

Israel – Hamas 2023 Symposium – A “Complete Siege” of Gaza in accordance with International Humanitarian Law

lieber.westpoint.edu/complete-siege-gaza-in-accordance-international-humanitarian-law

October 16, 2023

by [Rosa-Lena Lauterbach](#) | Oct 16, 2023



The recent attacks committed by Hamas in Israel can only be described as abhorrent. The death toll of the ongoing escalation of violence has (as at the time of drafting surpassed 1,500 casualties, with thousands more injured. Additionally, Hamas fighters have abducted and taken into Gaza City 150 Israeli hostages. Making matters significantly more horrifying, a spokesperson of Hamas’s armed wing threatened to execute those captured should Israel’s military target Palestinian houses without prior warning. The atrocities committed by Hamas have set the smoldering conflict between Israel and the terrorist group ablaze like rarely before.

Though there is no room for an extensive analysis of Israel’s right to self-defense here, there is quite robust support for the view that, since 9/11, Article 51 of the UN Charter also applies when an attack stems from a non-State actor. In accordance with international law, Israel therefore has the right to defend itself against Hamas’s most recent unlawful attacks by all necessary means. These attacks prompted a swift and decisive response by Yoav Gallant, the Israeli Minister of Defense, who ordered a “complete siege” of the Gaza Strip. According to his statement, all power, water, and food supplies to the area were to be cut off.

Notwithstanding Israel's right to self-defense, an operation that may be expected to cause widespread harm raises some issues with respect to the law protecting civilians in times of armed conflict. In this vein, some have called the order of a "complete siege" collective punishment, prohibited under international humanitarian law (IHL). An estimated two million people live in the Gaza Strip, and humanitarian conditions were already dire prior to the recent escalation of the conflict. Taking this into account, one may question whether the ordered complete siege of the Gaza Strip could constitute a violation of IHL.

This post first portrays what little is known about the government's plan to enact the complete siege and contextualize the expected measures in the broader armed conflict. It then sheds some light on the guardrails IHL sets when it comes to implementing such a siege. Because not all lines of questioning can be addressed with this post, I will limit my analysis to the prohibition of starving civilians as a method of warfare. I will follow my assessment of IHL with an account of Israel's own disclosures on its view of the prohibition to starve civilians. Finally, I will attempt to reconcile any uncertainties of interpretation in favor of alleviating humanitarian concerns.

For the purposes of this short analysis, it is assumed that the Gaza Strip may not be classified as occupied territory (others disagree). Questions pertaining to the non-international or international character of this armed conflict will also not be addressed here.

The "Complete Siege" – Tightening Israel's Grip on the Gaza Strip

While ordering a complete siege may increase the intensity of isolation in the Gaza Strip, it will not involve any entirely novel types of operations to the conflict region. Israel's armed forces have for sixteen years been in control of land access to the area, arguably conducting a siege ever since Hamas seized control over the Gaza Strip in 2007. In response to the *Free Gaza Movement's* attempts to enter the territory by sea, Israel's armed forces also implemented a naval blockade in early 2009. In his case study on the subject, Professor Benvenisti summarized that, since then, Israel has seized complete control over "its own terrestrial border with the Gaza Strip and the region's airspace and territorial waters."

Currently, it is unclear whether supplies to the Gaza Strip have been interrupted entirely. Two observations, however, already seem verified. First, the Rafah Border Crossing between the Gaza Strip and Egypt was the last route for Palestinian civilians to evacuate. It has recently been closed following air strikes, rendering all inhabitants of the Gaza Strip trapped. Second and somewhat consequentially, the Israeli Defense Minister's order amounts to a hermetic seal of the entire area, implicating civilians, hostages, and Hamas fighters alike.

As mentioned above, living conditions in the Gaza Strip were already grim before the Hamas attacks. The UN assessed in June 2022 that approximately 80% of the area's inhabitants were dependent on international aid. Imposing a complete siege could make matters

significantly worse for the densely packed civilian population. Secretary General António Guterres expects conditions to “deteriorate exponentially” and promised the UN would “continue efforts to provide aid” to the affected population.

Judging by the wording of Defense Minister Gallant’s order, there seems to be little room for mercy, stating that Israel is “fighting against human animals,” and “acting accordingly.” While the chosen wording’s translation differs between news media outlets, Gallant strikes a significantly unrelenting tone. As of this moment, it remains uncertain whether (and, if so, when) Israel’s forces will in fact allow any humanitarian aid to enter the Gaza Strip.

The Prohibition on Starvation of Civilians in IHL

Should the densely populated area indeed be sealed off from any supplies of food, water, or electricity, mass deprivation will follow, potentially causing thousands of civilians to starve. This inevitably begs the question whether IHL could permit such conduct, as the Protocols Additional to the Geneva Conventions of 8 June 1977 (AP I and II) prohibit starvation of civilians as a method of war. According to Rule 53 of the International Committee of the Red Cross’s (ICRC) extensive study of State practice and *opinio iuris*, the prohibition is also enshrined in customary IHL. The prohibition is flanked by an obligation to “allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need,” contained in customary law (Rule 55) as well as the APs.

Article 54, paragraph 1 of AP I and Article 14 of AP II prohibit using civilian starvation as a method of “warfare” or “combat” respectively. According to Professor Watts, the first AP’s wording suggests that a violation in an international armed conflict implies purposefully wielding starvation against civilians as such. Consequentially, according to his view, incidental starvation of civilians alone would not suffice to establish a breach of the prohibition. Professors Akande and Gillard deny the requirement of a purpose to cause starvation among civilians in international armed conflicts, basing their theory on the remaining systematicity of Article 54. Their interpretation accepts that a violation of Article 54 paragraph 1 of AP I can take place whenever it is reasonably foreseeable that civilians will starve as the result of a military operation denying humanitarian assistance. Professor Dannenbaum, on the other hand, holds that, in the sense of AP I, “to engage purposefully in the deprivation of objects intrinsically indispensable to survival is to engage in starvation as a method of warfare, regardless of ultimate aim and regardless of whether the object is scarce at the time of the deprivation.”

Each of these forms of interpretation is underlined with considerable arguments, making the legally preferable one difficult to discern. As for an international obligation to provide civilians with humanitarian aid (AP I, art. 70(1) and AP II, art. 18(2)), matters are no less contested. While it is on the one hand argued that a civilian population in need may not be denied impartial relief arbitrarily, another view holds the reasons to deny sustenance remain at a State’s own discretion.

Israel, however, is a State party to neither AP I nor AP II. It could therefore only be bound along the lines of the customary counterpart of the prohibition to starve civilians. According to Rule 53 of the ICRC's study of customary IHL, sieges (and naval blockades) do not violate the prohibition "as long as the purpose is to achieve a military objective and not to starve a civilian population." The legality of Israel's complete siege would therefore hinge upon the military goal to be achieved at any given point throughout the operation. As for Rule 55, the authors of the ICRC study clearly hold that "consent [to impartial humanitarian relief operations] must not be refused on arbitrary grounds," reiterating that "Practice . . . 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." If an independent organization, such as the United Nations, were to organize aid for Palestinian civilians on the brink of starvation, any reason to deny access could not serve as an adequate justification.

Yet, in light of the current force and scale of attacks committed on Israel's territory by Hamas fighters coming from the Gaza Strip, gaining control over the situation via siege presents as a viable military measure. According to reports, "hundreds of armed fighters of the terrorist group, many on motorcycles, followed bulldozers that breached fences separating Israel from Gaza and charged into cities, taking Israeli soldiers off guard and gunning down citizens." An effective complete siege strategy may significantly support efforts to stop Hamas's armed forces from crossing over into Israel again while weakening them at the same time. Cutting electrical power further supports efforts to interrupt communication between the armed forces. The Gaza Strip's population density and the overall challenges of urban warfare prove an obstacle to identifying military targets, making a preliminary hermetic seal of the area one of the few workable routes of gaining control over the situation. As a temporary measure, the complete siege could thus adhere to IHL's standards.

The question, therefore, is, how long such a complete siege can remain militarily justifiable and therefore lawful. Bringing civilians in the Gaza Strip to the brink of starvation would seem to be the *absolute* red line. Should this threshold be reached, pressuring Hamas fighters to compel them to free hostages will not absolve Israel of its obligation to let impartial aid through to the besieged civilians. The operation's legality also depends upon how Israel itself defines the military advantage sought at any given moment of the siege. It is incontestable that retaliation cannot serve as legal reasoning here.

Israel's Previous Account Concerning the Prohibition on Starvation of Civilians

At some point, it will become necessary to provide civilians with humanitarian aid or the possibility to evacuate. This has time and again been reiterated by Israel itself. In the *Al-Bassiouni* case before the State's High Court of Justice, Israel did "not in any way deny the existence of their humanitarian obligations, which require the State of Israel to allow the passage of essential humanitarian goods to the Gaza Strip."

Concerning siege practices, Israel's 2006 *Manual on the Rules of Warfare* states that a "siege of a military target is a completely legitimate means of warfare, even if it involves the starvation of the besieged soldiers," while questioning matters when a populated town is affected. Arguing that the "Additional Protocols . . . contain a provision banning starvation of the civilian population in battle . . . residents of a city need to be allowed to leave it if it is besieged. 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." The *Manual*, as well as the *Al-Bassiouni* case, were also considered as State practice by the ICRC when it investigated the customary nature of the prohibition to starve civilians.

When the United Nations' Sixth Committee held its 75th session on October 20, 2020 pertaining to the Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts, Sarah Weiss Ma'udi issued a [statement](#) on Israel's behalf. In it, Weiss Ma'udi emphasized Israel's commitment to IHL, while explicitly naming a few regulations the country does not consider customary law. Among them were rules concerning the protection of the natural environment in armed conflict and prisoners of war, but not the prohibition of the starvation of civilians as a method of warfare. Overall, Israel therefore seems committed to upholding this IHL rule.

Concluding Thoughts

In conclusion, sieges themselves are not *per se* prohibited by IHL. Some military advantages are to be gained by the temporary implementation of a complete siege as ordered here. It is also clear that Hamas's attacks within Israel's territory and its population need not go unanswered. However, siege must be a temporary measure, dependent upon how the complete siege of the Gaza Strip is, in fact, carried out. When looking at its own interpretation of the prohibition to starve civilians, it seems likely that Israel could itself only consider the "complete siege" lawful for such time until conditions require access to humanitarian aid or the immediate evacuation of the civilian population.

[Rosa-Lena Lauterbach](#) is a PhD Candidate at the University of Cologne.

Photo credit: Unsplash

[SUBSCRIBE](#)

RELATED POSTS

[The Legal Context of Operations Al-Aqsa Flood and Swords of Iron](#)

by Michael N. Schmitt

October 10, 2023

–

Hostage-Taking and the Law of Armed Conflict

by John C. Tramazzo, Kevin S. Coble, Michael N. Schmitt

October 12, 2023

–

Siege Law and Military Necessity

by Geoff Corn, Sean Watts

October 13, 2023

–

The Evacuation of Northern Gaza: Practical and Legal Aspects

by Michael N. Schmitt

October 15, 2023