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Medical Lawfare: The Nakba and Israel's Attacks on Palestinian Healthcare

Nicola Perugini  and Neve Gordon 

ABSTRACT

In this article, the authors coin the phrase *medical lawfare* to describe how Israel has been justifying its systematic attacks on healthcare facilities in the Gaza Strip during its five military assaults on the besieged enclave between 2008 and 2023. They show how Israel mobilizes the laws of armed conflict dealing with human shields and “hospital shields” to securitize lifesaving and sustaining infrastructures and legitimize their destruction. They describe how medical lawfare works as a racialized form of necropolitical governance that intensifies the Nakba's settler-colonial logic of elimination while casting Palestinians as guilty of bringing disaster upon themselves.

KEYWORDS

lawfare; medical lawfare; laws of armed conflict; medical units; healthcare; hospitals; Gaza; Nakba; Palestine; Israel

“THE NAKBA IS AN EXPLICITLY CONTINUING PRESENT,” Bashir Bashir and Amos Goldberg assert in their introduction to *The Holocaust and the Nakba: A New Grammar of Trauma and History* (New York: Columbia University Press, 2018), explaining that it was not simply an isolated event in the past, but “an ongoing policy aimed at denying Palestinians their rights, curtailing their freedom of action, and depriving them of their memory.”¹ The volume's editors elaborate how Zionist forces subjected Palestinians in the late 1940s to eliminatory, settler-colonial practices that are still “unfolding, being deployed, and affecting almost every Palestinian and Palestinian family, along with the Palestinian collective, on a near-daily basis.”² Indeed, while the Nakba's persistence can be felt throughout historic Palestine, it is particularly intense and clear in the Gaza Strip where a population of over two million people—70 percent of whom are refugees and children of refugees who fled or were expelled from their homes in 1948—have been held for years in the world's largest “open-air prison.”³ They have not only been denied the right to return to their homes and lands as a result of Israel's refusal to acknowledge the Palestinian right to self-determination, but since 2007, they have been subjected to what UN officials consider the longest military siege in modern history.⁴

As we were finalizing this article, the fifth assault on Gaza in fifteen years erupted on October 7, 2023. Following Hamas and other Palestinian factions' massacre in Israeli kibbutzim, towns, military bases, and a music festival in the desert, several Israeli high-ranking officials proclaimed their intent to destroy, “in whole or in part,” the Palestinian population in Gaza, framing them as “human animals,” promising to turn “Gaza into Dresden,” and to “erase” and “flatten” it.⁵ On October 13, Israel's President Isaac Herzog stated publicly that there are “no innocent civilians” in Gaza.⁶ Since then, the Israeli military has been engaging

in genocidal forms of violent retribution, carpet bombing entire neighborhoods, and killing more than 30,000 Palestinians at the time of writing, of whom over 12,000 are children.⁷ The extent of so much killing in such a short period of time is unprecedented in the twenty-first century, and is accompanied by Israel's repeated dehumanization of Palestinians, the displacement of 1.8 million residents, the cutting off of water, electricity, and fuel from the population of Gaza, the implementation of a policy of starvation, and systematic attacks on dozens of healthcare facilities.⁸

The multiple rounds of military attacks carried out by Israel since the implementation of the siege on Gaza in 2007 should be conceived of as an intensification of the existing pattern of settler-colonial dispossession and elimination.⁹ Indeed, the seventeen years of blockade have had catastrophic effects on Gaza's population. More than 2 million Palestinians have been caged in the enclave, limiting their access to medical treatment, education, employment, and economic opportunities, and even to family and social life.¹⁰ Israel's military siege has rendered the vast majority of inhabitants in Gaza destitute and undernourished.¹¹ Even before the 2023 war, the infant mortality rate stood at 22.7 per 1,000 live births,¹² compared with fewer than three deaths per 1,000 births in Israel.¹³ This means that, before the war, newborn children in Gaza were seven times more likely to die than if they had been born a one-hour drive away in Beersheba or Tel Aviv. Furthermore, life expectancy in Gaza before the war was around 74 years,¹⁴ while Israelis can expect to live nine years longer.¹⁵

This wide gap is primarily caused by acute differences in the underlying determinants of health between Gaza and Israel—differences that grow starker with each round of eruptive violence. With Gaza's GDP per capita reaching around \$1,050¹⁶ in 2021 compared with Israel's \$51,100,¹⁷ it is unsurprising that the United Nations Relief and Works Agency (UNRWA) supplied food to over 1,139,000 refugees in Gaza in 2022—fourteen times higher than it did in 2000 when the number was around 80,000.¹⁸ Moreover, prior to the war, one-fourth of all diseases in Gaza were waterborne due to water and sanitation crises, creating an additional burden on the healthcare system.¹⁹ And with over 80 percent of the water extracted from Gaza's aquifers not meeting the World Health Organization's (WHO) standards—in addition to a similar percentage of the population living below the international poverty line of \$1.9 a day—it is apparent that Israel's stranglehold has been killing Palestinians in Gaza even outside of periodic military assaults.²⁰ Certainly, Israel's 2023–24 attacks have led to famine and grave concerns about the spread of diseases, and given the systematic attacks on health facilities and the lack of access to healthcare, these diseases are likely to contribute to Gaza's already staggering death toll.²¹

In this way, the Nakba continues to unfold in Gaza as a result of periodic eruptions of violence *and* ongoing structural violence that can be conceptualized as a set of “social arrangements that put individuals and populations in harm's way.”²² Structural violence is a type of violence that operates through what Daniel Feierstein has identified as “systematic weakening,” which includes the physical destruction of the target group “through overcrowding, malnutrition, epidemics, [and] lack of health care.”²³ It is thus often a slow form of violence that destroys the population's health in a protracted, attritional, and less viscerally alarming way because it is not as immediately visible as eruptive violence, which is agent-driven and deployed for a certain period of time before receding.²⁴ The structural forms of violence impacting the health of Palestinians in Gaza include the denial of access to healthcare, the lack of available health services, and the implementation of strategies that erode the underlying determinants

of health.²⁵ Ultimately, Israel has systematically weakened Palestinian healthcare infrastructures in Gaza.²⁶ And since healthcare is a fundamental component necessary for sustaining the social body, the eruptive and structural attacks on healthcare should be understood as part of the ongoing eliminatory strategy of the Nakba aimed at making Gaza unlivable. Indeed, Israeli Agriculture Minister Avi Dichter even stated publicly on November 11, 2023 that, “We are now rolling out the Gaza Nakba.”²⁷

This article shows how Israel mobilizes the laws of armed conflict dealing with human shields and “hospital shields” to legitimize the destruction of Gaza’s lifesaving and sustaining infrastructures. Before turning to the data about the destruction of healthcare in Gaza, we offer a brief overview of the protections the laws of armed conflict offer medical units, while also discussing the exceptions to these protections. We then describe Israel’s bombing of hospitals and clinics in Gaza from 2008 to 2023, providing a cursory overview of the sheer extent of the attacks on medical units before turning to an analysis of how Israel’s military has justified targeting sites that, according to the laws of armed conflict, “shall be respected and protected at all times and shall not be the object of attack.”²⁸ Analyzing a series of reports, infographics, cartoons, and video clips disseminated by different actors before, during, and after the rounds of military aggressions launched since the 2007 siege, we trace the emergence and circulation of a discourse that we call *medical lawfare*—a phrase we coin to describe a strategy adopted by the Israeli military and government to legitimize attacks on lifesaving and sustaining infrastructures by shifting the blame for these attacks onto the Palestinians themselves.

We describe how Israel employs medical lawfare to legitimize its use of lethal force against medical units and staff, while tracing the intensification of this discourse over the past fifteen years. We further maintain that the Israeli military and government deploy medical lawfare because eruptive violence tends to be visible and much more shocking than structural violence, and because military attacks require legal explanation and justification. Building on the important work of scholars who have demonstrated the decisive role of legal discourses in justifying occupations,²⁹ states of siege,³⁰ and eruptive violence,³¹ as well as on our own work,³² we suggest that Israel uses medical lawfare not only to offer justification for “maiming” the Palestinian social body,³³ but also to produce a civilizational divide between Israelis and Palestinians. This sets the stage for the recirculation of the Zionist myth that Palestinians are to blame for the impact of Israel’s military destruction. Ultimately, we conceive of medical lawfare as a discourse that aims to sustain and justify a form of racialized necropolitical governance—a process that climaxed in Israel’s unprecedented targeting of healthcare infrastructures in 2023—revealing, as it were, how medical lawfare serves to justify Israel’s eliminatory drive and the transformation of Gaza into an unlivable space.

The Laws of War, Medical Units, and “Humanitarian Violence”

The International Committee of the Red Cross (ICRC) provides the official interpretation of the law of armed conflict (LOAC)—also known as the laws of war or international humanitarian law—including the rules of conduct warring parties must follow in relation to medical units, transport, and staff. These rules were first formulated in 1864—a year after the foundation of the ICRC—with the promulgation of the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (commonly known as

the First Geneva Convention).³⁴ The convention described the medical field as serving a humanitarian mission that stands in sharp contrast to the destructive character of war. At the time, the medical field was understood to be external to the war effort, a field in which doctors, nurses, and medics were cast as neutral and in need of protection.³⁵ One of the ways the drafters of the First Geneva Convention hoped to facilitate the protections was by requiring health providers to mark themselves and their medical transport with insignia so that warring parties can identify them.

Despite the development of the LOAC and the formulation of the Hague Conventions at the turn of the twentieth century, the protection of medical units and staff remained fragile,³⁶ not least during the two world wars, when assaults on hospitals were not uncommon. After World War II, the protection of medical facilities and personnel emerged again as an international legal priority, and new forms of codification were introduced in the 1949 Geneva Conventions. Following a series of anti-colonial national liberation wars and the dramatic expansion of membership in the UN, the legal protections offered to medical units were further refined as part of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1974–77, which led to the formulation of the 1977 Additional Protocols to the Geneva Conventions.³⁷

There is undoubtedly much to praise about the concrete legal protections the LOAC offers the medical field, yet it is important to note that the law also introduces a series of exceptions that permit warring parties to target medical facilities and staff.³⁸ Analyzing the provisions laid out in the LOAC, a recurring schema of protection followed by an exception to the protection is evident from the very first international convention. These exceptions are also apparent in Additional Protocol I—the most robust treaty regulating the deployment of violence during armed conflict. The first clause of article 12 states that “Medical units shall be respected and protected at all times and shall not be the object of attack.”³⁹ But in the article’s fourth clause, this categorical injunction is qualified and two exceptions are introduced: “Under no circumstances shall medical units be used in an attempt to *shield* military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.”⁴⁰ There are, in other words, two situations in which a medical unit may lose its protections and become susceptible to attacks: if it shields combatants or harbors weapons, and if it is located near a military target (since it might be used to house a munitions factory, military base, launch site, and so on). The ICRC explains in its commentary that the “deliberate siting of a medical unit in a position where it would impede an enemy attack” is sufficient for it to lose protection, provided the warring party abides by the principles of proportionality and military necessity.⁴¹

Article 13 introduces a third exception, stating that “the protection to which civilian medical units are entitled shall not cease *unless* they are used to commit, outside their humanitarian function, acts harmful to the enemy.”⁴² According to the ICRC: such harmful acts would, for example, include the use of a hospital as a shelter for able-bodied combatants or fugitives, as an arms or ammunition dump, or as a military observation post; another instance would be the deliberate siting of a medical unit in a position where it would impede an enemy attack. What constitutes acts “harmful to the enemy” is nonetheless left open to interpretation and can be expanded dramatically by warring parties from the use of the medical facility to conceal combatants, to a patient-combatant making a cellphone call.⁴³ The ICRC’s commentary does note that protections can be “withdrawn only after due warning has been given with a

reasonable time limit and only after that warning has gone unheeded,”⁴⁴ but it fails to indicate that the notion of “humanitarian function” is not self-evident, and that warring parties also dispute the humanitarian nature of certain acts.

According to the ICRC, marked medical transports that convey the wounded and sick, medical personnel, or medical equipment enjoy the same protections as medical units, while medical personnel must also be protected from attack unless they commit, outside of their humanitarian function, acts that are harmful to the enemy.⁴⁵ When medical personnel “carry and use weapons to defend themselves or to protect the wounded and sick in their charge, they [namely, the medical staff] do not lose the protection to which they are entitled.”⁴⁶ The wounded and sick therefore remain protected even if medical units or medical personnel lose their protection.⁴⁷ In this way, the LOAC calls on warring parties to observe and respect the foundational distinction between healthcare and war-making in their warfare strategies. At the same time, however, it introduces numerous exceptions, allowing belligerents to attack medical units in instances where the distinction is violated, and provided they abide by certain principles and conditions.⁴⁸ Israel’s deployment of these exceptions following its attacks on Palestinian medical units and staff provides a concrete example of how the LOAC is invoked to legitimize the wholesale destruction of Gaza’s healthcare system as a form of “humanitarian violence”—that is, a form of violence that abides by the normative exceptions inscribed in international humanitarian law.

Epidemiology of Israeli Strikes on Gaza

Along with Afghanistan, Syria, and Yemen, the besieged Gaza Strip is an epicenter of wartime assaults on healthcare staff and infrastructure.⁴⁹ Ever since the winter of 2008–9, the Israeli Air Force and other military units have targeted healthcare providers in Gaza, intensifying a decades-long pattern of various forms of structural violence against the Palestinian healthcare system there.⁵⁰ Indeed, from 1967 to 1993, when Israel directly controlled and administered Gaza and the West Bank through the Israeli Civil Administration, it refrained from bombing health facilities used by Palestinians since it would have been responsible for their reconstruction. Following the 1993 Oslo Accords, however, control over healthcare facilities and all other Palestinian civilian infrastructure in the occupied territories was transferred to the nascent Palestinian Authority (PA). This is when Israel’s modes of control and its repertoires of violence first began to change, and over the years, they grew more lethal and destructive, especially after it withdrew its forces and settlers from Gaza in 2005.⁵¹ According to *Breaking the Silence*, two doctrines have guided the Israeli military’s assaults on Gaza since 2008: the first is the “no casualties doctrine,” which stipulates that, for the sake of protecting Israeli soldiers, Palestinian civilians can be killed. This can happen by relaxing the principles of distinction, proportionality, military necessity, and precaution. In fact, the second doctrine recommends attacking civilian sites disproportionately in order to deter Hamas.⁵² These two doctrines produce moral and legal challenges for Israel, and medical lawfare is one of the ways it tries to address these challenges.

Israel’s widespread destruction of medical infrastructure in Gaza is an integral part of these two doctrines and first occurred during the 2008–9 attack, when the Israeli army damaged or destroyed 58 hospitals and clinics, in addition to 29 ambulances; it also killed 16 medical workers and injured 25 more.⁵³ In the 2012 aggression, the destruction was more restricted,

with 16 hospitals and clinics, as well as six ambulances, damaged or destroyed, and three medical workers injured. Two years later, however, 73 hospitals and clinics and 45 ambulances were damaged or destroyed, and 23 medical workers killed, with an additional 76 injured.⁵⁴ In its 2014 military campaign, the Israeli military also used “double-tap” and “multiple consecutive strikes” on a single location, which led to an increase in civilian casualties as well as to the killing and injuring of first responders.⁵⁵ Then, in May 2021, Israeli airstrikes damaged 33 healthcare centers, including Gaza’s main COVID-19 laboratory, and at least two prominent doctors were killed—the internal medicine consultant Ayman Abu al-Alouf, who was leading the COVID-19 team at al-Shifa Hospital, and neurologist Mo’in al-Aloul.⁵⁶

But Israeli attacks on medical units in the Gaza Strip reached an unprecedented level in 2023. Between October 7 and November 14, the WHO documented 181 attacks, resulting in 553 fatalities and 707 injuries, including 22 health workers killed and 59 injured. The attacks impacted 45 healthcare facilities, with 23 hospitals and 32 ambulances destroyed or damaged.⁵⁷ And as a result, as of November 14, 47 of the 72 (65 percent) primary care facilities are out of commission in the besieged enclave. Moreover, 26 out of 36 hospitals (72 percent) are not functioning due to Israeli bombing and acute shortages of fuel and electricity, as well as the depletion of medications and medical supplies.⁵⁸ Ultimately, during these five instances of eruptive violence, the Israeli military dealt devastating blows to the Palestinian healthcare services already severely weakened by various forms of structural violence going back decades. Indeed, as a computation of the data cited above reveals, between 2008 and November 2023, Israel carried out 361 strikes against hospitals and medical clinics in the Gaza Strip, targeting 112 ambulances and killing 63 health workers, while injuring an additional 163. These attacks took place while hundreds, and at times thousands, of injured Palestinians sought either urgent medical treatment at hospitals and clinics or refuge in their buildings. As Osama Tanous of Physicians for Human Rights-Israel put it, Israel’s attacks have placed a brutal burden “on a health care infrastructure that was already on its knees because of the occupation’s systematic ‘de-development’ of Gaza’s health care sector.”⁵⁹

There is little doubt that the Israeli military knew exactly what it was striking each time.⁶⁰ Indeed, given the fact that the GPS coordinates of all medical facilities were communicated by the health providers to the Israeli military, that its surveillance capabilities enable it to ascertain the exact location of every hospital and medical clinic in Gaza, and given the sophisticated weapons in its possession, it is highly implausible that it inadvertently bombed medical facilities—certainly not 361 times since 2008. Instead, the sheer number of attacks suggests that medical units were systematically targeted as part of the efforts to quell Palestinian resistance and weaken the Palestinian social body more generally. After all, the destruction of medical facilities has far-reaching implications for the provision of healthcare to Palestinians in the weeks, months, and years following each military attack, underscoring the persistence of Israel’s necropolitical violence over the Gaza Strip. Not unlike the aftermath of the 1948 Nakba, here, too, eruptive violence contributes to, and then itself morphs into, a form of structural violence that continues to wreak havoc on the Palestinian social body long after the bombing has subsided.

Medical Lawfare

Israel has repeatedly claimed that Palestinians intentionally use medical units “outside their humanitarian function” to shield combatants, hide weapons, or protect other legitimate

military targets, and that when the Israeli military attacks these targets, the Palestinians accuse it of breaching international legal norms.⁶¹ Adopting a term popularized by Charles Dunlap Jr., former deputy judge advocate general in the US Air Force and professor of law, Israel refers to this strategy as lawfare—“a method of warfare where law is used as a means of realizing a military objective.”⁶² According to Dunlap, in lawfare, nonstate actors provoke the use of violence against protected sites and people by deploying, for example, civilians as human shields to defend legitimate military targets, and when these targets are attacked and some of the human shields are killed, these same nonstate actors accuse the attacking party in different forums of carrying out war crimes against civilians.⁶³

Dunlap and several other legal experts have characterized our era as one dominated by lawfare, claiming that the LOAC is used as a technique of warfare by nonstate actors against state militaries.⁶⁴ As a result, human shielding has become one of the key tropes invoked by state militaries to blame their nonstate enemies for civilian casualties, and it has come to dominate many contemporary lawfare debates, with Israel frequently accusing Palestinian resistance of deploying shields to fend off attacks.⁶⁵ In fact, even the Israeli Security Agency accused Hamas and other armed resistance groups in the Gaza Strip of intentionally using civilians as shields when launching attacks against Israel in order to accuse it of war crimes if it strikes back.⁶⁶ In a similar vein, in the “IDF Strategy”—a text that provides the “ideational and practical infrastructure for all the fundamental documents put out by the IDF”—the Israeli military describes a “growing trend in the international arena of regulating the use of force and imposing limitations on it, alongside the enforcement of the laws of war mainly on state-actors.”⁶⁷ It explains that this trend is “exploited by the enemies to harm the legitimization of the State of Israel and the IDF’s freedom of action.”⁶⁸

This is the state-centric version of lawfare, whereby states accuse nonstate actors of using lawfare against them in order to achieve legal, military, and political gains. Elsewhere, we have shown that states are not immune from engaging in lawfare. On the contrary, state actors, such as the Israeli military and its legal department, are actually more likely to use lawfare against nonstate actors, accusing the latter of violating the LOAC to protect themselves from any form of legal accountability for the killing of civilians and the destruction of protected sites.⁶⁹ We therefore agree that lawfare has become a pervasive instrument of war, but in contrast to Dunlap and other experts who discuss the use of lawfare by nonstate actors against state militaries, we argue that in reality state militaries are more prone to use lawfare against nonstate actors to justify their use of lethal violence. Israel’s use of medical lawfare is a case in point.

We coin the term “medical lawfare” to define a specific political manifestation of lawfare in which legal accusations are made in the context of healthcare, normally by suggesting that combatants intentionally hide in hospitals, clinics, and ambulances, or among medical staff. After a warring party targets healthcare facilities and staff, it deploys medical lawfare to accuse its enemy of having used them as “medical shields.” Understanding the unique nature of what and who is bombed is crucial in order to understand the peculiar characteristics informing the discourse of medical lawfare. For Dunlap, lawfare constitutes methods of warfare where one warring party intentionally increases the risk of protected sites and civilians being targeted by using them, for instance, to shield a legitimate military target. If its enemy strikes the target and kills civilians, then the warring party casts the enemy as immoral and legally culpable. But health facilities and infrastructures are different from other protected sites and people because they have a very specific collective social function—protecting the health of the social

body by providing lifesaving and sustaining services. The role of health facilities also transcends the period of eruptive violence. Indeed, health facilities are a fundamental component of society's infrastructure of existence, and in a society marred by structural and eruptive violence, they become particularly crucial sites because they provide the conditions of possibility for all the others who are protected by the LOAC to remain alive.

In a settler-colonial context like the Palestinian one, medical shielding can serve as an instrument for legitimizing the necropolitical transformation of the colonized's space of life into a space of death. This was blatantly apparent in Israel's 2023 war on Gaza—ongoing at the time of writing—during which the destruction and damage of medical facilities were having an immediate and detrimental impact on the collective life of the Palestinian population. Beyond the instances of injury and death caused to those who were seeking shelter in hospitals during the attacks, medical institutions that had not ceased operations were overwhelmed with an unprecedented number of incoming “patients, amputations and surgeries.”⁷⁰ Moreover, with limited electricity, fuel, and basic medicine, they were unable to treat 9,000 cancer patients, over 1,000 dialysis patients, and an average of 180 daily births, among other sensitive cases.⁷¹

With a health system continually on the brink of collapse due to decades of structural and eruptive violence, in addition to total siege, bombarding medical infrastructures—whether or not combatants use them to hide—should be conceived as a primary feature of Israel's strategy of “maiming” the Palestinian social body, while waging war on the life of the population itself.⁷² Indeed, the discourse and tactics of medical lawfare provide a lens for understanding the statement made by Israel's Military Spokesperson Daniel Hagari on November 22, 2023, one week after the military attack on Gaza's al-Shifa Hospital: “ Hamas has been systematically using hospitals in Gaza to run its terror machine. Hamas built tunnels underneath hospitals, used them to command their operations . . . Hamas wages war from hospitals. This is the sick nature of the savage terrorists we are fighting.”⁷³ The twofold nature of the medical field—protected while protecting—is what renders medical lawfare a distinct necropolitical articulation of lawfare that can be mobilized to justify different forms of elimination of the collective social body.

Medical Lawfare and the Goldstone Report

Israel's use of medical lawfare was first evident after its 2008 assault on Gaza, which came three years after it unilaterally withdrew from the enclave, and one year after it declared it a “hostile entity” and, together with Egypt, transformed its temporary military siege into a permanent blockade.⁷⁴ This led Palestinian resistance groups to increasingly use missiles and mortar attacks against Israel, while the Israeli military intensified its aerial surveillance and bombardments.⁷⁵ Israel went beyond policies of ethnic policing, mass incarceration, torture, and widespread restrictions on movement to more remote eruptive violence through systematic aerial missiles, drone warfare, and mortar attacks.⁷⁶ As part of these changes, the Israeli military began bombing medical facilities in Gaza, having, as it were, an immediate impact on the Palestinian population's access to healthcare services.

The bombardment led to international scrutiny, and in January 2009, the UN sent a fact-finding mission to Gaza to investigate any instances of violation of the LOAC or international human rights law. In July 2009, while the report of the mission was still being prepared, the Israeli Ministry of Foreign Affairs (MFA) published a “factual and legal” defense of its conduct during the invasion.⁷⁷ The report included a specific section on the “misuse of medical facilities,” accusing Hamas of utilizing hospitals “as headquarters, situation-rooms, command centers, and hiding places.”⁷⁸ According to Israel’s legal-military team, hospitals were transformed into weapons storage facilities, as well as sites for engaging in gunfire and launching rockets, and that Hamas also “routinely conducted a range of military operations in close proximity to these structures.”⁷⁹ By framing the provision of healthcare as a key component of the Palestinian war-making apparatus, the Israeli MFA securitized the medical field and paved the way for military intervention against it. The report concluded that Hamas committed war crimes and therefore, it was the party to blame for Israeli damage to Palestinian medical facilities, since it deliberately endangered doctors, the sick, and the wounded in violation of the LOAC.

Notwithstanding its efforts to justify its attacks on hospitals, the Israeli legal defense was dealt a serious blow after the publication of the UN report in September 2009, known as the Goldstone Report in honor of the head of the mission, Justice Richard Goldstone. The members of the fact-finding mission concluded that they “did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes.”⁸⁰ They added that Israel’s attacks and the casualties they caused “subjected the beleaguered Gaza health sector to additional strain,” and that “hospitals and ambulances were targeted by Israeli attacks.”⁸¹ The report that the Israeli government produced in its defense had also provided images allegedly showing Palestinian resistance combatants carrying out military activities in the vicinity of medical facilities. However, the Goldstone Report concluded that it was not possible to determine if these images were taken during the 2008 assault, since they might have been images of “previous alleged instances of firing of rockets from Gaza,”⁸² as the Israeli government itself conceded. This raised concerns about the potential fabrication of the Israeli report.

It is precisely in this context that we need to understand Israel’s increasing efforts to accuse Palestinian armed resistance groups of exploiting hospitals, clinics, ambulances, and healthcare staff, as well as the wounded and sick, as shields. Regardless of the veracity of the MFA’s report, Israel cast medical units in Gaza as guilty of not abiding by the legal principle of distinction that calls on warring parties to distinguish between protected and unprotected sites. In turn, it sought to use this discourse as an ethical and legal defense for its own attacks. This framing is a fundamental component of Israel’s “legal work,” which Duncan Kennedy characterizes as a site of struggle in which each legal interpretation is informed by the interpreter’s ideological disposition and can advance different political and social goals.⁸³ Medical lawfare is thus part of Israel’s broader “legal work” that Noura Erakat describes in her analysis of how the “normative and diplomatic treatment of the question of Palestine” is produced through discourses of law.⁸⁴

We argue, moreover, that Israel’s use of medical lawfare to defend its bombardment of Palestinian health infrastructures in Gaza reveals the persistence of the settler-colonial

eliminatory logic of the Nakba that systematically weakens the Palestinian social body while also blaming the Palestinians for their plight. As Edward Said observed, one of the main mechanisms through which Israel has concealed the human costs of its successes since 1948 is through the dissemination of a series of myths that have cast the Palestinians as guilty for their own misfortunes. For Said, the Nakba was the foundational moment where “blaming the victim” became a strategy aimed at rendering the use of violence against Palestinians more acceptable.⁸⁵ One of these myths framed the Nakba as a “voluntary transfer,” according to which hundreds of thousands of Palestinians voluntarily left their homes in order to “make way for the invading Arab armies bent on destroying the fledgling Jewish state.”⁸⁶ Likewise, the line of justification Israel’s military and governmental apparatuses deploy through medical lawfare confers all blame for Palestinian suffering on the Palestinians themselves.

Medical Lawfare in Israel’s Info-Wars

Strictly speaking, lawfare refers to the use of law to advance a military objective within legal arenas, but it can also be used in a similar way within the public sphere. This was particularly evident in the aftermath of Israel’s 2014 invasion of Gaza, during which the Israeli military’s bombardment of Palestinian medical facilities led to dire conditions in Gaza. Following the strikes, Amnesty International issued a call for urgent action, explaining that, due to the systematic targeting of ambulances and medical facilities, “scores of critically wounded patients will die unless they are urgently transferred to hospitals outside Gaza for specialized treatment.”⁸⁷ It added that it had collected testimonies and reports from patients and medical staff about multiple cases in which Palestinian medical teams were “prevented from reaching scores, possibly hundreds, of injured people in various areas.”⁸⁸ The call depicted the situation as a medical sector on the verge of collapse following years of blockade and a military offensive that led to “fuel and power shortages, inadequate water supply, and shortages of essential drugs and medical equipment.”⁸⁹

But preempting another Goldstone Report, in the 2014 invasion, the Israeli military blamed the armed Palestinian groups for the crisis and accused them of using medical facilities for military purposes during the offensive rather than after. It did so by unleashing a media campaign—an info-war—on Twitter, Facebook, Instagram, and YouTube to provide ethical legitimacy for the deployment of lethal violence against medical units in Gaza. The objective, it seems, was to popularize and render accessible for public consumption certain legal arguments to help justify the military’s assaults on medical facilities and staff. The 2014 attack thus marked the beginning of a form of semiotic warfare based on the dissemination of infographics and sophisticated video clips in which the Israeli military presented itself as the civilized party abiding by the principle of distinction, taking all the precautions needed to prevent unnecessary harm to protected persons and structures. By contrast, the same media sources depicted Palestinian combatants as the uncivilized warring party, illegally and barbarically taking cover behind medical units.

For example, the Israeli military published an infographic on Facebook, Twitter, and blog accounts in the midst of its bombardment of the Palestinian neighborhood of Shuja’iyya in Gaza during the 2014 assault. The image depicts an elevator operating panel showing the different floors of the al-Wafa Rehabilitation Hospital in Gaza. As in most hospitals, the ground floor is marked as the lobby, and levels 1 and 2 are labeled as medical wards ([Figure 1](#)). But

level -1 is depicted as a storage facility for missiles, level -2 as leading to the network of underground tunnels, and level 3 as a missile launching floor. The message is clear: Palestinian armed resistance groups disregard the distinction between protected medical sites and legitimate military targets, and thus, the Israeli military is not to blame for targeting the hospital. But in case the image itself was not clear enough, the military included this legal-ethical text underneath: “Hospitals shouldn’t endanger lives but in Gaza they do.”⁹⁰ This is a paradigmatic example of medical lawfare seeking to legally and ethically justify the destruction of life-supporting systems, in spite of the fact that the Israeli military later conceded that no weapons had been hidden within al-Wafa Hospital.⁹¹



Figure 1. An image depicting an elevator operating panel showing the different floors of the al-Wafa Rehabilitation Hospital in Gaza, titled “Hospitals Shouldn’t Endanger Lives but in Gaza They Do.” SOURCE: Israel Defense Forces, August 14, 2014 (see endnote 90).

Following Israel’s publication of this and similar infographics, a few cartoonists adopted the Israeli medical lawfare tactic, circulating it among much broader audiences. For example, *The Times* cartoonist Peter Brookes replicated the idea behind the elevator infographic, playing with the military meaning of the word “operations” while also depicting an armed fighter launching a mortar bomb from within a hospital (Figure 2).⁹² As another example, in the *Sydney Morning Herald*, Australian cartoonist John Spooner portrayed an intensive care room in which two Palestinian doctors ironically joke about a Hamas fighter who is firing a missile from the room’s window. Underneath an unequivocally incriminatory header to the image—“Hamas and the use it makes of Gaza hospitals for its terror activity”—Spooner depicted a conversation in which one doctor says to the other, “Must be the new anaesthetist,” in reference to the fighter (Figure 3).⁹³ These kinds of images fulfill an integral part of the medical lawfare discourse in the public sphere, helping to frame Palestinian medical staff in Gaza as complicit in resistance groups’ attacks on Israel, thereby sanitizing their potential targeting by the Israeli military.



Figure 2. A cartoon of a Hamas fighter in a Gaza hospital.
Source: Peter Brookes, *The Times*, July 24, 2014 (see endnote 92).

Hamas and the use it makes of Gaza hospitals for its terror activity



Figure 3. A cartoon of a Hamas fighter in an intensive care unit.
Source: John Spooner, *Sydney Morning Herald*, August 7, 2014 (see endnote 93).

Some of Israel's embassies also took part in the info-wars. On July 29, 2014, the Israeli Embassy in London published an infographic on its website that was produced by the Israeli military's media unit with an aerial picture of al-Wafa Hospital depicted as a launch site (Figure 4). The embassy's accompanying statement portrayed Palestinian fighters as living in a parallel legal world where "hospitals are command centers, ambulances are transport vehicles, and medics are human shields, in flagrant violation of international law."⁹⁴ According to a well-known colonial script, Palestinians are thus described as the barbarians who intentionally refuse to distinguish between protected and unprotected sites in an effort to exploit the Israeli military's compliance with international law. Indeed, in a message posted alongside the infographic, the Israeli Embassy claimed: "They know the IDF does not attack medical facilities, and using a medical facility provides their terrorist operatives located there with a kind of immunity. For the same reason they use ambulances to move terrorist operatives and weapons from place to place in combat zones."⁹⁵ The cruel irony—as the data provided above reveals—is that the Israeli military does attack medical facilities. In fact, Israel's destruction of hospitals and medical clinics is precisely why it disseminated videos aimed at corroborating the legality of its attacks on medical facilities in the first place.



Figure 4. An aerial photo of al-Wafa Hospital from which the Israeli Embassy in London claimed Hamas fired rockets to Israel.

SOURCE: "Hamas Uses Hospitals and Ambulances for Terrorism," Embassy of Israel, London, July 29, 2014 (see endnote 94).

In a 2014 video clip uploaded by the Israeli military on YouTube titled “What Is Hamas Doing to Schools and Hospitals in Gaza?” a voice introduces the images of an alleged shooting from a hospital in Gaza. The viewers then hear a military intelligence officer telling a drone operator that the Israeli military alerted the hospital personnel that the facility had been emptied of staff and patients and was ready to be targeted (Figure 5).⁹⁶ In this clip, the Israeli military deploys the discourse of medical lawfare to provide the attacks on medical infrastructures with an aura of humanity: “we strike according to international legal humanitarian standards.”⁹⁷ Notwithstanding these claims, the 2015 UN Independent Commission of Inquiry responsible for investigating the 2014 assault echoed the 2009 Goldstone Report that the documentation provided by Israel was not verifiable, and that “the use of weapons with wide-area effects against targets in the vicinity of specifically protected objects (such as medical facilities and shelters)” is a form of indiscriminate attack which might “amount to a war crime.”⁹⁸



Figure 5. An image from a video titled “What Is Hamas Doing to Schools and Hospitals in Gaza?,” posted by the Israel Defense Forces to justify the targeting of a hospital.

SOURCE: Israel Defense Forces blog, August 6, 2014 (see endnote 96).

The fact that this has become the key claim in Israel’s legal playbook and in the info-wars it wages in tandem with its bombardment of medical facilities was immediately exposed following the bombing of al-Ahli Arab Hospital in Gaza City on October 17, 2023, in which scores of displaced Palestinians who had been sheltering in the medical facility were killed. Hananya Naftali, an Israeli influencer who served as a social media advisor to Prime Minister Benjamin Netanyahu, instantly tweeted: “Israeli Air Force struck a Hamas terrorist base inside a hospital in Gaza. A multiple number of terrorists are dead. It’s heartbreaking that Hamas is launching rockets from hospitals, Mosques, schools, and using civilians as human shields”⁹⁹ (Figure 6).

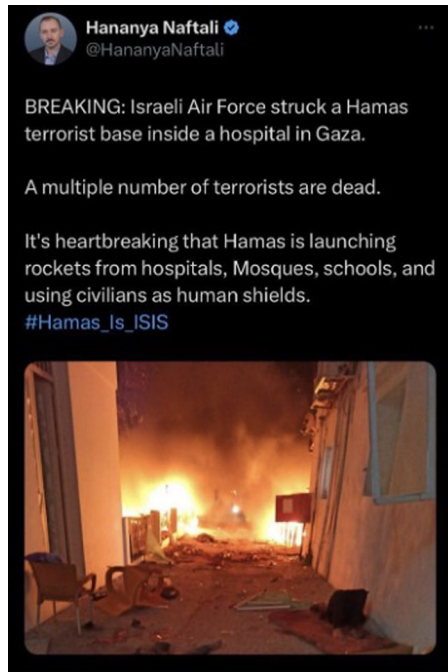


Figure 6. A now deleted tweet by Hananya Naftali following the bombing of al-Ahli Arab Hospital in Gaza City on October 17, 2023.

SOURCE: Hananya Naftali (@HananyaNaftali), Twitter, October 17, 2023 (see endnote 99).

The tweet perfectly exemplifies Israeli medical warfare: lie about what actually happened; immediately blame the victim for the casualties and destruction by claiming the hospital was used as a shield; produce a civilizational distinction by intimating that the other side does not adhere to the principle of distinction; and emphasize this divide by suggesting that Israel's military cares about protecting Palestinian civilians with terms like "heartbreaking." But Naftali erased his tweet a few minutes later, likely after learning that the Israeli military and political establishment had decided to accuse Palestinian Islamic Jihad fighters of striking the hospital by "misfiring" a missile originally directed toward Israel.¹⁰⁰

Ten days later on October 27, in advance of its invasion of al-Shifa Hospital in Gaza City, the Israeli military tweeted a three-dimensional clip of the medical facility claiming that Hamas's main headquarters were located in tunnels underneath it (Figure 7).¹⁰¹ A similar claim was made a day later about another large medical complex in Gaza City, al-Quds Hospital, with Israel instructing the staff to evacuate alongside the sick and wounded.¹⁰²

Although Israel did not immediately invade al-Quds Hospital, its accusations that Hamas's headquarters were located underneath al-Shifa Hospital served as preemptive justifications for bombing and occupying it days later. On November 3, 2023, the Israeli military struck a clearly marked ambulance outside al-Shifa Hospital, killing and injuring an estimated twenty-one in the vicinity. The military claimed that its "forces saw terrorists using ambulances as a vehicle to move around. They perceived a threat and accordingly we struck that ambulance."¹⁰³ And then, on November 15, Israeli forces raided the hospital, which was treating 650 patients and sheltering an estimated 7,000 displaced Palestinians.¹⁰⁴ The Israeli

**Israel Defense Forces** 

@IDF



The Shifa Hospital is not only the largest hospital in Gaza but it also acts as the main headquarters for Hamas' terrorist activity.

Terrorism does not belong in a hospital and the IDF will operate to uncover any terrorist infrastructure.



10:02 PM · Oct 27, 2023 · **2.6M** Views

Figure 7. An image from a video of a 3D construction of al-Shifa Hospital that the Israel Defense Forces posted claiming Hamas's main headquarters was located under the hospital.

SOURCE: Israel Defense Forces (@IDF), Twitter, October 27, 2023 (see endnote 101).

military claimed in a tweet that it was “carrying out a precise and targeted operation against Hamas in a specified area in the Shifa Hospital ... with the intent that no harm is caused to the civilians being used by Hamas as human shields.”¹⁰⁵ Nonetheless, other sources reported that the Israeli military shot people as they tried to flee from the hospital, including by remote-controlled quadcopters.¹⁰⁶

Three elements reveal the particular intensity of the eliminatory function of Israeli medical lawfare in the 2023–24 assault on Gaza. First, Israel's warnings that it would be attacking the health facilities were made at a time when the WHO had already reported that 12 out of 35 of the hospitals in the Gaza Strip were no longer operational either due to damage caused by Israeli bombing and/or the lack of electricity, fuel, and basic medicines. Today, we know that Israel's accusations of Hamas situating its headquarters under al-Shifa and al-Quds hospitals were fabrications and that they were used to provide moral and legal justification for attacking them, dealing yet another major blow to the already collapsing lifesaving and sustaining medical infrastructures in besieged Gaza. Indeed, al-Quds Hospital ceased operations due to fuel shortages on November 12, and in January 2024 Médecins Sans Frontières (MSF) reported

that al-Shifa Hospital was barely functioning and had been transformed into a camp for displaced people.¹⁰⁷ Second, the two hospitals are located in the northern part of the Gaza Strip, the most targeted area at the time of writing; depriving it of its two main hospitals in effect condemned thousands of Palestinian civilians to suffering and death. Third, these hospitals serve as shelters for thousands of displaced Palestinians following two months of bombardment, and targeting them would likely kill or injure many of those seeking shelter as well. Medical lawfare thus serves to justify levels of ethnic cleansing and elimination that have already surpassed those experienced in 1948.

Medical Lawfare and Necropolitical Governance

Israel seeks to influence global audiences' perception of its attacks on Palestinian medical units in the Gaza Strip through different tactics, including what we call medical lawfare. It attempts to do this through a series of fabrications that frame the Palestinians as morally bereft and civilizationally inferior on the one hand, and the Israeli military as the humane and law-abiding actor on the other. Indeed, the "IDF Strategy" emphasizes the importance of "carrying out effective public diplomacy, perception-shaping, and legal efforts before, during, and after combat," in order to "generate legitimacy for military operations."¹⁰⁸ Thus, the Israeli military assumes that by dictating the ethical-legal contours of its assaults on Gaza, it becomes easier for it to claim that Palestinian resistance groups exploit its compliance with the LOAC for their own military advantage.

Indeed, the sleek infographics, aerial videos, illustrative clips, and ironic cartoons circulated in defense of the Israeli military's actions serve a twofold purpose: first, they offer legal and moral justification for Israel's bombing of hospitals, clinics, and ambulances; and second, they are constitutive of an Israeli strategy to conceal the impact of its ongoing destruction of the health of the Palestinian social body. Not unlike the planting of forests and the erection of picnic grounds on top of destroyed Palestinian villages in post-1948 Israel, Israel's medical lawfare campaigns strive to camouflage the violence its military inflicts on the descendants of those who took refuge in Gaza in 1948, who have lived under a blockade for seventeen years, and who are the Nakba's living embodiment.

Thus, Israel deploys medical lawfare to justify its implicit claim to a right to kill and maim Palestinians, and to destroy the very lifesaving and sustaining infrastructures that enable them to exist as a collective. And by justifying these attacks that render Palestinian life unlivable in Gaza, Israeli medical lawfare becomes a tool of settler-colonial dispossession and erasure. Moreover, it operates as a discursive register that reproduces the key Nakba myth that Palestinians are to blame for the destruction Israel wreaks—the same register that also continually asserts the civilizational divide between colonizers and colonized, whereby the latter are cast as savages who do not ethically and legally distinguish between military targets and medical infrastructures. In this way, medical lawfare has become a critical component of Israel's racialized necropolitical form of governance in the Gaza Strip.

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