

Operation Protective Edge: Medical facilities and IHL

Medical material and medicine

Before addressing the protection of medical facilities during hostilities it is important to reiterate that Israel, as the Occupying Power in the occupied Palestinian territory (oPt), which includes the Gaza Strip, has a duty to ensure that food and medical supplies are provided to the occupied Palestinian population.¹

As a result of the closure of Gaza and the more recent closure of the Rafah border crossing, hospitals and medical centres in Gaza were already low on essential equipment and supplies before the beginning of the current operation. This scarcity has been compounded by continuing hostilities between Israel and Palestinian armed groups. The Public Health sector is currently nearing collapse, with hospitals in Gaza now suffering from an acute shortage of fuel and medical supplies in addition to some damage to water infrastructure in certain cases.

Protection of Civilian Objects

All civilian objects are protected against direct attacks during hostilities. However, a key challenge is that objects considered civilian in nature may sometimes become military objects by virtue of their use for military purposes, such as command and control centers or weapons storage.

Special protection

Deliberate attacks against hospitals, medical staff, or medical transport are serious violations of IHL and are prosecutable as war crimes.² These objects have special protection under international humanitarian law (IHL) due to their inherent humanitarian character, which means that the circumstances in which they may lose their protection are extremely limited.³

Hospitals provide immediate and short-term care for civilians, but are also essential to the long-term needs of a civilian population. As such, an attack on a hospital or medical centre will also deprive civilians of medical care in the future. This is even more of an issue in the Gaza Strip, where the Israeli-imposed separation policy and closure have limited the availability of medical supplies and restricted the development and repair of essential infrastructure.

According to UN OCHA, several hospitals, clinics, ambulances and a treatment centre have sustained damage, while one doctor has been killed and some 20 medical staff injured since 7 July.⁴

¹ Article 55, GCIV.

² Article 18, Geneva Convention IV.

³ Rule 35 ICRC Customary IHL Rules.

⁴ Office for the coordination of humanitarian affairs, 'Gaza Emergency Humanitarian Snapshot', (14 July 2014). See also 'International activists staying at Gaza hospital the IDF plans to bomb', *Haaretz* (12 July 2014).

Loss of protection

During hostilities, accusations are sometimes made that one party is using hospitals “outside of their humanitarian duties” in “acts harmful to the enemy”. Examples of such acts would include storing weapons, the launch of attacks, or use as command centres, and are unlawful. This issue is addressed clearly in Article 19 of the Fourth Geneva Convention:

"The protection to which civilian hospitals are entitled shall not cease unless they are used to commit...acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded."⁵

While the period of ‘reasonable time’ is not specified, it must be ‘long enough’ to allow the hospital to respond to unfounded accusations, to cease the unlawful acts and retain its protected status, or to remove the hospital patients to safety before an attack.

However, even in a situation where a hospital is acting as a command centre, and after due warning has been given, any attack has to adhere to the principles of IHL in order to be lawful, namely proportionality and precaution. Only the specific part of the hospital in question, one particular wing, for example, could be targeted. Crucially, however, the damage to civilians must be carefully measured and it cannot exceed the expected military advantage of the attack. The threshold of proportionality for essential civilian infrastructure, including medical facilities and hospitals, is very high.

While it would depend on the exact circumstances of each case, it is difficult to imagine that the proportionality test would be satisfied in the Gaza Strip, especially bearing in mind the long-term damage to the civilian population⁶ and the current situation in the territory.

It is also worth noting that IHL actually envisages a situation where there might be a small amount of arms and ammunition present in a hospital, for example, those taken from wounded fighters who are brought in for treatment.

Again, simply providing a warning of impending attack is not sufficient, and does not absolve the attacker from its responsibilities. Also, it is important to highlight that, in cases of any doubt as to the use of the hospital for ‘unlawful acts’, the hospital should retain its protected status and not be attacked.⁷ In conclusion, the loss of protected status for hospitals or medical centres should be an extreme exception to the rule and should be avoided at all costs.

International Criminal Law

Attacks on medical facilities beyond the rare exceptions set out above have been criminalised under international criminal law.

"The act of intentionally directing attacks against medical services in the context of an armed conflict...is considered a war crime under humanitarian law."

Article 8(2)(b)(xxiv) and 8(2)(e)(ii) of the Rome Statute of the ICC

⁵ See also, Commentary to Article 19, GCIV.

⁶ This is based on the interpretation that the foreseeable, or ‘knock-on-effects’ of an attack should also be factored into the proportionality equation, so long as these effects can be reasonably expected.

⁷ Rule 6 ICRC Customary IHL Rules.

"A deliberate attack on personnel, buildings or transport clearly carrying one of the protective signs constitutes a war crime."

International Committee of the Red Cross (ICRC)

An intentional attack, launched in the knowledge that it will cause loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct military advantage anticipated is considered a serious violation of IHL and a war crime.

Article 8(2)(b)(iv) of the Rome Statute of the ICC

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