

# **ISRAEL'S RIGHT OF SELF DEFENCE AND THE USE OF CIVILIAN FACILITIES AS MILITARY CENTERS GAZA: AN APPRAISAL INTERNATIONAL HUMANITARIAN LAW**

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## **ABSTRACT**

International Humanitarian Law which is rooted in the Geneva Conventions of 1949 and customary international law, is designed to safeguard civilians and those no longer active in combat, such as surrendered soldiers, and to restrict weaponry and combat tactics. Its provisions, which are binding on all states and non-state armed groups in a conflict, prohibit indiscriminate attacks, targeting civilians, and collective punishment, regardless of reciprocal actions or military disparities. In light of the ongoing investigation by the International Criminal Court and mounting evidence collected by human rights organizations, there is a pressing call for clear statements from legal authorities on the applicability of international law to the current situation in the Gaza Strip. The paper recommends that any entities, irrespective of their political or military stature, found responsible for war crimes in the Gaza Strip should face legal repercussions. The paper concluded that the pursuit of accountability is a crucial step toward halting the cycle of violence and upholding the principles of international humanitarian law.

## **MEANING OF INTERNATIONAL HUMANITARIAN LAW?**

Prior to the evolution of international humanitarian law, once there was fighting between states, the ensuing was often one where the ordinary laws of peace existing between the warring states superseded by a state of chaos, brutality and inhumane treatment between the parties to the conflict<sup>1</sup>. To regulate such conduct and reduce the dehumanization of individuals, it was inevitable that a body of law aimed at regulating activities during the theatre of war would be developed<sup>2</sup>. It was the need for such body of law that led to the evolution of international humanitarian law. International humanitarian law therefore is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the laws of war, the laws and customs of war or the law of armed conflict<sup>3</sup>. International humanitarian law is a branch of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practice considered by them as legally binding, and general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter. It comprises of all those rules of international law which are designed to regulate the treatment of the individual-civilian or military, wounded or active-in armed conflict. International humanitarian law is a branch of international law dealing with such matters as the use of weapons and other means of warfare, the treatment of war victims by the enemy and

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<sup>1</sup>Chris C. Nwigwe, *International Humanitarian Law*, (Readwide Publishers, Accra Ghana” 2010) p 1.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

generally the direct impact of war on human life and liberty<sup>4</sup>.

Another issue which needs to be treated here is the difference between international humanitarian law and international human rights law. While human rights laws operate primarily in peace time, International humanitarian law apply only to armed conflict and seek to regulate the relationship between adversaries; it does not cover internal tensions or disturbances such as isolated acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting. International humanitarian law distinguishes between international and non-international armed conflict. International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocols I and II. This however, does not mean that human rights are suspended or inapplicable during armed conflicts. Human rights are also applicable during armed conflict as individual rights are protected<sup>5</sup>. International law seeks to prohibit the use of force but at the same time it does not make the use of force totally illegal. It is provided in article 2(4) that:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

This general prohibition on the non use of force has been confirmed by the International Court of Justice in the *Corfu Channel Case*<sup>6</sup> and the *Case Concerning Military and Paramilitary Activities In and Against Nicaragua*<sup>7</sup> and is considered to be a rule of *jus cogens* – that is, a peremptory norm of international law from which no subject of international law may derogate. The two main exceptions<sup>8</sup> to this general prohibition are: the right of a state to use force in self-defence or collective self-defence under Article 51 of the Charter, and the right of the Security Council under Article 42 to authorize the use of force to maintain or restore international peace and security by virtue of Article 39. Another exception has been added by scholars of international humanitarian law that humanitarian intervention is the third exception to the rule of non use of force against the territorial integrity of another state. But this is a debate for another day as this paper focuses on the war on Gaza and Israel's right to self-defence vis-à-vis the protection of the Palestinians civilian infrastructure and population

#### **(a) Israel's Right of self defence**

One of the exceptions to the non use of force provided in article 2(4) of the United Nations Charter is the right of self defence and it is provided in Article 51<sup>9</sup> to the effect that:

Nothing in the present Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs against a member of the UN until the security Council has taken measures necessary to maintain international peace and security.

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<sup>4</sup> See Black's Law Dictionary, (7<sup>th</sup> ed.) s p.745

<sup>5</sup> See the Advisory Opinion of the ICJ on the Threat or Use of Nuclear Weapons, ICJ Reports 1996, 226 at para.25

<sup>6</sup> *Corfu Channel* ((U.K. v. Alb.), International Court of Justice 19 49, ( I.C.J.) 4

<sup>7</sup> *Military and Paramilitary Activities*(Nic. v. U.S.),International Court of Justice, (Nic. v. U.S.), 1986 (I.C.J.) 14

<sup>8</sup> See S D Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order*, ( University of Pennsylvania, 2009) p. 9 available [www.upenn.edu/pennpress/book](http://www.upenn.edu/pennpress/book) accessed on 8 October 2018.

<sup>9</sup> Article 51 UN Charter

There is considerable controversy regarding article 51 of the Charter, as the scope of the self defence and the circumstances under which the right of self defence may be exercised are ill defined. And it is also applicable to what the Charter meant by armed attack. The most contentious issue being whether the right of self defence can only be invoked when an armed attack has occurred or whether it can be invoked in anticipation of armed attack. On the one side, there is a view that article 51 read in conjunction with article 2(4) will prohibit such anticipatory right where no attack has actually occurred and posit that there is no other circumstance to invoke the right of self defence except upon armed attack<sup>10</sup>. The reason why anticipatory self defence is frowned upon is that states should not be allowed on their own to determine what should be called preventive acts. If it were to be otherwise, they argued, it would lead to a world of uncertainty and would lead to the law of the jungle<sup>11</sup>.

According to *Nwigwe*, the right of self defence is not only limited to defence of the individual or the civilian population as a whole but extends to the defence of other objects like factories, military installments within the territory of the state being attacked<sup>12</sup>. The provisions under Article 51 implies that the use of force, war or armed conflicts are not totally illegal and can validly be termed legal if the provisions of Article 39-43 and 51 of the UN Charter are complied with. On the other hand, there are legal scholars who argue that article 51 should not be interpreted to exclude anticipatory self defence. The case of *Nicaragua V. United State*<sup>13</sup> is instructive with respect to the right of self-defence. The United State claim that she was acting in the collective self defence of *El Salvador* was held by the International Court of Justice that the US has been involved in the unlawful use of force. They could not rely on article 51 of the Charter since they acted without the consent of *El Salvador* and thus the claim of collective self-defence cannot succeed or be sustained.

On 7 October 2023, the paramilitary wings of *Hamas*, the *Palestinian Islamic Jihad* and other armed groups in Palestine launched a series of coordinated armed incursions into the *Gaza envelope* of neighboring *Israeli* territory, the first invasion of Israel since the *1948 Arab–Israeli War*. This incursion fell on the Jewish holiday of *Simchat Torah*, right after the festival of *Sukkot*, a *Sabbath* day. The attacks initiated the current *Israel–Hamas war*, almost exactly 50 years after *Operation Badr* and the greater *Yom Kippur War* of 6 October 1973. Hamas and other Palestinian armed groups named the attacks Operation Al-Aqsa Flood while in Israel they are referred to as black Saturday or the Simchat Torah Massacre and internationally as the 7 October attack.<sup>14</sup> The indiscriminate attacks was a violation of International humanitarian law as it did not distinguish between military targets and civilian populations of Israel.<sup>15</sup>

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<sup>10</sup>Louis Henkin, *How Nations Behave: Law and Foreign Policy*, (Columbian University Press, New York: 1979) pp. 140-143

<sup>11</sup>*Ibid*

<sup>12</sup>Chris Nwigwe, Op. Cit, footnote 1

<sup>13</sup> 1984 ICJ Report. 392

<sup>14</sup>. The October 7 Attack on Israel: [https://en.wikipedia.org/wiki/Israeli-occupied\\_territories](https://en.wikipedia.org/wiki/Israeli-occupied_territories) accessed on 18th January, 2024.

<sup>15</sup>. See Article 47 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, also see Article 8 of Rome Statute Of The International Criminal Court Article, as well as Articles 85, 88, and 89 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

The attacks began in the early morning with a rocket barrage of at least 3,000 rockets launched against Israel. Hamas fighters breached the Gaza–Israel barrier, attacking Israeli civilian communities and military bases as well as a music festival near Re'im, resulting in 1,139 deaths – 695 Israeli civilians (including 36 children), 71 foreign nationals, and 373 members of the security forces.<sup>16</sup> Approximately 250 Israeli civilians and soldiers were taken as hostages to the Gaza Strip, including 30 children, with the stated goal to force Israel to release Palestinian prisoners. Israel and international media have reported rape and sexual assault by Hamas fighters with documentary footage and photographs, which Hamas has denied. It was this attack that prompted Israel's response which has been criticized as highly disproportionate to the initial Hamas attacks. Hamas said its attack was in response to the continued Israeli occupation of the Palestinian territories, the blockade of the Gaza Strip, the expansion of illegal Israeli settlements, rising Israeli settler violence, and recent escalations<sup>17</sup>. At least 44 nations denounced the attack as terrorism, while some Arab and Muslim countries blamed the Israeli occupation of the Palestinian territories as the root cause of the attack. The day was labeled the bloodiest in Israel's history and the deadliest for Jews since the Holocaust<sup>18</sup>.

Israel's response to these attacks has been criticized as being disproportionate. One basic element of self defence by victim states is that such actions must be necessary and proportionate to the acts of aggression by the other state. It is important to note that when a state acts in self defence, it must limit itself to rejecting the armed attack. As noted by the ICJ in *Nicaragua's case*<sup>19</sup>, self defence only warrants measures which are proportionate to the armed attack and necessary to respond to it. The state acting in self defence must never occupy the territory of the attacked state unless such occupation is aimed at preventing the later from continuing the acts of aggression. This is the problem. Israel claims that the war is necessary to prevent such future attack by Hamas and has vowed to continue despite mounting international criticism of their military tactics.

## SCOPE OF INTERNATIONAL HUMANITARIAN LAW

International humanitarian law covers two areas namely:

The protection of those who are not, or no longer taking part in fighting and restrictions on the means of warfare in particular weapons and the methods of warfare, such as military tactics.

International humanitarian law protects those who do not take part in the fighting, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part, such as wounded, shipwrecked and sick combatants, and prisoners of war. These categories of person are entitled to respect for their lives and for their physical and mental integrity. They also enjoy legal guarantees. They must be protected and treated humanely in all circumstances, with no adverse distinction. More specifically: it is forbidden to kill or wound an enemy who surrenders or is unable to fight; the sick and wounded must be collected and cared for by the party in whose power they find themselves. Medical personnel, supplies, hospitals and

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<sup>16</sup>.The October 7 Attack on Israel: [https://en.wikipedia.org/wiki/Israeli-occupied\\_territories](https://en.wikipedia.org/wiki/Israeli-occupied_territories) accessed on 18th January, 2024

<sup>17</sup>*Ibid*

<sup>18</sup>*Ibid*

<sup>19</sup>.1984 ICJ Report. Supra

ambulances must all be protected. According to *Nwigwe*<sup>20</sup>, there are also detailed rules governing the conditions of detention for prisoners of war and the way in which civilians are to be treated when under the authority of an enemy power. This includes the provision of food, shelter and medical care, and the right to exchange messages with their families. Criticism has mounted against Israel for tactics that appear to subject the civilian population of Gaza to collective punishment. The protracted blockade and recurrent airstrikes, which have led to high civilian casualties, especially among children, have prompted calls for investigations by international organizations including the UN Human Rights Watch. There are reports that since October 7th, Israeli operations have resulted in over 24,400 Palestinian fatalities, raising questions about the proportionality and discrimination of these attacks<sup>21</sup>.

Secondly, about weapons and tactics, International humanitarian law prohibits all means and methods of warfare which fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property; cause superfluous injury or unnecessary suffering, cause severe or long-term damage to the environment. Humanitarian law has therefore banned the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines. All these prohibitions are contained in the Hague Conventions, the four Geneva Conventions and the two Additional Protocols to the Conventions and other Conventions aimed at regulating military combat.

#### **(i) Protection of the Civilian Protection**

The Geneva Conventions, which were adopted before 1949 were concerned with combatants only, not with civilians. The events of World War II showed the disastrous consequences of the absence of a convention for the protection of civilians in wartime. The fourth Convention<sup>22</sup> adopted in 1949 takes account of the experiences of World War II. It is composed of 159 articles. The bulk of the Convention deals with the status and treatment of protected persons, distinguishing between the situation of foreigners on the territory of one of the parties to the conflict and that of civilians in occupied territory. It spells out the obligations of the Occupying Power vis-à-vis the civilian population and contains detailed provisions on humanitarian relief for populations in occupied territory. It also contains a specific regime for the treatment of civilian internees.

By Articles 13 and 32, civilians are to be protected from murder, torture or brutality, and from discrimination on the basis of race, nationality, religion or political opinion while by Article 14, hospitals and safety zones may be established for the wounded, sick, and aged, children under 15, expectant mothers and mothers of children under seven. Article 18 equally guarantees the inviolability of civilian hospitals and their staff during wartime but Israel has bombed several hospitals in Gaza in the cause of the war, claiming that those hospitals were used by Hamas as command centers. The Convention also provides for the care of children who are orphaned or separated from their families. The International Committee of the Red Cross's Central Tracing and Protection Agency is also authorized to transmit family news and assist with family

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<sup>20</sup> Chris Nwigwe, Op. Cit., pg. 45

<sup>21</sup> See Aljazeera English News Coverage of January, 18, 2023

<sup>22</sup> The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949

reunifications, with the help of Red Cross and Red Crescent national societies<sup>23</sup>. Article 27 provides that the safety, honor, family rights, religious practices, manners and customs of civilians are to be respected while Articles 33 and 34 provides that pillage, reprisals, indiscriminate destruction of property and the taking of hostages are prohibited. They<sup>24</sup> are not to be subjected to collective punishment or deportation and the civilians cannot be forced to do military-related work for an occupying force<sup>25</sup> while they are to be paid fairly for any assigned work<sup>26</sup>. Occupying powers are to provide food and medical supplies as necessary to the population and maintain medical and public health facilities while Medical supplies and objects used for religious worship are to be allowed passage<sup>27</sup>.

However, when that is not possible, they are to facilitate relief shipments by impartial humanitarian organizations such as the International Committee of the Red Cross. Red Cross or other impartial humanitarian relief organizations authorized by the parties to the conflict are to be allowed to continue their activities<sup>28</sup>. The Convention makes provision for the continuance of public services. It provides that Public officials will be permitted to continue their duties and the Laws of the occupied territory will remain in force unless they present a security threat<sup>29</sup>. In the same fashion, Articles 79-135 provides in summary that if security allows, civilians must be permitted to lead normal lives. They are not to be deported or interned—except for imperative reasons of security. If internment is necessary, conditions should be at least comparable to those set forth for prisoners of war. Articles 89-91 provide that internees are to receive adequate food, clothing and medical care, and protected from the dangers of war. Article 106 is to the effect that Information about internees is to be sent to the Central Tracing Agency while Internees have the right to send and receive mail and receive relief shipments<sup>30</sup>. Children, pregnant women, mothers with infants and young children, the wounded and sick and those who have been interned for a long time are to be released as soon as possible<sup>31</sup>.

However, Israel has been accused of using prohibited weapons in the Gaza war. There are also serious allegations that Israel has employed white phosphorus, a substance with devastating effects on human tissue, in densely populated areas of Gaza. Such use in civilian areas could contravene International Humanitarian Law due to the indiscriminate suffering it causes. On the Palestinian side, armed groups stand accused of war crimes for the intentional targeting of Israeli civilians, the indiscriminate firing of rockets into Israeli territories, and the usage of human shields. These actions breach the cardinal rules of International Humanitarian Law and have resulted in approximately 1,400 Israeli deaths reported by the government since the conflict's resurgence.

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<sup>23</sup> See Articles 24, 25

<sup>24</sup> Articles 33, 49

<sup>25</sup> Article 40

<sup>26</sup> Article 54

<sup>27</sup> Articles 55, 58

<sup>28</sup> Article 59

<sup>29</sup> Article 64

<sup>30</sup> Articles 107, 108

<sup>31</sup> Article 132

### **COMMON ARTICLE 3**

All four Geneva Conventions contain an identical Article 3, extending general coverage to “conflicts not of an international character.” In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat (out of the fight) by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. The wounded, sick and shipwrecked shall be collected and cared for.

**Article 3, common to the four Geneva Conventions**, marked a breakthrough, as it covered, for the first time, situations of non-international armed conflicts. These types of conflicts vary greatly. They include traditional civil wars, internal armed conflicts that spill over into other States or internal conflicts in which third States or a multinational force intervenes alongside the government. Common Article 3 establishes fundamental rules from which no derogation is permitted. It is like a mini-Convention within the Conventions as it contains the essential rules of the Geneva Conventions in a condensed format and makes them applicable to conflicts not of an international character.

It requires humane treatment for all persons in enemy hands, without any adverse distinction. It specifically prohibits murder, mutilation, torture, cruel, humiliating and degrading treatment, the taking of hostages and unfair trial. It requires that the wounded, sick and shipwrecked be collected and cared for. It grants the International Committee of the Red Cross the right to offer its services to the parties to the conflict. It calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through so-called special agreements. It recognizes that the application of these rules does not affect the legal status of the parties to the conflict. Given that most armed conflicts today are non-international, applying Common Article 3 is of the utmost importance. Its full respect is required.

### **HAS ISRAEL COMMITTED WAR CRIMES IN GAZA?**

Israel is alleged to have violated medical neutrality in its war with Hamas and it is a violation of International Humanitarian Law because article 18 of the Fourth Geneva Convention prohibits the violation of medical facilities during war time. In response, Israel claims that the targeting of the hospitals are justified because Hamas uses the basements of the hospitals as command center and as military facilities thus violating international laws which prohibits the use of civilian structures for military purposes. The question whether Israel has committed war crimes in Gaza

is as complex as the middle east conflict itself. For instance, on November, 8, 2023, the United Nations High Commissioner for Human Rights Volker Turk said on war crimes had been committed by both Israel and Hamas in the conflict that erupted following the October 7 attacks on Israel<sup>32</sup>. The UN High Commissioner was quoted as saying that:

The atrocities perpetrated by Palestinian armed groups on 7 October were heinous, they were war crimes including the continued holding of hostages. Also the collective punishment by Israel of Palestinian civilians is also a war crime, as is unlawful forcible evacuation of civilians.

Speaking of the humanitarian aid that has been delivered through Rafah, Turk said:

The lifeline has been unjustly, outrageously thin. Israel has bombarded Gaza unrelentingly in response to a cross-border Hamas raid on southern Israel on Oct. 7, in which gunmen killed 1,400 people and took about 240 hostages. Israeli bombardments have killed more than 10,500, including many women and children. I call – as a matter of urgency - for the parties now to agree a ceasefire

The UN Chief added that there are three human rights imperatives to the conflict: the delivery of sufficient humanitarian aid to Gaza, the release of hostages and to implementation of a durable end to the occupation<sup>33</sup>.

Hamas has refused calls for the release of hostages it captured on October 7 while Israel on her side has resisted calls by the United Nations and G7 nations for a humanitarian pause in the hostilities to alleviate the suffering in Gaza, saying it will not agree to a ceasefire until the hostages are released. Hamas says it will not stop fighting while Gaza is under attack. Israel has a right of self defense under article 51 of the UN Charter and that includes the quest to free and return the hostages. The civilian deaths that happens in the cause of the war has been argued as consequences of war- that even the most holy war have unintended casualties. Israel insists it is fighting a war of survival and it is doing her best to protect civilian population and that it regrets the unintended civilian deaths.

On November, 20, 2023 Israeli forces and Hamas fighters *clashed* near a hospital next to the Gazan city of Jabalia, which has seen fierce *fighting* between Israel and Hamas<sup>34</sup>. The Hamas-run Gaza Health Ministry claimed that Israeli tank fire killed 12 Palestinians at the medical facility, known as the Indonesian Hospital. The Israel Defense Forces (IDF) *denied* this claim. After “terrorists opened fire from within the Indonesian Hospital,” Israeli “troops directly targeted the specific source of enemy fire” but launched no shells at the hospital.

In describing Hamas tactics of using civilian infrastructure as military command centers, *Joe Truzman, Research Analyst at FDD’s Long War Journal* stated thus:

Hamas has been building a terror fortress in Gaza for almost two decades. Hamas pervades every aspect of Gaza: the government, schools, hospitals, mosques, international organizations, and media. The IDF did not choose these

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<sup>32</sup>. Nafisa Eltahir: <https://www.reuters.com/world/middle-east/un-rights-chief-says-war-crimes-committed-both-sides-israel-hamas-conflict-2023-11-08/> accessed on 18<sup>th</sup> January, 2024.

<sup>33</sup>*Ibid*

<sup>34</sup>. Enia Krivine, Senior Director of FDD’s Israel Program and National Security Network <https://www.fdd.org/analysis/2023/11/21/hamas-using-hospital-as-cover-for-attacks/> accessed on 18 January, 2024.



battlefields. Hamas did. Despite its shocking nature, it is not surprising that Hamas and other terrorist organizations exploit hospitals in the Gaza Strip as an essential component of their military operations. It is imperative to acknowledge that Hamas and its allies take advantage of any viable resources at their disposal, even exploiting sick and injured Palestinians to shield themselves and conduct attacks against Israeli targets.<sup>35</sup>

Earlier in November 2023, the Israeli Defense Force published information on Hamas's extensive use of hospitals, including the Indonesian Hospital, as cover for terror activity. An Israeli military spokesman, Rear Adm. Daniel Hagari, released satellite imagery and other intelligence indicating Hamas had built a tunnel network under the hospital and had stationed rocket launchers a few dozen meters away<sup>36</sup>. Hagari also shared audio in which Hamas officials allegedly acknowledge using fuel reserves belonging to the hospital<sup>37</sup>.

During the fighting within and around the Al-Shifa Hospital complex, the biggest hospital complex in Gaza City, Israeli forces found an unspecified amount of weaponry. The IDF also said it uncovered "concrete evidence that Hamas terrorists used the Shifa hospital as a terror headquarters." Israel has warned for years that Hamas leaders were exploiting the hospital's protected status by digging their main bunker and tunnel network below the facility. The IDF also found weapons on November 13 in the basement of Rantisi Hospital, which is north of Gaza City<sup>38</sup>.

If these discoveries and claims by Israel are verified and accepted as true, then the claim or allegation that Israel is committing war crimes and genocide in Gaza will become unfounded because in the circumstances they found themselves in the Gaza war, Israeli is permitted under international Law to defend itself<sup>39</sup>. This is because if enemy fire is coming against Israel from within a hospital complex or any other civilian infrastructure, Israel is entitled to defend itself and the person using the hospital as military base will be the one violating international humanitarian law.

## CONCLUSION

International Humanitarian Law which is rooted in the Geneva Conventions of 1949 and customary international law, is designed to safeguard civilians and those no longer active in combat, such as surrendered soldiers, and to restrict weaponry and combat tactics. Its provisions, which are binding on all states and non-state armed groups in a conflict, prohibit indiscriminate attacks, targeting civilians, and collective punishment, regardless of reciprocal actions or military disparities including targeting of hospitals and churches and mosques. Israel accuses Hamas of using these civilian facilities as military command centers and thus a justification for the attacks by Israel on these facilities. It is recommended that the United Nations agencies responsible for preventing the violation of international humanitarian laws should carry out investigations to unravel the party responsible for the violation of international law and to apportion the appropriate sanction. This is because the pursuit of accountability is a crucial step toward halting the cycle of violence and upholding the principles of international law.

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<sup>35</sup>*Ibid*

<sup>36</sup>*Ibid*

<sup>37</sup>*Ibid*

<sup>38</sup>Op. cit

<sup>39</sup>See article 51 UN Charter