PERINATAL JOURNAL

Original Article

Perinatal Journal 2025; 33(2):497-503

https://doi.org/10.57239/prn.25.03320052

Ensuring access to perinatal and abortion care in armed conflicts: A legal analysis under international humanitarian law

Amer Fakhoury[1*], Mahir Al Banna[2]

[1,2]College of Law American University in the Emirates -UAE

Abstract

This research aims to delve into one of the most important rights of women during armed conflicts, both internal and international, namely the right of women to obtain the necessary health care during pregnancy and the right to have safe abortion. These rights have been established by international conventions, foremost among them the Geneva Conventions and the Additional Protocols attached to those conventions. In this research, we studied and analysed the topic by comparing legal texts with each other, in addition to reviewing some of the most important judgments of the International Criminal Court, known as the Hague Court, and addressing the most important decision issued by it, namely the case of the Prosecutor v. Al Hassan, as the latest and most recent legal development concerning crimes that may occur during armed conflicts against women. It became clear to us from this study that there is a large gap between the legal texts that aim to protect women in armed conflicts and the actual legal reality, and this gap is widening in some conflict areas such as Sudan, Ukraine, Yemen, Syria, and Gaza. Despite the importance of international law, and specifically international humanitarian law, this law explicitly lacks legal provisions aimed at protecting women and providing health and medical assistance during wars. Our research concluded that it is necessary for the United Nations to adopt legal provisions aimed at protecting women and providing the necessary medical and health care during armed conflicts.

Keywords: International humanitarian law, Maternal care, Safe abortion, International criminal court, Women's rights, Armed conflicts

Introduction

One of the most important branches of the right to health is known as maternal care, which constitutes one of the most essential pillars in the lives of women and children during armed conflicts. When referring to reports issued by the World Health Organization, it becomes clear that more than 60% of deaths during childbirth in the world occur in areas where wars exist, whether civil wars or international wars. Areas of political and security instability represent some of the most significant regions where deaths during childbirth are widespread [1]. Accordingly, the health care system in conflict zones is considered one of the most endangered environments, which leads to depriving pregnant women of any basic medical services to obtain safe childbirth or even postnatal care. Naturally, the lives of women who wish to have safe abortions in conflict zones are also affected [2].

The law applicable during armed conflicts is known as international humanitarian law, and within this framework, medical protection for pregnant women is considered an integral part of the obligations of states and warring parties, as stipulated in the Geneva Conventions of 1949 and the Additional Protocols attached to those conventions of 1977. Article 16 of the 1949 Geneva Conventions requires respect for pregnant women and their humane treatment, while Article 27 provides for the special protection of women against any attack on their honor, especially rape and enforced prostitution. Article 38 refers to the care of pregnant women, and Article 76 prohibits the execution of death sentences on pregnant women or breastfeeding mothers.

For its part, the Additional Protocol I of 1977 states in Article 70 the necessity of providing medical and food supplies specific to pregnant women, and Article 76 — which represents the core of protection that should be available to pregnant women during armed conflicts — grants women special protection and respect, particularly pregnant women and mothers of young children [3]. However, the distance between the provisions of international law on the one hand and practical reality on the other proves to be very large. According to recent studies issued by the

Correspondence: Amer Fakhoury, College of Law American University in the Emirates -UAE, **e-mail:** Amer.fakhoury@aue.ae, **Received:** August 25, 2025 **Accepted:** November 17, 2025

International Committee of the Red Cross and, according to United Nations studies as well, these obligations imposed on states are not respected in many armed conflicts, especially in Syria, Yemen, and Ukraine [4][5].

There is also a significant legal and ethical debate regarding the issue of abortion in the context of armed conflicts, whether international or internal. While states in general are obligated to protect women from sexual violence and to provide medical care during wars, on the other hand, some legal systems of certain states impose restrictions on abortion during armed conflicts regardless of the nature of the pregnancy, whether it occurred naturally or as a result of the crime of rape. This may be considered by many — and by international law first — a violation of the woman's right to medical treatment [6].

When referring to the United Nations Human Rights Committee, it has confirmed on many occasions that depriving women of abortion services, especially when abortion would preserve the mother's life, constitutes inhuman and degrading treatment, according to what is stated in the International Covenant on Civil and Political Rights. It should be noted that the aforementioned Covenant did not explicitly refer to this right, but it can be derived from the interpretation of Article 6 related to the right to life, and also from Article 7 related to the prohibition of torture or cruel, inhuman, or degrading treatment [7].

Based on the above, this research seeks to analyze the legal framework regulating the guarantee of access to women's care and abortion services during both international and non-international armed conflicts, through analyzing the legal texts derived from international humanitarian law and conducting practical applications on certain conflict situations, with the aim of proposing more effective legal mechanisms to protect pregnant women and ensure their rights during times of war.

Methodology

This article seeks to explore the responses by international humanitarian law to women's situation in armed conflicts. It analyzes the legal framework attached to values and norms of armed conflicts to explain the views and conducts of international actors, taking an increasingly important place of greater protection of international humanitarian law. It is empirical legal research that involves critical thinking skills which assess related facts and information by adopting a qualitative legal approach that involves taking information about cases, courts and international conventions then analyzing them. This method allows us to discover the complexity and dimensions of the situation of peri natality and pregnancy of women during armed conflicts in their search for recognition and protection by international law.

In addition to analyzing international conventions in international humanitarian law, this research will also address some of the main judgments issued by the Hague Court, known as the International Criminal Court, especially those judgments that deal with crimes directed against women during armed conflicts, whether the crime of rape or sexual violence. These judgments that will be examined establish clear legal rules on the necessity of providing reproductive and health protection for women during times of armed conflict. The International Criminal Court, through some of its judgments, has directly contributed to expanding the legal understanding of sexual violence as a war crime or a crime against humanity depending on the circumstances of the case, and this gives women greater health protection during armed conflicts, including safe abortion.

Discussion

All international law experts agree that one of the most important challenges facing the legal situation of women during armed conflicts is the lack or absence of actual compliance with the protection of women's reproductive health during wars. Although international law, as stated in the Geneva Conventions and the Additional Protocols, obliges all conflicting parties to provide medical care without discrimination and to give priority to pregnant women in receiving care and treatment, the field reality raises many questions about the unwillingness or inability of the conflicting parties to comply with what is stated in international law, and this is clearly seen in conflict areas such as Ukraine, Syria, Yemen, and other regions around the world [4][5].

When observing the field situation in many wars, we find that some conflicting parties confuse the legal obligations related to maternity care, and this confusion lies on the one hand between humanitarian protection and on the other hand between religious and political positions, which ultimately leads to a negative impact on the provision of reproductive health care, especially regarding the right to abortion. It has been observed that in some areas where civil wars are widespread, women are prevented from having abortions even if that poses a danger to the mother's life, and this constitutes a clear violation of what has been affirmed by the principles of international human rights law and what has also been confirmed by the United Nations Human Rights Committee when it stated that depriving women of life-saving abortion constitutes inhuman, degrading, and humiliating treatment [7].

Another significant challenge has also been observed, which is the inability of international medical organizations responsible for providing medical services to reach areas affected by conflicts, and their inability to coordinate with some of the conflicting parties, especially those non-governmental parties, which makes the absence of maternity services greatly increase and leads to higher mortality rates resulting from pregnancy [4].

Here appears a very important legal point when we make a comparison between the principles of international human rights law and the provisions of international humanitarian law, and this appears through the inability of international law to determine legal responsibility for the incident of depriving women of reproductive care during armed conflicts. If international law in general imposes obligations on the parties to the conflict not to violate commitments in the health field, it does not explicitly stipulate the penalty resulting from such obligations. And when referring to the judgments issued by the International Criminal Court, which was established in 1998 and entered into force in 2002, we do not find until now any rulings directly related to depriving women of maternity care or abortion services. But most of its judgments are related to sexual violence and rape, as in the Al Hassan case, which established some important legal principles in this regard [8].

There is no doubt that the Al Hassan case [8] is considered one of the most important and recent cases issued by the International Criminal Court regarding crimes directed against women during armed conflicts, where the Court confirmed in the judgment issued in 2024 that gender-based crimes can fall within war crimes and crimes against humanity when committed systematically and on a large scale. Although the Court did not issue a clear conviction regarding sexual crimes such as rape or forced marriage, this judgment established a very important legal rule that gender-based persecution constitutes one of the most serious crimes in international law and can be inferred in cases of discrimination or deprivation of women's basic health services [9].

International Humanitarian Law (IHL)

International Humanitarian law (IHL) attempts to protect pregnant women by equating them with the wounded and sick, but it faces significant obstacles that limit its effectiveness, notably the lack of access to sexual and reproductive health care in humanitarian crises, sexual and gender-based violence, and the collapse of health infrastructure. As a result, pregnant women in conflict or disaster situations are at higher risk of unwanted pregnancy, pregnancy-related complications and limited access to basic care. In fact, IHL states that belligerents must treat the wounded and sick regardless of their status. All pregnant women and girls, including those who have been victims of sexual assault, are protected by the provisions of international humanitarian law for 'wounded and sick' persons and must receive the treatment necessary for their condition [3].

In fact, conflict settings have consistently shown higher maternal mortality rates than non-conflict settings, as well as lower access to reproductive and maternal health services for marginalized populations, including poor populations, less educated and rural [1]. While reproductive health services are an essential part of human rights, in Gaza, women suffer from a severe shortage of these services. These violations include the lack of regular checkups and care during pregnancy and after childbirth, which increases the risk of maternal and child death. It is estimated that more than (60%) of pregnant women in Gaza were unable to obtain regular medical care during conflicts (Abu Rabie 2024) [11]. The absence of obstetricians in many regions also makes it more difficult to provide

emergency services, exacerbating health risks for women. This situation represents a clear violation of States' obligations under the Global Plan of Action for Reproductive Health (Abu Rabie 2024) [11]. Malnutrition poses a major threat to the health of pregnant women and their fetuses, as about (46,300) pregnant women suffer from severe malnutrition, which increases the risk of anemia and preeclampsia. This nutritional deficiency also directly affects the health of fetuses, as many of them are born with a lower-than-normal weight, which increases the chances of premature death (Abu Rabie 2024) [11].

As a matter of fact, access to safe reproductive services remains controversial. This sensitive issue is evident in the fact that the United States lobbied in 2019 to remove any direct reference to these services in the final text of United Nations Security Council (UNSC) Resolution 2467 (2019) (Cerulli 2024) [12]. Indeed, as Sarah De Vido has highlighted, "not only the phrase 'sexual and reproductive rights', but also the weaker expression 'access to sexual and reproductive services' is difficult to use in binding or non-binding legal instruments at the international level" (De Vido 2020) [13]. However, as many studies have shown, the lack of access to this service leads to an increase in the use of unsafe abortions and, consequently, maternal mortality (Hedstrom & Herder 2023) [14].

It is important to stress that, unlike international humanitarian law instruments, human rights treaties often do not include the issue of abortion or explicitly allow the "right to abortion". Nevertheless, there is growing international recognition that abortion services are part of international humanitarian law's protection of 'needs-based medical care" in international academic policy and state practice (Radhakrishnan, Sarver & Shubin 2017) [15]. In this regard, in 2013, the UN Security Council adopted two resolutions calling on states to provide safe abortion services for girls and women who were raped during the war (Priddy 2015) [16]. In response to these decisions, some European countries revised and amended their humanitarian aid policy to recognize that safe abortion services for these victims are protected under international humanitarian law, such as the UK, the Netherlands, and France (Radhakrishnan, Sarver & Shubin 2017) [15].

In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), also known as Maputo Protocol No. 8, states in Article 14, paragraph 2 (c), that States Parties shall take all appropriate measures to protect women's reproductive rights by allowing medical abortion in cases of sexual assault, incestuous rape, and when continued pregnancy would endanger the mental and physical health of the woman (Verma 2022) [17]. Some human rights organizations have expressed their concern about states where abortion is totally prohibited or severely restricted in their concluding observations or non-binding conclusions, insofar as it may, in certain cases, lead to cruel, inhuman or degrading treatment. For example, the European Court of Human Rights (ECtHR) found that Poland violated Article 3 of the European Convention on Human Rights (ECHR) (inhuman or degrading treatment) in case P. and S. v. Poland, because a 14-year-old girl was raped and became pregnant as a result, and she was unable to obtain a safe abortion and was harassed by the government and pro-life activists even though Polish law allows abortion in cases of rape (Verma 2022) [17]. Some believe that each state should decide how to restrict abortion in accordance with the culture, religion or beliefs of its citizens and that international law does not prevent states from doing so, both in peacetime and in times of armed conflict (Verma 2022) [17]. For example, the Holy See and many Catholic and Arab countries opposed the inclusion of forced pregnancy in the Rome Statute of the International Criminal Court, fearing that the inclusion of this crime would be interpreted as imposing on national systems the obligation to provide access to abortion for women who have undergone forced pregnancy (Steains 1999) [18].

Criticism

We cannot argue that the texts are insufficient, but that in this field as in others, the rules are not sufficiently respected. To better understand the insufficiency of IHL, this study will highlight the feminist critics of this branch of international law. **First,** by addressing the issue of humanitarian needs in armed conflicts, IHL presupposes a population in which there is no systematic inequality between the sexes. Unfortunately, this system is unable to recognize the inequality of situations between men and women in society (Tayebi 2016) [19].

Second, the law is based on the patriarchal male view of women. Criticism is directed at the law for being drafted by a white male in 1949, lacking women's expertise in drafting it. It practiced negative discrimination against women by providing them with special protection and assumed that their role in armed conflicts was linked to the civilian mother or the victim of sexual violence, despite the law being created with neutrality and non-discrimination (Jerbawi 2010) [20].

Third, increasing the burden on the victim (woman), since international humanitarian law in its current form and after its developments, especially with regard to the Rome Statute of the International Criminal Court, particularly in Article (54), which relates to the duties and powers of the Public Prosecutor, requires the presence of the victim and witnesses, their interrogation and further evidence of the occurrence of sexual violence. This places a burden on the victim to prove that, for fear of honor issues or societal repercussions, making the Convention an ineffective alternative to protect many victims of sexual violence committed in conflict (Jerbawi 2010) [20].

Results

It appears clearly, after analyzing the legal principles contained in the texts of international law and the judgments of the International Criminal Court, that the gap between field practice and the principles of international law is very large with regard to health care for pregnant women and abortion services during wars, both internal and international. It became clear to us that the parties to these conflicts do not actually adhere to the international standards that require providing such care to pregnant women as stipulated in the Geneva Convention [21].

It also became clear to us that the majority of the ongoing military conflicts and wars in the world lack an effective mechanism to ensure respect for the obligations that must be provided to pregnant women and women who wish to have an abortion to preserve their lives, especially those conflicts in Syria, Yemen, Sudan, Ukraine, and Gaza, which has resulted in a large number of deaths due to unsafe childbirths [22].

But on the other hand, we must be frank in saying that international humanitarian law lacks precise provisions that criminalize the deprivation of obstetric care, and international law lacks provisions that could consider such deprivation as a war crime or a crime against humanity [23]. However, current reports issued by international organizations, whether the World Health Organization or the United Nations, consider that the deprivation of obstetric care during armed conflicts can be considered inhuman treatment according to the interpretations of international law, specifically the International Covenant on Civil and Political Rights [24].

It also became clear to us that the International Criminal Court, which deals with the most serious international crimes such as war crimes, genocide, crimes against humanity, and crimes of aggression, has not yet issued a direct ruling related to the deprivation of health care in armed conflicts. However, it has dealt with cases related to sexual violence, such as the case of the Prosecutor v. the accused known as Al Hassan, where the interpretation of such cases can be expanded to include the protection of women's reproductive and health rights during wartime [25].

Recent and independent data issued by the United Nations and the World Health Organization have shown that about 45% of births in armed conflict areas do not take place in medical institutions and that many pregnant women in current war zones do not receive care or even regular pregnancy follow-up, which leads to an increase in cases of abortion outside medical centers, resulting inevitably in deaths among those women who need immediate health care [26].

Unfortunately, it has been found that religious and sometimes cultural barriers play a major role in preventing women from obtaining safe abortion services during armed conflicts, even if the pregnancy resulted from crimes of rape [27].

Conclusion

At the end of this research, we reach the conclusion that one of the most complex legal and humanitarian issues in the present era is the protection of pregnant women and ensuring that they receive health care during pregnancy and the right to safe abortion during armed conflicts. Although international law

contains provisions that regulate all international and internal conflicts and includes legal texts that cover and punish all international crimes, the reality arising from armed conflicts shows that there is a gap between the field reality of women during wars and the provisions of international law, despite the existence of the Geneva Convention and the Additional Protocols. These rules, despite their importance, remain ineffective during armed conflicts and require a practical international mechanism agreed upon to implement them [28].

What is more serious is that some states, for religious, political, or cultural reasons, refuse reproductive health during armed conflicts, especially with regard to the right to safe abortion. As for the International Criminal Court, its perspective has remained linked to sexual violence and has not expanded to include deprivation of health care, despite the importance of the judgments it has issued and despite the fact that these judgments may be the legal basis on which different interpretations can be built to protect women during armed conflicts [29].

Based on the above, we recommend that the United Nations, as the body responsible for maintaining international peace and security, in cooperation with other organizations such as the International Committee of the Red Cross and the International Criminal Court, update its rules to include the deprivation of women from obstetric care and their right to abortion during wars. The discussion about the concept of reproductive health during times of armed conflicts must be closely linked to the humanitarian aid provided by international organizations to countries affected by armed conflicts [30].

In conclusion, we affirm the fact that the protection of women during armed conflicts is not only a moral or humanitarian issue but also a legal matter that must be addressed within the legal frameworks of international law, especially through the United Nations, which is responsible for maintaining international peace.

References

1.World Health Organization. *Maternal mortality in conflict settings and humanitarian emergencies.* Geneva: WHO; 2023.

2.United Nations Population Fund (UNFPA). *State of the World's Midwifery 2021.* New York: UNFPA; 2021.

3.International Committee of the Red Cross (ICRC). *Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I).* Geneva: ICRC; 1977.

4.International Committee of the Red Cross (ICRC). *Women and War: ICRC Study on the Impact of Armed Conflict on Women.* Geneva: ICRC; 2022.

5.United Nations Population Fund (UNFPA). *Reproductive Health in Emergencies: Syria, Yemen, and Ukraine.* New York: UNFPA; 2023.

6.Human Rights Watch. *A Matter of Life and Death: The Need for Access to Safe Abortion in Conflict Situations.* New York: HRW; 2022.

7.United Nations Human Rights Committee. *General Comment No. 36 on Article 6: Right to Life.* CCPR/C/GC/36. Geneva: United Nations; 2018.

8.International Criminal Court. *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Trial Judgment. The Hague: ICC; 26 June 2024.

9.Opinio Juris. *Al Hassan: The ICC's First Judgment on Gender Persecution.* 2024 Aug 2.

10.Zampas C, Brown R, Afulukwe O. *Interpreting International Humanitarian Law to Guarantee Abortion and Other Sexual and Reproductive Health Services in Armed Conflict.* Health and Human Rights Journal. 2024;26(1):31–43.

11.Abu Rabie MI. *Serious violations against pregnant women during the war on the Gaza Strip (deteriorating reproductive health).* Internal Displacement Monitoring Centre (IDMC); Dec 2024.

12.Cerulli F. *Access to Abortion for Rape Victims in Armed Conflicts: A Feminist Analysis.* Israel Law Review. 2024; 57:449–479.

13.De Vido S. *Violence against Women's Health through the Law of the UN Security Council.* QIL Zoom-in. 2020; 74:3–4.

14.Hedstrom J, Herder T. *Women's Sexual and Reproductive Health in War and Conflict: Are We Seeing the Full Picture?* Global Health Action. 2023;16(1):1–10.

15.Radhakrishnan A, Sarver E, Shubin G. *Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers.* Reproductive Health Matters.

2017;25(51):40–47.
16.Priddy A. *Tackling Impunity for Sexual Violence.* In: Bellal A, ed. *The War Report: Armed Conflict in 2014.* Oxford: Oxford University Press; 2015. p.68.
17.Verma A. *Access to Abortion and International Humanitarian Law.* Indian Journal of Integrated Research in Law. 2022;II(V).
18.Steains C. *Gender Issues.* In: Lee RS, ed. *The International Criminal Court: The Making of the Rome Statute.* The Hague: Kluwer Law International; 1999. p.366–367.
19.Tayebi MBHEA. *La protection des femmes et des enfants dans le droit des conflits armés.* Revista Misión Jurídica. 2016;9(11):97–110.
20.Jerbawi A, Khalil A. *Armed Conflicts & Security of Women.* Ramallah: Ibrahim Abu Lughod Institute of International Studies; 2010.
21.International Review of the Red Cross. Women's Health in Armed Conflicts: Between Law and Practice. Geneva: ICRC; 2024.
22.United Nations Office for the Coordination of Humanitarian Affairs (OCHA). Global Humanitarian Overview 2024: Health and Protection of Women in Conflict Zones. New York: United Nations; 2024.
23.Geneva Academy of International Humanitarian Law and Human Rights. Accountability Gaps in International Humanitarian Law: Health and Gender Perspectives. Geneva Academy Report; 2023.
24.Office of the High Commissioner for Human Rights (OHCHR). The Right to Health and Reproductive Autonomy under International Law. Geneva: OHCHR; 2024.
25.International Criminal Court. The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud – Summary of Judgment. The Hague: ICC Press Release; 2024.
26.World Health Organization & UNFPA. Maternal and Newborn Health in Conflict Settings: Global Data Update 2024. Geneva: WHO; 2024.
27.United Nations Security Council. Resolution 2467 on Women, Peace and Security. New York: United Nations; 2019.
28.International Committee of the Red Cross. *Strengthening Compliance with International Humanitarian Law: Report on Accountability and Protection.* Geneva: ICRC; 2024.
29.International Criminal Court. *Gender-based Crimes in Armed Conflicts: Evolving Interpretations under the Rome Statute.* The Hague: ICC Policy Paper; 2024.
30.United Nations Population Fund (UNFPA). *Reproductive Rights in Humanitarian Response: Policy Recommendations for UN Agencies and Member States.* New York: UNFPA; 2024.