

Israel – Hamas 2024 Symposium – The Ibn Sina Hospital Raid and International Humanitarian Law

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by [Michael N. Schmitt](#) | Feb 1, 2024



On Monday, an Israeli security forces team conducted a raid into the Ibn Sina Hospital in the West Bank. During the raid, Mohammed Jalamneh, a Hamas commander, was killed. Also killed were two brothers, Basel and Mohammed Al-Ghazzawi, both members of Islamic Jihad who had been involved in recent attacks. Video of the incident released by the Palestinian Health Ministry shows the armed team of 12 in civilian clothes (several in medical garb) moving through the hospital carrying a wheelchair (see also here).

The hospital's medical director claimed the three were "executed as they slept," while a hospital spokesperson said the team attacked doctors and nurses. The IDF has not provided information on how the killings occurred, but the video shows no mistreatment of hospital personnel, only the search of one. Unfortunately, this conflict has witnessed widespread mis- and disinformation, such as mistaken allegations of IDF responsibility for the al Ahli Hospital explosion and wildly exaggerated claims of the resulting death toll. This propensity to fabricate and exaggerate facts has made it difficult to separate the wheat from the chaff when legally assessing incidents.

Labeling the group a “terrorist cell,” the IDF issued a statement in which it asserts that Jalamneh was “a Hamas terrorist who had recently been involved in promoting significant terrorist activity.” According to the IDF, he

had been in the Jenin Camp for a long period, had contacts with Hamas headquarters abroad and was even wounded when he tried to promote a car bombing attack. In addition, [he] transferred weapons and ammunition to terrorists in order to promote shooting attacks, and planned a raid attack inspired by the October 7th massacre.

The IDF statement explained that the raid was launched because Jalamneh “planned to carry out a terror attack in the immediate future and used the hospital as a hiding place.” Notably, Basel Al-Ghazzawi had been partially paralyzed during an earlier drone strike and was receiving treatment in the hospital’s rehabilitation ward.

Legal experts were quick to weigh in on the operation, raising the specter of IHL violations of the prohibitions on perfidious attacks, attacking individuals who are *hors de combat* due to wounds, and attacking a hospital. I agree that press reports on the incident present the first two issues. However, in this post, I will explain why it is premature to draw definitive conclusions about the lawfulness of the Israeli operation. As is often the case with the legal assessment of such operations, the devil is in the details.

The Legal Framework

Although traditional *law enforcement* operations conducted in occupied territory such as the West Bank are broadly subject to international human rights law and applicable domestic law, international humanitarian law (IHL) governs operations mounted with a nexus to the armed conflict. The raid was a classic “conduct of hostilities” operation against individuals who were members of a party to the conflict. This is so even though law enforcement and intelligence personnel played a role. Therefore, IHL is the appropriate legal regime for evaluating the operation.

In most IHL analyses, the first step is to classify the armed conflict as either international or non-international to determine which IHL rules apply. I am of the opinion that this conflict is non-international, but I admit that reasonable minds differ. However, in the case of the Ibn Sina raid, the relevant rules in both forms of conflict are nearly identical. Therefore, the analysis that follows should be treated as applying whatever one’s position on the issue of conflict classification.

Attacking Individuals

As will be discussed below, the facts remain unclear as to whether the Israeli team entered the hospital to kill one or more of the individuals or, instead, whether their deaths occurred when the team was forced to defend itself during an operation to capture them. However, this

distinction does not alter the applicable rules, for the law on “attack” is triggered whether the actions are offensive or defensive (see the well-accepted definition of attack in Additional Protocol I, [art. 49](#)).

The preliminary issue with respect to the use of lethal force against the three individuals is their status under IHL. In this case, the key rule is that “members of hostile, non-State armed groups may be made the object of attack unless they are placed hors de combat” (U.S. Department of Defense (DoD), [Law of War Manual](#), § 5.8.2.1). In IHL terms, such groups are labeled “organized armed groups” (OAG).

Therefore, as members of an OAG (Hamas and Islamic Jihad), Jalamneh and Mohammed Al-Ghazzawi were subject to capture or being killed by Israeli forces. In regard to attacking OAG members, the [International Committee of the Red Cross \(ICRC\)](#), some States, and a number of experts are of the view that only OAG members with a “continuous combat function” are targetable around the clock; other members may be attacked only for such time as they “directly participate in the hostilities.” The U.S. position and that of many other States and experts, including myself, is that this purported requirement is a misinterpretation of the law (DoD, [Law of War Manual](#), § 5.8.1.2).

However, assuming solely for the sake of discussion that the ICRC’s approach is not a misinterpretation, Jalamneh and Mohammed Al-Ghazzawi nevertheless performed paradigmatic continuous combat functions (planning and executing attacks) in their respective OAGs. As members of an OAG, there was no requirement that they be engaged in any hostilities-related conduct at the time of attack. To be clear, they could lawfully be killed even as they sleep. Nor, despite occasional claims to the contrary, is there any [requirement](#) that OAG members be captured instead of killed, even if feasible.

Basel Al-Ghazzawi’s status is more complicated because of his injuries. If he had left Islamic Jihad as a result of those injuries, his status was that of a civilian protected from *direct* attack (see discussion in DoD, [Law of War Manual](#), § 5.8.4.1). If his death was instead *incidental* to the attack on the other two, it would factor into the proportionality and precautions in attack assessments as so-called collateral damage.

The complication is that he may have been *hors de combat*, a French phrase denoting being out of the battle. It has long been accepted as a matter of customary law that attacking persons who are *hors de combat* is an IHL violation in both international and non-international armed conflict and a war crime in at least international (in my view, non-international too) armed conflict (see Hague Regulations, [art. 23\(c\)](#); common [art. 3](#) of the Geneva Conventions; Additional Protocol I, [arts. 41\(1\)](#) and [85\(3\)\(e\)](#); DoD, [Law of War Manual](#), § 5.9; ICRC, [Customary IHL study, rule 47](#); Rome Statute of the International Criminal Court (ICC), [art. 8\(2\)\(b\)\(vi\)](#)).

There are numerous ways an individual can be rendered *hors de combat* (e.g., surrender or capture), but in this case, the question is whether Basel Al-Ghazzawi was defenseless due to his wounds. To be defenseless means an individual is definitively out of the fight. This requires that the wounded soldier not continue to participate in the hostilities. As the DoD *Law of War Manual* explains, “[i]n order to receive protection as *hors de combat*, the person must be wholly disabled from fighting. On the other hand, many combatants suffer from wounds and sickness but nevertheless continue to fight and would not be protected” (§ 5.9.4). For instance, if Basel Al-Ghazzawi picked up a weapon to engage the Israeli team as they entered the room, he would have forfeited *hors de combat* status.

Moreover, the requirement to desist from participation in the conflict is not limited to the moment of attack. For example, an amputee can still participate in military activities such as operational planning, training, logistics, etc. Indeed, there are many examples in the U.S. armed forces of personnel remaining on active duty and continuing to contribute meaningfully after suffering severe wounds. Those who do are no longer *hors de combat*. In this case, therefore, a further question is whether Basel Al-Ghazzawi was still engaging in activities supporting Islamic Jihad (or Hamas). If the Israeli assertion that Jalamneh was planning an attack from the hospital while hiding there is accurate, it is certainly possible that Al-Ghazzawi may have been contributing to that planning in some way.

To summarize, there is no question that Jalamneh and Mohammed Al-Ghazzawi were valid targets under IHL. Whether Basel Al-Ghazzawi was directly targetable depends on his activities. If he was in any meaningful way participating in or supporting military operations by Hamas or Islamic Jihad, he was also subject to attack despite his condition.

Protection of Hospitals

Before turning to the second key issue raised in the raid, perfidious attack, it is necessary to dispense with one red herring that has appeared repeatedly on social media. Despite claims to the contrary, the Israeli operation was not an *attack* on a hospital. Rather, it was mounted *in lieu of* an attack. The attacks, whether offensive or defensive in nature, were against the three individuals who were killed.

But even if the raid had been an attack on the facility, a hospital that the enemy is using for military purposes is a military objective “by use” under IHL and may be attacked subject to the application of the rule of proportionality and the requirement to take precautions in attack including a warning requirement (see my extended explanation [here](#)). Of course, military personnel and other fighters may visit the wounded in a hospital without the facility losing its protection, so long as strict conditions, such as consent by the medical authorities and non-interference with medical care, are satisfied. But in this case, the IDF has stated that Jalamneh was using the hospital as a hiding place and as a location from which attacks were being planned. This activity unambiguously rendered it a military objective. But, again, as a matter of law, there was no attack on the hospital.

As I have explained before, there is a further obligation to respect and protect civilian hospitals, which applies even when they have lost their protection, as was the case here. The obligation requires parties to the conflict to avoid unnecessarily interfering with their medical functions. However, the surgical nature of the raid suggests compliance, for although the operation was disruptive, the hospital continued providing most medical care with little interruption.

Perfidious Attack?

Most condemnation of the Israeli operation has centered on the wear of civilian and medical attire. As I have explained in a previous post with Lieutenant Chris Koschinitzky, wearing civilian clothing is not a violation of IHL; instead, it results in loss of prisoner of war status and combatant immunity upon capture during an international armed conflict. Any such purported prohibition in the context of a non-international armed conflict would be even less supportable.

Nor is there an IHL prohibition on pretending to be medical personnel *per se*. Instead, the rules prohibit the misuse of protected emblems such as the Red Cross and Red Crescent (see, e.g., DoD, Law of War Manual, § 5.24), medical facilities, and medical transports (see here). The question concerning the wear of civilian and medical clothing is, instead, whether it is a component of a perfidious attack, an IHL violation I explored in greater depth in an earlier post on assassination.

Article 37(1) of Additional Protocol I is, in substantial part, considered to reflect customary law: “It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy” (see also Hague Regulations, art. 23(b); DoD, Law of War Manual, § 5.22; ICRC, Customary IHL study, rule 65). In other words, perfidy is a tactic designed to cause the enemy to lower its guard. Among the examples provided by Article 37 is feigning civilian status, which would also encompass the wear of medical garb. Perfidious attack is a war crime in international and non-international armed conflict (see, e.g., Rome Statute of the ICC, arts. 8(2)(b)(xi) and 8(2)(e)(ix)).

There are two problems with assertions that because of the wear of the civilian and medical garb, the Israeli operation was self-evidently a perfidious attack. The first is the scope of the prohibition. Unlike parties to Additional Protocol I during an international armed conflict, Israel is not bound by the prohibition on using perfidy to *capture* the enemy, for that requirement is not customary (but see ICRC, Customary IHL study, rule 65). For instance, the U.S. DoD Law of War Manual limits the prohibition to “teachery or perfidy used to kill or wound,” observing that “[t]he Department of Defense has not interpreted customary international law to prohibit U.S. forces from seeking to capture by resort to perfidy” (§

5.22.2.1). Similarly, the *Tallinn Manual* and *Harvard Air and Missile Warfare Manual* experts only agreed that perfidy was unlawful under customary law when used to wound or kill the enemy (rules 122 & 111, respectively).

In my estimation, the argument that the prohibition excludes the use of perfidy to capture is sound. Therefore, the first question is, what was the objective of the Israeli team? I can only speculate, but the fact that they carried a wheelchair even after they revealed their weapons augurs against the conclusion that they simply intended to kill Jalamneh. Logic would suggest that if the intent was to kill him, the team would have discarded the unwieldy wheelchair as soon as it no longer served the purpose of misleading the enemy. And much has been made of the fact that the team appears to have also carried silenced weapons, the suggestion being that this demonstrates the intent to kill him. But the team might have had them to facilitate spiriting Jalamneh out of the hospital without alerting Hamas and other fighters. And indeed the intelligence value of such leaders buttresses the possibility that Israel intended to capture rather than kill them.

The second problem with definitively labeling the operation a perfidious attack, even if the objective was to kill Jalamneh, is that once the team entered the hospital, the video demonstrates that they took out their weapons as they proceeded up to the third floor. At that point, there could be little reasonable doubt to anyone observing them that they were Israelis conducting a military operation; there was no longer any feigning of civilian status to invite the confidence of the enemy. This begs the question of when the prohibition on wearing civilian clothes preceding an attack kicks in. In my view, a reasonable interpretation would not include crossing through enemy-held territory but would include, for instance, entering the hospital and searching for their targets. It appears that once the team did enter the hospital, they took steps that would render them no longer mistaken for medical personnel or other civilians.

Again, whether Israel engaged in a perfidious attack in violation of IHL is fact-dependent. The two key questions are what was the team's intent, and when were they no longer acting perfidiously to deceive the enemy to achieve their objective?

Concluding Thoughts

Ironically, Hamas, which has embraced IHL violations as a strategy, labeled the killings "a vile crime that will not go unpunished." But Hamas's violations do not serve to release Israel from its own obligations.

Despite the almost instant criticism of the operation, the publicly available facts are insufficient to draw any definitive conclusion regarding the raid's lawfulness. I can envision circumstances in which elements of the raid were unlawful, but I can also craft a reasonable scenario in which the entire operation was conducted in compliance with IHL. Thus, as I have counseled in a previous *Articles of War* post, an objective assessment of the Ibn Sina

Hospital raid would benefit from greater evidentiary patience and more granular legal analysis. Hopefully, legal pundits will move more cautiously and deliberately through the facts and law when assessing future complex incidents.

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