

MASTER THESIS | MASTER'S THESIS

Titel | Title

Parties to the conflict and third States's response on allowing and facilitating humanitarian relief in Gaza Strip and the West Bank

verfasst von | submitted by

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angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of
Master of Laws (LL.M.)

Wien | Vienna, 2024

Studienkennzahl lt. Studienblatt |
Degree programme code as it appears on the
student record sheet:

UA 999 079

Universitätslehrgang lt. Studienblatt |
Postgraduate programme as it appears on
the student record sheet:

Human Rights (LL.M.)

Betreut von | Supervisor:

Mag. Dr. Jan Pospisil Privatdoz.

A La Niña y El Negro, mis viejitos eternos.

A Zoran, por ser mi refugio incondicional.

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List of Abbreviations

CERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IRC	International Rescue Committee
MSF	Médecins Sans Frontières
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PRCS	Palestine Red Crescent Society
R2P	Responsibility to Protect
UDHR	Universal Declaration of Human Rights
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSC	United Nations Security Council
WFP	World Food Programme
WHO	World Health Organization

Introduction

The ongoing conflict in the Gaza Strip and the West Bank, particularly following the escalation on 7 October 2023, has severely exacerbated the already dire humanitarian crisis in the region. Critical shortages of food, fuel, drinking water, and medicines persist, leaving the population in a state of great hardship and facing daily threats to their lives and safety. The displacement of more than one million persons from the northern regions of the Gaza Strip to the southern areas has further aggravated the situation. Humanitarian organizations struggle to gain access¹, and the continuous bombing and targeting of field distribution teams further hinder relief efforts.

According to the United Nations Office for the Coordination of Humanitarian Affairs (hereinafter OCHA), relentless Israeli airstrikes by air, land, and sea persistently target numerous areas across the Gaza Strip. These assaults have led to increased civilian casualties, widespread displacement, and extensive damage to critical civilian infrastructure, including hospitals. OCHA further highlights ongoing ground operations and intense clashes between Israeli forces and Palestinian armed groups as contributing to the escalating violence and humanitarian crisis in the region². Meanwhile, allegations against Hamas for stockpiling essential supplies have further complicated the situation.³

In response to these developments, the United Nations High Commissioner for Human Rights, Volker Türk, emphasized that “(...) the imposition of sieges that endanger the lives of civilians by depriving them of goods essential for their survival is prohibited under international humanitarian law”⁴, calling for a solution grounded in both International Humanitarian Law (IHL) and International Human Rights Law (IHRL).

Amidst this context, the establishment of humanitarian corridors has been proposed as a solution to facilitate the entry of relief supplies and ensure the protection of civilians. The

¹ Qatar Red Crescent, ‘QRCS, EAA deliver life-saving aid in Gaza’ (*Relief Web*, 17 February 2024) <<https://reliefweb.int/report/occupied-palestinian-territory/qrcs-eaa-deliver-life-saving-aid-gaza-enar>> accessed 19 February 2024

² UN News Global perspective Human stories, ‘Lifesaving medical care collapsing under assault in Gaza: WHO’ (*Relief Web*, 16 February 2024) <[https://news.un.org/en/story/2024/02/1146632#:~:text=Intense%20bombardment%20continues,Humanitarian%20Affairs%20\(OCHA\)%20said](https://news.un.org/en/story/2024/02/1146632#:~:text=Intense%20bombardment%20continues,Humanitarian%20Affairs%20(OCHA)%20said)> accessed 19 February 2024

³ Rosenberg, M. and Abi-Habib, M., ‘As Gazans Scrounge for Food and Water, Hamas Sits on a Rich Trove of Supplies’ (*The New York Times*, 27 October 2023) <<https://www.nytimes.com/2023/10/27/world/middleeast/palestine-gazans-hamas-food.html>> accessed 19 February 2024

⁴ UN Press Release, ‘UN Human Rights Chief urges States to defuse “powder keg” situation in Israel and OPT, as incalculable suffering, massive death tolls take hold’, (*Office of the High Commissioner for Human Rights*, 10 October 2023) <<https://www.ohchr.org/en/press-releases/2023/10/un-human-rights-chief-urges-states-defuse-powder-keg-situation-israel-and>> accessed 22 February 2024

United Nations Security Council (hereinafter UNSC) has attempted to address the situation through several resolutions, including Resolution 2720 (2023) adopted on 22 December 2023⁵, which called for humanitarian pauses and corridors throughout Gaza to enable rapid and unhindered humanitarian access. Similarly, the International Court of Justice (ICJ) has ordered Israel to take measures to enable access to humanitarian assistance.⁶

Despite ongoing diplomatic efforts, including attempts by the United States (U.S.), Qatar, Egypt, and Jordan to broker a ceasefire and facilitate aid, the humanitarian situation remains precarious,⁷ underscoring the urgent need for more robust mechanisms to ensure the delivery of essential assistance. In light of these reasons of concern, it is fundamental to examine what International Law dictates regarding the obligations to provide relief aid and the legality of the actions taken by parties to the conflict, as well as the role of third States in facilitating assistance. For this purpose, this master thesis seeks to explore the obligations under IHL and IHRL of parties to the conflict and third States to allow and facilitate humanitarian relief in the Gaza Strip and West Bank, with a particular focus on the Geneva Conventions and their Additional Protocols. The research will examine the responses of the parties to the conflict, namely Israel and Hamas to determine whether their actions comply with those obligations or constitute interference. If interference is identified in the selected actions of the study, the author aims to explore the reasoning behind such actions and assess whether they can be justified by having a legitimate aim. In addition, the research will examine the role of third States in facilitating humanitarian assistance in this complex scenario.

Current State of Research and Relevance of the Topic

The significance of addressing the facilitation of humanitarian aid in conflict zones stems from the responsibility to uphold the dignity and rights of individuals not taking part in hostilities. As the dynamics of the conflicts change, the role of parties to the conflict, third states and non-state actors becomes increasingly critical in mitigating harm to civilian populations. The situation in the Gaza Strip and the West Bank exemplifies the challenges of complying with

⁵ United Nations Security Council, 'Protection of civilians and enabling of immediate humanitarian assistance to Palestinians in Gaza – Security Council Resolution – 2720 (2023)' (*United Nations*, 22 December 2023) <<https://www.un.org/unispal/document/security-council-resolution-s-res-2720-22dec2023/>> accessed 15 February 2024

⁶ Order concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel), International Court of Justice (ICJ), 16 January 2024 <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> accessed 16 June 2024

⁷ OCHA, 'Occupied Palestinian Territory: Reported impact since 7 October 2023', (OCHA, n.d.) <https://www.ochaopt.org/?_gl=1*15axwei*_ga*MzUyNzk1NTQ0LjE3MTMxMTMxNDA.*_ga_E60ZNX2F68*MTcxMzExMzE0MC4xLjAuMTcxMzExMzE0MC42MC4wLjA> accessed 7 April 2024

IHL obligations, where legal frameworks designed to protect human rights are tested by the realities of modern conflict and the consideration of military and security needs, the scope of which may seem unclear. Understanding how international law can adapt to these changes is essential in addressing issues of compliance in complex conflict environments. This approach not only seeks to nurture the existing body of literature but also aims to promote deeper academic discussion on the topic.

The literature review on the facilitation of humanitarian aid suggests that there is previous research that addresses various historical analyses of humanitarian corridors in specific conflicts.⁸ Other scholarly literature addresses humanitarian aid from a foreign policy and negotiation in conflicts approach.⁹

However, scarce literature can be found on obligations to provide humanitarian aid in the Israel-Hamas conflict since the escalation of the conflict in October 2023, which is the temporal scope of this master project. During the past months, the topic has been mainly addressed through scholarly commentary in journal articles.

In this sense, some elements of humanitarian assistance in conflicts have been discussed in previous literature and scholarly commentary, but the research question of this master thesis has not been answered comprehensively. Therefore, this research builds upon previous research completed on humanitarian assistance obligations under IHL and IHR but captures the current complexity of the specific case of Gaza Strip and West Bank, focused on recent developments (October 2023-July 2024).

Research Question and Sub-questions

This thesis argues that the imbalance between humanitarian needs and military necessity undermines the compliance of IHL provisions related to the facilitation of humanitarian aid in the Gaza Strip and the West Bank.

The primary research question addressed in this thesis is: *How and to what extent have parties to the conflict and third States in the Gaza Strip and the West Bank responded to their obligations regarding allowing and facilitating humanitarian relief?*

To guide the research and answer the main research question, the thesis explores the following sub-questions:

⁸ See for instance: Maelle L'Homme (2022), Geoff Gilbert and Anna Rüşch (2017).

⁹ See for instance Larry Minear and Hazel Smith (2007).

1. What is the legal scope of the obligations under the International Law of parties to the conflict and third States regarding allowing and facilitating humanitarian relief in the Gaza Strip and the West Bank?
2. Have parties to the conflict upheld those obligations or have they interfered, and if so, is there a justification or a legitimate aim for their response?
3. What role have third States played in providing humanitarian assistance during this conflict?
4. Is a ceasefire necessary to improve the humanitarian conditions in Gaza and the West Bank?

Methodology and Structure

This master thesis is conducted by a doctrinal desk research method, focusing on the analysis of legal rules, including the Geneva Conventions, Additional Protocols, United Nations Security Council resolutions, and other relevant international legal instruments and principles. The analysis will be supplemented by reviewing reports from humanitarian organizations, such as the International Committee of the Red Cross (hereinafter ICRC) and the United Nations (hereinafter UN), as well as academic literature on IHL and IHRL.

Events in this master's thesis are based on information provided by reliable primary sources, which have been triangulated with various other sources or included in reports where reasonable grounds for the standard of proof have been met. However, as with any conflict, media-reported information may need to be corroborated by a reliable source. In this case, only humanitarian organizations such as the ICRC and the UN, in addition to the Coordinator of Government Activities in the Territories in Israel, are providing updated reports on humanitarian aid. Nevertheless, it is important to note that information may still vary and there remains a substantial data gap in corroborating death tolls and verifying allegations of IHL and IHRL violations by Hamas, which the author of this thesis identified as a research limitation.

The research is structured as follows:

- Chapter 1 - Overview of the situation in the Gaza Strip and the West Bank. This chapter provides the historical background to the conflict, a timeline of key events following the 7 October 2023 attacks, as well as a snapshot of the humanitarian situation and the status of crossing points for the delivery of aid. For the purpose of this research, the time scope of events is until 20 July 2024 (one day after the International Court of Justice gave its Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem)

- Chapter 2 - Obligation to allow and facilitate humanitarian aid. This chapter provides an analysis of the legal scope of obligations related to humanitarian relief, focusing on the Geneva Conventions and their Additional Protocols, International Human Rights Law instruments, Customary law, International Court of Justice advisory opinions and provisional measures, United Nations Security Council Resolutions, and the Responsibility to Protect Principle.
- Chapter 3 - Analysis of the response. This chapter examines the application of the obligations elaborated in Chapter 2, in the Gaza Strip and the West Bank, analyzing the actions of the parties to the conflict and third States. The research also examines whether the actions of the parties of the conflict align with their respective obligations and explores whether a ceasefire can improve the humanitarian situation in the region.

1. Overview of the situation in the Gaza Strip and the West Bank

1.1 Historical background to the conflict

The conflict in the Gaza Strip and the West Bank is rooted in a complex interplay of national, territorial, and religious identities that have developed over more than a century.

The origins of the Israeli-Palestinian conflict can be traced back to the late 19th and early 20th centuries, coinciding with the rise of nationalist movements among both Jews and Arabs. The Jewish nationalist movement sought to establish a homeland for the Jewish people in Palestine, driven by widespread anti-Semitism in Europe and a growing desire for self-determination. This period saw increased Jewish immigration to Palestine, then part of the Ottoman Empire, leading to tensions with the local Arab population, who viewed this influx as a threat to their land and livelihood¹⁰.

Following World War I and the dissolution of the Ottoman Empire, the League of Nations allocated former Ottoman territories to victorious Allied powers as mandates. The League of Nations officially granted Britain the mandate over Palestine in 1920, which was formalized in 1922 through the League of Nations Mandate for Palestine, which gave Britain the authority to administer the territory and prepare it for eventual self-governance, with the mandate lasting until 1948 when Britain withdrew, and the State of Israel was declared¹¹.

The Balfour Declaration of 1917, in which Britain expressed support for the establishment of a *national home for the Jewish people* in Palestine, further intensified Arab opposition to Jews. Tensions escalated during the 1920s and 1930s, culminating in violent confrontations, such as the Arab revolt of 1936-1939. In 1947, the United Nations General Assembly proposed a partition plan with Jews receiving around 55 per cent of the land and Arabs about 40 percent (Jerusalem and Bethlehem will be under international control), which was accepted by Jewish leaders but rejected by Arab representatives leading to sporadic violence and consequently, to the 1948 Arab-Israeli War¹². The war resulted in the establishment of Israel and the displacement of hundreds of thousands of Palestinians, an event known by them as the Nakba, or the "catastrophe"¹³.

¹⁰ Charles D. Smith, 'Palestine and the Arab-Israeli Conflict: A History with Documents'. Bedford/St. Martin's, 2001.

¹¹ Sanford R. Silverburg, 'How Israel Was Won: A Concise History of the Arab-Israeli Conflict.' Library Journal, vol. 124, no. 15, Library Journals, LLC, 1999.

¹² Benny, Morris, 'The Birth of the Palestinian Refugee Problem Revisited', pp. 9-10. Cambridge University Press, 2001.

¹³ Rashid Khalidi, 'The Iron Cage: The Story of the Palestinian Struggle for Statehood', p.3. Beacon Press, 2006.

In the years that followed, the West Bank came under Jordanian rule, while Gaza was administered by Egypt. The Six-Day War in 1967 marked a significant turning point, as Israel occupied the West Bank, Gaza Strip, and East Jerusalem, leading to further dispossession and hardship for the Palestinian population¹⁴. The occupation was characterized by the establishment of Israeli settlements, military checkpoints, and restrictions on movement, which have been widely criticized as violations of international law (see for instance UN Security Council Resolution 242¹⁵). The political landscape further evolved with the rise of the Palestine Liberation Organization (PLO) and, later, Hamas, each claiming to represent Palestinian interests but differing in their approaches to the conflict¹⁶.

As the conflict continued into the 21st century, periodic escalations of violence between the Israel Defense Forces (hereinafter IDF) and Hamas, notably in the form of military operations in Gaza and ongoing settlement expansion in the West Bank, have perpetuated a cycle of despair and resistance among Palestinians. The Oslo Accords of the 1990s, which aimed to establish a framework for peace, ultimately fell short, leaving the core issues of borders, refugees, the status of Jerusalem, and mutual recognition unresolved¹⁷. The historical grievances surrounding land, identity, and sovereignty continue to fuel one of the most protracted and contentious conflicts in modern history, impacting millions of lives on both sides and challenging efforts toward a just and lasting peace.

1.2 Timeline of events following 7 October 2023

The timeline provides a summary of key events from 7 October 2023, to 20 July 2024. It is not intended to offer detailed information on rapidly evolving situations but rather to highlight key events for the further purpose of analyzing humanitarian assistance obligations and compliance.

On 7 October 2023, the Palestinian non-state armed group Hamas, designated as a terrorist organization by the European Union¹⁸ and countries such as Israel¹⁹, the U.S²⁰, and the United

¹⁴ Avi Shlaim, 'The Iron Wall: Israel and the Arab World'. W.W. Norton & Company, 2000.

¹⁵ United Nations Security Council – Security Council Resolution – 242: The Situation in the Middle East (*UN Peacemaker*, 2024) <<https://peacemaker.un.org/middle-east-resolution242>> accessed on 23 May 2024

¹⁶ Noam Chomsky, 'Hegemony or Survival: America's Quest for Global Dominance'. Henry Holt and Company, 2003.

¹⁷ Robert Malley and Hussein Agha, 'Camp David: The Tragedy of Errors'. The New York Review of Books, August 2001.

¹⁸ European Council, 'Sanctions against terrorism' (*European Council*, n.d.) <<https://www.consilium.europa.eu/en/policies/fight-against-terrorism/sanctions-against-terrorism/#list>> accessed 3 June 2024

¹⁹ Israel Defense Forces (IDF), 'The Hamas - Israel War' (*IDF*, n.d.) <<https://www.idf.il/en/mini-sites/hamas-israel-war-24/>> accessed 3 June 2024

²⁰ US Department of State, 'Foreign Terrorist Organizations' (*US Department of State*, n.d.) <<https://www.state.gov/foreign-terrorist-organizations/>> accessed on 27 May 2024

Kingdom²¹ (U.K.), initiated an armed attack against Israel, by launching several thousand rockets into Israel territory and carrying out assaults in border areas. This resulted in around 1,200 civilian casualties and the capture of 251 hostages²² within the "Operation Al-Aqsa Flood". In retaliation, the IDF started the execution of air strikes against Hamas and imposed a complete siege, preventing food, water, and fuel from entering the Gaza Strip.²³

On 13 October, Israel instructed residents of Gaza City, to evacuate to the south of the Gaza Strip. Leaflets were dropped by the Israeli military, warning that anyone remaining in the city would be regarded as a supporter of terrorism.²⁴ The World Health Organization (hereinafter WHO) noted that the forced evacuation of patients and health workers "will further worsen the current humanitarian and public health catastrophe."²⁵

On 21 October, after days of diplomatic negotiations, 20 aid trucks were permitted to enter Gaza through the Rafah border crossing from Egypt, providing some relief supplies, including food, water, medicines, and fuel -although it was only a small portion of what was needed-. The aid was received by the Palestinian Red Crescent.²⁶

After a several-day siege, **on 15 November** Israeli troops entered Al Shifa, Gaza's largest hospital. Israel claimed the hospital was hiding an underground Hamas headquarters, which the staff denied. Within a few weeks, all hospitals in the northern Gaza Strip would stop functioning.²⁷

On 21 November, Israel and Hamas announced a seven-day truce to exchange hostages held in Gaza for Palestinians detained by Israel and to allow more aid into Gaza. Approximately half

²¹ United Kingdom Government, 'Proscribed terrorist groups or organisations' (UK Gov., 2024) <<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version#list-of-proscribed-international-terrorist-groups>> accessed 3 June 2024

²² Toi Staff, '3 weeks before Oct. 7, IDF Gaza Division warned of Hamas plan to attack, take 250 hostages' (*The Times of Israel*, 2024) <<https://www.timesofisrael.com/weeks-before-oct-7-idf-said-to-have-been-warned-of-hamas-plan-to-take-250-hostages/#:~:text=During%20the%20actual%20October%207,killed%20amid%20acts%20of%20brutality>> accessed 3 June 2024

²³ Rushdi Abu Alouf & Oliver Slow, 'Gaza 'soon without fuel, medicine and food' - Israel authorities' (*BBC News*, 2023) <<https://www.bbc.com/news/world-middle-east-67051292>> accessed 17 June 2024

²⁴ Amnesty International, 'Israel/OPT: Israeli army threats ordering residents of northern Gaza to leave may amount to war crimes' (*Amnesty International*, 2023) <<https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israeli-army-threats-ordering-residents-of-northern-gaza-to-leave-may-amount-to-war-crimes/>> accessed 17 June 2024

²⁵ WHO, 'Gaza: Forcing patients to flee hospitals a 'death sentence' warns WHO' (*UN News*, 2023) <<https://news.un.org/en/story/2023/10/1142347>> accessed 17 June 2024

²⁶ Nidal Al-Mughrabi and Aidan Lewis, 'First aid convoy enters Gaza Strip from Egypt' (*Reuters*, 2023) <<https://www.reuters.com/world/middle-east/trucks-enter-gaza-carrying-medical-supplies-food-hamas-2023-10-21/>> accessed 17 June 2024

²⁷ Reuters, 'Chronology of Israel's war in Gaza' (*Reuters*, 2024) <<https://www.reuters.com/world/middle-east/major-events-during-war-gaza-2024-02-27/>> accessed 17 June 2024

of the hostages, including women, children, and foreigners, were released in exchange for 240 Palestinian women and teenage detainees.²⁸

The war resumed **on 1st December**, with Israeli forces launching an assault on the southern city of Khan Younis to target senior Hamas battalion leaders. A significant number of civilians fled to Rafah, one of the few remaining areas safe from the ground invasion. Within weeks, over half of Gaza's total population had crowded into this city near the Egyptian border.²⁹

On 6 December, U.N. Secretary-General António Guterres invoked Article 99 of the United Nations Charter, which led **on 12 December** to a Security Council vote on a cease-fire. He alerted to the possibility of increased “mass displacement into neighbouring countries”, subtly referring to the potential of forced displacement of Palestinians from Rafah into Egypt³⁰. The further resolution calling for an “immediate humanitarian ceasefire” faced a veto from the U.S., with 13 countries supporting it and the U.K. abstaining.³¹

By the end of 2023, international pressure on Israel intensified due to the high civilian casualties and widespread destruction in Gaza. For instance, in mid-December, U.S. President Joe Biden remarked that Israel was starting to lose international support.³²

In early January 2024, with nearly 23,000 Palestinians reported dead (mostly civilians, but also Hamas fighters), Israel announced a shift to a more targeted military strategy. In late January, Qatar, Egypt, and the United States mediated a potential three-phase ceasefire framework aimed at negotiating a comprehensive end to the war. This framework included a phased release of hostages in Gaza and Palestinian prisoners held by Israel. However, the agreement remained elusive as Hamas demanded assurances that the hostage exchange would lead to a permanent ceasefire.³³

Ceasefire talks facilitated by international mediators quickly broke down, resulting in an escalation of violence. As the threat of famine intensified and more individuals faced deadly disease outbreaks, the World Food Programme (hereinafter WFP), UNICEF, and WHO

²⁸ *ibid*

²⁹ Britannica, ‘Israel-Hamas War’ (*Britannica*, 2024) <<https://www.britannica.com/event/Israel-Hamas-War>> accessed 24 June 2024

³⁰ United Nations, ‘Letter by the Secretary-General to the President of Security Council invoking Article 99 of the United Nations Charter’ (*UN News*, 2023) <<https://www.un.org/en/situation-in-occupied-palestine-and-israel/sg-sc-article99-06-dec-2023>> accessed 24 June 2024

³¹ United Nations, “US vetoes resolution on Gaza which called for ‘immediate humanitarian ceasefire’” (*United Nations: The Question of Palestine*, 2023) <<https://www.un.org/unispal/document/us-vetoes-resolution-on-gaza-which-called-for-immediate-humanitarian-ceasefire-dec8-2023/>> accessed 24 June 2024

³² Reuters (n 27)

³³ Britannica (n 29)

urgently called for a significant improvement in the flow of humanitarian aid into Gaza, although relief assistance alone would not address all the critical needs of the people in Gaza.³⁴

In February, Israeli officials announced plans to extend their military operations into Rafah, raising global concerns about the humanitarian impact. Despite Prime Minister Netanyahu's commitment to this action as a means to eliminate remaining Hamas forces, tensions with the U.S. emerged, with President Biden considering withholding military support unless a civilian protection plan was put in place.³⁵

By mid-March, the IDF proposed evacuating some Rafah residents to "humanitarian islands" in Gaza before a planned offensive³⁶. On 25 March, UN Security Council Resolution 2728 was passed, calling for an immediate ceasefire during Ramadan, the release of hostages, and the facilitation of humanitarian access to Gaza. The U.S. notably refrained from vetoing this resolution.³⁷

On 1st April, an Israeli airstrike killed seven World Central Kitchen aid workers. While the IDF acknowledged the deaths and manifested "deep sorrow about the incident"³⁸, the situation caused a worldwide commotion, leading the IDF to investigate the facts.

On 5 April, the IDF released a statement of the findings of the event, that happened during an operation to transfer humanitarian aid from the World Central Kitchen (WCK hereinafter) to the Gaza Strip. According to the investigation, the incident was a grave incident caused by a series of failures, including mistaken identification, errors in decision-making, and an attack that violated IDF Standard Operating Procedures. Those who approved the strike were convinced they were targeting armed Hamas members rather than WCK employees.³⁹

Despite initial progress **in early May**, negotiations collapsed **on 5 May** when Hamas launched rockets at Israeli soldiers near the Kerem Shalom border crossing, the primary route for

³⁴ WFP, UNICEF and WHO, 'Preventing famine and deadly disease outbreaks in Gaza requires faster, safer aid access and more supply routes' (*UNICEF*, 2024)

<<https://www.unicef.org/lac/en/press-releases/preventing-famine-and-deadly-disease-outbreaks-gaza-requires-faster-safer-aid-access>> accessed 24 June 2024

³⁵ Britannica (n 29)

³⁶ Emanuel Fabian and Toi Staff, 'Civilians in Rafah will be evacuated to 'humanitarian islands' before ground op' (*The Times of Israel*, 2024)

<<https://www.timesofisrael.com/idf-civilians-in-rafah-will-be-evacuated-to-humanitarian-islands-before-ground-op/>> accessed 24 June 2024

³⁷ United Nations Security Council, 'The situation in the Middle East, including the Palestinian question—Security Council Resolution – 2728 (2024)' (United Nations, 25 March 2024)

<<https://documents.un.org/doc/undoc/gen/n24/080/81/pdf/n2408081.pdf>> accessed 23 May 2024

³⁸ IDF, 'Conclusion of the Investigation Into the Incident in Which 7 WCK Employees Were Killed During a Humanitarian Operation in Gaza' (*IDF*, 2024)

<<https://www.idf.il/en/mini-sites/hamas-israel-war-24/all-articles/conclusion-of-the-investigation-into-the-incident-in-which-7-wck-employees-were-killed-during-a-humanitarian-operation-in-gaza/>> accessed 22 June 2024

³⁹ Ibid.

delivering humanitarian aid at the moment, killing four of the soldiers and prompting Israel to shut down the crossing. The crossing was closed soon after. The following day, Israel ordered the evacuation of 100,000 Palestinians from Rafah. Israel's war cabinet authorized military actions in Rafah, and **by 14 May**, Israeli forces had entered the city. Over 800,000 people had fled Rafah by then, with their new locations deemed inadequate by international organizations. **On 16 May**, a U.S.-built floating pier, Ashdod Port, began receiving humanitarian aid, though distribution faced disruptions. On June 8, Israeli special forces rescued four hostages from the Nuseirat refugee camp, leading to heavy fighting and the deaths of over 270 Palestinians.⁴⁰ **On 10 June**, the UN Security Council passed Resolution 2735, drafted by the U.S., calling for a cease-fire, hostages' release, and safe aid distribution, with 14 votes in favor and Russia abstaining.⁴¹

1.3 Humanitarian situation

Following the 7 October attacks, civilians continued to suffer from the compounded effects of blockade, restriction of movement, closure of border crossings, ongoing violence, and economic instability, keeping the region in a state of emergency while humanitarian organizations face significant challenges in delivering aid.

The conflict resulted in significant civilian casualties, widespread displacement, and extensive destruction of infrastructure. Essential services, including healthcare, water, and electricity, were severely disrupted, exacerbating the already dire living conditions for the residents of Gaza. Access to basic necessities, such as food, water, and medical supplies became critically limited.

Currently, the health sector is still overwhelmed by the rising number of casualties and the lack of medical supplies and personnel. Hospitals, many of which were damaged in the conflict, struggle to provide adequate care.

Here are the key aspects of the humanitarian situation in the Gaza Strip and the West Bank **by 25 October 2023**⁴²:

- Between 7 and 25 October, there have been 6,547 casualties and 17,439 injuries in Gaza, while in the West Bank, 102 casualties and 1,889 injuries have been recorded, according

⁴⁰ Britannica (n 29)

⁴¹ United Nations, 'Adopting Resolution 2735 (2024) with 14 Votes in Favour, Russian Federation Abstaining, Security Council Welcomes New Gaza Ceasefire Proposal, Urges Full Implementation' (*United Nations Meeting Coverage and Press Releases*, 2024)

<<https://press.un.org/en/2024/sc15723.doc.htm>> accessed 17 June 2024

⁴² OCHA, 'Hostilities in the Gaza Strip and Israel, Flash Update #19' (OCHA, 2023)

<<https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-19>> accessed 13 June 2024

to the Palestine Ministry of Health (hereinafter MoH)⁴³. In contrast, as reported by Israeli authorities in the same period, there have been approximately 1,400 casualties and 5,431 injuries in Israel; 1 casualty and 11 injuries in the West Bank and 1 casualty and 3 injuries in Gaza.

- 62 trucks with humanitarian aid have entered Gaza since 21 October, mostly directed to hospitals, ambulances, and internally displaced persons (IDPs). Before the hostilities, an average of about 500 trucks per day were allowed into Gaza.
- Fuel, essential for operating backup generators, continued to be banned by Israeli authorities.
- There were approximately 1.4 million IDPs in Gaza, with around 629,000 having shelter in 150 UNRWA-designated emergency shelters (DES). Overcrowding was already a major concern.
- Water supply in southern areas has temporarily improved after UNRWA and UNICEF delivered small quantities of fuel from reserves to key facilities. However, this fuel was expected to run out by 26 October, affecting the water supply again.

After nine months of conflict, here are the key aspects of the humanitarian situation in the Gaza Strip and the West Bank as of July 2024⁴⁴:

- Between 7 October 2023 and 4 July 2024, at least 38,011 Palestinians have been killed and 87,445 have been injured in Gaza, according to MoH.
- The United Nations estimates that Gaza's current population is still about 2.1 million.
- The number of IDPs has increased to 1.9 million, roughly 90% of the population, due to Israeli military evacuation orders, infrastructure destruction, ongoing hostilities with Hamas, and restricted access to services. A significant evacuation on July 1 allegedly moved 250,000 residents from eastern Khan Younis and Rafah to a "humanitarian zone" in Al Mawasi, impacting vital services and worsening conditions in already overcrowded western Khan Younis and Deir Al Balah. Displaced individuals continue to face severe safety concerns.

⁴³ The Ministry of Health (MoH) is the official source reporting the death toll in Gaza, relying on an existing system primarily composed of hospitals and morgues to verify each death since early November, without distinguishing between civilians and combatants. However, as hospitals in northern Gaza began shutting down or evacuating during the hostilities, the MoH had to supplement data from the few remaining hospitals with media reports, which cannot provide a comprehensive or reliable count. Consequently, these statistics may not accurately reflect the actual death toll in Gaza and should be seen as indicative of the overall level of death and injury.

⁴⁴ OCHA, 'Humanitarian Situation Update #187, Gaza Strip' (OCHA, 2023)

<<https://www.ochaopt.org/content/humanitarian-situation-update-187-gaza-strip>> accessed 20 July 2024

- By 2 July, after Israeli authorities clarified that the 1st July evacuation order didn't apply to the European Gaza Hospital (EGH) - a 650-bed health facility-, most medical staff and patients had already fled in a rush due to concerns about the hospital becoming non-functional, a common issue in evacuation situations. By the evening, EGH was empty, with all 320 patients and staff having transferred to Nasser Medical Complex, which soon became overwhelmed.
- By 5 July, 15 out of Gaza's 36 hospitals were still operational, though they were only partially functional. Many of these facilities are difficult for patients to reach due to security issues, access restrictions, and damage. Fuel shortages are severely disrupting essential humanitarian aid, including life-saving health services. The shortage is critically affecting water and sanitation systems and overall living conditions in Gaza. From 22 to 28 June, only 51,490 liters of fuel were delivered to partners for operating key water and wastewater facilities, which is roughly 10 per cent of the daily need. Consequently, about 50 per cent of Gaza's functioning water wells have halted water pumping, reducing water production by half, and approximately 106 water trucks have stopped operating.
- Ongoing conflict and access issues are severely disrupting aid delivery in Gaza. From July 1 to 4, only 8% of aid missions to northern Gaza were successful in coordination with Israeli authorities, while 69% were blocked and 15% canceled. In southern Gaza, 78% of aid movements were facilitated by Israeli authorities, but 11% were blocked and 9% were cancelled. Delays and bottlenecks at checkpoints, particularly on Salah Ad Din Road, and security risks at Kerem Shalom Crossing are further hampering aid efforts.
- On 19 June and 12 July 2024, an inter-agency team assessed the priority needs in Gaza City⁴⁵ following the Israeli forces' withdrawal on 30 May. Key findings revealed: Overcrowding and lack of safety; lack of shelter supplies (bed, clothes, food); severe shortages of safe drinking water; degrading sanitation conditions; a rise in Hepatitis A, skin diseases (especially among children), and respiratory illnesses due to inadequate medical facilities and supplies. Food assistance is insufficient, with residents relying on bread and canned goods.

⁴⁵ OCHA, 'Humanitarian Situation Update #193 | Gaza Strip' (OCHA, 2023) <https://www.ochaopt.org/content/humanitarian-situation-update-193-gaza-strip?_gl=1*vnm1cg*_ga*OTMwMDc3MzUzLjE3MDU1NzU0MDg.*_ga_E60ZNX2F68*MTcyMTQ5NjQ5MC40OC4xLjE3MjE0OTY3NzQuMzluMC4w> accessed 10 July 2024

- An average of 86 trucks per day is entering Gaza for humanitarian aid, which exceeds the June daily average of 76 trucks but falls short of the May average of 94 trucks per day.⁴⁶
- According to WHO, over 1,000 attacks on healthcare facilities have been recorded in both Gaza and the West Bank since 7 October 2023.⁴⁷

Regarding the situation with humanitarian personnel, OCHA reported in April 2024 that between 7 October 2023 and 30 April 2024, at least 254 aid workers have died in Gaza, including 185 United Nations staff and 27 members and volunteers from the Palestine Red Crescent Society (hereinafter PRCS). Ongoing hostilities, airstrikes, and the overall deterioration of the rule of law in Gaza continue to present severe security risks to humanitarian staff and resources.⁴⁸

By May 2024, Human Rights Watch had documented 8 attacks on aid workers in the Gaza Strip by the Israeli military since October 2023:

“Attack on a Médecins Sans Frontières (MSF or Doctors without Borders) convoy, November 18, 2023.

Attack on a guest house of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), December 9, 2023.

Attack on an MSF shelter, January 8, 2024.

Attack on an International Rescue Committee (IRC) and Medical Aid for Palestinians (MAP) guest house, January 18, 2024.

Attack on an UNRWA convoy, February 5, 2024.

Attack on an MSF guest house, February 20, 2024.

Attack on a home sheltering an American Near East Refugee Aid Organization (Anera) employee, March 8, 2024.”

Attack on a World Central Kitchen convoy, April 1, 2024⁴⁹

The ICRC has reiterated the importance of safeguarding medical missions, including facilities, ambulances, doctors, and nurses, urging all parties involved in the conflict to fully protect and respect these critical and life-saving services. Additionally, the ICRC often calls parties to the

⁴⁶ *ibid.*

⁴⁷ WHO cited by OCHA, ‘Today's top news: Occupied Palestinian Territory’ (OCHA, 2024) <<https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-11>> accessed 20 July 2024

⁴⁸ OCHA, ‘Humanitarian Access Snapshot - Gaza Strip | 1-30 April 2024’ (OCHA, 2024) <[https://www.ochaopt.org/content/humanitarian-access-snapshot-gaza-strip-1-30-april-2024#:~:text=At%20least%2054%20aid%20workers,Red%20Crescent%20Society%20\(P RCS\)>](https://www.ochaopt.org/content/humanitarian-access-snapshot-gaza-strip-1-30-april-2024#:~:text=At%20least%2054%20aid%20workers,Red%20Crescent%20Society%20(P RCS)>) accessed 17 May 2024

⁴⁹ Human Rights Watch, ‘Gaza: Israelis Attacking Known Aid Worker Locations’ (Human Rights Watch, 2024) <<https://www.hrw.org/news/2024/05/14/gaza-israelis-attacking-known-aid-worker-locations>> accessed on 10 June 2024

conflict to adhere to their legal responsibilities under international humanitarian law to protect civilian lives and objects.⁵⁰

1.4 Status of crossing points

In examining the facilitation of humanitarian aid, it is essential to understand the current status of key crossing points that serve as crucial junctures between the Gaza Strip and its neighbouring territories -Israel and Egypt-. Each crossing plays a role in the movement of people and goods, and their operational status directly impacts the access of humanitarian relief in Gaza.

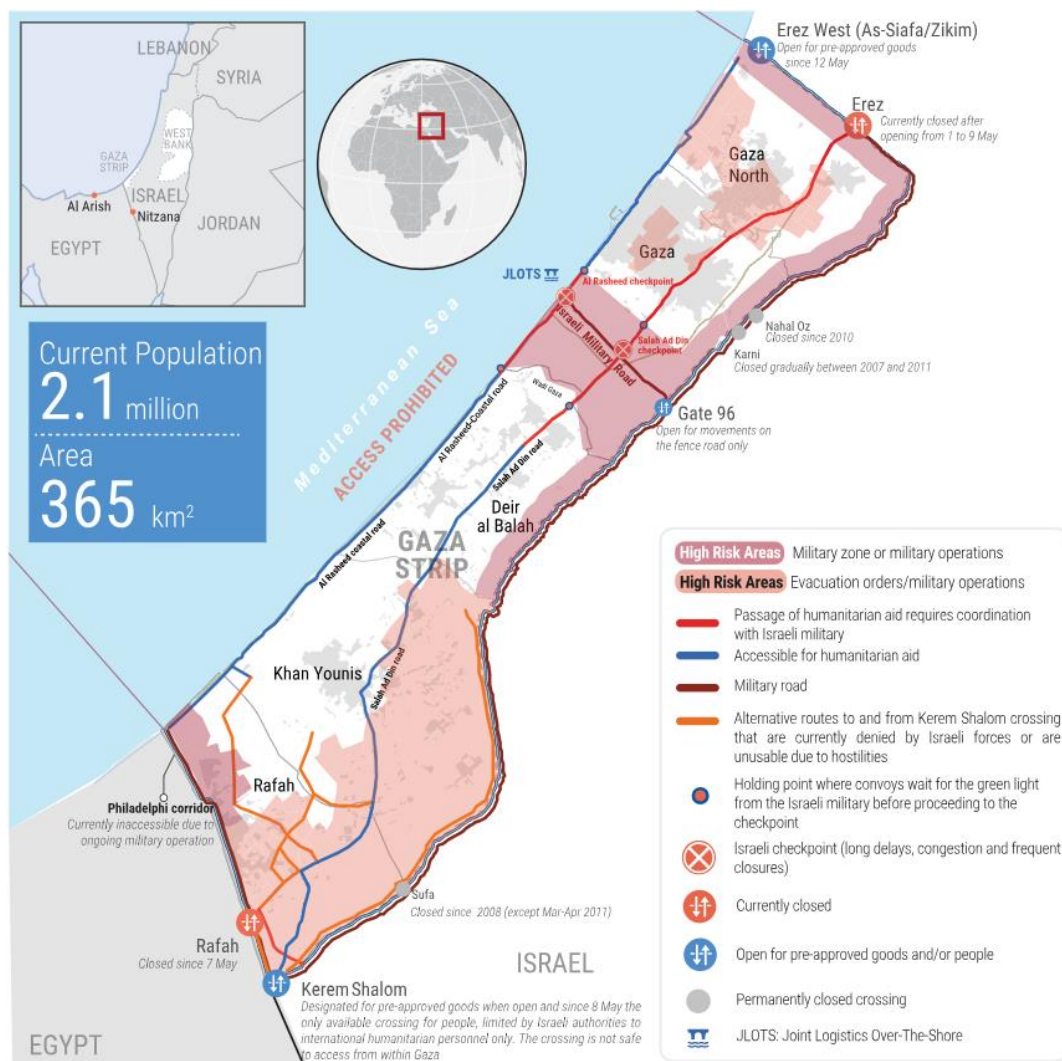


Figure 1: Reported impact snapshot | Gaza Strip (OCHA, 17 July 2024)⁵¹

⁵⁰ ICRC, 'Gaza: ICRC calls for protection of civilians while hoping for an agreement amidst evacuations, military operations and negotiations' (ICRC, 2024) <<https://www.icrc.org/en/document/gaza-icrc-calls-protection-civilians-while-hoping-for-an-agreement>> accessed 13 June 2024

⁵¹ OCHA, 'Reported impact snapshot. Gaza Strip' (OCHA, July 2024) <<https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-17-july-2024>> accessed 20 July 2024

○ **The Rafah Border Crossing**

Situated at the southern end of Gaza on the Egypt-Palestine border, the Rafah border has been the main entry and exit point for aid workers and those attempting to flee since 7 October 2023. It is managed by Egypt under agreement with Israel after negotiations in 2005, which stipulates that imports through the crossing require Israeli approval.⁵² This crossing has facilitated the majority of food, medical supplies, and fuel deliveries to Gaza for many years, even when other crossings with Israel were accessible.

In October 2023, with the onset of the Israel-Hamas war, the crossing was sealed. Egyptian officials, including President Abdel-Fatah al-Sisi, expressed their unwillingness to allow Palestinians to flee into northern Sinai. They feared this could lead to the permanent resettlement of over 2 million people, whom Israel would not permit to return to Gaza. President Abdel-Fatah al-Sisi highlighted concerns about the potential consequences of a Palestinian exodus from Gaza, stating that allowing them to temporarily settle in Sinai would effectively enable Israel to control an emptied Gaza Strip.⁵³

On 21 October, the border opened with relief supplies⁵⁴, and on November 1, a limited number of foreigners and wounded persons were allowed to exit Gaza.⁵⁵

In May 2024, Israel seized the crossing during the Rafah offensive. In response, Egypt closed the crossing and further negotiations followed to open it.⁵⁶ **As of 20 July, the Rafah Border Crossing Point remains closed since 7 May.**

According to OCHA, between October and December 2003, 6168 commodities were imported through the Rafah crossing point in truckloads, of which 85% were humanitarian supplies (mostly human food products) and 15% were of a commercial nature. In addition, between

⁵² 'Agreed Documents on Movement and Access from and to Gaza: Agreement on Movement and Access Agreed Principles for Rafah Crossing' (*UN Peacemakers*, n.d.) <https://peacemaker.un.org/sites/peacemaker.un.org/files/IsraelOPT_AgreedDocumentsOnMovementAccessGaza2005.pdf> accessed on 7 June 2024

⁵³ Ruth Michaelson, 'Rafah border crossing: could Egypt open it to fleeing Palestinians?' (*The Guardian*, 2023) <<https://amp.theguardian.com/world/2023/oct/15/rafah-border-crossing-could-egypt-open-it-to-fleeing-palestinians>> accessed on 7 June 2024

⁵⁴ Nicols Camut, 'Aid enters Gaza as Rafah border crossing opens' (*POLITICO*, 2023) <<https://www.politico.eu/article/aid-enter-gaza-rafah-border-crossing-open/>> accessed on 7 June 2024

⁵⁵ Reuters, 'At least 320 foreign nationals and some wounded leave Gaza for Egypt' (*Reuters*, 2023) <<https://www.reuters.com/world/middle-east/egypt-prepares-evacuees-gaza-arrive-through-rafah-crossing-2023-11-01/>> accessed on 7 June 2024

⁵⁶ Toi Staff, 'Israel, Egypt said moving toward reopening Rafah Crossing amid US pressure' (*The Times of Israel*, 2024) <<https://www.timesofisrael.com/israel-egypt-said-to-agree-to-reopen-rafah-crossing-following-us-pressure/>> accessed on 7 June 2024

January and March 2024, 3984 commodities were imported through this crossing, with similar distribution of supplies.⁵⁷

- **Kerem Shalom**

Situated where the border sections between the Gaza Strip and Israel meet, as well as where the Gaza Strip and Egypt intersect, the crossing has been the principal route for commercial goods from Israel into Gaza.

On 7 October 2023, the Kerem Shalom crossing point was among several targets attacked during Hamas's multi-front assault on Israel. Initially, the crossing remained closed during subsequent IDF operations. However, it reopened on 17 December 2023, to allow UN aid trucks to pass through, following an agreement during the hostages-for-prisoners exchanges. The crossing closed again on 5 May 2024, after a rocket attack on an Israeli military base.⁵⁸

The closure of the Kerem Shalom crossing point occurred soon after the head of the UN World Food Programme declared that northern Gaza was experiencing a "full-blown famine"⁵⁹, marking one of the most significant warnings about the impact of restrictions on aid entering the region.

Kerem Shalom crossing point reopened for humanitarian aid on 8 May 2024. Based on the OCHA database, 2177 commodities were imported through it between October and December 2023, while between January and March 2024, 8261 commodities were imported, with 92% of the supplies being of humanitarian nature (mostly human food products).

- **Erez**

The Erez Crossing is a border crossing between the Gaza Strip and Israel, situated at the northern end of the Gaza Strip. It lies between the Israeli kibbutz of Erez and the Palestinian town of Beit Hanoun.

During the attacks on 7 October 2023, Hamas's military wing, the Al-Qassam Brigades, temporarily took control of the Erez Crossing, prompting hundreds of Palestinian civilians to head towards the crossing. The attack caused damage to the crossing facilities, and it remained closed until **12 May 2024, when it was reopened for aid** transports into Gaza after approval

⁵⁷ OCHA, 'Gaza crossings: movement of people and goods' (OCHA, 2024) <<https://www.ochaopt.org/data/crossings>> accessed 20 July 2024

⁵⁸ The Guardian, 'Key aid crossing into Gaza closed after rocket attack kills Israeli soldiers' (*The Guardian*, 2024) <<https://www.theguardian.com/world/article/2024/may/06/key-aid-crossing-into-gaza-closed-after-rocket-attack-kills-israeli-soldiers>> accessed 17 June 2024

⁵⁹ Joshua Askew, 'Northern Gaza in 'full-blown' famine: Senior UN official' (*Euronews*, 2024) <<https://www.euronews.com/2024/05/04/northern-gaza-in-full-blown-famine-senior-un-official>> accessed 17 June 2024

by Israeli authorities.⁶⁰ The announcement came after U.S. President Joe Biden warned that future support for Israel would be contingent on Israel taking concrete steps to protect civilians and aid workers.⁶¹

Normally, it serves as a crossing point for persons, not supplies, between the Gaza Strip and Israel. For instance, 429,045 entries and 437,794 exits of persons were reported through the Erez in 2023⁶². However, after the reopening in May 2024, the Erez crossing also allows the entry of aid trucks bound for Gaza, once inspected by Israeli authorities. The crossing was the nearest point to Gaza from Israel's Ashdod Port,⁶³ a pier that facilitated nearly 20 million pounds of aid, delivered to Gaza from March to July 2024.⁶⁴

⁶⁰ Reuters, 'Israel allows trucks from newly reopened Erez crossing into Gaza after U.S. pressure' (*Reuters*, 2024) <<https://www.reuters.com/world/middle-east/israel-allows-trucks-newly-reopened-erez-crossing-into-gaza-after-us-pressure-2024-05-01/>> accessed on 10 June 2024

⁶¹ Lorenzo Tondo, 'Joe Biden calls for 'immediate ceasefire' in Gaza and says Israel must protect civilians to keep US support' (*The Guardian*, 2024) <<https://www.theguardian.com/world/2024/apr/04/israel-us-gaza-joe-biden-benjamin-netanyahu-phone-call>> accessed on 10 June 2024

⁶² OCHA, 'Gaza crossings: movement of people and goods. Erez crossing' (*OCHA*, 2024) <<https://www.ochaopt.org/data/crossings>> accessed 20 July 2024

⁶³ Michael Bachner and Emanuel Fabian, 'Israel opens Erez crossing to Gaza aid for first time as Blinken tours border' (*The Times of Israel*, 2024) <<https://www.timesofisrael.com/israel-opens-erez-crossing-to-gaza-aid-for-first-time-as-blinken-tours-border/>> accessed on 7 June 2024

⁶⁴ USAID, 'Press Briefing on Humanitarian Maritime Corridor in Gaza port' (*USAID*, 2024) <<https://www.usaid.gov/news-information/speeches/jul-19-2024-press-briefing-humanitarian-maritime-corridor-gaza>> accessed on 20 July 2024

2. Obligation to allow and facilitate humanitarian aid

Humanitarian aid is a crucial component in mitigating the suffering of civilians in conflict zones. International Humanitarian Law (hereinafter IHL) and International Human Rights Law (hereinafter HRL) legal frameworks provide comprehensive regulations for humanitarian relief operations and access to populations in need, which will be further explored in this chapter.

IHL applies to both States and armed non-state actors but is confined to armed conflict situations. Conversely, human rights law is applicable in all situations, during peace and conflict times, placing the primary responsibility for aiding conflict-affected populations on the territorial State. In contrast, under IHL this responsibility may lie with the territorial State, an occupying foreign power, or a non-state armed group controlling territory during an armed conflict.⁶⁵ Customary international law rules complement these treaty provisions governing humanitarian relief operations.

Alongside these provisions, International Criminal Law deals with aspects of criminality and prospects for accountability regarding violation of humanitarian assistance obligations, while United Nations Security Council resolutions call parties to the conflict to comply with those provisions and often reflect the prevailing geopolitical landscape, influencing how these provisions are enforced and interpreted. Furthermore, the role of International Court of Justice advisory opinions in shaping the understanding and application of IHL obligations of States contributes to the interpretation of norms regarding humanitarian assistance.

The obligation to allow and facilitate humanitarian aid is also grounded in fundamental principles of IHL, including proportionality, humanity, distinction, and military necessity⁶⁶. These principles, shaped significantly by the ICRC, outline the imperative to alleviate human suffering during armed conflict and occupation. When combined with the Responsibility to Protect (R2P) principle, the legal framework for providing humanitarian aid becomes clearer, highlighting the international community's role in safeguarding human dignity and minimizing the impact of armed conflict on civilians. This chapter aims to explore the legal framework of the obligation to allow and facilitate humanitarian relief, examining the evolving standards and the corresponding scope of protection.

⁶⁵ Annyssa Bellal, Stuart Casey-Masle, 'The Additional Protocols to the Geneva Conventions in Context. Relief Operations. 2022' (*Oxford Public International Law*, 2022) <<https://opil-oup.com.uaccess.univie.ac.at/display/10.1093/law/9780192868909.001.0001/law-9780192868909-chapter-7?prd=OPIL>> accessed on 12 June 2024

⁶⁶ ICRC, 'Fundamental principles of IHL' (*Casebook ICRC*, n.d.) <https://casebook.icrc.org/a_to_z/glossary/fundamental-principles-ihl> accessed on 12 June 2024

2.1 Geneva Conventions and Additional Protocols

International humanitarian treaty law regulates various aspects of warfare, from provisions establishing obligations for parties to the conflict to protect civilians, to addressing permissible means and methods of combat. Particularly, the four Geneva Conventions (1949) and their Additional Protocols (1977) are foundational international treaties in this sense, containing rules to protect people who do not take part in the hostilities and those who can no longer fight, including provisions on the obligation to allow and facilitate humanitarian aid.

To date, 196 states have ratified the four Geneva Conventions, including Egypt, Israel, Jordan and the U.S. Protocol I has been ratified by 174 states and Protocol II by 169 states, neither Israel nor the U.S. is a party to these protocols, while third States such as Egypt and Jordan have ratified them. Protocol III has been ratified by 79 states, including the U.S., but not Israel.⁶⁷

Obligations to allow and facilitate the provision of humanitarian relief are reflected in the following legal framework:

- **Common Article 3 to the four Geneva Conventions** set the minimum standards in paragraph (1) for persons taking no active part in the conflict, by stating:

Article 3 - 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:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.⁶⁸

Regarding the scope of protection, Article 3 common to the four Geneva Conventions mandates that each party involved in a non-international armed conflict must humanely treat individuals not actively participating in hostilities. However, as noted by the International Court of Justice (hereinafter ICJ) in its Nicaragua judgement, the Court recognizes the applicability of these provisions of international humanitarian law codified by Article 3 to international armed conflicts too, by stating that they represent “a minimum yardstick, (...) and reflect what the

⁶⁷ United Nations Treaty Collection, ‘Geneva Conventions and Additional Protocols adherence’ (*United Nations*, n.d.) <<https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a>> accessed on 12 June 2024

⁶⁸ Geneva Conventions, ‘Article 3 - Conflicts not of an international character’ (International Humanitarian law Databases, n.d.) <<https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a>> accessed on 12 June 2024

Court in 1949 called ‘elementary considerations of humanity’.”⁶⁹ Article 3 binds parties to the conflict, meaning, those signatory and non-signatory States of the Geneva Conventions, along with non-state parties involved in a conflict in the territory of one of the High Contracting Parties.

The term “humane treatment” encompasses a wide-ranging concept. One interpretation is that parties to an armed conflict must provide persons with food, drinking water, and medical supplies, including those under the effective control of a party to an armed conflict.⁷⁰

Furthermore, Pictet highlighted that the principle of humane treatment is essentially the basis of the four Geneva Conventions, which is “recognized as essential by civilized nation”⁷¹, adding: “The purpose of this Convention is simply to define the correct way to behave towards a human being, who himself wishes to receive humane treatment and who may, therefore, also give it to his fellow human beings”⁷²

- **Geneva Convention IV of 1949 (hereinafter GC IV) relative to the Protection of Civilian Persons in Time of War**, set in **Article 23** the obligation to allow the free passage of relief consignments⁷³:

Article 23 - Consignment of medical supplies, food and clothing

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

- (a) that the consignments may be diverted from their destination,
- (b) that the control may not be effective, or
- (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

⁶⁹ ICJ, ‘Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US)’, Merits, Judgment (*ICJ Reports*, 1986) p. 114, para 218 <<https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>> accessed on 12 June 2024

⁷⁰ UN Office for the Coordination of Humanitarian Affairs and University of Oxford, Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict’ (*ELAC*, 2016) p. 12, para 14 <<https://www.elac.ox.ac.uk/wp-content/uploads/2022/06/oxfordguidancepdf.pdf>> accessed on 12 June 2024

⁷¹ Jean S. Pictet, ‘The Geneva Conventions of 12 August 1949 Commentary - IV Geneva Convention relative to the Protection of Civilian Persons in Time of War’, (*ICC Legal tools Database*, n.d.) p. 34 <<https://www.legal-tools.org/doc/7d971f/pdf>> accessed on 12 June 2024

⁷² *ibid* p. 204.

⁷³ Geneva Convention IV, ‘Article 23’ (*International Humanitarian law Databases*, 1949) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-23>> accessed on 12 June 2024

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Article 23 GC IV protects the right to free passage of essential supplies under the supervision of the Protecting Powers⁷⁴ to safeguard the interests of the State granting passage. The scope of protection of this provision applies in any conflict, whether non-international or international and binds all High Contracting Parties, meaning States that have signed or ratified the Geneva Conventions, even if they are not actively participating in an armed conflict.

Pictet emphasises that Article 23 GC IV reflects “the harsh necessities of war”⁷⁵. He notes that the distinction made in the provision of the free passage of assistance for the exclusive use of children under fifteen, expectant mothers, and maternity cases is based on military considerations by expressing: “The intention is to keep a strict check on the destination of provisions which might reinforce the economic potential of the enemy if used for other purposes”⁷⁶.

He also outlines that the scope of application relies on all consignments directed to the civilian population of another contracting party, ‘*even if the latter is its adversary*’, which is significant in armed conflicts where it is often difficult to place them in for an enemy State. Additionally, Article 23 GC IV makes no distinction between relief consignments sent by states, humanitarian organizations, or private individuals and merchandise imports acquired through regular trade channels from allied or neutral states. This general approach contrasts with Article 59 GC IV and subsequent articles, which regulates more specifically the obligations on relief consignments for civilians in occupied territories.⁷⁷

As regards to conditions (a), (b), and (c), they represent safeguards to the parties that the free passage to consignments will only be used for the purposes specified in the Convention. In this line, Pictet adds: “(...) if, however unlikely it may seem, a belligerent has serious reason to think that the size and frequency of the consignments are likely to assist the military or

⁷⁴ According to the ICRC, a Protecting Power is “a neutral State or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the enemy Party and has agreed to carry out the functions assigned to a Protecting Power under international humanitarian law. In the absence of an agreement on a Protecting Power, the International Committee of the Red Cross or any other impartial humanitarian organization should be designated as a substitute.” See more in: ‘Protecting Powers: How Does Law Protect in War? - Online Casebook’.

⁷⁵ Jean S. Pictet, ‘The Geneva Conventions of 12 August 1949 Commentary - IV Geneva Convention relative to the Protection of Civilian Persons in Time of War’, (*ICC Legal tools Database*, n.d.) p. 183 <<https://www.legal-tools.org/doc/7d971f/pdf>> accessed on 12 June 2024

⁷⁶ *ibid*, p. 180.

⁷⁷ *ibid*, p. 181.

economic efforts of the enemy, he would be entitled to refuse free passage”⁷⁸. He concludes by commenting that the value of free passage will largely depend on how States exercise their discretion.

- **Article 55 of the Geneva Convention IV** details provisions on food and medical supplies for the population by the Occupying Power:

Article 55 - Food and medical supplies for the population

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

Article 55 GC IV poses an obligation to the occupying power to ensure, “*to the fullest extent of the means available to it*”, the food and medical supplies of the population, which reflects the awareness of the material difficulties that the Occupying Power might face in conflict situations, although it is an obligation to use all the means at its disposal, wherever they are from -allies, neutral parties, or adversary-.⁷⁹

The scope of this provision protects the ‘population’ in general, which can include not only civilians but also members of the armed forces detained in the occupied territory. In addition, the Occupying Power must consider the “*requirements of the civilian population*.” This provision of the Convention supports an existing rule from the Hague Regulations, which states that requisitions must be proportional to the country’s resources.⁸⁰

The last paragraph of Article 55 GC IV highlights that the Protecting Power must verify food and medical supplies in occupied territories and temporary restrictions on this verification are allowed, which wording shows that it shall be only for urgent military needs and cannot be general or permanent.⁸¹

As noted by Fleck, this obligation stems from the more general duty to humanely treat individuals under the power of a party to the armed conflict, the same spirit that can be found

⁷⁸ *ibid*, p. 182.

⁷⁹ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Commentary. (*IHL Database*, 2016) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-55/commentary/1958?activeTab=1949GCs-APs-and-commentaries>> accessed on 12 June 2024

⁸⁰ *ibid*.

⁸¹ *ibid*.

in common Article 3 GC I–IV and Article 27 GC IV: to guarantee that the fundamental needs of the population under their control are fulfilled.⁸²

- **Geneva Convention IV** also outlines in **Article 59** the provisions regarding collective relief in an occupied territory:

Article 59 - Relief I. Collective relief

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.⁸³

The Convention poses an obligation on the Occupying Power to accept collective relief and also to facilitate it by all means at its disposal. The International Committee of the Red Cross, along with any other "*impartial humanitarian organization*," holds the same authority as a State to undertake relief schemes. This provision binds the Occupying Power and all High Contracting Parties.

Article 59 GC IV refers to foodstuffs, medical supplies and clothing as consignments because of their vital importance for the population, however, it also may apply to other items with the character of relief supplies.⁸⁴

The historical background of this clause is drawn from the experience during the Second World War. Relief consignments were disrupted by measures aimed at weakening the enemy's economic power. The economic and financial blockade of Europe, the counter-blockade, and the progressive expansion of the 'war contraband' hindered many relief efforts. Some schemes were only implemented after long delays and tough negotiations with blockade authorities. This

⁸² Dieter Fleck, 'The Handbook of International Humanitarian Law', Humanitarian Assistance, (*Oxford Public International Law*, 2021) <<https://opil-oup.com.uaccess.univie.ac.at/display/10.1093/law/9780198847960.001.0001/law-9780198847960>> accessed on 13 June 2024

⁸³ Geneva Convention IV, 'Article 59' (*International Humanitarian Law Database*, 1949) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-59?activeTab=undefined>> accessed on 12 June 2024

⁸⁴ Geneva Convention IV, 'Article 59' Commentary of 1958 (*International Humanitarian Law Database*, 1949) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-59?activeTab=undefined>> accessed on 12 June 2024

situation limited humanitarian considerations, and almost any goods destined for enemy-controlled areas were at risk of confiscation.⁸⁵

Therefore, the principle of free passage of the consignments and the obligation to guarantee their protection is the core of the provision, meaning that relief supplies for the population of an occupied territory must be permitted to pass through the blockade; they cannot be classified as war contraband or seized by those enforcing the blockade under any circumstances.

Paragraph 4 concerning the verification and supervision of consignments, represents safeguards for the State granting free passage to the supplies to ensure that they are for strictly humanitarian purposes and not for military reasons or for the benefit of the Occupying Power. Nevertheless, these safeguards must never be used to render the rule ineffective or to cause unnecessary delays in the delivery of relief.

The ICRC, as well as any other *impartial* humanitarian organization, possesses the same authority as a State to carry out relief schemes. This ‘right of initiative’ finds its legal basis in common Article 3 GC I–IV and in Articles 10 GC IV, defined as “the legal entitlement given to impartial humanitarian organizations to propose their humanitarian activities to a party to the armed conflict.”⁸⁶ For instance, the principle of impartiality can be translated into alleviating individuals' suffering by addressing their needs and prioritizing the most urgent cases of distress, which is a key element in granting humanitarian access.⁸⁷ In this context, a service offer from a humanitarian organization that does not meet the criteria of *impartiality* can be lawfully rejected.

It is also critical to emphasize that *military necessity* cannot be used to entirely reject services offered by impartial humanitarian organizations. This argument can only regulate, but not completely prohibit humanitarian access. Therefore, *military necessity* may only justify geographic and temporary restrictions.⁸⁸

Practical arrangements for their transit will be detailed in special agreements between the States concerned, as encouraged by Article 7 GC IV, which suggests States make specific agreements for such matters - even if the creation of such agreements is not explicitly required by Article 59 GC IV.⁸⁹

⁸⁵ *ibid.*

⁸⁶ ICRC, *Commentary of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I)*, Article 3, Geneva, ICRC, 2016, para. 784.

⁸⁷ Fleck (n. 82)

⁸⁸ *ibid.*

⁸⁹ *ibid.*

- **Additional Protocol I** (1977), governing international armed conflicts, establishes in Articles 69, 70 and 71 provisions regarding relief actions:

Article 69 - Basic needs in occupied territories

1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.

2. Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59 , 60 , 61 , 62 , 108 , 109 , 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay.⁹⁰

Article 69 of Additional Protocol I (hereinafter AP I) extends the scope of the Occupying Power's responsibilities by noting that relief efforts must encompass a wider range of essential items to support the needs of the affected population. To the foodstuffs and medical supplies mentioned in Article 55 GC IV as relief supplies, other elements such as shelter are added. It is important to note that the article does not contain an exhaustive list of 'other essential supplies' as it depends on local conditions.⁹¹

Article 70 - Relief actions

"1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

3. The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:

(a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;

(b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;

⁹⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 'Article 69', Commentary of 1987. (*International Humanitarian Law Database*, 1987) <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-69/commentary/1987>> accessed on 12 June 2024

⁹¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 'Article 70', Commentary of 1987. (*International Humanitarian Law Database*, 1987) <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-69/commentary/1987?activeTab=undefined>> accessed on 12 June 2024

(c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.

4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.

5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international coordination of the relief actions referred to in paragraph 1.⁹²

The scope of application for relief actions according to the first sentence is in territories under the control of a Party to the conflict other than occupied territories (e.g. those with special status and territories under the control of movements fighting in conflict).

Although the phrase "not adequately provided" -similar to Article 55 GV IV- in the context of humanitarian relief is imprecise, it could be justified due to varying needs and urgencies in different situations. Likewise, as mentioned in Article 59 GC IV, relief actions must be humanitarian, and impartial, which includes the principles of non-discrimination and proportionality, and require the agreement of the Parties concerned. Protection of the national sovereignty of the State receiving the relief lies as the background of this clause.⁹³

The obligation to allow relief passage applies to Parties to the conflict and High Contracting Parties based, for instance, on geographic necessity. These parties cannot refuse passage but can impose technical and supervision guarantees to ensure the aid reaches its intended population, such as the prescription of technical arrangements and the supervision by the Protecting Power ensuring proper distribution of assistance. Unlike Article 23 GC IV, Article 70's conditions for relief passage are less restrictive, focusing on preventing diversion and ensuring effective control without serving as a pretext for denial.⁹⁴

Some scholars affirm that Article 70 AP I represents a development of international humanitarian law compared with Article 23 GC IV by extending relief to all affected civilians and encompassing a broader range of essential supplies. For instance, Frits Kalshoven and Liesbeth Zegveld⁹⁵ argue that these provisions reflect a broader duty beyond what is stipulated in GC IV to protect and ensure the well-being of civilians, needing the facilitation of humanitarian relief without unnecessary delays or obstacles.

Article 71 - Personnel participating in relief actions

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ Kalshoven F, Zegveld L. Frontmatter, 'In: Constraints on the Waging of War: An Introduction to International Humanitarian Law. Cambridge University Press; 2011 (*Cambridge*, 2011) <<https://www.cambridge.org/core/books/constraints-on-the-waging-of-war/8D99DA5E00841F92D18C7BF752FA1FEC>> accessed on 12 June 2024

personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.

2. Such personnel shall be respected and protected.

3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.

4. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated.⁹⁶

This provision mandates that humanitarian relief personnel, and objects used for humanitarian relief operations, must be respected and protected, which entails an obligation of the Parties to prevent relief from being diverted and to ensure the safety of convoys, for the benefit of persons in need. To achieve this, parties must issue clear and strict directives to their armed forces to safeguard humanitarian relief and personnel. In return, relief workers must comply with the national laws, security requirements, and agreements established with the parties in the territory where they operate. Their movement and activities may only be temporarily restricted due to imperative military necessity, which can be subjective to each Party. Nevertheless, restrictions should be only temporary.⁹⁷

The scope of protection applies to personnel in a relief action, both in occupied territories and other territories controlled by any of the Parties to the conflict and the approval of their participation by the Party where the actions will be taken should be interpreted in the case of occupied territories, as the Occupying Power (not the Party whose territory is occupied).⁹⁸

- In addition, **Additional Protocol II** (1977), regulating non-international armed conflicts, refers to the field of application in **Article 1**, stating:

Article 1 - Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

⁹⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 'Article 71', Commentary of 1987. (*International Humanitarian Law Database*, 1987) < <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-71/commentary/1987?activeTab=undefined> > accessed on 12 June 2024

⁹⁷ Fleck (n. 82)

⁹⁸ Protocol Additional to the Geneva Conventions (n. 96)

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.⁹⁹

Article 1 of Additional Protocol II (hereinafter AP II) supplements the provisions of Common Article 3 GC I-IV, by establishing that the Protocol applies in non-international armed conflicts, specifically in situations where the armed forces of a High Contracting Party confront dissident armed forces or organized armed groups. To be recognized as parties to the conflict, these groups must meet specific conditions, including being “under a responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”¹⁰⁰.

- Further **Article 18 AP II**, establishes provisions regarding relief societies and actions:

Article 18 - Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.¹⁰¹

Article 18 AP II aims to facilitate humanitarian activities in non-international armed conflicts to aid and protect victims. Common Article 3 does not address relief actions, prompting the ICRC and the Red Cross Movement to advocate for this addition. The provision ensures that relief societies and the civilian population can assist in caring for victims. Paragraph 2 emphasizes international relief actions when civilian populations suffer undue hardship due to a lack of essential supplies.

Such aid must be humanitarian, impartial, and conducted without adverse distinction, requiring the consent of the involved state. Relief actions must occur when local resources are exhausted, and authorities cannot arbitrarily refuse assistance from impartial humanitarian organizations. These actions must be meticulously organized to address any political or security concerns,

⁹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), ‘Article 1’ Commentary of 1987. (*International Humanitarian Law Database*, 1987) <<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-1/commentary/1987?activeTab=undefined>> accessed on 12 June 2024

¹⁰⁰ *ibid.*

¹⁰¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), ‘Article 18 (2)’ (*International Humanitarian Law Database*, 1987) <<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-18?activeTab=default>> accessed on 12 June 2024

ensuring that relief is delivered to intended beneficiaries while meeting legal and operational standards.¹⁰²

After reviewing the relevant provisions, the key insights from the Geneva Conventions and their Additional Protocols on allowing and facilitating humanitarian relief can be summarised as follows:

- High Contracting Parties to the Geneva Conventions and their Additional Protocols, as well as all parties to the conflict -regardless of whether they are State or non-state actors- are bound by the provisions requiring them to allow and facilitate rapid and unimpeded humanitarian aid.
- The concept of humanitarian assistance is fundamentally connected to the primary obligation of parties in an armed conflict to meet the basic needs of the population under their control. This responsibility stems from the broader obligation to treat humanely those who are under the power of a party to the conflict.
- The expression of “basic needs” of the population has been extended, particularly through Additional Protocol I. However, it should be tailored to the context of each conflict.
- Impartial humanitarian organizations can undertake their services for the benefit of those affected by armed conflicts, provided they receive consent from the parties concerned (see common Article 3 GC I–IV, Article 59 GC IV, Article 70 AP I and Article 18 AP II). This rule is fundamental for humanitarian access.
- Once impartial humanitarian relief efforts are agreed upon, the parties to the conflict are expected to allow and facilitate the rapid and unimpeded passage of consignments while retaining their right to regulate to ensure that aid is targeted to the population in need and to prevent its misuse (such as diversion of aid). (see Articles 23 and 59 GC IV, Article 70 AP I).
- Any denial of services for humanitarian activities must be based on valid and lawful reasons. The party to the conflict must evaluate offers of humanitarian services in good faith under its international legal obligations concerning the humanitarian needs of those affected by armed conflict.
- The obligation to allow and facilitate relief supplies is pointed out in provisions regulating humanitarian activities in armed conflicts, including situations of occupation

¹⁰² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), ‘Article 18’ Commentary of 1987. (*International Humanitarian Law Database*, 1987) <<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-18?activeTab=default>> accessed on 12 June 2024

(see Article 59 para. 3 GC IV and Article 70 para. 2 AP). Rules for humanitarian activities applicable in international armed conflicts can be considered as customary law and, hence, applicable also to non-international armed conflicts.

- In international armed conflicts, parties to the conflict and all States concerned are obliged to allow and facilitate relief operations (see Article 70 AP I). For instance, third States -as high contracting parties to the Geneva Conventions- whose territory impartial humanitarian organizations may need to cross to reach conflict zones, must grant permission for such transit. Despite international humanitarian law not explicitly addressing the consent of third countries, such consent must be sought and obtained according to public international law. Regardless, third States are obligated under international humanitarian law (see Article 23 GC IV and Article 70, para. 2, AP I) to facilitate relief efforts.
- In non-international armed conflicts, there is no explicit obligation for third States to facilitate humanitarian relief but there is an expectation they will not obstruct it. The humanitarian principles of international law suggest that non-belligerent states should support relief efforts accepted by conflict parties.¹⁰³

2.2 International Human Rights Law instruments

International Human rights law also protects civilians in times of armed conflict. The relation between IHL and IHRL can be understood by the concept of *complementarity*, which means that these two bodies of law are grounded in the same principles, as noted by Droege:

Complementarity means that human rights law and humanitarian law do not contradict each other but, being based on the same principles and values, can influence and reinforce each other mutually. In this sense, complementarity reflects a method of interpretation enshrined in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which stipulates that, in interpreting a norm, *any relevant rules of international law applicable in the relations between the parties* shall be taken into account. This principle, in a sense, enshrines the idea of international law understood as a coherent system. It sees international law as a regime in which different sets of rules cohabit in harmony. Thus human rights can be interpreted in the light of international humanitarian law and vice versa.¹⁰⁴

Building on this foundation, it is crucial to recognize the specific human rights related to humanitarian relief operations. The obligation of parties to the conflict to treat humanely the population, expressed in various provisions of the Geneva Conventions and their duty to ensure

¹⁰³ See for instance para. 5 on International cooperation and para. 7 about States in proximity to emergencies in The Guiding Principles on Humanitarian Assistance adopted by the UN General Assembly in 1991 (Resolution 46/182).

¹⁰⁴ Cordula Droege, 'Parallel Application of IHL and International Human Rights Law: An Examination of the Debate', 40(2) *Israel Law Review* (2007) p. 337.
<https://www.researchgate.net/publication/228176888_Parallel_Application_of_International_Humanitarian_Law_and_International_Human_Rights_Law_An_Examination_of_the_Debate> accessed on 6 July

that their basic needs are met, can be derived from the concept of **human dignity**, which is enshrined in the preamble of **the Universal Declaration of Human Rights (1948)**, as well as in Article 1: “All human beings are born free and equal in dignity and rights.”¹⁰⁵ The dignity of the human person is a fundamental right and also serves as the foundation for other rights. Of particular relevance are the human rights relating to bodily integrity as well as economic, social, and cultural rights enshrined, for example, in the **International Covenant on Civil and Political Rights** of 1966 (hereinafter ICCPR)¹⁰⁶ and the **International Covenant on Economic, Social and Cultural Rights** of 1966 (hereinafter ICESCR)¹⁰⁷ respectively, as well as in several regional instruments. Positive obligations form part of states' responsibility to safeguard the rights to life of individuals -which is out of the scope for the purpose of this study. In examining the concept of human dignity, both the ICCPR and ICESCR state this right in their respective Article 1 provisions, recognizing the right of self-determination for all peoples, allowing them to freely determine their political status and pursue their economic, social, and cultural development. This emphasis on self-determination outlines the inherent dignity of individuals, reflecting a foundational belief that respect for human dignity is essential for the fulfilment of all rights.

A significant focus of this thesis in regards to the humanitarian needs described in Chapter I, is given to the **right to adequate food**, recognized in various instruments under international law. The **ICESCR**, for instance, contains the following provisions:

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.¹⁰⁸

¹⁰⁵ Universal Declaration of Human Rights (1948) <<https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>> accessed on 1 July

¹⁰⁶ International Covenant on Civil and Political Rights (1966) <<https://www.ohchr.org/sites/default/files/ccpr.pdf>> accessed on 7 July

¹⁰⁷ International Covenant on Economic, Social and Cultural Rights (1966) <<https://www.ohchr.org/sites/default/files/cescr.pdf>> accessed on 1 July

¹⁰⁸ *ibid.*

The **Committee on Economic, Social and Cultural Rights** has interpreted the right to food in the **General Comment No. 12** as “indivisibly linked to the inherent dignity of the human person” and noted that it is still used in conflicts as a “political weapon”.¹⁰⁹

It also mentions that when individuals or groups are unable, for reasons beyond their control, to access adequate food and water using available means, states are obligated to directly provide these rights, as read below in paragraph 15 regarding the State obligation to protect, respect and fulfill the right to adequate food:

The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.¹¹⁰

General Comment No. 12 also states that the prevention of access to humanitarian food aid constitutes a violation of the right to food¹¹¹, aligned with **Article 54 AP I** on the ‘Protection of objects indispensable to the survival of the civilian population’, which prohibits the starvation of civilians as a method of warfare¹¹². This has sparked extensive discussions outlining the complexity of prosecuting starvation as a war crime and the pressing need for international legal frameworks and political will to address this issue effectively¹¹³, especially following the ICC Prosecutor's application for arrest warrants against leaders of both Hamas and Israel as

¹⁰⁹ E/C.12/1999/5: General Comment No. 12 on the right to adequate food (1999) (*OHCHR*, n.d.) <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec1219995-general-comment-no-12-right-adequate-food>> accessed on 7 July

¹¹⁰ *ibid.*

¹¹¹ *ibid.*, para. 19.

¹¹² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), ‘Article 54’ Commentary of 1987. (*International Humanitarian law Database*, 1987) <<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-18?activeTab=default>> accessed on 12 June 2024

¹¹³ See: Raphael Van Steenberghe and Jérôme de Hemptinne, ‘ICC Prosecutor’s application for arrest warrant against Israeli leaders: The war crime of starvation and its contextual element’ (*EJIL: Talk!*, 2024) <<https://www.ejiltalk.org/icc-prosecutors-application-for-arrest-warrant-against-israeli-leaders-the-war-crime-of-starvation-and-its-contextual-element/>> accessed on 22 June 2024
Catriona Murdoch and Wayne Jordash, ‘Clarifying the Contours of the Crime of Starvation’ (*EJIL: Talk!*, 2019) <<https://www.ejiltalk.org/clarifying-the-contours-of-the-crime-of-starvation/>> accessed on 22 June 2024

intentionally using starvation of civilians as a method of warfare is considered a war crime under article 8(2)(b)(xxv) of the Rome Statute¹¹⁴.

2.3 Customary law

The development of customary international law is a continuous process. Every tradition and civilization has played a role in shaping this law, which now constitutes a shared legacy of humanity. In 2004, ICRC published a study¹¹⁵ aiming to clarify the meaning and importance of several rules of international humanitarian law based on State practice and to ensure better protection of war victims. The authors highlight the value of customary humanitarian law in its universality regarding adherence, its applicability to all armed conflicts (international *and* non-international) and its helpful use in the interpretation of treaty law.

According to the ICJ, customary law refers as “general practice accepted as law”¹¹⁶. In addition to the *usus* (State practice), *opinio juris* “requires that custom should be regarded as State practice amounting to a legal obligation”, meaning, the belief that the practice is required by law.¹¹⁷

In this line, provisions on allowing and facilitate humanitarian relief are reflected in the following State practice:

Rule 55: The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.¹¹⁸

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts, according to Henckaerts and Doswald-Beck¹¹⁹, by stressing that Rule 55 reflects a universally recognized norm that binds all parties to a conflict, reinforcing the principles enshrined in the Geneva Conventions and Additional Protocols. They emphasize that this rule is integral to maintaining humanitarian standards during conflicts.

¹¹⁴International Criminal Court, ‘Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine’ (ICC, 2024) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>> accessed on 1 June 2024

¹¹⁵ Jean-Marie Henckaerts and Louise Doswald-Beck, ‘Customary International Humanitarian Law’ (ICRC CIHL Study, 2005) <<https://www.refworld.org/reference/research/icrc/2005/en/98261>> accessed on 19 June 2024

¹¹⁶ International Court of Justice Statute, ‘Article 38(1)(b)’ (ICJ, 1945), <<https://www.icj-cij.org/index.php/statute>> accessed on 19 June 2024

¹¹⁷ Oxford Reference, ‘Opinio Juris’ (Oxford Reference, n.d.), <<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100251755>> accessed on 19 June 2024

¹¹⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, ‘Customary International Humanitarian Law’ (ICRC CIHL Study, 2005). Rule 55. <<https://www.refworld.org/reference/research/icrc/2005/en/98261>> accessed on 19 June 2024

¹¹⁹ *ibid.*

Rule 55 is further significant as it applies to both states and organized armed groups (non-state actors) involved in a conflict, laying down an obligation to allow and facilitate humanitarian aid by taking all necessary measures, as noted in the respective Oxford Guidance:

“While it is states party to an armed conflict that are most likely to be in a position to take the more formal measures (...), organised armed groups are under the same obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief supplies, equipment, and personnel by taking all appropriate measures.”¹²⁰

The development of customary international humanitarian law establishes universal obligations independent of formal State ratification processes and distinction between international and non-international armed conflicts, aiming to uphold human dignity and mitigate the suffering of civilians during war.

2.4 International Court of Justice advisory opinions and provisional measures

The ICJ has provided guidance on the interpretation of obligations under IHL, including the duty to allow and facilitate humanitarian aid, grounded in Article 65 of the Statute. The ICJ's opinions, while not legally binding unlike the Court's judgments, carry significant weight in shaping State behaviour and interpreting the scope of rights and obligations, including those related to humanitarian aid.

The ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem (2004)¹²¹ held that the Fourth Geneva Convention of 1949 is the applicable law in the occupied Palestinian territories by Israel because these regulations are considered part of customary international law. Therefore, Israel is bound to comply with it, as well as provisions of the Hague Regulations of 1907 and human rights instruments. The Court determined that the construction of the wall significantly hindered the Palestinian people's right to self-determination, thus breaching Israel's obligation to respect that right.

Additionally, the Court found that the wall's construction violated international humanitarian law. The Court particularly noted that the construction of the wall violated Articles 46 and 52 of the Hague Regulations of 1907 and Article 53 of the Fourth Geneva Convention due to the destruction or requisition of properties, not justified by military necessity.

¹²⁰ UN Office for the Coordination of Humanitarian Affairs and University of Oxford, ‘Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict’ (*ELAC*, 2016) p. 12, para 14 <<https://www.elac.ox.ac.uk/wp-content/uploads/2022/06/oxfordguidancepdfpdf.pdf>> accessed on 12 June 2024

¹²¹ International Court of Justice, 'Advisory Opinion on the Legal Consequences of the Construction of a Wall', (United Nations, 2005) < <https://www.un.org/unispal/document/auto-insert-204033/#:~:text=Settlements%20established%20by%20Israel%20in,Construction%20of%20the%20wall%20severely> > accessed 12 June 2024

For some scholars like Gray, this advisory opinion is “unambiguous” and “a clear rejection of the Israeli position on the legality of the wall”¹²². For others, such as Breau, the judgment is an object of criticism for its “brevity regarding the complexities of international humanitarian law”¹²³, suggesting that there could have been more exploration of how security concerns intersect with obligations to ensure basic human needs in a context of occupation.

The ICJ issued in January 2024, **legally binding provisional measures** ordering Israel to “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip”.¹²⁴ Given the deteriorating humanitarian situation, the Court reaffirmed this order in March emphasizing the urgent need for relief aid, as well as the need for expanding the capacity and number of land border crossings¹²⁵.

The ICJ Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem¹²⁶ was given based on Resolution 77/247¹²⁷ by the United Nations General Assembly, which referred the current occupation case to the ICJ. The Court commenced public hearings on 19 February 2024. The prolonged length of Israel’s occupation grounded the need for an advisory opinion clarifying the status of said territories and the consequences of Israel’s actions. It is to be noted that this case was referred to the ICJ before the 7 October events and the subsequent actions in Gaza.

On July 19, 2024, the Court found that Israel’s continued occupation of the **Occupied Palestinian Territory** violates several rules of international law and that Israel needs to withdraw from the territories as quickly as possible. The ruling also highlighted the applicability

¹²² Christine Gray, ‘The ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory’. The Cambridge Law Journal, vol. 63, no. 3, p. 531. (JSTOR, 2004) <<http://www.jstor.org/stable/4509123>> accessed 6 July 2024

¹²³ Susan C. Breau, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion, 9 July 2004.” The International and Comparative Law Quarterly, vol. 54, no. 4, pp. 1020. (JSTOR, 2005) <<http://www.jstor.org/stable/3663410>> accessed 18 July 2024

¹²⁴ International Court of Justice, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel)’ p. 23 (ICJ, January 2024) <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> accessed 18 July 2024

¹²⁵ International Court of Justice, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa V. Israel)’ (ICJ, March 2024) <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>> accessed 18 July 2024

¹²⁶ International Court of Justice, ‘Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem’ (ICJ, 2024) <<https://www.icj-cij.org/case/186/advisory-opinions>> accessed 20 July 2024

¹²⁷ General Assembly resolution 77/247, ‘Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (ICJ, 2022) <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20230117-REQ-01-00-EN.pdf>> accessed 16 July 2024

of the Fourth Geneva Convention and the Hague Regulations, emphasizing Israel's obligations as an occupying power to respect the provisions of the occupation law.

The Court noted violations of the ICCPR, the ICESCR and the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter CERD) due to discriminatory practices against Palestinians.

As regards the legal consequences, the ICJ stated that Israel is obligated to end its occupation as rapidly as possible, cease all new settlement activities, and repeal discriminatory legislation and measures. Israel must continue to respect international law, despite the illegality of its presence. Other States have an obligation not to recognize the illegal situation resulting from Israel's policies and practices, and to ensure Israel's compliance with international law. Lastly, the Court noted the need for the UN to put an end to the illegal presence of Israel, reaffirming the role of the international community in resolving the conflict based on established international principles.

2.5 United Nations Security Council Resolutions

The UNSC has passed numerous binding resolutions that address the need for humanitarian assistance in conflict zones, reinforcing the obligations of states and non-state actors, especially in situations where a party to an armed conflict did not consent to humanitarian assistance. The UNSC has adopted resolutions urging the parties to allow unimpeded delivery of supplies to civilians that often serve as reminders of existing obligations under international humanitarian law (they are formulated as recommendations to grant consent, for instance). However, in extreme humanitarian crises, the UNSC has used stronger language, specifically referring to Chapter VII of the UN Charter and demanding humanitarian access¹²⁸, as seen in UNSC Resolutions 688 on Iraq (1991)¹²⁹; 770 on Bosnia-Herzegovina (1992)¹³⁰ and 794 on Somalia (1992)¹³¹.

Attention will now turn to relevant UNSC resolutions concerning the situation in the Gaza Strip, by chronological order.

¹²⁸ Fleck (n. 82)

¹²⁹ United Nations Security Council, 'Security Council Resolution – 688' (*UN documents*, 5 April 1991) <<https://digitallibrary.un.org/record/110659?ln=en.&v=pdf> > accessed on 27 May 2024

¹³⁰ United Nations Security Council, 'Security Council Resolution – 770' (*UN documents*, 13 August 1992) <<https://main.un.org/securitycouncil/en/content/resolutions-adopted-security-council-1992>> accessed on 27 May 2024

¹³¹ United Nations Security Council – Security Council Resolution – 794 (*UN Digital Library*, 3 December 1992) <<https://digitallibrary.un.org/record/154648?ln=en&v=pdf>> accessed on 27 May 2024

- **UNSC Resolution 681 (1990)**¹³² called upon Israel *to accept the de Jure applicability* of the Geneva Convention IV provisions and to ensure the welfare of the civilian population in all the Palestinian territories occupied by Israel since 1967, including facilitating the provision of humanitarian aid. Quigley interprets UNSC Resolution 681 as a call for the collective responsibility of the Geneva Conventions parties to ensure Israel's adherence to humanitarian law in the occupied territories, stemming from concerns about Israel's non-compliance with international law.¹³³
- **UNSC Resolution 1860 (2009)**¹³⁴ emphasized the need to ensure the sustained provision of humanitarian assistance throughout Gaza. Henderson and Lubell indicate that a call made by the UNSC in this type of resolution is legally binding upon the members of the United Nations¹³⁵, thus reinforcing the obligations of states and parties to the conflict to allow and facilitate humanitarian relief.
- **UNSC Resolution 2720 (2023)**¹³⁶ emphasized the urgent need for humanitarian pauses and corridors throughout Gaza to enable rapid and unhindered humanitarian access. While international humanitarian organizations such as the International Rescue Committee (hereinafter IRC) and CARE International welcomed the resolution urging immediate action to protect civilians, they also stressed that to enable a sufficient humanitarian response, a ceasefire is needed. In this line, the IRC noted that “from a humanitarian point of view, the failure of the UNSC to demand an immediate and sustained ceasefire is unjustifiable”¹³⁷, while CARE mentioned that “these words must translate into concrete action”.¹³⁸

¹³² United Nations Security Council, ‘Territories occupied by Israel’ – Security Council Resolution 681 (1990)’ (*United Nations*, 20 December 1990) <<https://main.un.org/securitycouncil/en/content/resolutions-adopted-security-council-1990>> accessed 27 May

¹³³ John Quigley, ‘The Role of Law in a Palestinian-Israeli Accommodation’ *Case Western Reserve Journal of International la*, Volume 3 (1999), p. 377.

<<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1511&context=jil>> accessed 2 June

¹³⁴ United Nations Security Council, ‘Protection of civilians and enabling of immediate humanitarian assistance to Palestinians in Gaza – Security Council Resolution – 2720’ (*United Nations*, 22 December 2023)

<<https://www.un.org/unispal/document/security-council-resolution-s-res-2720-22dec2023/>> accessed 15 February

¹³⁵ Christian Henderson and Noam Lubell, ‘The Contemporary Legal Nature of UN Security Council Ceasefire Resolutions’, *Leiden Journal of International Law*, 26 (2013), 369–97

<<https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/abs/contemporary-legal-nature-of-un-security-council-ceasefire-resolutions/6A008EBE0E147B69B60189FD9D97913D#access-block>>

¹³⁶ United Nations Security Council, ‘Security Council Resolution – 1860’ (*United Nations*, 08 January 2009) <<https://www.un.org/unispal/wp-content/uploads/2016/06/SRES1860.pdf>> accessed 15 February

¹³⁷ International rescue Committee, ‘Gaza: The IRC responds to UN Security Council Resolution’ (*IRC*, 2023) <<https://www.rescue.org/uk/press-release/gaza-irc-responds-un-security-council-resolution>> accessed 13 May

¹³⁸ CARE, ‘CARE welcomes UNSC Resolution 2720 on Gaza’ (*CARE*, 2023) <<https://www.careinternational.org.uk/press-office/press-releases/care-welcomes-unsc-resolution-2720-on-gaza/>> accessed 13 May

- **UNSC Resolution 2728**¹³⁹ demanded an immediate ceasefire for the month of Ramadan, the immediate and unconditional release of hostages and calling to secure and expand humanitarian needs in Gaza. Resolution 2728 was adopted with 14 votes in favour, none against, and one abstention from the United States. Birkenkötter concludes in her analysis that the resolution is legally binding, creating clear obligations for all parties involved.¹⁴⁰ She refutes the idea that explicit Chapter VII language or the use of the word “decide” is necessary for a resolution to be binding, in the framework of Article 25 of the UN Charter.¹⁴¹ This interpretation aligns with the ICJ's stance on the binding nature of Security Council decisions in the Namibia Advisory Opinion¹⁴², which states that Article 25 of the UN Charter extends to all decisions of the UN Security Council.

2.6 Responsibility to Protect Principle

The Responsibility to Protect (hereinafter R2P) principle, though primarily associated with preventing mass atrocities, has implications for humanitarian aid.

Adopted at the 2005 World Summit in its outcome document¹⁴³, R2P encompasses the international community's obligation to intervene when a State fails to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity. The R2P rests on three equal pillars:

- Pillar I: the responsibility of each State to protect its populations.
- Pillar II: the responsibility of the international community to assist States in protecting their populations.
- Pillar III: the responsibility of the international community to protect when a State is manifestly failing to protect its populations.¹⁴⁴

¹³⁹ United Nations Security Council. ‘UN Security Council demands ‘immediate ceasefire’ in Gaza, ending months-long deadlock’ – Security Council Resolution 2728 (*United Nations*, 25 March 2024) <<https://news.un.org/en/story/2024/03/1147951>> accessed 28 March

¹⁴⁰ Hannah Birkenkötter, ‘Why Today’s UN Security Council Resolution Demanding an Immediate Ceasefire Is Legally Binding’ (*Verfassungsblog*, 2024) <<https://verfassungsblog.de/why-todays-un-security-council-resolution-demanding-an-immediate-ceasefire-is-legally-binding/>> accessed on 13 July

¹⁴¹ United Nations Charter (*United Nations*, 1945)

<<https://www.un.org/en/about-us/un-charter/full-text>> accessed on 13 July

¹⁴² International Court of Justice, ‘Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)’ (*ICJ*, 1971)

<<https://www.icj-cij.org/index.php/case/53/advisory-opinions>> accessed on 13 July

¹⁴³ United Nations General Assembly, ‘World Summit Outcome - Resolution 60/1’ (*UN Peacemaker*, 20 September 2005) <<https://peacemaker.un.org/node/95>> accessed on 27 May 2024

¹⁴⁴ Ivan Šimonović, ‘The Responsibility to Protect’ (*UN chronicles*, 2016)

<[https://www.un.org/en/chronicle/article/responsibility-protect#:~:text=The%20responsibility%20to%20protect%20\(commonly,and%20the%20responsibility%20of%20the](https://www.un.org/en/chronicle/article/responsibility-protect#:~:text=The%20responsibility%20to%20protect%20(commonly,and%20the%20responsibility%20of%20the)> accessed 8 July 2024.

The concept of the R2P is inspired by Francis Deng's idea of 'State sovereignty as a responsibility', believing that sovereignty includes positive responsibilities towards a population's welfare and mutual assistance among states. The primary responsibility for protecting a population lies with the State itself and humanitarian action is intended to complement and support them in fulfilling their responsibilities, ensuring it does not undermine or replace state obligations.¹⁴⁵

Nevertheless, a residual responsibility exists within the international community, which is activated when a State is unwilling or unable to protect its citizens, or when it is the perpetrator of crimes or atrocities.¹⁴⁶

Evans posits that R2P "is about the full spectrum of preventive, reactive and rebuilding response"¹⁴⁷ and not about military humanitarian intervention as often misunderstood. In this sense, the collective responsibility to protect populations during armed conflicts by allowing and facilitating humanitarian relief, aligns with the R2P, especially when a State fails to protect its population from mass atrocities.

While R2P is not legally binding, it is grounded in existing international law. For instance, States' responsibilities regarding genocide are outlined in the Genocide Convention (1948), which mandates the prevention and punishment of genocide. Additionally, states' obligations to respect and ensure respect for international humanitarian law are detailed in the Geneva Conventions and their Additional Protocols and the obligation for contracting parties to respect and ensure respect for the Conventions, lying down in Common Article 1 GC I-II.

As noted by Ivan Šimonović, the former Special Adviser to the Secretary-General on the Responsibility to Protect (2016-2018), many believe that R2P has failed given the widespread and severe crises around the world. The besieging of civilian communities and the denial of humanitarian aid, causing immense suffering, are particularly concerning. In today's world, civilians in conflict zones should not face starvation or lack of basic medical care. Although Member States have emphasized their support for preventing atrocity crimes, this has not translated into concrete preventive measures. The main challenge remains the strong political

¹⁴⁵ UNHCR Emergency Handbook, 'Humanitarian principles' (UNHCR, 2024)

<<https://emergency.unhcr.org/protection/protection-principles/humanitarian-principles>> accessed 7 July 2024.

¹⁴⁶ Office of Genocide Prevention and the Responsibility to Protect, 'Responsibility to Protect' (United Nations, n.d.) <<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>> accessed 7 July 2024.

¹⁴⁷ Evans, Gareth, 'The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All' Irish Studies in International Affairs, vol. 20, pp. 7–13. (JSTOR, 2009) <<http://www.jstor.org/stable/25735145>> accessed 7 July 2024.

interests of part of the powerful states, which hinder early interventions to protect at-risk populations.¹⁴⁸

In this context, what is the scope of applicability of the R2P principle in the situation of a prolonged armed conflict in the Gaza Strip and West Bank? How could R2P be useful in addressing the current situation of humanitarian crisis? R2P is highly relevant to humanitarian aid provision, yet it has typically been applied in scenarios where State actors fail to protect their populations. It has not been commonly invoked in complex, asymmetrical conflicts involving non-state actors such as Hamas and occupied territories. The political and diplomatic complexities of the conflict have limited the consensus on providing humanitarian assistance on numerous occasions. Additionally, the veto power of permanent members has been a major barrier to reaching agreements necessary for more robust measures.

Considering that R2P is viewed as a normative standard and a moral imperative by the international community, it logically raises the question of how the five permanent members (P5) should exercise their veto power in cases of mass atrocities.¹⁴⁹ Here is where the Responsibility Not to Veto (RN2V) appears, as the duty of the P5 not to use their right to veto in cases of mass atrocities, which remains non-binding but whose debate concerning its legal nature¹⁵⁰ is important for the R2P principle, as it can enhance the discussion on the appropriate authority for R2P, reflect the quest for a new moral and political consensus on Pillar 3, and highlight the necessity for further development and of R2P.¹⁵¹

Despite the political and diplomatic complexities mentioned earlier, one reflection of the RN2V was the reframing of the U.S. veto of UNSC Resolution 2728, which demanded an immediate ceasefire for the month of Ramadan, the immediate and unconditional release of hostages, and measures to secure and expand humanitarian aid in Gaza. Furthermore, the R2P could also be reflected and the ICJ Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, as stated the obligation of third States not to recognize the illegality of Israel's occupation, as highlighted in paragraph 280:

¹⁴⁸ Ivan Šimonović, 'The Responsibility to Protect' (*UN chronicles*, 2016) <[https://www.un.org/en/chronicle/article/responsibility-protect#:~:text=The%20responsibility%20to%20protect%20\(commonly,and%20the%20responsibility%20of%20the](https://www.un.org/en/chronicle/article/responsibility-protect#:~:text=The%20responsibility%20to%20protect%20(commonly,and%20the%20responsibility%20of%20the)> accessed 8 July 2024.

¹⁴⁹ Vasilka Sancin, 'Are we »manifestly failing« R2P?' 1st ed., p. 87 (2017)

¹⁵⁰ For more information on this debate, see Jennifer Trahan, 'Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes' (Cambridge: Cambridge University Press, 2020); and, Rana M. Essawy, 'The Responsibility Not to Veto Revisited under the Theory of 'Consequential Jus Cogens'. *Global Responsibility to Protect* 12.3 (2020)

¹⁵¹ *ibid*, p. 101.

(...) Given the nature and significance of the obligations *erga omnes* related to Israel's illegal presence in the Occupied Palestinian Territory, the duty not to recognize the legal status of this situation and the obligation to differentiate between Israel and the Occupied Palestinian Territory in interactions with Israel also apply to the United Nations.¹⁵²

This action illustrates the broader meaning of the Responsibility to Protect principle in upholding humanitarian standards in conflict situations.

2. 7 Obligations to allow and facilitate humanitarian aid in the light of the conflict

From the short review above, IHL rules apply to all parties in a conflict, regardless of the nature of the conflict: International Armed Conflicts (IACs) and Non-International Armed Conflicts (NIACs). This means that IHL binds both States and non-state armed groups involved in conflicts, even though these groups cannot officially ratify the treaties.

International lawyers have debated the character of this conflict (international and non-international)¹⁵³, discussing whether Gaza is currently wholly or partly occupied, considering Israeli troops are present but not in full control of the territory¹⁵⁴. Although the obligation to allow and facilitate humanitarian aid applies to all armed conflicts, grounded in Common Article 3 of the Geneva Conventions I-IV, Article 23 of Geneva Convention IV, and Rule 55 of Customary International Law, the author of this thesis believes that occupation law still applies in the current conflict between Israel and Hamas, hence, affecting the applicable law regarding humanitarian relief obligations.

Israel ceased governing and withdrew its forces from Gaza in 2005¹⁵⁵. Since 2007, Hamas has effectively governed the Gaza Strip after expelling the Palestinian Authority¹⁵⁶. However, Israel's withdrawal in 2005 did not end its occupation of Gaza, as Israel has maintained effective control over Gaza's territorial waters, airspace, movement of people and goods (except at the border with Egypt), and essential infrastructure.

¹⁵² International Court of Justice, 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem' (ICJ, 2024) paragraph 280 <<https://www.icj-cij.org/case/186/advisory-opinions>> accessed 20 July 2024

¹⁵³ See, for instance, Jérôme de Hemptinne, 'Classifying the Gaza Conflict Under International Humanitarian Law, a Complicated Matter' (EJIL: Talk!, 2023) <https://www.ejiltalk.org/classifying-the-gaza-conflict-under-international-humanitarian-law-a-complicated-matter/> > accessed 19 June 2024

¹⁵⁴ For countries recognizing the Palestinian State, there is no unified position on the classification of the conflict. Some categorize it as an international armed conflict maintaining that Israel is occupying Palestine, as a sovereign state, but without making reference to the status of Hamas. Others States choose not to classify it at all.

¹⁵⁵ Luke Baker, 'Shadow of Israel's pullout from Gaza hangs heavy 10 years on' (Reuters, 2015) <<https://www.reuters.com/article/us-israel-gaza-disengagement-insight/shadow-of-israels-pullout-from-gaza-hangs-heavy-10-years-on-idUSKCN0QF1QQ20150810/>> accessed 2 July 2024

¹⁵⁶ Conal Urquhart in Ramallah, Ian Black and Mark Tran, 'Hamas takes control of Gaza' (The Guardian, 2005) <<https://www.theguardian.com/world/2007/jun/15/israel4>> accessed 2 July 2024

This position is supported by the ICRC¹⁵⁷, scholars¹⁵⁸ and the ICJ Advisory Opinion on the Legal Consequences of Israel's Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem (paragraphs 88 to 94). The Court views that the law of occupation governs at least some of Israel's actions, though it does not specify which obligations apply. ICJ judge Sarah H. Cleveland, in her separate opinion, noted that the Court could have determined which humanitarian relief obligations are applicable as a consequence, stating:

22. Nevertheless, I believe that, at a minimum, the Court could and should have made clearer certain responsibilities of Israel with respect to the long-standing tragic situation in the Gaza Strip, and it is regrettable that it did not do so.

24. Second, with respect to Israel's obligations under the law of occupation regarding Gaza after 2005 (see para. 10 above), it is clear that Israel did not exercise effective control over most of the day-to-day government administration of the Gaza Strip — a responsibility which, after 2007, was under the control of Hamas. Israel, therefore, did not generally possess the effective control necessary, for example, to incur the obligation under Article 43 of the 1907 Hague Regulations to maintain public order within Gaza. Nevertheless, the Court could have found that Israel's control over the sea and air space of the Gaza Strip, as well as land crossings (which it shared in part with Egypt (Advisory Opinion, para. 89)), and its severe restrictions on, for example, imports of food, exports, and activities such as fishing in Gaza's maritime space (contrary to Israel's commitments under the Oslo Accords), brought with it, *inter alia*, aspects of the duty "to ensur[e] the food and medical supplies of the population" under Article 55 of the Fourth Geneva Convention, as well as the duty to facilitate humanitarian relief under Article 59 of that Convention.¹⁵⁹

Although this position is not part of the ICJ AO, it is significant in that it gives further clarification of what the Court may have ruled concerning Israel's obligations.

As far as Hamas as a non-state armed actor is concerned, obligations under IHL also arise as international jurisprudence has recognized that all parties to the conflict, including States and non-state actors, are bound by customary international law, which "represents the common standard of behaviour within the international community"¹⁶⁰. Common Article 3 to the Geneva Conventions also applies parties to the conflict, without distinction to States and non-state armed actors involved in the conflict, even if the latter do not ratify treaties, as this is a rule reflecting customary international law.

¹⁵⁷ ICRC 'Frequently asked questions on ICRC's work in Israel and the occupied territories: What is the status of the Gaza Strip under international law?' (ICRC, 2024). <<https://www.icrc.org/en/document/Frequently-asked-questions-icrcs-work-Israel-and-occupied-territories>> accessed 20 July 2024

¹⁵⁸ Ayesha Malik, 'Classification of the Israel-Palestine Conflict under the Laws of War' 3. An Occupation. 4. An Occupation and A Non-International Armed Conflict. (*Opinio Juris*, 2023) <<https://opiniojuris.org/2023/11/24/classification-of-the-israel-palestine-conflict-under-the-laws-of-war/>> accessed 20 July 2024

¹⁵⁹ Sarah H. Cleveland, 'Separate opinion of Judge Cleveland. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem' (ICJ, 2024) <<https://www.icj-cij.org/node/204173>> accessed 20 July 2024

¹⁶⁰ Special Court for Sierra Leone, *Prosecutor v. Sam Hinga Norman*, 31 May 2004, para. 22. <[https://www.rscsl.org/Documents/Decisions/CDF/Appeal/131/SCSL-04-14-AR72\(E\)-131.pdf](https://www.rscsl.org/Documents/Decisions/CDF/Appeal/131/SCSL-04-14-AR72(E)-131.pdf)> accessed 20 July 2024

Additional Protocol II complements the obligations of non-state armed groups as parties to non-international armed conflicts. Moreover, the development of international humanitarian law establishes universal obligations that are not dependent on formal State ratification¹⁶¹. For instance, the Customary International Humanitarian Law Study (ICRC, 2005) extended the majority of rules applicable to international armed conflicts to non-international armed conflicts.

In light of the Israel-Hamas war, there are many debates about which provisions specifically apply to Hamas, as the Geneva Conventions regulate non-state armed groups in conditions that cannot apply entirely to Hamas, meaning, under a NIAC and fighting against its State. This does not seem to be the case here as Hamas is in an international conflict with Israel, not against the Palestinian State. Therefore, the body of customary international law relevant to NIACs applies to Hamas and constitutes the legal base to analyze issues of compliance.¹⁶²

Further analysis of the response of parties to the conflict and third States, will be based on the law of occupation rooted in custom as applicable law regarding humanitarian relief obligations.

¹⁶¹ Cordula Droege and Eirini Giorgou, 'How international humanitarian law develops' (*International Review of the Red Cross*, 2022) <<https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-11/how-international-humanitarian-law-develops-920.pdf>> accessed 20 July 2024

¹⁶² See more: Sassòli M and Shany Y, 'DEBATE: Should the Obligations of States and Armed Groups under International Humanitarian Law Really Be Equal?' (2011) 93 *International Review of the Red Cross* <<https://doi.org/10.1017/s1816383111000403>>
Kleffner JK, 'The Applicability of International Humanitarian Law to Organized Armed Groups' (2011) 93 *International Review of the Red Cross* <<https://doi.org/10.1017/s181638311200001x>>

3. Analysis of the response

The Hamas attack on 7 October 2023 received widespread condemnation from many States, some classifying it as a terrorist act. While the war deepened the humanitarian crisis in the Gaza Strip, Israel faced significant international pressure to allow aid into the territory. Calls for a ceasefire intensified as the conflict dragged on. Several UNSC resolutions called for unimpeded humanitarian aid, while procedures before the ICJ, sought by South Africa, aimed to prevent violations of the International Genocide Convention, including enabling humanitarian assistance in Gaza. Additionally, the ICC Prosecutor's application to prosecute leaders of Hamas and Israel highlighted the international community's role in addressing the situation and seeking accountability.

As noted in Chapter II, these actions exemplify the broader significance of the R2P principle in maintaining humanitarian standards during conflicts, including the notion of the Responsibility to Not Veto. For the purpose of the following examination, special focus is given to the actions of third States involved in agreements for the provision of humanitarian relief, as well as to the parties to the conflict, Hamas and Israel, with the aim to analyze alleged issues of compliance with obligations to allow and facilitate humanitarian aid.

3.1 Parties to the conflict

Common Article 3 of the Geneva Conventions along with Rule 55 of Customary Law and international jurisprudence, bind parties to the conflict to allow and facilitate humanitarian relief in international and non-international armed conflicts. As seen in Chapter II, IHL distinguishes between the terms "Parties to the conflict" and "High Contracting Parties," with the latter referring to States that have signed the Geneva Conventions. The status of "Parties to the conflict" applies equally to both States and non-state actors involved in the conflict.

Once consent is granted, the obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief supplies may be fulfilled in various ways. IHL rules regulating humanitarian relief operations provide parties with some flexibility in how they implement this obligation.¹⁶³ Akande and Guillard argue that while clear violations of humanitarian relief operations, such as causing civilian starvation or intentionally withholding medical assistance, are evident breaches of the law, most situations involve ambiguities regarding whether specific obstructions or delays constitute violations. This uncertainty makes it challenging to pursue

¹⁶³ Dapo Akande and Emanuela-Chiara Gillard, 'Promoting Compliance with the Rules Regulating Humanitarian Relief Operations in Armed Conflict: Some Challenges' (*Israel Law Review* 50, 2017), pp. 119–37 <<http://dx-doi-org.uaccess.univie.ac.at/10.1017/S0021223717000048>> accessed 20 July 2024

accountability, which is reflected in the limited use of mechanisms for addressing violations of this aspect of IHL.¹⁶⁴

With this in mind, further analysis is elaborated looking into the parties to the conflict and third States, focusing on selected facts from the timeline outlined in Chapter 1.

3.1.1 Israel

As a State and a High Contracting Party to the Geneva Conventions, Israel is bound by its provisions, particularly, those applicable in occupation situations as stated in Chapter II.

While Israel maintains that “*Hamas is the de facto governing authority*”¹⁶⁵, it is also of the position that its obligations under international law correspond to ‘the law of armed conflict’ (IHL) and that parties to the conflict must allow and facilitate access to the provision of aid if it is not adequately provided. In addition, Israel states that:

“(…)This obligation is subject to important conditions, including that there are no serious reasons to fear that consignments will be diverted from their civilian destination or otherwise accrue to the advantage of the enemy’s military efforts.”

According to its position, Israel has made and continues to make significant efforts to address the humanitarian situation in Gaza, collaborating closely with international stakeholders to achieve this goal, outlining various initiatives as follows.

- Constant monitoring and coordination through the Coordinator of Government Activities in the Territories unit (hereinafter COGAT), which monitors and coordinates humanitarian needs in Gaza. This unit, supported by multidisciplinary experts, collaborates with international organizations such as the ICRC, UN and the Palestinian Red Crescent Society, and the private sector in Gaza. A specialized task force maintains regular communication with these organizations, holding frequent meetings with the UN, the U.S., and Egypt to synchronize humanitarian efforts. Their activities include mapping shelters, overseeing aid distribution routes, and monitoring sanitation levels.
- Facilitating consignments, such as food, water, shelter equipment, and medical supplies to Gaza, as well as seeking international donations based on periodic assessments of required items which are checked for security reasons in crossing points to prevent military smuggling for Hamas. Humanitarian supplies on trucks are counted during

¹⁶⁴ *ibid*, p. 127.

¹⁶⁵ Ministry of Foreign Affairs, ‘Israel-Hamas Conflict 2023: Humanitarian Efforts’ (Israel Government website, 2023) <<https://www.gov.il/en/pages/israel-hamas-conflict-2023-humanitarian-efforts>> accessed 12 June 2024

inspections on the Israeli side before being handed over to aid agencies on the Gazan side for collection and distribution.

- Strengthening medical services by supporting the establishment of field hospitals in Gaza, assisting with the evacuation of patients for medical treatment, and providing fuel to hospitals, among other efforts.
- Supplying water to Gaza through pipelines and facilitating repairs to damaged pipes, involving risks and complex coordination for access in conflict zones.
- Taking operational humanitarian measures, including securing humanitarian corridors and designating a 'humanitarian zone' in southern Gaza, where civilians can evacuate, and international organizations can distribute aid.

Similarly, Israel has identified several limitations to its humanitarian efforts, such as theft, looting, and hoarding of supplies by Hamas, accusing them to divert aid for military purposes and sabotage humanitarian activities. Another limitation they refer to is the lack of capacity of international organizations to absorb and distribute aid in Gaza after it has undergone security checks. Israel has stated that it does not control the distribution of aid in Gaza and cannot guarantee that aid will reach those in need.¹⁶⁶

However, these efforts were upheld after a complete blockade of humanitarian assistance to the Gaza Strip following the 7 October attacks¹⁶⁷¹⁶⁸, including food, medicines, fuel and electricity. While the IDF has set itself as a goal to “dismantle the Hamas terrorist organization's military and administrative capabilities”¹⁶⁹, it is still necessary to adequately balance humanitarian needs with military objectives in a complex environment.

The humanitarian siege raises concerns about Israel's capability to distinguish civilians from combatants and, in a broader way, questions emerge about whether Israel was complying with international humanitarian law during the siege. In analyzing the potential breach of IHL provisions, several aspects need to be considered: the applicable law, the interferences, and the justification.

As the applicable law, relevant provisions under IHL include:

¹⁶⁶ *ibid.*

¹⁶⁷ Statement by PM Netanyahu, (*Government of Israel*, October 18, 2023) <<https://www.gov.il/en/pages/pm-netanyahu-statement-18-oct-2023>> accessed May 3, 2024

¹⁶⁸ Emmanuel Fabian, 'Defense minister announces 'complete siege' of Gaza: No power, food or fuel' (*The Times of Israel*, October 9, 2023) <https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/> accessed May 2, 2024

¹⁶⁹ Israel Defense Forces, 'The Hamas - Israel War' (IDF Official Website, 2024) <<https://www.idf.il/en/mini-sites/hamas-israel-war-24/>> accessed 23 June 2024

- Fourth Geneva Convention (GC IV), Article 55 on food and medical supplies for the population.
- Fourth Geneva Convention (GC IV), Article 59 about collective relief.
- Rule 55 Customary International Law regarding access to humanitarian relief for civilians in need

Article 55 GC IV enshrines the obligation to ensure the food and medical supplies to the population “To the fullest extent of the means available to it” if “the resources of the occupied territory are inadequate”. This article refers to foodstuffs, medical stores, and other items, without specification.

The siege of humanitarian assistance announced by Israel included - among other supplies - medicine and food in the Gaza Strip, whose infrastructure depended on Israel's provision of these items and others such as electricity to run drinking water pipes, according to reports from various humanitarian organizations as shown in Chapter I. Hence, the siege of those supplies falls under the scope of Article 55 GC IV.

The last paragraph of Article 55 GC IV establishes that the Protecting Power must verify food and medical supplies in occupied territories and *temporary* restrictions on this *verification* are allowed “by imperative military requirements”, -which in this case is not relevant because to date, Israel has not officially appointed a Protecting Power and there has been no international organization recognized as a substitute.¹⁷⁰

Assessing whether the resources of the population "are inadequate" may seem subjective and discretionary to Occupying Power, bound by this article. Nevertheless, there are various elements to be considered.

First, the more general duty to humanely treat individuals under the Occupying Power, in line with common Article 3 GC I–IV, enshrines the obligation to protect all persons who are not actively participating in hostilities, ensuring their safety and well-being.

Second, the conditions and requirements of the population should be considered. In times of conflict it may seem an arduous task to make an assessment of what the needs are -which in any case the Government of Israel maintains it is currently doing-. However, one can start with an analysis of the current level of dependence of the population on the resources provided by the Occupying Power, which in this case, is significant enough to understand that without these supplies, it is difficult for the population to live.

¹⁷⁰ ICRC, ‘Protecting Powers | How Does Law Protect in War? - Online Casebook’ (ICRC, n.d.) <https://casebook.icrc.org/a_to_z/glossary/protecting-powers#:~:text=A%20%22Protecting%20Power%22%20is%20a,Power%20under%20international%20humanitarian%20law> accessed 12 July 2024

Third, this provision of the Convention supports an existing rule from the Hague Regulations, which states that requisitions of supplies must be proportional to the country's resources¹⁷¹. In this case, it does not seem to be applicable because the siege does not have a resource limitation as justification -beyond the understanding that in an armed conflict, there is an important expense for the parties in conflict-, but rather, that it has a defense background.¹⁷²

These aspects lead to a further analysis of consent and provision of relief consignment "To the fullest extent of the means available to it", which sets a different tone to the obligation to give free passage and protect relief consignments. This sentence reflects the awareness of the material difficulties that the Occupying Power might face in conflict situations, such as the lack of security or infrastructure. Nevertheless, it is an obligation to use all the means at its disposal. The sentence adds a degree of discretion on Occupying Power to interfere with the obligation because it can claim that does not have all the means necessary to comply with this obligation. However, when the siege was imposed, there was no overt reason for denying humanitarian aid. Looking at Prime Minister Netanyahu's statements and IDF statements, several attempts to justify this decision could be inferred.

First, humanitarian assistance is conditional on the return of hostages. In the Israeli PM's statement announcing the siege of humanitarian assistance, he demanded that their captives be released and for the Red Cross to visit them. This discourse has continued to this day in line with hostage exchange efforts.

The second justification is related to operational considerations. In Israel's initial response to the OHCHR background note¹⁷³ 'Indiscriminate and disproportionate attacks during the conflict in Gaza (October – December 2023)',¹⁷⁴ it stated that legal conclusions must be based on a solid factual foundation, adding:

Proper assessment of the full factual context in which operational decisions are made is key when addressing such decisions and applying the law to them. Such factual assessment will take into consideration, inter alia, the specific intelligence and knowledge available to the commanders who direct strikes; the characteristics of enemy conduct; the characteristics of the battleground, including presence of civilians and civilian infrastructure as well as

¹⁷¹ *ibid.*

¹⁷² Israel mentioned several times during the course of the war its right and obligation to defend itself. See more: Ministry of Foreign Affairs, ' Hamas-Israel Conflict 2023: Key Legal Aspects', (Ministry of Foreign Affairs Website, 3 December, 2023) <<https://www.gov.il/en/pages/hamas-israel-conflict2023-key-legal-aspects>> accessed 25 May 2024

¹⁷³ 'Israel's Initial Response to OHCHR Background Note' (*Permanent Mission of Israel in Geneva*, 24, June 2024) < <https://www.ohchr.org/sites/default/files/documents/countries/opt/israel-initial-response-ohchr-background-note-june2024.pdf>> accessed 12 July 2024

¹⁷⁴ OHCHR, 'Thematic Report - Gaza Conflict (October – December 2023)' (2024) <<https://www.ohchr.org/sites/default/files/documents/countries/opt/20240619-ohchr-thematic-report-indiscrim-disprop-attacks-gaza-oct-dec2023.pdf>> accessed 12 July 2024

military assets; the military objectives and targets of a strike, and the military advantage gained from them.¹⁷⁵

While the response was in relation to issues raised by OHCHR about Israel's use of explosive weapons with wide effects in densely populated areas during the escalation of hostilities in Gaza since 7 October 2023, there is a common denominator with the assessment of compliance with allow and facilitate humanitarian aid that relies on how this aligns with IHL, especially regarding the principles of humanity, distinction, proportionality, and military necessity.

The third justification lies in the concern that the relief consignments might be diverted from their intended civilians, thus failing to achieve their original purpose. Israel has stated that its obligation to allow and facilitate humanitarian supplies is subject to various conditions, “including that there are no serious reasons for fearing that the consignments will be diverted from their civilian destination or otherwise provide a definite advantage to the enemy’s military efforts”¹⁷⁶ in line with the conditions outlined in Article 23 GC IV on consignment of medical supplies, food, and clothing. This was stated after Israel accepted the entry of humanitarian aid and designated COGAT as the coordinating unit for this purpose. He added that humanitarian efforts were being carried out even though “ Hamas possesses many essential supplies which it is deliberately withholding from its civilians”, adding that it “has systematically stolen international aid, and smuggled arms within such aid, so as to advance its own terrorist objectives”¹⁷⁷.

There are exceptions to the obligation to allow and facilitate humanitarian relief under the Additional Protocols and customary international law, including if there are substantial grounds to believe the relief might be diverted to the enemy's military efforts or if the relief would enable the enemy to preserve its supplies for its war efforts rather than distributing them to its civilian population.

Taking Israel's decision to cut off fuel to Gaza after the 7 October attacks as an example, it can be argued that the decision was justified by concerns that the fuel might be hoarded by Hamas rather than used to maintain water pipes or keep hospitals operational. The fear that supplies could be diverted for military use rather than reaching those in need provides a basis for making a temporary exception to the obligation to allow and facilitate humanitarian relief in these circumstances. While allegations of widespread diversion of relief consignments are becoming more frequent during conflicts and result in further reduction of aid -not only from the parties

¹⁷⁵ Israel’s Initial Response to OHCHR Background Note (2024), p. 2.

¹⁷⁶ Ministry of Foreign Affairs, ‘ Hamas-Israel Conflict 2023: Key Legal Aspects’, (Ministry of Foreign Affairs Website, 3 December, 2023) <<https://www.gov.il/en/pages/hamas-israel-conflict2023-key-legal-aspects>> accessed 25 May 2024

¹⁷⁷ *ibid.*

to the conflict but also from donors, international organizations and third States- analyzing the context of humanitarian needs can provide a comprehensive approach to decision-making, prioritizing the needs of civilians.

One aspect to include in this analysis is if the fuel is necessary for the civilian population, in terms of its survival. Although provisions of the Geneva Convention do not specify fuel as a relief supply, Rule 55 of customary international law emphasizes that “There is a practice which recognizes that a civilian population in need is entitled to receive humanitarian relief essential to its survival”¹⁷⁸.

In this context, what is essential for civilians to survive in conflicts must be determined on a case-by-case basis. In Gaza, fuel is necessary for water pipes and hospitals to function, as well as to support rescue efforts and cooking, making it a critical relief supply.

Another element to consider in analyzing the context is that, for years, conditions have been difficult, making the population in the Gaza Strip and West Bank heavily reliant on international aid even before 7 October 2023. OCHA¹⁷⁹ has been tracking power supply data in the Gaza Strip since 2017. Their charts reveal that nearly two-thirds of the available power has consistently come from Israeli sources, with the remainder supplied by the Gaza Power Plant, which exhausted its fuel supply on 11 October 2023, resulting in a complete failure of the energy supply in the Gaza Strip.

Fuel is a critical and sensitive issue in the conflict. While it can provide essential support to the civilian population in Gaza, it also has the potential to enhance Hamas’s military strength and undermine Israel’s position. Additionally, other vital supplies such as food, water, and medical items could similarly fall into the hands of the Hamas, further complicating the situation. Therefore, it is crucial to strike a balance between the potential harm of relief supplies falling into the hands of an adversary and the risk faced by civilians without access to these essential supplies. Despite the challenges, it appears that the imminent risk to the population’s survival outweighs the consequences of fuel aid diversion.

While Israel did not ratify the Additional Protocols and, as a party to the conflict has considerable discretion in the implementation of Geneva Convention provisions regarding humanitarian aid, it is imperative to uphold the principle of distinction in any decision, a fundamental principle of IHL that requires to differentiate between combatants and civilians. Civilians and civilian objects should never be targeted and minimization of harm is mandatory.

¹⁷⁸ Henckaerts and Doswald-Beck (n. 118)

¹⁷⁹ OCHA, ‘Electricity in the Gaza Strip’ (*United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory*) <<https://www.ochaopt.org/page/gaza-strip-electricity-supply>> accessed on 22 June 2024

Similarly, it is of the utmost importance to consider the principle of proportionality on the measure (in this case, the siege) regarding the anticipated military benefit, as well as the principle of humanity. Could Israel rely on military necessity to justify interference of its obligation to allow and facilitate humanitarian aid? Is achieving the war's aims, meaning dismantling Hamas, over the protection of civilians a legitimate justification for the interference?

Israel is required by the Geneva Conventions to ensure civilians have access to essential goods and facilitate humanitarian aid delivery as a party to the conflict and Occupying power as its control over crossings, the sea and air space in the Gaza Strip. Even if the siege aimed to deprive Hamas of supplies, the potential civilian starvation and suffering of the population from the lack of food, medical and other essential supplies, constitutes a disproportional action. **Israel's imposed siege in Gaza following the 7 October attacks, was excessive in relation to the concrete and direct military advantage expected and represented massive harm to the entire population for Hamas's actions, constituting a breach of Art. 55 GC IV, mirrored in Rule 55 of Customary International Law, as well as the principles of humanity, distinction, proportionality, and military necessity.**

Regarding the obligation under Article 59 of the Fourth Geneva Convention to agree to relief schemes and "*facilitate them by all the means at its disposal*" if the population in a occupied territory "*is inadequately supplied*," the analysis of Israel's compliance in this context must consider its consent to relief schemes. The siege on humanitarian aid implied not only the blockade of supplies from Israel as the Occupying Power but also, the withholding of consent for international organizations, such as OCHA¹⁸⁰, to undertake such schemes through Israeli territory for some time.¹⁸¹

Although States have a margin of appreciation in the decision to give consent to humanitarian organizations that they consider impartial, the balance between humanitarian needs and military necessity imposes limits on when consent can be lawfully withheld or denied on arbitrary grounds. Human rights considerations should ensure that withholding consent does not infringe on fundamental rights, such as bodily integrity.

¹⁸⁰ OCHA, 'United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory. Hostilities in the Gaza Strip and Israel. Flash Update #87' (United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory, January 8, 2024)

<<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-87>> accessed 24 June 2024

¹⁸¹ This analysis does not examine the case of UNRWA, out of scope in this research, where there is currently an investigation led by the United Nations Office of Internal Oversight Services following allegations by Israel that UNRWA aid workers were complicit in the Hamas attacks on Oct. 7.

The aim of dismantling Hamas does not justify the general blocking of relief supplies, especially given the critical humanitarian conditions of the population in the Gaza Strip, including the threat of starvation. Military necessity does not have reasonable grounds to justify the siege when a humanitarian organization can address the crisis impartially. In this case, withholding consent is seen as arbitrary and inconsistent with international law. **The denial by Israel to accept relief schemes from international organizations during the first days following the 7 October attacks constitutes a breach of Article 59 of the Fourth Geneva Convention.**

Nevertheless, the dynamic nature of the conflict means that if circumstances change, there could be valid reasons for Israel to lawfully and temporarily withhold consent. If there is a higher risk that relief supplies might be diverted to Hamas compared to the risk of survival of the civilians, Israel's decision to withhold consent might be justified. Aid diversion is nothing new. Even in these circumstances, when there is a potential risk of aid diversion for military purposes, strategies are necessary to minimize those risks while still striving to meet humanitarian needs. Some of these strategies include:

- Aid delivery can be subjected to more rigorous monitoring and verification processes to enhance transparency, involving independent third-party organizations and donors to oversee the distribution of aid to ensure it reaches its intended recipients.
- Engaging and supporting local actors, including community leaders, civil society organizations, and neutral local NGOs, can provide valuable insights and assistance in the distribution of aid. These groups often have a better understanding of the local context and can help navigate the complex dynamics of the conflict to reduce the risk of aid diversion.
- Donors usually have operational manuals that address aid diversion, including ways to report it and proceed with an investigation. Proactive risk management, due diligence and accountability tools should be encouraged since the Geneva Conventions do not provide further information on its regulation.

The fear of diversion might lead to a reduction in aid, but this must be weighed against the potential consequences of not providing assistance at all.

3.1.2 Hamas

Although non-state armed groups like Hamas are not High Contracting Parties to the Geneva Conventions, they are still bound by customary international humanitarian law and Common Article 3 of the Geneva Conventions as a party to the conflict, which sets the minimum

guarantees of humane treatment. In this regard, analysis will be conducted for the attack near the Kerem Shalom border crossing on May 5, 2023.

On May 5 when Hamas launched rockets at Israeli soldiers near the Kerem Shalom border crossing, resulting in four Israeli soldiers killed and the closure of the crossing point by Israeli authorities, which disrupted shipments of humanitarian aid as it was the primary route for delivering relief supplies at the moment. Hamas stated that it had targeted Israeli soldiers in the area.¹⁸²

Although border crossing points are not explicitly protected areas by IHL, they are an important location for the passage of humanitarian aid. As seen in Chapter I, examining compliance in the facilitation of humanitarian aid requires including considerations of the status of key crossing points, given their role in the movement of people and goods and the way their operational functioning directly impacts access to humanitarian relief.

This attack obstructed the access and distribution of humanitarian assistance to the Gaza Strip, making it challenging for civilians to get the supplies they need, which is especially critical given the humanitarian crisis characterized by shortages of food, medicine, and other essential items.

The military necessity of the attack should have thoroughly considered the substantial impact on humanitarian needs. Under IHL, parties to the conflict are required to avoid attacks that could disproportionately affect civilians and humanitarian operations. This means that even when targeting a military objective, in this case, Israeli soldiers in the area, parties must weigh the consequences of disrupting critical infrastructure that supports humanitarian aid. The Kerem Shalom border crossing was key for delivering essential supplies to the Gaza Strip, and its closure because of the attack severely impeded the flow of aid. In this context, Hamas's military strategy should have incorporated measures to minimize the risk of blocking the passage of humanitarian goods and mitigate the adverse effects on civilian populations reliant on this aid. Even if that was not the original intention of Hamas, misidentifying the crossing as a military objective indicates that Hamas did not take adequate precautions in the attack, and their target verification procedures were either deliberately flawed or reckless incompetence.

By targeting the area near the Kerem Shalom border crossing through an indiscriminate attack causing its closure, Hamas amounted to a breach of Common Article 3 provision GC I-IV and Rule 55 of Customary Law, by hindering the delivery of essential

¹⁸² CBS, 'Hamas attacks Israel-Gaza border crossing as cease-fire talks appear to fizzle' (CBS News, 2024) <<https://www.cbsnews.com/news/hamas-attacks-israel-gaza-border-crossing-cess-fire-talks-continue/>> accessed 24 June 2024

humanitarian assistance to civilians in Gaza. This action not only impacted immediate humanitarian relief efforts but also exacerbated the ongoing humanitarian crisis in the region.

3.2 The role of third States in allowing and facilitating humanitarian relief

Relevant provisions for allowing and facilitating humanitarian supplies include Article 23 and Article 59 GC IV, outlining the obligations of third States as High Contracting Parties to ensure the provision of humanitarian relief. In addition, Article 70 Additional Protocol I, demands Parties to the conflict and High Contracting States in general allow and facilitate rapid and unimpeded passage of humanitarian aid, binding third States, which becomes critical when a State party to the conflict is unwilling or unable to comply with this obligation. These provisions enshrine the duty of third States to provide support and services in accordance with international humanitarian law and principles of humanity, impartiality and non-discrimination. Furthermore, customary IHL reinforces the obligations of third States to allow and facilitate humanitarian relief and the Guiding Principles on Humanitarian Assistance, adopted by the UN General Assembly in 1991, stress that "States near emergencies are encouraged to work closely with the affected countries in international efforts to facilitate, as much as possible, the passage of humanitarian aid."¹⁸³

Following the 7 October attacks, third States have been involved in diplomatic efforts to negotiate aid delivery routes and have provided financial support for humanitarian relief operations. In December 2023, after diplomatic pressure and negotiations with the UN and the U.S., the Israeli government started permitting aid trucks to cross through the Kerem Shalom checkpoint from Israel. European officials also pressured Israel to allow aid to be delivered by sea through the Israeli port of Ashdod -now closed- to provide an alternative to Rafah, and some aid has been delivered overland from Jordan to the Kerem Shalom crossing.

The ICJ's legally binding provisional measures in the South Africa v. Israel case, which order Israel to facilitate the flow of aid into Gaza, along with UNSC resolutions demanding the unimpeded and safe delivery of humanitarian assistance, represent mechanisms to define clear expectations for compliance with IHL. These measures illustrate an operational example of the Responsibility to Protect principle, which, in this case, relates to the *erga omnes* principle, meaning that certain obligations under international law are owed to the international community as a whole.

ICJ's AO from July 2024 particularly notes that the questions presented to the Court are not primarily about a bilateral dispute. According to the ICJ, the General Assembly's request,

¹⁸³ UN General Assembly, Resolution A/RES/46/182.

though it involves Israel and Palestine, relates to the responsibilities of the United Nations and broader issues of international peace and security, as well as certain *erga omnes* obligations of states, including the right of self-determination of the Palestinian people and obligations under IHL and IHRL. The Court dedicates a whole section to it¹⁸⁴.

Some of the measures that third States can employ in line with this duty to uphold and promote respect for IHL and IHRL, even if they are not parties to the conflict, are cooperation with the UN, refrain from entering into treaty relations with Israel in any situation where it claims to act on behalf of the Occupied Palestinian Territory, not recognize as legal the situation resulting from Israel's unlawful presence in the Occupied Palestinian Territory, among others. This implies that states must act not only in their interest but also in the interest of the broader international community to prevent humanitarian crises and protect human rights.

In light of the conflict in Gaza, *erga omnes* obligations are intrinsically linked with the obligations under IHL and IHRL to avoid actions that could exacerbate conflicts or impede humanitarian efforts. This includes ensuring that humanitarian aid is not obstructed and that relief operations are supported in a manner consistent with international obligations. The implications for third States are significant, as they must take proactive measures to protect civilians and collaborate internationally to address and mitigate the humanitarian impact of conflicts.

Further cooperation, diplomatic and logistics support between States to establish technical arrangements for the passage and distribution of relief consignments, to open ports, airports, and border crossing, to prevent diversion of aid and to provide alternative routes for aid delivery, have been the key to increase the flow of basic supplies in the Gaza Strip. However, challenges remain related to the effectiveness and adequacy of facilitation efforts, and humanitarian aid access needs to be improved whether or not a ceasefire is agreed upon.

Many states, international organizations and NGOs urge for an immediate ceasefire in Gaza, which, according to ICJ's order in January 2024, has been shown to be the sole measure capable of preventing a "real and imminent risk that irreparable prejudice"¹⁸⁵ to the rights of Palestinians. In the meantime, various measures can be implemented beyond the compliance of parties to the conflict to allow and facilitate humanitarian relief. These measures may be facilitated or supported by third States and include ending siege tactics, opening the border crossings, restoring services, negotiating the removal of restrictions on essential items for

¹⁸⁴ See 'B. Legal consequences for other States' and 'C. Legal consequences for the United Nations' of the AO.

¹⁸⁵ International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)' para. 61. (*ICJ Website*, 26 January, 2024) <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> accessed 24 May 2024.

humanitarian aid and establishing effective deconfliction mechanisms for aid delivery and humanitarian personnel in Gaza during hostilities.¹⁸⁶

3.3 Ceasefire and humanitarian relief

Throughout 2024, there have been efforts to reach a ceasefire agreement in Gaza. Although it has been a complex path to materialize its call through UNSC resolutions, finally, Resolution 2735 (2024) proposes a three-phase ceasefire deal to end the conflict, urging Israel and Hamas to fully implement the ceasefire without delay. Resolution 2735, intends in Phase I, “the safe and effective distribution of humanitarian assistance at scale throughout the Gaza Strip to all Palestinian civilians who need it, including housing units delivered by the international community,”¹⁸⁷ drawing attention to the need to comply with obligations related to facilitating and enabling relief supplies in a context with severe humanitarian conditions.

The question of whether a ceasefire is necessary to improve humanitarian conditions in Gaza and the West Bank is deeply intertwined with both legal and geopolitical considerations. While IHL provides the framework for the protection of civilians and the delivery of humanitarian aid during conflicts, geopolitical dynamics often dictate the feasibility and sustainability of such humanitarian efforts.

Ceasefires¹⁸⁸ can have significant humanitarian benefits. However, its role in improving humanitarian conditions is complex and context-dependent.

Humanitarian access and prevention of further deterioration

One of the primary arguments in favour of ceasefires is that they can create the necessary conditions for the delivery of humanitarian aid. In situations where hostilities are ongoing, humanitarian organizations often face significant challenges in accessing affected populations. Humanitarian spaces are complex, partially intersecting, dynamic, and continuously evolving. For instance, in Gaza, repeated military operations have led to widespread destruction of infrastructure, including schools and hospitals, as well as evacuations, limiting the ability of aid

¹⁸⁶ An effective deconfliction arrangement is essential for military compliance with international humanitarian law and is widely used in conflicts globally. This process involves aid organizations informing the military of their planned movements and receiving approval for specific routes, allowing humanitarian aid workers to operate safely in conflict zones, to avoid miscommunications and mistargeting. However, this tool does not transfer the responsibility for upholding IHL, which remains solely with the parties involved in the conflict.

¹⁸⁷ United Nations Security Council, ‘Security Council Resolution – 2735’ (*UN documents*, 10 June 2024) <<https://documents.un.org/doc/undoc/gen/n24/165/11/pdf/n2416511.pdf>> accessed on 22 July 2024

¹⁸⁸ A universally accepted definition of a ceasefire does not exist but according to Bailey (1982), can be defined as a “suspension of acts of violence by military and paramilitary forces, usually resulting from the intervention of a third party”.

organizations to operate effectively. A ceasefire can provide a window of opportunity for these agencies to deliver aid and assess needs without the immediate threat of violence.

In 2014, the temporary ceasefire on August 13-19, facilitated by the UN and other international actors allowed the delivery of critical supplies to civilians trapped in conflict zones in Gaza¹⁸⁹. Similarly, in the Syrian conflict, humanitarian ceasefires between 2011 and 2017, albeit fragile and often short-lived, have occasionally provided relief to besieged areas, allowing for the evacuation of civilians and the delivery of humanitarian aid.¹⁹⁰

Ceasefires can also prevent further deterioration of humanitarian conditions by halting violence. Prolonged hostilities have led to massive displacement, destruction of livelihoods, and widespread suffering. In Afghanistan, for example, a ceasefire negotiated by the IRCR in 2009 between the armed opposition and US forces, though limited in duration, has temporarily allowed the medical assistance of cholera victims and provided relief to the civilian population¹⁹¹.

Yet, humanitarian spaces are complex and dynamic. The way humanitarian organizations operate in conflict zones today has significantly changed from previous years. Humanitarian action is frequently central to conflicts and a focus of international attention, as seen in Gaza, where the operational environment has become more hostile. While adherence to humanitarian principles remains crucial, it is equally important for humanitarian organizations to gain acceptance from local communities or groups controlling the area, whether States or non-state actors. Their legitimacy often depends on this recognition and their reputation.

In the evolving complexity of humanitarian spaces, ceasefires can serve as a preliminary step toward achieving comprehensive peace agreements. However, if they are not accompanied by robust compliance monitoring mechanisms, and if local communities are not actively involved in humanitarian efforts alongside organizations, these agreements may fail to improve humanitarian conditions, leading to renewed violence and exacerbating the suffering of affected populations.

The geopolitical dimension of ceasefires

The geopolitical context of a conflict plays a critical role in determining the impact of a ceasefire, in this case, in the improvement of humanitarian conditions. In the Israeli-Hamas

¹⁸⁹ Government of Israel, 'Israeli Humanitarian Aid Continues - 10 Jul 2014' (*Government of Israel*, 10 July 2014) <<https://www.gov.il/en/pages/israeli-humanitarian-aid-continues-10-jul-2014>> accessed on 22 July 2024

¹⁹⁰ Dogukan Cansin Karakus and Isak Svensson, "Between the Bombs: Exploring Partial Ceasefires in the Syrian Civil War, 2011–2017" (2017) 32 *Terrorism and Political Violence* 681 <<https://doi.org/10.1080/09546553.2017.1393416>> accessed on 22 July 2024

¹⁹¹ Fiona Terry, "The International Committee of the Red Cross in Afghanistan: Reasserting the Neutrality of Humanitarian Action" (2011) 93 *International Review of the Red Cross* 173 <<https://doi.org/10.1017/s1816383111000026>> accessed on 22 July 2024

conflict, the geopolitical dynamics are particularly complex, involving them as parties to the conflict but also regional and global powers with varying interests. Ceasefires in this context are often influenced by broader geopolitical considerations, which can both facilitate and hinder their effectiveness.

Under certain conditions, ceasefires can initiate a process of gradually building trust through successive de-escalation measures, leading toward peace and improving the humanitarian situation. Nevertheless, depending on local dynamics, even if a ceasefire leads to a peace-making initiative, it does not mean that its implementation will be immediate or without challenges, such as consolidating military forces or preventing groups from rearming. For instance, the Comprehensive Peace Agreement (CPA) in Sudan in 2005 and the Colombian agreement for peace in 2016 (*Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera* in Spanish) included ceasefire provisions, marking a significant step towards the end of hostilities. The ceasefire allowed for the return of displaced persons, the delivery of aid to previously inaccessible areas, and the beginning of reconstruction and transitional justice efforts. However, both agreements also highlight the limitations of ceasefires: while they improved conditions in some areas, they failed to address the conflict in others, where violence resumed and humanitarian crises continued. In these cases, ceasefires have often been used by local actors as a tactic to consolidate control over besieged areas, ultimately perpetuating the overall humanitarian situation.

In relation to the ceasefire deal between Israel and Hamas, which is often negotiated by Egypt, Qatar, or the U.S., it also reflects the influence of local and international regional powers in the conflict. While the ceasefire deal can temporarily reduce violence, its long-term effectiveness may be undermined by the lack of common ground for political negotiations, such as those related to the release of hostages, and the absence of enforcement mechanisms, impacting the humanitarian situation.

Given historical precedents and geopolitical considerations, it is clear that a ceasefire can be necessary as a temporary measure to improve humanitarian conditions in Gaza and the West Bank. With a pause in hostilities, the delivery of aid and repair of infrastructure can be improved. However, the effectiveness of ceasefires in this context is heavily dependent on the broader geopolitical environment, the willingness of the parties involved to continuously negotiate and commit to a sustainable agreement, the involvement of local and international mediators, and the ability to address the underlying causes of the conflict, including the remain obligations of Israel as an occupying power.

Conclusion

This research aimed to identify the obligations under IHL and IHRL concerning the facilitation of humanitarian relief in the Gaza Strip and the West Bank, focusing on the actions of the State of Israel, Hamas as a non-state actor, and third States. Based on the analysis of provisions from various instruments, mainly of Geneva Conventions, their Additional Protocols, and provisions of Customary International Law, this thesis concludes that these obligations are established and all parties to the conflict -regardless of whether they are States or non-state actors- and High Contracting Parties (such as third States in the conflict) are bound by the provisions requiring them to allow and facilitate rapid and unimpeded humanitarian aid. This responsibility stems from the broader obligation to treat humanely those who are under the power of a party to the conflict.

However, these obligations are subject to consent and constraints imposed by military necessity, meaning that humanitarian actions may be limited or conditions may be applied if required by the military necessity. In this context, and given that conflict dynamics are constantly evolving, the ICJ's interpretation of treaty law, customary law, and general principles helps clarify these provisions for future implementation. It also aids in assessing the balance between military necessity and the humanitarian needs of those not involved in the hostilities.

This thesis is expected to shed light on the legal responsibilities of parties to the conflict Israel-Hamas, particularly in the context of the escalation since October 2023, and to evaluate whether their actions align with their obligations under international law. The findings illustrate that while the legal framework is robust, its compliance by both parties to the conflict is hindered by political and military considerations.

Moreover, the role of third parties in facilitating humanitarian assistance during this conflict was examined in light of the Responsibility to Protect principle, focusing on their obligations under the Fourth Geneva Convention and Customary International Humanitarian Law. The UNSC resolutions further reinforce these responsibilities, emphasizing the need for cooperation in ensuring aid reaches those in need. In the Gaza conflict, third States have engaged in diplomatic efforts to open aid routes, while the ICJ has emphasized *erga omnes* obligations to prevent the obstruction of aid and uphold international humanitarian and human rights law. Despite these efforts, challenges remain in ensuring effective and adequate access to humanitarian aid, with ongoing negotiations to reach a ceasefire and additional measures to protect civilians and facilitate relief operations in Gaza.

Lastly, the thesis pointed out that without a comprehensive practical approach that includes political solutions and long-term commitments to peace, ceasefires alone may offer only temporary respite rather than a lasting improvement in humanitarian conditions. The experiences from other conflicts illustrate the importance of combining compliance with IHL provisions regarding humanitarian relief and implementing ceasefires with sustainable efforts to address the needs of affected populations. Additionally, the findings suggest that stronger international oversight and clearer accountability measures should be implemented to prevent further violations. Considering the conclusions drawn, it is recommended that the parties of the conflict, third States and the UN take more prominent roles in protecting civilians and facilitating humanitarian aid in Gaza and the West Bank.

The research comprehensively clarifies the scope of obligations for parties to the conflict and third States in the Israel-Hamas complex conflict, marked by severe humanitarian conditions. By analyzing their actions, it challenges the assumption that humanitarian needs are being adequately met and argues that, in conducting warfare, it is crucial to prioritize balancing humanitarian needs with military necessities if the aim is to protect civilians.

Future research is needed to explore in greater depth the effectiveness of existing enforcement mechanisms to ensure compliance with IHL regulations to allow and facilitate humanitarian aid, particularly in situations where States and non-state actors are involved. Similarly, studying aid diversion is necessary and should be further explored, taking into account the unique aspects of each conflict. Understanding the reasons behind aid diversion in contemporary conflicts can improve approaches to addressing these issues from a humanitarian and human rights perspective.

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Abstract

The ongoing conflict in Gaza, exacerbated by the 7 October attacks, has brought into sharp focus the critical challenges surrounding the delivery of humanitarian aid. In this light, it is fundamental to examine what international law dictates regarding the issue. This thesis clarifies the obligations of Israel and Hamas as parties to the conflict, as well as third states, in allowing and facilitating relief supplies, focusing on the legal scope of International Humanitarian Law and International Human Rights Law. Through a critical analysis of compliance with these obligations, the research reveals significant interferences and a lack of legitimate justification by the parties to the conflict, suggesting that while legal frameworks are comprehensive, their application is inconsistent, leading to severe consequences for the civilian population. It also points out that third states play a significant role in facilitating relief and explains why ceasefires alone are insufficient to improve current humanitarian conditions. The thesis concludes that, in conducting warfare, it is crucial to prioritize balancing humanitarian needs with military necessities to protect civilians in high-risk environments such as the Gaza Strip and the West Bank.

Abstrakt

Der andauernde Konflikt im Gazastreifen, verschärft durch die Angriffe vom 7. Oktober, hat die kritischen Herausforderungen bei der Lieferung humanitärer Hilfe deutlich gemacht. In diesem Zusammenhang ist es grundlegend, die Vorgaben des internationalen Rechts zu diesem Thema zu prüfen. Diese Arbeit klärt die Verpflichtungen Israels und der Hamas als Parteien des Konflikts sowie der Drittstaaten hinsichtlich der Gewährung und Förderung von Hilfslieferungen, wobei der rechtliche Rahmen des Internationalen Humanitären Rechts und des Internationalen Menschenrechtsrechts analysiert wird. Durch eine kritische Analyse der Einhaltung dieser Verpflichtungen zeigt die Forschung erhebliche Eingriffe und das Fehlen legitimer Rechtfertigungen seitens der Konfliktparteien auf. Es wird vorgeschlagen, dass, obwohl die rechtlichen Rahmenbedingungen umfassend sind, ihre Anwendung inkonsistent ist, was zu schweren Folgen für die Zivilbevölkerung führt. Es wird auch darauf hingewiesen, dass Drittstaaten eine bedeutende Rolle bei der Erleichterung der Hilfe spielen und erklärt, warum Waffenstillstände allein nicht ausreichen, um die aktuellen humanitären Bedingungen zu verbessern. Die Arbeit schließt mit dem Hinweis, dass es im Krieg von entscheidender Bedeutung ist, humanitäre Bedürfnisse und militärische Notwendigkeiten auszubalancieren, um Zivilisten in hochriskanten Umgebungen wie dem Gazastreifen und dem Westjordanland zu schützen.