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Responsibility for Conditions of Starvation in Gaza

As the hostilities between Israel and armed groups in Gaza persist and the levels of violence in the West Bank, including East Jerusalem, remain high, the Diakonia IHL Centre provides regular updates regarding legal aspects of the evolving situation.¹ This update covers Israel's responsibility for conditions of starvation in Gaza.

On 29 February 2024, over a hundred people were reportedly killed and hundreds more injured as they sought food from trucks delivering humanitarian aid in an area near the shore of Gaza City under Israeli military control.² Reports based on witness accounts indicated that the casualties were caused when Israeli forces opened fire at crowds of people awaiting aid delivery, prompting condemnation of a 'massacre' 'targeting unarmed Palestinians'.³ The Israeli military insisted on a different account of events, claiming that as the aid convoy approached, 'thousands of Gazans descended upon the trucks. Some began violently pushing and even trampling other Gazans to death, looting the humanitarian supplies', and that this resulted in dozens being killed.⁴ On this account, the Israeli troops opened fire in a subsequent incident, which resulted in 'no more than ten casualties', that occurred when some people in the crowd approached them, and the troops felt under imminent threat and resorted to 'limited' force that was warranted under the circumstances.⁵

Establishing what actually occurred in this incident will require an independent investigation, but even if it were accepted, *arguendo*, that Israeli troops had not unlawfully opened fire at civilians on this occasion, Israel bears responsibility for what transpired.

¹ '2023-2024 Hostilities and Escalating Violence in the oPt | Legal Updates' (*Diakonia IHL Centre*) <<https://www.diakonia.se/ihl/jerusalem/2023-2024-hostilities-escalating-violence-opt/legal-updates/>> accessed 5 March 2024.

² Nidal Al-Mughrabi, 'More Than 100 Killed While Seeking Aid in Gaza, Overall Death Toll Passes 30,000' *Reuters* (Cairo, 1 March 2024) <<https://www.reuters.com/world/middle-east/dozens-killed-gaza-aid-queue-overall-death-toll-passes-30000-2024-02-29/>> accessed 5 March 2024.

³ 'The Latest | Gaza Death Toll Tops 30,000 as Over 100 Killed in Aid Convoy Violence' *The Associated Press* (New York, 1 March 2024) <<https://apnews.com/article/israel-amas-war-latest-02-29-2024-ae3d114b28cafd3b1a806bfaa9f83cab>> accessed 5 March 2024; "'Heinous": Deadly Israeli Attack on Gaza Aid Seekers Condemned' *Al Jazeera* (Doha, 29 February 2024) <<https://www.aljazeera.com/news/2024/2/29/heinous-deadly-israeli-attack-on-gaza-aid-seekers-condemned>> accessed 5 March 2024.

⁴ 'Press Briefing by IDF Spokesperson, Rear Admiral Daniel Hagari, February 29th, 2024' (*Israel Defense Forces*, 29 February 2024) <<https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/february-24-press-briefings/press-briefing-by-idf-spokesperson-rear-admiral-daniel-hagari-february-29th-2024/>> accessed 5 March 2024.

⁵ Emanuel Fabian and Agencies, 'Dozens Killed in Gaza Aid Stampede; IDF Says its Fire Caused No More Than 10 Casualties' *The Times of Israel* (Jerusalem, 29 February 2024) <<https://www.timesofisrael.com/dozens-of-gazans-said-killed-in-stampede-for-aid-idf-opens-fire-blamed-for-deaths/>> accessed 5 March 2024.

For one thing, Israel bears primary responsibility for the conditions of desperate hunger that drove the people who were killed and injured in the incident and thousands of others to converge on the aid delivery trucks. These conditions, which exist throughout the entire Gaza Strip, are especially acute in areas of northern Gaza that have been reduced to ruins by Israeli attacks and where the Israeli military has secured on-the-ground control.⁶ In these areas in particular, people are so hungry that they are reportedly being forced to forage for scraps of food left by rats and resorting to eating leaves and animal feed.⁷ At least ten children in the north of the Gaza Strip have reportedly died because of dehydration and malnutrition.⁸ This dire state of affairs, in which famine is said to be ‘almost inevitable’, is not the result of a natural disaster, but ‘a man-made catastrophe’.⁹ While Israeli officials have laid blame on Hamas, which they accuse of pilfering aid, and on the UN for allegedly failing to distribute it properly, the catastrophe has been precipitated for the most part by Israel’s acts and omissions.¹⁰ These include the initial imposition of a ‘complete siege’ that harshened the conditions of Israel’s 16-year closure (blockade) of Gaza by completely preventing food and other indispensable resources from entering the Strip,¹¹ combined with massive bombardment that has destroyed and disabled crucial resources with far-reaching reverberating effects;¹² subsequently denying aid agencies’ requests to deliver aid to northern Gaza and generally slowing the supply of aid by creating an exceedingly cumbersome process involving arbitrary delays and denials;¹³ failing to remove Israeli civilian protesters who

⁶ Ruth Michaelson, ‘UNRWA Suspends Aid to Northern Gaza Amid “Collapse of Civil Order”’ *The Guardian* (London, 24 February 2024) <<https://www.theguardian.com/world/2024/feb/24/unrwa-suspends-aid-to-northern-gaza-amid-collapse-of-civil-order>> accessed 5 March 2024.

⁷ ‘News and Press Release | Gaza: Families Forced to Forage for Food Left by Rats as 1.1 Million Children Face Starvation’ (*Save the Children*, 22 February 2024) <https://reliefweb.int/report/occupied-palestinian-territory/gaza-families-forced-forage-food-left-rats-11-million-children-face-starvation?_gl=1*hf6n1p*_ga*MjAzNzE0MzU4OC4xNzAyODkwMTgw*_ga_E60ZNX2F68*MTcwODY2OTA0MC41LjE uMTcwODY2OTA2Ny4zMy4wLjA> accessed 5 March 2024.

⁸ ‘Statement by Adele Khodr, UNICEF Regional Director for the Middle East and North Africa’ (*UNICEF*, 3 March 2024) <<https://www.unicef.org/press-releases/statement-adele-khodr-unicef-regional-director-middle-east-and-north-africa-0>> accessed 5 March 2024.

⁹ ‘Security Council Hears Gaza Famine “Almost Inevitable” Unless Aid Is Massively Scaled Up’ (*UN News*, 27 February 2024) <<https://news.un.org/en/story/2024/02/1146997>> accessed 5 March 2024; Megan K Stack, ‘Starvation Is Stalking Gaza’s Children’ *New York Times* (New York, 29 February 2024) <<https://www.nytimes.com/2024/02/29/opinion/gaza-israel-palestinians-starvation.html>> accessed 5 March 2024.

¹⁰ Charlie Summers, ‘“No Food Shortage in Gaza”, Says IDF Official, Dismissing UN Claims to the Contrary’ *The Times of Israel* (Israel-Gaza Border, 11 January 2024) <<https://www.timesofisrael.com/no-food-shortage-in-gaza-says-idf-official-overseeing-transfer-of-aid/>> accessed 5 March 2024.

¹¹ Lucy Swan, Harvey Symons, and Niels de Hoog, ‘“Complete Siege” of Gaza: Satellite Map of Worst Affected Areas’ *The Guardian* (London, 20 October 2023) <<https://www.theguardian.com/world/2023/oct/20/complete-siege-of-gaza-satellite-map-of-worst-affected-areas>> accessed 5 March 2024.

¹² Julia Frankel, ‘Israel’s Military Campaign in Gaza Seen as Among the Most Destructive in Recent History, Experts Say’ *The Associated Press* (Jerusalem, 11 January 2024) <<https://apnews.com/article/israel-gaza-bombs-destruction-death-toll-scope-419488c511f83c85baea22458472a796>> accessed 5 March 2024.

¹³ Claire Parker, ‘How Israel’s Restrictions on Aid Put Gaza on the Brink of Famine’ *The Washington Post* (Jerusalem, 3 March 2024) <<https://www.washingtonpost.com/world/2024/03/03/gaza-aid-convoy-israel-war/>> accessed 5

blocked aid convoys bound for Gaza;¹⁴ failing to ensure safe passage in Gaza, by failing to prevent looters and desperate crowds from attacking aid convoys,¹⁵ by harassing, intimidating, or detaining humanitarian workers,¹⁶ and in some cases opening fire on aid vehicles.¹⁷

Israel is not only causally responsible for the situation. It is also legally responsible. As indicated in the IHL Centre's legal brief concerning the initial stages of the current hostilities, the rules of international humanitarian law (IHL) regarding the conduct of hostilities prohibit the use of starvation as a method of warfare.¹⁸ Furthermore, and as explained in a previous update, due to the on-the-ground control that it currently wields over much of the Gaza Strip, including the northern areas where the incident occurred, Israel now has a wider range of obligations with respect to Gaza under the provisions of IHL that regulate behaviour in occupied territory, known as the law of occupation.¹⁹ For one thing, by adding control on the ground to the control that it has long exerted over Gaza's external envelope, Israel has increased the range of measures that it can and therefore must take pursuant to the core provision of the law of occupation which requires the occupant to 'take all the measures in his power' to restore and ensure, as far as possible, public order and civil life in the occupied territory.²⁰ Pursuant to this rule as well as the occupying power's more specific duty to act, to the fullest extent of the means available to it, to ensure the food and medical supplies of the population,²¹ Israel is obliged to ensure that food and other essentials are safely and effectively delivered to the population of Gaza. If Israel itself

March 2024; Lee Keath, 'Cumbersome Process and "Arbitrary" Israeli Inspections Slow Aid Delivery into Gaza, US Senators Say' *The Associated Press* (Cairo, 6 January 2024) <<https://apnews.com/article/israel-gaza-rafah-aid-us-senators-2bc2a3c5e5f8af8e2d3f0b7242c1a885>> accessed 5 March 2024.

¹⁴ Loveday Morris, 'Young Israelis Block Aid to Gaza While IDF Soldiers Stand and Watch' *The Washington Post* (Kerem Shalom, 10 February 2024) <<https://www.washingtonpost.com/world/2024/02/10/gaza-aid-blockade-protest-kerem-shalom/>> accessed 5 March 2024.

¹⁵ 'UPDATED: Aid Relief Arriving in Gaza but "Too Little, Too Late", Warns WHO' (*UN News*, 9 January 2024) <<https://news.un.org/en/story/2024/01/1145347>> accessed 5 March 2024.

¹⁶ 'New Incident with Medical Evacuation at Al Amal Hospital Marks Unacceptable Security Conditions for Humanitarian Aid Delivery' (*United Nations Office for the Coordination of Humanitarian Affairs (OCHA) occupied Palestinian territory (oPt)*, 27 February 2024) <<https://www.ochaopt.org/content/new-incident-medical-evacuation-al-amal-hospital-marks-unacceptable-security-conditions-humanitarian-aid>> accessed 5 March 2024.

¹⁷ Raja Abdulrahim, 'U.N. Says Israeli Forces Fired on Aid Convoy in Central Gaza' *The New York Times* (New York, 29 December 2023) <<https://www.nytimes.com/2023/12/29/world/middleeast/un-israel-gaza-aid.html>> accessed 5 March 2024.

¹⁸ 'Legal Brief on the 2023 Hostilities in Israel and Gaza' (*Diakonia IHL Centre*, 5 December 2023) <<https://www.diakonia.se/ihl/news/legal-brief-on-the-2023-hostilities-in-israel-and-gaza/>> accessed 5 March 2024.

¹⁹ 'Legal Update: Israel's Expanding Obligations in Gaza Pursuant to the Law of Occupation' (*Diakonia IHL Centre*, 15 February 2024) <<https://www.diakonia.se/ihl/news/israels-expanding-obligations-in-gaza-pursuant-to-the-law-of-occupation/>> accessed 5 March 2024.

²⁰ 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, 18 October 1907, 205 CTS 277, art 43.

²¹ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 28 (GC IV), art 55.

cannot adequately supply food and other basic needs, it has an obligation to allow humanitarian relief to reach the population and to facilitate it by all the means at its disposal.²²

The various Israeli acts and omissions specified above stand in stark contrast to these legal obligations. Instead of ensuring that the population of Gaza is provided with food and other indispensable resources or, at the very least, facilitating provision by others, Israel for a time completely prevented and subsequently severely hampered the supply of these resources. Far from ensuring public order and safety in a manner conducive to normal civil life, Israel has allowed chaos and lawlessness to reign in the parts of Gaza where its troops are present. This manifested not only when aid convoys were exposed to looting or intercepted by crowds of hungry people, but also when Israel failed to impose discipline on its own troops, for instance when they engaged in widespread pillage and vandalism against Palestinian property, apparently so convinced of their impunity that they often gleefully documented themselves in the act.²³ Israel's lack of commitment to discharging its obligation to ensure the wellbeing of the population of Gaza, or even to protect it from starvation, was further evidenced by the Israeli authorities' lackadaisical approach towards Israeli protesters who blocked aid convoys bound for Gaza.²⁴

In addition to obligations derived from the law of occupation, Israel's legal obligation to ensure that food and other indispensable resources reach the population of Gaza also emanates from an order on provisional measures issued by the International Court of Justice (ICJ) on 26 January 2024 in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.²⁵ Among other things, the ICJ ordered that Israel 'take immediate and effective measures to **enable the provision of urgently needed basic services and humanitarian assistance** to address the adverse conditions of life faced by Palestinians in the Gaza Strip'.²⁶ Based on the considerations outlined here, it is extremely doubtful that Israel adequately complied with the order.

²² GC IV art 59.

²³ See, eg, Yagil Levy, 'Israeli Soldiers' Looting in Gaza Is Part of the Revenge' *Haaretz* (Tel Aviv, 19 February 2024) <<https://www.haaretz.com/opinion/2024-02-19/ty-article-opinion/.premium/israeli-soldiers-looting-in-gaza-is-part-of-the-revenge/0000018d-c296-dfbc-a3af-dad756540000>> accessed 5 March 2024; Samuel Forey, 'Israeli Soldiers Deployed in Gaza Post Their Abuses on Social Media' *Le Monde* (Jerusalem, 28 February 2024) <https://www.lemonde.fr/en/international/article/2024/02/28/israeli-soldiers-deployed-in-gaza-post-their-abuses-on-social-media_6568987_4.html> accessed 5 March 2024; Oren Ziv, 'Rugs, Cosmetics, Motorbikes: Israeli Soldiers are Looting Gaza Homes En Masse' *+972 Magazine* (Tel Aviv, 20 February 2024) <<https://www.972mag.com/israeli-soldiers-looting-gaza/>> accessed 5 March 2024.

²⁴ Josh Breiner, 'Israeli Police Wary of Blocking Protests Against Gaza Aid, Security Sources Say' *Haaretz* (Tel Aviv, 17 February 2024) <<https://www.haaretz.com/israel-news/2024-02-17/ty-article/.premium/israeli-police-wary-of-blocking-protests-against-gaza-aid-security-sources-say/0000018d-b83b-dc8c-a3df-fa3fd5f40000>> accessed 5 March 2024.

²⁵ 'South Africa v. Israel – Order on Provisional Measures (26 January 2024)' (*Diakonia IHL Centre*, 26 January 2026) <<https://www.diakonia.se/ihl/news/icj-order-provisional-measures-south-africa-v-israel/>> accessed 5 March 2024.

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Indication of Provisional Measures: Order) General List No. 192 [2024] ICJ 1

Third States too have certain responsibilities in relation to the situation in Gaza. For one thing, they have an obligation to respect and ensure respect for IHL.²⁷ The obligation to ensure respect for IHL requires that third States do everything reasonably in their power to prevent violations by parties to the conflict and to bring them to an end.²⁸ Second, where the population of an occupied territory is inadequately supplied, the occupying power must consent to relief schemes while retaining a right to control.²⁹ In such situations, as is the case in Gaza, IHL imposes an obligation on third States to ‘permit the free passage of these consignments and ... guarantee their protection’.³⁰ Moreover, such relief schemes, including the provision of food, may also be undertaken by third States. Lastly, third States should refrain from any conduct that stands to undermine the provisional measures indicated by the ICJ and refrain from interfering with the provision of humanitarian assistance so as not to exacerbate the dire situation the Court has sought to alleviate.³¹ In any case, the ultimate responsibility towards the Gazan population remains incumbent upon Israel.

<<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> accessed 5 March 2024.

²⁷ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31, art 1; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85, art 1; Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135, art 1; GC IV, art 1.

²⁸ *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War* (2nd ed, ICRC 2020), Common art 1, para 186 <<https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-1/commentary/2020?activeTab=undefined>> accessed 5 March 2024.

²⁹ GC IV 59.

³⁰ *Ibid.*

³¹ ‘ICJ Order on Provisional Measures in South Africa v. Israel: Legal Consequences for Third States’ (*Diakonia IHL Centre*, 2 February 2024) <<https://www.diakonia.se/ihl/news/icj-order-provisional-measures-consequences-for-third-states/>> accessed 5 March 2024.