ISRAEL'S OBLIGATIONS UNDER INTERNATIONAL LAW IN GAZA: A BRIEFING NOTE ON HOSPITALS

Protection of hospitals and other medical facilities

Hospitals and other medical units **exclusively** assigned to medical purposes must be respected and protected in all circumstances. However they **lose their protection** if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.[1]

Examples of use "to commit acts harmful to the enemy" include use to **shelter** able-bodied combatants, or to **store** arms or munitions, or as a **shield** for military action.[2] On the other hand the fact that small arms and ammunition taken from the wounded and not yet handed to the proper service are found in a medical unit does not deprive it of protection.[3]

Prior to an attack against a medical unit that is being used to commit acts harmful to the enemy, a **warning** has to be issued setting a reasonable time-limit where appropriate. An attack is only permitted after the warning has remained unheeded.[4]

Even when a medical unit has become a military objective because it is used to commit acts harmful to the enemy, an attack must still comply with the requirement of **proportionality**, that the expected civilian casualties and damage to civilian objects must not be excessive in relation to the anticipated military advantage in the judgment of a reasonable military commander with the information available at the time.[5] All feasible **precautions** must also be taken to avoid and minimise civilian casualties and damage to civilian objects.[6]

Al-Shifa Hospital

Israeli authorities have long believed that Hamas has used **basements** under and around the Al-Shifa hospital for military purposes.[7] CCTV footage found by the Israeli forces at the hospital shows that it was used for military purposes including **concealing able-bodied hostages** abducted from Israel, **shielding their captors** and **storing military equipment** taken from Israel.[8] Hamas personnel captured in Israel following the attack of 7 October 2023 have also stated under questioning that Hamas uses the Al Shifa hospital to **shield** personnel from Israeli strikes and to **store** weapons and ammunition, and that there is an extensive **underground complex** operated by Hamas beneath the hospital.[9] In view of this use, the hospital lost its protection in accordance with the rules set out above.

During the present conflict Israel has repeatedly warned that Hamas is using hospitals, including Al-Shifa, for military purposes.[10] Israeli soldiers entered the hospital in the early morning of 15 November 2023, accompanied by Israeli doctors, medical equipment, medical supplies and baby food. It appears that no weapons were fired

inside the hospital and there was no destruction of hospital facilities. The IDF stated they had given **12 hours' notice** to the authorities in Gaza that any military operation in the hospital must cease.[11]

Extensive tunnels and other facilities were subsequently found by the IDF underneath the hospital compound, with electricity supply and communications facilities provided from the hospital.[12] Weapons were also found inside the hospital.[13]

Other hospitals

Evidence of military use of other hospitals in the Gaza Strip has also been found on site[14] or obtained by questioning personnel.[15]

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1 ICRC Rules of Customary International Humanitarian Law, Rule 28; 1899 and 1907 Hague Regulations, Art 27; 1st Geneva Convention, Art. 19; 4th Geneva Convention, Art. 18; Additional Protocol I to the Geneva Conventions ("Additional Protocol I") Art. 12. It should be noted that Israel is not a party to the Additional Protocols, but the matters set out in this note and reflected in the Additional Protocols are generally considered to be binding on all States as customary international law.

2 ICRC Rules of Customary International Humanitarian Law, Rule 28; ICRC Commentary on 1st Geneva Convention, pp200-201

3 ICRC Rules of Customary International Humanitarian Law, Rule 28; 1st Geneva Convention, Art. 22; 4th Geneva Convention, Art. 19; Additional Protocol I, Art. 13(2)

4 ICRC Rules of Customary International Humanitarian Law, Rule 28; 1st Geneva Convention, Art. 21, 4th Geneva Convention, Art. 19, Additional Protocol I, Art. 13(1); Additional Protocol II, Art. 11(2)

5 ICRC Rules of Customary International Humanitarian Law, Rule 14

6 ICRC Rules of Customary International Humanitarian Law, Rule 15

7 https://web.archive.org/web/20090313095323/http://haaretz.com/hasen/spages/1054569.html; https://www.pbs.org/wnet/wideangle/wa-blog/gaza-er-hamas-hiding-in-shifa-hospital/4086/; https://www.timesofisrael.com/liveblog_entry/hamas-leaders-again-hiding-under-hospital/

8 https://twitter.com/talschneider/status/1726310948737077707; https://videoidf.azureedge.net/a72d538a-f733-45bc-a045-e6b432578160; https://videoidf.azureedge.net/7bf213e9-9301-436f-9a37-66fe5461a6c6; https://idfanc.activetrail.biz/ANC191120236486845465465; https://idfanc.activetrail.biz/ANC19112023468645854

9 https://www.ynetnews.com/article/bkrxjhcf6; https://www.theguardian.com/world/2023/oct/30/human-shield-israel-claim-hamas-command-centre-under-hospital-palestinian-civilian-gaza-city

10 https://www.pbs.org/newshour/world/stalemate-around-gazas-main-hospital-draws-out-as-israel-claims-hamas-is-hiding-inside; https://www.telegraph.co.uk/world-news/2023/11/07/hamas-fighters-last-stand-gaza-hospital/

11 https://www.theguardian.com/world/2023/nov/15/idf-entered-gaza-al-shifa-hospital-raid-targeted-operation-hamas

12 https://twitter.com/IDF/status/1727409278636478519; https://www.youtube.com/watch?v=PR2w_wDf-DY

13 https://www.youtube.com/watch?v=sTMFyD7ag5o

14 https://www.timesofisrael.com/idf-hamas-operated-command-center-likely-held-hostages-under-gaza-kids-hospital/; https://www.timesofisrael.com/idf-says-it-nabbed-some-90-terror-operatives-at-north-gaza-hospital-seized-weapons/

15 https://www.timesofisrael.com/gaza-hospital-director-admits-hamas-used-medical-complex-as-operational-hub/