

Israel – Hamas 2023 Symposium – Facts Matter: Assessing the Al-Ahli Hospital Incident

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by [Aurel Sari](#) | Oct 19, 2023



In the evening hours of October 17, 2023, reports emerged of an explosion at the Al-Ahli Arab Hospital in the Gaza Strip. The Gazan Ministry of Health spoke of a massacre, suggesting that at least 500 people were killed in what it claimed was an Israeli air strike on the hospital. This account of the events was widely repeated by major media outlets, prompting several governments to condemn Israel and organizations such as Médecins Sans Frontières to express their horror at “the recent Israeli bombing of Ahli Arab Hospital.”

Within hours, the Israel Defense Forces (IDF) released a statement denying their involvement and suggesting that the hospital was damaged by a failed rocket launched by Palestinian Islamic Jihad, one of the armed groups operating in the Palestinian territories. The following day, President Biden confirmed this version of events during his visit to Israel. He stated, “Based on information we have today, it appears the result of an errant rocket fired by a terrorist group in Gaza.” Evidence on the ground also firmly points into this direction.

Regardless of who ultimately bears responsibility for the explosion at the Al-Ahli Hospital, the loss of innocent life is awful. That much should be common ground. Yet the incident also underlines that facts matter. While it may be tempting to allocate blame in response to the suffering playing out on our TV screens and our social media feeds, rushing to conclusions and throwing around allegations of war crimes or worse without at least a reasonably firm understanding of the facts does not help. Get the facts, identify the law, assess. In that order.

The importance of this point may be illustrated with a brief overview of how different factual scenarios lead to dramatically different legal outcomes under the customary rules of the law of armed conflict, which apply both to Israel and to Palestinian armed groups. Consider the following hypothetical scenarios.

Possible Scenarios

Scenario One

The IDF deliberately attacked the Al-Ahli Hospital without the latter qualifying as a military objective. Civilian hospitals are civilian objects that enjoy special protection under the law of armed conflict and must be respected and protected at all times. Civilians, medical personnel and the wounded and sick inside a hospital and in its vicinity also enjoy protection. Carrying out a deliberate attack directly against a civilian hospital and protected persons would be an indiscriminate attack that also amounts to a war crime. It cannot be justified.

Scenario Two

The IDF deliberately attacked the Al-Ahli Hospital and the latter did qualify as a military objective. The protection accorded to hospitals and other medical units ceases if they are used, outside their humanitarian function, to commit acts harmful to the enemy. In the present context, this might be the case, for example, if Hamas were to use a hospital as a base for conducting military operations against Israel. In such circumstances, an attack on a hospital would be permissible, though one would expect a warning to be issued and that warning, after the passing of a reasonable time limit, to go unheeded. The attack would also have to observe the rule of proportionality; any incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, expected from the attack must not be excessive in relation to the concrete and direct military advantage anticipated. Provided these conditions pertain, the attack might be lawful.

Scenario Three

The IDF conducted an attack against a military objective located in the vicinity of the Al-Ahli Hospital, rather than the hospital itself, and caused harm to the hospital incidentally. If the IDF expected its attack to cause such incidental harm, it would have had to comply with the proportionality rule, ensuring that the expected level of civilian harm was not excessive in relation to the military advantage anticipated. If the IDF did not expect the hospital to suffer

any harm, or expected significantly lower levels of injury or damage than actually occurred, this would raise the question whether it took all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. For instance, did those who planned and carried out the attack base their decisions on the information from all sources available to them at the relevant time?

Scenario Four

A weapon used by the IDF in an attack against another target malfunctioned and hit the hospital unintentionally. Here too the question is whether the IDF complied with the precautionary duty to avoid, and in any event to minimize, incidental civilian harm. If it was reasonably foreseeable and likely that a weapon might hit the hospital by accident, then all feasible steps had to be taken to avoid, or at least minimize, the eventuality of incidental civilian harm.

Scenario Five

Hamas or another Palestinian armed group fired a missile at a target located in Israel, but the missile for some reason hit the Al-Ahli Hospital by accident. As in the previous scenario, the legal assessment turns in part on the question whether or not the armed group concerned complied with its precautionary duties if the accident was reasonably foreseeable and likely. However, additional considerations apply. The missiles used by Palestinian groups are widely considered to be inherently indiscriminate weapons, as their lack of accuracy renders them incapable of distinguishing between civilian objects and military targets. The use of such weapons is prohibited. Moreover, if the weapons were not aimed at specific military objectives, their use would amount to an indiscriminate attack, which is also prohibited.

Scenario Six

Hamas or another Palestinian armed group fired a missile at a target located in Israel, the missile was intercepted by the IDF and the debris fell onto the Al-Ahli Hospital. As far as the Palestinian armed group is concerned, its obligation not to carry out indiscriminate attacks, as discussed in the previous scenario, is engaged. As far as the IDF is concerned, if it was reasonably foreseeable and likely that intercepting the missile would cause civilian harm, its precautionary duty to take all feasible steps to avoid, or at least minimize, such harm was engaged.

The bottom line is that witnessing tragedies such as the death of civilians on one side does not necessarily allow us to conclude, without more, that the other side failed to comply with its legal obligations.

Back to reality

Now that more of the relevant facts have come to light, where does this leave us? As noted earlier, it seems that the explosion at the Al-Ahli Hospital was caused by the malfunctioning of a rocket fired by Palestinian Islamic Jihad (PIJ). The legal implications were sketched out in Scenario Five above. A few more points are worth adding.

The use of weapons that are indiscriminate by nature and the conduct of attacks that are indiscriminate because they are not directed at a specific military objective is prohibited whether or not they succeed in hitting their original target. In other words, the fact that the PIJ rocket disintegrated before it reached Israel does not transform what was an indiscriminate weapon and an indiscriminate attack into discriminate ones; the launch of the rocket was a violation of the law of armed conflict on these grounds, notwithstanding its malfunction.

A party to the conflict must also give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit. If PIJ failed to give such a warning ahead of its rocket attack, this too was in breach of the law of armed conflict. Finally, if PIJ located the military objectives used in the attack within or near densely populated areas, and it would have been feasible to avoid doing so, it committed yet another breach.

Concluding Remarks

Experience teaches us that compliance with the rules of war is patchy and that respect for the law runs deeper with some belligerents than others. The longer the current round of the Israeli-Palestinian conflict continues, the more violations we are likely to witness. It is vital, both in the interest of the rule of law and for the sake of those caught up in the hostilities, that we demand compliance and call out violations—but we have to get the facts and the law right.

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