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## The International Law of Siege and Starvation: The Case of Gaza After October 7, 2023

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**THE INTERNATIONAL LAW OF SIEGE AND  
STARVATION: THE CASE OF GAZA AFTER OCTOBER 7,  
2023**

*R. Field†*

*Abstract*

*This article will assess the legality of Israel's current siege of Gaza under international humanitarian law (IHL) and domestic Israeli law. Since October 7, 2023, Israel has implemented a strict siege of Gaza, severely restricting the entry of food, water, fuel, and other humanitarian goods. The civilian population of Gaza now faces ongoing starvation. While sieges are not categorically banned in IHL, under customary IHL a besieging party may not refuse consent to the entry of sufficient humanitarian aid into the besieged area unless it has a valid, non-arbitrary reason to do so. The Israeli High Court of Justice has upheld this customary norm as applicable to the Israeli government. This article will argue that the Israeli government has no valid, non-arbitrary reason to prohibit the passage of sufficient humanitarian aid into Gaza. The article concludes that Israel has thus far failed to meet its legal obligation under IHL because the small amount of aid it is allowing to enter Gaza is insufficient to prevent the mass starvation of Gazan civilians.*

INTRODUCTION

On October 7, 2023, Hamas, a designated terrorist organization and the ruling entity in the Gaza Strip, conducted a surprise attack on Southern Israel in which over 1,200 people were killed, over 6,900

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†□The author would like to thank her family, her professors, and the editors and staff of the Buffalo Human Rights Law Review

injured, and approximately 240 taken hostage.<sup>1</sup> Most of the victims of the attack were civilians.<sup>2</sup> In response, Israel immediately declared war on Hamas and began a military operation to destroy Hamas' capabilities in the Gaza Strip.<sup>3</sup> On October 9, 2023, Israeli Defense Minister Yoav Gallant announced that he had ordered a "complete siege" of the Gaza Strip, which entailed cutting off all food, fuel, and other goods supplied to Gaza.<sup>4</sup> Shortly after, Israel's Energy Minister Israel Katz announced an order to cut off all water supplied to Gaza from Israel<sup>5</sup> and an order for the Israel Electric Corporation to cut its supply of electricity to Gaza.<sup>6</sup> Israel's siege orders were intended to weaken Hamas in Gaza in conjunction with its military campaign.<sup>7</sup>

Immediately after the orders were announced, various human rights groups and international organizations, including Amnesty International, the International Committee of the Red Cross (ICRC), Human Rights Watch, and various United Nations (UN) agencies, asserted that Israel's total siege of Gaza was illegal under international law.<sup>8</sup> These human rights groups argued that the total siege was illegal

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1. Bill Hutchinson, *Israel-Hamas War: Timeline and Key Developments*, ABC NEWS (Nov. 22, 2023, 3:24 PM), <https://abcnews.go.com/International/timeline-surprise-rocket-attack-hamas-israel/story?id=103816006>.

2. *See id.*

3. Abbas Al Lawati & Nadeen Ebrahim, *Israel is at War with Hamas. Here's What to Know*, CNN (Oct. 15, 2023, 4:20 PM), <https://edition.cnn.com/2023/10/09/middleeast/israel-hamas-gaza-war-explained-mime-intl/index.html>.

4. Mia Jankowicz, *Israel Announces 'Complete Siege' of Gaza, Cutting its Electricity, Food, Water, and Fuel*, BUS. INSIDER (Oct. 9, 2023), <https://www.businessinsider.com/israel-gallant-announces-complete-siege-gaza-no-electricity-food-fuel-2023-10?r=US&IR=T>.

5. *See id.*

6. Tal Schneider, *Israel Cuts Electricity Supply to Gaza*, TIMES OF ISR. (Oct. 7, 2023, 7:56 PM), [https://www.timesofisrael.com/liveblog\\_entry/israel-cuts-electricity-supply-to-gaza/](https://www.timesofisrael.com/liveblog_entry/israel-cuts-electricity-supply-to-gaza/).

7. Jankowicz, *supra* note 4.

8. *See Israel/OPT: Israel Must Lift Illegal and Inhumane Blockade on Gaza as Power Plant Runs Out of Fuel*, AMNESTY INT'L (Oct. 12, 2023), <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israel-must-lift-illegal-and-inhumane-blockade-on-gaza-as-power-plant-runs-out-of-fuel/>; *see*

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on two primary grounds: (1) Israel as the occupier of Gaza has the legal duty to ensure that the basic needs of Gaza's population are met, and (2) Israel's total siege constitutes the illegal use of starvation of civilians as a tool of war.<sup>9</sup> This article will analyze the latter argument under the provisions of international humanitarian law (IHL) governing siege and starvation.<sup>10</sup>

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*also* Lisa Schlein, *UN Agencies Call for Lift of Siege on Gaza*, VOICE AM. (Oct. 10, 2023, 1:28 PM), <https://www.voanews.com/a/un-agencies-call-for-lift-of-siege-on-gaza-/7304880.html>; Akshaya Kumar, *With Gaza Sealed Off, Palestinians Face Aid Freezes Too*, HUM. RTS. WATCH (Oct. 11, 2023, 3:08 PM), <https://www.hrw.org/news/2023/10/11/gaza-sealed-palestinians-face-aid-freezes-too>. Many of these same organizations argued that Israel's blockade of Gaza prior to October 7, which restricted but did not entirely cut off supplies to Gaza, was already illegal. The scope of this article will only address the legality of the siege since the October 7 announcement cutting off all supplies to Gaza.; *Gaza Closure: Not Another Year!*, INT'L COMM. RED CROSS (June 14, 2010), <https://www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm>.

9. Kumar, *supra* note 8.

10. The question of whether or not Israel currently occupies Gaza is beyond the scope of this article. Many states and international organizations consider Gaza to still be occupied by Israel, by virtue of Israel's effective control of the Gaza Strip. Israel disputes this and asserts that its occupation of Gaza ended when it withdrew its troops from Gaza in 2007. This article will solely address Israel's obligations toward Gaza under the IHL provisions governing siege and starvation and will not discuss Israel's concurrent obligations toward Gaza under the law of occupation. The purpose of this framework is not to deny that Israel has concurrent obligations toward Gaza under the law of occupation. Rather, this article will focus solely on Israel's legal obligations toward Gaza under IHL to analyze the applicable IHL governing siege and starvation in isolation and avoid confusing these overlapping bodies of law. Therefore, the article will not address the application of the law of occupation to Gaza. For a detailed discussion of Gaza's legal status under the law of occupation, see Michael Luft, *Living in a Legal Vacuum: The Case of Israel's Legal Position and Policy towards Gaza Residents*, 51 ISR. L. REV. 193 (2018). For the same reason, this article will not discuss Israel's concurrent obligations toward Gaza under International Human Rights Law. For a detailed discussion of Israel's legal obligations toward Gaza under IHRL, see Orna Ben-Naftali & Yuval Shany, *Living in Denial: The Application of Human Rights in the Occupied Territories*, 37 ISR. L. REV. 17 (2003).

While Gallant ordered a complete siege on October 7, Israel has since amended its policies to allow a limited amount of humanitarian aid to enter Gaza.<sup>11</sup> On October 26, 2023, Israel reopened one of three water pipelines between Israel and Gaza, allowing 14.4 million liters of water to flow into Gaza per day.<sup>12</sup> On October 28, Israel reopened a second water pipeline to Gaza, raising the total amount of water provided from Israel to Gaza to 28.5 million liters per day.<sup>13</sup> This amount is just over half the approximately 49 million liters a day Israel supplied to Gaza before the October 7 attacks.<sup>14</sup> On October 31, Israel announced that it would permit 100 trucks of aid to enter Gaza daily through the Rafah Crossing on the Egypt-Gaza border.<sup>15</sup> On November 24, as part of a temporary pause agreement with Hamas, Israel agreed to allow 200 trucks of aid daily into Gaza.<sup>16</sup> In comparison, prior to October 7, approximately 500 trucks carrying humanitarian

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11. Jacob Magid, *Israel Agrees to Allow 100 Trucks of Humanitarian Aid into Gaza Each Day — Official*, TIMES OF ISR. (Oct. 31, 2023, 6:56 AM), <https://www.timesofisrael.com/israel-agreed-to-allow-100-trucks-of-humanitarian-aid-into-gaza-each-day-official/>.

12. Jeremy Sharon, *Israel Reopens Second of Three Water Pipelines into Gaza*, TIMES OF ISR. (Oct. 29, 2023), <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza/>.

13. *Id.*

14. *Id.*

15. Magid, *supra* note 11; The actual number of aid trucks entering Gaza daily since this announcement has been inconsistent. Between October 21 and November 24, an average of 45 trucks per day have entered Gaza. See Jacob Magid, *US Officials Say Israel Likely Can't Make Good on Hostage Deal Promise to up Gaza Aid*, TIMES OF ISR. (Nov. 24, 2023), <https://www.timesofisrael.com/us-officials-say-israel-likely-cant-make-good-on-hostage-deal-promise-to-up-gaza-aid/>.

16. Toi Staff, *Egypt: 130,000 Liters of Fuel, 200 Trucks of Aid to enter Gaza Daily During Pause*, TIMES OF ISR. (Nov. 24, 2023), [https://www.timesofisrael.com/liveblog\\_entry/egypt-130000-liters-of-fuel-200-trucks-of-aid-to-enter-gaza-daily-during-pause/](https://www.timesofisrael.com/liveblog_entry/egypt-130000-liters-of-fuel-200-trucks-of-aid-to-enter-gaza-daily-during-pause/); Hamas later accused Israel of violating this term of the truce agreement due to delays in Israel's review of the trucks. See Jones Hayden, *Gaza Hostage Releases Reportedly Delayed Amid Dispute Over Aid Trucks*, POLITICO (Nov. 25, 2023), <https://www.politico.eu/article/gaza-hostage-releases-reportedly-delayed-amid-dispute-over-aid-trucks/>.

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aid entered Gaza every day.<sup>17</sup> On November 15, Israel allowed fuel to enter Gaza for the first time since October 7, permitting the UN to distribute approximately 6,000 gallons of fuel.<sup>18</sup> Israel stated that it would permit the UN to deliver two fuel tankers to Gaza every 48 hours during the pause.<sup>19</sup> According to Tom White, director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), this amount of fuel is 9 percent of the amount needed to sustain lifesaving activities.<sup>20</sup> As of early 2024, Israel continues to totally cut off the supply of electricity to Gaza and only allow minimal amounts of aid into the Strip.<sup>21</sup> In February 2024, “just 98 trucks per day crossed into Gaza on average, according to the United Nations, compared with an average of 170 per day in January.”<sup>22</sup> Israel continues to reject the entry of dual-use items, including power generators, crutches, field hospital kits, inflatable water tanks, children’s toys and, “perhaps most depressingly, 600 oxygen tanks.”<sup>23</sup> Israel also continues to arbitrarily deny the entry of goods not

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17. Magid, *supra* note 11.

18. Yusri Mohamed & Maya Gebeily, *First Fuel Since Start of War Delivered to UN in Gaza*, REUTERS (Nov. 15, 2023), <https://www.reuters.com/world/middle-east/first-truck-with-fuel-begins-crossing-into-gaza-egypt-2023-11-15/>.

19. Ari Rabinovitch & Simon Lewis, *Israel to Allow Some Fuel into Gaza After US Push -Officials*, REUTERS (Nov. 17, 2023), <https://www.reuters.com/world/middle-east/israel-allow-two-fuel-trucks-day-into-gaza-official-says-2023-11-17/>.

20. Mohamed & Gebeily, *supra* note 18.

21. *Israel Defying ICJ Ruling to Prevent Genocide by Failing to Allow Adequate Humanitarian Aid to Reach Gaza*, AMNESTY INT’L (Feb. 26, 2024), <https://www.amnesty.org/en/latest/news/2024/02/israel-defying-icj-ruling-to-prevent-genocide-by-failing-to-allow-adequate-humanitarian-aid-to-reach-gaza/>.

22. Claire Parker, *How Israel’s Restrictions on Aid Put Gaza on the Brink of Famine*, WASHINGTON POST (Mar. 3, 2024, 5:30 PM), <https://www.washingtonpost.com/world/2024/03/03/gaza-aid-convoy-israel-war/>.

23. Nadeen Ebrahim, *Why Only a Trickle of Aid is Getting into Gaza*, CNN (Feb. 11, 2024), <https://edition.cnn.com/2024/02/11/middleeast/why-only-a-trickle-of-aid-is-getting-into-gaza-mime-intl/index.html>.

designated as dual-use, such as dates, anesthetics, solar panels, and insulin pens.<sup>24</sup>

The impact of the siege on Gazan civilians has been catastrophic.<sup>25</sup> On November 17, 2023, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) announced that Gazans are at a high risk of starvation.<sup>26</sup> OCHA stated that it is incapable of providing adequate food, water, and medical care to meet Gazans' needs.<sup>27</sup> The small amount of food that does arrive in Gaza is "woefully inadequate" to tackle mass hunger, and local food infrastructure is "no longer functional."<sup>28</sup> Similar statements have been made by other international organizations.<sup>29</sup> According to Cindy McCain, the executive director of the UN World Food Programme, "[s]upplies of food and water are practically nonexistent in Gaza, and only a fraction of what is needed is arriving through the borders. Civilians are facing the immediate possibility of starvation."<sup>30</sup> The World Health Organization and the UN Special Rapporteur on Water and Sanitation have raised related concerns about the fuel shortages resulting from the siege, which have led to the shutdown of sewage

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24. Tamara Qiblawi, Allegra Goodwin, Nima Elbagir, Caroline Faraj & Kareem Khadder, *Anesthetics, Crutches, Dates. Inside Israel's Ghost List of Items Arbitrarily Denied Entry into Gaza*, CNN (Mar. 2, 2024), <https://www.cnn.com/2024/03/01/middleeast/gaza-aid-israel-restrictions-investigation-intl-cmd/index.html>; Riley Sparks & Hajar Harb, *Gaza Aid In-Depth: Response Leaders Warn of Extreme Obstacles, Even with a Ceasefire*, THE NEW HUMANITARIAN (Feb. 1, 2024), <https://www.thenewhumanitarian.org/news-feature/2024/02/01/gaza-aid-leaders-warn-extreme-obstacles-ceasefire>.

25. *Starvation as Weapon of War Being Used Against Gaza Civilians*, OXFAM INTERNATIONAL (Oct. 25, 2023) <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam>.

26. Emma Graham-Harrison, *UN Warns of Gaza Starvation as Concerns Rise about Safety in the South*, THE GUARDIAN (Nov. 17, 2023) <https://www.theguardian.com/world/2023/nov/17/gaza-un-starvation-disease#:~:text=The%20UN%20has%20said%20Gaza%27s,out%20communications%20across%20the%20strip>.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

treatment and water pumping plants; this has created a heightened risk that Gazans will die of thirst and disease.<sup>31</sup>

The impacts of the siege have only grown more dire in 2024. According to a report by the Integrated Food Security Phase Classification (IPC) Famine Review Committee (FRC) released in March 2024, widespread famine is imminent in Gaza and there will be a “major acceleration of death and malnutrition” in the upcoming months.<sup>32</sup> The report concluded that south and central Gaza are in Phase 4 of the IPC Food Insecurity Scale, called the Emergency Phase, while Northern Gaza is already in Phase 5, which is the Catastrophe Phase.<sup>33</sup>

The conditions are indeed worst in Northern Gaza, where very little aid is able to reach civilians and an estimated 300,000 people still remain.<sup>34</sup> A Palestinian Ministry of Health spokesperson asserted that as of early March 15, children have died of dehydration and malnutrition in northern Gaza.<sup>35</sup> A WHO team corroborated reports of child starvation, reporting that “the lack of food resulted in the deaths of 10 children” at Kamal Adwan hospital in northern Gaza during its visit.<sup>36</sup> Reports of starvation and malnutrition

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31. *Id.*

32. *Gaza Strip March 2024: Conclusions and Recommendations*, INTEGRATED FOOD SECURITY PHASE CLASSIFICATION FAMINE REVIEW COMMITTEE, at 2 (Mar. 18, 2024), [https://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/IPC\\_Famine\\_Committee\\_Review\\_Report\\_Gaza\\_Strip\\_Acute\\_Food\\_Insecurity\\_Feb\\_July2024\\_Special\\_Brief.pdf](https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Committee_Review_Report_Gaza_Strip_Acute_Food_Insecurity_Feb_July2024_Special_Brief.pdf).

33. *Id.* at 3.

34. Tia Goldenberg & Wafaa Shurafa, *Pressure Grows on Israel to Open More Aid Routes into Gaza by Land and Sea as Hunger Worsens*, AP NEWS (Mar. 6, 2024), <https://apnews.com/article/israel-hamas-war-news-03-06-2024-3e4bc85bc4e184312763fc331fbffedb>.

35. Helen Regan, Ibrahim Dahman & Amy Cassidy, *Children Starve to Death in Gaza, WHO Says, as Ceasefire Deal Sticking Points Remain*, CNN (Mar. 4, 2024), <https://edition.cnn.com/2024/03/04/middleeast/gaza-children-dying-malnutrition-israel-ceasefire-talks-intl-hnk/index.html>.

36. *Id.*



deaths continue to increase week by week.<sup>37</sup> As Israel's siege continues to have a large impact on Gazan civilians, the implications of siege law and the law of starvation as a tool of war are highly applicable to Israel's current policy towards Gaza.

There is disagreement between scholars as to what obligations the international law of siege imposes on the besieging party.<sup>38</sup> A minority of scholars argue that sieges are altogether prohibited by international law, as they are automatically incompatible with the prohibition of the use of starvation of civilians as a tool of warfare.<sup>39</sup> The prevailing interpretation of the international law on siege, however, is that sieges are permissible subject to certain limitations.<sup>40</sup> Namely, the international law of siege requires that the besieging party allow civilians to evacuate the besieged area and allow humanitarian aid for civilians to enter the besieged area.<sup>41</sup> The latter requirement will be the main focus of this article.

This article will analyze the legality of Israel's siege of Gaza since October 7, 2023, under the international humanitarian law governing siege and starvation as a tool of war. The article will also discuss the Israeli Supreme Court's interpretation of the international law of siege and starvation and the legality of the current siege under Israeli law. While sieges are permissible under the prevailing interpretation of international humanitarian law, international humanitarian law also

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37. Doha Madani, *As Malnutrition Deaths are Reported and Hunger Grows, Will 'Famine' be Declared in Gaza?*, NBC NEWS (Mar. 6, 2024), <https://www.nbcnews.com/news/world/famine-gaza-hunger-israel-amas-war-rcna141891>.

38. See Tom Dannenbaum, *Siege Starvation: A War Crime of Societal Torture*, 22 CHI. J. INT'L L. 368, 381 (2021).

39. See Gloria Gaggioli, *Are Sieges Prohibited under Contemporary IHL?*, EJIL: TALK! (Jan. 30, 2019), <https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/>.

40. See *id.*

41. Federica D'Alessandra and Matthew Gillett, *The War Crime of Starvation in Non-International Armed Conflict*, Blavatnik School of Government Working Paper Series 1, 16 (Nov. 2019), <https://www.bsg.ox.ac.uk/sites/default/files/2019-11/BSG-WP-2019-031.pdf>.

requires that the besieging party allow sufficient humanitarian relief to reach civilians in the besieged area and prohibits states from refusing the passage of such humanitarian aid for arbitrary reasons.<sup>42</sup> The article concludes that under both IHL and domestic Israeli law, Israel has a legal duty to allow humanitarian aid into Gaza sufficient to prevent mass civilian starvation. In the current siege of Gaza, Israel has not met this obligation because the small amount of aid that has been allowed into Gaza is not sufficient to prevent the mass starvation of Gazan civilians.

## I. BACKGROUND

### A. *The Law Applicable to the Current Siege of Gaza*

On October 9, 2023, Israel officially declared war against Hamas, the current Palestinian ruling entity in the Gaza Strip.<sup>43</sup> The body of law governing this war is international humanitarian law (IHL), the applicable *lex specialis* in conflicts of both international and non-international character.<sup>44</sup> At the same time, international human rights law (IHRL) concurrently applies to the war between Israel and Hamas.<sup>45</sup> The dominant view among international legal bodies and

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42. *See id.*

43. Hadas Gold, Shirin Faqiri, Helen Regan, Jessie Yeung and Caitlin Hu, *Israel Formally Declares War Against Hamas as it Battles to Push Militants off its Soil*, CNN (Oct. 8, 2023, 8:55 PM), <https://edition.cnn.com/2023/10/08/middleeast/israel-gaza-attack-hostages-response-intl-hnk/index.html>; Israel has been engaged in armed conflict with Hamas before, but this is the first formal declaration of war.

44. *See* Jose Serralvo, *Concomitant Prohibitions: Collective Punishment as the Origin of Other Violations of the Rights of Civilians under Belligerent Occupation*, 55 *ISR. L. REV.* 178, 182 (2022).

45. *See id.*; However, Israel disputes this. *See* State of Israel, *International Covenant on Civil and Political Rights—Second Periodic Report*, U.N. Doc. CCPR/C/ISR/2001/2, ¶ 8 (Nov. 20, 2001) (describing Israel’s position that human rights law cannot apply concurrently to the armed conflict between Israel and the Palestinian Territories). The Israeli Supreme Court, on the other hand, has acknowledged that IHRL does concurrently apply to the Palestinian territories, though it has not clarified how or when. *See generally*, Anthony Carl,

scholars is that IHRL protections do not disappear in cases of armed conflict; rather, during situations of armed conflict “IHL and IHRL are applied concurrently, with either acting as the *lex specialis* when situationally applicable.”<sup>46</sup> Nevertheless, while IHL and IHRL can apply concurrently and mutually reinforce one another, “when the two branches of international law lead to conclusions that are incompatible, priority should be given to the more specific norm,” which is IHL in the context of armed conflict.<sup>47</sup>

### B. *What is a Siege?*

There is no widely agreed upon definition of siege in IHL.<sup>48</sup> But, in general, the term siege refers to “a military effort to surround and cut off an area, often but not always a city, to deny external access or egress, and secure the defender’s submission by deprivation or isolation.”<sup>49</sup> According to the U.S. Department of Defense Law of War Manual, the essence of a siege is the encirclement of enemy forces “with a view towards inducing their surrender by cutting them off from reinforcements, supplies, and communications with the outside world.”<sup>50</sup> While the precise language used to describe a siege differs,

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*Paradigm Perplexities: Does International Humanitarian Law or International Human Rights Law Govern the Gaza Border Protests of 2018-2019, & What Are the Consequences? A Response to the Supreme Court’s Opinion in Yesh Din v. IDF Chief of Staff* (HCJ 3003/18), 3 CARDOZO J. INT’L L. 1193 (2020).

46. *See id.*; *see also* NILS MELZER & GLORIA GAGGIOLI, CONCEPTUAL DISTINCTION AND OVERLAPS BETWEEN LAW ENFORCEMENT AND THE CONDUCT OF HOSTILITIES, IN THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS 63, 75 (2d ed. 2015); Ben-Naftali & Shany, *supra* note 10 at 57 (asserting that the ICJ Wall opinion was a “resounding confirmation” that IHRL does not cease during times of armed conflict, and the *lex specialis* of IHL in times of armed conflict does not remove the concurrent application of IHRL).

47. Serralvo, *supra* note 44 at 182.

48. *See* Maxime Nijs, *Humanizing Siege Warfare: Applying the Principle of Proportionality to Sieges*, INT’L REV. RED CROSS 683, 686 (2021).

49. Sean Watts, *Siege Law*, THE LIEBER INST. AT WEST POINT (Mar. 4, 2022), <https://lieber.westpoint.edu/siege-law/>.

50. OFF. OF GEN. COUNS., U.S. DEP’T OF DEF., LAW OF WAR MANUAL (Dec. 2016) § 5.19.1.

there is general consensus that a siege is a military encirclement of an enemy area for the purpose of defeating the enemy through attrition.<sup>51</sup>

Sieges have been used throughout history to defeat enemy forces or capture enemy-held territory while avoiding costly ground assaults.<sup>52</sup> Though sieges have a medieval connotation, they continue to be used frequently in modern warfare.<sup>53</sup> Prominent examples of modern sieges include the siege of Mariupol, Ukraine by Russian forces from February to May 2022; the ongoing siege of Taiz, Yemen by Houthi forces since 2015; and the siege of Nagorno-Karabakh by Azerbaijan since December 2022, among many others.<sup>54</sup> Siege continues to be a common tool of warfare in the modern world because it remains the most effective method with which to capture a heavily defended area with minimal losses.<sup>55</sup>

The regulation of the use of sieges during warfare has a long history within IHL and can be found in both treaty and customary international law.<sup>56</sup> However, the law governing sieges has changed significantly over the past century, and many points of the law are still hotly debated.<sup>57</sup> The following section will provide an overview of the IHL governing sieges according to both international treaty and customary international law. It will trace the history of the law and evaluate where the IHL regulating sieges stands today.

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51. See Watts, *supra* note 49.

52. See *id.*

53. See Nijs, *supra* note 48, at 684.

54. See Amos Fox, *Urban Warfare, Sieges, and Israel's Looming Invasion of Gaza*, WAR ON THE ROCKS (last visited Oct. 27, 2023), <https://warontherocks.com/2023/10/urban-warfare-sieges-and-israels-looming-invasion-of-gaza/>.

55. See YORAM DINSTEIN, SIEGE WARFARE AND THE STARVATION OF CIVILIANS, HUMANITARIAN LAW OF ARMED CONFLICT, CHALLENGES AHEAD: ESSAYS IN HONOUR OF FRITS KALSHOVEN 151-52 (1991) (“The broad injunction against sieges affecting civilians is untenable in practice, since no other method of warfare has been devised to bring about the capture of a defended town with a tenacious garrison and formidable fortifications.”).

56. See *id.*

57. *Id.*

## II. THE LAW OF SIEGE AND STARVATION

### A. *Siege and Starvation in Treaty Law*

In the 20th century, rules placing limits upon the use of sieges during warfare were first codified into international treaty law.<sup>58</sup> This section will provide an overview of the main IHL provisions governing sieges and the ongoing debates over their interpretation.

The Hague Conventions of 1899 and 1907 were the first international conventions to codify regulations applicable to military sieges.<sup>59</sup> Article 27 of the Hague Regulations provides that during sieges and bombardments “all steps necessary” must be taken to spare “as far as possible” locations devoted to art, religion, science, and medicine, “provided they are not used at the same time for military purposes.”<sup>60</sup> This article did not create any new limitation upon siege warfare, but rather reaffirmed the application of the principles of distinction and military necessity to siege warfare.<sup>61</sup> Under this article, a state is still permitted to target the listed locations during siege if they are used for military purposes.

The next international convention that created limits on siege warfare was the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (the Fourth Geneva Convention).<sup>62</sup> Article 17 of the Fourth Geneva Convention requires parties to attempt to evacuate vulnerable persons from the besieged area.<sup>63</sup> It provides that the parties to a conflict “shall endeavor” to conclude agreements for the removal of children, the elderly, and the wounded

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58. *Id.*

59. Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277.

60. *Id.* at art. 27.

61. *Id.*

62. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, [hereinafter the Fourth Geneva Convention].

63. *Id.* at art. 17.

from the besieged area and for the passage of religious personnel, medical personnel, and medical equipment into the besieged area.<sup>64</sup> This article creates two new obligations upon states during siege: the obligation to allow certain vulnerable groups to evacuate the besieged area and the obligation to allow certain humanitarian goods and persons to enter the besieged area. However, these obligations are not absolute. The use of the word “endeavor” means that the article only requires states to attempt to evacuate the listed persons from the besieged area and allow the listed entities into the besieged area.<sup>65</sup> A state does not violate Article 17 if it attempts to meet these obligations but does not ultimately fulfill them. Further, these obligations are still subject to the agreement of the conflicting parties.<sup>66</sup> Under the language of this article, a state can refuse to agree to the passage of persons into or out of the besieged area.<sup>67</sup>

Article 23 of the Fourth Geneva Convention complements Article 17 by requiring states to allow the passage of humanitarian aid to civilians in all conflict situations.<sup>68</sup> It requires that parties allow the passage of medical and religious supplies “intended only for civilians” and the passage of food, clothing, and medicine for young children and expectant mothers.<sup>69</sup> These obligations apply even if the aid recipients are civilians of an adversary party.<sup>70</sup> The obligations created by Article 23 are likewise not absolute; they are subject to the party’s satisfaction that the humanitarian aid will not be diverted from its destination and that the provision of the aid will not give a definite advantage “to the military efforts or economy of the enemy. . . .”<sup>71</sup>

The Additional Protocols to the Geneva Conventions of 1977 further codified the requirement for parties to allow humanitarian aid to

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64. *Id.*

65. Sean Watts, *Humanitarian Logic and the Law of Siege: A Study of the Oxford Guidance on Relief Actions*, 94 INT’L L. STUD. 1, 21 (2019).

66. *See id.*

67. *Id.*

68. The Fourth Geneva Convention, *supra* note 54, at art. 23.

69. *Id.*

70. *See* Gaggiolo, *supra* note 39, at 4.

71. Watts, *supra* note 49, at 4.

reach civilians during sieges.<sup>72</sup> Article 70 of Additional Protocol I, which applies to international armed conflicts, provides:

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,<sup>73</sup> 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.<sup>74</sup>

Once again, the obligation is “subject to the agreement of the Parties,” meaning that the parties are only obligated to allow humanitarian relief to reach besieged civilians if both parties agree.<sup>75</sup> Article 18 of Additional Protocol II, applicable to non-international armed conflicts, contains nearly identical language:

If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and

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72. See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977 [hereinafter AP I], [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34\\_AP-I-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34_AP-I-EN.pdf); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977 [hereinafter AP II], <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and-0>. Israel is not a signatory to either Additional Protocol I or Additional Protocol II.; *but see*, Amos Fox, *Urban Warfare, Sieges, and Israel’s Looming Invasion of Gaza*, WAR ON THE ROCKS (Oct. 27, 2023) <https://warontherocks.com/2023/10/urban-warfare-sieges-and-israels-looming-invasion-of-gaza/>. (“the Additional Protocols are considered to be norms of customary international law, and they are therefore binding on all parties in conflict, regardless of their status as a signatory or not.”).

73. Article 69 states: “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.”

74. See AP I, art. 70, at 278.

75. *Id.*

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.<sup>76</sup>

Here too, there is a requirement of party consent to trigger the obligation.<sup>77</sup>

The above articles contain party consent clauses in an effort to balance the military purpose of sieges with the protection of besieged civilians.<sup>78</sup> IHL seeks an optimal balance between the exigencies of military necessity and the protection of civilians during war.<sup>79</sup> The clauses subjecting humanitarian aid to party agreement and consent lean in favor of military necessity, effectively allowing parties to choose whether or not to allow the passage of humanitarian relief to besieged civilians at their discretion.<sup>80</sup> The drafting history of the Additional Protocols shows that the inclusion of consent clauses was hotly debated.<sup>81</sup> Ultimately, the consent clauses were adopted to appease states concerned that an absolute obligation to allow civilian-bound humanitarian aid into the besieged area would thwart the very purpose of a siege, since besieged enemy forces can easily appropriate aid intended for besieged civilians.<sup>82</sup>

While the obligation for parties to allow the passage of humanitarian aid to civilians is technically subject to the agreement or consent of the parties, there is general consensus in international law that the parties cannot arbitrarily withhold their consent to the delivery of humanitarian aid to besieged civilians.<sup>83</sup> This interpretation of the articles

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76. AP II, art. 18.

77. *Id.*

78. *See* Watts, *supra* note 49, at 6.

79. *See id.*

80. *See id.* at 45.

81. *See id.* at 31.

82. *See id.* at 28.

83. *See* U.N. Security Council, Report of the Secretary-General on the Protection of Civilians in Armed Conflict, UN Doc S/2013/689, Nov. 22, 2013, ¶ 58 (“While under international humanitarian law the consent of the affected



best accords with the Vienna Convention on the Law of Treaties, which requires that all treaty provisions be given effective meaning.<sup>84</sup> If the articles requiring parties to allow humanitarian aid to reach besieged civilians were entirely left to the parties' discretion, they would be entirely ineffectual.<sup>85</sup> The only interpretation that gives the articles effect while accounting for military necessity is the interpretation that states cannot arbitrarily deny consent to the delivery of humanitarian aid.<sup>86</sup> In addition, this interpretation seems to be the version intended by the drafters of the Additional Protocols.<sup>87</sup> The ICRC Commentary on AP I cites a passage by the German delegate Professor Michael Bothe, from the Official Records of the Diplomatic Conference: “. . . the High Contracting Party concerned has no absolute or unlimited freedom to refuse its consent to relief actions. A Party refusing its consent could only do so for valid reasons, not for arbitrary or capricious ones.”<sup>88</sup> This interpretation has been explicitly affirmed in multiple subsequent statements of law, including the Guiding Principles on Internal Displacement, the Institute of International Law's Resolution on Humanitarian Assistance, the Council of Europe Recommendation 6 on internally displaced persons, and the ICRC Commentary to Geneva Convention I.<sup>89</sup>

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State is required for relief operations to be undertaken, it is generally accepted that such consent must not be arbitrarily withheld.”)

84. See Dapo Akande & Emanuela-Chiara Gillard, *Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict*, 92 INT'L L. STUD. 483, 489 (2016); see also Vienna Convention on the Law of Treaties Arts, 31, 32, May 23, 1969, 1155 U.N.T.S. 331.

85. Akande & Gillard, *supra* note 84, at 489.

86. See *id.*

87. See *id.* at 490.

88. LIBR. OF CONG., *Official Records of the Diplomatic Conference On The Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* 336 ¶ 27 (1978) (statement of Michael Bothe, representative of Germany).

89. See Akande & Gillard, *supra* note 84 at 491-92; see also Economic and Social Council, Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2, Feb. 11, 1998, Principle 25.2 provides: “Consent [to the passage of humanitarian aid] shall not be arbitrarily withheld, particularly when

The treaty provisions of international law prohibiting the use of starvation of civilians as a tool of war are also closely tied to the regulation of sieges.<sup>90</sup> Article 54(1) of AP I provides, “[s]tarvation of civilians as a method of warfare is prohibited.”<sup>91</sup> Article 14 of AP II provides, “[s]tarvation of civilians as a method of combat is prohibited.”<sup>92</sup> The Rome Statute also provides that the intentional starvation of civilians is a war crime in both international and non-international armed conflict.<sup>93</sup>

The rules governing the starvation of civilians as a method of war are closely tied to the use of sieges because a siege of any area where civilians live inevitably causes the starvation of those civilians.<sup>94</sup> At first glance, the prohibition against the starvation of civilians as a tool of war seems irreconcilable with the use of sieges.<sup>95</sup> The very purpose of a siege is to starve the besieged area, including the incidental starvation of besieged civilians.<sup>96</sup> Consequently, some scholars argue that

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authorities concerned are unable or unwilling to provide the required humanitarian assistance.”

90. Akande & Gillard, *supra* note 84 at 496.

91. See AP I, *supra* note 72 at Art. 54(1). Israel is not a party to the Additional Protocol I but accepts that some of its provisions accurately reflect customary international law. Arguably, the provisions of AP I that Israel takes issue with still constitute customary international law. See *Israel/Gaza: Operation Cast Lead*, INTERNATIONAL COMMITTEE OF THE RED CROSS CASEBOOK (2009), <https://casebook.icrc.org/case-study/israelgaza-operation-cast-lead>.

92. AP II, *supra* note 72 at art. 14.

93. See Rome Statute of the International Criminal Court Art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 90. The Rome Statute was amended to include starvation as a war crime in NIAC in December 2019; see also Christian Durisch Acosta, *It Takes Two: The Protection of Civilians during Sieges under the IHL Prohibition against Starvation and the Right to Food*, OPINIO JURIS (Dec. 20, 2021), <http://opiniojuris.org/2021/12/20/it-takes-two-the-ihl-protection-of-civilians-during-sieges-under-the-prohibition-against-starvation-and-the-right-to-food/>.

94. Dannenbaum, *supra* note 38 at 384. The starvation of civilians is a “necessary predicate” to the starvation of enemy fighters during siege.

95. *Id.*

96. *Id.*

the prohibition of the starvation of civilians as a tool of warfare is a de facto prohibition of all sieges as a tool of warfare.<sup>97</sup>

However, most scholars find this to be an overly expansive interpretation of Article 54 and Article 14.<sup>98</sup> IHL explicitly regulates the use of sieges, thereby permitting their use; any ban of sieges would likewise need to be clear and explicit in the law.<sup>99</sup> Rather than banning all sieges, most scholars conclude that the prohibition of starvation of civilians as a tool of war is an additional regulation of siege warfare governing the intent of sieges.<sup>100</sup> Under this interpretation, any siege with the sole purpose of starving civilians is prohibited by Articles 54 and 14, but sieges that intend to starve military objects and only incidentally starve civilian populations remain lawful.<sup>101</sup> Critics respond that the intent distinction is unsatisfactory. They argue that if intent is the only distinction between lawful siege and unlawful starvation, then the prohibition of starvation of civilians as a tool of war would be rendered ineffective as virtually every modern siege has the primary intent of starving military objects while incidentally starving civilians.<sup>102</sup> Nevertheless, the prevailing interpretation among scholars and states is that the prohibition of the starvation of civilians as a tool of war does not constitute a total ban of the use of siege warfare; sieges remain legal under IHL so long as they comply with all relevant rules.<sup>103</sup>

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97. Tom Dannenbaum, *Encirclement, Deprivation and Humanity: Revising the San Remo Manual Provisions on Blockade*, 97 INT'L L. STUD. 307, 321 (2021).

98. See Nijs, *supra* note 48.

99. See *id.*

100. See *id.* at 688.

101. *Id.*

102. See Gaggiolo, *supra* note 39.

103. See *id.*

*B. Siege and Starvation in Customary International Law*

Customary international law is the body of accepted legal norms derived from state practice; it exists independent of treaty law.<sup>104</sup> It exists independent of treaty law.<sup>105</sup> The customary law governing sieges and the starvation of civilians as a tool of war has changed significantly in recent history.<sup>106</sup> Until the passage of AP I in 1977, it was widely accepted that the starvation of civilians as a tool of war was permitted by custom.<sup>107</sup> The Lieber Code, the famous early attempt to crystalize the laws of war during the American Civil War, unequivocally stated that starvation was a permissible tool of war—even when used against civilians.<sup>108</sup> During the Nuremberg Trials, a 1948 judgment of the American Military Tribunal concluded that the Nazi's total siege of Leningrad was not itself unlawful because cutting off of all food and supplies to a besieged area was a permissible tactic of war under customary international law.<sup>109</sup>

Customary law regarding the starvation of civilians as a tool of war began to change in the 1970s.<sup>110</sup> In 1977, Article 54(1) of Additional Protocol I and Article 14 of Additional Protocol II explicitly

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104. See *Customary Law*, INT'L COMM. RED CROSS, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.

105. See *id.*

106. See Dannenbaum, *supra* note 97, at 320-21.

107. *Id.* at 321.

108. See U.S. DEPT. WAR, INSTRUCTIONS FOR GOV'T ARMIES U.S. FIELD: GEN. ORDS. NO. 100 (Wash., Gov't Printing Off. 1863). Article 17 of the Code provides, "[i]t is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy."

109. Dinstein, *supra* note 54, at 146-47 (quoting *U.S. vs. Wilhelm von Leeb*, U.S. Mil. Trib. Nuremberg, Judgment of Oct. 27, 1948, <http://werle.rewi.hu-berlin.de/High%20Command%20Case.pdf>. ("A belligerent commander may lawfully lay siege to a place controlled by the enemy and endeavor by a process of isolation to cause its surrender. The propriety of attempting to reduce it by starvation is not questioned. Hence, the cutting off of every source of sustenance from without is deemed legitimate . . ." We might wish the law were otherwise but we must administer it as we find it. Consequently, we hold no criminality attached on this charge").

110. See Dannenbaum, *supra* note 97.

banned the starvation of civilians as a method of warfare.<sup>111</sup> Today, AP I and AP II have been adopted by 174 and 169 countries respectively, indicates a widespread acceptance of the prohibition of starvation of civilians in customary international law.<sup>112</sup> The UN General Assembly and Security Council have condemned the use of starvation of civilians as a method of war on many occasions.<sup>113</sup> For example, in Resolution 2417, the Security Council condemned the use of starvation against civilians as a method of warfare and declared any denial of humanitarian access a violation of international law.<sup>114</sup> Since 2016, the U.S. Department of Defense Law of War Manual has recognized the prohibition of starvation of civilians as a customary rule of IHL.<sup>115</sup> Many states have criminalized the starvation of civilians as a method of warfare in IACs.<sup>116</sup> And many other states have criminalized starvation of civilians as a method of warfare in both IACs and NIACs.<sup>117</sup> Article 8(2)(b)(xxv) of the Rome Statute criminalizes “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions.”<sup>118</sup> 123

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111. See AP I, *supra* note 72 at art. 54(1); see also AP II, *supra* note 72 at art. 14.

112. D’Alessandra and Matthew Gillett, *supra* note 41, at 4.

113. See S.C. Res. 688 (Apr. 5, 1991); S.C. Res. 706 (Aug. 15, 1991); S.C. Res. 822 (Apr. 30, 1993); S.C. Res. 853 (Jul. 29, 1993); S.C. Res. 874 (Oct. 14, 1993).

114. S.C. Res. 2417 ¶ 6 (May 24, 2018).

115. OFF. OF GEN. COUNS., U.S. DEP’T OF DEF., LAW OF WAR MANUAL (Dec. 2016), *supra* note 50, § 5.20.

116. These countries include Australia, Burundi, Canada, Congo, France, Georgia, Ireland, Kenya, Latvia, Lesotho, Mali, Malta, Mauritius, New Zealand, Samoa, Slovenia, South Africa, Timor-Leste, Trinidad & Tobago, and the United Kingdom; see also Dannenbaum, *supra* note 97 at 364-84; see generally, Nijs, *supra* note 48.

117. These countries include Belgium, Bosnia and Herzegovina, Croatia, Ethiopia, Norway, Rwanda, and Spain. See Dannenbaum, *supra* note 96 at 331-32; see generally, Nijs, *supra* note 47.

118. Rome Statute of the Int’l Crim. Ct. art. 8(2)(b)(xxv), July 1, 2002, 2187 U.N.T.S. 90.

countries have ratified the Rome Statute.<sup>119</sup> Today, the prohibition against starvation of civilians as a tool of war has become a norm of customary international law.<sup>120</sup>

There is also customary international law consensus on the rule that a besieging state must allow civilian-bound humanitarian aid to enter the besieged area and cannot arbitrarily deny consent to the passage of such aid.<sup>121</sup> This rule has been affirmed in the law of war manual of many states.<sup>122</sup> The UN General Assembly and Security Council have affirmed this obligation on many occasions.<sup>123</sup> This obligation is drawn from the principle of distinction, which requires that state military actions distinguish between fighters and civilians.<sup>124</sup> By allowing humanitarian aid to flow to civilians, the besieging party ensures that the siege complies with distinction in that it starves enemy forces but does not starve besieged civilians.<sup>125</sup> The Israeli government itself does not dispute that IHL creates an obligation for the besieging party to allow the passage of civilian-bound aid into besieged areas.<sup>126</sup>

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119. International Criminal Court, *The States Parties to the Rome Statute*, <https://asp.icc-cpi.int/states-parties>.

120. David Marcus, *Famine Crimes in International Law*, 97 AM. J. INT'L L. 245, 269 (2003).

121. Akande & Gillard, *supra* note 84. This rule has been incorporated into the military manuals of Argentina (“allow”), Australia (“allow”), Canada (“allow” and “facilitate” in case of siege warfare), Colombia (“allow”), Germany (“permit”), Italy (“accept”), Kenya (“allow and facilitate”), Netherlands (“have to give” and “facilitate”), New Zealand (“allow”), Russia (“give all facilities”), Switzerland (“all necessary facilities”) (*ibid.*, § 393), United Kingdom (“allow”, “all necessary facilities” and “guarantee”) and United States (“agree” and “facilitate”).

122. *Id.*

123. S.C. Res. 2417, ¶ 6 (May 24, 2018).

124. See Emanuela-Chiara Gillard, *Sieges, the Law and Protecting Civilians*, CHATHAM HOUSE (June 27, 2019) at 11, [https://www.chatham-house.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians\\_0.pdf](https://www.chatham-house.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians_0.pdf).

125. *See id.*

126. *See* LBC, *Tom challenges Israel government spokesman over Gaza siege*, LBC, YOUTUBE (Nov. 27, 2023), [https://www.youtube.com/watch?v=kwk\\_MusWcrA](https://www.youtube.com/watch?v=kwk_MusWcrA). In an interview, Eyal

However, there is not yet consensus as to what constitutes a valid, non-arbitrary reason for a party to withhold consent to the passage of aid.<sup>127</sup> The UN, ICRC, and many scholars assert that whether the denial of humanitarian aid to a besieged area is arbitrary or not depends on whether the denial would be legal under the principle of proportionality.<sup>128</sup> According to the UN, “a blockade that has a disproportionate impact on the humanitarian situation of the civilian population violates the principle of proportionality.”<sup>129</sup> According to the ICRC and the UN, a State’s denial of consent is arbitrary “in situations where the civilian population is inadequately supplied and the State intends to cause, contribute to, or perpetuate starvation.”<sup>130</sup> Several states have affirmed this interpretation of the law in their official law of war manuals.<sup>131</sup> Under this interpretation of the law, a state cannot deny

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Levy, official representative of the Israeli government, stated: “... our obligations under international law are to facilitate the provision of humanitarian aid necessary for the civilian population. We have been doing that, and we want to see [the passage of] as much food, water, medicine [as possible].”

127. See Akande & Gillard, *supra* note 84.

128. *Id.*; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, *Commentary of 1987*, INTERNATIONAL HUMANITARIAN LAW DATABASES, <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-18/commentary/1987?activeTab=undefined>.

129. BEARING THE BRUNT OF WAR IN YEMEN: INTERNATIONAL LAW VIOLATIONS AND THEIR IMPACT ON THE CIVILIAN POPULATION, INTERNATIONAL COMMISSION OF JURISTS 18 (July 2018), <https://www.icj.org/wp-content/uploads/2018/09/Yemen-War-impact-on-populations-Advocacy-Analysis-Brief-2018-ENG.pdf>.

130. Dapo Akande and Emanuela-Chiara Gillard, *The Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* (Oct. 26, 2016), p. 23, ¶ 51; *see generally*, EVE MASSINGHAM & KELISIANA THYNNE, CHAPTER 14 HUMANITARIAN RELIEF OPERATIONS (2020); ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (2016) ¶ 1164, <https://ihl-databases-icrc-org.proxy.library.vanderbilt.edu/ihl/full/GCI-commentary> (ICRC Commentary 2016).

131. Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1: Rules, Cambridge University Press,

consent to the entry of aid to the besieged area whenever that denial would have a disproportionate effect on the besieged civilian population.<sup>132</sup>

However, a significant number of states assert that the threat that humanitarian aid will be diverted to enemy forces is a non-arbitrary basis to deny consent to humanitarian relief.<sup>133</sup> For example, the US and UK Law of War Manuals provide: “that the besieging party may deny consent when there are serious reasons for fearing that the consignments may be diverted from their destination, the control may not be effective or a definite advantage may accrue to the military efforts or economy of the enemy.”<sup>134</sup>

There is also consensus in customary law that the obligations of allowing civilians to evacuate the besieged area and allowing humanitarian aid into the besieged area operate in tandem and are not interdependent.<sup>135</sup> Some scholars and states argue that if a besieger allows civilians to evacuate the besieged area, it is free of its obligation to allow humanitarian aid into the besieged area because it has fulfilled

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Cambridge 197 (2005) (ICRC Customary Law Study), <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> (“Practice further indicates that a party that imposes a siege, blockade or embargo which has the effect of starving the civilian population has an obligation to provide access for humanitarian aid for the civilian population in need.”)

132. See Nijs, *supra* note 48 at 692-93.; OFF. OF GEN. COUNS., U.S. DEP’T OF DEF., LAW OF WAR MANUAL (Dec. 2016) § 5.20.2 (“Starvation – Proportionality. Military action intended to starve enemy forces, however, must not be taken where it is expected to result in incidental harm to the civilian population that is excessive in relation to the military advantage anticipated to be gained.”); see also Henckaerts & Doswald-Beck, *supra* note 131 at 197 (“If it is established that a civilian population is threatened with starvation and a humanitarian organisation which provides relief on an impartial and non-discriminatory basis is able to remedy the situation, a party is obliged to give consent.”)

133. See Nijs, *supra* note 48 at 692.

134. See Nijs, *supra* note 48, at 692; OFF. OF GEN. COUNS., U.S. DEP’T OF DEF., LAW OF WAR MANUAL (Dec. 2016) § 5.19.3; United Kingdom Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict, 2004*, 220-21, ¶ 9.12.1.

135. See Nijs, *supra* note 48 at 685-91.



its duty to give civilians a path of survival.<sup>136</sup> The prevailing view in international law, exemplified by the ICRC and the Oxford Guidance on Humanitarian Relief Operations, disagrees.<sup>137</sup> A besieging party is obligated to allow civilians to leave the besieged area *and* to allow civilian-bound humanitarian relief into the besieged area.<sup>138</sup> It cannot pick and choose between the two.<sup>139</sup> While relevant, the obligation of parties to allow civilians to evacuate the besieged area is beyond the scope of this paper.<sup>140</sup>

As shown above, both international treaty and customary international law affirm the following: (1) sieges are permitted by IHL, (2) the starvation of civilians cannot be the primary purpose of a siege, (3) a besieging party must allow besieged civilians to evacuate the besieged area, (4) a besieging party cannot arbitrarily deny consent to the entry of civilian-bound humanitarian aid, and (5) the obligations to allow civilians to evacuate the besieged area and the obligation to allow humanitarian aid to enter the besieged are concurrent

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136. See Dinstein, *supra* note 55 at 151-52. (“if the civilians in a besieged town are allowed to leave the encircled area yet choose to stay *in situ*, what legitimate claim do they have for special protection from the hardships of starvation? . . . Why should the besieging force be required to raise a siege or avoid hermetically sealing the enveloped town when it is offering civilians a safety valve?”); see also Military Advocate General’s Corps: IDF School of Military Law, *Manual on the Rules of Warfare* (2006) (“In cases where civilians do not have the opportunity to leave the besieged city, a duty arises to supply them with food, water and humanitarian aid.”); Rosa-Lena Lauterbach, *Israel-Hamas 2023 Symposium: A “Complete Siege” of Gaza in Accordance With International Humanitarian Law*, THE LIEBER INST, AT WEST POINT (Oct. 16, 2023) <https://lieber.westpoint.edu/complete-siege-gaza-in-accordance-international-humanitarian-law/>.

137. See *generally*, Dannenbaum, *supra* note 97.

138. See *id.*

139. See *id.*

140. Israel does not dispute that it is not permitting Gazans to evacuate the besieged area. While it has created humanitarian corridors for Gazans to leave areas bombarded by air strikes in the North, it has not created humanitarian corridors for Gazans to leave the besieged Gaza Strip; See Clare Mulroy, *Why Can’t People Leave Gaza? Gaza Strip Blockade Explained Amid Israel Evacuation Order*, USA TODAY (Oct. 13, 2023), <https://eu.usatoday.com/story/news/world/2023/10/13/why-cant-people-leave-gaza/71170077007/>.

obligations. However, debate still exists within IHL as to what constitutes a valid, non-arbitrary reason to deny the passage of aid.

### C. *Siege and Starvation in Israeli Domestic Law*

Israel's Supreme Court has provided its own interpretation of Article 54(1), Article 14, and the customary international law governing siege and starvation as applied to Israel's siege of Gaza.<sup>141</sup> In the 2008 judgment of *Jaber Al-Bassiouni v. Prime Minister (Al-Bassiouni)*, the Israeli Supreme Court acknowledged Israel's obligation under international law to allow sufficient humanitarian aid into Gaza.<sup>142</sup>

Israel's initial siege of Gaza began in 2007, following the election of Hamas as the governing power in the Strip.<sup>143</sup> Prior to October 7, 2023, the siege was not total, but strictly limited the entry of food, fuel, electricity, and other goods into Gaza.<sup>144</sup> In the 2008 *Al-Bassiouni* case, several Palestinian plaintiffs challenged the legality of the Israeli siege of Gaza.<sup>145</sup> In its decision, the Israeli Supreme Court concluded that under international law the Israeli Government is obligated to allow the passage of a minimum level of essential humanitarian aid, including food, water, medical supplies, fuel, and electricity, into Gaza.<sup>146</sup>

In 2007, the Israeli government announced new restrictions to significantly reduce Israel's supply of fuel and electricity to Gaza.<sup>147</sup> Palestinian petitioners challenged this fuel and electricity reduction plan as illegal under international and Israeli law because it would deprive

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141. *See generally*, H.C.J. 9132/07 *Jaber Al-Bassiouni v. Prime Minister*, Judgment of January 30, 2008, [http://elyon1.court.gov.il/Files\\_ENG/07/320/091/n25/07091320.n25.htm](http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.htm).

142. *Id.* at 11.

143. UNICEF, *The Gaza Strip | The Humanitarian Impact of 15 Years of Blockade* (June 2022), <https://www.unicef.org/mena/documents/gaza-strip-humanitarian-impact-15-years-blockade-june-2022>.

144. *Id.*

145. *Al-Bassiouni*, *supra* note 141, at 2.

146. *Id.* at 15.

147. *See id.* at 2.

Gazans of their basic humanitarian needs.<sup>148</sup> In its opinion, the Israeli Supreme Court first established that Gaza was no longer occupied by Israel but rather was subject to Israeli siege.<sup>149</sup> The Court opined that under international law, Israel still had a legal duty to allow a minimum level of essential humanitarian aid, including food, water, medical supplies, and minimum levels of fuel and electricity, into Gaza.<sup>150</sup> The court ultimately found Israel's reduction plan legal because even with the reductions, the amount of fuel and electricity entering Gaza was enough to satisfy the essential humanitarian needs of Gaza.<sup>151</sup>

In his commentary on the case, Yuval Shany, a scholar of law at the Hebrew University in Jerusalem, asserts that the *Al-Bassiouni* court created a positive obligation for Israel not only to *allow* the passage of aid into Gaza, but to itself *provide* aid to Gaza.<sup>152</sup> According to Shany, "the Court held that a duty [for Israel] to provide a minimum level of supplies [to Gaza] exists."<sup>153</sup> Shany primarily bases this interpretation of the *Al-Bassiouni* decision on the relief sought by the petitioners in the case; the petitioners "did not simply request[ that Israel]... facilitate the passage of basic supplies to Gaza, but rather [that Israel] supply some of them itself."<sup>154</sup> Because the relief sought by petitioners was Israel's *supply* of electricity and fuel to Gaza, Shany reasons, the court's holding also applied to Israel's supply of aid to Gaza.<sup>155</sup>

However, Shany's conclusion is a fundamental misinterpretation of the *Al-Bassiouni* case. Contrary to Shany's assertions, the *Al-*

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148. *See id.*

149. *See id.* at 9. The assertion that Israel no longer occupies Gaza is hotly debated, and many international organizations assert that Israel does continue to occupy Gaza.

150. *See id.* at 11.

151. *See id.* at 15.

152. *See generally*, Yuval Shany, *The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v. The Prime Minister of Israel*, 42 *Isr. L. Rev.* 101 (2012).

153. *Id.* at 110.

154. *Id.*

155. *Id.*

*Bassiouni* court did *not* hold that Israel has an obligation to itself provide aid to Gaza.<sup>156</sup> The court narrowly held that Israel only has an obligation to *allow* a minimum amount of humanitarian aid into Gaza.<sup>157</sup>

First, as Shany acknowledges, “[i]t is... debatable whether Israel ‘supplies’ fuel [and electricity] to Gaza” at all.<sup>158</sup> Though the Court refers to Israel’s supply of fuel and electricity to Gaza frequently in its opinion, this phrase does not accurately describe the Israeli government’s role in the supply of fuel and electricity to Gaza.<sup>159</sup> Fuel is delivered from Israel to Gaza by Dor-Alon, a privately owned Israeli corporation.<sup>160</sup> Electricity is supplied from Israel to Gaza by the Israel Electric Company, a government owned corporation.<sup>161</sup> While state attribution for a state-owned enterprise’s actions is a complex question in international law, the general principle is that “[m]ere state ownership or control of shareholding is insufficient” to prove that the state-owned enterprise is an organ of the state.<sup>162</sup> In the past, Israel has publicly asserted that acts of the Israel Electric Company are “independent” from the state.<sup>163</sup> Given this context, it makes no sense for the court to create a positive obligation for Israel to itself supply aid to Gaza out of nowhere.<sup>164</sup>

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156. *Al-Bassiouni*, *supra* note 141 at 9.

157. *Id.*

158. Shany, *supra* note 152 at 110, fn. 20.

159. *Al-Bassiouni*, *supra* note 141 at 5 (“Electricity is supplied to the Gaza Strip by the State of Israel via ten power lines...”).

160. *See* Shany, *supra* note 152 at 110, fn. 20.

161. *See id.*

162. Peter Bekker, *State Responsibility for Acts of SOEs*, BERNE UNION (Sept. 18, 2023) <https://www.berneunion.org/Articles/Details/795/State-responsibility-for-acts-of-SOEs>.

163. *See* Barak Ravid & Jack Khoury, *Israeli Government Says Not Behind Electric Corp. Decision to Cut West Bank Power*, HAARETZ (Feb. 23, 2015) <https://www.haaretz.com/2015-02-23/ty-article/.premium/israeli-govt-not-behind-west-bank-power-cuts/0000017f-e5d5-d62c-a1ff-fdff9bef0000>.

164. *Al-Bassiouni*, *supra* note 141 at 9.

Most significantly, Shany's argument is premised on a basic misreading of the *Al-Bassiouni* case's ruling. In briefs and affidavits, the Israeli government asserted its belief that it has a duty to provide aid to Gaza and was doing so as a matter of policy.<sup>165</sup> The court did reference this claim by the Israeli government as proof that Israel was acting in accordance with IHL, but the court's ruling did not go so far as to hold that Israel's provision of aid to Gaza was a legal obligation under IHL.<sup>166</sup> The Court only ruled that IHL obligates Israel to *allow* a minimum level of aid to enter Gaza.<sup>167</sup> The Court stated its holding unambiguously on page nine of the opinion: "The respondents are required to discharge their obligations under international humanitarian law, which requires them to *allow* the Gaza Strip to receive only what is needed in order to provide the essential humanitarian needs of the civilian population."<sup>168</sup> Indeed, the Court's ruling carefully avoided the phrase "provide" with respect to aid to Gaza, instead only using the words "allow" and "permit."<sup>169</sup> Therefore, the Court's holding narrowly affirms that the international law of siege and starvation applies to Israel, and under such law Israel has the obligation of allowing the passage of minimal aid into Gaza.<sup>170</sup> Shany's misinterpretation of the case has been erroneously duplicated in other pieces of legal scholarship.<sup>171</sup> In order to better understand the domestic law of Israel, it is necessary to correct this misinterpretation here.

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165. *Id.*

166. *Id.*

167. *Id.*; see also Hilly Moodrick-Even Khen, *Having It Both Ways: The Question of Legal Regimes in Gaza and the West Bank*, 16 ISR. STUD. 55, 64 (2011) ("The HCJ, stating that the Gaza strip was no longer under Israeli occupation, decided that Israel only bears the duties that are specified in the Geneva Conventions, the Hague Reg., and the First Additional Protocol to the Geneva Convention (1977) (API), not to prevent food and water supplies from reaching the population.").

168. *Al-Bassiouni*, *supra* note 141, at 9 (emphasis added).

169. *See id.*

170. *See id.*

171. *See* Benjamin Rubin, *Disengagement from the Gaza Strip and Post-Occupation Duties*, 42 ISR. L. REV. 528, 562 (Jan. 31, 2010) (Stating that in *Al-Bassiouni* "The HCJ explained Israel's duty to continue the supply of electricity

Although the court's holding was fairly narrow, *Al-Bassiouni* is still noteworthy in that it affirmed that Israel must allow a minimum level of aid into Gaza to meet civilians' basic needs, in compliance with the provisions of international law governing siege and starvation.<sup>172</sup> The Court said that this remains an obligation even when "some of the fuel that enters the Gaza Strip is in fact used [by] terrorist organizations" and when reducing aid would help "to damage the terrorist infrastructures and affect their ability to operate against the citizens of the State of Israel."<sup>173</sup> Thus, according to the Court, Israel's obligation is to allow into Gaza the minimum amount of aid required to meet Gazan civilians' needs even if there is a risk of the aid being appropriated.<sup>174</sup> That amount of aid is objectively calculated based on the physical needs of Gaza's population, and it remains the same regardless of changes to the scale of the threat posed by Hamas to Israel.<sup>175</sup> Consequently, Israel's obligation to allow aid into Gaza remains the same in the current siege.<sup>176</sup>

Since October 2023, the Israeli government has not allowed a level of aid sufficient to meet civilians' basic needs into Gaza, as demonstrated by the widespread food insecurity of the civilian population, lack of safe drinking water, and stoppages of hospitals due to lack of fuel.<sup>177</sup> Thus, Israel's current siege of Gaza violates the law established by the Supreme Court in *Al-Bassiouni* and is in contravention of domestic Israeli law.

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by reference to general humanitarian law."); Luft, *supra* note 10 at 198 ("The Court held in *Al-Bassiouni* that Israel is under an obligation to continue the supply of electricity and fuels to Gaza so as not to harm the provision of humanitarian needs of the population."); Carl, *supra* note 45 at 1226 ("The Court in *Bassiouni* affirms that Israel is in fact obligated to actively provide humanitarian supplies, most notably electricity and water, to Gaza.").

172. *Al-Bassiouni*, *supra* note 141, at 9.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. Gaza Strip March 2024: Conclusions and Recommendations, *supra* note 32.

## III. ISRAEL'S CURRENT SIEGE UNDER INTERNATIONAL LAW

As demonstrated above, the most prevalent interpretation of the international law of siege and starvation permits the use of siege as a tool of warfare when the besieging party allows sufficient civilian-bound humanitarian relief to enter the besieged area.<sup>178</sup> In effect, “total” sieges (i.e. sieges that universally cut off all resources, including humanitarian relief, to the besieged area) are banned under international law.<sup>179</sup> Sieges that allow sufficient humanitarian relief into the besieged area to prevent the starvation of civilians are still permissible.<sup>180</sup>

Many critics argue that Israel's siege of Gaza since October 7, 2023 violates this principle because it is a total siege cutting off entry of all resources to Gaza, including all humanitarian resources that would prevent starvation of the civilian population.<sup>181</sup> On October 13, 2023, the ICRC released a rare statement castigating Israel's total siege: “[t]he instructions issued by the Israeli authorities for the population of Gaza City to immediately leave their homes, coupled with the complete siege explicitly denying them food, water, and electricity, are not compatible with international humanitarian law.”<sup>182</sup> However, context and events unfolding since October 7th, 2023 have complicated the characterization of Israel's siege as “total”.<sup>183</sup> The following passages will attempt to answer two questions in the context of the 2023 siege of Gaza: (1) What are Israel's obligations toward

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178. See e.g., Henckaerts and Doswald-Beck, *supra* note 131.

179. See *id* at 196.

180. See *id* at 197.

181. See Amnesty International, *supra* note 8.

182. *Israel and the Occupied Territories: Evacuation Order of Gaza Triggers Catastrophic Humanitarian Consequences*, INT'L COMM. OF THE RED CROSS (Oct. 13, 2023), <https://www.icrc.org/en/document/israel-and-occupied-territories-evacuation-order-of-gaza-triggers-catastrophic-humanitarian-consequences>.

183. See Emma Farge, *'Immense Relief' as UN Deliveries to Northern Gaza Ramp Up*, REUTERS (Nov. 27, 2023), <https://www.reuters.com/world/middle-east/immense-relief-un-deliveries-northern-gaza-ramp-up-2023-11-26/>.

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Gaza under the laws of siege; and (2) has Israel fulfilled these obligations in its siege of Gaza?

A. *What are Israel's Obligations?*

Under the international law of siege, the besieging party is required to allow, or consent to, the provision of sufficient humanitarian aid to the besieged civilians unless it has a non-arbitrary reason to refuse consent.<sup>184</sup> The underlying purpose of this requirement is to prevent the mass starvation of the besieged civilian population.<sup>185</sup> Israel has argued that in the current war, it has multiple valid, non-arbitrary reasons to refuse to consent to the passage of sufficient humanitarian aid into Gaza, including the following: (1) because Hamas will appropriate any aid entering Gaza intended for civilians, (2) because Hamas, not Israel, has a duty to provide for Gazans' humanitarian needs and is capable of doing so, and (3) because the passage of sufficient humanitarian aid into Gaza can be used as a bargaining chip to achieve the release of Israeli hostages held in Gaza.<sup>186</sup> The following section will analyze whether each of these reasons is a valid, non-arbitrary reason for Israel to refuse the passage of sufficient humanitarian aid into Gaza.

1. Hamas' Appropriation of Civilian Aid

Under international law, the besieged party has the same obligation as the besieging party to permit humanitarian aid to reach civilians in the besieged area.<sup>187</sup> Hamas, both as the governing entity in Gaza and as a party to the current conflict, has an obligation to allow humanitarian aid to reach Gaza's civilian population.<sup>188</sup> Israel asserts that

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184. See *Top Legal Experts on Why Aid to Gaza Can't Be Conditioned on Hostage Release, in Response to Remarks by US Official*, JUST SECURITY (Nov. 20, 2023), <https://www.justsecurity.org/90196/top-experts-on-why-aid-to-gaza-cant-be-conditioned-on-hostage-release-in-response-to-remarks-by-us-official/>.

185. See Dannenbaum, *supra* note 38, at 408.

186. See JUST SECURITY, *supra* note 184.

187. AP I, *supra* note 72 at art. 70.

188. See Jelena Pejic, *The Protective Scope of Common Article 3: More Than Meets the Eye*, 93 INT'L REV. RED CROSS 1, 27 (2011); Christopher M.



Hamas has failed to meet this obligation in the current siege because it is appropriating civilian-bound aid.<sup>189</sup> Hamas has been documented appropriating aid intended for Gazan civilians in the past.<sup>190</sup> There are also credible allegations, based on video footage and eyewitness reports, that Hamas has appropriated UNRWA aid intended for Gazan civilians in 2023.<sup>191</sup> Israeli officials have asserted that the risk that Hamas will appropriate civilian-bound aid is a valid, non-arbitrary reason

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Blanchard, Jeremy M. Sharp, & Jim Zanotti, *Israel and Hamas October 2023 Conflict: Frequently Asked Questions (FAQs)*, CONG. RSCH SERV., 28 (Oct. 20, 2023), <https://crsreports.congress.gov/product/pdf/R/R47754>; Gillard, *supra* note 124, at 11 (“Primary responsibility for meeting the basic needs of civilians lies with the party that has effective control over them – in the case of sieges, the besieged party”).

189. See Patrick Kingsley, *Amid Food Shortages, People in Gaza are Ambushing Aid Convoys*, THE NEW YORK TIMES (Feb. 21, 2024) <https://www.nytimes.com/2024/02/21/world/middleeast/gaza-aid-convoys-ambush.html>.

190. See *Hamas Militias Confiscate UN Aid Provisions, Again*, Wafa NEWS AGENCY (Feb. 7, 2009), <https://english.wafa.ps/Pages/Details/107518>; *Gaza: see also UN Suspends Aid Operation After Second Hamas-Linked Theft of Supplies*, UNITED NATIONS INFORMATION SYSTEM ON THE QUESTION OF PALESTINE (Feb. 6, 2009), <https://www.un.org/unispal/document/auto-insert-209885/>.

191. *Elderly Gazan Woman Accuses Hamas of Stealing Aid in Rare Criticism*, THE TELEGRAPH (Dec. 8, 2023) <https://www.youtube.com/watch?v=NBjvYkNzuAA>; Toi Staff, *Gaza Aid Trucks Stolen by Gunmen and Looted, as Convoys Start Crossing from Israel*, TIMES OF ISRAEL (Dec. 17, 2023), <https://www.timesofisrael.com/gaza-aid-trucks-stolen-by-gunmen-and-looted-as-convoys-start-crossing-from-israel/>. It is difficult to confirm the extent of Hamas’ aid theft due to difficult conditions on the ground, including widespread looting, aid theft by criminal gangs, and the fact that journalists are not permitted to enter Gaza. In February 2024, US special Middle East envoy for humanitarian issues David Satterfield stated that Israel had not provided the US with “specific evidence of diversion or theft” of U.N. assistance but that Hamas was certainly “shap[ing] where and to whom assistance goes.” Wafaa Shurafa & Samy Magdy, *U.S. Envoy Says Israel Has Not Shown Evidence that Hamas is Diverting UN Aid in Gaza*, PBS (Feb. 17, 2024), <https://www.pbs.org/news-hour/world/u-s-envoy-says-israel-has-not-shown-evidence-that-hamas-is-diverting-un-aid-in-gaza>.

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for it to refuse the passage of humanitarian aid under international law.<sup>192</sup>

As summarized above, there is no clear consensus under customary international law as to whether the risk that aid will be appropriated by enemy forces is a valid non-arbitrary reason to refuse the passage of aid under international law.<sup>193</sup> But, according to the UN, ICRC, and a large number of states, denial of the passage of aid is arbitrary whenever it will have a disproportionate impact on the besieged civilian population, regardless of whether or not there is a risk of appropriation.<sup>194</sup> In other words, if the civilian population is in desperate need of aid, the besieging party has an obligation to allow aid to reach besieged civilians even if there is a risk it will be appropriated by besieged enemy forces.<sup>195</sup>

An example can be seen in the Saudi coalition's blockade of Yemen.<sup>196</sup> In April 2015, the Saudi coalition undertook a total blockade of Red Sea ports to prevent fuel from reaching Houthi rebels.<sup>197</sup> The Saudi coalition's concern that Houthi rebels would appropriate fuel intended for civilian purposes was justified. In June 2017, a UN Panel of Experts reported that the Houthis had earned approximately \$1.14 billion from fuel and oil sales and that "fuel was one of the main

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192. See Andrew Solender, *Scoop: House GOP Scrutinizes Biden's Aid to Palestinians*, AXIOS (Oct. 24, 2023), <https://www.axios.com/2023/10/24/israel-hamas-aid-funding-gaza-biden>. Israel Defense Forces spokesperson Daniel Hargari stated that "fuel won't enter Gaza" and because " Hamas uses it for operational needs." See also Yoav Zitun, *Hamas Hoards Massive Fuel Reserves as Gazans Languish*, YNET NEWS (Nov. 3, 2023), <https://www.ynetnews.com/article/hywp1vfqp>. "Israel maintains a firm stance that it will not provide fuel to Gaza as part of routine humanitarian assistance provided to the territory, citing that such resources are likely to be appropriated by Hamas for its terrorist activities."

193. See e.g., Akande & Gillard, *supra* note 84.

194. See *id.* at 498-502.

195. See *id.*

196. See, Laura Graham, *Prosecuting Starvation Crimes in Yemen*, 52 CASE W. RES. J. INT'L L. 267, 281 (2020).

197. See *id.* at 282.

sources of revenue for the Houthis.”<sup>198</sup> In addition to the financial benefits, Houthi forces have used imported fuel directly for military purposes.<sup>199</sup> However, the consequence of the coalition’s 16-month long blockade of the Red Sea Ports was the decreased flow of food, fuel, and medicine to Yemeni civilians.<sup>200</sup> This blockade directly contributed to the gross humanitarian disaster affecting Yemeni civilians.<sup>201</sup>

In 2018, the UN Security Council called on all parties in Yemen to “allow and facilitate the safe, rapid and unhindered access for humanitarian supplies and personnel” to all affected areas.<sup>202</sup> The statement urged the opening of multiple Yemeni ports and reaffirmed “that denial of humanitarian access can constitute a violation of international humanitarian law.”<sup>203</sup> In its September 2018 report, the Group of Eminent International and Regional Experts on Yemen, the expert group established by the Human Rights Council, described the severe impacts of the Saudi coalition’s blockade of humanitarian aid to Yemen.<sup>204</sup> The Group concluded that the blockade of aid was disproportionate because of its significant impact on civilians and its negligible military advantage:

The harm to Yemen’s civilian population caused by severe restrictions on naval imports was foreseeable, given the country’s pre-conflict reliance on imports and the criticality of Hudaydah port... No possible military advantage could justify such sustained and extreme suffering of millions of people. The coalition has failed to cancel or

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198. See Human Rights Watch, *Yemen: Coalition’s Blocking Aid, Fuel Endangers Civilians* (Sept. 27, 2017), <https://www.hrw.org/news/2017/09/27/yemen-coalitions-blocking-aid-fuel-endangers-civilians>.

199. See *id.*

200. See Graham, *supra* note 197 at 282.

201. See *id.*

202. Press Release, Security Council, *Amid Deteriorating Conditions in Yemen, Security Council Presidential Statement Calls for Humanitarian Access, Strict Adherence to Embargo*, U.N. Press Release SC/13250 (Mar. 15, 2018).

203. *Id.*

204. See Press Release, U.N. Off. Of The High Comm’r for Hum. Rts., *See Yemen: United Nations Experts Point to Possible War Crimes by Parties to the Conflict* (Aug. 28, 2018), <https://www.ohchr.org/en/press-releases/2018/08/yemen-united-nations-experts-point-possible-war-crimes-parties-conflict>.

suspend the restrictions, as required under international law... Based on the evidence available, there are reasonable grounds to believe access restrictions and de facto blockades violate the proportionality rule of international humanitarian law.<sup>205</sup>

Under IHL, a besieging force “may impose naval blockades to prevent arms and military material from reaching enemy forces.”<sup>206</sup> But when it comes to humanitarian goods like food, fuel, and medicine, international humanitarian law prohibits the besieging force from blocking the passage of civilian-bound humanitarian goods if doing so will have a disproportionate effect on the civilian population, even when there is a valid military purpose to block those goods from reaching enemy forces.<sup>207</sup> Because Yemen relied so heavily on imports and already had weak infrastructure, the impact of the coalition’s blockade was devastating and extremely disproportionate.<sup>208</sup> Therefore, the coalition’s blockade violates the principle of proportionality and likely constitutes a war crime according to human rights organizations and the UN.<sup>209</sup>

Many states, including the US and UK, disagree with this interpretation of arbitrariness.<sup>210</sup> They argue that the risk that aid will be appropriated by enemy forces is a valid, non-arbitrary reason to refuse the passage of aid.<sup>211</sup> To prohibit a besieging party from blocking humanitarian aid when enemy forces could appropriate that aid for themselves sacrifices the exigencies of military necessity in favor of civilian protections.<sup>212</sup> Sean Watts, a Professor of Law at the United States Military Academy at West Point, argues that the ICRC and Oxford Guidance’s interpretation of arbitrariness is “based on a narrow or

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205. *Id.*

206. *See* HUMAN RIGHTS WATCH, *supra* note 198.

207. *See id.*

208. *See id.*

209. *See id.*

210. *See* Nijs, *supra* note 48, at 692; *see generally*, DEP. OF DEF, LAW OF WAR MANUAL (2023); JOINT DOCTRINE AND CONCEPTS CENTRE, THE JOINT SERVICE MANUAL OF THE LAW OF ARMED CONFLICT (2023).

211. Nijs, *supra* note 48, at 692.

212. *See generally*, Dinstein, *supra* note 55.

incomplete understanding of the purposes of the law of war... [Their] interpretive effort skews almost exclusively to humanitarian concerns at the expense of considerations of military experience and practice.”<sup>213</sup>

It is undoubtedly true that the ICRC interpretation of arbitrariness skews more in favor of humanitarian concerns than military concerns. However, within IHL, certain categories of acts can never be justified by military necessity or utility.<sup>214</sup> Although IHL requires a balancing act between military and humanitarian concerns, the “military utility of a particular method is insufficient to justify deviation from a clear legal prohibition.”<sup>215</sup> The prohibition of the starvation of civilians as a tool of war is one such prohibition that applies even when it may result in a military disadvantage.<sup>216</sup> As Judge Aharon Barak wrote on behalf of the Israeli Supreme Court in 1999, to comply with international law, a state “must sometimes fight with one hand tied behind its back.”<sup>217</sup>

Furthermore, the ICRC interpretation of the arbitrary withholding of consent does account for military needs.<sup>218</sup> Under the ICRC interpretation, a besieging party is still permitted to fully control the delivery of humanitarian aid to the besieged area in order to ensure it is not diverted by armed actors; “[s]uch measures of control may include the search of relief consignments and their delivery under supervision.”<sup>219</sup> In this way, the law of siege attempts to strike a balance between the military necessity of besieging enemy forces with the humanitarian necessity of preventing the starvation of civilians.<sup>220</sup> Many scholars

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213. Watts, *supra* note 65, at 44.

214. See, e.g., Dannenbaum, *supra* note 38, at 393 (the crimes of torture, mistreatment of POWs, and the use of banned weapons).

215. *Id.*

216. *Id.*

217. See H.C.J. 5100/94 Pub., *Comm. Against Torture in Israel v. State of Israel*, 53(4) PD 3, 36-37 (1999) (Isr.).

218. Access for Humanitarian Relief to Civilians in Need, *Commentary to Rule 55*, INTERNATIONAL HUMANITARIAN LAW DATABASES, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55>.

219. *Id.*

220. See Dannenbaum, *supra* note 38 at 388.

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agree with this interpretation as the optimal balance of military necessity and humanitarian concerns.<sup>221</sup>

Israel has a legitimate concern that Hamas will appropriate civilian-bound humanitarian aid entering Gaza.<sup>222</sup> This is a particular concern regarding the delivery of fuel to Gaza.<sup>223</sup> While fuel is necessary for civilian purposes, such as operating hospitals and desalination plants, it can be diverted and used to power rockets aimed at Israeli territory.<sup>224</sup> Indeed, Hamas has a well-documented history of stealing fuel intended for hospitals' use to power their rockets and has already done so in the current war.<sup>225</sup> Acknowledging that this is a real and serious military concern for Israel, such concern does not alleviate Israel's duty to allow the passage of civilian-bound humanitarian aid into Gaza.<sup>226</sup> Nevertheless, the case of Gaza has a strong parallel in the Saudi coalition's siege of Yemen. Evidence of Houthi appropriation of fuel affirmed that Saudi Arabia had a valid military purpose in blocking materials from Houthi forces, yet, Saudi Arabia's blockage of civilian-bound humanitarian aid still constitutes a war crime.<sup>227</sup> The same is true of Israel's blockade of Gaza. It is well established that Gaza heavily relies on Israel for imports and has weak infrastructure.<sup>228</sup> According to Gisha, an Israeli nonprofit that advocates for the free movement of Palestinians in Gaza, in 2022, 68% of goods

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221. *See id.*

222. *See Staff, supra* note 191.

223. *See Toi Staff, UNRWA Indicates Hamas Stole Supplies from its Gaza Premises, then Walks Back Claim*, TIMES OF ISR. (Oct. 16, 2023), <https://www.timesofisrael.com/un-refugee-agency-says-hamas-stole-fuel-and-medications-from-its-gaza-premises/>.

224. *See id.*

225. *See Zitun, supra* note 193; *see also* United Nations Watch, *Hamas Stole 36,000 Liters of Fuel from UN Warehouses* (Oct. 16, 2023), <https://un-watch.org/hamas-stole-36000-liters-of-fuel-from-un-warehouses/>.

226. Human Rights Watch, *supra* note 198.

227. *See id.*

228. *See Emma Bubola & Ben Hubbard, What Does a 'Complete Siege' of the Gaza Strip Mean?*, THE NEW YORK TIMES (Oct. 10, 2023), <https://www.ny-times.com/2023/10/10/world/middleeast/gaza-strip-israel-egypt.html>.

entering Gaza came from Israel.<sup>229</sup> The Gazan commercial economy also relies heavily on exports to Israel, which is the primary market for Gazan goods.<sup>230</sup> Gazan civilians have been severely impacted by the total siege, and the humanitarian crisis is only growing worse.<sup>231</sup> Israel could lawfully exert full supervision over the delivery of humanitarian aid to Gaza to ensure weapons and other military materials do not enter the Strip. Indeed, Israel had already implemented an effective process to review and approve goods crossing into Gaza prior to October 7 and has continued to review all aid entering Gaza since October 7.<sup>232</sup> Nevertheless, Israel cannot lawfully deny the passage of sufficient civilian-bound humanitarian aid into Gaza.

## 2. Hamas' Duty to Provide Aid

Israeli officials have also asserted that Israel is not required to allow humanitarian aid into Gaza because Hamas, not Israel, has the duty to supply aid to Gazans.<sup>233</sup> They assert that Hamas' failure to

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229. *Id.*

230. U.N. Off. for the Coordination of Humanitarian Affs., *Gaza Crossings: Movement of People and Goods*, <https://www.ochaopt.org/data/crossings>; Wafa Aludaini, *Gaza Exhales: Israel Lifts Kerem Shalom Export Ban*, MIDDLE EAST MONITOR (Sept. 9, 2023), <https://www.middleeastmonitor.com/20230909-gaza-exhales-israel-lifts-kerem-shalom-export-ban/>

231. See Graham-Harrison, *supra* note 26.

232. See Carrie Keller-Lynn, *Israel Says All Aid Convoys Entering Gaza Have Been Checked for Contraband*, TIMES OF ISR. (Oct. 22, 2023), [https://www.timesofisrael.com/liveblog\\_entry/israel-says-all-aid-convoys-entering-gaza-have-been-checked-for-contraband/](https://www.timesofisrael.com/liveblog_entry/israel-says-all-aid-convoys-entering-gaza-have-been-checked-for-contraband/).

233. See CNN, *'On the Brink of a Catastrophe': Israel's UN Ambassador Warns Against Rising Antisemitism in US* (Nov. 5, 2023), <https://edition.cnn.com/videos/politics/2023/11/05/sotu-erdan-full-interview.cnn>. Israel's ambassador to the United Nations Gilad Erdan states, "It's very sad that for 16 years, Hamas exploited all the money that was transferred to Gaza instead of investing it to build hospitals, or water desalination powerplants, only to turn Gaza into a war machine. It's very sad, but Israel shouldn't be held accountable for this situation."; see also SKY NEWS, *Israel-Hamas War: 'Time for Hamas to Pay the Price', says Israel's Ambassador to the UK*, YouTube (Oct. 16, 2023), <https://www.youtube.com/watch?v=PzAcksFjTy8>. Israel's ambassador to the UK Tzipi Hotovely states, "There is no humanitarian

fulfill this duty does not obligate Israel to compensate for that failure.<sup>234</sup> Not only has Hamas failed to meet Gazans' needs for years, but it currently has a vast stockpile of food that would be enough to sustain the Gazan civilian population if Hamas decided to share it.<sup>235</sup> Evidence on the ground in Gaza shows that Hamas is indeed stockpiling food and other goods.<sup>236</sup>

Under IHL, Israel's duty to allow humanitarian aid into Gaza does not depend on Hamas' actions.<sup>237</sup> Denying consent to the passage of aid is arbitrary if doing so would have a disproportionate impact on the besieged civilian population.<sup>238</sup> Two factors determine whether denying the passage of aid would be disproportionate: (1) if the civilians are "inadequately provided with essential supplies" and (2) if "the party with responsibility to meet their needs [is] failing to provide the requisite assistance."<sup>239</sup> If these two pre-conditions are present, then the denial of consent to the passage of aid would be disproportionate and the besieging party has no valid reason to refuse the passage of aid.<sup>240</sup>

The preconditions that trigger Israel's duty are both present: Gazan civilians are "inadequately provided with essential supplies" and Hamas, "the party with responsibility to meet their needs," is failing to do so.<sup>241</sup> Thus, Israel's duty to allow the passage of sufficient humanitarian aid into Gaza is triggered even though Hamas has violated its duties to the Gazan population.<sup>242</sup>

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crisis in Gaza... Israel is in charge of the safety of the Israelis. Hamas is in charge of the safety of the Palestinians."

234. *Id.*

235. *See* Zitun, *supra* note 193.

236. *See id.*

237. *See* Nijs, *supra* note 48 at 698-704.

238. *Id.*

239. Akande & Gillard, *supra* note 84, at 492.

240. *See id.*

241. *Id.*

242. *See* JUST SECURITY, *supra* note 184.



### 3. Humanitarian Aid as a Bargaining Chip for Hostage Release

At a Security Conference on November 18, 2023, White House Coordinator for the Middle East and North Africa Brett McGurk made an official presentation in which he articulated the U.S. policy of conditioning the scale of humanitarian relief to Gaza on Hamas' release of the hostages.<sup>243</sup> He stated: "the surge in humanitarian relief, the surge in fuel, the pause in fighting, will come when hostages are released."<sup>244</sup> Israeli officials have stated their adoption of the same policy in the level of aid they are allowing into Gaza; in response to calls for an increase in aid to Gaza, Israeli Energy Minister Israel Katz said "there would be no halt to the siege without freedom for Israeli hostages."<sup>245</sup>

As described above, international humanitarian law requires the besieging party to allow humanitarian aid into the besieged area if the denial of aid would have a disproportionate impact on besieged civilians.<sup>246</sup> The presence of Israeli hostages in Gaza does not alter the proportionality analysis; the severe impact of the denial of aid on Gazan civilians remains the same.<sup>247</sup> Adil Ahmad Haque, professor of law at Rutgers Law School, has argued that depriving humanitarian aid to civilians as a tool of negotiation is "incompatible with international humanitarian law and may amount to a war crime."<sup>248</sup> While Hamas' taking of hostages is equally illegal under international law, the intention to exchange aid for hostages is still not a valid, non-arbitrary reason to refuse the passage of aid. Allowing the passage of aid is an

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243. *See id.*

244. *Id.*

245. Henriette Chacar, Nidal Al-Mughrabi & Humeyra Pamuk, *Israel Links Gaza Aid to Hostages' Release as Humanitarian Disaster Looms*, REUTERS (Oct. 12, 2023, 3:10 PM), <https://www.reuters.com/world/middle-east/biden-warns-iran-over-gaza-israel-forms-emergency-war-cabinet-2023-10-11/>

246. *See Nijs, supra* note 48 at 691.

247. *See id.*

248. *See JUST SECURITY, supra* note 184.

“independent, categorical obligation[] that do[es] not depend on reciprocity of any kind.”<sup>249</sup> Humanitarian aid must be unconditional.<sup>250</sup>

On November 22, 2023, Israel and Hamas agreed to a temporary pause in fighting in order to exchange Israeli hostages in Gaza for Palestinian prisoners in Israel.<sup>251</sup> Pursuant to the temporary truce agreement, Israel immediately allowed an increase in the amount of aid flowing into Gaza.<sup>252</sup> Both the release of hostages and the influx of aid into Gaza are positive steps toward humanitarian aims in Israel and Gaza.<sup>253</sup> Nevertheless, the success of the exchange does not change the obligations required by international law: Hamas is required to release all hostages unconditionally and Israel is required to allow sufficient aid into Gaza unconditionally.<sup>254</sup> The *quid pro quo* of hostages for aid, while welcome in the circumstances, remains a violation of IHL obligations by both parties.

B. *Has Israel Fulfilled Its Duty to Allow the Passage of Aid?*

On October 31, 2023, Israel announced that it would allow 100 trucks of humanitarian aid into Gaza each day through Gaza’s border with Egypt.<sup>255</sup> Since then, a trickle of aid has been permitted to enter Gaza through the Rafah Crossing on the Egypt-Gaza border.<sup>256</sup> The actual number of trucks allowed in has fluctuated, ranging from 34 to 101 trucks per day, with long stretches of time that fall far below this standard; according to OCHA, between October 21<sup>st</sup> and November 1<sup>st</sup>, only 26 trucks carrying water and sanitation supplies entered Gaza, which is “nowhere near enough to meet the essential needs for the

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249. *Id.*

250. *Id.*

251. Ece Goksedef, *Israel-Hamas Truce in Gaza Extended as More Hostages Freed*, BBC (Nov. 30, 2023), <https://www.bbc.com/news/world-middle-east-67571742>.

252. United Nations, *UN Delivers More Aid into Gaza on First Day of Humanitarian Pause*, UN NEWS (Nov. 24, 2023), <https://news.un.org/en/story/2023/11/1143957>

253. *See id.*

254. *See* JUST SECURITY, *supra* note 184.

255. Magid, *supra* note 11.

256. *Id.*

survival of the population.”<sup>257</sup> All aid trucks are checked by Israeli security forces before entering Gaza to ensure that only food, medicine, and other humanitarian supplies go through.<sup>258</sup> Israel has claimed that its allowance of 100 aid trucks per day into Gaza fulfills its duty to allow the passage of sufficient humanitarian aid into Gaza.<sup>259</sup> Some Israeli officials have even claimed that Israel never cut off humanitarian aid to Gaza at all.<sup>260</sup> For instance, in February 2024, the Coordinator of the Government Activities in the Territories (COGAT), the Israeli military body that oversees Palestinian civilian affairs, declared that “there are no restrictions on importing humanitarian aid” into Gaza.<sup>261</sup> In addition, multiple Israeli officials have repeatedly asserted that “there is no humanitarian crisis in Gaza,” thus relieving Israel of its duty to increase the amount of humanitarian aid to Gaza.<sup>262</sup>

First, there is undoubtedly a humanitarian crisis in Gaza.<sup>263</sup> Before October 7, approximately 500 trucks of aid entered Gaza every day, and still 60% of the population was food insecure.<sup>264</sup> Today, Gazans

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257. *Northern Gaza Residents Struggle on the Brink of Starvation and Disease as Food and Water Supplies Dwindle to Near Depletion*, ACTION AID INTERNATIONAL (Nov. 7, 2023) <https://actionaid.org/news/2023/northern-gaza-residents-struggle-brink-starvation-and-disease-food-and-water-supplies>.

258. See Magid, *supra* note 11.

259. See *id.*

260. See LBC, *supra* note 126.

261. @EylonALevy, TWITTER (Mar. 2, 2024, 3:41 PM), <https://twitter.com/EylonALevy/status/1764028194418536616?s=20> (“The idea that Israel ‘isn’t letting aid in’ is simply a lie. There is no limit to the amount of food, water, medicine, or shelter equipment that can enter via Israel. There is EXCESS CAPACITY at Israel’s crossings for more to enter.”).

262. See CNN, *supra* note 227. Israel’s ambassador to the United Nations Gilad Erdan states, “I’m saying again, there is no humanitarian crisis based on the international humanitarian law right now in Gaza.” See also Emmanuel Fabbian, *IDF Says There Is No Humanitarian Crisis in Gaza*, THE TIMES OF ISR. (Oct. 21, 2023). (An Israeli security official states, “As of now, I can tell you that there is no humanitarian crisis in Gaza.”)

263. Zitun, *supra* note 193.

264. See Mahmoud Mushtaha, *Palestinians Fear ‘Slow Death’ as Hunger and Thirst Spread in Gaza*, +972 MAGAZINE (Nov. 14, 2023), <https://www.972mag.com/gaza-food-water-crisis-starvation/>.

receive only a fraction of the aid required to meet their minimum humanitarian needs and over half a million people in Gaza face severe food shortages.<sup>265</sup> In November, the World Food Program stated that “the rate of aid being delivered to Gaza is enough to meet just 7% of the population’s daily minimum caloric needs.”<sup>266</sup> OCHA has warned that Gazan civilians are at imminent risk of starvation.<sup>267</sup> The Israeli government is, or should be, aware that the amount of aid currently entering Gaza is not sufficient to ensure the survival of civilians. In 2012, Israel’s defense ministry “made precise calculations of Gaza’s daily calorie needs to avoid malnutrition,” which was designed to identify warning signs of a humanitarian crisis in the Gaza Strip.<sup>268</sup> Israel cannot fairly continue to deny that a humanitarian crisis exists in Gaza.

Second, despite COGAT’s bizarre assertion, Israel has severely restricted the entry of aid into Gaza since October 7 and is continuing to do so.<sup>269</sup> Humanitarian aid workers report a substantial portion of aid meant for Gazan civilians is rejected by COGAT authorities at the border.<sup>270</sup> Many items classified as dual use items, such as power generators, crutches, field hospital kits, and oxygen tanks, are rejected by COGAT on this basis. Other items, such as dates, anesthetics, and solar panels, are denied entry by COGAT for seemingly arbitrary reasons.<sup>271</sup> In addition, Israel continues to issue insufficient permits and security clearances for trucks containing aid for Gazan civilians.<sup>272</sup> In a January 13 press conference, Benjamin Netanyahu openly boasted about permitting “minimal humanitarian aid” to enter Gaza.<sup>273</sup>

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265. ACTION AID INTERNATIONAL, *supra* note 257, at 1.

266. JUST SECURITY, *supra* note 184, at 5.

267. Graham-Harrison, *supra* note 26, at 1.

268. See *Israel Used ‘Calorie Count’ to Limit Gaza Food During Blockade, Critics Claim*, THE GUARDIAN (Oct. 17, 2012), <https://www.theguardian.com/world/2012/oct/17/israeli-military-calorie-limit-gaza>.

269. Qiblawi et. al., *supra* note 24.

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

Third, because a humanitarian crisis does exist in Gaza, Israel has a duty to allow the passage of sufficient civilian-bound aid into the Strip.<sup>274</sup> So far, Israel has not fulfilled this duty because the minimal amount of aid it has allowed into Gaza is not sufficient to prevent the mass starvation of civilians.<sup>275</sup> As noted above, the source of the besieging party's obligation to allow the passage of sufficient humanitarian aid is the prohibition of the use of starvation of civilians as a tool of war.<sup>276</sup> The key word is sufficient; if a besieging party could fulfill its legal obligation by providing an amount of aid so small that the civilian population would die of starvation anyway, the purpose of the articles would be moot. The United Nations Relief and Works Agency for Palestine Refugees (UNRWA) has stated that 100 trucks a day is a drop in the bucket for the 2 million people in Gaza and does virtually nothing to actually alleviate the risk that the civilian population will starve for lack of food.<sup>277</sup> To actually fulfill its obligations under international humanitarian law, Israel must allow an amount of humanitarian aid into Gaza that is sufficient to ensure the civilian population's survival.<sup>278</sup> This will require that Israel significantly increase the amount of aid it currently allows to enter Gaza.

### CONCLUSION

In conclusion, the Israeli government has not fulfilled its obligations under the international law of siege and starvation. While sieges are not prohibited under international law, they are subject to many rules and any violation of these rules may constitute a war crime.<sup>279</sup> The main rule regulating siege at issue in this article is the prohibition against the starvation of civilians as a tool of war.<sup>280</sup> To reconcile the prohibition against starvation of civilians as a tool of war with the use of sieges whose primary goal is starvation, IHL requires that the

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274. See Nijs, *supra* note 48.

275. Magid, *supra* note 11.

276. Dannenbaum, *supra* note 38.

277. Magid, *supra* note 11.

278. Dannenbaum, *supra* note 38.

279. *Id.*

280. AP I, art. 54(1); AP II, art. 14.

besieging party allow civilian-bound humanitarian aid to enter the besieged area in order to prevent mass civilian starvation.<sup>281</sup> The incidental starvation of besieged civilians is only lawful if the besieging party complies with this rule.<sup>282</sup>

The situation in Israel and Gaza since October 7 is complex and constantly evolving.<sup>283</sup> It is not a cut-and-dry example of a total siege, as there are several intervening factors impacting Israel's implementation of the siege, including the actions of Hamas and Egypt as well as Israel's allowance of a small amount of aid into Gaza.<sup>284</sup> Nevertheless, these intervening factors do not affect Israel's obligations under IHL to allow humanitarian aid sufficient to prevent mass civilian starvation into besieged Gaza.<sup>285</sup> Under IHL, Israel retains this obligation regardless of the fact that Hamas may appropriate civilian-bound aid; Hamas is primarily responsible for fulfilling Gazans' humanitarian needs, and an increase in aid could be used as a bargaining chip to secure the release of Israeli hostages.<sup>286</sup>

At least from October 7, the implementation of the most recent Gaza siege orders, through December 8, the current date, Israel has failed to fulfill its obligation to allow sufficient civilian-bound aid to enter Gaza.<sup>287</sup> Israel has let an inconsistent trickle of aid enter Gaza since late October, but this amount is not sufficient to prevent mass civilian starvation.<sup>288</sup> Indeed, over two months of insufficient food, water, and other humanitarian goods are already having a marked impact on Gazan civilians.<sup>289</sup> Israel must immediately increase the amount of aid flowing into Gaza to prevent a greater humanitarian catastrophe and to satisfy its obligations under international law.

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281. See Henckaerts and Doswald-Beck, *supra* note 131.

282. *Id.*

283. Rabinovitch & Lewis, *supra* note 19.

284. *Id.*

285. See JUST SECURITY, *supra* note 184.

286. See *id.*

287. See *id.*

288. Magid, *supra* note 11.

289. See ACTION AID INTERNATIONAL *supra* note 257.

This article is only a small piece of the puzzle regarding the illegality of siege and starvation in international law. For instance, it is imperative that future articles analyze mass starvation in Gaza as a violation of the Genocide Convention, especially considering the recent genocide charges brought against Israel at the International Court of Justice. While this article does not address every facet of Israel's siege and starvation of Gaza, this article shows that under both IHL and domestic Israeli law, Israel is violating its legal obligations to provide sufficient aid to Gazan civilians.