensure that counter-terrorism laws do not jeopardize medical and humanitarian response.
medical
There is emerging bipartisan consensus that these laws do not make us safer and lead to unnecessary human suffering and deprivation. Senators Cory Booker and Todd Young introduced a resolution in the Senate in May to mark the 70th anniversary of the Geneva Conventions.[6] Among its provisions, the resolution seeks to harmonize counter-terrorism laws with humanitarian imperatives. Congress could do more by expressly precluding criminal

[6] S Res. 206, Marking the 70th anniversary of the four Geneva Conventions of 1949, expressing concern about significant violations of international humanitarian law on contemporary battlefields, and encouraging United States leadership in ensuring greater respect for international humanitarian law in current conflicts, particularly with its security partners.

prosecution for providing health care, no matter what the person's affiliation, and ensuring that the laws do not impede aid for people in need. Congress should do more than pass a resolution. It should amend material support laws to clarify that health care is not to be considered a form of material support of terrorism.

2. Stop military assistance and arms sales to entities that attack health care.

The U.S. has continued military support and arms sales to partners when it is known that those partners attack hospitals in war. It has been well documented that since 2015, the first year of the war in Yemen, the Saudi-led Coalition has bombed hospitals indiscriminately. There is evidence, too, that indiscriminate attacks on civilian objects have often employed U.S. weapons. Congress deserves credit for passing legislation to cut off arms sales to the Saudis and pressuring the administration to stop in-air refueling that has permitted indiscriminate bombing in Yemen.

The President vetoed the legislation, and we welcome continued efforts in Congress to prevent our military assistance and weapons to be used to attack hospitals, not just in Yemen but in future conflicts. We have laws that restrict arms sales to units that commit human rights violations, but a broader prohibition is needed.

We also support initiatives to train and support partners in security cooperation agreement so they can take steps toward respecting and protecting health care in their military operations. At the same time, the experience in Yemen shows that training and technical support is not sufficient if the violations continue. In those circumstances, military and arms support should be precluded.

3. Require the Department of Defense to adopt doctrine, procedures, practice, and training to protect health care in military operations.

Three years ago, Security Council resolution 2286 called on states to incorporate practical measures for the protection of the wounded and sick and medical services into the planning and conduct of their military operations. To date, though, the Department of Defense has not developed any doctrine and rules, accompanied by training, to address the conduct of operations so as to avoid such harms. It is not enough to train soldiers in the provisions of the Geneva Conventions not to attack health facilities and personnel and the wounded and sick. The doctrines and training must address specific sources of vulnerability to health care for the wounded and sick and means of reducing or ameliorating them

Improvements are especially needed concerning conduct at checkpoints and in hospital searches. Data collected by our colleagues at the International committee of the Red Cross in 2012 and 2013 showed that almost 25% of the more than 450 incidents of violence against or obstruction of access to health care it found by state armed forces in 23 countries occurred at checkpoints.[7] It may well be that routine military practices that are rarely documented can have as great or

[7] International Committee of the Red Cross, Promoting Military Operational Practice that Ensures Safe Access to and Delivery of Healthcare (2014). https://www.icrc.org/en/publication/4208-promoting-military-operational-practice-ensures-safe-access-and-delivery-health

greater an impact on health access and survival as spectacular acts of violence. Similarly, search procedures carried out violently lead people in need of care to fear and ultimately forgo seeking care in hospitals when there is a record of violent entries by militaries.

Five years ago, the ICRC convened senior offices from 20 countries, resulting in recommendations to militaries on how to make these operations safer for the wounded and sick without compromising security.[8] The Pentagon has yet to adopt operational changes, but has experience in Afghanistan on what could be done. We plan to offer recommendations to the Pentagon in the context of its work on reducing civilian casualties. Congress, of course, has a key role to play, and should require the Department of Defense to adopt specific doctrine, procedures practice and training to ensure the security of patients, health workers, and emergency responders in volatile situations at checkpoints and hospital searches.

4. Affirm protection of civilian health workers in Department of Defense policy and doctrine on protection of health care.

In the wake of the bombing of the MSF hospitals in Kunduz, Afghanistan, then Secretary of Defense Ashton Carter issued a memorandum to all armed services, the Joint Chiefs of Staff, and all combatant command entitled Principles Related to the Protection of Medical Care Provided by Impartial Humanitarian Organizations During Armed Conflicts.[9] Although laudable in some respects, by omission it actually undermined protection of the vast majority of health workers and facilities offering care in armed conflict by restricting the coverage of the memorandum to humanitarian organizations. The vast majority of doctors, nurses, and other health workers, clinics, health posts, and hospitals in conflict regions are offered or run by civilians not affiliated with humanitarian organizations.

Under international humanitarian law, civilian health workers and facilities are entitled to protection and respect and to be free from punishment for their delivery of essential health services, as humanitarian organizations. Secretary Carter's memorandum makes only one mention of civilians at the end of the memorandum, referencing the possibility of protections they may enjoy. There is no statement the protections recited in the memorandum apply to then. The memorandum also is mistaken in the asserting at its very beginning that medical care in armed conflict is an activity that is fundamentally neutral. The law, however, does not premise protection on neutrality, and would not, as many health providers are affiliated with a party to the conflict, whether through military health services, government-affiliated hospitals, or otherwise. They are protected unless they commit acts harmful to the enemy. Congress should require that the Department of Defense amend this memorandum so as to explicitly embrace the obligation to protect civilian health workers and facilities and include them in policy, doctrine and training.

5. Increase reporting and accountability.

[8] Ibid.
[9] Memorandum from Secretary of Defense, October 3, 2016.
https://dod.defense.gov/Portals/1/Documents/pubs/Principle-Promulgation-Memo.pdf

Despite the work of the World Health Organization, reporting of violence against health care is limited (the WHO system only covers a few countries). Congress could contribute to reporting by requiring the State Department to include attacks on health care in annual reports on human rights practices. Embassies have access to information that the WHO does not, and the rights at stake justify inclusion in the reports.

Accountability has always been central to the protection of human rights generally and for the protection of health care in particular. Congress can advance accountability in a number of ways. First, it can legislate to strengthen the Office of Global Criminal Justice, which the Trump Administration has weakened. The Office previously played a key role in advancing international justice for war crimes, and that role should be restored.

Second, the United States has the capacity to provide evidence for investigation or prosecution of war crimes against health care in Syria and elsewhere, whether through UN mechanisms, national courts acting in accordance with principles of universal jurisdiction, or in international tribunals. Through its oversight powers Congress should assess the degree of cooperation in sharing evidence, and if necessary, pass legislation to require it.

Third, Congress should encourage the Administration to continue to seek accountability for attacks on health care through the Security Council and other UN entities.

Conclusion

Congress has a critical role to play in the protection of health care in conflict. The Booker-Young resolution in the Senate is a good indication of concern, as is a bipartisan resolution in the House by Representatives Nita Lowey and Mario Diaz-Balart that urges greater global attention and support for local frontline health workers to ensure their protection and ability to respond effectively during humanitarian and public health crises.[10]

I understand that Co-Chair McGovern is considering legislation to address the protection of health care in conflict. I and other members of the Safeguarding Health in Conflict Coalition would be pleased to provide expertise and technical assistance on ways of accomplishing that goal.

[10] H. Res. 467, Recognizing the essential contributions of frontline health workers to strength- ening the United States national security and economic prosperity, sustaining and expanding progress on global health, and saving the lives of millions of women, men, and children around the world. https://lowey.house.gov/sites/lowey.house.gov/files/documents/Frontline%20Health%20Workers.116th.pdf