

12 December 2024

Analysis of Developments in North 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 provides a legal assessment of the situation in North Gaza pursuant to the law of occupation and the law of siege warfare.

In early October 2024, Israeli forces resumed carrying out intense ground attacks in North Gaza.² At the same time, parts of the governorate – particularly Beit Hanoun, Beit Lahia, and Jabalia refugee camp – have been put under siege and cut off from humanitarian relief operations, with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reporting that as of 10 December, no aid deliveries had reached certain areas for the last 66 days.³ Continued attacks and renewed instructions by the Israeli military for hundreds of thousands of Palestinians to relocate have led to mass displacement of the civilian population.⁴ At the beginning of November, the Integrated Food Security Phase Classification (IPC) Famine Review Committee estimated with ‘strong likelihood that famine is imminent in areas within the northern Gaza

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 12 December 2024.

² ‘Humanitarian Situation Update #227 | Gaza Strip’ (*United Nations Office for the Coordination of Humanitarian Affairs (OCHA) occupied Palestinian territory (oPt)*, 8 October 2024) <<https://www.ochaopt.org/content/humanitarian-situation-update-227-gaza-strip>> accessed 12 December 2024; David Gritten, ‘Heavy Fighting in Gaza’s Jabalia as Israel Conducts New Ground Operation’ *BBC News* (London, 8 October 2024) <<https://www.bbc.com/news/articles/c3019r3medzo>> accessed 12 December 2024; ‘UNRWA Situation Report #149 on the Humanitarian Crisis in the Gaza Strip and the West Bank, Including East Jerusalem’ (*UNRWA*, 27 November 2024) <<https://www.unrwa.org/resources/reports/unrwa-situation-report-149-situation-gaza-strip-and-west-bank-including-east-jerusalem>> accessed 12 December 2024. The terms ‘North Gaza governorate’, ‘North Gaza’, ‘northern Gaza’, and ‘the north of Gaza’ are used interchangeably throughout this note.

³ ‘Humanitarian Situation Update #245 | Gaza Strip’ (*OCHA oPt*, 10 December 2024) <<https://www.ochaopt.org/content/humanitarian-situation-update-245-gaza-strip>> accessed 12 December 2024; ‘Gaza Humanitarian Response Update | 10- 23 November 2024’ (*OCHA oPt*, 26 November 2024) <<https://www.ochaopt.org/content/gaza-humanitarian-response-update-10-23-november-2024>> accessed 12 December 2024.

⁴ Sari Bashi, ‘North Gaza: Between Death and Displacement’ (*Human Rights Watch*, 18 October 2024) <<https://www.hrw.org/news/2024/10/18/north-gaza-between-death-and-displacement>> accessed 12 December 2024; ‘Israel/OPT: Israel Must Rescind Latest “Evacuation” Orders for North Gaza and Allow Immediate, Unhindered Humanitarian Access’ (*Amnesty International*, 15 October 2024) <<https://www.amnesty.org/en/latest/news/2024/10/israel-opt-israel-must-rescind-latest-evacuation-orders-for-north-gaza-and-allow-immediate-unhindered-humanitarian-access/>> accessed 12 December 2024.

Strip'.⁵ In an ostensible repeat of previous patterns of conduct, the Israeli military has been attacking 'barely functioning' hospitals despite a sharp increase in medical needs and detained doctors and medical staff.⁶ On 23 October, United Nations (UN) Secretary-General António Guterres wrote on X, formerly known as Twitter: 'People suffering under the ongoing Israeli siege in North Gaza are rapidly exhausting all available means for their survival'.⁷ Philippe Lazzarini, the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), remarked on 9 December that '[n]owhere is the blatant disregard for international law and the rules-based order more apparent than in Gaza'.⁸

The reported patterns of conduct bear resemblance to what has been called the 'Generals' Plan', the suggestion reportedly advanced by former Israeli generals, including Giora Eiland, to impose a siege on northern Gaza, instruct civilians to relocate to the south, cut off food, water, and other essential resources from the area, and treat remaining Palestinians as fighters, thus supposedly coercing Hamas into surrendering.⁹

⁵ 'IPC Famine Review Committee Alert Gaza Strip' (*IPC Info*, 8 November 2024)

<https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_FRC_Alert_Gaza_Nov2024.pdf> accessed 12 December 2024.

⁶ OCHA oPt Humanitarian Situation Update #245 | Gaza Strip (n 3). See Isabel Debre, Julia Frankel, and Lee Keath, 'Still Wrecked From Past Israeli Raids, Hospitals in Northern Gaza Come Under Attack Again' *The Associated Press* (New York, 3 November 2024) <<https://apnews.com/world-news/still-wrecked-from-past-israeli-raids-hospitals-in-northern-gaza-come-under-attack-again-00000192eebfd414a79ffbf88cc0000>> accessed 12 December 2024; Hiba Yazbek, 'Israeli Strikes Damage a Major Hospital in Northern Gaza, Officials Say' *New York Times* (Jerusalem, 4 November 2024) <<https://www.nytimes.com/2024/11/04/world/middleeast/israel-strike-hospital-jabaliya.html>> accessed 12 December 2024; 'Urgent: Last Remaining Hospitals in Northern Gaza Under Siege as People are Trapped' (*MSF*, 20 October 2024) <<https://www.doctorswithoutborders.org/latest/urgent-last-remaining-hospitals-northern-gaza-under-siege-people-are-trapped>> accessed 12 December 2024; Nidal Al-Mughrabi, 'Israeli Army Leaves North Gaza Hospital, Detains Medics, Says Health Ministry' *Reuters* (Cairo, 27 October 2024) <<https://www.reuters.com/world/middle-east/israeli-army-leaves-north-gaza-hospital-detains-medics-says-health-ministry-2024-10-26/>> accessed 12 December 2024; 'Israel Attacks Hospital in Northern Gaza, Leaving Bodies Lying in Streets, Director Says' *The Guardian staff with agencies* (London, 7 December 2024) <<https://www.theguardian.com/world/2024/dec/07/israel-attacks-hospital-in-northern-gaza-leaving-bodies-lying-in-streets-director-says>> accessed 12 December 2024.

⁷ António Guterres (X, 23 October 2024) <<https://x.com/antonioguterres/status/1849185247121846418>> accessed 12 December 2024.

⁸ 'Remarks by Phillipe Lazzarini, Commissioner-General of UNRWA at the Doha Mediation Forum' (*UNRWA*, 9 December 2024) <<https://www.unrwa.org/newsroom/official-statements/remarks-phillipe-lazzarini-commissioner-general-unrwa-doha-mediation>> accessed 12 December 2024.

⁹ Bethan McKernan, "'Israel is Trying to Erase Our Presence": Palestinians Say "Generals' Plan" to Clear North Gaza is Under Way' *The Guardian* (Jerusalem, 26 October 2024) <<https://www.theguardian.com/world/2024/oct/26/israel-generals-plan-clear-north-gaza-palestinians>> accessed 12 December 2024; Ravit Hecht, 'Retired Israeli General Giora Eiland Called for Starving Gaza. Does He Regret it?' *Haaretz* (Tel Aviv, 27 September 2024) <<https://www.haaretz.com/israel-news/2024-09-27/ty-article-magazine/.highlight/retired-israeli-general-giora-eiland-called-for-starving-gaza-does-he-regret-it/00000192-33f5->

Possible argumentation by Israel

Israel may argue that its actions in North Gaza are directed against Hamas fighters and thus permissible under the law of siege warfare, which international humanitarian law (IHL) does not classify as illegal in itself.¹⁰ They may point out that Israeli forces are operating in densely populated civilian areas, and that they are taking steps to minimise harm to civilians and damage to civilian objects – by providing advance warnings and allowing civilians to leave besieged areas.¹¹

Reported factual patterns contradict the Israeli account. Persons have been unable to leave the besieged north, and others trying to do so have come under attack.¹²

dc91-a1df-bffff4930000> accessed 12 December 2024; Jeremy Bowen, ‘Israeli Attack on Northern Gaza Hints at Retired General’s “Surrender or Starve” Plan for War’ *BBC News* (London, 12 October 2024) <<https://www.bbc.com/news/articles/c1e82yy0wxno>> accessed 12 December 2024; Julia Frankel, ‘Netanyahu Mulls Plan to Empty Northern Gaza of Civilians and Cut Off Aid to Those Left Inside’ *The Associated Press* (Jerusalem, 14 October 2024) <<https://apnews.com/article/hamas-israel-generals-plan-eiland-gaza-219d7eb9a3050e281ccc032d5a56263c>> accessed 12 December 2024.

¹⁰ Gloria Gaggioli, ‘Joint Blog Series on International Law and Armed Conflict: Are Sieges Prohibited Under Contemporary IHL?’ (*EJIL: Talk!*, 30 January 2019) <<https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/>> accessed 12 December 2024. For example, Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV) art 17 provides that ‘[t]he Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas’. This seems to provide for the possibility that sieges can be lawfully imposed. However, more stringent conditions are set out in Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (AP I) art 54, which prohibits the starvation of civilians as a method of warfare and attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population. See ‘Legal Brief on the 2023 Hostilities in Israel and Gaza’ (*Diakonia IHL Centre*, 5 December 2023) 76 <<https://www.diakonia.se/ihl/news/legal-brief-on-the-2023-hostilities-in-israel-and-gaza/>> accessed 12 December 2024 and the references cited therein, in particular Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (4th ed, CUP 2022) 295-296.

¹¹ Effective advance warnings unless circumstances do not permit constitute one measure that parties to an armed conflict can take to discharge their obligations pursuant to the principle of precautions during the conduct of hostilities, which requires parties to take all feasible measures to avoid, and in any event to minimise, incidental harm to civilians and damage to civilian objects. Study on Customary IHL by the International Committee of the Red Cross (ICRC) ‘Customary IHL Database’ (*ICRC*, first published in 2005) (CIHL) rr 15, 20. The requirement to allow civilians to leave besieged areas emerges from GC IV art 17 (which does not impose a strict obligation but rather suggests that parties to an armed conflict ‘endeavour’ to do so) and AP I art 54, which is considered reflective of customary international law, amongst other provisions. See Legal Brief on the 2023 Hostilities (n 10) 76.

¹² Eg ‘Gazans in the North Trapped with Nowhere to Go, as Fighting Intensifies’ (*UN News*, 7 October 2024) <<https://news.un.org/en/story/2024/10/1155441>> accessed 12 December 2024; ‘As Israel’s Siege on North Gaza Continues, How Are People Coping?’ *Al Jazeera* (Doha, 21 October 2024) <<https://www.aljazeera.com/news/2024/10/21/as-israels-siege-on-north-gaza-continues-how-are-people-coping>> accessed 12 December 2024.

In any event, irrespective of these factual accounts, it is still highly questionable that Israel's actions in North Gaza could be considered lawful under IHL. The following sections examine the legality of Israel's conduct pursuant to (i) the law of occupation and (ii) the law of siege warfare. Another relevant framework is international human rights law (IHRL); this note is confined to IHL.

The law of occupation

The IHL Centre – like the vast majority of commentators, including the International Court of Justice (ICJ) – holds the view that Gaza is occupied.¹³ In North Gaza specifically, Israel has a significant presence of ground forces and concomitant effective control since the start of its ground offensive more than a year ago.¹⁴

As an occupying power in Gaza, Israel has a fundamental obligation to maintain or restore civil life to the extent possible.¹⁵ In a situation of hostilities, the rules on conduct of hostilities apply alongside the law of occupation, and accordingly the scope of this obligation (an obligation of conduct, not result) may be circumscribed.¹⁶

Israel also has positive obligations under the law of occupation to ensure the food and medical supplies of the population in Gaza, and to ensure and maintain public health and hygiene as well as medical establishments and services in cooperation with the local authorities.¹⁷

Israel's actions on the ground contravene these obligations. In northern Gaza, Israel has largely restricted the entry of humanitarian relief supplies, with severe risk of famine being reported, and despite a massive influx of patients barely operational hospitals have come under attack.¹⁸

¹³ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (Advisory Opinion) [2024] [88]-[94] <<https://icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>> accessed 12 December 2024.

¹⁴ 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 (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 (Hague Regulations) art 42. See '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 12 December 2024.

¹⁵ Hague Regulations art 43.

¹⁶ Marco Longobardo, *The Use of Armed Force in Occupied Territory* (CUP 2018) 229; Yoram Dinstein, *The International Law of Belligerent Occupation* (2nd ed, CUP 2019) 111; Legal Brief on the 2023 Hostilities (n 10) 75; 'Violations of the IHL Rules on the Protection of Healthcare Applicable in Gaza' (*Diakonia IHL Centre*, 21 March 2024) <<https://www.diakonia.se/ihl/news/violations-of-the-ihl-rules-on-the-protection-of-healthcare-applicable-in-gaza/>> accessed 12 December 2024.

¹⁷ GC IV arts 55(1), 56(1). See Legal Brief on the 2023 Hostilities (n 10); Violations of the IHL Rules on the Protection of Healthcare (n 16).

¹⁸ Eg OCHA oPt Humanitarian Situation Update #245 | Gaza Strip (n 3); IPC Info (n 5); Debre, Frankel, and Keath (n 6); MSF (n 6).

Persons are trapped underneath the rubble amidst an electricity blackout with civil defence forces unable to rescue them.¹⁹

As an occupying power, Israel is allowed to take security measures ('measures of control and security ... as may be necessary as a result of the war') in the occupied territory.²⁰ The strictest security measures available to the occupying power vis-à-vis protected persons in the occupied territory are internment and assigned residence.²¹

One can argue that even in a situation of hostilities, where the occupying power's obligations under the law of occupation may be circumscribed, a siege imposed on the whole north of Gaza – especially one that is directed not exclusively against fighters but also against the civilian population, as explained in the part on siege warfare below – does not constitute a permissible security measure for purposes of the law of occupation.²²

There are two considerations that militate in favour of this view. *First*, an occupying power by definition exerts effective control over an area, thus diminishing the security rationale that can justify the imposition of a siege. *Second*, a siege – especially one that is prolonged, restrictive, and extends over a large area – necessarily compromises the occupying power's ability to comply with its obligation to provide for the needs of the population in the occupied territory.²³

Even if one were to accept the position that Gaza is not occupied, which can hardly be reconciled with the circumstances currently prevailing on the ground, Israel's conduct would still most likely be unlawful under the law of siege warfare.

The law of siege warfare

As noted, while IHL does not altogether prohibit the imposition of sieges, the besieging party must comply with certain stringent conditions.²⁴ The siege must be aimed only at fighters for purposes of bringing about their surrender, and not against the civilian population.²⁵ Furthermore, the besieging party must comply with other applicable IHL rules, such as the prohibition of starvation of the civilian population as a method of warfare, the attacking,

¹⁹ Bethan McKernan and Malak A Tantesh, "No One is Coming to Save Them": Blackouts Hide Horrors of Siege of North Gaza' *The Guardian* (Jerusalem and Gaza, 29 October 2024) <<https://www.theguardian.com/world/2024/oct/29/no-one-is-coming-to-save-them-blackouts-hide-horrors-of-siege-of-north-gaza>> accessed 12 December 2024.

²⁰ GC IV art 27(4).

²¹ *ibid* art 78(1).

²² Legal Brief on the 2023 Hostilities (n 10) 75-76.

²³ Eliav Lieblich and Eyal Benvenisti, *Occupation in International Law* (OUP 2022) 165-166.

²⁴ Gaggioli (n 10); Emanuela-Chiara Gillard, 'Sieges, the Law and Protecting Civilians' (*Chatham House*, June 2019) <https://www.chathamhouse.org/2019/06/27/Sieges-Protecting-Civilians_0.pdf> accessed 12 December 2024.

²⁵ 'The Protection of the Civilian Population During Sieges: What the Law Says' (*ICRC*, 5 February 2024) <<https://www.icrc.org/en/document/protection-civilian-population-during-sieges-what-law-says>> accessed 12 December 2024; Dinstein (n 10) 296.

destruction, removal, or rendering useless of objects indispensable for the survival of the civilian population, the obligation to allow for the passage of impartial humanitarian relief, the rules on the evacuation of civilians, and the rules on conduct of hostilities (in respect of attacks accompanying the siege), among others.²⁶

In a densely populated civilian area such as northern Gaza, the besieging party would have to, at a minimum, allow for impartial humanitarian relief to reach the civilian population, or allow them to leave the governorate.²⁷ Israel's reported failure to do so suggests the imposition of a siege that is directed not exclusively at fighters but also against civilians, which is impermissible under modern IHL, and may also indicate an intent to starve the civilian population, which is a war crime if committed in an international armed conflict.²⁸

The besieging party is also prohibited from attacking, destroying, removing, or rendering useless objects indispensable for the survival of the civilian population, for example foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works, for purposes of denying their sustenance value to the civilian population or to the opposing belligerent.²⁹ Israel has destroyed much of the civilian infrastructure in Gaza, including water facilities and agricultural land.³⁰

²⁶ AP I arts 54(1), (2); CIHL rr 1, 14, 15, 53, 54, 55, 129; GC IV arts 17, 49(1). See Legal Brief on the 2023 Hostilities (n 10) 76 and the references cited in fns 496-500.

²⁷ Gaggioli (n 10); Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC 2019) 96 <<https://library.icrc.org/library/docs/DOC/icrc-4231-002-2019.pdf>> accessed 12 December 2024; Legal Brief on the 2023 Hostilities (n 10) 77.

²⁸ AP I art 54(1); Gaggioli (n 10); Melzer (n 27) 96; Legal Brief on the 2023 Hostilities (n 10) 77; Rome Statute of the ICC (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (ICC Statute) art 8(2)(b)(xxv).

²⁹ AP I art 54(2).

³⁰ 'Shocked by Harrowing Death, Destruction in North Gaza from Israeli Military Operations, Secretary-General, "in the Name of Humanity", Calls for Ceasefire' (UN, 27 October 2024) <<https://press.un.org/en/2024/sgsm22426.doc.htm>> accessed 12 December 2024; 'Footage from UN Vehicle Shows Scale of Destruction in Northern Gaza – Video' *The Guardian* (London, 7 November 2024) <<https://www.theguardian.com/world/video/2024/nov/07/footage-from-un-vehicle-shows-scale-of-destruction-in-northern-gaza-video>> accessed 12 December 2024; Joseph Krauss and Sarah El Deeb, 'Gaza is in Ruins After Israel's Yearlong Offensive. Rebuilding May Take Decades' *The Associated Press* (New York, 9 October 2024) <<https://www.ap.org/news-highlights/spotlights/2024/gaza-is-in-ruins-after-israels-yearlong-offensive-rebuilding-may-take-decades/>> accessed 12 December 2024; 'Gaza: Geospatial Data Shows Intensifying Damage to Cropland' (FAO, 3 October 2024) <<https://www.fao.org/newsroom/detail/gaza-geospatial-data-shows-intensifying-damage-to-cropland/en>> accessed 12 December 2024. It is well-documented that Israeli forces have attacked and destroyed civilian objects without military necessity (i.e., in the absence of any fighting). Eg 'Israel/OPT: Israeli Military Must be Investigated for War Crime of Wanton Destruction in Gaza – New Investigation' (*Amnesty International*, 5 September 2024) <<https://www.amnesty.org/en/latest/news/2024/09/israel-opt-israeli-military-must-be-investigated-for-war-crime-of-wanton-destruction-in-gaza-new-investigation/>> accessed 12 December 2024.

Furthermore, it can be argued that sieges are subject to the principle of proportionality.³¹ According to one line of argumentation, this is by analogy to the law of naval blockades, where such a proportionality requirement exists.³² Accordingly, a siege should not be imposed if ‘the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated’.³³ It is very difficult to see how the siege of North Gaza could be considered proportionate since it has reportedly resulted in the displacement of more than 100,000 persons and has pushed a population already living through humanitarian catastrophe further into famine.³⁴

There have also been suggestions that all those who remain in northern Gaza – implying also those who are unable or unwilling to leave, such as sick and elderly persons and persons with disabilities – are fighters and can thus be lawfully targeted in attacks.³⁵ This implies a fundamental disregard of the principle of distinction.³⁶ IHL protection during the conduct of hostilities is status-based. Civilians do not lose their protected status just because they decide not to leave an area or are unable to do so.

Displacement

The cutting off of large swathes of northern Gaza and concomitant instructions for civilians to leave these areas has resulted in the mass displacement of the civilian population. It is highly questionable that this can be considered lawful under IHL.

Since Gaza is occupied, the deportation of protected persons to the territory of another State, including the territory of the occupying power, or their forcible transfer within the occupied

³¹ Gaggioli (n 10); Maxime Nijs, ‘Humanizing Siege Warfare: Applying the Principle of Proportionality to Sieges’ (2020) 102 Intl Rev Red Cross 683. Both Gaggioli and Nijs argue that sieges constitute an attack for purposes of AP I art 49(1). For the argument that there is a general principle of proportionality in IHL, not just for attacks, see Jann K Kleffner, ‘Military Collaterals and *Jus in Bello* Proportionality’ (2018) 48 Israel YB Human Rts 43.

³² Gaggioli (n 10); Nijs (n 31). This is set out in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (adopted on 12 June 1994) (San Remo Manual) art 102(b).

³³ San Remo Manual art 102(b).

³⁴ IPC Info (n 5); ‘Humanitarian Situation Update #237 | Gaza Strip’ (OCHA oPt, 12 November 2024) <<https://www.ochaopt.org/content/humanitarian-situation-update-237-gaza-strip>> accessed 12 December 2024; ‘Humanitarian Situation Update #239 | Gaza Strip’ (OCHA oPt, 19 November 2024) <<https://www.ochaopt.org/content/humanitarian-situation-update-239-gaza-strip>> accessed 12 December 2024. Overall, around 1.9 million out of Gaza’s 2.1 million inhabitants have been internally displaced. ‘Reported Impact Snapshot | Gaza Strip (10 December 2024)’ (OCHA oPt, 10 December 2024) <<https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-10-december-2024>> accessed 12 December 2024.

³⁵ Eg Frankel (n 9); McKernan (n 9).

³⁶ CIHL r 1.

territory is prohibited.³⁷ Partial or total evacuations of an area for purposes of ensuring the security of the population or for reasons of imperative military necessity are permitted as long as they are temporary, and the food, health, accommodation, and hygiene of the evacuees is provided for.³⁸ The evacuees must be allowed to return as soon as it is safe for them to do so.³⁹

For the relocation instructions by the Israeli military to be considered lawful under the law of occupation, the authorities would have to demonstrate that there are indeed imperative military or security reasons mandating the inhabitants of North Gaza to leave, and that evacuees have someplace else to go that is safe from attack, and where food, water, shelter, and other basic necessities are provided. These are not the conditions that are currently prevailing for those who attempt to leave North Gaza.⁴⁰

There have also been statements by Israeli officials suggesting that the displacement of Palestinians from North Gaza may be permanent, which would clearly be unlawful.⁴¹ Such concerns are further reinforced by the widespread destruction of infrastructure necessary for the survival of the civilian population, such as homes, schools, hospitals, and water and sanitation facilities, essentially rendering a return in the near future impossible.⁴² For many Palestinians,

³⁷ *ibid* r 129(A); GC IV art 49(1). Even if Gaza is not considered occupied, the law of non-international armed conflict prohibits the forced movement of the civilian population for reasons related to the conflict unless the security of the civilian population or imperative military reasons so demand. CIHL r 129(B).

³⁸ GC IV arts 49(2), (3).

³⁹ *ibid* art 49(2).

⁴⁰ Bashi (n 4); 'Nowhere Safe in Gaza as Attacks in the North and Hospital Ablaze in the South Put the Lives of Children and Families at Risk' (*Save the Children*, 14 October 2024) <<https://www.savethechildren.net/news/nowhere-safe-gaza-attacks-north-and-hospital-ablaze-south-put-lives-children-and-families-risk>> accessed 12 December 2024; 'Palestinians Flee Northern Gaza with Nowhere to Go as Israel Expands Offensive' *The Associated Press* (Gaza City, 5 December 2024) <<https://apnews.com/video/israel-hamas-war-israel-benjamin-netanyahu-gaza-strip-israel-government-1c8dd0ed27b24af4b3b2b7816d198d97>> accessed 12 December 2024.

⁴¹ Eg Bethan McKernan and William Christou, 'Palestinians Will not be Allowed to Return to Homes in Northern Gaza, Says IDF' *The Guardian* (Jerusalem and Beirut, 6 November 2024) <<https://www.theguardian.com/world/2024/nov/06/palestinians-will-not-be-allowed-to-return-to-homes-in-northern-gaza-says-idf>> accessed 12 December 2024. The Israeli military later ostensibly attempted to rectify these remarks. Bethan McKernan, 'IDF Distances Itself from "No Return" Remarks about North Gaza Evacuees' *The Guardian* (Amman, 7 November 2024) <<https://www.theguardian.com/world/2024/nov/07/idf-israel-military-no-return-remarks-north-gaza>> accessed 12 December 2024.

⁴² Eg Patrick Wintour, 'Widespread Destruction in Gaza Puts Concept of "Domicide" in Focus' *The Guardian* (London, 7 December 2023) <<https://www.theguardian.com/world/2023/dec/07/widespread-destruction-in-gaza-puts-concept-of-domicide-in-focus>> accessed 12 December 2024; 'Preliminary Assessment of the Economic Impact of the Destruction in Gaza and Prospects for Economic Recovery' (*UNCTAD*, January 2024) <<https://unctad.org/publication/preliminary-assessment-economic-impact-destruction-gaza-and-prospects-economic-recovery>> accessed 12 December 2024.

this brings with it painful echoes of the Nakba, most of Gaza's residents being refugees or descendants of refugees from 1948.⁴³

A party to an armed conflict cannot ostensibly avail itself of the IHL rules on evacuation – which are conditioned upon exceptionality and temporality and linked to a humanitarian purpose – for fundamentally illegal purposes, such as ethnically cleansing an area or the annexation of territory by force.

The siege imposed on North Gaza can also be considered a form of collective punishment against the civilian population, which is prohibited under IHL.⁴⁴

Wider considerations

It is worth noting that the catastrophic humanitarian situation in Gaza also features prominently in the proceedings instituted by South Africa before the ICJ concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).⁴⁵ One of the constitutive inhumane acts of genocide, if committed with the requisite intent to destroy the protected national, religious, racial, or ethnic group as such, in whole or in part, is the deliberate infliction of conditions of life calculated to bring about its physical destruction in whole or in part.⁴⁶ Human rights organisation Amnesty International concluded in a report published on 5 December 2024 that Israel's conduct in Gaza amounts to genocide.⁴⁷

The arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Israeli Defence Minister Yoav Gallant for alleged war crimes and crimes against humanity issued by the International Criminal Court (ICC) three weeks ago also strongly relate to the siege and starvation

⁴³ 'Nakba Day Statement' (*Diakonia IHL Centre*, 15 May 2024) <<https://www.diakonia.se/ihl/news/nakba-day-statement/>> accessed 12 December 2024; Joseph Krauss, 'Palestinians Mark 76 Years of Dispossession as a Potentially Even Larger Catastrophe Unfolds in Gaza' *The Associated Press* (Jerusalem, 14 May 2024) <<https://apnews.com/article/israel-palestinians-hamas-war-nakba-history-b5cea9556e516655c25598d5db54192>> accessed 12 December 2024; Noreen Nasir, 'Palestinians Recount Painful History with War in Gaza as a Reminder' *The Associated Press* (New York, 16 May 2024) <<https://apnews.com/article/nakba-gaza-israel-hamas-war-a58e1a4f7fd224e1adfedf0da9b3608e>> accessed 12 December 2024.

⁴⁴ GC IV art 33(1); AP I art 75(2)(d); CIHL r 103.

⁴⁵ 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)' (*ICJ*) <<https://www.icj-cij.org/case/192>> accessed 12 December 2024.

⁴⁶ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 art II(c).

⁴⁷ "'You Feel Like You Are Subhuman': Israel's Genocide Against Palestinians in Gaza' (*Amnesty International*, 5 December 2024) <<https://www.amnesty.org/en/documents/mde15/8668/2024/en/>> accessed 12 December 2024.

of Gaza.⁴⁸ They are being charged with the war crime of starvation as a method of warfare (over the denial of essential resources to Gaza at least during the time period from 8 October 2023 until 20 May 2024); the crime against humanity of murder (in relation to civilian deaths from starvation and dehydration); the crime against humanity of other inhumane acts (in relation to the denial of medical supplies and medicine); and the crime against humanity of persecution (since the noted conduct resulted in depriving a considerable part of the civilian population of their fundamental rights), amongst others.⁴⁹ The Court also found that similar conduct ‘appears to be ongoing’.⁵⁰

Finally, the electricity and internet blackout throughout much of North Gaza, in addition to more than a year of attacks on Palestinian journalists and access restrictions for foreign media and international fact-finding missions, means that the international community does not have a full picture of what is happening on the ground.⁵¹ This obscures further possible serious violations of international law and renders documentation and accountability efforts much more difficult.⁵²

⁴⁸ ‘Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel’s Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant’ (*ICC*, 21 November 2024) <<https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>> accessed 12 December 2024; ‘ICC Arrest Warrants Against Israeli and Hamas Officials’ (*Diakonia IHL Centre*, 22 November 2024) <<https://www.diakonia.se/ihl/news/icc-arrest-warrants-against-israeli-and-hamas-officials/>> accessed 12 December 2024. The ICC also issued an arrest warrant for Mohammed Deif, the Commander-in-Chief of Hamas’ military wing, the Al-Qassam Brigades. ‘Situation in the State of Palestine: ICC Pre-Trial Chamber I Issues Warrant of Arrest for Mohammed Diab Ibrahim Al-Masri (Deif)’ (*ICC*, 21 November 2024) <<https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim>> accessed 12 December 2024.

⁴⁹ Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant (n 48).

⁵⁰ *ibid.*

⁵¹ McKernan and Tantesh (n 19); ‘Journalist Casualties in the Israel-Gaza War’ (*Committee to Protect Journalists*, 11 December 2024) <<https://cpj.org/2024/12/journalist-casualties-in-the-israel-gaza-conflict/>> accessed 12 December 2024; ‘One Year in Gaza: How Israel Orchestrated a Media Blackout on a Region at War’ (*Reporters Without Borders*, 3 October 2024) <<https://rsf.org/en/one-year-gaza-how-israel-orchestrated-media-blackout-region-war>> accessed 12 December 2024.

⁵² ‘Call to Protect Civil Society Watchdogs in Israel-Palestine on Human Rights Day’ (*Diakonia IHL Centre*, 10 December 2024) <<https://www.diakonia.se/ihl/news/call-to-protect-civil-society-israel-palestine-human-rights-day/>> accessed 12 December 2024.

Legal consequences for third States

Israel's conduct in North Gaza also has implications for third States. All States have an obligation to ensure respect for IHL.⁵³ This entails both a negative and a positive obligation: States must neither encourage nor aid or assist violations of IHL, and they must take steps to bring ongoing wrongful conduct to an end and to prevent it from occurring.⁵⁴

States also have an obligation under customary international law to prevent crimes against humanity, and an obligation both under customary international law and under the Genocide Convention to prevent genocide.⁵⁵

States have been put on notice that there are serious risks of IHL violations, crimes against humanity, and genocide being committed by Israel in Gaza *at least* on the basis that:

- South Africa instituted proceedings against Israel before the ICJ due to alleged violations of the Genocide Convention in December 2023 and the Court issued orders on provisional measures in January 2024, March 2024, and May 2024;⁵⁶ and
- The ICC issued arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Israeli Defence Minister Yoav Gallant for alleged war crimes and crimes against humanity committed at least between October 2023 and May 2024, with similar conduct allegedly ongoing.⁵⁷

Concretely, States should suspend the transfer of weapons and military equipment to Israel whenever there remains a risk that they will be used to commit violations of international law.⁵⁸ They should also attempt to influence Israel's conduct so as to bring it in line with its international

⁵³ Common art 1 to the GCs; CIHL r 144.

⁵⁴ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (GC I) Commentary of 2016 to art 1 paras 158-173; Commentary to CIHL r 144.

⁵⁵ International Law Commission (ILC), 'Draft Articles on Prevention and Punishment of Crimes Against Humanity' (2019) Yearbook Intl L Com Vol II Pt 2 arts 3(2), 4; Genocide Convention art I; Guénaël Mettraux, *International Crimes: Law and Practice, Volume I: Genocide* (OUP 2019) 66-120. See 'ICJ Contentious Case South Africa v. Israel' (*Diakonia IHL Centre*, 23 February 2024) <<https://www.diakonia.se/ihl/news/icj-questions-answers-contentious-proceedings-southafrica-israel-genocide-convention/>> accessed 12 December 2024; '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 12 December 2024.

⁵⁶ South Africa v. Israel (n 4545).

⁵⁷ Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant (n 4848).

⁵⁸ This also emanates from the findings of the ICJ in its Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, which was rendered on 19 July 2024. Advisory Opinion (n 13) [273]-[279]. See 'Responsibility of Third Parties Emanating from the Findings of the ICJ's Advisory Opinion of 19 July 2024' (*Diakonia IHL Centre*, 22 October 2024) <<https://www.diakonia.se/ihl/news/icj-advisory-opinion-legal-consequences-third-states-international-organisations/>> accessed 12 December 2024.

obligations, for example by means of denouncing violations, withdrawing diplomats, or suspending economic relations.⁵⁹

Furthermore, the prohibition of genocide, the prohibition of crimes against humanity, and the basic rules of IHL are also peremptory norms of general international law from which no derogation is permitted.⁶⁰ In case of serious breaches of peremptory norms, legal consequences follow for third States under the general law of State responsibility – a duty not to recognise as lawful the situation resulting from the serious breach, a duty not to render aid or assistance in its maintenance, and a duty to cooperate by lawful means to bring the serious breaches of peremptory norms to an end.⁶¹ Peremptory norms of general international law also give rise to obligations erga omnes, meaning that all States have a legal interest to invoke the international responsibility of the State that is committing the violation – for example, by means of instituting or joining proceedings before the ICJ.⁶² It is increasingly accepted that third States that are not directly injured may take countermeasures in response to violations of erga omnes norms.⁶³

Turning to individual criminal responsibility, all States must investigate and, where appropriate, prosecute war crimes allegedly committed by their military, their nationals, or on their territory, as well as all other war crimes over which they have jurisdiction.⁶⁴ In respect of IHL violations that amount to grave breaches of the universally ratified Fourth Geneva Convention, such as the forcible transfer or deportation of protected persons, States must either prosecute alleged perpetrators or hand them over for prosecution in another country.⁶⁵ Those States that are party to the ICC must fully cooperate with the Court’s investigation into the Situation in Palestine and hand over persons against whom arrest warrants are pending.⁶⁶

⁵⁹ Eg Cordula Droege and David Tuck, ‘Fighting Together and International Humanitarian Law: Ensuring Respect for the Law and Assessing Responsibility for Violations (2/2)’ (*ICRC Humanitarian Law & Policy Blog*, 17 October 2017) <<https://blogs.icrc.org/law-and-policy/2017/10/17/fighting-together-international-humanitarian-law-ensuring-respect-law-assessing-responsibility-violations-2-2/>> accessed 12 December 2024; Jinan Bastaki, ‘The “Capacity to Influence”, State Responsibility, and the Obligation to Prevent Genocide’ (*Opinio Juris*, 30 March 2024) <<https://opiniojuris.org/2024/03/30/the-capacity-to-influence-state-responsibility-and-the-obligation-to-prevent-genocide/>> accessed 12 December 2024.

⁶⁰ International Law Commission (ILC), ‘Report of the International Law Commission on its Seventy-Third Session 18 April–3 June and 4 July–5 August 2022’ (Advance Version of 12 August 2022) UN Doc A/77/10 Conclusion 23.

⁶¹ ILC, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries’ (2001) Yearbook Intl L Com Vol II Pt 2 (ARSIWA) arts 40, 41.

⁶² Report of the International Law Commission on its Seventy-Third Session (n 60) Conclusion 17; ARSIWA art 48(1).

⁶³ ARSIWA art 54; Miles Jackson and Federica Paddeu, ‘The Countermeasures of Others: When Can States Collaborate in the Taking of Countermeasures?’ (2024) 118 AJIL 231.

⁶⁴ CIHL r 158.

⁶⁵ GC IV arts 146(2), 147.

⁶⁶ ICC Statute arts 86, 89.

Third States should also ensure that humanitarian actors and civil society can continue to provide vital humanitarian assistance and document serious and systematic violations of international law in Gaza.⁶⁷

⁶⁷ Call to Protect Civil Society Watchdogs (n 52).