

# Besieging International Law: The Gaza Conflict and the Future of Siege Warfare

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## ABSTRACT

The legal boundaries of siege warfare are under renewed scrutiny following Israel's siege of Gaza after the October 7, 2023 Hamas attacks. This analysis explores the intersection of military necessity and humanitarian obligations, assessing whether Israel's tactics conform to established international law or signal a shift toward stricter legal interpretations. Key legal frameworks—including the Geneva Conventions, Hague Regulations, and customary international law—are examined alongside debates on civilian protection, humanitarian aid access, and the prohibition of starvation as a method of warfare. A comparative evaluation of sieges in Gaza and Syria reveals inconsistencies in how international humanitarian law is applied, raising concerns over selective enforcement. Recent actions by the International Court of Justice (ICJ) and the International Criminal Court (ICC) further highlight tensions between legal norms and political influence. These developments prompt critical questions about the future viability of siege warfare as a lawful military strategy and the broader implications for the integrity of international legal institutions.

## I. INTRODUCTION

On October 9, 2023, two days following the deadly Hamas attack on Israel, Israeli Defense Minister Yoav Gallant ordered a “total siege on the Gaza Strip.”<sup>1</sup> He announced that the siege would entirely sever electricity, food, water, and fuel supplies.<sup>2</sup> This measure immediately drew international scrutiny from humanitarian non-governmental organizations (NGOs) and scholars, raising concerns about compliance with the laws of war due to Gaza's dense civilian population.<sup>3</sup> Reports soon emerged that Israeli authorities redirected aid and fuel intended for Gaza, prompting calls to modify siege efforts and facilitate humanitarian assistance.<sup>4</sup> An analysis of food aid delivery data further revealed that civilians in Gaza continued to face

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1. Jared Maslin, *Israel Orders Complete Siege of Gaza*, WALL ST. J. (Oct. 9, 2023), <https://www.wsj.com/livecoverage/israel-hamas-gaza-rockets-attack-palestinians/card/israeli-orders-complete-siege-of-gaza-hEbz58wJocbxoX4gP00N> (last visited July 28, 2024).

2. *Id.*

3. See Rhianna Schmunk, *Food Will Run Out in Days Under Israel's Total Blockade of Gaza, Humanitarian Experts Warn*, CBC NEWS (Oct. 11, 2023, 1:00 AM PDT), <https://www.cbc.ca/news/world/israeli-palestinian-conflict-gaza-blockade-1.6990923> [<https://perma.cc/S3MC-JW3Q>].

4. See Press Release, Security Council, Amid Increasingly Dire Humanitarian Situation in Gaza, Secretary-General Tells Security Council Hamas Attacks Cannot Justify Collective Punishment of Palestinian People, U.N. Press Release SC/15462 (Oct. 24, 2023), <https://press.un.org/en/2023/sc15462.doc.htm> [<https://perma.cc/4UHU-FPQF>].

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significant food insecurity, with the diversion of resources as a contributing factor.<sup>5</sup>

The legal response to Israel's actions was swift and complex. On January 26, 2024, the International Court of Justice (ICJ) issued an order compelling Israel to "take immediate and effective measures to facilitate the provision of urgently needed basic services and humanitarian assistance" to Palestinians in Gaza.<sup>6</sup> Subsequently, on May 20, 2024, the International Criminal Court (ICC) Prosecutor sought arrest warrants against the Israeli Prime Minister and Defense Minister, charging them with the "starvation of civilians as a method of warfare," among other war crimes.<sup>7</sup> These developments signaled a significant escalation in the scrutiny of Israel's military tactics and highlighted growing tensions within international legal frameworks regarding siege warfare.

Siege warfare has long been recognized under international law as a permissible military tactic, governed by the Geneva Conventions and Hague Regulations.<sup>8</sup> However, the response to Israel's siege of Gaza has reignited debates over the legal boundaries of siege warfare and its humanitarian implications. This Article examines Israel's actions through the lens of international humanitarian law, evaluating whether the siege complies with established legal norms or reflects a shift toward stricter standards that could, in practice, limit or even prohibit the use of siege tactics in densely populated areas. This analysis aims to clarify whether Israel's siege is being judged by a universally applied legal standard or a *lex specialis*—a legal doctrine that allows specific rules to override general ones—uniquely crafted for this conflict. The evolving discourse around siege tactics raises fundamental questions about the balance between

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5. Naomi Fliss-Isakov et al., *Food Supplied to Gaza During Seven Months of the Hamas-Israel War*, *ISR. J. HEALTH POL'Y RSCH.*, Feb. 2025, at 10–11, <https://doi.org/10.1186/s13584-025-00668-6>.

6. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*S. Afr. v. Isr.*), Provisional Measures, 2024 I.C.J. ¶ 80 (Jan. 26), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

7. Press Release, Int'l Crim. Ct., Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine (May 20, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

8. See 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 art. 27, Oct. 18, 1907, 36 Stat. 2277 [hereinafter Hague Convention IV].

military necessity and humanitarian protection, and whether emerging legal standards will be applied consistently across future conflicts.

## II. INTERNATIONAL LEGAL STANDARDS ON SIEGE WARFARE: EVACUATION, STARVATION, AND HUMANITARIAN RELIEF

Siege warfare is governed by international treaties, including the 1907 Hague Conventions, the 1949 Geneva Conventions, and the 1977 Additional Protocols, and customary international law.<sup>9</sup> In modern conflicts, sieges are commonly used in urban areas as a less casualty-intensive alternative to the street-by-street combat.<sup>10</sup> Traditional military doctrine advise that attackers maintain a significant numerical advantage over defenders.<sup>11</sup> In contrast, siege warfare typically relies on numerical parity, focusing on containment rather than overwhelming force.<sup>12</sup> International humanitarian law regulates sieges through three key areas: the conduct of hostilities, the prohibition of civilian starvation, and rules governing civilian evacuations.<sup>13</sup>

Scholarly perspectives offer varying definitions of siege warfare, reflecting its evolving humanitarian impact and legal implications. One view describes it as an operational strategy aimed at capturing a fortified area by isolating enemy forces from reinforcements and supplies.<sup>14</sup> Another interpretation defines siege as a method of warfare against urban areas that are difficult to access or heavily defended, necessitating sustained military operations to gain control.<sup>15</sup> A more expansive definition emphasizes the strategic use of starvation, framing the essence of siege warfare as the attempt to capture a location by depriving its defenders and civilian population of essential resources.<sup>16</sup>

International military manuals from the United States, United Kingdom, and France outline the legal parameters for conducting siege warfare under international humanitarian law. The U.S. Department of Defense allows besieging enemy forces by severing reinforcements, supplies, and

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

10. See *id.*

11. See *id.*

12. See *id.* ¶ 3.

13. EMANUELA-CHIARA GILLARD, SIEGES, THE LAW AND PROTECTING CIVILIANS 3 (2019).

14. See Kraska, *supra* note 9, ¶ 1.

15. 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).

16. YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 133 (3d ed. 2016).

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communications to induce surrender, explicitly permitting starvation as a method to compel submission.<sup>17</sup> Similarly, the United Kingdom recognizes siege as a lawful tactic, provided it targets enemy armed forces and not undefended areas, emphasizing that besieging an unprotected town would violate international law.<sup>18</sup> France maintains that sieges are lawful when targeting military objectives and not intended to starve civilians.<sup>19</sup> It mandates the free passage of food, medical supplies, and safe evacuation for vulnerable groups, including the wounded and civilians.<sup>20</sup> It also emphasizes compliance with international humanitarian law principles of distinction and precaution.<sup>21</sup> Collectively, these frameworks underscore the delicate balance in siege warfare between achieving military objectives and protecting civilian populations.

International law imposes specific limitations on siege warfare to safeguard civilians and cultural heritage. Article 27 of the Fourth Hague Convention (HCIV) contains the basic targeting limitation of siege warfare.<sup>22</sup> It requires that during bombardments, all feasible precautions be taken to spare structures dedicated to religion, art, science, charitable purposes, historic monuments, hospitals, and facilities housing the sick and wounded, as long as they are not used for military objectives.<sup>23</sup> The principle of mandates marking protected buildings and informing besieging forces to separate civilian and military targets.<sup>24</sup> However, the directive to take precautions “as far as possible” acknowledges that the besieging force’s

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17. 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-I/O/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF> [<https://perma.cc/6PPZ-3T3Z>].

18. 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> [<https://perma.cc/U3K7-HG3D>].

19. MINISTÈRE DES ARMÉES, MANUEL DE DROIT DES OPÉRATIONS MILITAIRES [MILITARY LAW OPERATIONS MANUAL] § 5.5.4, at 161 (2022) (Fr.), [https://www.defense.gouv.fr/sites/default/files/sga/Manuel%20de%20droit%20des%20op%C3%A9rations%20militaires\\_%C3%A9dition%202022.pdf](https://www.defense.gouv.fr/sites/default/files/sga/Manuel%20de%20droit%20des%20op%C3%A9rations%20militaires_%C3%A9dition%202022.pdf) [<https://perma.cc/3SEZ-UT6X>].

20. *Id.*

21. *Id.*

22. Hague Convention IV, *supra* note 8, art. 27.

23. *Id.*

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

capacity and resources may limit its ability to fully implement these protections.<sup>25</sup>

The Geneva Conventions and Additional Protocols permit sieges but subject them to core humanitarian principles: distinction, proportionality, and humanity.<sup>26</sup> One of the underlying obligations in siege warfare is the prohibition against starvation as a method of combat.<sup>27</sup> Article 54(1) of the Additional Protocol I (API) reinforces this principle by explicitly forbidding the starvation of civilians as a means to achieve military objectives.<sup>28</sup> While this imposes a significant limitation on traditional siege tactics, it does not categorically ban sieges.<sup>29</sup> Although Israel has not ratified the Additional Protocols, it is still bound by Article 54 because its prohibition on the starvation of civilians is recognized as a norm of customary international law.<sup>30</sup>

Article 54(2) of the API forbids targeting and destroying items essential for civilian survival, including agricultural land, livestock, and water infrastructure.<sup>31</sup> However, interpretations of this provision vary. One perspective argues that it not only forbids the destruction of essential goods but also prohibits obstructing their delivery.<sup>32</sup> An alternative interpretation holds that only the physical destruction of resources is prohibited, meaning a besieging force may lawfully block or turn back supplies.<sup>33</sup>

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25. *Id.*

26. See GILLARD, *supra* note 13, at 3–4 (2019) (“[Sieges] must comply with a number of key rules: they must be directed exclusively against military objectives; they must not be indiscriminate; and they must comply with the rule of proportionality. Moreover, in the conduct of all military operations, belligerents must take constant care to spare the civilian population and civilian objects, and besieging and besieged forces must take a number of precautionary measures.”).

27. See *id.* at 2, 9–11.

28. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) art. 54(1), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I], <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf>.

29. See WATTS, *supra* note 24, at 10.

30. RUTH LAPIDOT ET AL., ISRAEL AND THE TWO PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS, at iv-v (2011).

31. Additional Protocol I, *supra* note 28, art. 54(2).

32. Agnieszka Szpak, *Evolution of the International Humanitarian Law Provisions on Sieges*, in 22 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 2019, at 3, 9–10 (Terry D. Gill et al. eds., 2021).

33. See A.P.V. ROGERS, LAW ON THE BATTLEFIELD 141–42 (3d ed. 2012). Protocol I does not classify the starvation of civilians as a grave breach, although it prohibits starvation as a method of warfare (art. 54, ¶ 1). Sieges that block, rather than destroy, civilian food supplies do not necessarily violate these provisions (art. 54, ¶¶ 2, 3). Furthermore, commanders facilitating safe passage for civilians adhere to the Protocol’s

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The International Committee of the Red Cross (ICRC) affirms that Article 54's prohibition on starvation is a recognized and established norm under customary international humanitarian law.<sup>34</sup> According to its study on customary international humanitarian law, the ICRC further clarifies that sieges remain lawful when directed at achieving legitimate military objectives, provided that civilians are not intentionally starved as a method of warfare.<sup>35</sup> Military manuals from France and New Zealand reflect this distinction, allowing sieges targeting military objectives but explicitly prohibiting the use of starvation as a weapon.<sup>36</sup> The study also acknowledges that Israel's *Manual on the Laws of War* interprets the starvation prohibition as requiring that civilians either be allowed to evacuate besieged areas or receive essential supplies during a siege.<sup>37</sup>

The distinction between intentional and incidental civilian starvation is further reinforced in the *San Remo Manual on International Law Application to Armed Conflict at Sea*<sup>38</sup> and the *HPCR Manual on International Law Relating to Air and Missile Warfare*.<sup>39</sup> Although no definitive criteria exist to affirm whether the "sole or primary purpose" of a siege is to starve civilians, humanitarian measures undertaken by the besieging force can provide critical context.<sup>40</sup> If the besieging party facilitates civilian evacuations

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protections (art. 51, ¶ 7; art. 58), and relief actions require the consent of all involved parties (art. 70). *Id.*

34. 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES 186 (2005).

35. *Id.* at 188. For a summary of opposing views, see GILLARD, *supra* note 26, at 10–11 (2019).

36. HENCKAERTS & DOSWALD-BECK, *supra* note 34, at 188; see MINISTÈRE DES ARMÉES, *supra* note 19, § 5.5.4, at 161; see 4 DEF. FORCE, MANUAL OF ARMED FORCES LAW: LAW OF ARMED CONFLICT § 8.8.27 (2d ed. 2019) (N.Z.).

37. HENCKAERTS & DOSWALD-BECK, *supra* note 34, at 188.

38. SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA 27 (Louise Doswald-Beck ed., 1995) [hereinafter SAN REMO MANUAL] ("The declaration or establishment of a blockade is prohibited if it has the sole purpose of starving the civilization population or denying it other objects essential for its survival.").

39. HPCR MANUAL ON INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE 369 (2013) [hereinafter HPCR MANUAL] ("The establishment or maintenance of an aerial blockade is prohibited if its sole or primary purpose is to starve the civilian population or to deny that population other objects essential for its survival."), <https://doi.org/10.1017/CBO9781139525275>.

40. 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> [<https://perma.cc/J27D-U9XM>].

or permits the delivery of humanitarian aid, it weakens any presumption that the primary intent is to use starvation as a method of warfare.<sup>41</sup>

Additionally, the Geneva Conventions and API also impose obligations regarding the evacuation of civilians. Article 15 of the First Geneva Convention (GCI) allows parties to a conflict to arrange for the removal or exchange of wounded and sick individuals from besieged or encircled areas, as well as to facilitate the passage of medical and religious personnel along with essential equipment.<sup>42</sup> Article 18 of the Second Geneva Convention (GCII) mirrors this provision, specifically applying it to evacuations carried out by sea.<sup>43</sup> Article 17 of the Fourth Geneva Convention (GCIV) expands these obligations by focusing on vulnerable civilian populations, including the wounded, sick, infirm, children, mothers, and the elderly.<sup>44</sup> It encourages parties to “endeavor to conclude . . . local arrangements” for civilian evacuation, though the provision is non-binding.<sup>45</sup>

Article 23 of the Fourth Geneva Convention mandates the free passage of essential food, clothing, and medical supplies for children under fifteen, expectant mothers, and maternity cases.<sup>46</sup> These limitations aim to ensure that humanitarian aid does not bolster enemy capabilities.<sup>47</sup> The provision further mandates “constant surveillance” to ensure that supplies reach their intended recipients.<sup>48</sup> Humanitarian aid obligations are conditional and do not impose a duty upon a party to supply aid to enemy civilians.<sup>49</sup> However, the free passage of food and supplies provided by third parties is required unless there are valid security concerns that justify withholding them.<sup>50</sup>

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41. *See id.*

42. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 15, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention I], <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-970-English.pdf>.

43. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 18, Aug. 12, 1949, U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Geneva Convention II], <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-971-English.pdf>.

44. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 17, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV], <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-973-English.pdf>.

45. *Id.* art. 17; *see* Szpak, *supra* note 32, at 11–12.

46. *Id.* art. 23.

47. JEAN S. PICTET, THE GENEVA CONVENTIONS OF 12 AUGUST 1949 COMMENTARY 180 (1958), <https://www.legal-tools.org/doc/7d971f>.

48. *Id.* at 183.

49. *See* Yoram Dinstein, *The Right to Humanitarian Assistance*, NAVAL COLL. WAR REV., Autumn 2000, at 77, 83, <https://digital-commons.usnwc.edu/nwc-review/vol53/iss4/7>.

50. *See id.* at 83–84; *see* Geneva Convention IV, *supra* note 44, art. 23.



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Article 70 of the API expands provisions related to humanitarian relief obligations to civilian populations in areas controlled by enemy forces.<sup>51</sup> The ICRC recognizes Article 70 as customary international law,<sup>52</sup> requiring aid for all civilians, with priority for children, expectant mothers, maternity cases, and nursing mothers.<sup>53</sup> However, the delivery of such aid is contingent upon the consent of the parties involved.<sup>54</sup> This framework balances the need for humanitarian access with respect for state sovereignty, addressing concerns over external interference disguised as impartial aid.<sup>55</sup>

The *ICRC Commentaries on the Additional Protocols*<sup>56</sup> and the *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*<sup>57</sup> offer authoritative interpretations on the obligations surrounding humanitarian relief under Article 70 of the API. Both assert that parties to a conflict must grant consent for humanitarian relief operations when certain conditions are met, reinforcing the principle that such consent cannot be withheld arbitrarily.<sup>58</sup> Article 70(3) outlines those permissible conditions under which parties may regulate the passage of relief.<sup>59</sup> Parties may establish technical protocols, including inspections, to secure aid deliveries; mandate that distribution is overseen by a neutral authority to ensure impartiality; and prevent the diversion or delay of aid, unless such actions are urgently required to benefit the civilian population.<sup>60</sup> These measures aim to balance state security concerns with the obligation to ensure that essential humanitarian assistance reaches civilians in need.

Military doctrines vary significantly regarding the discretion allowed in restricting humanitarian assistance during armed conflicts. Canada aligns with the ICRC position, emphasizing that parties to a conflict must facilitate

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51. See Additional Protocol I, *supra* note 28, art. 70.

52. HENCKAERTS & DOSWALD-BECK, *supra* note 34, at 193–94.

53. Elżbieta Mikos-Skuza, *Siege Warfare in the 21 Century from the Perspective of International Humanitarian Law*, 8 WROCLAW REV. L. ADMIN. & ECON. 319, 327 (2018), <https://doi.org/10.1515/wrlac-2018-0050>.

54. Additional Protocol I, *supra* note 28, art. 70.

55. See Mikos-Skuza, *supra* note 53, at 327.

56. See CLAUDE PILLOUD ET AL., COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 819–20 (Yves Sandoz et al. eds., 1987).

57. See DAPO AKANDE & EMANUELA-CHIARA GILLARD, OXFORD GUIDANCE ON THE LAW RELATING TO HUMANITARIAN RELIEF OPERATIONS IN SITUATIONS OF ARMED CONFLICT 16 (2016), <https://www.elac.ox.ac.uk/wp-content/uploads/2022/06/oxfordguidancepdfpdf.pdf>.

58. See PILLOUD ET AL., *supra* note 56, at 819–20; see GILLARD, *supra* note 57, at 16.

59. Additional Protocol I, *supra* note 28, art. 70(3).

60. *Id.*

the “rapid and unimpeded passage” of all relief consignments, equipment, and personnel.<sup>61</sup> In contrast, the United States and the United Kingdom adopt a more restrictive approach. They argue that a besieging party is only obligated to allow aid if it can guarantee the relief will not be diverted, maintain effective control over distribution, and ensure the assistance will not confer a military or economic advantage to the enemy.<sup>62</sup> Article 70(1) of the API prohibits the denial of humanitarian relief on arbitrary or capricious grounds, yet allows significant discretion for states to assess security concerns.<sup>63</sup> This divergence in interpretation has led some scholars to argue that a universal right to humanitarian assistance has yet to solidify as binding positive international law.<sup>64</sup>

International law generally prioritizes civilian evacuation over the delivery of humanitarian relief during sieges.<sup>65</sup> Although Article 70 of the API requires that humanitarian assistance be subject to the consent of the parties, provisions for civilian evacuation are generally more obligatory.<sup>66</sup> From a military perspective, the risks associated with enemy combatants escaping under the guise of civilian evacuation are often considered more acceptable than the potential diversion of humanitarian aid to enemy forces.<sup>67</sup> Evacuation also serves the dual purpose of fulfilling humanitarian obligations while distancing civilians from active combat zones.<sup>68</sup> Some interpretations suggest that civilians who refuse evacuation and remain in besieged areas may, under certain circumstances, be regarded as aligned with combatants, potentially limiting their entitlement to humanitarian aid.<sup>69</sup> The United Kingdom echoes this view, asserting that when civilians refuse evacuation, imposing restrictions on aid may be justified.<sup>70</sup>

Under Article 58 of Additional Protocol I (API), siege operations are classified as attacks, requiring parties to evacuate civilians from combat zones and take all feasible precautions to ensure their protection.<sup>71</sup> Facilitating the evacuation of civilians from besieged areas constitutes one of the most critical precautionary measures to mitigate harm.<sup>72</sup> In accordance with

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61. LAW OF ARMED CONFLICT AT THE OPERATIONAL AND TACTICAL LEVELS § 614(7) (2001) (Can.).

62. U.S. DEP’T OF DEFENSE, *supra* note 17, § 5.19.3, at 322 (2023); MINISTRY OF DEF., *supra* note 18, § 9.12.1, at 220.

63. *See* Dinstein, *supra* note 49, at 84.

64. *Id.* at 77.

65. *See* WATTS, *supra* note 24, at 18.

66. *Id.*

67. *Id.*

68. *Id.*

69. Szpak, *supra* note 32, at 14–15.

70. MINISTRY OF DEF., *supra* note 18, § 5.34.3, at 88.

71. GILLARD, *supra* note 13, at 7, 12.

72. Mikos-Skuza, *supra* note 53, at 326.

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the principle of proportionality, commanders overseeing a siege must continuously evaluate whether the anticipated military advantage justifies the potential harm to civilians.<sup>73</sup> Article 102(b) of the *San Remo Manual* and Article 157(b) of the *HPCR Manual* both emphasize the necessity of ongoing assessments to reduce civilian casualties during sieges.<sup>74</sup>

Although treaty law for non-international armed conflicts is less comprehensive, several interpretations contend that besieging parties bear obligations similar to those in international conflicts.<sup>75</sup> In such cases, Common Article 3 of the Geneva Conventions allows impartial humanitarian organizations, such as the ICRC, to offer services to the parties involved.<sup>76</sup> However, acceptance remains at the discretion of the parties, who may lawfully refuse those offers.<sup>77</sup>

The prohibition on using starvation as a method of warfare applies to international armed conflicts under the API<sup>78</sup> and to non-international armed conflicts under the Additional Protocol II (APII).<sup>79</sup> Despite this broad application, the 1998 Rome Statute classifies the use of starvation as a war crime only when committed during an international armed conflict.<sup>80</sup> Notably, Israel has not ratified the Rome Statute, limiting its direct legal obligations under this specific framework.<sup>81</sup>

### III. EVOLVING STANDARDS: U.N. SECURITY COUNCIL RESPONSES TO SIEGE WARFARE IN SYRIA

Siege warfare has been a defining feature of the conflict in Syria, resulting in a severe humanitarian crisis and heightened legal scrutiny.<sup>82</sup> In

73. See Additional Protocol I, *supra* note 28, art. 51(5)(b).

74. SAN REMO MANUAL, *supra* note 38, at 27; HPCR MANUAL, *supra* note 39, at 369.

75. WATTS, *supra* note 24, at 1, 5.

76. Geneva Convention IV, *supra* note 44, art. 3.

77. Dinstein, *supra* note 49, at 84.

78. Additional Protocol I, *supra* note 28, art. 54(1).

79. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) art. 14, June 8, 1977, 1125 U.N.T.S 609, <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17513-English.pdf>.

80. *Id.* at 85.

81. DINSTEIN, *supra* note 16, at 136.

82. JONATHAN WHITTALL, EVERYBODY'S WAR: THE POLITICS OF AID IN THE SYRIA CRISIS 139–40 (Jehan Bseiso et al. eds., 2021), <https://doi.org/10.1093/oso/9780197514641.003.0007>.

mid-2012, the Syrian army began besieging neighborhoods controlled by armed opposition groups, establishing checkpoints and sniper positions to restrict civilian movement and the flow of essential goods.<sup>83</sup> By 2013, these tactics expanded to areas surrounding Damascus and parts of Homs, severely limiting humanitarian access.<sup>84</sup> As of 2020, U.N. estimates indicate that at least 1.45 million Syrians have suffered besiegement since the start of the conflict.<sup>85</sup> The United Nations defines a besieged area as one “surrounded by armed actors with the sustained effect that humanitarian assistance cannot regularly enter, and civilians, the sick, and wounded cannot regularly exit.”<sup>86</sup> These sieges not only intensified the humanitarian toll but also raised questions about compliance with international humanitarian law, particularly regarding the principles of distinction, proportionality, and the obligation to facilitate humanitarian aid.

The United Nations Security Council adopted several resolutions addressing siege tactics in Syria, emphasizing the urgent need for humanitarian access. Resolutions 2042 (2012) and 2043 (2012) called on Syrian authorities to allow “immediate, full, and unimpeded access of humanitarian personnel” and to “cooperate fully” with the United Nations and humanitarian organizations.<sup>87</sup> Resolution 2139 (2014) intensified these demands, calling on all parties to lift sieges on populated areas, including the Old City of Homs, Nubl, Zahra, Madamiyet Elsham, Yarmouk, Eastern Ghouta, and Darayya.<sup>88</sup> Resolution 2165 (2015) condemned the “continued, arbitrary, and unjustified withholding of consent” for relief operations and criticized the persistent barriers impeding aid deliveries to besieged and hard-to-reach areas.<sup>89</sup>

The Security Council’s resolutions on Syria marked a significant shift from the traditional framework governing humanitarian aid during armed conflicts. As previously discussed, international law typically requires that besieging parties consent to the delivery of humanitarian assistance.<sup>90</sup> However, the Council’s directives appeared to override this requirement, mandating unimpeded aid access without explicit consent from Syrian authorities.<sup>91</sup> This approach raised legal concerns under Article 2(7) of the UN Charter, which prohibits external intervention in a state’s internal

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83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. S.C. Res. 2042, ¶ 3 (Apr. 14, 2012), <https://undocs.org/S/RES/2042>; S.C. Res. 2043, ¶ 3 (Apr. 21, 2012), <https://undocs.org/S/RES/2043>.

88. S.C. Res. 2139, ¶ 3 (Feb. 22, 2014), <https://undocs.org/S/RES/2139>.

89. S.C. Res. 2165, ¶ 2 (July 14, 2014), <https://undocs.org/S/RES/2165>.

90. See Additional Protocol I, *supra* note 28, art. 70.

91. Szpak, *supra* note 32, at 11.

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affairs.<sup>92</sup> Nevertheless, the Security Council justified its position by framing Syria's humanitarian crisis as transcending domestic boundaries.<sup>93</sup> The Council framed the scale of civilian suffering, particularly in besieged areas, as an issue of international concern, thereby justifying its authority to intervene in what would otherwise be regarded as internal matters.<sup>94</sup>

Despite the Security Council's assertive position, its resolutions on Syria do not indicate a substantive change in international law governing siege warfare.<sup>95</sup> Rather than establishing new legal obligations or outright prohibiting sieges, the resolutions reaffirm existing international humanitarian law principles, emphasizing civilian protection and humanitarian access.<sup>96</sup> The Council's actions reflect a political consensus condemning parties that violate international humanitarian law during sieges, particularly when civilian suffering is exacerbated by restricted aid.<sup>97</sup> This approach highlights growing international intolerance for the humanitarian toll of urban sieges, while stopping short of altering the legal framework.<sup>98</sup> Ultimately, the resolutions highlight the tension between legal norms and political action, illustrating how the Security Council can exert influence without formally expanding international law.

#### IV. THE 2023 HAMAS ATTACKS AND GAZA CONFLICT

On October 9, 2023, Prime Minister Netanyahu outlined the primary objectives of Israel's military operation in Gaza.<sup>99</sup> These included dismantling Hamas's military and governmental infrastructure, securing the release of Israeli hostages, and mitigating security threats posed by Gaza to nearby Israeli communities.<sup>100</sup> That same day, Israeli Defense Minister Yoav Gallant announced a comprehensive closure of the Gaza Strip, restricting

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92. See WATTS, *supra* note 24, at 21.

93. See *id.*

94. *Id.*

95. *Id.* at 21–22.

96. *Id.*; Szpak, *supra* note 32, at 23.

97. See WATTS, *supra* note 24, at 21–22.

98. Szpak, *supra* note 32, at 23.

99. See Press Release, Benjamin Netanyahu, Israeli Prime Minister, Ministry of Foreign Affs., Statement Following the Escalation in the Israel-Hamas Conflict (Oct. 9, 2023), <https://www.gov.il/en/pages/statement-by-prime-minister-benjamin-netanyahu-9-oct-2023>.

100. *Id.*

the entry of essential supplies, including food, water, and fuel.<sup>101</sup> Following two weeks of international diplomatic pressure, Israel modified the closure to allow limited humanitarian aid.<sup>102</sup> On October 18, Israel permitted the delivery of food, water, and medicine to a designated safe zone in western Khan Younis, coordinated by the United Nations.<sup>103</sup> President Biden also announced that twenty food trucks would enter Gaza from Egypt.<sup>104</sup>

Humanitarian relief efforts surged during the temporary ceasefire on November 24–30, 2023.<sup>105</sup> On November 28, U.S. National Security Advisor Jake Sullivan announced that over 2,000 aid trucks had entered Gaza since October 21.<sup>106</sup> When hostilities resumed on December 1, Israel initially suspended aid deliveries but reversed the decision following statements from White House National Security spokesman John Kirby.<sup>107</sup> According to the Israeli Coordination of Government Activities in the Territories (COGAT), approximately 3,400 aid trucks entered Gaza in December, followed by an additional 5,000 in January.<sup>108</sup> That same month, Jordan and France began airdropping humanitarian and medical aid into

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101. See Jared Malsin, *Israel Orders Complete Siege of Gaza*, WALL ST. J. (Oct. 8, 2023, 3:17 AM), <https://www.wsj.com/livecoverage/israel-hamas-gaza-rockets-attack-palestinians/card/israeli-orders-complete-siege-of-gaza-hEbz58wJocbxoX4gP00N>.

102. David Gritten, *UN Says ‘Trickle’ of Aid Reaches North Gaza, as Israel Denies Blocking Access*, BBC NEWS (Oct. 16, 2024), <https://bbc.com/news/articles/czxdzynrp61o> [<https://perma.cc/4VYL-Y6HR>].

103. See John Reed et al., *Joe Biden Warns Israel to Avoid 9/11 ‘Mistakes.’* FIN. TIMES (Oct. 18, 2023), [www.ft.com/content/3168166a-4d0b-429f-88b4-be8d6dd36db9](https://www.ft.com/content/3168166a-4d0b-429f-88b4-be8d6dd36db9) [<https://perma.cc/UY87-B67W>].

104. *Biden Says Israel Agreed Humanitarian Assistance Can Move from Egypt to Gaza*, ABC NEWS (Oct. 18, 2023, 8:27 AM), [abcnews.go.com/International/live-updates/israel-gaza-live-updates/biden-says-israel-agreed-humanitarian-assistance-can-move-from-egypt-to-gaza-104072768](https://abcnews.go.com/International/live-updates/israel-gaza-live-updates/biden-says-israel-agreed-humanitarian-assistance-can-move-from-egypt-to-gaza-104072768) [<https://perma.cc/Q57J-J3TE>].

105. *UN Delivers More Aid into Gaza on First Day of Humanitarian Pause*, UN NEWS (Nov. 24, 2023), <https://news.un.org/en/story/2023/11/1143957> [<https://perma.cc/RCL9-JWHG>].

106. Press Release, Jake Sullivan, National Security Advisor, The White House, Statement on Airlift of Critical Humanitarian Supplies to Egypt to Support Aid Delivery in Gaza (Nov. 28, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/28/statement-from-national-security-advisor-jake-sullivan-on-airlift-of-critical-humanitarian-supplies-to-egypt-to-support-aid-delivery-in-gaza> [<https://perma.cc/9B2Y-CB5B>].

107. *See Hostages Held in Gaza Won’t Be Released Until Friday, Israeli Official Says*, WASH. POST (Nov. 22, 2023), [www.washingtonpost.com/world/2023/11/22/israel-hamas-war-news-hostages-gaza-palestine](https://www.washingtonpost.com/world/2023/11/22/israel-hamas-war-news-hostages-gaza-palestine) [<https://perma.cc/AD3A-CKPB>].

108. *Since the Start of the War, over 14,000 Trucks Were Transferred to the Gaza Strip*, TIMES ISR. <https://www.timesofisrael.com/israel-says-gaza-has-received-almost-14000-trucks-of-aid-since-start-of-war>.

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Gaza.<sup>109</sup> COGAT reported continued increases in aid deliveries, with 2,112 food trucks entering Gaza in February, 3,615 in March, 4,829 in April, and 5,258 in May.<sup>110</sup> By July 2024, over 700,000 tons of aid—including food, water, shelter equipment, medical supplies, fuel, and cooking gas—had been delivered on more than 38,000 trucks.<sup>111</sup>

On April 2, 2024, the Israeli government detailed its humanitarian efforts in a preliminary response to a petition filed by five NGOs before the Supreme Court of Israel regarding humanitarian relief.<sup>112</sup> The government asserted that it imposes no restrictions on the entry of essential aid—including food, water, medical supplies, and shelter—and actively facilitates distribution, subject to security checks.<sup>113</sup> To manage these efforts on the ground, the Israel Defense Forces (IDF) utilize Population Officers, known as CALIM, who are embedded within operational units at various command levels, including brigade, division, and battalion.<sup>114</sup> Established in 2010, CALIM officers receive specialized training to manage civilian populations and advise field commanders on humanitarian considerations during military operations.<sup>115</sup> They are also responsible for facilitating the movement of international organizations and local emergency teams operating within Gaza.<sup>116</sup> Beyond field operations, COGAT maintains ongoing communication with U.S., Egyptian, and UN representatives to expand aid delivery and address logistical challenges.<sup>117</sup> To further streamline coordination, the Gaza Coordination and Liaison Administration (CLA Gaza) processes

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109. *French, Jordanian Airforces Drop Medical Aid to Gaza-Elysee*, REUTERS (Jan. 5, 2024, 9:16 AM), [www.reuters.com/world/middle-east/french-jordanian-airforces-drop-medical-aid-gaza-elysee-2024-01-05](https://www.reuters.com/world/middle-east/french-jordanian-airforces-drop-medical-aid-gaza-elysee-2024-01-05) [https://perma.cc/S6ZS-87PH].

110. COGAT (@cogatonline), X (June 3, 2024, 9:12 AM), [https://x.com/cogatonline/status/1797662610244194502?t=6q5iL\\_SvgWNFI1ofmNm0kg&s=08](https://x.com/cogatonline/status/1797662610244194502?t=6q5iL_SvgWNFI1ofmNm0kg&s=08) [https://perma.cc/KU7U-DMHF].

111. Coordinator of Gov't Activities in the Territories, Gaza Humanitarian Aid Data, HUMANITARIAN EFFORTS ISRAEL, <https://gaza-aid-data.gov.il/main> (last visited July 28, 2024).

112. *See* Preliminary Response by Respondents, H CJ 2280/24 Gisha v. Government of Israel, ¶ 15, 16 (2024), [https://gisha.org/UserFiles/File/LegalDocuments/HCPetition2024/Excerpts\\_from\\_Respondents\\_response\\_En\\_020424.pdf](https://gisha.org/UserFiles/File/LegalDocuments/HCPetition2024/Excerpts_from_Respondents_response_En_020424.pdf).

113. *Id.* ¶ 15.

114. *Id.* ¶ 16.

115. *Id.*

116. *Id.*

117. *See* Preliminary Response by Respondents, *supra* note 112, ¶ 18.

requests from international aid organizations operating in the region to streamline coordination.<sup>118</sup>

Since October 21, 2023, aid trucks have entered Gaza through the Nitsana crossing in Egypt, where they undergo inspections before proceeding through the Egyptian Rafah crossing.<sup>119</sup> To expand aid delivery, Israel opened the Kerem Shalom crossing on December 15, 2023, facilitating the entry of goods directly into Gaza.<sup>120</sup> This crossing also supports the transfer of flour shipments from Ashdod Port and humanitarian aid from Jordan via the Allenby Bridge.<sup>121</sup> On March 11, 2024, Israel established a dedicated entry point to expedite the delivery of supplies to northern Gaza, an area facing acute shortages.<sup>122</sup> Israel has also coordinated maritime aid shipments through a temporary pier (JLOTS), working with the World Central Kitchen (WCK), the United Arab Emirates, and the United States.<sup>123</sup> In February 2024, Israel began coordinating airdrops of humanitarian aid with the United States, Jordan, France, the Netherlands, Belgium, and the United Arab Emirates, ensuring supplies reached hard-to-access regions.<sup>124</sup>

From the outset of the conflict, Israel raised concerns that Hamas would divert humanitarian aid away from civilian relief.<sup>125</sup> Hamas, the Palestinian militant group governing Gaza since 2007,<sup>126</sup> has consistently faced allegations from the international community of misappropriating aid to bolster its military operations and infrastructure.<sup>127</sup> In August 2022, an Israeli court sentenced Muhamad Halabi, a Hamas operative affiliated with the World Vision aid organization, to twelve years in prison for redirecting charitable funds and supplies to Hamas operatives and infrastructure, including tunnels and military bases.<sup>128</sup> Halabi and World Vision have denied these accusations, and the trial drew criticism over concerns regarding the sufficiency of evidence and procedural fairness.<sup>129</sup> In 2018, four years earlier, an

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118. *Id.* ¶ 25.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. Preliminary Response by Respondents, *supra* note 112, ¶ 25.

124. *Id.*

125. Gritten, *supra* note 102.

126. Nat'l Counterterrorism Ctr., *Hamas*, INT'L TERRORISM GUIDE, [https://www.dni.gov/nctc/ftos/hamas\\_fto.html](https://www.dni.gov/nctc/ftos/hamas_fto.html) (last updated Sept. 2024).

127. See Isabel Kershner & Dina Hadid, *Israel Charges Aid Group's Gaza Branch Manager with Funneling Funds to Hamas*, N.Y. TIMES (Aug. 4, 2016), <https://www.nytimes.com/2016/08/05/world/middleeast/world-vision-hamas.html> (last visited Feb. 21, 2005).

128. See Yonah Jeremy Bob, *World Vision Defendant El-Halabi Sentenced to 12 Years*, JERUSALEM POST (Aug. 30, 2024), <https://www.jpost.com/israel-news/article-715890> [<https://perma.cc/PL2C-M67A>].

129. *Id.*



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Israeli court sentenced Muhamad Murtaja, an employee of the Turkish humanitarian charity TIKA, to nine years in prison for diverting funds intended for impoverished Gazans to Hamas operatives and their families.<sup>130</sup> Likewise, in 2016, an Israeli court convicted Waheed Borsh, an engineer for the United Nations Development Program (UNDP), for diverting resources to support Hamas's naval forces and construct housing for its senior officials.<sup>131</sup>

On October 16, 2023, the United Nations Relief and Works Agency (UNRWA) reported that Hamas operatives had stolen fuel and medical supplies from its headquarters in Gaza City, though the agency quickly retracted the statement.<sup>132</sup> In a December interview with Al-Jazeera, a Gazan resident accused Hamas of hoarding aid, alleging that supplies were diverted to Hamas operatives while civilians were left without essentials.<sup>133</sup> That same month, the Israel Defense Forces (IDF) released footage showing Hamas operatives stealing humanitarian aid and assaulting Gazan civilians.<sup>134</sup> The Meir Amit Intelligence and Terrorism Center further documented instances of Gazan civilians using open-source platforms to accuse Hamas of diverting aid for military purposes.<sup>135</sup>

In February 2024, David Satterfield, the Biden administration's Gaza humanitarian envoy, stated that Israel had not provided concrete evidence

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130. Ilana Curiel, *Gaza Aid Worker Gets 9 Years for Helping Hamas*, YNETNEWS (July 16, 2018), <https://www.ynetnews.com/articles/0,7340,L-5311104,00.html> [https://perma.cc/8GJP-BLR2].

131. *UNDP Engineer Indicted for Assisting Hamas Terrorist Organization*, EMBASSY OF ISRAEL (Aug. 9, 2016), <https://embassies.gov.il/washington/NewsAndEvents/Pages/UNDP-engineer-indicted-for-assisting-Hamas-9-August-2016.aspx> [https://perma.cc/MKH5-LCE8].

132. *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](http://www.timesofisrael.com/un-refugee-agency-says-hamas-stole-fuel-and-medications-from-its-gaza-premises) (last visited July 28, 2024).

133. *Gaza Woman Tells Al-Jazeera Hamas Stealing All the Aid*, TIMES ISR. (Dec. 7, 2024), [www.timesofisrael.com/liveblog\\_entry/watch-gaza-woman-tells-al-jazeera-hamas-stealing-all-the-aid/](http://www.timesofisrael.com/liveblog_entry/watch-gaza-woman-tells-al-jazeera-hamas-stealing-all-the-aid/) (last visited July 28, 2024).

134. *Caught on Camera: Hamas Terrorists Steal Humanitarian Aid, Beat Civilians*, I24NEWS, (Dec. 11, 2023), [www.i24news.tv/en/news/middle-east/palestinian-territories/1702285314-caught-on-camera-hamas-terrorists-steal-humanitarian-aid-beat-civilians](http://www.i24news.tv/en/news/middle-east/palestinian-territories/1702285314-caught-on-camera-hamas-terrorists-steal-humanitarian-aid-beat-civilians) (last visited July 28, 2024).

135. *See Rifts Between Gazan Civilians and the Hamas Leadership, and Increasing Public Criticism of the Organization*, MEIR AMIT INTEL. INFO. CTR. (Dec. 13, 2023), [https://www.terrorism-info.org.il/app/uploads/2023/12/E\\_259\\_23.pdf](https://www.terrorism-info.org.il/app/uploads/2023/12/E_259_23.pdf) [https://perma.cc/2GGK-ZQFM].

of Hamas diverting aid.<sup>136</sup> However, by April, he acknowledged that Hamas had diverted portions of the aid, marking a significant shift in the U.S. administration's position.<sup>137</sup> Around the same time, Ramzi Awda, Secretary-General of the International Campaign to Combat the Occupation and Apartheid, publicly criticized Hamas.<sup>138</sup> He stated that a significant portion of the aid—over 60% or 70%—ends up with various factions, tribes, and even Hamas, who then sell the items at exorbitant prices.<sup>139</sup> In May, U.S. State Department spokesman Matthew Miller openly condemned Hamas for diverting aid shipments from Jordan that the United Nations had been recovering, explicitly criticizing Hamas's actions as “unacceptable.”<sup>140</sup>

Compounding these concerns, a study conducted by researchers from a consortium of Israeli universities and hospitals analyzed the nutritional content of humanitarian aid delivered to Gaza between January and July 2024.<sup>141</sup> It compared the COGAT registry data for shipments delivered via airdrops and land crossings to the Sphere Standards for food security and nutrition.<sup>142</sup> Their findings revealed that the aid provided—3,004 kilocalories per day—significantly exceeded the Sphere minimum of 2,100 kilocalories.<sup>143</sup> However, the study also identified several obstacles that reduced the effectiveness of aid delivery to Gaza's civilians, including theft, looting, hoarding of food and supplies, and the limited capacity of Israel and international organizations to ensure consistent access.<sup>144</sup>

Considering the factors discussed above, Israel's initial closure actions align with some interpretations of the laws of armed conflict, targeting the military objective of defeating Hamas forces. These actions indicate that

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136. Reuters & Jacob Magid, *US Envoy: Israel Hasn't Provided 'Specific Evidence' Hamas Is Stealing Aid Shipments*, TIMES ISR. (Feb. 17, 2024), <https://www.timesofisrael.com/us-envoy-israel-hasnt-provided-specific-evidence-hamas-is-stealing-aid-shipments> (last visited July 28, 2024).

137. Jacob Magid, *'It's an Established Fact': US Envoy Says Most Gazans at Risk of Imminent Famine*, TIMES ISR. (Apr. 11, 2024, 4:19 AM), <https://www.timesofisrael.com/its-an-established-fact-us-envoy-says-most-gazans-at-risk-of-imminent-famine> (last visited July 28, 2024).

138. *Palestinian Activist Ramzi Awda: Hamas Is Stealing the Aid Coming into Gaza and Re-selling It at Exorbitant Prices; It Rejects Any Political Solution for Gaza That Involves Its Removal from Power*, MIDDLE EAST MEDIA RSCH. INST. (Apr. 4, 2024), <https://www.memri.org/tv/palestinian-activist-ramzi-awda-hamas-stealing-aid-gaza-reselling-high-prices-rejects-solution>.

139. *Id.*

140. Press Release, Matthew Miller, Spokesperson, U.S. Dep't of State (May 2, 2024), <https://2021-2025.state.gov/briefings/department-press-briefing-may-2-2024>.

141. Fliss-Isakov et al., *supra* note 5, at 2, 5.

142. *Id.* at 13.

143. *Id.* at 23.

144. *Id.* at 27–28.

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civilians are not the intended targets of the siege,<sup>145</sup> highlighted by Israel's humanitarian efforts and public statements urging civilian evacuation.<sup>146</sup> However, these efforts to reduce civilian casualties are hampered by limited border access at Egypt, affecting the safe exit of refugees from Gaza.<sup>147</sup> Furthermore, the diversion of humanitarian aid by Hamas introduces additional complexity to the Israeli military operation. To address this, Israel implements specific technical conditions governing the entry of humanitarian aid into Gaza, aimed at preventing the redirection of resources to Hamas combatants.

#### V. INTERNATIONAL REACTIONS AND RESPONSES TO ISRAEL'S SIEGE OF GAZA

Israel's announcement of a comprehensive closure of Gaza elicited strong responses from the international community, including the United Nations and non-governmental organizations (NGOs). Volker Türk, the United Nations High Commissioner for Human Rights, condemned the siege as contrary to international law.<sup>148</sup> He stated that "the imposition of sieges that endanger the lives of civilians by depriving them of goods essential for their survival is prohibited under international humanitarian law."<sup>149</sup> On October 10, 2023, EU High Representative for Foreign Affairs Josep Borrell criticized specific actions by Israel—such as cutting water, electricity, and food to civilians—as violations of international law, echoing the concerns of the United Nations.<sup>150</sup> Jan Egeland, Secretary General for the Norwegian Refugee Council, described the siege as "collective punishment."<sup>151</sup>

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145. Press Release, Israeli Def. Forces, Data Regarding Evacuation of Civilian Population Within Gaza (Jan. 14, 2024), <https://www.idf.il/173002> [<https://perma.cc/WD52-T97S>].

146. *Id.*

147. Alice Jill Edwards, *Egypt's Border with Gaza Must Open to Palestinian Refugees*, FOREIGN POL'Y (Apr. 30, 2024, 10:12 AM), <https://foreignpolicy.com/2024/04/30/gaza-refugees-egypt-border-palestine> [<https://perma.cc/BW22-9BRJ>].

148. *UN Human Rights Chief: Israel's Total Siege of Gaza 'Prohibited' by International Law*, TIMES ISR. (Oct. 10, 2023, 4:38 PM), <https://www.timesofisrael.com/un-human-rights-chief-israels-total-siege-of-gaza-prohibited-by-international-law> [<https://perma.cc/D3DC-Y7UV>].

149. *Id.*

150. Suzanne Lynch & Barbara Moens, *Israel Is Acting Against International Law, Says Borrell*, POLITICO (Oct. 10, 2023, 9:27 PM CET), <https://www.politico.eu/article/israel-acting-against-international-law-says-eu-diplomat-josep-borrell> [<https://perma.cc/2PZY-2QK5>].

151. Rhianna Schmunk, *supra* note 3.

Despite Israel's adjustments to permit humanitarian aid into Gaza, international organizations continued to criticize the operation, highlighting persistent concerns over civilians' access to essential supplies. In April, B'Tselem, an NGO, accused Israel of "manufacturing famine" in Gaza.<sup>152</sup> In March, the European Union Foreign Policy Chief Borrell reiterated his claim that Israel was utilizing starvation as a weapon of war.<sup>153</sup> These claims received widespread support among prominent NGOs,<sup>154</sup> including Human Rights Watch,<sup>155</sup> Amnesty International,<sup>156</sup> the International Federation of Human Rights,<sup>157</sup> and Oxfam.<sup>158</sup>

The international legal community has offered varied perspectives on the siege of Gaza and its legal implications. One analysis underscores the historical use of siege tactics as a military strategy, emphasizing the need for efficiency and "constant care" to minimize civilian suffering.<sup>159</sup> Yet, it also criticizes the tendency of legal frameworks to prioritize civilian protection to an extent that may undermine military effectiveness.<sup>160</sup> Another interpretation of Article 23 of the GCIV argues that while Israel must generally permit humanitarian aid, it retains broad discretion to block aid if there are legitimate security concerns about its diversion to

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152. B'TSELEM, MANUFACTURING FAMINE: ISRAEL IS COMMITTING THE WAR CRIME OF STARVATION IN THE GAZA STRIP 1 (2024), [https://www.btselem.org/sites/default/files/publications/202404\\_manufacturing\\_famine\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/202404_manufacturing_famine_eng.pdf) [<https://perma.cc/T9G3-3GQN>].

153. James Gregory, *Israel Gaza War: EU Says Starvation Being Used as a Weapon*, BBC NEWS (Mar. 13, 2024), <https://www.bbc.com/news/world-middle-east-68550937> [<https://perma.cc/R97A-N9E9>].

154. See *Behind the ICC Prosecutor's Narrative: The NGOs That Pushed the "Starvation" Libel in October*, NGO MONITOR (May 21, 2024), <https://www.ngo-monitor.org/reports/icc-starvation> [<https://perma.cc/Y8KB-ST2T>].

155. See *Israel: Starvation Used as Weapon of War in Gaza*, HUM. RTS. WATCH (Dec. 18, 2023, 12:00 AM EST), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza> [<https://perma.cc/6HQD-SD4G>].

156. See *Israel Defying ICJ Ruling to Prevent Genocide by Failing to Allow Adequate Humanitarian Aid to Reach Gaza*, AMNESTY INT'L (Feb. 26, 2024), <https://www.amnesty.org/en/latest/news/2024/02/israel-defying-icj-ruling-to-prevent-genocide-by-failing-to-allow-adequate-humanitarian-aid-to-reach-gaza> [<https://perma.cc/9SG4-WZTV>].

157. See *Israel/Palestine: FIDH Condemns the Escalation of Violence and Double Standards*, INT'L FED'N FOR HUM. RTS. (Oct. 11, 2023), [www.fidh.org/en/region/north-africa-middle-east/israel-palestine/israel-palestine-the-international-federation-for-human-rights](http://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/israel-palestine-the-international-federation-for-human-rights) [<https://perma.cc/IE73-7QGY>].

158. See Press Release, Oxfam Int'l, *Starvation as Weapon of War Being Used Against Gaza Civilians* (Oct. 25, 2023), <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam> [<https://perma.cc/5FHD-TSB3>].

159. Geoff Corn & Sean Watts, *Siege Law and Military Necessity*, LIEBER INST. (Oct. 13, 2023), <https://lieber.westpoint.edu/siege-law-military-necessity> [<https://perma.cc/UB9C-AHA6>].

160. *Id.*

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Hamas combatants.<sup>161</sup> A different perspective holds that Hamas, as the governing authority in Gaza, bears the primary responsibility for providing humanitarian aid.<sup>162</sup> Israel's role, therefore, is not to actively supply aid but to ensure its allowance, contingent upon legitimate security concerns regarding aid diversion by enemy forces.<sup>163</sup> Additionally, a complete closure could temporarily be justified under international law as a military necessity, provided civilian needs are continually reassessed.<sup>164</sup> However, when civilians approach starvation, maintaining a siege becomes disproportionate and indefensible under international law.<sup>165</sup>

Some argue that the humanitarian relief framework established under the API has effectively superseded Article 23 of the GCIV, setting stricter obligations for facilitating aid delivery.<sup>166</sup> Refusing the free passage of humanitarian aid, leading to civilian starvation, violates the prohibition against arbitrary denial of aid, as reinforced by international legal standards and ICRC interpretations.<sup>167</sup> The argument that Israel retains de facto control over Gaza supports claims that it bears legal obligations, under occupation law, to ensure the population's humanitarian needs are met.<sup>168</sup> It is also claimed that Israel may be subject to the stricter laws of international armed conflict due to the lack of Palestinian consent to Israeli operations in Gaza.<sup>169</sup> Concerns are raised that the current methods of the siege do not adequately distinguish between combatants and civilians, thus challenging

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161. Jeffrey Lovitky, *The Applicability of Article 23 of the Fourth Geneva Convention to Gaza*, LIEBER (Dec. 13, 2023), <https://lieber.westpoint.edu/applicability-article-23-fourth-geneva-convention-gaza> [<https://perma.cc/EEA8-EEHM>]; see also Geneva Convention IV, *supra* note 44, art. 24.

162. Ori Pomson, *The Obligation to Allow and Facilitate Humanitarian Relief*, LIEBER INST. (Nov. 7, 2023), <https://lieber.westpoint.edu/obligation-allow-facilitate-humanitarian-relief> [<https://perma.cc/A2M5-8G35>].

163. *Id.*

164. Rosa-Lena Lauterbach, *A "Complete Siege of Gaza" in Accordance with International Humanitarian Law*, LIEBER INST. (Oct. 16, 2023), <https://lieber.westpoint.edu/complete-siege-gaza-in-accordance-international-humanitarian-law> [<https://perma.cc/V9NR-L7P5>].

165. *Id.*

166. Marina Sharpe, *Humanitarian Access to Gaza*, EUR. J. INT'L L.: TALK! (Nov. 20, 2023), <https://www.ejiltalk.org/humanitarian-access-to-gaza> [<https://perma.cc/XCQ8-PMC3>]; see also Additional Protocol I, *supra* note 28, art. 29.

167. *Id.*

168. See Tom Dannenbaum, *The Siege of Gaza and the Starvation War Crime*, JUST SEC. (Oct. 11, 2023), <https://www.justsecurity.org/89403/the-siege-of-gaza-and-the-starvation-war-crime> [<https://perma.cc/58UD-DC7H>].

169. *Id.*

the applicability of international protections against starvation.<sup>170</sup> Additionally, jurisprudence from the Israeli Supreme Court in 2008 required the State to provide humanitarian aid to Gaza.<sup>171</sup>

## VI. ISRAEL'S OBLIGATIONS TOWARD GAZA UNDER INTERNATIONAL HUMANITARIAN LAW

As mentioned earlier, on March 18, 2024, five Israeli NGOs petitioned the Supreme Court.<sup>172</sup> They demanded that Israel act according to its obligations as an occupying power and immediately provide essential humanitarian assistance to the civilian population in the Gaza Strip, particularly to the northern part.<sup>173</sup> The petitioners argued that Israel's control over Gaza's land crossings, airspace, and territorial waters satisfies the criteria of an occupying power<sup>174</sup> under a functional approach to occupation.<sup>175</sup> This interpretation is supported by an ICRC report, which states that "effective control," even without the physical presence of foreign forces, can constitute occupation under international law.<sup>176</sup>

If Israel is recognized as an occupying power, it is obligated to meet the humanitarian needs of the population in Gaza.<sup>177</sup> The petitioners point to several key supporting provisions: Article 43 of the HCIV, which mandates that the occupying power must restore and ensure public order and safety;<sup>178</sup> Article 27 of the CGIV, ensuring the general protection of the occupied population;<sup>179</sup> Article 55 of the GCIV, which mandates the occupying power to provide sufficient food and medical supplies if local resources are inadequate;<sup>180</sup> and Article 59 of the GCIV, which obliges

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170. *Id.*

171. *Id.*

172. See Petition for Order Nisi, HCJ 2280/24 Gisha v. Government of Israel (2024), [https://gisha.org/UserFiles/File/LegalDocuments/HCPetition2024/High\\_court\\_2280-24\\_petition\\_180324\\_EN.pdf](https://gisha.org/UserFiles/File/LegalDocuments/HCPetition2024/High_court_2280-24_petition_180324_EN.pdf).

173. See *id.*

174. *Id.* ¶ 82.

175. See INT'L COMM. OF THE RED CROSS, INTERNATIONAL HUMANITARIAN LAW AND THE CHALLENGES OF CONTEMPORARY ARMED CONFLICTS 12 (2015), [https://www.icrc.org/sites/default/files/document/file\\_list/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf](https://www.icrc.org/sites/default/files/document/file_list/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf) [<https://perma.cc/RHZ7-X9AS>] ("[D]espite the lack of the physical presence of foreign forces in the territory concerned, the retained authority may amount to effective control for the purposes of the law of occupation and entail the continued application of the relevant provisions of this body of norms.").

176. *Id.*

177. Petition for Order Nisi, *supra* note 172, ¶ 98.

178. See *id.* ¶ 99; see also Hague Convention IV, *supra* note 8, art. 43.

179. See Petition for Order Nisi, *supra* note 172, ¶ 99; see also Geneva Convention IV, *supra* note 44, art. 27.

180. Petition for Order Nisi, *supra* note 172, ¶ 100; see also Geneva Convention IV, *supra* note 44, art. 55.

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the occupying power to facilitate relief schemes if any part of the population is inadequately supplied.<sup>181</sup>

In its July 2024 advisory opinion, the ICJ affirmed Israel's status as Gaza's occupying power, citing its control over Gaza's land, air, and sea borders, movement restrictions, tax collection, and oversight of the buffer zone as evidence of sustained authority.<sup>182</sup> However, the ruling represents a departure from prior legal applications, as no other case has classified a party as an occupying power in the absence of effective control on the ground. Critics argue that this reasoning establishes an exceptional legal standard applied specifically to Israel rather than a universally recognized rule. However, the ICJ's opinion reinforces the legal understanding of Israel's extensive influence and administrative control in the region, thereby implicating it in obligations under international law to ensure the welfare of the Gaza population.

The application of occupation law to Gaza remains contested, given the lack of consistent state control and the complexities surrounding Gaza's fragmented governance. In general legal contexts, occupation is defined by actual physical control over a territory rather than merely through regulatory oversight of borders or maritime areas.<sup>183</sup> Moreover, Israel does not have exclusive control over Gaza's borders, as Egypt also manages certain border crossings.<sup>184</sup> Since Israel's 2005 disengagement from Gaza, its role has been limited to control over external borders and airspace, without direct involvement in the daily administration of civilian affairs.<sup>185</sup> Israel does

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181. Petition for Order Nisi, *supra* note 172, ¶ 101; *see also* Geneva Convention IV, *supra* note 44, art. 59.

182. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 2024 I.C.J. ¶ 93 (July 19), <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>.

183. *See International Humanitarian Law and Policy on Occupation*, INT'L COMM. OF THE RED CROSS, <https://www.icrc.org/en/law-and-policy/occupation> [<https://perma.cc/2FFE-G7WU>].

184. Astha Rajvanshi, *Why Egypt's Border with Gaza Is Sealed*, TIME (Oct. 17, 2023, 3:13 PM EDT), <https://time.com/6324766> [<https://perma.cc/98BF-JE2P>].

185. *See* Avi Bell & Dov Shefi, *The Mythical Post-2005 Israeli Occupation of the Gaza Strip*, 16 ISR. AFFS. 268, 268–70 (2010), <https://doi.org/10.1080/13537121003643912>.

not manage Gaza's education or health system, for example, nor does Israel have the ability to appoint Gazan officials.<sup>186</sup>

Article 42 of the HCIV sets the legal threshold for military occupation, defining it as the exercise of actual authority by a hostile army over a territory, limited to areas where such authority is effectively established and maintained.<sup>187</sup> Modern international law further defines occupation as an objective factual situation requiring three conditions: (1) the physical presence of the occupying state in the territory without the consent of the local government; (2) the inability of the previous sovereign to exercise governmental authority in the territory; and (3) the capability of the military force that took control to carry out governmental functions within the territory.<sup>188</sup>

Despite intensive military operations involving thousands of soldiers to subdue Hamas,<sup>189</sup> Israel's actions have not resulted in a continuous occupation of Gaza under international law.<sup>190</sup> Hamas retains administrative control over much of the Gaza Strip,<sup>191</sup> indicating that Israel has not established full civil authority in the region. In the 2008 *Al-Bassiouni* case, the Israeli Supreme Court clarified that Israel ceased exercising effective control over Gaza following its disengagement in September 2005.<sup>192</sup> This marked the end of military governance, with no permanent Israeli military or direct

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186. See U.S. DEP'T OF STATE, WEST BANK AND GAZA STRIP 2022 HUMAN RIGHTS REPORT 80–82 (2022), <https://www.state.gov/reports/2202-country-reports-on-human-rights-practices/israel-west-bank-and-gaza/west-bank-and-gaza> [<https://perma.cc/85NY-6VX5>].

187. See Hague Convention IV, *supra* note 8, art. 42.

188. See EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 31 (2d ed. 2012); ENRICO MILANO, UNLAWFUL TERRITORIAL SITUATIONS IN INTERNATIONAL LAW: RECONCILING EFFECTIVENESS, LEGALITY AND LEGITIMACY 173 (2006); see, e.g., Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶ 173 (Dec. 19), <https://www.icj-cij.org/sites/default/files/case-related/116/116-20051219-JUD-01-00-EN.pdf>; *U.S. Military Tribunal in Nuremberg, Trial of Wilhelm von List et al. (The Hostages Case), 8 July 1947 – 19 February 1948*, in 8 U.N. WAR CRIMES COMM'N, LAW REPORTS OF TRIALS OF WAR CRIMINALS 34, 55 (1949); Prosecutor v. Naletilić & Martinović, Case No. IT-98-34-T, Judgment, ¶ 211 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 31, 2003).

189. Sam Sokol & Emanuel Fabian, *Amid Troop Shortage, IDF Begins Calling Up 15,000 Previously Released Reservists*, TIMES ISR. (Aug. 20, 2024, 7:48 PM), <https://www.timesofisrael.com/amid-troop-shortage-idf-begins-calling-up-15000-previously-released-reservists> [<https://perma.cc/EDJ4-TCP9>].

190. See Hague Convention IV, *supra* note 8, arts. 42, 64. These articles outline the need for actual authority and control by a hostile army, not merely temporary military presence or external control of borders. *Id.*

191. Devorah Margolin & Neomi Neumann, *Countering Hamas's Shadow Governance in Gaza*, WASHINGTON INST. FOR NEAR E. POL'Y (Oct. 25, 2024), <https://www.washingtoninstitute.org/policy-analysis/countering-hamass-shadow-governance-gaza> [<https://perma.cc/53UK-Q83B>].

192. See HCJ 9132/07 *Al-Bassiouni v. Prime Minister of Israel*, ¶ 12 (2008).



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civil presence thereafter.<sup>193</sup> Therefore, according to international law standards, Israel does not have the obligations typically associated with belligerent occupation, such as maintaining public order or ensuring the welfare of the residents of Gaza.<sup>194</sup>

The 2008 *Al-Bassiouni* ruling further clarified Israel's legal responsibilities in Gaza post-disengagement.<sup>195</sup> The Israeli Supreme Court highlighted that Israel's obligations primarily stem from the ongoing armed conflict and the control over critical infrastructures such as border crossings.<sup>196</sup> Notably, the relationship developed through years of Israeli military rule has left the Gaza Strip almost completely dependent on Israel for electricity and other basic necessities.<sup>197</sup> The ruling acknowledged that Israel, conceding its obligations to supply fuel and electricity, is influenced more by the current state of conflict and control over these crossings than by a formal governance role.<sup>198</sup> However, the Court left ambiguities regarding the legal framework, raising questions about how past domestic rulings apply to Israel's current international obligations.

Following Israel's 2005 disengagement from Gaza, debates persist over whether Israel still meets international law criteria to be deemed an occupying power.<sup>199</sup> This reassessment could significantly impact its legal obligations toward Gazan civilians. The extensive military engagements, including the deployment of a significant number of reservists and ongoing conflict,<sup>200</sup> complicate the assessment of Israel's control over the territory. Such intricacies necessitate a reevaluation of Israel's role and legal responsibilities under evolving international standards.

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193. *Id.*

194. *Id.*

195. See Dannenbaum, *supra* note 168 (“[A]lthough rejecting Israel’s status as an occupying power in Gaza, the Israeli High Court of Justice has itself emphasized that the state is nonetheless required under international humanitarian law to allow Gaza to receive ‘what is needed in order to provide the essential humanitarian needs of the civilian population.’” (quoting *Al-Bassiouni*, ¶ 11)).

196. *Al-Bassiouni*, ¶ 12.

197. *See id.*

198. *See* Dannenbaum, *supra* note 168.

199. *Israel’s Disengagement from Gaza and North Samaria (2005)*, ISRAELI MISSIONS AROUND THE WORLD, <https://embassies.gov.il/MFA/ABOUTISRAEL/MAPS/Pages/Israels%20Disengagement%20Plan-%202005.aspx> [<https://perma.cc/U6HH-PWZH>].

200. Dan Williams, *Israel Drafts 300,000 Reservists as It Goes on the Offensive*, REUTERS (Oct. 9, 2023, 1:59 AM PDT), [www.reuters.com/world/middle-east/israel-drafts-300000-reservists-it-goes-offensive-2023-10-09](http://www.reuters.com/world/middle-east/israel-drafts-300000-reservists-it-goes-offensive-2023-10-09).

## VII. THE ICJ CASE AND ICC ARREST WARRANTS: LEGAL AND POLITICAL IMPLICATIONS

Two significant developments are reshaping the landscape of international law and siege warfare. The first is a case initiated by South Africa against Israel at the ICJ, alleging violations of the Genocide Convention.<sup>201</sup> The second involves the ICC's issuance of arrest warrants against Israeli officials.<sup>202</sup>

On December 29, 2023, South Africa filed a complaint with the ICJ, accusing Israel of breaching the Genocide Convention through its military operations against Hamas.<sup>203</sup> Both nations are signatories to the Convention, marking this case as pivotal for international genocide law. South Africa's petition alleges that Israel's siege tactics amount to genocide by inducing starvation, despite the lifting of the full siege on October 21, 2023.<sup>204</sup> The continued insufficiency of humanitarian aid, measured by truck entries into Gaza, underscores the severity of the situation.<sup>205</sup>

The application also cites U.N. Security Council Resolution 2720, adopted on December 22, 2023, which directs all parties to the conflict to facilitate humanitarian access throughout Gaza via all available routes, including border crossings.<sup>206</sup> It further calls for the United Nations to expedite the delivery humanitarian aid to the region.<sup>207</sup> South Africa argued that Israel's restrictions on aid distribution created significant obstacles and contended that merely counting the number of trucks entering Gaza failed to address the full scope of the humanitarian crisis.<sup>208</sup> South Africa also criticized Resolution 2720 for failing to call for a ceasefire, characterizing it as inadequate in addressing the severity of the situation.<sup>209</sup> Citing remarks from a former senior UNRWA official, South Africa described the resolution as effectively authorizing continued acts of genocide and failing to uphold international humanitarian law.<sup>210</sup> Similarly, Oxfam condemned the Security Council's omission of a ceasefire as a "profound dereliction of duty,"

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201. See Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2023 I.C.J. ¶ 2 (Dec. 29), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>.

202. Int'l Crim. Ct., *supra* note 7.

203. Provisional Measures, *supra* note 201, ¶¶ 1, 8.

204. *Id.* ¶¶ 61–70.

205. *Id.* ¶ 61.

206. S.C. Res. 2720, ¶¶ 3, 4 (Dec. 22, 2023), <https://undocs.org/S/RES/2720> [<https://perma.cc/EQ6B-Z44Z>].

207. *Id.*

208. Provisional Measures, *supra* note 201, ¶ 62.

209. *Id.* ¶ 63.

210. *Id.*

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calling it incomprehensible and inhumane given the humanitarian crisis in Gaza.<sup>211</sup>

On January 26, 2024, the ICJ ruled that South Africa presented a plausible claim, identifying a real and imminent risk of irreparable harm.<sup>212</sup> As part of its provisional measures, the ICJ ordered Israel to take immediate and effective steps to ensure the provision of urgently needed basic services and humanitarian aid.<sup>213</sup> The Court emphasized that these measures were necessary to address the deteriorating living conditions of Palestinians in the Gaza Strip.<sup>214</sup>

While the ICJ has yet to rule on the merits of South Africa's application, several preliminary observations emerge. Siege warfare, while a long-standing military tactic, is extensively regulated under The Hague and Geneva Conventions, as well as the Additional Protocols, which impose constraints to mitigate harm to civilians and property.<sup>215</sup> Legal scholars and states continue to debate the precise boundaries of lawful siege tactics under international law. South Africa's application before the ICJ challenges existing legal norms on siege warfare, arguing that Israel's actions amount to genocide.<sup>216</sup> If the ICJ endorses this argument, it could significantly alter the legal framework governing siege warfare. If the ICJ endorses this argument, the decision could reshape how siege tactics are evaluated under international law—potentially forcing states to reconsider established military strategies while raising complex humanitarian and legal questions. Such a ruling would have far-reaching implications for the conduct of armed conflicts, especially in urban environments. Moreover, the extent to which such a ruling would be enforced or adopted by states remains uncertain.

Scholars increasingly scrutinize siege warfare under international law, reflecting evolving legal and humanitarian concerns. U.N. Security Council Resolution 2139, which called for the lifting of sieges in Syria, reflects a broader shift in state practice and legal interpretation, signaling a diminishing tolerance for the humanitarian toll of urban siege operations.<sup>217</sup> This growing reluctance to employ prolonged sieges arises from both legal constraints

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211. *Id.*

212. *See* Provisional Measures, *supra* note 6, ¶¶ 54, 55.

213. *Id.* ¶ 80.

214. *Id.*

215. *See* Hague Convention IV, *supra* note 8, arts. 23, 25, 27, 28; *see* Geneva Convention IV, *supra* note 44, arts. 18, 23, 55, 56, 59; *see* Additional Protocol I, *supra* note 28, arts. 18, 51, 52, 54(1), 70.

216. *See* Provisional Measures, *supra* note 6, ¶¶ 61–70.

217. WATTS, *supra* note 24, at 1.

and reputational risks. Even before a final ruling, South Africa's case before the ICJ may have a deterrent effect, as states may seek to avoid siege tactics to mitigate legal exposure and allegations of genocide. However, restricting siege warfare could carry significant strategic consequences, particularly in urban conflicts, where alternative military tactics may necessitate more direct engagement in densely populated areas—potentially escalating both military and civilian casualties.

The ICJ's provisional order requiring Israel to facilitate humanitarian aid to Gaza raises questions about its alignment with Article 23 of the GCIV and Article 70 of the API.<sup>218</sup> While these provisions establish a duty to allow humanitarian relief, they also permit restrictions based on imperative military necessity.<sup>219</sup> The ICJ's broad directive departs from this framework by imposing an unconditional obligation for aid access,<sup>220</sup> without accounting for military necessity exceptions. This interpretation diverges from law of war manuals of countries like the United States and the United Kingdom, which acknowledge that humanitarian relief operations may face operational constraints during active hostilities.

On May 20, 2024, the ICC Prosecutor sought arrest warrants against Israeli Prime Minister Netanyahu and Defense Minister Galant for the alleged war crime of starvation of civilians as a method of warfare,<sup>221</sup> contrary to Article 8(2)(b)(xxv) of the Rome Statute. The Prosecutor cited systematic actions that led to this charge: a total siege of Gaza starting October 8, 2023, which involved the complete closure of the Rafah, Kerem Shalom, and Erez border crossings for extended periods.<sup>222</sup> Following their reopening, there were severe restrictions on the transfer of essential supplies such as food and medicine.<sup>223</sup> Additionally, the siege included severing cross-border water pipelines—Gaza's main source of clean water—and disrupting electricity supplies, significantly impacting civilian life.<sup>224</sup> Attacks targeting civilians at food distribution points, obstruction of humanitarian aid delivery, and violence against aid workers exacerbated the situation.<sup>225</sup> This compelled many agencies to reduce or suspend their operations in Gaza.<sup>226</sup> These findings not only highlight the severe

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218. See Provisional Measures, *supra* note 6, ¶ 80.

219. See Geneva Convention IV, *supra* note 44, art. 23; see Additional Protocol I, *supra* note 28, art. 70.

220. See Provisional Measures, *supra* note 6, ¶ 5.

221. Int'l Crim. Ct., *supra* note 7; see also Rome Statute of the International Criminal Court art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 90.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

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humanitarian impact of the siege but also underscore the legal complexities surrounding the ICC's pursuit of accountability for alleged war crimes.

As the ICC deliberates on its final decisions, the political ramifications of the arrest warrant requests become evident. Throughout the conflict, Israeli leadership has consistently stated its aim to dismantle Hamas's operational capabilities.<sup>227</sup> The Prosecutor's approach challenges the legality of siege warfare when it is conducted to intentionally deprive civilians of essential resources as a method of war, while also calling on Israel to facilitate humanitarian aid access to Gaza.<sup>228</sup> Even if Article 70 of the API overrides the conditions in Article 23 of the GCIV,<sup>229</sup> Israel retains the right to implement technical arrangements and manage aid distribution to ensure security compliance. However, the Prosecutor's position appears to downplay Israeli security concerns that necessitate strict oversight of aid deliveries, underscoring a broader tension between humanitarian obligations and national security measures.

#### VIII. URBAN COMBAT AND SIEGE TACTICS: LESSONS FROM FALLUJAH, MOSUL, AND MARAWI

Three pivotal battles illustrate the continued relevance of siege tactics in urban warfare: the Second Battle of Fallujah (2004), Iraq's siege of ISIS in Mosul (2016–2017), and the Philippine government's campaign in Marawi (2017). These cases demonstrate how state forces have confronted non-state armed groups embedded within densely populated areas. However, the conflict in Gaza presents distinct challenges due to the significantly larger number of insurgent forces with an estimated 30,000 to 40,000 fighters, significantly outnumber the insurgent forces encountered in Fallujah, Mosul, and Marawi,<sup>230</sup> intensifying both the operational scale and the risks to civilians. Consequently, this scale necessitates greater firepower, heightening both operational challenges and the difficulty of minimizing civilian casualties.

These case studies illustrate how besieging forces isolate cities by restricting movement and supply lines, preventing reinforcements from reaching

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227. Lazer Berman, *Netanyahu: Goal of War Is 'to Defeat the Murderous Enemy, Ensure Our Existence in Our Land,'* TIMES ISR. (Oct. 28, 2023, 8:57 PM), [https://www.timesofisrael.com/liveblog\\_entry/netanyahu-goal-of-war-is-to-defeat-the-murderous-enemy-ensure-our-existence-in-our-land](https://www.timesofisrael.com/liveblog_entry/netanyahu-goal-of-war-is-to-defeat-the-murderous-enemy-ensure-our-existence-in-our-land).

228. Int'l Crim. Ct., *supra* note 7.

229. See Additional Protocol I, *supra* note 28, art. 70(3).

230. *What to Know About Hamas' Military Capabilities*, AXIOS (Oct. 21, 2023), <https://www.axios.com/2023/10/21/palestine-hamas-military-power> [<https://perma.cc/95AX-2P84>].

opposing forces. Such strategies typically involve severing access to essential services like electricity, communication technologies, and food supplies.<sup>231</sup> While many civilians manage to evacuate, those who remain frequently face severe shortages of essential resources. Despite condemnation from the United Nations and various human rights organizations,<sup>232</sup> siege tactics remain a recurring element in modern warfare, reflecting their continued strategic and operational role in urban conflicts.

### A. Fallujah

Located in central Iraq along the Euphrates River, Fallujah is a densely populated industrial city with a population of between 250,000 and 300,000 residents as of 2004.<sup>233</sup> Following the inconclusive First Battle of Fallujah in April of that year, it emerged as a stronghold for Wahhabi insurgents led by Abu Musab al-Zarqawi.<sup>234</sup> These insurgents later formed the nucleus of what would become known as al-Qaeda in Iraq.<sup>235</sup> The Second Battle of Fallujah, a key engagement during Operation Iraqi Freedom, spanned from November 7 to December 23 that same year.<sup>236</sup> It involved a coalition force of approximately 13,500 American and British troops, supported by 2,000 members of the Iraqi security forces, engaging around 3,000 insurgents.<sup>237</sup>

Prior to launching the assault on Fallujah, coalition forces imposed a siege, establishing checkpoints along key access routes and urging civilians—excluding men of military age—to evacuate.<sup>238</sup> U.S. military estimates suggest that between 70% and 90% of the civilian population fled the city ahead of the operation.<sup>239</sup> At the same time, the Iraqi government ordered the closure of all roads leading into and out of Fallujah, preventing the return of civilians who had previously evacuated.<sup>240</sup>

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231. See, e.g., *How the Battle for Mosul Unfolded*, BBC NEWS (July 10, 2017), <https://www.bbc.com/news/world-middle-east-37702442> [<https://perma.cc/H5FC-FSHA>].

232. See, e.g., *Gaza: Israeli War Tactics Condemned as Aid Still Blocked from Reaching North*, UN NEWS (Nov. 14, 2024), <https://news.un.org/en/story/2024/11/1156946> [[perma.cc/RF5L-6WL7](https://perma.cc/RF5L-6WL7)].

233. John Spencer et al., *Urban Warfare Case Study #7: Second Battle of Fallujah*, MOD. WARFARE INST. (July 25, 2023), <https://mwi.westpoint.edu/urban-warfare-case-study-7-second-battle-of-fallujah> [<https://perma.cc/ZGE7-MXVU>].

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. See Dexter Filkins & James Glanz, *With Airpower and Armor, Troops Enter Rebel-Held City*, N.Y. TIMES (Nov. 8, 2004), <https://www.nytimes.com/2004/11/08/international/with-airpower-and-armor-troops-enter-rebelheld-city.html>.

240. *Id.*

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On November 8, in the aftermath of an aerial assault, coalition forces severed electricity and water supplies to Fallujah in an attempt to compel the evacuation of the remaining civilians.<sup>241</sup> This decision was met with stern condemnation from the Emergency Working Group on Fallujah, which included representatives from the United Nations, the ICRC, and Iraqi ministries.<sup>242</sup> They criticized the cutoff, highlighting its impact on approximately 50,000 residents, for whom they asserted water is not only a basic need but also a fundamental human right.<sup>243</sup>

A subsequent report from the Emergency Working Group, dated December 19, 2004, detailed ongoing challenges in delivering humanitarian aid.<sup>244</sup> The report addressed the needs of Fallujah's residents and approximately 200,000 internally displaced persons (IDPs) in nearby areas.<sup>245</sup> It further emphasized the complications arising from inadequate security and restricted access, exacerbated by military operations and checkpoints.<sup>246</sup> This situation rendered Fallujah largely inaccessible during the ongoing conflict, resulting in a severe shortfall in meeting critical humanitarian needs such as food, water, shelter, and medical aid.<sup>247</sup> According to the International Organization for Migration (IOM), only one humanitarian convoy entered the city on December 5, 2004—nearly a month after the initial assault.<sup>248</sup>

U.S. military officials raised concerns regarding the potential use of humanitarian aid convoys for smuggling supplies to insurgents, based on allegations that the Iraqi Red Crescent had previously exploited its humanitarian status for non-humanitarian purposes.<sup>249</sup> Specific instances reported by U.S. forces included the use of ambulances to transport enemy combatants

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241. TIMOTHY S. MCWILLIAMS & NICHOLAS J. SCHLOSSER, *U.S. MARINES IN BATTLE: FALLUJAH, NOVEMBER-DECEMBER 2004*, at 67 (2014).

242. ROSS CAPUTI ET AL., *THE SACKING OF FALLUJAH: A PEOPLE'S HISTORY* 97 (Edwin A. Martini et al. eds., 2019).

243. *Id.*

244. *Iraq: Emergency Working Group Falluja Crisis – Bulletin Update 19 Dec 2004*, RELIEFWEB (Dec. 19, 2004), <https://reliefweb.int/report/iraq/iraq-emergency-working-group-falluja-crisis-bulletin-update-19-dec-2004> [<https://perma.cc/EE85-YEBW>].

245. *Id.*

246. *Id.*

247. *Id.*

248. Cedric Turlan & Kasra Mofarah, *Military Action in an Urban Area: The Humanitarian Consequences of Operation Phantom Fury in Fallujah Iraq*, HUMANITARIAN PRAC. NETWORK, Nov. 21, 2006, at 19, <https://odihpn.org/publication/military-action-in-an-urban-area-the-humanitarian-consequences-of-operation-phantom-fury-in-fallujah-iraq>.

249. See CAPUTI ET AL., *supra* note 242, at 99.

and logistical support.<sup>250</sup> On November 24, the Red Crescent received authorization to enter Fallujah and deliver humanitarian assistance at the Hadrah Mosque.<sup>251</sup> However, complications arose during the operation when Red Crescent personnel utilized ambulance loudspeakers to call civilians onto the streets, violating a city-wide curfew.<sup>252</sup> Additionally, U.S. Marines observed several ambulances leaving the city with military-age males aboard, heightening concerns over the potential misuse of medical vehicles for combat-related activities.<sup>253</sup>

Jean Ziegler, the U.N. Special Rapporteur on the Right to Food, strongly condemned the siege tactics used in Fallujah.<sup>254</sup> He stated that although restricting access to food and water might be perceived as effective from a military standpoint, such strategies violate international human rights and humanitarian laws.<sup>255</sup> He also emphasized the severe impact on displaced civilians' rights to food and water, declaring such deprivation illegal under international law.<sup>256</sup>

### *B. Mosul*

The Battle of Mosul, a pivotal conflict in the fight against ISIS, spanned from October 16, 2016 to July 20, 2017.<sup>257</sup> Located in Iraq's Nineveh province, ISIS designated Mosul as the capital of its caliphate.<sup>258</sup> Between 3,000 and 12,000 ISIS fighters defended the city against a formidable offensive force exceeding one hundred thousand.<sup>259</sup> This coalition included Iraqi army and police units, Kurdish Peshmerga forces, and several militias.<sup>260</sup> Sixty Western nations provided 500 direct support personnel, and American troops offered significant indirect assistance.<sup>261</sup> The Battle for Mosul is widely considered one of the deadliest urban conflicts since World War

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250. *Id.*

251. McWILLIAMS & SCHLOSSER, *supra* note 241, at 61.

252. *Id.*

253. *Id.*

254. See Press Release, U.N. Hum. Rts. Off. of the High Comm'r, Statement by Jean Ziegler Special Rapporteur on the Right to Food on the Occasion of World Food (Oct. 16, 2005), <https://www.ohchr.org/en/statements/2009/10/statement-jean-ziegler-special-rapporteur-right-food-occasion-world-food-day> (last visited Oct. 29, 2024).

255. *Id.*

256. *Id.*

257. John Spencer & Jayson Geroux, *Urban Warfare Project Case Study Series, Case Study #2 – Mosul*, MOD. WAR INST. (Sept. 15, 2021), <https://mwi.westpoint.edu/urban-warfare-project-case-study-2-battle-of-mosul> [<https://perma.cc/HTM4-CRK3>].

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*



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II,<sup>262</sup> with civilian casualties estimated between 9,000 and 11,000.<sup>263</sup> The battle is often cited in discussions of the current conflict in the Gaza Strip, underscoring similarities in urban warfare tactics.<sup>264</sup>

During the initial phase of the Battle of Mosul, Shia militias effectively severed the western supply lines of ISIS, trapping fighters within the city.<sup>265</sup> Tal Afar, located sixty kilometers west of Mosul, previously served as a conduit to Syria.<sup>266</sup> On November 1, 2016, Shia militias and Kurdish Peshmerga forces collaborated to sever the highway connecting Mosul to Tal Afar, further isolating the city.<sup>267</sup> By late December 2016, coalition airstrikes destroyed all bridges linking east and west Mosul, severely limiting ISIS's mobility across the Tigris River.<sup>268</sup>

The siege significantly impaired civilian access to essential resources.<sup>269</sup> Humanitarian organizations faced considerable challenges in reaching ISIS-controlled areas, and even regions recently reclaimed remained

262. Jim Michaels, *Iraqi Forces in Mosul See Deadliest Urban Combat Since World War II*, USA TODAY (Mar. 29, 2017), <https://www.usatoday.com/story/news/world/2017/03/29/united-states-mosul-isis-deadly-combat-world-war-ii/99787764> [<https://perma.cc/7SEK-CVZH>].

263. Susannah George et al., *Mosul Is a Graveyard: Final IS Battle Kills 9,000 Civilians*, ASSOCIATED PRESS (Dec. 20, 2017, 7:08 PM), <https://apnews.com/article/middle-east-only-on-ap-islamic-state-group-bbea7094fb954838a2fdc11278d65460> [<https://perma.cc/4SD9-4M9R>].

264. Seth J. Frantzman, *Comparing Gaza with Mosul*, JERUSALEM STRATEGIC TRIB. (Jan. 2024), <https://jstribune.com/frantzman-comparing-gaza-with-mosul> [<https://perma.cc/3PB7-NVGD>]; Arwa Damon, *I Covered the Battle Against Isis in Mosul. Gaza's Challenges Will Make It Look Like Child's Play*, ATL. COUNCIL: MENASOURCE (Nov. 15, 2023), <https://www.atlanticcouncil.org/blogs/menasource/gaza-mosul-isis-hamas-israel> [<https://perma.cc/6QHQ-NGEX>]; Michael Knights, *Gaza's Urban Warfare Challenge: Lessons from Mosul and Raqqa*, THE WASHINGTON INST. FOR NEAR E. POL'Y (Oct. 13, 2023), <https://www.washingtoninstitute.org/policy-analysis/gazas-urban-warfare-challenge-lessons-mosul-and-raqqa> [<https://perma.cc/A82Q-E6QX>].

265. *Id.*

266. *Iraq Militias Claim to Have Isolated Mosul*, DEUTSCHE WELLE (Nov. 24, 2016), <https://www.dw.com/en/iraqi-militias-claim-to-have-isolated-is-controlled-mosul/a-36499177> [<https://perma.cc/HTQ3-MXYC>].

267. Spencer & Geroux, *supra* note 257.

268. *The Battle for Mosul*, REUTERS (June 8, 2017), <https://fingfx.thomsonreuters.com/gfx/mgs/MIDEAST-CRISIS-IRAQ-MOSUL/010041HK38V/index.html> [<https://perma.cc/YP72-S3XT>].

269. See AMNESTY INT'L, AT ANY COST: THE CIVILIAN CATASTROPHE IN WEST MOSUL, IRAQ, 21–23 (2017), <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1466102017ENGLISH.pdf> [<https://perma.cc/7MBG-UURW>].

dangerously unstable for prolonged periods.<sup>270</sup> A February 2017 BBC report highlighted severe food shortages in western Mosul, caused by government forces severing ISIS supply lines with support from U.S.-led coalition airstrikes and ground advisors.<sup>271</sup> By May, it was estimated that between 300,000 and 500,000 civilians were still confined under ISIS control, predominantly in Mosul's Old City, isolated from humanitarian aid.<sup>272</sup> According to the United Nations, thousands of civilians had no access to food, water, electricity, or fuel.<sup>273</sup> To warn civilians about the siege, the Iraqi government air-dropped leaflets across Mosul,<sup>274</sup> enabling roughly 700,000 residents to evacuate the city.<sup>275</sup>

Human Rights Watch condemned the siege tactics, noting that the weaponry used by Iraqi and coalition forces led by the United States disproportionately affected Mosul's civilians.<sup>276</sup> Additionally, Lise Grande, the U.N. Humanitarian Coordinator for Iraq, characterized the exodus of civilians from Mosul as "staggering."<sup>277</sup> She urged all parties to protect civilians, ensure access to vital aid, and minimize damage to essential infrastructure.<sup>278</sup>

### C. Marawi

The Battle of Marawi, the longest urban siege in Philippine history, lasted from May 23 to October 23, 2017, marking a significant chapter in

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270. See Shelly Culbertson & Linda Robinson, *Stabilizing Mosul After the Battle Against ISIS*, RAND (Feb. 9, 2017), <https://www.rand.org/pubs/commentary/2017/02/stabilizing-mosul-after-the-battle-against-isis.html> [<https://perma.cc/X529-KDQ5>].

271. *Mosul Battle: Iraqi Forces Seize Key Bridge*, BBC (Feb. 27, 2017), <https://www.bbc.com/news/world-middle-east-39103701> [<https://perma.cc/9XEY-R7KC>].

272. *Iraqis Starve Waiting for Troops to Push IS from Mosul*, ASSOCIATED PRESS (May 6, 2017), [www.voanews.com/a/iraqis-starve-waiting-troops-push-is-from-mosul/3840432.html](http://www.voanews.com/a/iraqis-starve-waiting-troops-push-is-from-mosul/3840432.html) [<https://perma.cc/NJ3F-TY4Y>].

273. *Civilians Living in "Penury and Panic" as Mosul Battle Rages*, U.N. HIGH COMM'R FOR REFUGEES (June 16, 2017), <https://www.unhcr.org/news/stories/civilians-living-penury-and-panic-mosul-battle-rages-unhcr> [<https://perma.cc/A3SZ-5X7G>].

274. *Iraqi Planes Drop Leaflets on West Mosul to Say Offensive Is Imminent*, REUTERS (Feb. 19, 2017), <https://www.reuters.com/article/world/iraqi-planes-drop-leaflets-on-west-mosul-to-say-offensive-is-imminent-idUSKBN15Y029> [<https://perma.cc/3GZJ-V5ZV>].

275. *As Mosul Battle Rages, Trapped Residents Face Terror and Hunger*, U.N. HIGH COMM'R FOR REFUGEES (June 27, 2017), <https://www.unhcr.org/news/stories/mosul-battle-rages-trapped-residents-face-terror-and-hunger> [<https://perma.cc/8FZB-WFY3>].

276. *Iraq/US-Led Coalition: Weapons Choice Endangers Mosul Civilians*, HUM. RTS. WATCH (June 8, 2017, 2:55 AM), <https://www.hrw.org/news/2017/06/08/iraq/us-led-coalition-weapons-choice-endangers-mosul-civilians> [<https://perma.cc/433B-M82Q>].

277. *Scale of Civilians Fleeing Iraq's Mosul 'Staggering' – Senior UN Relief Official*, <https://www.un.org/en/academic-impact/scale-civilians-fleeing-iraqs-mosul-staggering-%E2%80%93-senior-un-relief-official> [<https://perma.cc/4Q86-2DXZ>].

278. *Id.*

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the country's fight against Islamist insurgents.<sup>279</sup> Situated in Mindanao, the second-largest island in the Philippines,<sup>280</sup> Marawi had a population of close to 200,000 at the time, with nearly 90% identifying as Muslim.<sup>281</sup> By 2016, several Islamist groups unified under the Islamic State in the Philippines (IS-P) led by Isnilon Hapilon.<sup>282</sup> By May 2017, IS-P had established control over Marawi, issuing a call for both domestic and foreign fighters to reinforce its ranks.<sup>283</sup> Roughly 900 to 1,000 IS-P fighters battled a Philippine military force that swelled to 12,000 troops by the end of the conflict.<sup>284</sup> Prior to the siege, IS-P smuggled fighters into Marawi and built an extensive tunnel network connecting various buildings.<sup>285</sup> Anticipating a prolonged conflict, the group stockpiled weapons and supplies in tunnels, basements, and mosques.<sup>286</sup>

The fierce urban combat devastated Marawi, leaving much of the city in ruins.<sup>287</sup> Government reports estimate that the siege killed 920 militants, 165 soldiers, and 47 civilians, while displacing around 360,000 residents from Marawi and nearby areas.<sup>288</sup> In response, President Rodrigo Duterte

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279. ISAAC KFIR, TERRORISM IN THE INDO-PACIFIC: GLOCALISM COMES OF AGE 9 (2018), [https://ad-aspi.s3.ap-southeast-2.amazonaws.com/2018-05/SR\\_119\\_Terrorism\\_in\\_the\\_Indo-Pacific.pdf](https://ad-aspi.s3.ap-southeast-2.amazonaws.com/2018-05/SR_119_Terrorism_in_the_Indo-Pacific.pdf) [<https://perma.cc/P6S3-HMA2>]; John Spencer et al., *Urban Warfare Project Case Study Series, Case Study #8 – Marawi*, MOD. WAR INST. (May 23, 2024), <https://mwi.westpoint.edu/urban-warfare-case-study-8-battle-of-marawi> [<https://perma.cc/CK8P-FU7M>]; Dahlia Simangan & Raihan A. Yusoph, *The Places That Once Were: Remembering Marawi*, NEW MANDELA (May 19, 2023), <https://www.newmandala.org/the-places-that-once-were-remembering-marawi> [<https://perma.cc/XPF6-BK5X>].

280. Spencer et al., *supra* note 279.

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. *Battle for Marawi*, REUTERS, <https://fingfx.thomsonreuters.com/gfx/rngs/PHILIPPINES-ATTACK/010041F032X/index.html> [<https://perma.cc/2WHH-5475>]; Colin Dwyer, *Photos: In Marawi, a Siege Threatens to Grind into Stalemate*, NPR (June 7, 2017), <https://wamu.org/story/17/06/07/photos-in-marawi-a-siege-threatens-to-grind-into-stalemate> [<https://perma.cc/RWZ4-LXS4>].

287. AMNESTY INT'L, 'THE BATTLE OF MARAWI' DEATH AND DESTRUCTION IN THE PHILIPPINES 6 (2017), <https://www.amnestyusa.org/wp-content/uploads/2017/11/Philippines-The-Battle-of-Marawi-Death-and-Destruction-in-the-Philippines.-ASA-35.7427.2017-amended-16-Nov.pdf> [<https://perma.cc/G5WF-JUXM>].

288. Simangan & Yusoph, *supra* note 279.

declared martial law and imposed a citywide lockdown.<sup>289</sup> Military forces imposed strict access controls, establishing checkpoints around Marawi's perimeter and within the city.<sup>290</sup> Reports indicated that authorities shut down power and communication lines while heavily guarding all entry and exit points to prevent extremist groups from escaping.<sup>291</sup> The military secured key routes, including bridges and surrounding areas, to restrict militant reinforcements and disrupt supply lines.<sup>292</sup>

To support displaced civilians, the Philippine military worked with NGOs to coordinate permits and facilitate access through military checkpoints.<sup>293</sup> However, logistical and security challenges restricted most relief efforts to areas beyond the besieged city.<sup>294</sup> Humanitarian organizations raised concerns over civilians trapped within Marawi, reporting severe shortages of food and potable water.<sup>295</sup>

Amnesty International documented alleged violations of international humanitarian law by both IS-P and Philippine forces during the siege.<sup>296</sup> The organization noted that despite designated evacuation routes, hundreds—possibly thousands—of civilians remained trapped in Marawi for weeks.<sup>297</sup> On May 29, the United Nations estimated around 2,300 civilians remained trapped in Marawi, with the number dropping to fewer than 300 by late

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289. Mikas Matsuzawa, *Marawi Crisis: What We Know—and Don't Know—So Far*, PHILSTAR.COM (May 29, 2017, 9:13 AM), <https://www.philstar.com/headlines/2017/05/25> [<https://perma.cc/8QHP-X86F>].

290. Euan McKirdy & Ivan Watson, *Bloodied and Broken: Rising Toll of Philippines' War with Isis*, CNN (Aug. 24, 2017, 6:32 AM EDT), <https://www.cnn.com/2017/06/25/asia/philippines-marawi-isis/index.html> [<https://perma.cc/M48N-4HGX>].

291. Edwin O. Fernandez, *We're Not Ok: Marawi Mayor, Residents Confirm Fires in City, Blackout, Gunfire*, PHIL. DAILY INQUIRER (May 24, 2017, 12:25 AM), <https://newsinfo.inquirer.net/898937> [<https://perma.cc/YWJ6-F3D4>].

292. *Maute Escape Route Sealed Off*, PHIL. DAILY INQUIRER (Sept. 25, 2017, 5:18 AM), <https://newsinfo.inquirer.net/933055> [<https://perma.cc/U7UL-TGSR>]; Carmela Fonbuena, *Marawi Battle Area Shrinks as Troops Enclose 3rd Bridge*, RAPPLER (Sept. 23, 2017, 7:24 AM), <https://www.rappler.com/philippines/183034> [<https://perma.cc/X3UM-KFGS>].

293. Imelda Deinla & Rosalie Hall, *The Marawi Siege and After: Managing NGO-Military Relations*, LOWY INST. (Sept. 24, 2019), <https://www.lowyinstitute.org/the-interpreter/marawi-siege-after-managing-ngo-military-relations> [<https://perma.cc/32TE-78DY>].

294. See ANGELO PAOLO L. TRIAS & LINA GONG, GOVERNING HUMAN-INDUCED DISASTERS IN SOUTHEAST ASIA: INSIGHTS FROM THE 2017 MARAWI CONFLICT 9 (2020), [https://www.rsis.edu.sg/wp-content/uploads/2020/04/PR200423\\_Governing-Human-induced-Disasters-in-Southeast-Asia.pdf](https://www.rsis.edu.sg/wp-content/uploads/2020/04/PR200423_Governing-Human-induced-Disasters-in-Southeast-Asia.pdf) [<https://perma.cc/TUB9-WTQR>].

295. Dennis Jay Santos, *Starvation Threatens Hundreds Trapped by Fighting in Philippine City*, NEW HUMANITARIAN (June 19, 2017), <https://www.thenewhumanitarian.org/news/2017/06/19/starvation-threatens-hundreds-trapped-fighting-philippine-city> [<https://perma.cc/Z7TX-FJ22>].

296. See AMNESTY INT'L, *supra* note 287, at 21.

297. *Id.*

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August.<sup>298</sup> Those unable to escape faced dire shortages of food and water, further compounding the humanitarian crisis.<sup>299</sup>

#### IX. SIEGE WARFARE UNDER SCRUTINY: ISRAEL, INTERNATIONAL LAW, AND EMERGING NORMS

Siege warfare has long been recognized under international law as a tactical necessity in urban military operations where isolating enemy forces is critical to achieving strategic objectives.<sup>300</sup> Following the October 7, 2023 Hamas attacks, Israel imposed a siege on Gaza,<sup>301</sup> citing objectives to dismantle Hamas's military infrastructure, secure the release of hostages, and restore regional security. Despite reopening Gaza to humanitarian aid within two weeks,<sup>302</sup> international criticism has only intensified.

Global institutions and advocacy groups have condemned the siege as a violation of international law, a form of collective punishment, or even an act of genocide.<sup>303</sup> While siege operations—when conducted within the confines of international humanitarian law—are not inherently unlawful, critics contend that Israel's measures exceed permissible wartime conduct. Such criticisms reflect differing interpretations of the legal standards governing siege warfare and humanitarian obligations. Yet, under existing international law, no distinct legal framework compels Israel to assume direct responsibility for humanitarian aid under an occupation paradigm that it does not acknowledge as applicable.

Nevertheless, legal challenges surrounding Israeli siege operations in Gaza have mounted. The ICJ's provisional measures requiring Israel to facilitate humanitarian relief could set a precedent for how siege tactics are treated in future conflicts.<sup>304</sup> Simultaneously, the ICC's request for arrest warrants against Israeli officials signals a broader effort to scrutinize the use of siege as a method of warfare under international criminal law.<sup>305</sup> While these legal proceedings remain unresolved, they signal a potential

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298. *Id.*

299. *Id.*

300. *See* Provisional Measures, *supra* note 6, ¶ 80.

301. Malsin, *supra* note 1.

302. Gritten, *supra* note 102.

303. *See* Provisional Measures, *supra* note 6, ¶¶ 54, 55; *see* TIMES ISR., *supra* note 148; *see* Lynch & Moens, *supra* note 150; *see* B'TSELEM, *supra* note 152.

304. *See also* Provisional Measures, *supra* note 6, ¶ 80.

305. *See also* Int'l Crim. Ct., *supra* note 7.

shift in how siege tactics are assessed under international law—one that may have far-reaching consequences beyond the current conflict.

Historically, as demonstrated in Fallujah, Mosul, and Marawi, sieges have been employed as strategic alternatives to direct ground combat. Limiting their use could force militaries into prolonged engagements in densely populated areas, heightening risks for both combatants and civilians. Moreover, redefining siege operations as unlawful could encourage non-state actors to embed within civilian areas, expecting that legal and political constraints will limit state responses.

A key issue remains whether the scrutiny of Israel's siege reflects a broader transformation in international law or the selective application of existing standards. The sharp contrast between condemnation of Israel's conduct and the acceptance of similar tactics in prior conflicts underscores the inconsistency in international legal interpretations. While reasonable legal debates exist over the scope of permissible siege tactics, conflating lawful military strategy with allegations of war crimes or genocide risks eroding the credibility of international legal institutions. If legal norms are applied inconsistently, states may begin to perceive these institutions not as neutral arbiters but as instruments of political leverage. Whether this signals a genuine evolution in humanitarian law or the selective application of *lex specialis* to Israel remains uncertain—but repercussions will influence the future conduct of siege warfare, international legal standards, and the integrity of global legal institutions for years to come.