

Humanitarian Aid to the Gaza Strip and International Law

Legal Memo

Adv. Avraham (Russell) Shalev

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According to reports, the Chief Military Advocate General opposes the humanitarian aid distribution plan promoted by the political echelon.¹ The political echelon stipulates that humanitarian aid will be distributed exclusively in areas under Israeli control to prevent Hamas from seizing it. The military would first relocate the Gazan population to designated areas where aid would be distributed. The Chief of Staff claims this requirement contradicts the legal stance of the Chief Military Advocate General, who asserts that the IDF is obligated to provide aid to populations that do not evacuate, including areas under Hamas control.

According to this memorandum:

- A siege is a lawful military action anchored in international conventions and customary law.
- A siege whose primary or sole purpose is to starve the civilian population is prohibited.
- International law obligates states to allow humanitarian aid entry **unless there is a serious concern that the enemy will seize it.**
- There is a preference for evacuating the civilian population from the besieged area over providing humanitarian aid.
- According to accepted positions, civilians who refuse to evacuate may be considered affiliated with combatants, allowing restrictions on their access to humanitarian aid.
- International law prohibits transferring aid to areas under Hamas control.

¹ Amir Ettinger, "Netanyahu and Ministers Demanded Changes to the Humanitarian Aid Plan, Chief of Staff: The Legal Position in the IDF Does Not Allow It," Israel Hayom, May 13, 2025, <https://www.israelhayom.co.il/news/politics/article/17948546>

► The Siege

A siege is a lawful military practice enshrined in the Hague Regulations, Geneva Conventions, Additional Protocols, and customary law.² Typically, a siege is employed in urban areas as a less lethal alternative to street-by-street combat. A siege is defined as the encirclement and isolation of enemy forces to prevent supplies and reinforcements, aiming to subdue them.³

The U.S. Department of Defense's Law of War Manual permits besieging enemy forces by cutting off reinforcements, supplies, and communications to force surrender, explicitly allowing starvation as a method to achieve this.⁴ The United Kingdom recognizes sieges as lawful when directed against enemy armed forces and not unarmed towns.⁵

A siege is lawful under the law of armed conflict provided its sole or primary purpose is to defeat the enemy, not to deliberately starve civilians.⁶ As with any "attack" under the law of armed conflict, collateral harm to civilians must be proportionate to the military advantage. Article 54(1) of Additional Protocol I to the Geneva Conventions prohibits starvation of civilians as a method of warfare. Thus, a siege whose sole or primary purpose is to cause civilian starvation is unlawful.⁷ While Israel is not a signatory to Additional Protocol I, it is bound by its provisions to the extent they reflect customary law.

There is no universally accepted definition in international law for a siege's "sole or primary purpose," so it can be inferred from humanitarian benchmarks for civilian protection.⁸ A party imposing a siege that allows evacuation or provides humanitarian aid cannot be deemed to have the primary purpose of starving civilians.

The existence of Israeli plans to evacuate populations to safe areas alongside supervised aid distribution in southern Gaza indicates that the siege's purpose is to defeat Hamas, not to starve civilians.⁹

2 James Kraska, *Siege*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 2 (2009)

3 Jeroen C. van den Boogaard & Arjen Vermeer, *Precautions in Attack and Urban and Siege Warfare*, in 20 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 2017, at 163, 165 (Terry D. Gill et al. eds., 2019); YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 133 (3d ed. 2016)

4 U.S. Dep't of Def., *Law of War Manual* § 5.19.1, at 320–21 (2023), <https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/O/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF>

5 Ministry of Def., *The Joint Service Manual of the Law of Armed Conflict* ¶ 5.34.1, at 87 (2004) (U.K.), <https://assets.publishing.service.gov.uk/media/5a7952bfe5274a2acd18bda5/JSP3832004Edition.pdf>

6 *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* 27 (Louise Doswald-Beck ed., 1995); *HPCR Manual on International Law Applicable to Air and Missile Warfare* 369 (2013), <https://doi.org/10.1017/CBO9781139525275>.

7 Emanuela-Chiara Gillard, *Sieges, the Law and Protecting Civilians* 3 (2019), p.3-4

8 Gloria Gaggioli, *Joint Blog Series on International Law and Armed Conflict: Are Sieges Prohibited under Contemporary IHL?*, EUR. J. INT'L L.: TALK! (Jan. 30, 2019), <https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl>

9 Agnieszka Szpak, *Evolution of the International Humanitarian Law Provisions on Sieges*, in 22 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 2019, at 11-12.



Conditions for the Entry of Humanitarian Aid

Article 23 of the Fourth Geneva Convention mandates free passage of essential food, clothing, and medical supplies for children under 15, pregnant women, and mothers. The provision states:

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

- (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 Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which allows their free passage shall be entitled to prescribe the technical arrangements under which such passage is permitted.

Thus, aid provision is contingent on ensuring it reaches civilians and does not provide a military or economic advantage to the enemy. There is substantial evidence that Hamas diverts, steals, and hoards aid entering Gaza at the expense of civilians.¹⁰

Article 70(1) of Additional Protocol I (API) obligates parties to a conflict, subject to their agreement, to facilitate rapid and unimpeded aid to civilian populations in enemy-controlled areas, provided the aid is humanitarian and impartial. This requires the parties' consent to effective oversight arrangements, without which the provision does not apply.¹¹

Since Israel is not a signatory to API, it is bound only to the extent that it reflects customary law. According to the U.S. and U.K., there is an obligation to allow aid entry provided it is not diverted, effective control over distribution is ensured, and it does not provide a military or economic

10 UNRWA Indicates Hamas Stole Supplies from Its Gaza Premises, Then Walks Back Claim, TIMES ISR. (Oct. 16, 2023), www.timesofisrael.com/un-refugee-agency-says-hamas-stole-fuel-and-medications-from-its-gaza-premises

11 Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 133 (3d ed. 2016)

advantage to the enemy.¹² Article 70(1) prohibits arbitrary or capricious denial of aid but grants states broad discretion to consider security concerns.¹³

Thus, Israel can condition aid provision on distribution in supervised centers where Hamas cannot seize it.

► Civilian Population Evacuation

International law prioritizes evacuating civilians from siege areas over providing humanitarian aid.¹⁴ While Article 70 of API requires aid to be subject to parties' consent, provisions for civilian evacuation are generally considered more binding. From a military perspective, the risks of enemy fighters escaping under the guise of civilian evacuation are often deemed more acceptable than the risk of aid diversion to enemy forces. Evacuation serves a dual purpose: fulfilling humanitarian obligations while removing civilians from active combat zones.¹⁵

One view holds that civilians who refuse to evacuate and remain in siege areas may, in some cases, be considered affiliated with combatants, allowing restrictions on their access to aid.¹⁶ The U.K. adopts this approach, justifying restrictions on aid to civilians who refuse evacuation.¹⁷

During the “Iron Swords” war, evacuation efforts faced consistent refusal by Egypt to open its border, violating its obligations as a signatory to the African Union’s Convention on Refugees.¹⁸ Hamas’s systematic seizure of aid not only exempts Israel from allowing third-party aid transfers but also strengthens the legitimacy and rationale for voluntary migration projects as part of civilian evacuation during wartime, especially absent an Egyptian option.

► Prohibition on Aid to Terrorist Organizations

Israel is prohibited under international law from providing aid to areas under Hamas control. UN Security Council Resolution 1373, adopted under Chapter VII of the UN Charter, obligates all member states to refrain from providing terrorist organizations with “any funds, financial assets, or economic resources or financial or other related services.”¹⁹

12 U.S. DEP’T OF DEFENSE, *Law of War Manual*, § 5.19.3, at 322 (2023); MINISTRY OF DEF., § 9.12.1, at 220.

13 Yoram Dinstein, *The Right to Humanitarian Assistance*, NAVAL COLL. WAR REV., Autumn 2000, at 84, <https://digital-commons.usnwc.edu/nwc-review/vol53/iss4/7>

14 SEAN WATTS, *UNDER SIEGE: INTERNATIONAL HUMANITARIAN LAW AND SECURITY COUNCIL PRACTICE CONCERNING URBAN SIEGE OPERATIONS* 6 (2014), p.18, <http://blogs.law.harvard.edu/cheproject/files/2013/10/CHE-Project-IHL-and-SC-Practice-concerning-Urban-Siege-Operations.pdf>

15 Watts, *supra*

16 Szpak, 14-15.

17 MINISTRY OF DEF., § 5.34.3, at 88

18 *The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa*, Article 1(2).

19 United Nations Security Council (UNSC) Res 1373 (28 September 2001) UN Doc S/RES/1373.

► The Siege in Customary Law

Customary international law is shaped by consistent state practice over time, crystallizing into binding norms. Thus, examining the practical actions of Western states in combat is critical. In international law, reality shapes the law, and theoretical customary law not applied in practice does not bind states.²⁰

- **Second Battle of Fallujah (November–December 2004):** U.S. and British forces fought insurgents linked to Al-Qaeda. Before the assault, a siege was imposed, checkpoints were established, and civilians (except military-age males) were called to leave. Estimates suggest 70%–90% of civilians fled. The Iraqi government blocked roads to and from Fallujah, preventing civilian return. U.S. forces cut electricity and water to encourage evacuation and blocked Red Cross and Red Crescent aid convoys due to concerns over supply smuggling.²¹
- **Battle of Mosul (October 2016–July 2017):** Iraqi forces and a U.S.-led coalition fought ISIS militias. U.S. officials described it as one of the toughest urban battles since World War II. Mosul was cut off from supply lines, and bridges used for aid were destroyed, causing severe civilian food shortages. Aid groups could not reach ISIS-controlled areas, and “liberated” areas remained dangerous. Leaflets urged civilians to flee, and ~700,000 residents, a third of the original population, escaped.²²
- **Battle of Marawi (May–October 2017):** A prolonged urban battle in the Philippines left Marawi in ruins. Islamic State-Philippines (IS-P) militias seized the city, smuggling fighters and weapons and building tunnels for the siege. The fighting displaced over 360,000 civilians, with thousands trapped and suffering severe food and water shortages. The military regime isolated the city with checkpoints blocking supplies and movement, causing widespread infrastructure destruction and over 1,100 deaths.²³

Thus, sieges are a widely accepted and lawful combat strategy, applied by states and international coalitions, particularly in urban warfare, where they are often the only practical solution for capturing certain targets. Professor Yoram Dinstein notes:

The broad injunction against sieges involving civilians is unrealistic, in view of the fact that there may be no other method of warfare to bring about the capture of a defended town with a tenacious garrison and impregnable fortifications. This is not to say that the complete freedom of action vouchsafed to a besieging force by customary international law is entirely justified. It is a sensible ‘reversal of customary law’ to deny the besieging force the right to compel civilians to remain in an invested town from which they are trying to escape.²⁴

20 Statute of the International Court of Justice, Article 38(1)(b); International Law Commission, *Draft Conclusions on Identification of Customary International Law* (2018), Conclusion 2

21 Shalev, Avraham Russell, *Besieging International Law: The Gaza Conflict and the Future of Siege Warfare* (July 01, 2024). *San Diego Journal of International Law*, Spring 2025, p.30-32. Available at SSRN: <https://ssrn.com/abstract=5067897>.

22 Ibid., p.32-34

23 Ibid., p.34-36

24 Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 133 (3d ed. 2016), p.135

► Conclusion

The siege on the Gaza Strip, as implemented by Israel, complies with international humanitarian law, provided its primary purpose is to defeat Hamas, not to starve civilians. International law, including the Geneva Conventions and customary law, permits sieges as a lawful military tactic, subject to proportionality and civilian protection obligations. Israel's evacuation plans to safe areas and supervised aid distribution demonstrate commitment to humanitarian principles, while Hamas's systematic seizure of aid justifies restricting supplies to areas under its control. Thus, Israel's policy prioritizing civilian evacuation over aid provision to areas controlled by a terrorist organization aligns with international law, balancing security needs with humanitarian obligations.