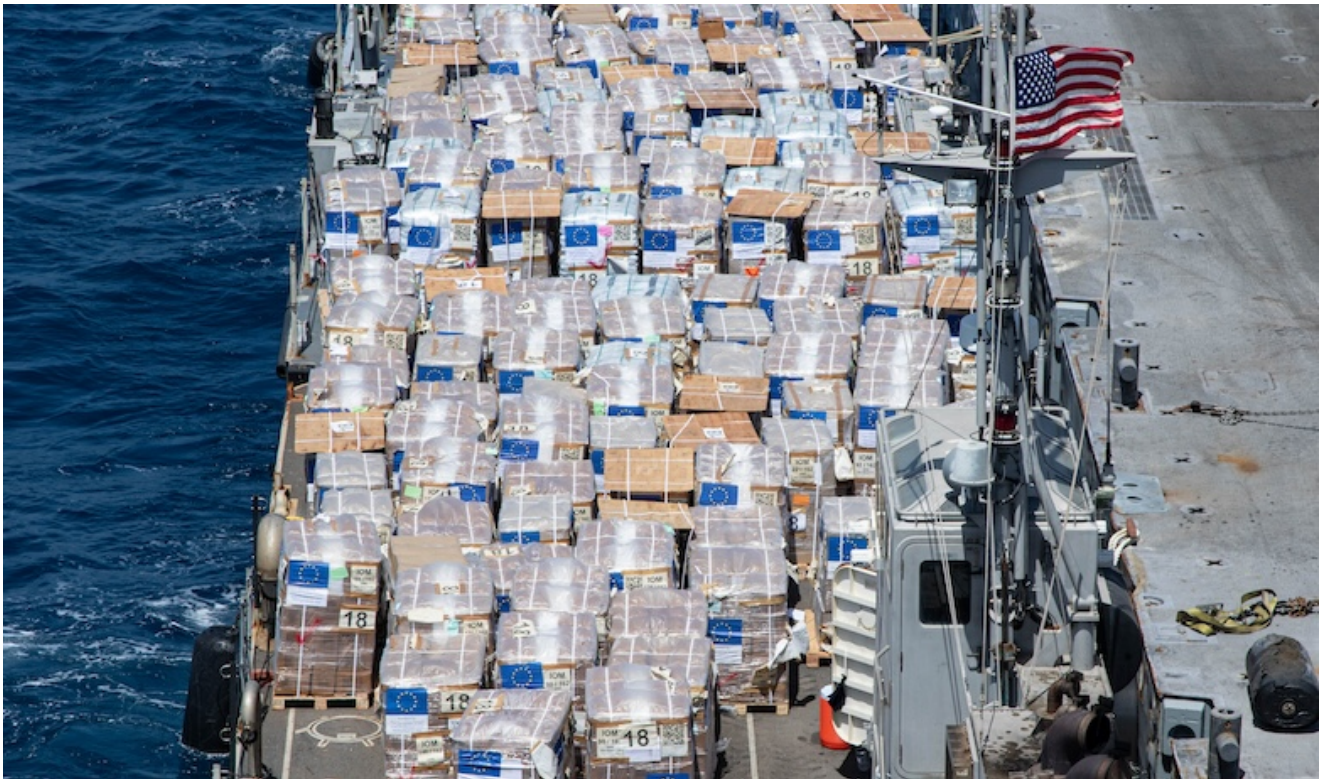


# Israel-Hamas 2025 Symposium – Humanitarian Relief as a Bargaining Chip

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March 25, 2025

by [Rosa-Lena Lauterbach](#) | Mar 25, 2025



Questions concerning the use of the starvation of civilians as a method of warfare have been discussed at length over the course of the past 536 days of war in the Gaza Strip. Some have submitted the intent to starve civilians was evident since the very onset of the “complete siege” imposed by the Israel Defense Forces (IDF). Others, myself included, were more wary of the intricate details a violation of the prohibition might entail. Circumstances may, however, have shifted. Israeli officials decided to halt the passage of all humanitarian aid into the Gaza Strip, unless senior members of Hamas would agree to prolong the first phase of the current ceasefire. Hamas disagrees. By its estimation, the second phase of the ceasefire—leading to an Israeli withdrawal from the Gaza Strip—should commence immediately, as was reportedly envisaged by the original conditions of the ceasefire agreement.

At this stage of the conflict, it is difficult to accept that complete denial of relief action is necessary to achieve a specific military advantage. Israel has not made clear justifiable arguments based on concrete military necessity to support its denial of consent to humanitarian relief operations. Considering the information available to the public, the

decision to withhold consent to relief operations appears arbitrary at best, collective punishment at worst. Withholding consent for the given reasons therefore presents a violation of the law governing humanitarian obligations, even by a narrow understanding.

### **The Law on Starvation**

It is worth recalling the interpretative issues at the heart of the prohibition to starve civilians as a method of warfare and the law governing relief action. Then a novel rule, the 1977 Additional Protocols to the Geneva Conventions (AP I and AP II) both include starvation prohibitions. And despite a lack of international jurisprudence pertaining to the prohibition, the International Committee of the Red Cross (ICRC) comprehensive study of State practice and *opinio iuris* asserts that the rule has become customary in character (rule 53). Further, AP I and AP II each contain an explicit obligation to “allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need,” which has, at least according to the ICRC, also crystallized into custom (rule 55).

Debate whether encirclement strategies involving civilians can be justified by pursuit of an overarching military advantage or necessarily form a violation of the prohibition to starve civilians is unresolved. In short, Article 54, paragraph 1 of AP I and Article 14 of AP II prohibit using civilian starvation as a method of “warfare” or “combat.” According to some, the APs’ wording implies that a violation requires directing starvation at civilians specifically. Incidental starvation of besieged civilians alone would fail to prove a violation and instead be limited by proportionality. Yet others argue that the ultimate aim of an encirclement operation is irrelevant. Once a conflict party engages in the deliberate deprivation of objects indispensable to the survival of civilians, it is engaging in starvation as a method of warfare, no matter the operation’s objective or the military advantage it might achieve.

### **The Law on Consent to Humanitarian Relief**

Matters are no less contested concerning the obligation to consent to deliveries of humanitarian aid into a besieged area (AP I, art. 70(1), AP II, art. 18(2)). First, many assert that a civilian population in need may not be denied impartial relief for “arbitrary or capricious” reasons (ICRC *Commentary*, para. 2805). The co-authors of the *Oxford Guidance on Humanitarian Relief* concur that consent to impartial humanitarian relief operations must not be refused on arbitrary grounds. With regard to sieges, the ICRC discerned that, as a matter of customary international law, “the besieging party must allow the free passage of foodstuffs and other essential supplies.” Concerning occupied territory, “the Fourth Geneva Convention imposes an obligation on the occupying power to ensure food and medical supplies for the population.”

However, others contend that States retain significant room for military discretion when deciding whether to withhold consent to humanitarian relief action. This argument becomes particularly substantial regarding non-parties to the Additional Protocols of 1977. The U.S.

Department of Defense *Law of War Manual*, for example, appraises only the legal boundaries of Article 23 of the Fourth Geneva Convention (GC IV), maintaining that,

allowing passage of [relief] items is not required by the party controlling the area unless that party is satisfied that there are no serious reasons for fearing that [a] the consignments may be diverted from their destination; [b] the control may not be effective; or [c] a definite advantage may accrue to the military efforts or economy of the enemy (§ 5.19.3).

Like the United States, Israel is neither a State party to AP I nor AP II. It is bound only by the customary counterpart of the prohibition on starvation of civilians. According to Rule 53 of the ICRC's *Customary International Humanitarian Law Study*, sieges do not violate the prohibition "as long as the purpose is to *achieve a military objective and not to starve a civilian population*" (emphasis added). This is where the prohibition on starving civilians and the obligation to facilitate humanitarian relief intersect.

Here, it is also worth recalling the obligations Israel itself expressed as legally binding. In a 2006 teaching document on the law of war, Israel conveys those as follows:

A siege of a military target is a completely legitimate means of warfare, even if it involves the starvation of the besieged soldiers. A question arises in the case of a military siege of a populated town. Until recently, there were no rules attached to this method of warfare, and it was permitted to exploit the suffering of the local population in order to overcome the enemy. The [1977] Additional Protocols to the Geneva Convention contain a provision banning starvation of the civilian population in battle. The meaning to be extracted from this provision is that the 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*(emphasis added).

There is other considerable related practice from Israel, affirming the obligation to allow and facilitate humanitarian aid into the Gaza Strip. A finding of the International Court of Justice, which opined that Israel retains obligations as an Occupying Power "commensurate" with the degree of effective control it holds over Gaza, underscores this duty (Advisory Opinion, para. 94). In this vein, the orders concerning provisional measures in the case of *South Africa v. Israel* issued by the International Court of Justice have also urged that humanitarian aid must be made accessible to civilians.

Nevertheless, when applying the narrowest interpretation of the prohibition on the starvation of civilians (as described above), the legality of Israel's encirclement strategy is still contingent upon the military advantage it stands to gain. It presents a controversial but considerable justification to base the denial of humanitarian access to the Gaza Strip on an attempt to stop adversarial fighters from misappropriating civilian relief, as was argued by Israel throughout the prior course of the conflict.

## **The International Criminal Court Rejects Military Necessity**

Remarkably, last November, Pre-Trial Chamber I of the International Criminal Court still issued arrest warrants against Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant. The Pre-Trial Chamber based the warrants principally on the war crime of starving civilians as a method of warfare. Moreover, “the Chamber found reasonable grounds to believe that *no clear military need or other justification under international humanitarian law could be identified* for the restrictions placed on access for humanitarian relief operations” (emphasis added). Though the arrest warrants remain sealed, the Court appears to dismiss the argument that restrictions on humanitarian relief were necessary for military reasons, even in the early stages of the war.

And yet, in light of the legal issues outlined above, experts validly held that “it is one thing to regret the tragic humanitarian suffering resulting from an armed conflict; it is quite another to infer from that suffering the requisite actions and mental state needed to prove it is the result of the war crime of starvation.” The interpretative uncertainties and the factual issues that the International Criminal Court will have to navigate are considerable.

However, this may not be the case regarding the latest decision to withhold consent to humanitarian aid. This latest shift may present a violation of even the narrowest interpretation of the intertwined rules governing starvation and the obligation to consent to humanitarian relief action, amounting to the war crime of starvation by willfully impeding relief supplies (Rome Statute, art. 8(2)(b)(xxv)).

### **Humanitarian Relief and Ceasefire Negotiations**

To halt all humanitarian aid primarily based on the idea that more hostages might be returned if the first phase of the truce were prolonged would probably fail to present a military advantage relevant to justifying the starvation of civilians in Gaza. This is for two reasons. First, according to news reports, the second phase of the ceasefire would have foreseen “the release of all living hostages in exchange for Palestinian prisoners and detainees.” The original plan therefore already incorporated an understanding on the release of all remaining hostages over the course of negotiating the second phase of the agreement.

Second, even assuming siege conditions involving the denial of humanitarian aid *could* legitimately be imposed to achieve a military advantage, that advantage would be limited to reasons related to stopping supplies from benefitting the enemy’s war efforts (see above).

That leaves the question whether humanitarian relief could still legitimately be withheld to stop supplies from reaching Hamas or other armed groups in Gaza. To this end, officials argue that the most recent denial of relief remains a response to Hamas allegedly (still) stealing supplies in support of its belligerent capabilities. This claim invokes the aforementioned “safeguards” stemming from Article 23 GC IV. In essence, the legal understanding appears as follows. As long as it is argued that (some) humanitarian aid flows towards Hamas or other armed groups in Gaza, one can always construe that supplies are:

“[a] [...] diverted from their destination; [b] the control may not be effective; or [c] a definite advantage may accrue to the military efforts or economy of the enemy” (§ 5.19.3). As international humanitarian law remains applicable during a ceasefire, this reasoning could appear convincing to some.

However, applying the safeguards outlined above during an ongoing ceasefire would distort them, even if the adversary siphoned off some of the relief supplies. Assuming they apply throughout efforts to consolidate a truce implies that it remains an indefinitely legitimate interest on one belligerent’s behalf to halt aid in order to coerce the other to either agree to favorable conditions or return to war. It therefore appears more convincing to assume that the safeguards are not applicable when a ceasefire is being observed.

First, a ceasefire is binding upon both sides, and continuing attempts to weaken the enemy would contradict the underlying accord to halt hostile acts. In other words, if neither side to a conflict still engages in war efforts, the reason to argue that humanitarian relief must yet be withheld to stop it from supporting the enemy’s war efforts becomes invalid. Second, applying the safeguards during a ceasefire turns often desperately needed humanitarian relief into a sword of Damocles, hovering over affected civilians whenever negotiations grind to a halt.

Invoking the safeguards would also no longer present an argument backed by legitimate concerns of military necessity if understood as follows by Professors Watts and Corn:

Whether in offensive, defensive, or siege operations, belligerents must assess whether *every* tactic employed is justified by military necessity. Although at times misused and even abused as a rationale for clearly unlawful conduct in war, correctly understood, military necessity remains the most fundamental legal restraint on military operations. Only those acts intended to bring about the enemy’s submission are justified in war. Acts that exceed what is anticipated to achieve enemy submission or bear no connection to achieving military advantage are always illegitimate. Military necessity is, in this sense, a free-standing check on all operations. It is also an essential prism through which legal restraints on military operations ... can best be understood.

At their core, the present ceasefire negotiations were supposed to lead to a permanent cessation of the hostilities. This, in turn, would mean that submission was already underway. Representatives from Hamas and State officials from Israel had already agreed upon next steps towards achieving lasting peace, especially because the third phase of the ceasefire was reportedly aimed at the exchange of the deceased and a reconstruction plan for Gaza. Claiming it would be necessary to deny all humanitarian aid as it may otherwise contribute to Hamas’s war efforts ignores that reality. Therefore, as long as the ceasefire holds there is no belligerent effort, and no military advantage to be curtailed on Hamas’s end when denying relief action.

## Conclusion

Sixteen months ago, shortly after Yoav Gallant had ordered the “complete siege” of the Gaza Strip, I wrote a post on the legality of such an operation. There, I concluded that,

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.

This point may have been surpassed. The International Court of Justice, the U.N. Security Council, the U.N. General Assembly, countless non-governmental organizations and States have urged Israeli officials to reconsider their restrictive policy concerning humanitarian access to the Gaza Strip.

In view of the above, halting deliveries of humanitarian aid appears a somewhat arbitrary exertion of increased pressure on Hamas at the expense of Palestinian civilians or (worse) collective punishment of the latter. The policy is not aimed at mitigating an advantage beneficial to Hamas’s war efforts. Consequently, even when taking military necessity into account, Israel would fail to justify its present denial of consent in accordance with the law of war.

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*Rosa-Lena Lauterbach is a PhD Candidate at the University of Cologne and a former Visiting Researcher at the Lieber Institute and Columbia Law School and a thematic editor for Articles of War.*

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