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Physicians for
Human Rights

256 West 38th Street
9th Floor
New York, NY
10018

+1.646.564.3720
phr.org

**House Foreign Affairs Committee
Tom Lantos Human Rights Commission**

**Hearing
on
PROTECTING HEALTH CARE DURING ARMED CONFLICT**

**October 30, 2019 - 10:00 a.m.
Room 2200 RAYBURN HOUSE OFFICE BUILDING**

**Statement of SUSANNAH SIRKIN
DIRECTOR OF POLICY
PHYSICIANS FOR HUMAN RIGHTS**

Thank you, Chairs McGovern and Smith, for holding this hearing at a most critical time, and for inviting me to testify before the Lantos Commission on behalf of Physicians for Human Rights.

We are an international non-governmental organization that brings the expertise of scientists and medical professionals to the defense of human rights. Physicians for Human Rights (PHR), which shared in the Nobel Peace Prize for our work to end the scourge of landmines, uses its investigations and expertise to advocate for persecuted health workers and facilities under attack, prevent torture, document mass atrocities, and hold those who violate human rights accountable.

For more than 30 years, we have investigated and reported on violations of the laws protecting health facilities and defended the duty of health workers to care for the sick and wounded without discrimination in situations of armed conflict. As the ICRC representative has indicated, attacks on health facilities and personnel are not a new phenomenon. But, given the amount of reporting and scrutiny available to governments, the UN, NGOs, and the public at large, and in the face of a unanimous UN General Assembly resolution¹ and Security Council Resolution 2286,² it is inexcusable that the laws protecting health continue to be blatantly flouted in the starkest ways. In many of today's conflicts, hospitals are places of fear and danger, instead of hope and recovery.

When hospitals or health clinics are destroyed, the loss is far greater than the bricks and mortar of the buildings. Safe and protected spaces for people to obtain routine and urgent medical attention are also lost. When medical workers are killed, the human toll is not just their lives, but also the exponential number of people who will suffer without treatment by those missing medical professionals and the many lives that will be lost as a result.

¹ United Nations General Assembly, Resolution 70/104 (2015), "Safety and security of humanitarian personnel and protection of United Nations personnel," available at: <https://undocs.org/en/A/RES/70/104>.

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>.



During PHR's decades of monitoring attacks on health in many of the world's most devastating crises, the scale and scope of attacks on health care facilities and health workers today represent the greatest deterioration of international humanitarian standards we have ever witnessed. We see this in the increasingly complex conflict in Yemen, where indiscriminate warfare and blatant disregard of distinction and proportionality have resulted in the widespread destruction of health and humanitarian capabilities. Respect for international human rights norms has been shredded in Syria, where a deliberate campaign of military strikes targeting health workers and infrastructure has obliterated civilian centers and compelled the capitulation of opposition populations. Across the world, the breadth and severity of attacks on health care is an urgent crisis.

The widespread and systematic assault on health care during the almost nine year-long Syrian conflict represent a glaring new low on the list of violation. And although the horrors of Syria's war may indeed receive more public attention than other conflicts, the failure to impose any accountability or to curb these barbaric acts sends a message to the world that the treaties protecting health in conflict can be blatantly trampled by warring parties.

So, my testimony will focus on the most egregious situation in Syria and what must be done to address it as the devastating conflict there moves to its apparent final phase. I will also highlight the widespread destruction of health facilities in Yemen where medical care has been bombed and shelled virtually out of existence.

Syrian Health Care Under Siege

For more than eight years, Syrian government armed forces and their allies, including Russia, have targeted health facilities as a strategy of war to punish civilians residing in opposition-held territories, destroy their ability to survive, and draw them into government-held areas or drive them out of the country. The Syrian government has also methodically targeted health workers merely for fulfilling their ethical obligation to provide health care to the sick and wounded in their communities. PHR and other human rights organizations have documented the detention, torture, and killing of many hundreds of health workers.

We have rigorously researched and documented attacks on Syria's health care system by all parties to the conflict from the very beginning of the fighting. From March 2011 through August 2019, PHR has corroborated³ 583 attacks on at least 350 separate health facilities in Syria as well as the killing of 912 medical personnel. More than 90 percent of these attacks are attributed to either Syrian forces specifically, or to Syrian and Russian forces. Soon-to-be-published PHR research points to the Syrian government's effective criminalization of the delivery of health care through its systematic detention, torture, and killing of health workers.

Since the Syrian government's escalation on Idlib began in late April 2019, PHR has received reports of more than 57 attacks on health facilities. Among the many we have confirmed, three were carried out on a single day – May 5. On that day, Russian or Syrian government airstrikes damaged and put out of service a surgical unit in Hama; warplanes attacked a nearby women and children's hospital in Hama, damaging equipment and infrastructure; and Russian or Syrian government forces hit the Kafr Nabl Surgical Hospital in Idlib, damaging the foundation and putting it out of service. The New York Times' visual investigations team recently published

³ Physicians for Human Rights, "Findings of Attacks on Health Care in Syria," September 2019, available at: <http://syriamap.phr.org/#/en/findings>.



a damning exposé on Russian culpability for these heinous war crimes, using a trove of Russian Air Force radio recordings and flight spotter logs.

Such sequenced attacks by the Syrian government and its Russian allies against health facilities in the same geographical locations are an indicator of the targeting not only of those individual facilities, but of local health networks and referral systems, whereby several hospitals have often been attacked within a short time frame. This strategy effectively deprives the local civilian population of life-saving medical care.

It was in this egregious context that agreements coordinated by the UN to notify all Russian, Turkish, and international coalition forces of the locations of health facilities – intended as a strategy to protect them – have been violated again and again. The Syrian and Russian governments have known exactly where most health facilities are located, and yet, they have continued to target them. The courageous remaining doctors in Syria provide life-saving care while being bombed.

The magnitude, frequency, and distribution of attacks on health care in Syria over the past eight years reveal a widespread and systematic pattern of violations, rising to the level of war crimes and, in PHR’s assessment, crimes against humanity. For years, PHR and so many others have called on the international community to put a stop to these crimes and ensure that any resolution to the conflict in Syria carries justice and accountability at its center.

Yemen and U.S. Leverage

Since the escalation of the conflict in 2015, warring parties in Yemen have perpetrated serious violations of international humanitarian law, including through attacks on medical infrastructure and health workers. Parties to the conflict have damaged and destroyed hospitals through air- and land-based attacks and have actively prevented health workers from carrying out their duties impartially. By repeatedly attacking medical facilities and workers, the Saudi-Emirati-led coalition, their Houthi opponents, and the internationally-recognized Yemeni government – among others – have demonstrated their inability or unwillingness to comply with the most basic international rules and norms protecting civilians and civilian infrastructure from attack. These violations have effectively denied Yemenis access to medical services at the time they need them most.

Despite deadly and destructive attacks on health facilities and personnel on all sides, the United States continues to have the most influence and leverage over the Saudi-Emirati-led coalition – as these militaries are the most reliant on U.S.-produced arms, particularly in terms of their capability to continue airstrikes. Additionally, the UN-supported Civilian Impact Monitoring Project (CIMP) has most recently reported that “airstrikes were again the deadliest type of armed violence in Q3 [of] 2019, and have resulted in the highest number of civilian fatalities in each quarter since CIMP began monitoring.” To that end, we have welcomed bi-partisan efforts to end U.S. involvement in the conflict and to restrict U.S. arms support for the Coalition in Yemen. Specific, targeted, time-bound holds on U.S. munitions are a key form of leverage that the United States has to curtail attacks on health care and civilian infrastructure, stress the need for accountability, and urge support for a UN-led solution to the conflict.

Recommendations to Protect Health in Conflict

As a member of the Safeguarding Health in Conflict Coalition, PHR fully supports the recommendations of our coalition partners, including support by the US for continued global documentation of violations and assuring that the provision of medical care is not criminalized



through counter-terrorism measures. As we support myriad measures to educate militaries and warring factions on the need to protect health in conflicts, and to enable front line health workers to better protect their vital humanitarian mission, we are also convinced that a legacy of absolute flouting of humanitarian norms with utter impunity provides license to continued and repeated erosion in the future. Therefore, we offer specific additional recommendations as they relate to Syria and Yemen.

Syria

In August, UN Secretary-General António Guterres initiated a Board of Inquiry, supported by the United States, among other Security Council members, to investigate the recent attacks on health facilities on UN-supported or “deconflicted” humanitarian facilities in the northwest of Syria. We urge the United States to demand that, in this UN process, the actors responsible for attacks on health facilities be identified, and the Board’s findings made public. Failure to do so will be a shameful betrayal of the patients, health care workers, and staff of humanitarian organizations who have died or suffered in the wake of these attacks.

However, the focus on this current limited inquiry should not distract from the overall imperative to hold perpetrators of the years of war crimes and crimes against humanity accountable. Given the failure of the UN Security Council to refer the case of Syria to the International Criminal Court as a result of China and Russia’s vetoes, national courts must step up efforts to prosecute the crimes, and UN member states, including the United States, must re-invest in the International Impartial and Independent Mechanism (IIIM) for Syria.

Under the UN Resolution and the Terms of Reference that established this body, the IIIM head was meant to act as a prosecutor who builds cases for presentation in courts which meet international standards, although there is not yet a specific court to litigate this case. The U.S. government negotiated with prior international courts – specifically, the International Criminal Court for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone – to establish Rule 70(B) of their Rules of Procedure, under which the U.S. government could share non-public (but not top secret) information with the prosecutors under the ironclad guarantee that such information could not be disclosed without U.S. government consent. This was highly useful at the ICTY in its investigations of military operations by state actors in the former Yugoslavia. The same kind of sharing should be negotiated with the IIIM head, which would additionally open the possibility that she might share it – with U.S. government consent – with national prosecutors in proceedings in which the U.S. government has confidence. It should be noted that the IIIM head, Catherine Marchi-Uhel, is a former French investigative judge, who was also ombudsman for the UN terrorism sanctions regime under the UN Security Council (with U.S. government support). The ICTY rule is set out in the appendix below (and is almost identical to the ICTR and SCSL rules).

In ongoing efforts to support critical documentation to support accountability measures, the FY20 Foreign Ops Appropriation should include language to specifically authorize funding of NGO investigations into the targeting of medical facilities and personnel for the purpose of justice and accountability efforts. This would be added to language in FY19 appropriations that provided \$5 million for such grants for Syria and Iraq documentation to be made by the State Department’s Office of Global Criminal Justice, for administration by State’s regional Bureau for Near East Asia Affairs.



Yemen

Congress should support amendments currently under consideration for the FY20 National Defense Authorization Act (NDAA) that seek to leverage U.S. arms transfers to Saudi Arabia so as to limit capacity for the types of destructive strikes we have seen against civilians and health facilities in Yemen. In particular, the amendment by Congressman Tom Malinowski (Section 1099X of the House-passed NDAA) includes a one-year ban on Category IV air-to-ground bombs and missiles, which will effectively limit the ability of the Saudi-led coalition to strike hospitals and health workers, and send a clear message to the Saudi government that it must get serious about addressing attacks on civilians and civilian infrastructure, including medical care. Additionally, these key arms sales are a key piece of leverage that the US can use to pressure its partners to follow and support a UN-led mediation for a ceasefire, and ultimately an end to the conflict.

We want to urge support for this amendment at this moment, in particular, as the final provisions of the NDAA are currently being considered and negotiated. We urge representatives to press leadership to support the Malinowski amendment's inclusion in the final bill.

Additional Recommendations

Beyond the specifics of the conflicts outlined in this statement, we recommend that Congress and the U.S. government work to formalize more structured and rigorous guidelines and procedures for accountability measures in cases of attacks on civilians and civilian infrastructure or other violations of international humanitarian law – in particular, attacks on health care facilities and health workers in conflict.

This should include enhanced scrutiny by the Departments of Defense and State of end-use monitoring for American-made munitions and other military supplies, as well as for humanitarian violations in military operations by coalitions that the US supports.

Incidents of attacks on health care should formally be included in the Department of State's annual Human Rights Country Reports – to better mainstream the need for regular reporting on attacks on health workers and facilities as a critical human rights issue.

Appendix

ICTY Rule 70(B)

If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.

(International Criminal Tribunal for the former Yugoslavia, Rules of Procedure and Evidence, U.N. Doc. IT/32/Rev.50 (2015), entered into force 14 March 1994, amendments adopted 8 July 2015.)