

# Norway Seeks ICJ Advisory Opinion on Israel's Humanitarian Obligations in Gaza

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by [Camilla Cooper](#) | Dec 11, 2024



*Editors' note: The following post reflects the author's views and should not be interpreted to reflect the official Norwegian position.*

Norway is currently seeking support from the UN General Assembly (UNGA) for a resolution tasking the International Court of Justice (ICJ) to issue an advisory opinion on Israel's humanitarian obligations. Specifically, the resolution concerns Israel's obligation to allow and enable the UN, its agencies and bodies, other international organizations, and third States to deliver humanitarian aid to Gaza. In an accompanying [statement](#), Norway emphasised that "Humanitarian workers and civilians must never be targets. International law must always be respected."

Although the fog of war lies thick over the ongoing armed conflict between Israel and Hamas, the devastating and disastrous humanitarian effects on the civilian population are clear. The conflict has raised complicated law of armed conflict (LOAC) discussions on a range of issues, including but not limited to direct participation in hostilities, the use of human shields, and precautions in both defence and attack. However, access to humanitarian relief is a

somewhat different issue, as it does not directly support military objectives. Given the plight of Palestinian civilians, the legality of actions that prevent the civilian population from accessing humanitarian relief is in urgent need of clarification.

## **The UNRWA Problem**

Global concern for the humanitarian situation in Gaza and the passing of two bills by the Israeli Knesset serves as the backdrop for the Norwegian petition. On October 28, 2024, the Knesset declared the United Nations Relief and Works Agency for Palestine (UNRWA) to be a terrorist group and banned it from operating within Israel. Consequently, Israelis are prohibited by law from any contact with UNRWA, which effectively prevents the organization from delivering aid to Gaza. The alleged participation of UNRWA Gaza staff in the October 7 Hamas attacks influenced the legislation. Following an investigation into these allegations, UNRWA fired nine of its staff. Despite a recent independent review into the matter that confirmed UNRWA's commitment to remain neutral, there is a widespread perception in Israel that UNRWA has become too close to Hamas.

Israeli President Benjamin Netanyahu has emphasised that “sustained humanitarian aid must remain available in Gaza” and that Israel “stand[s] ready to work with our international partners to ensure Israel continues to facilitate humanitarian aid to civilians in Gaza in a way that does not threaten Israel’s security.” However, several States have stressed UNRWA’s unique role. Urging Israel to reconsider the ban, a U.S. State Department spokesman made it clear that UNRWA’s “work is absolutely critical and irreplaceable in Gaza right now.” Similarly, in its UNGA statement, Norway said, “UNRWA is the backbone of the entire international community’s humanitarian response in Gaza. All humanitarian organizations in Gaza are effectively dependent on UNRWA’s infrastructure and facilitation. No one can fulfil UNRWA’s responsibilities in addressing the fundamental needs of Palestinian refugees. For food, protection, shelter, health care and education.”

Many in the international community therefore expect Israel’s ban on UNRWA to have serious humanitarian consequences. Moreover, Israel’s ban raises two important legal questions. One relates to the obligation to allow and facilitate humanitarian relief for civilians in need under international humanitarian law. The other concerns respect for the UN and the international legal system it represents.

## **Access for Humanitarian Relief to Civilians in Need**

Although the discussions regarding the classification of the situation are ongoing, including in *Articles of War* (e.g., here and here), the ICJ, the International Committee of the Red Cross (ICRC), and the International Criminal Court (ICC) have deemed Israel an occupying power in Gaza, a designation that carries important implications under Geneva Convention (GC) IV.

However, given Israel contests this status (arguing that it lacks sufficient control over Gaza to qualify as an occupying power), it is perhaps more useful to consider more general LOAC provisions, as well as customary international humanitarian law (CIHL).

The situation for the civilian population in Gaza is critical. While the humanitarian crisis demands urgent and large-scale international assistance, actually getting aid into Gaza remains difficult and is expected to worsen as a result of the Israeli approach to UNRWA.

Some have opined on whether Israel's actions amount to the starvation of civilians, which is generally prohibited (e.g., Additional Protocol (AP) I, [art. 54\(1\)](#); ICRC, *CIHL Study*, [rule 53](#)). These prohibitions, however, are limited to the use of starvation as a method of warfare, thereby requiring intent. Intent is challenging to determine without a proper investigation. As a result, even though the ICC has [determined](#) there are reasonable grounds to suspect the starvation in Gaza is intentional, the issue remains unsettled. For this reason, this post focuses on general provisions and obligations, rather than attempting to imply intent from actions or omissions.

[Article 23](#) of GC IV sets out the general duty to allow free passage of medical supplies, food, and other items for the civilian population, especially for children under fifteen, expectant mothers, and maternity cases. [Rule 55](#) of the ICRC's *CIHL Study* likewise reflects such a duty, saying "The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control."

Under GC IV, a "right of control" limits this duty. In the general provision set out in Article 23, the duty is subject to the condition that the party in question "is satisfied that there are no serious reasons for fearing" any of the following will occur:

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

The provision further stipulates the party allowing relief consignments may prescribe technical arrangements for their free passage and distribution, including the power to require "protecting powers"—usually a neutral party, such as an international organisation—to supervise distribution.

Given this potential for imposing limitations on humanitarian assistance, any legal assessment concerning the same requires further investigation. Article 23's "definite advantage" language in subparagraph (c) also seems to call for an element of military necessity to justify limitations on humanitarian assistance. Similar limitations are found in Articles 54(2) and 54(3) of AP I (e.g., the prohibition on attacking objects indispensable to the survival of the civilian population does not apply, for example, if the objects are used in direct support of military actions). Nevertheless, "in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement" (AP I, art. 54(3)(b)). Considering these provisions, *per se* bans, at the very least, are legally suspect.

In cases of occupation, the duty (set out in GC IV, art. 55) goes even further, saying "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate."

As mentioned, the ICJ considers Israel an occupying power. In its July advisory opinion, the court emphasised "that the occupying Power has the continuing duty to ensure that the local population has an adequate supply of foodstuffs, including water" (para. 124).

Regardless of the classification of the conflict, it is difficult to see how Israel can completely block humanitarian assistance without violating LOAC. In any event, the situation requires continuous assessment of the military necessity of imposing limitations and the consequences thereof. Israel has control over most of the border into Gaza and may inspect the consignments and allow access. Israel may not justify the disastrous effects for the civilian population of denying UNWRA access by considerations of military necessity; even in siege warfare, in which the purpose is to isolate the opposing forces, the sieging force must take measures to spare the civilian population. As Israel's *Manual on the Laws of War* (cited in the ICRC's *CIHL Study*) explains, the prohibition of starvation "clearly implies that the city's inhabitants must be allowed to leave the city during a siege."

A fundamental but often overlooked LOAC rule, found in Article 57(1) of AP I and reflected in CIHL, says that "[i]n the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects." Violating this "constant care" rule does not amount to a war crime, however, as is the case with the majority of LOAC rules. The criteria for war crimes are detailed and the threshold is high. Discussions on LOAC compliance should, therefore, extend beyond considerations of whether something amounts to a war crime. LOAC is designed to remind States not to let military considerations alone drive their operations, but to uphold standards of humanity, even when the military necessity seems overwhelming. Thus, although the legality of limiting humanitarian access is

determined on a case-by-case basis, it is also important to consider the overall impact of the operation and to question whether more should have been done, in light of the general LOAC obligations and the situation on the ground.

The ICC pre-trial Chamber similarly 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.” Whether the deprivation of basics such as food, water, and medical supplies rises to the level of a war crime is a question of intent, and thus requires further investigation. However, it may nonetheless be a violation of LOAC, and systematic violations of international legal obligations remain serious and problematic, even if they do not amount to war crimes. This is particularly true when the rules in question exist to safeguard civilians and the ability of the international community to provide them with the help needed to survive.

### **Respect for the UN**

Although the humanitarian situation in Gaza has been a concern for many years, as recognised by the ICJ, many people expect Israel’s decision to emplace legal hurdles that obstruct the presence and operations of UNRWA in Gaza will considerably worsen the conditions for the civilian population. Norway, having recognized Palestine as a State in May 2024, has therefore deemed Israel’s ban to not only run counter to international humanitarian law but also to the Palestinian people’s right to self-determination, as it undermines the ability of Palestine to function and survive as a State.

The ICJ has also emphasised the link between the survival of the civilian population and the survival of the State. In its July advisory opinion, the court made it clear that “Israel, as the occupying Power, has the obligation not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory” (para. 237).

The right of self-determination and respect for the role of the UN and its agencies are fundamental aspects of the multinational legal order set out by the UN Charter. This is why attempts at interfering with the role of the UN and the ability of its agencies to access and operate in areas of conflict have been met with grave concern, including from the UN Secretary-General. UNRWA’s operations in Gaza are mandated by the UNGA and the cessation of UNRWA activities potentially runs counter to several international legal obligations, including the UN Charter, LOAC, and the 1946 Convention on the Privileges and Immunities of the United Nations. In a letter to the UNGA, the UN Secretary-General asks for “any guidance and support which the General Assembly may be able to provide at this critical juncture in the history of UNRWA.”

The Norwegian initiative would help provide the UN Secretary-General with such guidance. An advisory opinion from the ICJ on Israel's legal obligations to permit unhindered provision of supplies essential to the survival of the Palestinian civilian population, and to allow the international community to provide Palestinians with basic services and humanitarian and development assistance, would therefore be timely and valuable.

### **Concluding Remarks**

In an official press statement, Norway's Foreign Minister, Espen Barth Eide, explained that “[w]ith this initiative, Norway wants to establish that no country can rise above its obligations under international law. We see similar trends in other countries – that leaders try to undermine humanitarian law and aid work in situations of crisis and conflict. We must stop this development.”

Upholding the international legal order and the central role of the UN is perhaps more important now than ever. States' right of self-defence, including a right to ensure that humanitarian assistance does not conceal terrorism, is as fundamental to this system as people's right to self-determination and survival. Without systems of checks and balances such as the *jus ad bellum* and *jus in bello*/LOAC, the world would be a much darker place. Regardless of an opponent's actions, denying children and other civilians the necessary access to food and water is not the answer. When States lose sight of such fundamental humanitarian perspectives, the ICJ must help protect and uphold international law.

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