



GENEVA CENTRE  
FOR HUMAN RIGHTS  
ADVANCEMENT AND  
GLOBAL DIALOGUE

Vortex of Pain:

# Human Rights Implications of the Gaza Armed Conflict

*Research Paper*

September 2024



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## I. Introduction

### a. Factual overview

The recent escalation of hostilities, rapidly turning into a large-scale armed conflict, was triggered by the attack led by Hamas and other armed groups on the territory of Israel on 7 October 2023.<sup>1</sup> The attack was comprised of indiscriminate attacks, in parallel to a land, air and sea operation involving brutal killings and assaults of largely civilians,<sup>2</sup> and including acts of sexual violence.<sup>3</sup> In response to the attacks, Israel launched a military operation in the Gaza Strip, which was described as unprecedented both in terms of the number of casualties and the scale of destruction.<sup>4</sup> The conflict had its repercussions in the West Bank as well, both in terms of violent incidents and other practices affecting human rights, including looting and destruction of property,<sup>5</sup> restrictions on movement and access to grazing land.<sup>6</sup> Incitement to violence has become concerningly embedded in the conflict.<sup>7</sup>

### b. Framing of the research paper

The aim of the research paper is to provide a comprehensive, but concise, mapping of the impact of the armed conflict from a human rights law perspective.<sup>8</sup> The paper takes the viewpoint of individuals affected by the conflict, not actors of international law. It adopts a language of rights, rather than obligations. While this endeavour is therefore outside the scope

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<sup>1</sup> For a more detailed account of the events see “[Military occupation of Palestine by Israel](#)”, RULAC, 07.12.2023.

<sup>2</sup> ‘Legal Brief: 2023 Hostilities in Israel and Gaza’, Diakonia IHL Centre, December 2023, p 17. The attacks carried out on 7 October and in the following weeks resulted in the death of over 1,200 persons, injury of over 5,000, and the abduction of 240 people. For a timeline of events across Israel, Gaza, and the West Bank, see the overview provided by ACLED: ‘[Fact Sheet: Israel and Palestine Conflict](#)’, ACLED, 31.10.2023.

<sup>3</sup> Noëlle Quéniwet, “[Israel – Hamas 2023 Symposium – Sexual Violence on October 7](#)”, Articles of War, 19.12.2023.

<sup>4</sup> For instance, recent estimates demonstrate that the damage inflicted in the social sector is 17 times higher than in the hostilities occurring in 2014, and over 90 times higher than what was the case in 2021. See EU, UN, World Bank, [Gaza Strip – Interim Damage Assessment Summary Note – March 29, 2024](#), 02.04.2024, p 9. The conflict has witnessed large-scale destruction of cultural heritage as well. Estimates carried out by UNESCO demonstrate that, in the period of 07.10.2023-08.04.2024, 43 cultural heritage sites in the Gaza Strip had incurred damage. In addition to religious sites, the list of objects encompasses monuments and museums, movable cultural property, as well as archaeological sites and historical/artistic buildings. See UNESCO, “[Gaza Strip: Damage assessment](#)”, 10.04.2024. See also Ahmed Al-Barsh, “[Report on the Impact of the Recent War in 2023 on the Cultural Heritage in Gaza Strip – Palestine](#)”, ANSCH, 07.11.2023.

<sup>5</sup> “[Supporting Palestinian communities affected by settler violence in the West Bank](#)”, European Civil Protection and Humanitarian Aid Operations, 16.04.2024.

<sup>6</sup> OHCHR, “[Flash report on the human rights situation in the occupied West Bank, including East Jerusalem following the attacks on 7 October 2023](#)”, 27.12.2023, (hereafter: OHCHR Flash Report). Recent OHCHR figures indicate that 628 Palestinians have been killed in the West Bank since October 7, including 150 children, and according to OCHA, 259 Palestinian households (1547 people including 753 children) have been forcibly displaced [UN News](#) 28 August 2024.

<sup>7</sup> *Ibid*, para 45. For a comment, see Tamer Morris, “[Israel – Hamas 2024 Symposium – Information Warfare and the Protection of Civilians in the Gaza Strip](#)”, Articles of War, 23.01.2024. The second Decision issued by CERD in relation to the hostilities in the Gaza Strip also condemns incitement to violence. David Keane, “South Africa v Israel and CERD’s Early Warning and Urgent Action Procedure: Part II”, *Opinio Juris*, 16.01.2024, available at: <https://opiniojuris.org/2024/01/16/south-africa-v-israel-and-cerds-early-warning-and-urgent-action-procedure-part-ii/>.

<sup>8</sup> International human rights law (IHL) applies equally in peacetime and in situations of armed conflict, and its norms are complementary with those stemming from international humanitarian law.



of this research paper, taking into account international humanitarian law (IHL) norms as part of the applicable legal framework may nonetheless affect assessments of legality of the belligerents' conduct during the conflict.<sup>9</sup>

The application of international human rights law (IHRL) in times of armed conflict, and consequently the interplay of this branch of law with IHL, has been a matter of long-standing debate. While different views had been put forward on precisely how their co-application should be resolved and the norm stemming from which branch should take precedence under which circumstances, what is nowadays less debated is that IHRL does equally apply in peace and in times of armed conflict. Human rights bodies also reaffirmed the ICJ pronouncement that 'human rights do not cease in case of armed conflict',<sup>10</sup> and underline that 'both spheres of law are complementary, not mutually exclusive'.<sup>11</sup>

Norms of the two branches of law largely coincide – both prohibit ill-treatment including all acts of sexual violence, or hostage taking. Questions on how to reconcile them largely arise in the context of the use of force, and detention. In its interpretation of the right to life, the Human Rights Committee precisely embodies this complementary approach by emphasising that, in conduct of hostilities, use of force in an IHL-compliant manner will generally not entail an arbitrary deprivation of life.<sup>12</sup> Similarly, its interpretation of the right to liberty leaves room for accommodating IHL detention regimes.<sup>13</sup> Additionally, IHRL also embodies a system of adaptation mechanisms. Situations of armed conflict may give rise to a public emergency threatening the life of the nation, which may justify introducing derogations. Nonetheless, these measures must be exceptional, temporary, necessary and proportionate (requiring the State to specify the right from which it derogates, the duration and geographic area in which the derogation applies), and non-discriminatory. Additionally, derogations must be officially proclaimed, and the State must notify, in the case of the ICCPR, the UN Secretary-General of the measure introduced. Finally, not all rights may be derogated from - the prohibition of torture

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<sup>9</sup> For a more detailed overview of the applicable legal framework, including the most relevant norms of IHL, see "[Military occupation of Palestine by Israel](#)", RULAC, 07.12.2023. From the outset of the conflict, Israel had laid out its position on the key aspects relating to the legal framework governing the hostilities with Hamas: "[Hamas-Israel Conflict 2023: Key Legal Aspects](#)", State of Israel Ministry of Foreign Affairs, 02.11.2023. The Israeli authorities had usually justified the attacks on such facilities with military considerations, putting forward that the facilities had been used in support of Hamas. See for instance the statements cited in: Michael N. Schmitt, "[Israel – Hamas 2023 Symposium – The Legal Protection of Hospitals during Armed Conflict](#)", *Articles of War*, 29.12.2023.

<sup>10</sup> *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 09.07.2004, para 106.

<sup>11</sup> UN Human Rights Committee (CCPR), "General Comment No. 36, Article 6 (Right to Life)" (2019) CCPR/C/GC/35 (hereafter: General Comment 36), para 64.

<sup>12</sup> *Ibid.*

<sup>13</sup> CCPR, "General Comment 35, Article 9 (Liberty and Security of Person)" (2014) CCPR/C/GC/35 (hereafter: General Comment 35), para 15.





and cruel, inhuman and degrading treatment, but also a number of procedural safeguards, are examples of non-derogable rights.<sup>14</sup>

Another, related source of debate stems from the extraterritorial application of human rights. First clarifications coming from the ICJ confirmed that human rights apply extraterritorially in cases where a State exercises effective control over territory, such as situations of occupation.<sup>15</sup> An additional form of exercise of jurisdiction arises in cases where control is exercised over persons, such as detention, or custody. The Human Rights Committee interpreted the ICCPR to encompass the exercise of jurisdiction in instances where a State's conduct may have 'direct, significant, and foreseeable consequences' on human rights, thus englobing situations of conduct of hostilities.<sup>16</sup>

This research paper is entirely based on desk research, encompassing reports provided by UN human rights bodies, humanitarian and human rights organisations, as well as news sources.<sup>17</sup> It is based exclusively on internationally trusted and authoritative sources.

## **II. Immediate consequences of the armed conflict – A human rights perspective**

### **a. Right to life**

The right to life in the first place requires actors to refrain from depriving persons of life. However, it goes beyond the prohibition of intentional killing, and encompasses protection from threats to life that are reasonably foreseeable, including famine, or environmental degradation.<sup>18</sup> It thus requires enabling access to essential goods and services, including food and water, healthcare and sanitation, shelter, and electricity.<sup>19</sup> Additionally, lives should be protected from acts carried out by private actors, including by controlling the availability of firearms within the society.<sup>20</sup> Secondly, using force is permissible only in response to an imminent threat to life and where no alternatives would suffice. This presumes providing training and equipment that allows law enforcement officials to apply gradual use of force. The

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<sup>14</sup> CCPR, "General Comment No. 29: Article 4: Derogations during a State of Emergency", CCPR/C/21/Rev.1/Add.11, 31 August 2001.

<sup>15</sup> *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 09.07.2004, paras 107-113.

<sup>16</sup> General Comment 36, para 66.

<sup>17</sup> The title is a reference to the UN High Commissioner's for Human Rights statement upon his visit to the region, depicting the escalation of hostilities occurring on the territory of Israel and the occupied Palestinian territory. See "[UN Human Rights Chief travels to the Middle East in context of conflict in Israel and the Occupied Palestinian Territory](#)", UN, 07.12.2023.

<sup>18</sup> General Comment 36, para 21. In that regard, particularly concerning accounts arose in relation to violent acts in the West Bank, and the links between the settlers and Israeli authorities. See "[UN demands end to Israeli forces' support of settler attacks on West Bank Palestinians](#)", The Guardian, 16.04.2024; United Nations High Commissioner for Human Rights, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", 01.02.2024, A/HRC/55/72 (hereinafter: A/HRC/55/72), paras 16, 23.

<sup>19</sup> Adequately protecting the right to life also entails taking into account the particularly vulnerable positions that certain segments of the populations may be faced with, and mitigating those risks. General Comment 36, paras 23, 26.

<sup>20</sup> General Comment 36, paras 7, 21. In the present context, see accounts provided in the OHCHR Flash Report, paras 34, 36.



same kind of preparation is required for policing demonstrations.<sup>21</sup> Thirdly, actors are placed with a higher duty of care in relation to the right to life of persons found in their custody. This duty englobes, in addition to adequate living conditions, verifying their health condition and providing them with access to appropriate medical care.<sup>22</sup> Finally, measures should also be put in place to mitigate risks faced by persons placed in particularly vulnerable positions, including when such risks stem from their line of work.<sup>23</sup>

The ongoing conflict has placed the lives of vast numbers of the population at risk. In addition to direct physical violence coming from either belligerents or private actors, lives are jeopardised by dire living conditions. These include lack of access to critical medical care coupled with rising rates of diseases stemming from WASH/sanitation infrastructure, as well as lack of access to food and drinking water.

#### **b. Liberty and security of person**

Deprivation of liberty is permitted only in highly exceptional circumstances. A person may be subjected to administrative detention solely when this measure is the only adequate response to the imminent danger posed by that person. This deprivation of liberty must have a domestic legal basis.<sup>24</sup> This safeguard bars detaining a person's family members who have not committed any wrongful acts; or for having lawfully exercised their freedoms of opinion and expression. It evidently protects all persons from being taken hostage. Further, this domestic law must also set out the procedures and safeguards in accordance with which persons can be deprived of their liberty, along with information on reasons for arrest including any criminal charges, maximum duration and regular review of detention, and prompt presentation before a judge.<sup>25</sup>

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<sup>21</sup> Reports from the West Bank suggest certain concerning practices in these aspects. For instance, a more recent overview provided by the UN Office of the High Commissioner showcases that, within the period of November 2022 - October 2023, one fifth of all violent incidents (englobing loss of life and injury, as well as destruction of property) occurred between 7 and 31 October 2023, demonstrating a strong link between the onset of hostilities on 7 October and the further escalation of the situation in the West Bank. [State of Palestine: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, period from 1 November 2022 to 31 October 2023](#), OHCHR, March 2024, p 2. The most recent statistics provided in the UN report demonstrate that 20% of the incidents occurring between 1 January and 31 October 2023 had occurred since 7 October, and the daily average of violent incidents increasing from 3 to 8 in the said period. See A/HRC/55/72, paras 17-18. "[Supporting Palestinian communities affected by settler violence in the West Bank](#)", ECHO, 16.04.2024. See also "[Israeli settlers kill two Palestinians in West Bank, officials say](#)", The Guardian, 16.04.2024. "[Israel-Occupied Palestinian Territory situation, 100 days on](#)", OHCHR, 12.01.2024; In relation to policing demonstrations, see OHCHR Flash Report para 53. General Comment 36, para 12.

<sup>22</sup> General Comment 36, para 25.

<sup>23</sup> General Comment 36, para 23; "[Gaza: UN experts condemn killing and silencing of journalists](#)", OHCHR, 01.02.2024. Reports have testified to how communications shutdowns obstructed journalists in their work. "[Israel and Occupied Palestinian Territories: Stop the assault on free speech and protect civilians](#)", Article19, 13.11.2023.

<sup>24</sup> Particular concerns were raised in relation to the decision to revoke working permits for Palestinians from Gaza working in Israel, and the legality of their subsequent detention in Israel. "[Arrested, tortured and insulted', say workers returned to Gaza by Israel](#)", Aljazeera, 03.11.2023. '[Alarming increase of human rights violations against Palestinians in the occupied territory and against Palestinian citizens of Israel](#)', FIDH, 09.11.2023.

<sup>25</sup> This review should also stem from the person's right to challenge the lawfulness of their detention. See General Comment 35, paras 14-17, 24, 36-37, 39. Practices noted in the OHCHR Flash Report paras 22, 53 should therefore be examined in light



An important set of guarantees is related to persons' treatment in detention. In addition to the provision of adequate living standards and evidently refraining from any form of ill-treatment,<sup>26</sup> the detainees' right to legal assistance and to have their whereabouts disclosed should be upheld.<sup>27</sup> Numerous accounts of events documented in the current conflict warrant further examinations of their alignment with human rights. For instance, news reports have documented high numbers of arrests carried out in the West Bank shortly after the outbreak of hostilities.<sup>28</sup> Conduct documented in a recent OHCHR report raised several concerns from the perspective of human rights, in relation to the legal basis for deprivation of liberty, the length of administrative detention, treatment of persons upon their apprehension and during detention, as well as judicial guarantees enjoyed by persons subjected to detention.<sup>29</sup>

### c. Freedom from ill-treatment and the proper handling of mortal remains

Protection against ill-treatment is an absolute norm, and it does not stop with death. Norms governing the treatment of the dead stem not only from the rights of the deceased, but also from the rights of their relatives including the right to know their fate.<sup>30</sup> Ensuring the dignified treatment of the deceased is essential.<sup>31</sup> Fulfilling this right presumes introducing guarantees to properly account for the dead, including measures to search for and identify mortal remains, properly dispose of them and protect their gravesites.<sup>32</sup> This set of norms also entails proper and dignified, and therefore individual, burials. In this regard, the discovery of mass gravesites in the Gaza Strip was met with concerns.<sup>33</sup> Mass graves prevent families from having closure; and make identifying the deceased and locating gravesites more difficult. In parallel, exhumations should not be carried out unless warranted either by overriding public necessity,

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of these standards. Additional concerns were raised in relation to the use of facial recognition technology and surveillance measures more broadly to identify persons who should be subjected to detention and the ensuing additional risks to the right to privacy. "[How Israel uses facial-recognition systems in Gaza and beyond](#)", *The Guardian*, 19.04.2024.

<sup>26</sup> See: "[UN Report Describes Physical Abuse and Dire Conditions in Israeli Detention](#)", *New York Times*, 17.04.2024. Further, concerns were raised in relation to the treatment of detainees in Israel. "[UN Aid Agency Researchers Allege Abuse of Gazans in Israeli Detention](#)", *New York Times*, 03.03.2024; see also: "[Not just the UNRWA report: Countless accounts of Israeli torture in Gaza](#)", *Al Jazeera*, 13.03.2024. See also "[Systemic torture and inhumane treatment of Palestinian detainees in Israeli prison facilities since October 7, 2023](#)", *Adalah*, 16.02.2024; "[Gaza: Report from the ground](#)", UN, 19.01.2024. Further concern was raised in relation to statements concerning the detention of UNRWA staff members. "[UNRWA report says Israel coerced some agency employees to falsely admit Hamas links](#)", *Reuters*, 08.03.2024.

<sup>27</sup> Concerns were raised with regards to accounts about prolonged incommunicado detention. "[Israel: Gaza Workers Held Incommunicado for Weeks](#)", *Human Rights Watch*, 03.01.2024.

<sup>28</sup> See "[Occupied West Bank faces growing Israeli aggression amid Gaza war](#)", *Aljazeera*, 08.12.2023.

<sup>29</sup> OHCHR Flash Report, paras 19-26.

<sup>30</sup> In the current context, estimates made in mid-April 2024 demonstrate that approximately 7,000 persons were reported missing. UN ESCWA, *Expected Socio-Economic Impacts on the State of Palestine: Update April 2024*, 02.05.2024, p 2.

<sup>31</sup> Upholding the dignity of the dead has been emphasized as one of the recommendations made by UN experts. See "[Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence](#)", UN, 12.10.2023. For an overview of the legal framework governing the handling of mortal remains, stemming from both IHL and IHRL, see Gloria Gaggioli, "International humanitarian law: The legal framework for humanitarian forensic action", *Forensic Science International*, 2018, Vol. 282, pp 184-194.

<sup>32</sup> Janina Dill, "[No peace for the dead: legal questions about Israel's destruction of cemeteries in Gaza](#)", *EJIL:Talk!*, 31.01.2024.

<sup>33</sup> "[Gaza Authorities Say More Bodies Were Discovered in Mass Grave](#)", *New York Times*, 25.04.2024. "[UN Calls for Inquiry Into Mass Graves at 2 Gaza Hospitals](#)", *New York Times*, 23.04.2024. "[Immediate Action Must be Taken to Protect Mass Graves in Gaza](#)", *International Commission on Missing Persons*, 24.04.2024.





or for the aim of returning mortal remains to family members. Properly handling mortal remains requires adequate expertise and resources, most notably forensic and weapons experts, and equipment.<sup>34</sup>

#### **d. Right to health**

The destruction of healthcare facilities, coupled with the loss of life of qualified medical personnel, has a negative long-term impact on the availability of healthcare.<sup>35</sup> Ongoing hostilities have impeded the population from safely reaching medical care, thus impacting its accessibility.<sup>36</sup> Concerns were raised in relation to events occurring in the West Bank as well. An OHCHR report suggests several instances where persons were denied access to medical care, either following attacks by preventing medical personnel access to injured persons,<sup>37</sup> or due to movement restrictions preventing persons from accessing facilities where they would obtain needed treatment.<sup>38</sup>

#### **e. Right to food, and humanitarian assistance**

Armed conflicts have significant detrimental effects on the access to food,<sup>39</sup> leading to the destruction of agricultural products as well as to the damage of crops. As civilian infrastructure is damaged, local food production systems become dysfunctional, increasing the population's dependence on humanitarian assistance.<sup>40</sup> Local production of food in the Gaza Strip was additionally hindered by the lack of access to fuel and electricity. Essentially, the lack of fuel

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<sup>34</sup> A recent UN update precisely alerts to this question. See "[Hostilities in the Gaza Strip and Israel | Flash Update #160](#)", OCHA, 01.05.2024; '[10,000 people feared buried under the rubble in Gaza](#)', UN, 02.05.2024. "[Gaza: Discovery of mass graves highlights urgent need to grant access to independent human rights investigators](#)", Amnesty International, 24.04.2024. Actors have likewise vouched for a ceasefire which would enable actors to secure the proper handling of mortal remains, including recovery and burial. Call for ceasefire to be demanded at the Paris humanitarian conference: "[Israel/OPT: Paris Conference must push for an immediate humanitarian ceasefire](#)", Amnesty International, 08.11.2023, MDE 15/7388/2023.

<sup>35</sup> A recent report on the increasing healthcare crisis had been provided by MSF: "[Gaza's Silent Killings](#)", MSF, April 2024. WHO's update highlights the availability of 33% partially functioning hospitals (and none fully functioning), and 30% primary healthcare facilities. In addition to the high and rising tolls in most communicable diseases, the situation report underlined the danger stemming from the decomposition of bodies trapped under debris which is accelerating with the temperature rises. WHO, "[oPt Emergency Situation Update](#)", Issue 29: 07.10.2023-30.04.2024, 07.05.2024, p 3. For an earlier account of the availability and functional capacity of medical infrastructure see "[WHO leads very high-risk joint humanitarian mission in Al-Shifa Hospital in Gaza](#)", 18.11.2023. UN Committee on Economic, Social and Cultural Rights, "General Comment No. 14: The Right to the Highest Attainable Standard of Health", (2000) E/C.12/2000/4, para 12. According to WHO more than 22,500 people have life-changing injuries requiring rehabilitation services "now and for years to come" reflecting data as of 23 July [UN News](#) 12 September 2024.

<sup>36</sup> Ibid.

<sup>37</sup> OHCHR Flash Report, para 14.

<sup>38</sup> Ibid, para 49.

<sup>39</sup> In its most recent analyses, the Integrated Food Security Phase Classification (IPC) warned about an imminent risk of famine in the north of the Gaza Strip. The World Food Programme has been providing regular updates on the needs of the population of Gaza and the West Bank, and the assistance provided by WFP with the aim of meeting those needs. See "[WFP Palestine Emergency Response External Situation Report #18](#)", WFP, 24.04.2024. Its consecutive analyses also demonstrate a trend of a rapidly deteriorating situation across the territory, with an increased number of people facing 'high acute food insecurity'. See "[IPC Global Initiative – Special Brief: The Gaza Strip](#)", IPC, 18.03.2024, p 1. A more comprehensive study of the factors contributing to food insecurity in the Gaza Strip had been carried out by OXFAM. See "[Inflicting Unprecedented Suffering and Destruction](#)", OXFAM International, 15.03.2024.

<sup>40</sup> See "[IPC Global Initiative – Special Brief: The Gaza Strip](#)", IPC, 18.03.2024, pp 1, 6.



hinders crop irrigation, the preparation and refrigeration of food, the functioning of bakeries, but also, the delivery of available relief goods.<sup>41</sup>

The delivery of humanitarian assistance in situations of imminent crises such as the one in Gaza<sup>42</sup> becomes all the more important.<sup>43</sup> Consent to offers for providing humanitarian assistance may not be withheld arbitrarily. In cases where the civilians' needs would not be met either in terms of access to food or medicine, denying an offer to provide humanitarian assistance which would be 'exclusively humanitarian and impartial and delivered without adverse distinction' would be considered arbitrary.<sup>44</sup> Likewise, in cases where withholding consent would be legitimate, it must not go against principles of necessity and proportionality. This presumes carefully determining the time and duration, location, as well as the goods and services for which consent would not be given.<sup>45</sup> Similarly, the denial of consent should be properly reasoned.<sup>46</sup> In this regard, concerns were raised over the pronouncements that any UNRWA assistance would not be approved.<sup>47</sup> Once consent is obtained, actors must allow and facilitate rapid and unimpeded passage of humanitarian assistance. This obligation enables entry into the territory and movement within it.<sup>48</sup> In addition to evidently refraining from

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<sup>41</sup> [“Fuel has run out, stalling humanitarian operations in Gaza, warn aid agencies”](#), OXFAM, 14.11.2023. [“Starvation as weapon of war being used against Gaza civilians”](#), OXFAM International, 25.10.2023.

<sup>42</sup> Ensuring access to humanitarian relief operations in the Gaza Strip was one of the provisional measures indicated by the ICJ. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, ICJ, Provisional Measures, Order, 26.01.2024, para 86(4). UN Human Rights Council, “Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice”, 26.03.2024, UN Doc A/HRC/55/L.30 (hereafter: A/HRC/55/L.30), paras 20, 30. UN General Assembly, Protection of civilians and upholding legal and humanitarian obligations, 26.10.2023, UN Doc A/ES-10/L.25 (hereafter: A/ES-10/L.25), paras 2, 3, 8. The situation aggravated further with statements linking UNRWA staff to the 7 October attacks, which prompted numerous states to cease its funding, and a reversal in that decision only following the completion of the investigation process. [“States must reinstate and strengthen support to UNRWA amid unfolding genocide in Gaza: UN experts”](#), UN, 02.02.2024. Following the allegations, concerned staff members were dismissed, and an internal independent review was mandated by the UN to assess UNRWA's compliance with the neutrality principle. Additionally, a parallel investigation had been launched by the Office of Internal Oversight (OIOS) to look into allegations of staff misconduct. [“The situation in the Middle East, including the Palestinian question”: Briefing of the UN Relief and Works Agency for Palestine Refugees in the Near East \(UNRWA\)”](#), Security Council report, 16.04.2024. [Final Report for the United Nations Secretary-General, Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality](#), 20.04.2024. [“World News in Brief: UNRWA investigation updates, new recruits for Haiti-support force, gun battles in Chadian capital”](#), UN, 29.02.2024. At the time of writing, none of the two investigations had received, or found evidence corroborating allegations of UNRWA staff's involvement in the 07 October attacks. See [“Independent review panel releases final report on UNRWA”](#), UN, 22.04.2024. [“After UN report, Germany says it will resume funding for UNRWA”](#), New York Times, 24.04.2024.

<sup>43</sup> An authoritative interpretation of norms governing humanitarian relief operations has been provided in the Oxford Guidance. While relying primarily on norms stemming from IHL, the Guide takes into account IHRL, and public international law more broadly. Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict (hereafter: Oxford Guidance), 2016, paras 1, 7.

<sup>44</sup> Oxford Guidance, paras 17, 51.

<sup>45</sup> Ibid, para 52.

<sup>46</sup> Ibid, para 54.

<sup>47</sup> [“Israel tells UN it will reject UNRWA food convoys into northern Gaza”](#), UN, 24.03.2024; see also Philippe Lazzarini, *X*, 24.03.2024.

<sup>48</sup> In the present context, this obligation has been referred to in relation to the need to open more border crossings in order to allow the entry and facilitate the movement of humanitarian relief across the territory. See International Crisis Group, [“Stopping Famine in Gaza”](#), Crisis Group Middle East Report No. 244, 08.04.2024, pp 26-30. In addition to initial entry, the reports also refer to barriers to accessing the northern areas of the Gaza Strip. See [IPC Global Initiative – Special Brief: The Gaza Strip](#), IPC, 18.03.2024, p 4.



harassment of humanitarian relief personnel, the relief operation should benefit from simplified technical and formal arrangements, including visa and permits procedures, and customs inspections.<sup>49</sup> Nonetheless, parties have the possibility to maintain measures of control in good faith, including movement restrictions for imperative military necessity; or verification of whether relief consignments adhere to safety and health standards. Control measures however must not be imposed arbitrarily and must not impede the delivery of principled humanitarian assistance.<sup>50</sup> These measures of control can be implemented also in order to ensure the safety of the personnel delivering humanitarian assistance.<sup>51</sup> It should also enable the relevant actors to ensure that aid is delivered at places which can be safely reached by civilians seeking assistance.<sup>52</sup> Likewise, part of the effort of providing for the arrangements necessary to effectively carry out humanitarian relief operations is enabling the functioning of telecommunication networks necessary to ensure an adequate distribution of the assistance provided.<sup>53</sup> The disruption of communications impedes medical teams from being informed about the presence of wounded and sick, and reaching them in order to provide medical care.<sup>54</sup>

#### **f. Right to water and sanitation**

Armed conflicts are proven to be detrimental to the availability, accessibility, affordability, quality and safety, and acceptability of safe and clean drinking water.<sup>55</sup> The particularity in relation to Gaza is that direct access to water was already severely limited for the population of the Gaza Strip before the outbreak of hostilities.<sup>56</sup> Consequently, the lack of electricity or fuel particularly aggravates the situation, given its use for operating mechanisms to treat the

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<sup>49</sup> Oxford Guidance, paras 59-64. Similarly, in the present context, reports alerted to the restrictions of movement and inspection processes which cause logistical constraints and significantly delay the delivery of humanitarian relief, including by creating road congestions. An improvement in humanitarian access in the Gaza Strip had been noted in April, but it was underlined that removing administrative barriers would significantly contribute to increased flows of assistance. “[Aid Flows to Gaza Are Rising, UN Says, but More Is Needed](#)”, New York Times, 27.04.2024; “[UN Official Says ‘Every Day Counts’ in Aid Efforts for Gaza](#)”, New York Times, 25.04.2024.

<sup>50</sup> Oxford Guidance, paras 56, 65-72.

<sup>51</sup> The current estimates account for around 300 aid workers who were victims of the armed conflict in the period of 07.10.2023-20.04.2024 in the Occupied Palestinian Territories. These included deaths and injuries resulting from airstrikes, explosives, shootings, and assaults. See Security Incident Data, Aid Worker Security Database, for the period [October 2023- December 2023](#), and for the period [January 2024-April 2024](#). See “[Occupied Palestinian Territory/Israel: Vital need to ensure humanitarian aid and protect humanitarian workers](#)”, UN, 05.04.2024.

<sup>52</sup> International Crisis Group, “[Containing the Gaza Conflagration](#)”, 30.01.2024, p 3. An incident raising particular concern was the large-scale casualties that occurred amid the delivery of humanitarian assistance in February 2024. See “[UN experts condemn ‘flour massacre’, urge Israel to end campaign of starvation in Gaza](#)”, 05.03.2024.

<sup>53</sup> For an overview of the issues underpinning the delivery of humanitarian assistance in Gaza, see International Crisis Group, “[Containing the Gaza Conflagration](#)”, 30.01.2024, pp 2-4.

<sup>54</sup> Palestine Red Cross, [X](#), 27.10.2023. See also: “[Statement on Telecommunications Blackout in Gaza](#)”, Anera, 27.10.2023; Tedros Adhanom Ghebreyesus, [X](#), 28.10.2023; Tal Mimran, “[Israel-Hamas 2023 Symposium – Cyberspace – The Hidden Aspect of the Conflict](#)”, 30.11.2023.

<sup>55</sup> Particular concerns were raised over the flooding of the tunnel network in Gaza. “[Israeli Military Confirms It Has Begun Flooding Hamas Tunnels](#)”, New York Times, 30.01.2024; Aurel Sari, “[Israel – Hamas Symposium 2023 – Flooding Hamas Tunnels: A Legal Assessment](#)”, Articles of War, 11.12.2023.

<sup>56</sup> In fact, 90% of the population lacked direct access to safe drinking water, with local water needing to undergo desalination and decontamination. Mara Tignino, “[How does the classification of armed conflict impact the protection of freshwater in Gaza?](#)”, EJIL:Talk!, 20.11.2023.



water in order to render it potable.<sup>57</sup> The lack of access to water and the defaulting of sanitation facilities significantly contributes to the spread of diseases, thus also impacting the population's right to health.<sup>58</sup> It equally affects their access to food, seeing that the population relies on groundwater for irrigation and cooking as well.<sup>59</sup>

### **g. Right to education**

A distinct effect of armed conflict is also noted in the realm of access to education.<sup>60</sup> As also confirmed in Gaza, hostilities lead to the destruction of education infrastructure and high death tolls of qualified teachers and professors,<sup>61</sup> thus significantly impacting the availability of education. The hostilities have also impacted the accessibility of education institutions, given that remaining schools are no longer within safe physical reach as a result of hostilities, or of the presence of explosive remnants of war. This effect is compounded for displaced persons, given the limited opportunities to access quality education during and after displacement.<sup>62</sup>

Recovery of the education system will require long periods of time, given not only the need for reconstruction of institutions, but also the training of qualified teaching staff. In addition to the destruction of 80% of education facilities, engulfing all universities,<sup>63</sup> the remaining objects have been used as shelters for internally displaced persons,<sup>64</sup> thus further prolonging the prospect of having education institutions dedicated to their initial purpose once security allows. In addition to education, studies demonstrate the importance of the functioning of schools from a protective perspective, providing a safe space for children and shielding them from numerous risks, including recruitment, child labour, and early marriage.<sup>65</sup> The staggering effect of armed conflict on economic growth will evidently reverberate on the pace and scope of post-conflict investment in the quality of education.<sup>66</sup>

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<sup>57</sup> Mark Zeitoun, "[War on Water Prolongs Misery in Gaza](#)", Just Security, 17.10.2023. "[Total blackout in Gaza: Israel is imposing a humanitarian disaster on Palestinians in the Strip](#)", Gisha, 11.10.2023; "[Israel must stop using water as a weapon of war: UN expert](#)", OHCHR, 17.11.2023.

<sup>58</sup> See for instance "[Starvation as weapon of war being used against Gaza civilians](#)", OXFAM International, 25.10.2023. World Health Organisation, "[Infection prevention and control and water, sanitation and hygiene measures in health-care settings and shelters/congregate settings in Gaza](#)", Technical note, 22.02.2024.

<sup>59</sup> "[How Israel's flooding of Gaza's tunnels will impact freshwater supply](#)", Al Jazeera, 03.02.2024.

<sup>60</sup> More than 600 thousand children have been deprived of education since 7 October. See OCHA Flash Appeal, p 9.

<sup>61</sup> "[UN experts deeply concerned over 'scholasticide' in Gaza](#)", OHCHR, 18.04.2024. For instance, at an early stage of the conflict, the UNESCO resolution also underlines the deaths of the staff members of UNRWA, the UN agency that is also the main provider of education in the Gaza Strip. UNESCO, 'Impact and consequences of the current situation in the Gaza Strip/Palestine in all aspects of UNESCO's mandate', Draft Resolution, 42 C/COM.APX/DR.2, 09.11.2023.

<sup>62</sup> Movement restrictions and displacement coupled with rising acts of violence also impeded access to education in the West Bank. UNESCO, "[The hidden crisis: Armed conflict and education](#)", EFA Global Monitoring Report 2011, at 16.

<sup>63</sup> 80% of all school buildings have been destroyed, 92% of the remaining buildings are used as shelters. OCHA Flash Appeal, p 9. "[Over 2% of Gaza's child population killed or injured in six months of war](#)", Save the Children, 04.04.2024.

<sup>64</sup> Ibid.

<sup>65</sup> Michael Anglade, Elizabeth Rushing, Mark Chapple, "[Protecting education from attack during armed conflict](#)", ICRC Humanitarian Law and Policy Blog, 13.09.2023. UNICEF, "[Education under attack in the Gaza Strip](#)", 15.11.2023.

<sup>66</sup> Ibid, at 15.



## **h. Freedom of movement and displacement-related protection**

Several reasons have prompted the displacement of populations in the context of this armed conflict: risk posed by the hostilities themselves;<sup>67</sup> damage to objects, including homes and essential civilian structures including education and medical facilities; and shortage of essential supplies including due to halts in the functioning of civilian infrastructure.<sup>68</sup>

International law provides for several layers of protection in relation to displacement – from, during, and after it occurs. Firstly, displacement in situations of armed conflict is permissible only for the civilians’ security or imperative military reasons. It should be as short as possible and the authorities in question should explain the reasons and procedure for displacement to the population concerned. Importantly, the persons’ rights to life, dignity, liberty and security must be respected upon carrying out the displacement.<sup>69</sup> The scope of the evacuation orders issued by Israel raise concerns about their legality under international law,<sup>70</sup> the jeopardy in which persons who would remain faced,<sup>71</sup> as well as the dire conditions that the large numbers of displaced persons would endure including actual prospects to reach safety.<sup>72</sup>

Furthermore, persons are protected during displacement. They continue to enjoy the rights to physical security and integrity,<sup>73</sup> and basic necessities of life including shelter; food, water and sanitation; as well as medical care.<sup>74</sup> Displacement can precisely be the driver of further violations of human rights, due to the vulnerability that persons are placed in when forced to

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<sup>67</sup> Relocation orders have prompted vast numbers of civilians to move towards the south of Gaza due to security reasons. Nonetheless, many were unable or unwilling to relocate, including due to their reduced mobility (persons with disabilities, with children, or ill). “[Humanitarian Violence in Gaza](#)”, Forensic Architecture, 14.03.2024.

<sup>68</sup> “[Nowhere is safe for children in Gaza](#)”, Save the Children.

<sup>69</sup> [UN Guiding Principles on Internal Displacement](#) (1998) (hereafter: UN Guiding Principles), Principles 6-8. The Principles provide an authoritative compilation of norms stemming from its different branches, including IHL, IHRL, and international refugee law. Most principles are a restatement of the current state of international law applied in the context of displacement.

<sup>70</sup> See for instance the UNGA’s call: “[General Assembly Adopts Resolution Calling for Immediate, Sustained Humanitarian Truce Leading to Cessation of Hostilities between Israel, Hamas](#)”, UN, 27.10.2023. For a comment, see Eliav Lieblich, “[On Civilians’ Return to North Gaza: What International Humanitarian Law Requires](#)”, Just Security, 12.02.2024.

<sup>71</sup> See, for instance, “[Israel and the occupied territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences](#)”, ICRC, 13.10.2023. The Forensic Architecture team, for instance, stressed inconsistencies and imprecisions in the evacuation orders, including the exact areas of relocation and timeframe to do so, as well as the safety of those locations; leading to consecutive displacement. “[Humanitarian Violence in Gaza](#)”, Forensic Architecture, 14.03.2024.

<sup>72</sup> Concerns were raised over the evacuation orders issued to hospitals in the north of Gaza. Medical care personnel were essentially placed in a catch-22 position where both deciding to stay or leave, and equally abandoning patients receiving treatment or attempting to transport them, could increase even further the risk to survival. “[Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured](#)”, WHO, 14.10.2023. For an example of an evacuation order early into the conflict, see Michael N. Schmitt, “[Israel – Hamas 2023 Symposium – The Evacuation of Northern Gaza: Practical and Legal Aspects](#)”, *Articles of War*, 15.10.2023. Additionally, see the comment at: Yousuf Syed Khan, “[The Directive to Evacuate Northern Gaza: Advance Warning or Forced Displacement?](#)”, Just Security, 19.10.2023; Jinan Bastaki, “[Gaza, Forced Displacement, and Genocide](#)”, *EJIL:Talk!*, 05.04.2024.

<sup>73</sup> UN Guiding Principles, Principles 11-12.

<sup>74</sup> UN Guiding Principles, Principles 18-19.





flee.<sup>75</sup> Recent statistics demonstrate that more than 80% of Gaza's population is internally displaced,<sup>76</sup> around half of which live in makeshift tents which increase protection risks.<sup>77</sup>

Lastly, international law provides for the displaced persons' right to voluntary return to their place of residence,<sup>78</sup> which would be carried out in conditions of safety and with full respect for their dignity.<sup>79</sup> Similarly, individuals have the right to property restitution.<sup>80</sup> The scale of destruction of civilian infrastructure is however a significant factor impeding return.<sup>81</sup>

Instances of displacement were not limited to the events in the Gaza Strip. Rising rates of violence and intimidation coupled with restrictions in accessing grazing land and looting of property in the West Bank prompted an increased displacement of herding communities.<sup>82</sup> Restrictions to movement and access to certain towns or villages, the closure of numerous existing checkpoints and the erection of new ones, as well as the imposition of curfew, were measures imposed in a discriminatory manner to Palestinians only.<sup>83</sup> Such practices have resulted in restrictions on accessing religious sites, schools,<sup>84</sup> services, including medical care and areas which served as sources of food and income; as well as accessing justice.<sup>85</sup>

#### **i. Differentiated risks for different groups of the population**

While armed conflict impacts the entire population, various segments will be facing a higher exposure to such risks, or be confronted with additional ones. Children are one such category. They are faced with heightened risks not only to their physical integrity,<sup>86</sup> but also in terms of access to essential supplies such as food and water.<sup>87</sup> Additionally, reports have noted the long-

<sup>75</sup> See "[With Temperatures Soaring, Gazans Swelter in Makeshift Tents](#)", New York Times, 24.04.2024.

<sup>76</sup> "[The Right to Adequate Housing is Under Attack in Gaza](#)", Anera, 18.04.2024.

<sup>77</sup> "[Flash Appeal for the Occupied Palestinian Territory 2024](#)", OCHA, 17.04.2024 (hereafter: OCHA Flash Appeal), p 8.

<sup>78</sup> See CCPR, "General Comment No. 27: Article 12 (Freedom of Movement)" (1999) CCPR/C/21/Rev.1/Add.9; and CERD, "General Recommendation No. 22: Article 5 and refugees and displaced persons", (1996). One of the key issues underpinning ceasefire negotiations has been the question of return of Palestinians to their places of residence. See "[Cease-Fire Talks to Confront How Displaced Palestinians Can Return](#)", New York Times, 01.04.2024.

<sup>79</sup> UN Guiding Principles, Principle 28. For accounts which raised particular concern in this regard, see "[Palestinians Trying to Return to Northern Gaza Say Israeli Troops Fired on Them](#)", New York Times, 14.04.2024. Eliav Lieblich, "[On Civilians' Return to North Gaza: What International Humanitarian Law Requires](#)", Just Security, 12.02.2024.

<sup>80</sup> UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, 2005.

<sup>81</sup> In addition to the destruction of more than 70% of buildings as well as homes, estimates carried out in February 2024 show that almost 30% of all structures have been severely damaged. "[The Right to Adequate Housing is Under Attack in Gaza](#)", Anera, 18.04.2024; OHCHR, "[Widespread destruction by Israeli Defence Forces of civilian infrastructure in Gaza](#)", OHCHR, 08.02.2024; "[Gaza: UN experts deplore use of purported AI to commit 'domicide' in Gaza, call for reparative approach to rebuilding](#)", UN, 15.04.2024; See also OCHA Flash Appeal, p 8.

<sup>82</sup> "[State of Palestine: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, period from 1 November 2022 to 31 October 2023](#)", OHCHR, March 2024, p 2; A/HRC/55/72, paras 20, 25-26. See also "[West Bank: Israel Responsible for Rising Settler Violence](#)", HRW, 17.04.2024.

<sup>83</sup> OHCHR Flash Report, para 23. See also A/HRC/55/72, para 41.

<sup>84</sup> OCHA Flash Appeal, p 12.

<sup>85</sup> A/HRC/55/72, paras 30-33.

<sup>86</sup> "[UN Child Rights Committee condemns killing of children in Gaza Strip](#)", OHCHR, 01.11.2023.

<sup>87</sup> "[Gaza: Israel's Imposed Starvation Deadly for Children](#)", HRW, 09.04.2024. In fact, organisations have flagged concerning accounts of the toll of children who had died in the conflict, as well as their higher exposure to loss of life due to the lack of access to medical care. See also "[Gaza: More than 10 Children a Day Lose a Limb in Three Months of Brutal Conflict](#)", Save the Children, 07.01.2024.



term implications of health issues acquired by children, including the development of chronic health conditions and disabilities for which treatment is likewise hindered.<sup>88</sup>

Women are likewise impacted by conflict, not only in terms of comparatively high numbers of casualties and injuries,<sup>89</sup> but also the effects that the disruption of civilian infrastructure has on accessing healthcare services.<sup>90</sup> In particular, experts and scholars have underlined the heightened risk of being deprived of access to food, safe drinking water, health as well as adequate sanitation facilities and supplies faced by women and girls.<sup>91</sup> These effects are compounded in the case of pregnant women.<sup>92</sup> For women with disabilities, the gendered impact of the conflict is compounded by decreased support available, englobing medical care and assistive devices, as well as accessible infrastructure. Additionally, the number of households headed by women has increased, which in turn are exposed to a higher risk of loss of land, housing, and livelihood.<sup>93</sup>

### III. Long-term impacts of the armed conflict

The long-term implications of the armed conflict on the occupied Palestinian territories span across consequences on the labour market,<sup>94</sup> human development,<sup>95</sup> household consumption

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<sup>88</sup> See “A War on Health: Gaza’s Battle for Survival in a Shattered Health System”, Juzoor for Health and Social Development, March 2024, pp 9-12. “[UNICEF in the State of Palestine](#)”, UNICEF, Escalation Humanitarian Report 22, 12.04.2024, p 1.

<sup>89</sup> According to the more recent statistics provided by WHO, women and children comprise 72% of the fatalities. See, for instance, WHO, “[oPt Emergency Situation Update](#)”, Issue 28: 07.10.2023-20.04.2024, 29.04.2024, p 1.

<sup>90</sup> “[Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn](#)”, WHO, 03.11.2023.

<sup>91</sup> “[No freedom without reproductive freedom for Palestinian women](#)”, IPPF, 08.12.2023. “[Gender Alert: The Gendered Impact of the Crisis in Gaza](#)”, UN Women, January 2024.

<sup>92</sup> For instance, a recent UNFPA report underlines the high number of pregnant women that are at risk of imminent famine, and the number of women whose delivery is expected in the upcoming months. Pregnant women are also faced with a higher exposure to infections and diseases that are preventable with access to essential medicine, as well as the increasingly dangerous conditions under which birth is given since the beginning of the conflict. In addition to jeopardising the life of the mother, the report notes that such conditions put the newborn at risk of loss of life, or of the development of serious medical conditions. See “[Situation Report: Crisis in Palestine](#)”, UNFPA, Issue No. 7, 06.04.2024. See “A War on Health: Gaza’s Battle for Survival in a Shattered Health System”, Juzoor for Health and Social Development, March 2024, pp 12-14. For a comprehensive yet succinct analysis of this matter, see Fionnuala Ní Aoláin, “[A Zone of Silence: Obstetric Violence in Gaza and Beyond](#)”, Just Security, 21.02.2024.

<sup>93</sup> “[UN Women Rapid Assessment and Humanitarian Response in the Occupied Palestinian Territory](#)”, UN Women, 20.10.2023. “[Occupied Palestinian territory and Israel: Women and girls face exacerbated violence, inequalities and discrimination and see their future destroyed in front of their eyes. Statement by UN Special Procedures Experts](#)”, OHCHR, 14.12.2023, p 1.

<sup>94</sup> Research demonstrates an increase in the unemployment rate from 25.7% before the armed conflict to 46.1%. UN ESCWA, [Expected Socio-Economic Impacts on the State of Palestine: Update April 2024](#), 02.05.2024, p 3.

<sup>95</sup> Current estimates demonstrate a staggering setback of around 17 years. Ibid, p 4. Moreover, the total estimated damage to built infrastructure amounts to 97% of the total GDP of combined Gaza and the West Bank in 2022. Most recent estimates demonstrate that the highest damage was inflicted on housing (72%), followed by commerce (9%), agriculture, health and WASH infrastructure, and the environment (combined 11%). EU, UN, World Bank, [Gaza Strip – Interim Damage Assessment Summary Note – March 29, 2024](#), 02.04.2024, p 6.

<sup>95</sup> See [Gaza: Debris Management Planning](#), UNEP; and “[Even With Gaza Under Siege, Some Are Imagining Its Reconstruction](#)”, New York Times, 28.04.2024.



rates<sup>96</sup> and poverty,<sup>97</sup> as well as the economy more broadly.<sup>98</sup> Furthermore, armed conflicts create additional barriers to recovery from their direct consequences on populations and the resumption of ordinary life. Explosive remnants of war (ERW) are one such barrier.<sup>99</sup> In addition to posing a direct security risk to civilians, their presence in populated areas hinders the civilians' movement and prevents them from accessing means of sustenance and income.<sup>100</sup> Similarly, they impede the carrying out of the repairs necessary for the resumption of the functioning of infrastructure. This in turn requires specific expertise and equipment.<sup>101</sup>

Armed conflict likewise leaves consequences on the environment for both the population of Gaza and globally.<sup>102</sup> The most direct implication in that regard is the air pollution stemming from the use of explosives and bombardments. In addition to the weapons themselves, pollution is also caused by the vast amounts of debris which contain hazardous substances including asbestos and contaminants. Consequently, the environmental impact is also extended to the pollution of water and soil. Namely, among other factors, impairments of waste management systems and sewage facilities lead to the pollution of water sources,<sup>103</sup> including groundwater and the sea. Further, the pollution of soil hinders the use of agricultural lands, including farmlands, orchards, and greenhouses, impacting the population's capacity to produce food.<sup>104</sup> Beyond that, the armed conflict bears an impact on the territory's ecosystems.<sup>105</sup> Lastly, the correlation between armed conflicts and climate change has been long documented. These scientific findings englobe both the direct impact of hostilities, as well as the estimates on carbon emissions stemming from reconstruction efforts afterward. This footprint has been particularly underlined given the scale of infrastructure destruction and damage stemming from the present conflict.<sup>106</sup>

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<sup>96</sup> Current projections revolve around a loss of around 35-38% of consumption by the middle class. UNDP, [Expected Socio-Economic Impacts on the State of Palestine: Update April 2024](#), 02.05.2024, p 3.

<sup>97</sup> ESCWA-UNDP estimates an increase in the poverty rate from 38.8% to 60.7%. Ibid, p 3.

<sup>98</sup> Ibid, p 2. One particular concern that was raised was related to the decision to revoke the work permits of Palestinians working in Israel, and its impact on the economy of both Israel and Palestine. Yohanan Tzoreff, Esteban Klor, "[Returning Palestinian Workers from the West Bank to Work in Israel](#)", 04.03.2024, The Institute for National Security Studies. More generally, research demonstrates an estimated loss of 25.8% of GDP of the Palestinian economy in 2024; with the most severe consequences endured in the construction sector.

<sup>99</sup> Most recent statistics provide an estimate of around 7,500 tonnes of unexploded ordnance in Gaza. See "[10,000 people feared buried under the rubble in Gaza](#)", UN, 02.05.2024.

<sup>100</sup> For instance, their presence in schools may hinder children's access to education, while their presence on roads or agricultural lands may prevent persons from cultivating food. Seeing that food produced in areas contaminated by ERW poses significant health risks to the population, farming activities should not be carried out until areas have been cleared.

<sup>101</sup> ICRC, "[Explosive Remnants of War](#)", 10.06.2020, pp 5-6.

<sup>102</sup> "[The UN is investigating the environmental impact of the war in Gaza. Here's what it says so far](#)", Euronews, 06.03.2024.

<sup>103</sup> "[Environmental legacy of Explosive Weapons in Populated Areas](#)", UNEP, 05.11.2021.

<sup>104</sup> An investigation carried out by the Forensic Architecture team has shown that the armed conflict has resulted in the destruction of over 40 per cent of agricultural land, and 30 percent of greenhouses in Gaza. See "[no Traces of Life': Israel's ecocide in Gaza 2023-2024](#)", Forensic Architecture, 29.03.2024. "[Ecocide in Gaza': does scale of environmental destruction amount to a war crime?](#)", The Guardian, 29.03.2024.

<sup>105</sup> The Palestinian authorities had also requested the UN Environmental Programme to carry out an environmental impact assessment in the Gaza Strip. See "[Turning the corner on environmental crises in 2024](#)", UNEP, 25.01.2024.

<sup>106</sup> "[Emissions from Israel's war in Gaza have 'immense' effect on climate catastrophe](#)", The Guardian, 09.01.2024.



#### IV. *A way out of the vortex?* – An international law perspective to redress

##### a. Preliminary issue: lack of domestic remedies

The international legal framework reinforces the position of domestic institutions as the first port of call for seeking remedies for human rights violations. Carrying out investigations into alleged wrongdoing is the first step in upholding the right to an effective remedy.<sup>107</sup> The use of force should be subjected to obligatory reporting. Lethal and other life-threatening incidents, including particularly deaths occurring in custody,<sup>108</sup> should be thoroughly reviewed and investigated. Reparations should be provided in cases where the use of force was unlawful.<sup>109</sup> A similar duty can be seen as stemming from other human rights, including freedom from torture<sup>110</sup> and the prohibition of enforced disappearances.<sup>111</sup>

These investigations should be carried out in line with international law standards, which encompass the standards of independence and impartiality, thoroughness and credibility, promptness and effectiveness, and transparency.<sup>112</sup> One component of ensuring that effective investigations can be carried out (both by domestic and international bodies) is to allow for the documentation of the conduct of belligerent parties by not impeding the functioning of communication technologies. Several reports highlighted the impact of internet and communications shutdowns on documenting conduct during the conflict in Gaza, and consequently, subsequent efforts to carry out investigations based on such evidence.<sup>113</sup>

Against this backdrop, concerns were raised over the lack of accountability in relation to both Israel and Palestinian duty bearers, and incidents warranting suspicion over the occurrence of human rights violations in the West Bank, East Jerusalem, and Israel.<sup>114</sup> The documented figures of violence raised concerns about how the currently existing laws were applied, as well as the qualities of the newly adopted ones, suggesting discriminatory practices.<sup>115</sup> Moreover,

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<sup>107</sup> The duty to carry out investigations of IHL violations is also enshrined in IHL. Israeli authorities had committed to launching internal investigations in relation to several incidents which raised such concerns. See “[IDF probing alleged violations of regulations and international law during war on Hamas](#)”, Times of Israel, 06.02.2024.

<sup>108</sup> In this regard, concerning practices were noted in OHCHR Flash Report, para 32. For a recent overview of deaths of Palestinians occurring in custody, see “[Death in Israeli Prisons](#)”, Physicians for Human Rights, 20.03.2024.

<sup>109</sup> General Comment 36, paras 13, 19, 28. In the context of rising rates of settler violence in the West Bank, UN human rights bodies have underlined the importance of ensuring the right to an effective remedy. A/HRC/55/72, para 54(f).

<sup>110</sup> Convention Against Torture, Article 6.

<sup>111</sup> Convention for the Protection of All Persons from Enforced Disappearance (2006), Article 12.

<sup>112</sup> General Comment 36, para 28. In the present context, the duty to investigate allegations of potentially unlawful use of force, see OCHA report para 29.

<sup>113</sup> “[Israel and Occupied Palestinian Territories: Stop the assault on free speech and protect civilians](#)”, Article19, 13.11.2023. See also Mais Qandeel, “[Communication Blackouts: Israeli Cyberattacks Against Civilians in Gaza](#)”, Opinio Juris, 20.03.2024.

<sup>114</sup> See A/HRC/55/28, para 71.

A/HRC/55/L.30. According to OHCHR statistics for the period of 7 October – 27 December 2023, only two out of hundreds of settlers involved in violent attacks had been arrested, whereas no indictments had been filed. See in particular “[Alarming, urgent situation in the occupied West Bank, including East Jerusalem](#)”, OHCHR, 03.11.2023; “[Israel/Palestine: Authorities must end impunity for settler violence](#)”, International Commission of Jurists, 15.01.2024; Mairav Zonszein, “[Settler Violence Rises in the West Bank during the Gaza War](#)”, International Crisis Group, 06.11.2023, pp 1-4.

<sup>115</sup> OHCHR Flash Report, p 2; para 24.



the capacity to provide access to justice is further hindered by the destruction of judicial infrastructure as a result of hostilities.<sup>116</sup>

A positive step in that direction was made with regards to the petition at the Israel Supreme Court made by several Israel-based NGOs in relation to the provision of humanitarian assistance in the Gaza Strip. Since the petition had been filed in mid-March this year, the court had issued several interim decisions which requested the State authorities to provide information on their assessment of the needs of the population of Gaza, as well as the steps taken to remove barriers to the delivery of humanitarian aid.<sup>117</sup>

### **b. Implementation mechanisms of international law**

Several UN bodies have made pronouncements in relation to the hostilities in Israel and the Gaza Strip, including the General Assembly<sup>118</sup> and the Security Council.<sup>119</sup> The Security Council was also alerted about the situation in the Gaza Strip by the UN Secretary-General. The Charter's Article 99 procedure authorises the Secretary-General to bring matters of concern to international peace and security to the attention of the UN Security Council.<sup>120</sup> Notably, the Committee on the Elimination of Racial Discrimination (CERD) had activated its Early Warning and Action Procedure, used in relatively exceptional circumstances.<sup>121</sup> In its decision delivered in December 2023, the Committee called upon parties to take measures towards carrying out investigations into allegations of human rights violations.<sup>122</sup> The UN ad hoc Conciliation Commission, established by CERD in 2021, had also issued a statement calling upon the parties to refrain from further acts of hostilities and engage in negotiations.<sup>123</sup> Further, the UN Committee on the Elimination of Discrimination against Women (CEDAW),<sup>124</sup> and the Committee on the Rights of the Child (CRC) had likewise issued statements in relation

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<sup>116</sup> [“Israel/Gaza: UN experts condemn destruction of judicial infrastructure, call for protection of justice operators”](#), UN, 16.04.2024.

<sup>117</sup> ‘Aid access NOW’, [Gisha](#), 06.05.2024.

<sup>118</sup> See for instance A/ES-10/L.25.

<sup>119</sup> UNSC, [S/RES/2712 \(2023\)](#), 15.12.2023; [S/RES/2720](#), 22.12.2023; [S/RES/2728](#), 25.03.2024. For an overview of the trajectory of the proposals made at the UN Security Council in the first month of the conflict, see Marika Sosnowski, [“Israel – Hamas 2024 Symposium – A Gaza Ceasefire: The Intersection of War, Law and Politics”](#), *Articles of War*, 18.01.2024.

<sup>120</sup> This is the first time that the procedure has been invoked explicitly. [“Gaza: Guterres invokes ‘most powerful tool’ Article 99, in bid for humanitarian ceasefire”](#), UN, 06.12.2023. Likewise, scholars consider the procedure to authorise the UN Secretary General to also engage in fact-finding and mediation. Hyemin Han, [“UN Secretary-General Explicitly Invokes Article 99 Regarding Situation in Gaza”](#), *Lawfare*, 07.12.2023.

<sup>121</sup> The only bodies with such, or similar, mechanisms currently are the CERD, the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on Enforced Disappearances (CED). David Keane, [“Israel, Palestine and CERD’s Early Warning and Urgent Action Procedure”](#), *Opinio Juris*, 09.11.2023

<sup>122</sup> CERD, “Prevention of racial discrimination, including early warning and urgent action procedure”, Decision 2 (2023), 21.12.2023; CERD, “Israel and the State of Palestine”, Statement 5 (2023), 27.10.2023.

<sup>123</sup> [“Israel, Palestine: UN ad hoc Conciliation Commission urges end to violence against civilians and return to negotiation”](#), OHCHR, 13.12.2023.

<sup>124</sup> CEDAW made an additional pronouncement in February. See [“Gaza: When mothers have to bury at least 7,700 children, very basic principles are challenged, UN women’s rights committee says”](#), OHCHR, 16.02.2024.





to the human rights impact of the conflict.<sup>125</sup> Special procedures have also addressed the situation of concern via press statements, both individually and jointly.<sup>126</sup>

Contemporary armed conflicts have been marked by improved efforts to provide accounts of the factual circumstances on the ground. In the present context, this englobed fact-finding and documentation efforts by the Commission of Inquiry,<sup>127</sup> special procedures,<sup>128</sup> as well as civil society organisations.<sup>129</sup> The importance of having parties cooperate with international mechanisms and grant access on the ground has been emphasised on several occasions.<sup>130</sup>

Depending on the circumstances and their conditions, there are several destinations within the international human rights system at which individual complaints can be lodged, including special procedures,<sup>131</sup> treaty bodies,<sup>132</sup> and the Human Rights Council Complaint Procedure.<sup>133</sup> In the case of special procedures, complaints can then be followed upon via communications addressed to governments or non-state actors. Another avenue of redress is criminal justice and the establishment of individual criminal responsibility. This includes both domestic courts,<sup>134</sup> and the international realm through the International Criminal Court (ICC). At the ICC level, investigations have been ongoing in relation to the Situation in Palestine.<sup>135</sup> The ICC

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<sup>125</sup> [“Statement of the Committee on the Rights of the Child on grave violations of children’s rights in Israel and the occupied Palestinian territory”](#), OHCHR, 13.10.2023.

<sup>126</sup> [“Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence”](#), OHCHR, 12.10.2023.

<sup>127</sup> The Commission had announced a call for submissions of information in relation to the commission of crimes on and since 07 October 2023. [“Call for submissions on gender-based crimes on 7 October 2023”](#), OHCHR.

<sup>128</sup> Mohsen al Attar, [“Of Palestinian Liars and Israeli Saints: Confronting Anti-Palestinian Racism in International Law”](#), *Opinio Juris*, 05.04.2024.

<sup>129</sup> See for instance [“Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza”](#), Amnesty International, 20.10.2023; [“We’ve Become Addicted to Explosions” The IDF Unit Responsible for Demolishing Homes Across Gaza](#), Bellingcat, 29.04.2024.

<sup>130</sup> UN Doc A/HRC/55/L.30, paras 9, 14-15. In relation to mass graves, see [“Gaza: Discovery of mass graves highlights urgent need to grant access to independent human rights investigators”](#), Amnesty International, 24.04.2024.

<sup>131</sup> Yuval Shany, Amichai Cohen, Tamar Hostovsky Brandes, [“Israel – Hamas 2023 Symposium – Beyond the Pale: IHRL and the Hamas Attack on Israel”](#), *Articles of War*, 17.10.2023.

<sup>132</sup> Submitting an individual communication before a treaty body is possible provided that the State is a party of the relevant treaty and that it has accepted the competence of the relevant Committee. Depending on the treaty body, this acceptance is expressed through either the ratification of the relevant optional protocol or a declaration recognising this competence. This is currently not the case in relation to Israel. See UN Treaty Body Database, [Ratification status by country or by treaty](#).

<sup>133</sup> In case domestic remedies have been exhausted, or if there is reason to consider them ‘ineffective or unreasonably delayed’ and if the complaint is not addressed by another human rights body, complaints containing allegations of patterns of gross human rights violations can be brought before the HRC. See [“Human Rights Council complaint Procedure”](#), OHCHR.

<sup>134</sup> Mohsen al Attar, [“Of Palestinian Liars and Israeli Saints: Confronting Anti-Palestinian Racism in International Law”](#), *Opinio Juris*, 05.04.2024.

<sup>135</sup> The ICC prosecutor unequivocally reminded that the ICC would have jurisdiction over acts committed on the territory of Palestine or by Palestinian nationals. ICC, [“Statement of ICC Prosecutor Karim A. A. Khan from Cairo on the situation in the State of Palestine and Israel”](#), 30.10.2023. Hundreds of civil society organisations addressed the ICC Prosecutor to expedite investigations. Shawan Jabarin, Ahmed Abofoul, [“We are Witnessing a Genocide Unfolding in Gaza: To Stop it, the ICC Prosecutor Must Apply the Law Without Fear or Favour”](#), *Opinio Juris*, 24.11.2023. The Prosecutor had gone on a mission to Israel and Palestine in November-December 2023, and met with the victims and their families on both sides. ‘ICC Prosecutor, Karim A. A. Khan KC, concludes first visit to Israel and State of Palestine by an ICC Prosecutor: [“We must show that the law is there, on the front lines, and that it is capable of protecting all”](#)’, ICC, 03.12.2023. Both the timing and conduct of the visit were met with criticism. For a comment, see: Triestino Mariniello, [“The ICC Prosecutor’s Double Standards in the Time of an Unfolding Genocide”](#), *Opinio Juris*, 03.01.2024. For a response to the criticisms see Kevin Jon Heller, [“Responding to the Open Letter to the ASP Regarding Palestine”](#), *Just Security*, 08.12.2023.



Prosecutor filed applications for arrest warrants against senior members of Hamas and the Israeli State representatives on 20 May 2024.<sup>136</sup>

### c. Third States' conduct

From the outset, casualties and destruction resulting from the armed conflict in Gaza have provoked public outcry across the globe.<sup>137</sup> Populations have mobilised to demonstrate their support to the victims of armed conflict on both sides, and to demand either a change of course in the support provided by their governments, or public condemnation by their institutions of the belligerents' conduct.<sup>138</sup> In reaction to repressive measures taken worldwide, UN human rights bodies and civil society actors underlined the importance of ensuring freedom of opinion and the right to peaceful assembly.<sup>139</sup>

Third States also have a duty to exercise influence over the belligerent parties with the aim of changing their behaviour and bringing their conduct in line with international law.<sup>140</sup> Measures for doing so involve diplomatic avenues, technical assistance, sanctions, referrals to the UN Security Council and the UN General Assembly,<sup>141</sup> as well as support for avenues to ensure both State and individual criminal responsibility, including through the proceedings in national courts,<sup>142</sup> and before the ICC.<sup>143</sup> The Human Rights Council also adopted a resolution in this regard.<sup>144</sup> Notably, proceedings were also initiated before the International Court of Justice (ICJ). South Africa filed a case against Israel for the violation of the Genocide Convention.<sup>145</sup>

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<sup>136</sup> See "[Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#)", ICC, 20.05.2024.

<sup>137</sup> ACLED has recorded 4,200 events in the first three weeks following 7 October. See Timothy Lay, *Ciro Murillo*, [Global Demonstrations in Response to the Israel-Palestine Conflict](#), ACLED, 07.11.2023.

<sup>138</sup> "[UN Human Rights Chief condemns rise in hatred](#)", OHCHR, 04.11.2023.

<sup>139</sup> "[Speaking out on Gaza/Israel must be allowed: UN experts](#)", OHCHR, 23.10.2023.

<sup>140</sup> See for example "[Joint briefing of the Independent International Commission of Inquiry on the Occupied Palestinian Territory and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. Remarks by Ms Navanethem Pillay](#)", OHCHR, 10.11.2023.

<sup>141</sup> For instance, letters were addressed to the UNGA President requesting the resumption of its emergency special session. This procedure is a product of the 1950 Uniting for Peace resolution, which allows the UNGA to consider matters of international peace and security in cases where the UNSC is blocked by lack of agreement among permanent members. Rebecca Barber, "[What is the UN General Assembly Able to Do on the Israel-Hamas War?](#)", Just Security, 24.10.2023.

<sup>142</sup> "[UN experts call for full and independent investigations into all crimes committed in Israel and the Occupied Palestinian Territory](#)", OHCHR, 27.11.2023.

<sup>143</sup> "[Arms exports to Israel must stop immediately: UN experts](#)", OHCHR, 23.02.2024. See for example "[Turkey Halts Trade With Israel Amid Deteriorating Relations](#)", New York Times, 02.05.2024.

<sup>144</sup> "[Gaza: Human Rights Council resolution urges arms embargo on Israel](#)", OHCHR, 05.04.2024.

<sup>145</sup> South Africa filed the case based on the *erga omnes partes* nature of the obligations enshrined in the Genocide Convention, pursuant to its Article IX. Bringing the proceedings before the ICJ has also been seen by commentators as an avenue of enforcing international human rights law, to the extent that it allows third States to pursue accountability based on the *erga omnes* nature of the obligations. See James A. Goldston, "[Strategic Litigation Takes the International Stage: South Africa v Israel in Its Broader Context](#)", Just Security, 31.01.2024. This has been more elaborated upon in Oona Hathaway, Alaa Hachem, Justin Cole, "[A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing](#)", Columbia Journal of Transnational Law, 61(2) Forthcoming.



The ICJ issued provisional measures in relation to this case, and it made pronouncements on three additional requests for provisional measures since then.<sup>146</sup>

States are arguably required to refrain from transferring arms to parties to the conflict if there are reasons to suspect that exporting this equipment may have ‘direct, significant, and foreseeable consequences’ on the population’s human rights.<sup>147</sup> Several avenues were pursued towards stopping such transfers. Cases were brought in both domestic<sup>148</sup> and international legal fora.<sup>149</sup> Calls to this end were likewise made by OHCHR,<sup>150</sup> the Human Rights Council<sup>151</sup> and special procedures,<sup>152</sup> as well as by numerous NGOs.<sup>153</sup>

## V. Concluding remarks

The implications of hostilities on the human rights of Gaza’s population need to be considered as exacerbating an already vulnerable position.<sup>154</sup> While the effects are felt immediately in all spheres of daily life, they also have long-term implications.<sup>155</sup> Spanning across all sectors, including among others healthcare and education, long periods are required for the recovery of the indispensable infrastructure and for building the capacities of personnel. These challenges need to be overcome hand in hand with efforts to enable the population to return. In addition to efforts of reconstructing infrastructure, ensuring avenues for victims of human rights violations to seek redress will be equally important pre-conditions for any resumption of ordinary life in a post-conflict context. Achieving this objective is the interest, and duty, of the international community as a whole.

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<sup>146</sup> The ICJ had issued additional provisional measures on 24 May. Previously, the Court had issued an Order on the initial request for provisional measures on 26 January, and it indicated additional provisional measures on 6 March. For a comprehensive comment on a potential obligation of States to not block resolutions requesting a ceasefire, see: Rana Moustafa Essayy, “[The Legal Responsibility Not to Veto a Ceasefire in Gaza](#)”, *Opinio Juris*, 19.03.2024.

<sup>147</sup> Otto Spijkers, “[Summary Proceedings About the Delivery from the Netherlands of Parts for F-35 Fighter Planes to Israel \(Part I\)](#)”, *Opinio Juris*, 05.01.2024.

<sup>148</sup> A prominent example is that of Dutch Court in relation to The Netherlands’ arms exports. See “[Legal proceedings relating to Israel and the OPT](#)”, Diakonia IHL Centre.

<sup>149</sup> Nicaragua filed a case before the ICJ in relation to Germany’s conduct with regards to the conflict. Among others, it raised the question of Germany’s provision of military supplies to Israel. On 30 April 2024, the ICJ, pronouncing itself on Nicaragua’s request for the Court to issue provisional measures, refrained from doing so. See ICJ, *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v Germany)*, Request for the Indication of Provisional Measures, Order, 30.04.2024. Nonetheless, the Court did not remove the case from the General List of cases, concluding there is no manifest lack of jurisdiction in this case.

<sup>150</sup> OHCHR Flash Report, para 56.

<sup>151</sup> A/HRC/55/L.30, paras 12-13, 42.

<sup>152</sup> “[Arms exports to Israel must stop immediately: UN experts](#)”, OHCHR, 23.02.2024.

<sup>153</sup> See, for example, the call of Amnesty International USA with regards to United States’ conduct. Amnesty International, “[U.S.-Made Weapons Used by Government of Israel in Violation of International Law and U.S. Law](#)”, 29.04.2024.

<sup>154</sup> Against this backdrop, particular concerns were raised in relation to the Israeli authorities’ announcement that they would prevent the flow of essential supplies, including not only water and food, but also electricity and fuel. “[Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel](#)”, 09.10.2023. For a comment on the legality of such actions, see Geoff Corn, Sean Watts, “[Israel – Hamas 2023 Symposium – Siege Law and Military Necessity](#)”, *Articles of War*, 13.10.2023. The halt in the provision of fuel and electricity led to the shutdown of Gaza’s power plant. The electricity blackout had therefore been ongoing since October 2023. OCHA Flash Appeal 2024, p 10.

<sup>155</sup> One example is the increase in illness caused by exposure to toxic substances or harmful products and the resulting long-term impact on both physical and mental health of the population.



## VI. Annex

### International Humanitarian Law and Water in the Armed Conflict in Gaza

*Contribution by **Professor Mara Tignino**, Senior Lecturer at the University of Geneva and Deputy Director of the Platform for International Water Law, Geneva Water Hub (20 September 2024)*

The research report **Vortex of Pain: Human Rights Implications of the Israel-Gaza Armed Conflict** focuses on the human rights implications of the Gaza armed conflict. This paper, in annex to the report, focuses on the implications for the access to water from an international humanitarian law (IHL) perspective and will highlight some existing accountability efforts.

IHL imposes stringent obligations on occupying powers concerning the welfare of civilians in the occupied territory. Israel, as the occupying power in Gaza, is legally bound to ensure the welfare of civilians and must prioritize their access to fundamental necessities, including safe drinking water and sanitation facilities (Geneva Convention IV Article 55). Any deliberate actions that impede or restrict access to water for the civilian population in Gaza can be considered a violation of IHL (Geneva Convention IV Article 56).

Taking into account legal protections offered under international law, including IHL, on the access to water, the presentation will focus on three aspects of the military operations in Gaza:

- 1) the cutting off the water supply and starvation;
- 2) the conduct of hostilities and the protection of water systems;
- 3) the humanitarian access and assistance.

#### 1) Cutting off the water supply and starvation

The first measure taken by the Israeli defence forces that caught the attention of the global community was the announcement of the Israeli Defense minister of ‘complete siege’ of Gaza, cutting off food, electricity, fuel, or water.<sup>1</sup> Cutting off the water supply and other essentials and restricting humanitarian access could implicate Israel’s international responsibility under IHL, even if the measures were not taken for the specific purpose of starving the civilians in Gaza. Scholars have addressed the issue of “unintentional” starvation combining the reading of paragraphs 1, 2 and 3 of Article 54 of the First Additional Protocol.<sup>2</sup>

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<sup>1</sup> ICJ, Application of the Convention on the Prevention and Punishment of the crime of genocide in the Gaza Strip (South Africa v. Israel), Order of 26 January 2024, para. 52.

<sup>2</sup> See Gloria Gaggioli, Joint Blog Series on International Law and Armed Conflict: Are Sieges Prohibited under Contemporary IHL, EJIL: Talk!, 30 January 2019. She argues the prohibition on “incidental” starvation based on Article 54 (2) and (3) of API. She says: “A combined reading of Articles 54(2) and (3) API shows that more than mere purposeful starvation of civilians is prohibited. Take, for instance, the destruction of a drinking water installation in the context of a siege that has the specific purpose of denying water to the adverse Party. This will be considered as unlawful if such destruction ‘may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement’ ».



In fact, the prohibition of starvation derives from the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population. Customary IHL which is binding on Israel (Rule 54) does not contain exception to this rule. This reflects Article 54.2 of the First Additional Protocol which clearly says that this prohibition applies “whatever the motive, whether in order to starve out civilians, to cause them to move away, **or for any other motive** ». Even in the case of attaching a water infrastructure because such infrastructure provides “direct support of military action », the civilian population must not be left with such inadequate food or water as to cause its starvation or force its movement.

**War crimes** are serious violations of IHL that are committed wilfully, i.e., either intentionally or recklessly (*dolus eventualis*). According to the ICC Statute, “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies” constitutes a war crime (Art. 8 (2) (b) (xxv) and (e) (xix)). Hence, establishing individual criminal responsibility for the war crime of starvation necessitates proving the required mental element (*mens rea*) of those responsible for implementing the measures.

Deprivation of freshwater may also qualify as a **crime against humanity** as implying the commission of inhumane acts.<sup>3</sup> As noted by the report of the Geneva Water Hub “Fully foreseeable: the reverberating effects of water and health in Gaza”, the deprivation of clean water has far-reaching and devastating consequences and elevates the risk of waterborne diseases, including cholera, heightens poor hygiene conditions in overcrowded shelters and creates a fertile ground for rapid disease transmission. The United Nations has described the situation as a “matter of life and death” for over 2 million people in Gaza. Deprivation of water and food constitute inhuman acts. The International Court of Justice has already noted in March and Mar 2024 that Palestinians in Gaza are no longer facing only a risk of famine, “but that famine is setting in.”<sup>4</sup>

In addition, depriving civilians of access to freshwater can also be part of a ‘**deliberate imposition of conditions aimed at the physical destruction of the group**’ as defined under ICC Statute, Art. 6(c) (see ICRC Commentary AP I, para. 2097). This point will be addressed later in the paper.

In this regard, the ICC Pre-Trial Chamber, in the Omar Al Bashir case, explored the connection between depriving civilians of means of survival, including access to freshwater and the crime of genocide. The Prosecution contended that Sudanese government forces systematically destroyed essential means of survival, such as food, shelter, crops, and freshwater sources, constituting the deliberate imposition of conditions aimed at the physical destruction of a group. Nevertheless, the Pre-Trial Chamber ultimately concluded that there were insufficient grounds to establish that Omar Al Bashir had the specific intent to destroy a particular group in Darfur

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<sup>3</sup> Tom Dannenbaum, “The siege of Gaza and the Starvation War Crime”, *Just Security*, 11 October 2023.

<sup>4</sup> ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order of 28 March 2024, para.21.





(paras 202-206). Access to safe drinking water is also a fundamental human right, and the occupying power must respect human rights and meet the humanitarian needs of the population in compliance with IHL and the Fourth Geneva Convention.<sup>5</sup> Thus, denying access to critical resources like water, particularly as a **collective** punitive measure during armed conflicts is contrary to IHL (Rule 103, Customary International Humanitarian Law and art.33 of the Fourth Geneva Convention), and human rights law.<sup>6]</sup>

## 2) The Conduct of Hostilities and the Protection of Water Systems

The second element that this paper highlights is related to the conduct of hostilities and the protection of water systems. IHL strictly prohibits attacks on civilian objects, including water infrastructure. Parties engaged in conflict must adhere to the principles of distinction, proportionality, and precautions. The intentional targeting of civilian infrastructure, including water systems, or damages that lead to extensive civilian casualties and damage to objects violate such fundamental principles of IHL. Deliberate and disproportionate attacks constitute war crimes in international armed conflicts.

Evaluating whether an attack constitutes a breach of the rules governing the conduct of hostilities involves the analysis of multiple legal factors and factual elements.

This assessment needs to consider: 1) the status of the targeted object; 2) its actual or intended use by the opposing party; 3) the military significance of the targeted object for the attacking party compared to the potential unintended harm to civilians; and 4) whether the attacker took all feasible precautions to minimize or prevent incidental harm to civilians during the attack. Such determination necessitates an *ex-ante* evaluation by the attacking party, based on available intelligence and information, as well as how the attack was planned.

It is essential to recognize that extensive destruction and harm to civilians can exacerbate animosity and perpetuate a cycle of violence and violations, hindering the prospects for peace.

## 3) Humanitarian Access and Assistance

The third element that the paper highlights is related to humanitarian access and assistance. Parties involved in the conflict are obligated to facilitate and allow the safe passage of humanitarian relief and related services to alleviate the suffering of civilians.<sup>7</sup> The international community, through various UN Security Council (UNSC) resolutions, underscores the urgent need for sustained and unimpeded delivery of humanitarian aid to the affected civilian population.<sup>8</sup> On May 2024, the UNSC also adopted a resolution 2730, sponsored by Switzerland and other 97 States, which calls all States to respect and protect United Nations and humanitarian personnel in accordance with their obligations under international law. The resolution was adopted by a vote of 14 States in favour, none against, and one abstention.

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<sup>5</sup> See ICJ's Advisory Opinion on Wall (2004), paras. 104-113, 130 and HRC, A/HRC/40/CRP.2, paras. 80-83.

<sup>6</sup> General Comment No. 15, paras. 21 and 31.

<sup>7</sup> CIHL, Rule 55.

<sup>8</sup> See UNSC Resolution 2573 (2021), para. 7 and Resolution 2401 (2018), para. 1.



Israel has the primary responsibility of ensuring, by all the means at its disposal, the basic needs of the population in the occupied territory. And if it cannot do so, a mandatory relief scheme to allow humanitarian assistance must be introduced.<sup>9</sup> Israel must also respect UN and other humanitarian personnel that are engaged in the relief scheme.

The State of Israel must grant rapid and unimpeded passage and access to water-related personnel and consignments used for humanitarian relief operations, including the operation, repairs or rehabilitation of water systems and related facilities.<sup>10</sup> In the proceedings before the ICJ, South Africa has explicitly requested that “The State of Israel shall immediately take all effective measures to ensure and facilitate the unimpeded access to Gaza of United Nations and other officials engaged in the provision of humanitarian aid and assistance to the population of Gaza”.<sup>11</sup> In its order for provisional measures of May 2024, the ICJ repeated what already said in March requesting to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip.<sup>12</sup>]

The paper now gives an overview of the existing accountability efforts to address the armed conflict in Gaza.

### 1) Efforts before the International Court of Justice (ICJ)

In the case initiated by South Africa against Israel before the ICJ in December 2023, South Africa alleges that Israel’s actions in Gaza amount to genocide under the Genocide Convention. The ICJ established *prima facie* jurisdiction, determining that South Africa’s claims were plausible and that there was a dispute between the two states regarding the application of the Genocide Convention. To address immediate concerns, the ICJ has already issued **three provisional measures** (January, March and May of this year) requiring Israel to take measures to meet its obligation under the Genocide Convention and facilitate the unhindered provision of humanitarian aid to Gaza. This measure specifically targets severe shortages of essential supplies, including water, which have reached critical levels due to ongoing conflict and blockades. Eight States have asked to intervene in the proceedings (including Colombia, Chile, Spain, Mexico, Turkiye, Palestine, Nicaragua and Libya).

ICJ’s jurisdiction is confined to matters related to the Genocide Convention. This means it can only address whether Israel’s actions constitute genocide as defined by the Convention, not broader humanitarian issues or other international law violations (**this does not mean that it cannot make reference to such laws**). The provisional measures focus on alleviating immediate harm while the Court’s final judgment will determine if Israel’s conduct meets the legal criteria for genocide.

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<sup>9</sup> Geneva Convention IV, Article 59.

<sup>10</sup> CIHL, Rule 56.

<sup>11</sup> ICJ, Application of the Convention on the Prevention and Punishment of the crime of genocide in the Gaza Strip (South Africa v. Israel), Order of 24 May 2024, para. 14.

<sup>12</sup> ICJ, Application of the Convention on the Prevention and Punishment of the crime of genocide in the Gaza Strip (South Africa v. Israel), Order of 28 March 2024, para.51 (2) (b) and Order of 24 May 2024, para. 57 (2) (b).



## 2) Efforts at the International Criminal Court (ICC)

There is already an investigation into the situation in Palestine before the ICC since 2021. Unfortunately, in its submission to the ICC Pre-Trial Chamber of May 2024 regarding the request the arrest warrants of Israeli and Hamas leaders, the ICC prosecutor did not include a charge relating to **indiscriminate and/or disproportionate** attacks. Maybe this is because of the difficulty of proving ‘direct attacks’ intentionally or recklessly. In addition, the Prosecutor also did not include a charge of **genocide**, although the indictment did mention ‘**extermination**’ as a **crime against humanity**, which obviously includes deprivation of essential resources such as water (the UN Commission of Inquiry also did not include genocide in its report).

## 3) Efforts before national courts

The Israeli Supreme Court has a few cases in relation to the ongoing conflict in Gaza. In previous cases, the Israeli High Court of Justice, stated that Israel is not an occupying power in Gaza, nonetheless the Court underscored that under IHL Israel has an obligation to allow Gaza to receive “what is needed in order to provide the essential humanitarian needs of the civilian population”.<sup>13</sup>

The Court was criticized for not elaborating on the exact basis of international law for its conclusion. In another case, the Supreme Court sitting as the High Court of Justice, decided that “as long as Israel has control of the transfer of necessities and the supply of humanitarian needs to the Gaza Strip, it is bound by the obligations enshrined in international humanitarian law, which require it to allow the civilian population to have access, inter alia, to medical facilities, food and water, as well as additional humanitarian products that are needed to maintain civilian life”.<sup>14</sup>

There are also cases before the domestic courts of the US, UK, Germany and Netherlands. While the issue of water was not explicitly raised in these cases, judgements by national courts can have indirect implications for the protection of water in Gaza.

To conclude, the paper highlights the obligation of states and international organs in relation to the conflict in Gaza.

This is particularly important given the two resolutions adopted during the 10<sup>th</sup> emergency session of the United Nations General Assembly. First, the General Assembly adopted a resolution upgrading Palestine’s rights at the United Nations as an observer State, urging the Security Council to favorably consider its full membership under Article 4 of the UN Charter (143 States in favour, 146 out 193 UN member States recognizes Palestine as a State). This resolution (document [A/ES-10/L.30/Rev.1](#)) is particularly important for the negotiations

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<sup>13</sup> Jaber al-Basyuni Ahmad et al. v. The Prime Minister and the Minister of Defence (2008), para. 11.

<sup>14</sup> Physicians for Human Rights and others v. Minister of Defence, HCJ 201/09, para.27.



between the parties to end the conflict. The recognition of Palestine as a State with full membership at the UN will put finally the two parties at the same level in the negotiation and will also put an end to the confusion between Hamas and Palestinian people and official authorities.

Second, it is important to highlight the importance of another resolution adopted during the emergency session of the United Nations General Assembly (A/ES-10/L.31/Rev.1) which is entitled “Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory”.

This resolution is important for several reasons:

- First, it demands that Israel brings to an end without delay its unlawful presence in the Occupied Palestinian Territory, no later than 12 months from the adoption of the present resolution.
- Second, for the first time, the UNGA resolution sets out clear responsibilities for third State which are:
  - 1) Abstaining from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof.
  - 2) To take steps to ensure that nationals, and companies and entities under the jurisdiction of third States do not act in any way that would entail recognition or provide aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory;
  - 3) States must take steps towards ceasing the importation of any products originating in the Israeli settlements,
  - 4) State must take steps to end the provision or transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory;
  - 5) States must also take steps to implement sanctions, including travel bans and asset freezes, against natural and legal persons engaged in the maintenance of Israel’s unlawful presence in the Occupied Palestinian Territory, including in relation to settler violence;
  - 6) Finally the Resolution calls to the Government of Switzerland, as depository of the four Geneva Conventions, to convene a conference of High Contracting Parties (HCP) to the Fourth Geneva Convention. The HCP must decide on measures to enforce this Convention in the Occupied Palestinian Territory in order to ensure its respect in accordance with common article 1 of the four Geneva Conventions. The UNGA requested that this conference is organized within six months of the adoption of the resolution.



The argument that UN resolutions have not formally a legally binding value must not be interpreted in a way that reduce their legal weight as reflecting *opinio juris* of States. On the contrary, its adoption by a striking majority of UN States, (124 out of 193) in favour to 14 against, with 43 abstentions) is a very important signal not only for the end of the hostilities but also on how to build the peace when the hostilities will cease.

Common Article 1 of the four Geneva Conventions stipulates that the HCPs undertake to respect and ensure respect for the four Geneva Conventions in all circumstances. According to the ICJ, the duty to respect and ensure respect emanates from the general principles of IHL, to which the Conventions merely give specific expression.<sup>15</sup> This overarching obligation to ensure respect for Geneva Conventions could broadly be seen as a logical extension of the general object and purpose of IHL. There are different practices and views concerning the scope of this obligation. The internal dimension of the obligation, i.e., to respect and ensure respect for Geneva Conventions by the armed forces of HCPs, is uncontested. HCPs need to ensure that acts or omissions attributable to their armed forces in regard to population over which they establish authority or jurisdiction, is in line with the obligations of the Geneva Conventions.

The external dimension of the obligation to ensure respect by other actors, its customary law status, and whether common Article 1 imposes any obligation on third parties is reflected in the resolution adopted by special session of the UN General Assembly. Already, in 2004, another principal organ of the United Nations, the ICJ emphasized that states, both occupying powers and third states, have a responsibility to ensure respect for Geneva Convention IV<sup>16</sup> and all the States parties to the Convention ‘are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention’.<sup>17</sup> Similarly, the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Kupreskic et al. case underscored that most rules of IHL, due to their absolute character, lay down obligations for the international community and that each and every member of that community has ‘a legal entitlement to demand respect for such obligations’.<sup>18</sup>

Accordingly, the obligation to ensure respect for the Geneva Conventions requires the efforts of third parties to bring parties to an armed conflict back to a position of respect for IHL by preventing potential breaches, encouraging compliance, avoiding actions that facilitate IHL breaches, and investigating violations.

Third states must also exert their influence, to the degree possible, to stop violations of IHL.<sup>19</sup> Third states must also take steps in relation to arms transfers and avoid providing weapons or support that may be used to commit violations of IHL. Importantly, IHL underscores the

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<sup>15</sup> *Nicaragua case* 1986, para. 220.

<sup>16</sup> ICJ, *Advisory Opinion on Wall* (2004), para. 158.

<sup>17</sup> *Ibid*, para. 159.

<sup>18</sup> *Kupreskic case* 2000, para. 519.

<sup>19</sup> CIHL, Rule 144.





importance of accountability and adherence to humanitarian principles and places obligations to repress ‘serious violations’ and to suppress all other violations. In the case of disastrous humanitarian conditions like the current situation in Gaza, there is an obligation of HCPs to ensure that States and non-state armed groups respect the rules of IHL.



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