

The ICJ Obligations of Israel Advisory Opinion – Mass Deprivation and Preventive Protection

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by [Tamar Luster](#) | Feb 4, 2026



Editors' note: This post is part of a series featuring analysis of the 2025 International Court of Justice advisory opinion on obligations of Israel in and in relation to the Occupied Palestinian Territory. The introductory post to the series by [Sean Watts](#) is available [here](#).

In its October 2025 [advisory opinion](#) on the *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*, the International Court of Justice (ICJ) offers an important and at times forceful articulation of legal duties concerning humanitarian assistance against the backdrop of a dire humanitarian crisis in Gaza, ongoing hostilities, and parallel [genocide](#) proceedings before the Court.

Notwithstanding the opinion's contributions to international jurisprudence on a number of issues, this post addresses a more structural concern: how international law conceptualizes situations of mass deprivation. Focusing on the Court's interpretation of [Article 59](#) of the Fourth Geneva Convention of 1949 (GC IV), this post suggests that the Court's reliance on extreme factual indicators to establish when a population is "inadequately supplied" risks

transforming an early-warning standard into a post-catastrophe label, leaving normative benchmarks underdeveloped and fragmented. These methodological choices, while institutionally intelligible in the context of an ICJ advisory opinion, may in turn narrow the preventive and protective function of the law precisely where it is most needed.

The opinion was given at the request of the UN General Assembly, following Israeli legislation terminating United Nations Relief and Works Agency for Palestine Refugees in the Near East's (UNRWA) operations within Israel and the occupied territories, and amidst [Israel's allegations](#) that UNRWA staff members and facilities were involved in the October 7 attacks and ensuing hostilities. A [United Nations investigation](#) led to the termination of the employment of nine staff members while broader allegations were [denied](#). Beyond this contested factual issue, the Court analyzed Israel's obligations as an occupying power in Gaza, building upon its previous 2024 [advisory opinion](#) on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territories*.

For the purposes of the present discussion, and with specific focus on GC IV Article 59, the 2025 advisory opinion finds that Israel “has not ensured that the population of the Gaza Strip is adequately supplied” (para. 122). The Court further noted that the information before it did not support allegations regarding UNRWA's lack of impartiality or neutrality (paras. 114, 118), nor did it point to the existence of an alternative, functioning mechanism for aid distribution (para. 123). Accordingly, it found Israel “under an obligation to agree to and facilitate relief schemes provided by the United Nations and its entities, including UNRWA” (para. 124).

Excellent commentary has already examined the advisory opinion from a range of perspectives, including its [doctrinal implications](#), the [internal judicial disagreements](#) within the Court on the duty to cooperate with the UN, its treatment of [occupation](#), and its engagement with private [humanitarian actors](#). This post builds on these analyses but shifts the focus to a broader structural issue: how the Court conceptualizes humanitarian assistance in situations of mass deprivation, i.e., the systematic denial of civilians' access to their most basic needs.

(Extreme) Factual Indicators Without Normative Benchmarks

The advisory opinion examined the obligation of an occupying force not to withhold consent to external humanitarian assistance, applicable when the civilian population is inadequately supplied, under GC IV Article 59. While the advisory opinion takes steps forward, it raises doctrinal and conceptual concerns as to the threshold of “inadequately supplied,” particularly with respect to the preventive function of GC IV Article 59 and its normative underdevelopment.

This obligation not to withhold consent to humanitarian efforts is distinct from the occupying power's independent duties under GC IV [Articles 55](#) and [56](#) to ensure the basic needs of the occupied population, irrespective of the adequacy of existing supplies. Nonetheless, the

occupying power's primary duty to provide for the occupied population might be insufficient or vulnerable to violation or exploitation, as Eliav Liebllich [observes](#). In this context, the obligation set out under GC IV Article 59 to accept external humanitarian assistance operates as a central safeguard against deprivation. Further, the interpretation of "inadequately supplied" carries broader normative meaning beyond occupation, as it also appears in the context of obligations to allow and facilitate humanitarian relief under the [law](#) of the conduct of hostilities.

In the context of Gaza, the Court concluded that the population is inadequately supplied, effectively rejecting Israel's reliance on a quantitative assessment of the volume of aid entering the Strip (para. 107). Significantly, the Court does not limit itself to a formal assessment but rather inquires into a range of interconnected indications of the severity of the humanitarian crisis at hand, as documented by diverse UN agencies and additional actors (paras. 102-09).

Yet the opinion's determination that Gaza's population is "inadequately supplied" rests primarily on a factual analysis, relying on indicators that reflect not mere inadequacies of supply, but conditions of already extreme and prolonged humanitarian catastrophe. These include: reports of acute medical shortages and critical food insecurity by UN agencies; a rapid rise in direct hunger-related mortality; and a determination by an international famine early warning system (the Integrated Food Security Phase Classification or IPC) that [famine conditions](#)—the worst tier of the five-tier food security [classification](#) system—were reached in certain regions as of August 2025.

Reliance on indicators of such gravity may constrain the protective ambit of GC IV Article 59. The preventive logic of Article 59 GC IV, designed to avert prolonged deprivation before catastrophic harm materializes by requiring occupying forces to agree to humanitarian efforts when populations are inadequately supplied, may be read as narrowed.

Further, the Court stops short of referring to any specific point in time in which the population was first inadequately supplied, triggering the obligation to consent to humanitarian assistance. Consider that conditions had already eroded the adequacy of supply well before the issuance of the opinion. Temporality is highly important in the context of deprivation, as indicated in the emphasis within a new [International Committee of the Red Cross Commentary](#) to the Geneva Conventions on "rapid" aid delivery. The question of when the duty to consent to humanitarian efforts emerges is crucial amidst the lived time of those subjected to deprivation, when every moment might entail suffering and increased risks to one's life and mental health.

Even more so, the opinion further limits the standard's effectiveness by refraining from any normative articulation of what "inadequately supplied" actually means. By leaving unanswered the question of the doctrinal baseline for determining when this threshold has been met, the Court also leaves unresolved a series of closely related issues: what

information should be gathered, by whom, and at which points in time; whether the assessment of adequacy implies additional obligations of transparency or ongoing humanitarian monitoring; and what legal consequences follow.

Beyond Formal Aid Authorization: Progress and Elusive Standards

Still, the opinion offers a meaningful analysis of the obligation under GC IV Article 59 by grappling with the complex on-the-ground realities of aid distribution. Significantly, the opinion rejects security considerations as a general free-standing exception to humanitarian obligations (para. 89). The Court also clarifies that technical arrangements related to the facilitation of humanitarian aid, such as the searching of consignments, cannot be undertaken “in a manner that undermines the performance of its obligations as set out in Article 59” (para. 97).

Against the backdrop of Israel’s claim that it acted to allow and facilitate humanitarian aid—an argument endorsed by a ruling of its [Supreme Court](#), as is discussed [elsewhere](#)—the Court emphasizes that “an occupying Power must do more than simply allow the passage of essential items into the occupied territory. It must also use all means at its disposal to ensure their regular, fair, and non-discriminatory distribution, including by facilitating access to them” (para. 100). The opinion also stresses the exceptional and temporary nature of any aid diversion, limited to “cases of urgent necessity, in the interests of the population of the occupied territory” under GC IV [Article 60](#).

In doing so, the opinion moves beyond managerial, technical, or intent-based accounts of compliance based on alleged efforts and instead foregrounds effective distribution and civilian access to humanitarian assistance. These advances, however, remain partial. While confirming that aid facilitation requires more than formal authorization, the opinion stops short of providing substantive clarity on its implications. It does not explicitly integrate international human rights law (IHRL) as an interpretive lens through which this obligation might be further developed.

Additionally, the opinion does not articulate concrete standards concerning the accessibility of aid or meaning of “[all the means at its disposal](#)” nor does it demarcate the limits of permissible [technical arrangements](#) for humanitarian assistance. While some degree of flexibility or ambiguity may be inevitable in the context of humanitarian assistance, the absence of articulated criteria within the substantive elements of GC IV Article 59 risks rendering the obligation unenforceable, especially when deprivation is prolonged and structural. It remains unclear, for instance, whether delays or the blocking of items under Israel’s broadly defined list of “dual-use” goods could amount to a violation of these obligations. Similar questions echo across other humanitarian crises, where aid restrictions—often bureaucratic and opaque—frequently operate as mechanisms of deprivation.

Moreover, the underdevelopment of normative benchmarks for humanitarian access obligations is particularly evident given the Court's otherwise robust engagement with IHRL. In other sections of its analysis, the Court situates obligations related to deprivation within a human rights framework, notably through the rights to life and to an adequate standard of living. As Marco Milanovic has [explained](#), the opinion makes a significant contribution to IHRL by endorsing interpretations developed by human rights bodies. Specifically, the Court reiterates statements from [General Comment No. 36](#) on the right to life, extending its protection to acts inconsistent with international humanitarian law, such as harm to objects indispensable to the survival of the civilian population. I concur with his assessment. Yet this engagement also exposes a missed opportunity: the Court's discussion of IHRL remains compartmentalized, invoked alongside, rather than integrated into, its analysis of humanitarian obligations.

To demonstrate, the opinion's emphasis on *access to aid* closely resonates with the normative vocabulary developed around socio-economic rights, particularly the right to food, as elaborated in [General Comment No. 12](#) (an emphasis that Aeyal Gross and I have pointed to elsewhere). The right to food, for instance, has been interpreted as requiring not only the availability of food, but also its physical and economic accessibility. While taking a step forward by citing General Comment No. 12 on the right to food, the opinion does not explicitly draw upon its substantive content, nor does it deploy it to better understand humanitarian obligation.

In doing so, the opinion leaves the rich IHRL doctrinal insights on accessibility outside the scope of its discussion. In this respect, IHRL could have served as an interpretive tool to give concrete content to humanitarian access obligations, without displacing their basis in international humanitarian law. This compartmentalized mode of reasoning points to a broader tendency in the Court's treatment of mass deprivation, examined in the following section.

Fragmentation and Mass Deprivation

Importantly, the opinion formally recalls the prohibition on the [starvation of civilians](#) as a method of warfare (para. 145). This signaling assumes particular weight against the backdrop of the International Criminal Court's [arrest](#) warrants against senior Israeli officials for the war crime of starvation, on the one hand, and Israel's Supreme Court ruling earlier that year denying any violation of this prohibition, on the other. Yet the Court's brief reference to this prohibition does little to clarify its relationship to the threshold of a population being "inadequately supplied," or to the occupying power's duty to ensure the basic needs of the occupied population. Rather than integrating these obligations, the opinion treats them as analytically discrete. This, in turn, demonstrates the Court's fragmented approach to comprehensive violations and harms of deprivation, exposing its limits and possible shortcomings. Fragmentation, as used here, [refers](#) to the "emergence of specialized and

relatively autonomous spheres” of rules and legal regimes, each with its own concepts and institutional logics. In situations of deprivation, this mode of reasoning carries particular consequences.

Deprivation practices often involve interconnected acts, from restrictions on humanitarian assistance and the destruction of vital infrastructure, through siege, blockade, and closure, which, at their most extreme, may culminate in the destruction of a group, in whole or in part. By contrast, the Court’s analysis proceeds as though these harms can be disaggregated into separable violations, each situated within a singular legal framework and moment in time. While this compartmentalization may reflect the constraints of advisory proceedings, it distances legal analysis from the factual continuum of deprivation, translating lived, cumulative harm into sharply bounded legal categories. This fragmentation risks obscuring the prolonged and interconnected nature of deprivation, and with it, the cumulative impact on civilian life.

This tendency toward fragmentation becomes particularly pronounced in the procedural remarks addressing the Court’s discretion to render the advisory opinion. The Court rejects the argument that the advisory proceedings impermissibly overlap with the pending case brought by South Africa against Israel in relation to the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. Accepting this conclusion—as, in my view, one should—the Court nonetheless confines its analysis to obligations arising under IHL and IHRL, in order to avoid prejudging elements central to the genocide proceedings.

Yet this caution comes at a cost. The opinion declines to incorporate obligations stemming from the provisional measures indicated by the Court in *South Africa v. Israel*, notwithstanding their binding character. This omission was forcefully criticized by Judge Gómez Robledo in his [Partially Dissenting opinion](#), which emphasized that the provisional measures constitute an independent source of legal obligations, both normatively and jurisdictionally.

Although the separation between proceedings may be necessary for international adjudication, such compartmentalization risks weakening international law’s preventive capacity. The Court’s approach treats the proceedings in *South Africa v. Israel* as existing at a discrete and isolable point in time, rather than as part of a broader process unfolding gradually across space and time. This sits uneasily with both theoretical and empirical understandings of mass atrocities, which often begin below the threshold of formal classification—and at times even below the threshold of illegality under the law of armed conflict—before escalating. Against the backdrop of Gaza’s dire humanitarian conditions, the omission of obligations arising from the provisional measures is therefore particularly troubling.

Conclusion

When the Court opts for a primarily factual assessment devoid of further normative development and guidance, it does not merely risk setting the stage for future violations; it entrenches a legal posture in which deprivation becomes legally cognizable only once it has reached catastrophic proportions. The Court's doctrinal neatness, reflected in the clear separation between legal regimes and its refusal to engage obligations arising from parallel proceedings, comes at a cost. By declining to articulate early warning standards, such as the threshold of a population being "inadequately supplied," or to engage with obligations aimed at preventing further deterioration, as those anchored in the provisional measures issued in *South Africa v. Israel*, legal recognition of deprivation risks arriving only after catastrophic harm has already materialized.

The Court's legal restraint and doctrinal approach may be institutionally understandable. Yet this very approach undermines the relevance and normative force of international law's preventive and protective functions at the precise moment mass deprivation demands them.

[Tamar Luster](#) is a Ph.D. candidate at Tel Aviv University's Buchmann Faculty of Law, where she teaches transitional justice, and an Azrieli Foundation Fellow.

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