

May 4, 2025

To:
Chief of the General Staff
Lieutenant General Eyal Zamir

IDF MAG

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The Obligation to Permit the Entry of Humanitarian Aid into Gaza

We, lecturers in international law at various academic institutions in Israel, write to you to express our professional opinion that the decision to halt the transfer of humanitarian aid to Gaza is inconsistent with the obligations of the State of Israel under international humanitarian law. We call on the security authorities to fulfill immediately the obligation of the State of Israel to permit the entry of humanitarian aid into the Gaza Strip.

A. The Supreme Court's ruling

1. On 27.3.2025, the Supreme Court issued its judgment in H CJ 2280/24 *Gisha v. Government of Israel*. In the petition, the Court was requested to instruct the Government of Israel to permit the entry of humanitarian aid into Gaza. During the hearing, the state authorities acknowledged their obligation to allow this aid and detailed to the Court the steps they had taken to fulfill it. The authorities also argued that there is no restriction on the entry of humanitarian aid into Gaza.
2. The Court ruled that the authorities are obligated “to permit and facilitate the transfer of aid necessary for meeting the essential needs of the civilian population in the Strip, with all that this entails” (paragraph 56 of the judgment). Although the Court dismissed the petition on its merits, it did so only after reaching the conclusion that, in light of the material submitted to it (some of it in closed session), there is no reason to determine that the authorities violated their obligation.
3. In its judgment, the Court also addressed the obligation of the authorities to monitor the humanitarian situation in Gaza, and toward the end of the judgment added:
It is to be assumed... that the respondents will persist in monitoring humanitarian needs, including continued contact with aid organizations; and will continue to adapt their conduct to the situation on the ground, insofar as possible given the constraints of the fighting (paragraph 96 of the judgment).

B. The Government of Israel's decision to halt aid entry to Gaza

1. The petition was submitted in March 2024, in reference to the policy implemented at that time. However, even before the judgment was issued, the Government of Israel decided on 2.3.2025 to halt the entry of humanitarian aid into Gaza. The Prime Minister's Office explained that this decision was intended to pressure Hamas to release the hostages who

remain in Hamas tunnels in Gaza. On 18.3.2025, the government decided not to enter negotiations for phase B of the hostage release deal and to renew fighting in Gaza.

2. Although the government's decision to halt the entry of humanitarian aid into Gaza was made before the Supreme Court ruled in HCJ 2280/24, the Court declined to address this new development. **Its finding that there is no basis to determine that the authorities violated their obligation thus referred to the period in which the state authorities acknowledged their obligation to permit humanitarian aid entry, and for which they also submitted evidence of compliance. Therefore, it cannot be inferred from the Court's judgment that the government's decision to stop the aid is lawful.**

C. The humanitarian situation in Gaza today

1. Even before the government's decision to stop permitting the entry of humanitarian aid, the nutritional situation in Gaza was dire, as was the state of sanitation and medical services. For example, UNICEF reported as early as March 2024 that in the northern Strip, 31% of children under the age of two suffer from severe malnutrition. An IPC report (a global initiative for assessing food security) from November 2024 stated that there is an imminent danger of famine in Gaza, especially in the northern Strip.
2. Following the decision to halt the transfer of humanitarian aid to Gaza, the humanitarian situation in Gaza has greatly deteriorated. Below are some of the reports on the nutritional and medical situation in the Strip:
 - a. On 4.4.2025, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported: "Gaza faces a new danger of famine and malnutrition, as the complete blockade on goods, now entering its second month, has nearly completely halted flour distribution and is leading to the closure of subsidized bakeries."
 - b. On 7.4.2025, the heads of seven international organizations involved in the humanitarian situation in Gaza issued an urgent appeal, referring to the famine prevailing in the Strip, while stocks of food, medicine, fuel, and tents are stuck at the crossings due to the prohibition imposed by the Government of Israel on the entry of aid. The statement said that 25 bakeries supported by the UN World Food Programme ceased operations due to a lack of flour and cooking gas.
 - c. On 8.4.2025, UNICEF reported: "Without aid since March 2, malnutrition, diseases, and other preventable conditions are expected to worsen... Medicines and other medical supplies are running out rapidly, including a critically low supply of blood units for maternal and child health."
 - d. On 14.4.2025, the UN Secretary-General expressed his deep concern in view of the continued prohibition on aid entry and noted that the humanitarian consequences are devastating, as food supplies are running out, water production has drastically dropped, and almost no shelter resources remain.
 - e. On 15.4.2025, OCHA reported that intensive military operations, evacuation orders, prevention of all aid or commercial supply entry, and the shrinking humanitarian space are leading to what is likely the most severe humanitarian crisis in the Gaza Strip since October 2023. Water insecurity is deepening, as there is no access to more than half of the water and sanitation facilities. As a result, there is a sharp decline in access to drinking water, harm to basic hygiene, and harm to public health. Food consumption and

dietary diversity in Gaza have severely deteriorated.

f. On 25.4.2025, the UN World Food Programme (WFP) announced: “The WFP’s food stocks in Gaza have run out. The programme, which provided one hot meal per day to about half of the population, will not be able to provide further meals.”

g. On 30.4.2025, OCHA reported that “Gaza’s healthcare system is on the brink of collapse, collapsing under the burden of treating masses of casualties and severely disrupted by the total blockade preventing the entry of medicines, vaccines, and medical equipment.”

h. On 2 May 2025, the International Committee of the Red Cross announced that humanitarian aid within the Gaza Strip is on the verge of total collapse.

D. The legal obligation to permit and facilitate the entry of humanitarian aid

1. The scope of Israel’s legal obligation regarding the provision of humanitarian aid to Gaza depends primarily on its status in the Strip (or in parts of it). While the obligation imposed on a party to a conflict is to facilitate the entry of humanitarian aid by third parties seeking to assist, the obligation of an occupying state is to ensure itself that the population in the occupied territory has food and medicine. If there is not enough food and medicine in the occupied territory, the occupying state must supply them to the extent of its capability.
2. There is disagreement between Israel and parties in the international community as to whether Israel currently holds the status of occupying power in parts of the Gaza Strip. In the aforementioned judgment, the Supreme Court determined that the answer is negative. One may dispute the Court’s position on this matter, but for the purpose of our position here, it is unnecessary to resolve the question, because the obligation to permit humanitarian aid applies both in a situation of occupation and during hostilities in the absence of occupation.
3. The obligation imposed on a party to a conflict to permit and facilitate the transfer of humanitarian aid to the civilian population in areas of hostilities is anchored in Article 23 of the Fourth Geneva Convention and Article 70 of the Additional Protocol to the Geneva Conventions (which, according to the Supreme Court, reflects, in its core provisions, customary law binding on Israel). According to both, **a state is not permitted to prohibit the entry of humanitarian aid into an area of hostilities. On the contrary, it is obligated to permit such entry, subject to its right to establish technical arrangements aimed at verifying that the aid is indeed humanitarian and not military, and to supervise the distribution of aid to prevent it from reaching combatants.**
4. It is true that Article 23 of the Geneva Convention provides that aid may be halted if it results in a “definite advantage” to the military effort of the opposing side or makes a definite contribution to the enemy’s economy by relieving it of the need to supply the civilian population. However, like any decision made during warfare, this decision must be examined according to the principle of proportionality. Under this principle, the question is whether the harm to the civilian population due to denial of aid is excessive in relation to the expected military advantage from the harm to Hamas. Under the current

circumstances, with Israel encircling Gaza from all sides, and given the immense distress, there is no doubt that the decision is disproportionate.

5. **In any case, and no less importantly**, Article 70 of the First Additional Protocol was precisely intended to prevent the possibility of invoking the opposing-party-benefit argument to completely empty the obligation to permit humanitarian aid of its content, merely by pointing to some economic benefit that may accrue to the other side. Therefore, Article 70 **does not include** the exception concerning the enemy's use of aid. The official commentary to the First Protocol states this explicitly, and due to the importance of the matter, we quote it here:

Moreover, paragraph 2(c) of Article 23 of the fourth Convention actually goes even further and virtually allows the blockage of any relief action. In fact, it is clear that such an action, even if it all goes to the civilian population needing it, to some extent relieves the burden on the economy of the receiving Party. However, this is a question of proportionality: there is no way in which one could weigh the humanitarian considerations of an action destined to ensure the survival of a civilian population lacking essential supplies against the military advantage that such an action could have for the receiving Party, which would in any case always be minimal and indirect, even though it would be wrong to deny its existence altogether. Article 70 of the Protocol in this respect modifies Article 23 of the fourth Convention, and the second paragraph of that article should be considered as obsolete in any armed conflict to which Protocol I applies..

6. Indeed, in the study of the International Committee of the Red Cross (ICRC) on the customary rules of international humanitarian law currently in force, the obligation to permit and facilitate the entry of humanitarian aid is described as follows:

"The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control."

As noted above, the state's right of control exists to verify that the aid is indeed humanitarian, not weaponry, and to establish ways to supervise its distribution so that it does not reach combatants.

7. It should be noted that Article 70 of the First Additional Protocol obligates the facilitation of aid when the civilian population "is not adequately provided." Even if some in the IDF dispute the accuracy of the information provided by international organizations cited in section C above, given the objective situation in which a vast proportion of structures in the Strip—including health and food production infrastructure—have been destroyed, and the majority of the population is displaced to tent camps without infrastructure, **it is not seriously arguable that the population is adequately provided.**

E. The prohibition on starvation and denial of means of survival

1. The obligation to permit and facilitate the entry of humanitarian aid is not the only obligation applying to Israel regarding humanitarian assistance. Article 54 of the First Additional Protocol (which also reflects customary law) establishes an absolute prohibition on the use of starvation as a method of warfare. **In our case, it is clear that the purpose of halting the entry of humanitarian aid to Gaza is to cause shortage and hunger in the territory—since if the population had sufficient food, stopping the aid would not create any pressure on Hamas.** That is, the aim of preventing the aid is to generate pressure on the other side by harming its civilians.
2. It is claimed against permitting the entry of humanitarian aid that there is information suggesting that Hamas members appropriate the aid and even sell it to civilians. There is no doubt that Israel has the right to take measures to prevent—or at least reduce—the possibility that Hamas members will exploit the aid for their benefit. However, this right does not grant permission to prohibit the entry of aid when there is a fear of famine among the civilian population. Instead of banning aid entry, the authorities should maintain close contact with the organizations providing the aid in order to find ways to supervise the distribution and use of the aid.
3. It should also be remembered that proceedings are pending before the International Court of Justice (ICJ) against the State of Israel, in which it is accused of violating the Convention on the Prevention and Punishment of the Crime of Genocide. One of the acts that may be considered genocide is deliberately inflicting on an ethnic or national group “conditions of life calculated to bring about its physical destruction in whole or in part.” There is concern that the halting of humanitarian aid entry will be regarded as an act falling within this prohibition. Indeed, in the provisional measures ordered by the ICJ on 26.01.2024—which are binding on Israel as a party to the Convention—the Court unequivocally ruled that Israel must act to allow humanitarian aid into Gaza.
4. Simultaneously, the International Criminal Court (ICC) has issued arrest warrants against the Prime Minister and the former Minister of Defense, in indictments accusing them of the war crime of starvation. The halting of humanitarian aid entry may be considered an act falling within this prohibition.

F. The obligation to secure the release of the hostages

We are fully aware of the moral and legal duty of the State of Israel to bring the hostages back from hell, and we support every step permitted under international law that may achieve this goal. There is no doubt that in the kidnapping of the hostages, their disappearance, and their detention under subhuman conditions, Hamas members are committing not only war crimes but also crimes against humanity. However, the crimes of a terrorist organization should not lead the state to descend to the depths of that organization, to violate international law, and to harm civilians who are not responsible for the crimes of the terrorist organization.

As the Supreme Court noted in its judgment:

“Cicero’s dictum that in time of war the laws fall silent does not reflect modern reality... The rationale behind this approach is not only pragmatic, the product of political and normative reality. The rationale is far deeper. It is an expression of the distinction between a democratic

state fighting for its life and the fight of terrorists who rise up against it. The state fights in the name of the law and for its preservation. The terrorists fight against the law and through its violation. The war against terror is also the law's war against those who rise up against it. But beyond that: the State of Israel is a state whose values are Jewish and democratic. We have established here a law-abiding state, realizing its national goals and the vision of generations, and doing so while recognizing and realizing human rights in general, and human dignity in particular. Between these two there is harmony and compatibility—not conflict and alienation.”

Conclusion

The government's decision not to permit the entry of humanitarian aid into Gaza stands in contradiction to international law. It violates the obligation of a state involved in armed conflict to allow the entry of humanitarian aid into the area of hostilities, and it may be considered the use of starvation as a method of warfare.

We call upon the authorities to revoke the decision and to permit the transfer of humanitarian aid into Gaza.

Respectfully,

Professor Eyal Benvenisti

Professor Orna Ben-Naftali

Professor Iris Canor

Dr. Natalie Davidson

Professor Aeyal Gross

Professor Guy Harpaz

Professor David Kretzmer

Professor Eliav Lieblich

Dr. Doreen Lustig

Dr. Tamar Megiddo

Dr. Michal Saliternik

Professor Yuval Shany

Professor Yael Ronen

Dr. Limor Yehuda