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Litigating Slow Violence: Deprivation in Gaza, Humanitarian Aid, and the Limits of International Humanitarian Law

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In March 2025, Israel's Supreme Court upheld the legality of Israel's restrictions on humanitarian aid into Gaza, rejecting a petition brought by Israeli non-governmental organizations. The ruling came amidst intensifying international debate over whether Israel's conduct amounts to genocide and the issuance of international arrest warrants against top Israeli leaders for the war crime of starvation.

This Article critically examines the Supreme Court decision to demonstrate how norms of international humanitarian law ("IHL"), ostensibly designed to counter deprivation, can be invoked by belligerents to entrench and obscure it. Focusing on the parties' competing interpretations of two central IHL obligations—to allow and facilitate humanitarian aid, and to prohibit civilian starvation as a method of warfare—the analysis exposes deep tensions within IHL and its underlying assumptions. IHL's vague language of "allow and facilitate" humanitarian aid under "technical arrangements" enables belligerents to cast restrictive measures in managerial and neutral terms, and in turn, reframe deprivation as legal compliance.

Beyond identifying the indeterminate and facilitative features of international legal norms, the Article highlights an underexplored mechanism through which these features are operationalized: the deployment of temporality. In the context of prolonged deprivation, time is not a neutral fact but a driving force shaping the meaning of belligerents' conduct, the substance of relevant legal obligations, and the lived experience of civilians exposed to deprivation. Further, the legal proceedings themselves—through delays, inaction, and selective timelines—could inherently constrain efforts to recognize and address the "slow violence" of deprivation.

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Introduction

In March 2025, Israel's Supreme Court upheld the legality of Israel's restrictions on access to humanitarian aid in Gaza, rejecting a legal challenge brought forward by five Israeli non-governmental organizations ("NGOs") a year earlier.[1] While the petitioners alleged grave violations of international

1. Ruling, HCJ 2280/24 Gisha—Legal Ctr. for Freedom of Movement v. Gov't of Israel [hereinafter HCJ 2280/24 Gisha] (Mar. 27, 2025) (Isr.) [hereinafter HCJ 2280/24 Gisha Ruling], https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2025/3/27/

humanitarian law ("IHL"), the Israeli Government claimed that it had exceeded its obligations and denied imposing any limitation on the volume of humanitarian aid.[2] The Supreme Court's ruling, issued in response to the *Gisha* petition, came amid international proceedings alleging that Israel's conduct in Gaza amounted to genocide,[3] international arrest warrants for senior Israeli leaders,[4] and growing fears of famine engulfing the Gaza Strip. Beyond adopting restrictive doctrinal positions on international humanitarian obligations—particularly regarding the protection of civilians' basic needs—the Supreme Court's decision exposed the underlying tensions and temporal ambiguities embedded in those obligations.

This Article critically examines the *Gisha* proceedings to show how the indeterminate[5] and seemingly neutral, "managerial" language of IHL[6] fails to constrain slower, less visible forms of violence inflicted by belligerents,[7] such as deprivation, and may, in fact, play a facilitative role[8] in its perpetration. It also illustrates how belligerents might construct widespread deprivation practices

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2024-0-2280-72-2&fileName=4332ce4a4792479aaff095df174ed9b1&type=4 [https://perma.cc/YHJ5-2DE6] (all translations from Hebrew by author, unless indicated otherwise); Petition for Order *Nisi* and Order for Urgent Hearing, HCJ 2280/24 Gisha (Mar. 18, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha Petition] (unofficial English translation by HaMoked, or the Center for the Defence of the Individual, one of the petitioners, posted on the Gisha website), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/High_court_2280-24_petition_180324_EN.pdf [https://perma.cc/H2J7-PYED].

2. Respondents' Preliminary Response, HCJ 2280/24 Gisha (Apr. 2, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Respondents_Response_He_020424.pdf [https://perma.cc/3K58-GNXQ] (unofficial translation of excerpts by Gisha available at https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Excerpts_from_Respondents_response_En_020424.pdf [https://perma.cc/V8PR-W9LM]); Respondents' Response, HCJ 2280/24 Gisha (June 28, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_Response_He_280624.pdf [https://perma.cc/VPT6-KRUV].

3. *See generally* Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.) [hereinafter S. Afr. v. Isr.], Application Instituting Proceedings, I.C.J. General List No. 192 (Dec. 29, 2023), https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf [https://perma.cc/MZY8-GM4S].

4. Press Release, Int'l Crim. Ct. [ICC], Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant (Nov. 21, 2024), https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges [https://perma.cc/EL5K-D6CH]. The announcement provided public information on these confidential arrest warrants.

5. Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument 21, 24, 66 (2006).

6. David Kennedy, The Dark Sides of Virtue: Reassessing International Humanitarianism 235, 263–64 (2004).

7. Rob Nixon, Slow Violence and the Environmentalism of the Poor 2–4 (2011).

8. Eliav Lieblich, *The Facilitative Function of Jus in Bello*, 30 Eur. J. Int'l L. 321, 326–28 (2019). On the legitimizing rule of IHL, see Kennedy, *supra* note 6, 273–74, 315.

as remaining just below the threshold of illegality by harnessing IHL's intrinsic indeterminacies to advance highly permissive interpretations and fragmented doctrinal analysis.[9]

Further, this Article uses the *Gisha* case to explore the inherent legal complexity of what the Article terms "deprivation atrocities:" the systematic, large-scale denial of civilians' access to necessities such as food, water, and medical care during armed conflict. As elaborated in Part II, the Article advances deprivation atrocities as a distinct category of violation.[10] These harms are characterized by the operation of diverse, interconnected, and often indirect practices; the involvement of a dense, diffused system of perpetrators, often operating with varying degrees of intent; and the production of cumulative, long-term harm extending well beyond the initial moment of deprivation. Despite their comprehensive impact on individuals and communities, the legal articulation of such harms remains fragmented across multiple legal regimes, obligations, rights, prohibitions, and crimes. This fragmentation forms the basis for the Article's proposal to rearticulate deprivation atrocities as a distinct analytical and legal category. In the specific context of IHL, conceptualizing deprivation atrocities as an analytical category helps clarify how IHL regulates structural and prolonged deprivation and how different legal obligations operate together in practice.

In recent decades, conflict-induced starvation, forced displacement, and mass denial of medical treatment have emerged as defining features of warfare, disproportionately impacting society's most vulnerable populations. Starting in the second half of the 20th century, IHL has developed and deployed seemingly rigorous norms and obligations to protect civilians' basic needs in situations of armed conflict.[11] These norms include the obligation to facilitate the delivery of

9. *See* Tom Dannenbaum & Janina Dill, *International Law in Gaza: Belligerent Intent and Provisional Measures*, 118 Am. J. Int'l L. 659, 660 (2024) (raising a similar point in reference to Israel's public statements). More generally on non-legality, see Fleur Johns, Non-legality in International Law: Unruly Law 10 (2013) (proposing a typology of non-legalities, including "making *illegality*" by legal crafting of conducts forbidden by international law, and "making *infra-legality*" by framing harmful practices as neutral and incidental).

10. For alternative conceptualizations of deprivation, see generally Diana Sankey, *Towards Recognition of Subsistence Harms: Reassessing Approaches to Socioeconomic Forms of Violence in Transitional Justice*, 8 Int'l J. Transitional Just. 121 (2014) [hereinafter Sankey, *Towards Recognition*]; David Scheffer, *Genocide and Atrocity Crimes*, 3 Genocide Stud. & Prevention 229 (2006); Diana Sankey, *Gendered Experiences of Subsistence Harms: A Possible Contribution to Feminist Discourse on Gendered Harm?*, 24 Soc. & Legal Stud. 25 (2015). In the context of famine, see Alex de Waal, Mass Starvation: The History and Future of Famine 14, 33 (2018).

11. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War arts. 23, 51, 55–63, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts arts. 51, 69–71, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter AP I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and

humanitarian aid[12] and the prohibition on using civilian starvation as a method of warfare,[13] and are further reinforced by humanitarian principles of proportionality, distinction, and precaution.[14] In situations of occupation, occupying forces bear the robust and positive "duty of ensuring the food and medical supplies of the population" to "the fullest extent of the means available."[15] However, critical scholars have long signaled that ambiguities, gaps, and contradictions emerge from these legal obligations and that such indeterminacies in the language of IHL may actually serve to *legitimize* violence in warfare practices.[16] More recently, doctrinal debates have questioned the extent to which IHL norms truly mitigate deprivation and provide the doctrinal legal infrastructure necessary to protect civilians' basic needs in practice.[17]

Relating to the Protection of Victims of Non-International Armed Conflicts arts. 14, 18(2), June 8, 1977, U.N. Doc. A/32/144 [hereinafter AP II]; Int'l Comm. of the Red Cross [ICRC], Customary IHL Database, rs. 53–55 [hereinafter ICRC Customary IHL Database], https://ihl-databases.icrc.org/en/customary-ihl/v1 [https://perma.cc/V5BX-GSV5]; San Remo Manual on International Law Applicable to Armed Conflicts at Sea arts. 102–04, June 12, 1994 [hereinafter San Remo Manual], https://ihl-databases.icrc.org/en/ihl-treaties/san-remo-manual-1994/article-93-108?activeTab=[https://perma.cc/P2SR-3ET8]. For relevant obligations in the context of conflict-induced food insecurity, see S.C. Res. 2417, pmbl. ¶¶ 4–7, U.N. Doc. S/RES/2417 (May 24, 2018).

12. Fourth Geneva Convention, *supra* note 11, art. 23; AP I, *supra* note 11, art. 70; AP II, *supra* note 11, art. 18; ICRC Customary IHL Database, *supra* note 11, r. 55.

13. AP I, *supra* note 11, art. 54; AP II, *supra* note 11, art. 14; ICRC Customary IHL Database, *supra* note 11, r. 53.

14. AP I, *supra* note 11, arts. 48(1), 51(1), 51(2), 51(5)(b), 57; ICRC Customary IHL Database, *supra* note 11, rs. 1, 7, 14, 15–21. In situations of naval warfare, see San Remo Manual, *supra* note 11, arts. 102–04.

15. Fourth Geneva Convention, *supra* note 11, art. 55; *see also id.* arts. 56, 59–60.

16. On international humanitarian law's ("IHL") functions as legitimizing and facilitative of violence, see, for example, David Kennedy, *Lawfare and Warfare*, *in* The Cambridge Companion to International Law 158, 166 (James Crawford & Martti Koskenniemi eds., 2012); *see also* Lieblich, *supra* note 8, at 330–32.

17. *See generally, e.g.*, Dapo Akande & Emanuela-Chiara Gillard, *Conflict-Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare: The Underlying Rules of International Humanitarian Law*, 17 J. Int'l Crim. Just. 753 (2019); Tom Dannenbaum, *Siege Starvation: A War Crime of Societal Torture*, 2 Chi. J. Int'l L. 368 (2021); Alex de Waal & Bridget Conley, *What Justice for Starvation Crimes?*, *in* Time For Reparations: A Global Perspective 272 (Jacqueline Bhabha, Margareta Matache & Caroline Elkins eds., 2021); Jessica Whyte, *A "Tragic Humanitarian Crisis": Israel's Weaponization of Starvation and the Question of Intent*, 28 J. Genocide Res. 1 (2024). For alternative views, see generally Phillip J. Drew, *Can We Starve the Civilians? Exploring the Dichotomy Between the Traditional Law of Maritime Blockade and Humanitarian Initiatives*, 95 Int'l L. Stud. 302 (2019); Sean Watts, *Humanitarian Logic and the Law of Siege: A Study of the Oxford Guidance on Relief Actions*, 94 Int'l L. Stud. 1 (2019). For relevant manuals, see generally Dapo Akande & Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* (2016) [hereinafter *Oxford Guidance*], https://www.unocha.org/attachments/65388dae-cedb-3954-be9b-882f6988368d/Oxford%20Guidance%20pdf.pdf [https://perma.cc/G7KW-PWCG] (commissioned by United Nations ("U.N.") Off. for the Coordination of Humanitarian Affs.); Swiss Fed. Dep't of Foreign Affs., *Humanitarian Access in Situations of Armed Conflict: Handbook on*

Rather than attempting to resolve this doctrinal debate, this Article turns instead to the *Gisha* proceedings as a site that surfaces some of IHL's core contradictions and raises pressing doctrinal and theoretical questions. By reviewing the parties' submissions and judicial decisions, this Article explores the diverging interpretations of two central IHL obligations: the obligation to allow and facilitate humanitarian aid, and the prohibition on the use of civilian starvation as a method of warfare. In doing so, it also examines their underlying assumptions, terms, and conditions while calling attention to the slow, erosive processes of deprivation and rearticulating them as an often-sidelined form of violence. In terms of methodology, this Article draws on a close reading of all parties' submissions and the Supreme Court's protocols in their original language, spanning thousands of pages, as well as direct observation of all relevant Israeli Supreme Court hearings (mostly in-person) and analysis of the final judgement.

Doctrinally, the *Gisha* proceedings illuminate how international legal norms, often presumed as intended to counter deprivation, can be utilized by belligerents to further entrench and obscure it, particularly within domestic judicial venues. The technical yet vague terms of these humanitarian provisions allow for highly restrictive interpretations that subordinate the protection of civilians' basic needs to military considerations and prioritize belligerents' *intent* over the *impact* upon civilians.[18] Further, the *Gisha* decision illustrates how IHL's use of highly ambiguous terms, such as "allow and facilitate"[19] or "technical arrangements,"[20] effectively collapses the factual distinction between the facilitation of humanitarian aid and its obstruction. In doing so, IHL's ambiguities essentially permit belligerent parties to frame deprivation practices as technical-managerial procedures rather than legal and political policy choices. More broadly, this Article argues that IHL's inherent indeterminacy provides fertile ground for "epistemic fissures"[21]—instances of extreme and sometimes deliberate distortions of reality—rather than helping to quell or at least navigate them. Read as a whole, Israel's Supreme Court decision in *Gisha* further demonstrates how two IHL obligations—the duty to facilitate the delivery of humanitarian aid and the prohibition on using civilian starvation as a method of warfare—can be interpreted and operationalized by belligerents as mutually disabling.

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the Normative Framework (2011), https://alnap.org/help-library/resources/humanitarian-access-in-situations-of-armed-conflict-handbook-on-the-international [https://perma.cc/X5WL-E26C].

18. Whyte, *supra* note 17, at 10; Dannenbaum & Dill, *supra* note 9, at 661–62, 667–70.
19. AP I, *supra* note 11, art. 70.
20. *Id.*
21. Dannenbaum & Dill, *supra* note 9, at 660.

Beyond pointing to IHL's indeterminate and facilitative features, this Article sheds light on a key *mechanism* through which these features are operationalized: the deployment of temporality during prolonged processes of deprivation. In the context of Israel's military campaign in Gaza, some have pointed to rapid, high-intensity forms of direct violence producing significant casualties within a short time span, noting that, the "speed of violence is being accelerated."[22] This Article, instead, calls attention to slow forms of harm produced through deprivation, using time and temporality as a lens to examine IHL obligations and legal proceedings.

Drawing from emerging scholarship on time and law, the Article proposes to perceive time not as a neutral fact or passive context but rather as an active driving force, shaping the meaning of belligerents' conduct, the substantive content of IHL's doctrinal obligations, and the lived experience of victims and survivors subjected to deprivation.[23] This Article contends that IHL remains ill-equipped to address the cumulative and temporally extended harms of deprivation, particularly when those harms are exercised and mediated through delay, inaction, and omission rather than overt violence. In this context, the notion of *slow violence*, a term originally coined in reference to environmental harms, is instructive.[24] Slow violence refers to "delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all."[25] The Article extends this prism into the domain of IHL, asserting that IHL's narrow construction of violence simultaneously sidelines and legitimizes the slow violence of deprivation.

In such contexts, the legal proceedings themselves become part of the problem. First, courts often adhere to and invoke their own procedural requirements, such as the obligations to exhaust administrative remedies or to observe mandatory waiting periods before taking action as prescribed under relevant legislation.[26] These procedures introduce and embed legally structured

22. Luke Moffett & Nikhil Narayan, *Provisional Justice in Protracted Conflicts: The Place of Temporality in Bridging the International Humanitarian Law and Transitional Justice Divide*, 106 Int'l Rev. Red Cross 1222, 1238 (2024).

23. *See* sources cited *infra* notes 112–114 and accompanying text.

24. *See generally* Nixon, *supra* note 7.

25. *Id.* at 2; *see also* Dannenbaum, *supra* note 17, at 406.

26. Under Israeli administrative law, petitioners are generally required to exhaust administrative remedies before petitioning the Supreme Court sitting as the High Court of Justice. Petitioners should first submit a formal request to the competent administrative authority and allow it a reasonable opportunity to consider the request and exercise its authority. Only after the authority has articulated its position—or failed to do so within a reasonable time—may judicial review be sought. This requirement reflects principles of judicial restraint and institutional competence, and the court retains discretion to relax it in circumstances of urgency or where alternative remedies are ineffective or inadequate. *See* HCJ 7505/10 Head of the Khirbet Bani Harith Village Council v. Military Commander of the West Bank, ¶¶ 5–6 (July 25, 2011) (Isr.) (decision on costs), https://supremedecisions.court.gov.il/Home/Download?path=Hebre

intervals of delays within the judicial process. Second, courts determine the relevant timeline and temporal framework and, thus, can adopt narrowly bounded timelines that exclude preexisting structural conditions or developments that arise during deliberation. Third, beneath the surface, the proceedings are not only an arena of competing factual and legal narratives but also of competing modalities of time, as advanced by different parties. In all respects, legal processes might inherently constrain efforts to recognize and address the prolonged, cumulative harms of deprivation.

Before proceeding, I emphasize that this Article does not seek to ascertain the precise facts nor to provide a comprehensive doctrinal analysis of relevant IHL obligations, Gaza's legal status, or the *Gisha* ruling's implications for parallel international proceedings. These issues are debated by a host of international and domestic tribunals, examined by international organizations and initiatives, and have generated extensive scholarly and advocacy attention. Rather, this Article's intended contribution lies in analyzing the *Gisha* case study to map the tensions and inadequacies within IHL's legal infrastructure and its approach to deprivation atrocities.

Relatedly, several months after the Gisha final judgment, international legal interpretation of relevant norms deepened, including through the International Court of Justice Advisory Opinion on Israel's obligations toward humanitarian relief organizations[27] and the 2025 International Committee of the Red Cross ("ICRC") Commentary on the Fourth Geneva Convention.[28] This Article does not seek to retrospectively evaluate the validity of the *Gisha* ruling. Instead, it draws on these materials to further illuminate IHL's systemic tensions already present at the core of the Gisha proceedings.

The remainder of this Article is structured as follows. Part I begins by presenting the *Gisha* petition alongside a brief review of parallel international proceedings concerning mass deprivation in Gaza. Part II provides a theoretical framework, connecting critical legal scholarship with the concepts of slow,

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wVerdicts%5C10/050/075/f08&fileName=10075050.f08&type=4 [https://perma.cc/KTT4-3HYT]; HCJ 1661/05 Gaza Coast Regional Council v. Knesset, 59(2) PD 481, ¶¶ 122–23 (2005) (Isr.). In addition, access to information may require a formal request under the Freedom of Information Law, which mandates awaiting the authority's response before judicial review may be sought. *See* §§ 7, 17, Freedom of Information Law, 5758–1998, SH 1667 (1998) 226.

27. Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory, Advisory Opinion (I.C.J. Oct. 22, 2025) [hereinafter 2025 ICJ Advisory Opinion on Israel's Obligations], https://www.icj-cij.org/sites/default/files/case-related/196/196-20251022-adv-01-00-en.pdf [https://perma.cc/QTY2-F859] .

28. ICRC, Commentary: Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 23 (2025) [hereinafter 2025 Commentary to GC IV], https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-23/commentary/2025?activeTab=1949GCs-APs-and-commentaries#refFn_EE40176_00067 [https://perma.cc/H8QM-VZ65].

bureaucratic, and invisible violence as key lenses for analyzing deprivation. Building on this foundation, Part III examines two IHL obligations—the obligation to facilitate humanitarian aid and the prohibition of civilian starvation as a method of warfare—while shedding light on several doctrinal indeterminacies within and between these obligations, as prominently displayed by the *Gisha* proceedings. Part IV then focuses on issues of temporality that arise from both this doctrinal architecture and the deployment of temporal constructs within the legal proceedings. The Article concludes with a discussion of developments that followed the closure of this particular case and offers some final reflections regarding the possibility (and limits) of litigating deprivation atrocities.

I. The Gisha Petition Before Israel's Supreme Court and Parallel International Proceedings

On October 7, 2023, war reignited between Israel and Hamas-led Palestinian armed groups in Gaza after a brutal attack on Israel that resulted in over 1,200 deaths, many thousands of reported injuries, and more than 250 people abducted from Israel and unlawfully taken hostage.[29] Israel responded by launching a military campaign in Gaza that claimed, according to estimates, well over 67,000 Palestinian lives in Gaza, including many civilians, at least 20,000 of whom were children,[30] before a fraught ceasefire agreement was reached in

29. Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel, Detailed Findings on Attacks Carried Out on and After 7 October 2023 in Israel, ¶ 21, U.N. Doc. A/HRC/56/CRP.3 (June 10, 2024).

30. *Reported Impact Snapshot—Gaza Strip*, United Nations [U.N.] Office for the Coordination of Humanitarian Affairs [OCHA] (Oct. 15, 2025), https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-15-october-2025 [https://perma.cc/H9W3-KQAX] (figures reported by the Gazan Health Ministry). *See generally* Michael Spagat et al., *Violent and Non-Violent Death Tolls for the Gaza Conflict: New Primary Evidence from a Population-Representative Field Survey*, 14 Lancet Glob. Health 552, (2026), https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(25)00522-4/fulltext [https://perma.cc/J6W4-SLCT] (estimating violent, conflict-induced death at over 75,000 between Oct. 7, 2023, and Jan. 5, 2025, of which, over 22,800 children); Zeina Jamaluddine et al., *Traumatic Injury Mortality in the Gaza Strip from Oct 7, 2023, to June 30, 2024: A Capture–Recapture Analysis*, 405 Lancet Glob. Health 469 (2025). For previous information, see Louisa Loveluck et al., *More than 60,000 People Killed in Gaza War, Local Health Officials Say*, Wash. Post (July 29, 2025), https://www.washingtonpost.com/world/2025/07/29/gaza-war-death-toll-60000/ [https://perma.cc/XQU8-QW4C] (figures reported by the Gazan Health Ministry, along with a list of named casualties); *cf.* Abraham Wyner, *A Statistical Response to "Traumatic Injury Mortality in the Gaza Strip from Oct 7, 2023, to June 30, 2024: A Capture-Recapture Analysis"* (Wharton Sch. Res. Paper, Jan. 28, 2025), https://ssrn.com/abstract=5115647 [https://perma.cc/EKL3-626Y]; Sergio Della Pergola, *No, 100,000 Palestinians Haven't Died in Gaza*, Haaretz (July 6, 2025), https://www.haaretz.com/opinion/2025-07-06/ty-article-opinion/.premium/no-100-000-people-havent-died-in-gaza/00000197-df88-d78d-a39f-dfdc47470000 [https://perma.cc/RRJ9-WAAG]; Gabriel Epstein, *Assessing the Gaza Death Toll After Eighteen Months of War*, Policy Note No. 158 (Wash.

October 2025.[31] Horrifyingly, these casualty figures likely reflect only part of the true scale of the crisis in Gaza: At certain points in time, high levels of food insecurity threatened over 1.8 million people out of Gaza's population of 2.2 million,[32] alongside widespread forced displacement and the destruction of the vast majority of physical infrastructure[33] and agricultural lands.[34] Although accounting for indirect deaths in an active warzone is challenging

Inst. for Near E. Pol'y, May 21, 2025), https://www.washingtoninstitute.org/sites/default/files/pdf/PolicyNote158Epsteinv3.pdf [https://perma.cc/YZ6Z-ZNJT]. Casualty figures reported by Gaza's Ministry of Health have been disputed by the Israel Defense Forces ("IDF"), and reports have also indicated that such totals are viewed by Israeli officials as failing to distinguish between combatants and civilians. *See* Yoav Zitun, *IDF Disputes Gaza Death Toll After Reports Cite Hamas-Run Health Ministry Figures*, YNETNEWS (Jan. 31, 2026), https://www.ynetnews.com/article/h1jhuacize [https://perma.cc/574G-2XS7].

31. William Christou & Jason Burke, *First Phase of Ceasefire Deal to End War in Gaza Agreed by Israel and Hamas*, GUARDIAN (Oct. 9, 2025), https://www.theguardian.com/world/2025/oct/09/first-phase-of-ceasefire-deal-to-end-war-in-gaza-agreed-by-israel-and-hamas [https://perma.cc/Q7UA-G9MA].

32. *See, e.g.*, INTEGRATED FOOD SEC. PHASE CLASSIFICATION [IPC], *IPC Special Brief: Gaza Strip—Acute Food Insecurity and Malnutrition, Feb.–Mar. 2024* (Mar. 18, 2024) [hereinafter IPC, *Feb.–Mar. 2024*], https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Special_Brief_March2024.pdf [https://perma.cc/3LW6-X7HW]; *Gaza Strip: IPC Acute Food Insecurity Special Snapshot—May 1–Sept. 30, 2024*, IPC (June 25, 2024), https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1157065/?iso3=PSE [https://perma.cc/4D23-9TNF] [hereinafter IPC, *Gaza Strip*]; *Gaza Strip: IPC Acute Food Insecurity and Acute Malnutrition Special Snapshot—Sept. 2024–Apr. 2025*, IPC (Oct. 17, 2024) https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1157985/?iso3=PSE [https://perma.cc/D69V-KUP8]; IPC Famine Review Committee, *IPC Famine Review Committee Alert: Gaza Strip*, IPC (Nov. 8, 2024), https://www.ipcinfo.org/ipcinfo-website/countries-in-focus-archive/issue-114/en/ [https://perma.cc/LUE2-JYD6]; *see also* Dana Hassneiah et al., *Acute Malnutrition Among Children in the Gaza Strip, Palestine: May 2024-November 2024*, 10 BMJ GLOBAL HEALTH 1, 4–5 (2025).

33. *See* U.N. Satellite Centre, *UNOSAT Gaza Strip Comprehensive Damage Assessment* (Oct. 31, 2025), https://www.un.org/unispal/wp-content/uploads/2025/11/OCHA-CBPF-OPT-031_UNOSAT_A3_GazaStrip_CDA_11October2025.pdf [https://perma.cc/398Y-TETJ] (noting that "[a]ccording to satellite imagery analysis, as of 11 October 2025, approximately 81% of all structures in the Gaza Strip are damaged"); *see also* World Bank, European Union [EU] & U.N., *Gaza Strip Interim Damage Assessment Summary Note* 10–11 (Mar. 29, 2024), https://thedocs.worldbank.org/en/doc/14e309cd34e04e40b90eb19afa7b5d15-0280012024/original/Gaza-Interim-Damage-Assessment-032924-Final.pdf [https://perma.cc/7WNN-FS2Z]; Nir Hasson, *New Satellite Data Shows: Gaza Devastation Scale Greater than Estimated, at Least 70 Percent of Buildings Leveled*, HAARETZ (July 17, 2025), https://www.haaretz.com/israel-news/2025-07-17/ty-article-magazine/.premium/satellite-data-shows-at-least-70-percent-of-gaza-buildings-leveled/00000198-12de-d9c7-af98-7adffc8f0000 [https://perma.cc/C8V6-P2VT].

34. *"No Traces of Life": Israel Ecocide in Gaza 2023–2024*, FORENSIC ARCHITECTURE (Mar. 29, 2024), https://forensic-architecture.org/investigation/ecocide-in-gaza [https://perma.cc/B7S6-5CYD]; World Bank, EU & U.N., *Interim Rapid Damage and Needs Assessment (IRDNA): Gaza & West Bank*, at 47–48 (Feb. 18, 2025), https://thedocs.worldbank.org/en/doc/133c3304e29086819c1119fe8e85366b-0280012025/original/Gaza-RDNA-final-med.pdf [https://perma.cc/36CZ-FCXF]; Food & Agriculture Organization of the United Nations & U.N. Institute for Training & Research, *Land Availability for Cultivation in the Gaza Strip as of April 2025*, https://openknowledge.fao.org/server/api/core/bitstreams/c4be554e-170f-413e-ae57-f77030be8d09/content [https://perma.cc/Y63X-SV4V].

and prone to unreliability, early estimations (both prior to and after the *Gisha* Supreme Court ruling) suggest that starvation has caused a significant number of deaths.[35] Expert bodies have attributed Gaza's continued risk of famine to intense hostilities and large-scale destruction of vital civilian infrastructure, leading to a near "collapse of food, health and water systems,"[36] the evacuation orders imposed by Israel on massive civilian populations, and additional restrictions that reduced the amount of aid available in Gaza.[37] All of these factors then contributed to soaring food prices in the informal market. Deep concerns were further heightened by Israel's 2024 legislation banning the United Nations ("U.N.") Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA") from operating within Israel's territory and terminating all governmental engagement with the agency.[38] Moreover, Gazans were

35. *See generally* Spagat et al., *supra* note 30 (estimating excess non-violent mortality of over 8,000 casualties during period between October 7, 2023, and January 5, 2025). For earlier estimates, see Letter from American Medical Professionals Who Served in Gaza to Joe Biden, President of the United States, and Kamala Harris, Vice President of the United States app. re: American Physicians Observations from the Gaza Strip Since October 7, 2023 (Oct. 2, 2024), https://www.gazahealthcareletters.org/usa-letter-oct-2-2024 [https://perma.cc/UY6Q-EZUX] (app. available at https://static1.squarespace.com/static/66e083452b3cbf4bbd719aa2/t/66fcd754b472610b6335d66f/1727846228615/Appendix+20241002.pdf [https://perma.cc/7B7L-XRFR]) (estimating 60,000 starvation-related deaths, excluding additional deaths caused by infectious or non-communicable diseases); *see also* Sophia Stamatopoulou-Robbins, *The Human Toll: Indirect Deaths from War in Gaza and the West Bank October 7, 2023 Forward*, Costs of War Project (Oct. 7, 2024), https://costsofwar.watson.brown.edu/sites/default/files/papers/Robbins_Human-Toll-Since-Oct7.pdf [https://perma.cc/UCQ3-Y88J]; Alex de Waal, *How Many People Have Died of Starvation in Gaza? (Updated)*, World Peace Foundation (Aug. 28, 2025), https://world-peacefoundation.org/blog/how-many-people-have-died-of-famine-in-gaza-updated/ [https://perma.cc/Q8WL-BJYQ]. *See generally* Rasha Khatib, Martin McKee & Salim Yusuf, *Counting the Dead in Gaza: Difficult but Essential*, 404 Lancet 237 (2024) (offering a combined estimate of 180,000 direct and indirect deaths). Subsequent to the *Gisha* Ruling, see Press Release, World Health Organization, Malnutrition Rates Reach Alarming Levels in Gaza, WHO Warns (July 27, 2025), https://www.who.int/news/item/27-07-2025-malnutrition-rates-reach-alarming-levels-in-gaza--who-warns [https://perma.cc/5N54-9YY3]; *cf.* Danny Orbach et al., *Debunking the Genocide Allegations: A Reexamination of the Israel–Hamas War from October 7, 2023 to June 1, 2025*, Begin–Sadat Ctr. For Strategic Studies (Sept. 2025), https://besacenter.org/wp-content/uploads/2025/ [https://perma.cc/NGK3-MTZV].

36. *See* Integrated Food Security Phase Classification, Gaza Strip: IPC Acute Food Insecurity and Acute Malnutrition Special Snapshot - Sept. 2024–Apr. 2025 (Oct. 17, 2024), *supra* note 32.

37. *See* IPC, *IPC Special Brief: Gaza Strip: Acute Food Insecurity and Famine Risk, 2025 Update* (May 12, 2025) [hereinafter IPC, *2025 Update*], https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_2025_Update.pdf [https://perma.cc/L5GX-ZBUH]; *see also* IPC, *Gaza Strip*, *supra* note 32.

38. Law for the Cessation of UNRWA Activities in the Territory of the State of Israel, 5784–2024, SH 3295 2 (Isr.) https://fs.knesset.gov.il/25/law/25_lsr_5106948.pdf [https://perma.cc/3MNA-EABZ]; Law for the Cessation of UNRWA Activities, 5784–2024, SH 3296 4 (Isr.), https://fs.knesset.gov.il/25/law/25_lsr_5106937.pdf [https://perma.cc/V5KE-ZTEG]; U.N. Secretary-General, Letter Dated 28 October 2024 from the Secretary-General Addressed to the President of the General Assembly, U.N. Doc. A/79/558 (Oct. 29, 2024), https://docs.

predisposed, even before the 2023–2024 period studied here, to food insecurity amid the poverty, economic stagnation, and exclusion brought about by Israel's prolonged control over the Strip.[39] These events are rooted in the deeply-seated Israeli-Palestinian conflict and following decades of Israeli occupation, blockade, and siege in Gaza; however, this systemic and longstanding context of oppression lies beyond the scope of this Article.[40]

With concerns growing over Israel's actions in the region since October 2023, allegations of mass deprivation in Gaza prompted multiple international proceedings and inquiries. In an unprecedented step, the International Criminal Court ("ICC") issued arrest warrants in November 2024 against both Israel's Prime Minister Benjamin Netanyahu and then-Minister of Defense Yoav Gallant for the war crime of starvation and the crime against humanity of extermination.[41] This marked the first time that the ICC has pursued a charge for the war crime of starvation, alleging that both individuals intentionally and knowingly deprived civilians in Gaza of "objects indispensable to their survival, including food, water, medicine and medical supplies, as well as fuel and electricity."[42]

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un.org/en/A/79/558 [https://perma.cc/4SEG-N8A7] (providing UNRWA's unofficial English translation).

39. Aeyal Gross & Tamar Feldman, *"We Didn't Want to Hear the Word 'Calories'": Rethinking Food Security, Food Power, and Food Sovereignty—Lessons from the Gaza Closure*, 33 Berkeley J. Int'l Law. 379, 399–405 (2015).

40. As non-exhaustive examples of scholarship on the topic across different fields, see generally, Israel and the Palestinian refugees (Eyal Benvenisti, Chaim Gans & Sari Hanafi eds., 2007); Benny Morris, 1948: A History of the First Arab-Israeli War (2008); Anita Shapira, Israel: A History (2012); Noura Erakat, Justice for Some: Law and the Question of Palestine (2019); Ian S. Lustick, Paradigm Lost: From Two-State Solution to One-State Reality (2019); Rashid Khalidi, The Hundred Years; War on Palestine: A History of Settler Colonialism and Resistance, 1917–2017 (2020); *see also* Sara Roy, The Gaza Strip: The Political Economy of De-Development (3d ed. 2016); Ilana Feldman, Life Lived in Relief: Humanitarian Predicaments and Palestinian Refugee Politics (2018); Jean-Pierre Filiu, Gaza: A History (John King trans., 2014).

41. ICC, *supra* note 4. Importantly, an arrest warrant was issued for the leader of Hamas's al-Qassam Brigades for alleged war crimes and crimes against humanity, including murder and extermination, in connection with the Oct. 7 attacks; the warrant, along with two additional requests against other Hamas leaders, was withdrawn following confirmation of their deaths in 2025.

42. *Id.* The Pre-Trial Chamber I of the International Criminal Court ("ICC") further rejected Israel's challenges under Articles 18 and 19 of the Rome Statute. *See* Decision on Israel's Challenge to the Jurisdiction of the Court Pursuant to Article 19(2) of the Rome Statute, ICC-01/18-374, Pre-Trial Chamber I Decision, ¶¶ 11–18 (Nov. 21, 2024), https://www.icc-cpi.int/court-record/icc-01/18-374 [https://perma.cc/SBK7-2USB]; Decision on Israel's Request for an Order to the Prosecution to Give an Article 18(1) Notice, ICC-01/18-375, Pre-Trial Chamber I Decision, ¶¶ 14–16 (Nov. 21, 2024), https://www.icc-cpi.int/court-record/icc-01/18-375 [https://perma.cc/A738-GVFC].

Additionally, in 2024, the International Court of Justice ("ICJ") began debating South Africa's allegation that Israel's deliberate denial of basic needs in Gaza, together with other practices, amounted to acts violating the Genocide Convention.[43] The ICJ issued provisional measures multiple times, including ordering the Israeli Government to take:

> . . . all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance . . . to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary . . . [44]

In parallel to these developments, in December 2024, the U.N. General Assembly requested the ICJ to issue an advisory opinion on Israel's obligations toward U.N. agencies, international organizations, and third states, particularly in relation to its restrictions on UNRWA operations.[45] The court subsequently received written submissions and heard oral arguments throughout 2025, ultimately delivering its advisory opinion in October 2025.[46] Analyzing Israel's obligations under both international humanitarian law and international human rights law ("IHRL"),[47] the opinion deemed Israel obligated to ensure the basic needs of the civilian population under the law

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43. *S. Afr. v. Isr.*, 2026 I.C.J.; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277; *see also* Human Rights Watch, *Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water* (Dec. 19, 2024), https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza/ [https://perma.cc/353K-7GCP]; Amnesty Int'l, *"You Feel Like You Are Subhuman": Amnesty International Concludes Israel Is Committing Genocide Against Palestinians in Gaza* (Dec. 14, 2024), https://www.amnesty.org/en/latest/news/2024/12/amnesty-international-concludes-israel-is-committing-genocide-against-palestinians-in-gaza/ [https://perma.cc/4SLC-CDZZ]; Univ. Network for Hum. Rts. & Bos. Univ. Sch. of Law, *Genocide in Gaza: Legal Analysis and Factual Findings* (Jan. 2024), https://www.humanrightsnetwork.org/publications/genocide-in-gaza [https://perma.cc/DWC2-HU6E]; Francesca Albanese (Special Rapporteur on the Occupied Palestinian Territories), *Rep. of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, U.N. Doc. A/HRC/55/73 (July 1, 2024), https://docs.un.org/en/A/HRC/55/73 [https://perma.cc/F5QD-5NH2]; B'Tselem, *Our Genocide* (July 2025), https://www.btselem.org/sites/default/files/publications/202507_our_genocide_eng.pdf [https://perma.cc/8TAX-5WKA]; Physicians for Human Rights Israel, *Destruction of Conditions of Life: A Health Analysis of the Gaza Genocide* (July 2025), https://www.phr.org.il/wp-content/uploads/2025/07/Genocide-in-Gaza-PHRI-English.pdf [https://perma.cc/LF6E-5THF].

44. S. Afr. v. Isr., Order, 2024 I.C.J. 513, ¶ 527 (Mar. 28) (referring specifically to "food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care"). *See generally* S. Afr. v. Isr., Order, 2024 I.C.J. 3 (Jan. 26).

45. G.A. Res. 79/232, Request for an Advisory Opinion of the International Court of Justice on the Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States, U.N. Doc. A/RES/79/232 (Dec. 19, 2024).

46. *See generally* 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27.

47. *Id.* ¶¶ 82–160.

of occupation and noted that Gaza's population was inadequately supplied, among other legal assessments.[48] Underscoring the gravity of the situation, the court further recalled "Israel's obligation not to use starvation of the civilian population as a method of warfare."[49] The opinion also built upon the court's July 2024 Advisory Opinion, which addressed the Occupied Palestinian Territories, including Gaza, as a single territorial unit that has been occupied in 1967.[50] In that earlier opinion, the court further determined that "Israel's [2007] withdrawal from the Gaza Strip has not entirely released it of its obligations under the law of occupation bore obligations," and that Israel's obligations are "commensurate with the degree of its effective control over the Gaza Strip,"[51] albeit with partially dissenting views among some judges regarding the extent of Israel's effective control over Gaza.[52]

An independent U.N. Commission of Inquiry concluded, on reasonable grounds, that all parties to the conflict committed gross violations of international humanitarian and human rights law, some of which may amount to international crimes.[53] Further, in a subsequent paper, the commission found reasonable grounds to conclude Israel had, since October 2023, committed

48. *Id.* ¶¶ 85–87, 91–138.

49. *Id.* ¶ 145.

50. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J. 94, ¶ 78 (July 19, 2024) [hereinafter 2024 ICJ Advisory Opinion on the Legal Consequences of Israel's Policies in the Occupied Palestinian Territory].

51. *Id.* ¶ 94; *see also id.* ¶¶ 93, 262.

52. *See, e.g.*, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J 94, ¶¶ 13–21 (July 19, 2024) (separate opinion by Cleveland, J.). While agreeing with the court's finding regarding the unlawful nature of Israel's continued presence in the Occupied Palestinian Territory with respect to East Jerusalem and the West Bank, Judge Cleveland reads the Opinion as not establishing that this conclusion necessarily extends to Gaza. *See* Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J 94, ¶¶ 13–17 (July 19, 2024) (joint opinion by Tomka, Abraham & Aurescu, JJ) (noting that "[t]he Court did not have evidence before it which would allow it to assert whether and to which extent the control Israel continued exercising over the Gaza Strip after the 2005 withdrawal," and thus "the Court should have concluded that it was unable to properly pronounce itself on the situation in Gaza prior to 7 October 2023").

53. Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel, Report, ¶¶ 90–107, U.N. Doc. A/HRC/56/26 (June 14, 2024). On sexual and gender-based violence, see generally Association of Rape Crisis Centers in Israel, *Silent Cry: Sexual Violence Crimes on October 7*, Special Report (Feb. 2024), https://www.1202.org.il/centers-union/publications/reports/712-silent_cry [https://perma.cc/87RW-GASS]; Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Mission Report: Official Visit of the Office of the SRSG-SVC to Israel and the Occupied West Bank,*

several acts amounting to genocide, including deliberately inflicting conditions calculated to destroy the group.[54]

Simultaneously, legal proceedings were initiated within Israel's domestic legal system. On March 18, 2024, five Israeli human rights NGOs (*Gisha* – Legal Center for Freedom of Movement; HaMoked: Center for the Defence of the Individual; Physicians for Human Rights – Israel; the Association for Civil Rights in Israel; and Adalah – The Legal Center for Arab Minority Rights in Israel) jointly petitioned Israel's Supreme Court against Israel's restrictions on humanitarian aid into Gaza. The NGOs requested that the court order the Government of Israel and its relevant military forces to "allow free and swift access without delay of all humanitarian aid, equipment and staff to Gaza, especially to the north of the Strip," "significantly increase the volume of said aid," and "act according to their obligations as an occupying power and immediately provide essential humanitarian aid to the civilian population in the Gaza Strip."[55]

The five petitioners argued that Israel was severely obstructing humanitarian aid in Gaza in violation of its IHL obligations as an occupying force in the territory and as a belligerent in the conflict.[56] The petition underscored alleged interconnected practices, including stringent restrictions on humanitarian aid and direct attacks on civilian infrastructure under the pretext of military activities, which resulted in a dire humanitarian catastrophe in the area.[57] The petitioners also contended that Israel's claims of military necessity and aid diversion by Hamas did not absolve it of the obligation to facilitate the rapid and unimpeded delivery of humanitarian aid to civilians in Gaza, nor did they nullify the prohibition on the use of starvation as a method of warfare.[58]

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29 January–14 February 2024 (Mar. 4, 2024), https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2024/03/report/mission-report-official-visit-of-the-office-of-the-srsg-svc-to-israel-and-the-occupied-west-bank-29-january-14-february-2024/20240304-Israel-oWB-CRSV-report.pdf [https://perma.cc/Z52F-SXQL]; Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel, "More than a Human Can Bear": Israel's Systematic Use of Sexual, Reproductive and Other Forms of Gender-Based Violence Since 7 October 2023, U.N. Doc. A/HRC/58/CRP.6 (Mar. 13, 2025), https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session58/a-hrc-58-crp-6.pdf [https://perma.cc/TP9U-EXW6].

54. Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel, Legal Analysis of the Conduct of Israel in Gaza Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, U.N. Human Rights Council, ¶¶ 26, 47, 57–62, 71, U.N. Doc. A/HRC/60/CRP.3 (Conference Room Paper, Sept. 16, 2025).

55. HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 1–2.

56. *Id.* ¶¶ 6, 78–89.

57. *Id.* ¶¶ 2–4, 13–14, 24–67, 77–78.

58. *Id.* ¶¶ 16, 113–29.

In response, the Israeli government argued that it was upholding all of its obligations under the law of armed conflict and exceeding them,[59] while rejecting claims that Gaza, or any part of it, was occupied.[60] Not a party to the Additional Protocols, Israel nevertheless acknowledged in these proceedings, as in prior ones, the customary and binding character of the obligation to facilitate humanitarian relief under Article 23 of the Fourth Geneva Convention and "core" provisions of Article 70 of Additional Protocol I.[61] The Israeli government maintained that it was merely implementing necessary security arrangements and imposing no limitations on the amount of humanitarian aid able to reach the Strip.[62] Israel highlighted its alleged efforts to enable aid entrance and distribution by increasing the capacity and infrastructure of border crossings, improving coordination, and easing access procedures for needed logistical equipment.[63]

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59. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 5, 52, 107; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 12, 49.

60. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 57–71, 93–95; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 240–58; Respondents' Reply to Petitioners' Supplemental Notice, ¶¶ 64–67, HCJ 2280/24 Gisha (Nov. 14, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha, Respondents' Reply to Petitioners' Supplemental Notice (Nov. 14, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Respondents_response_he_141124.pdf [https://perma.cc/HVW2-HM3U] (unofficial translation of excerpts by Gisha available at https://static.gisha.org/uploads/2024/11/Respondents_Response_en_141124.pdf). *See generally* Respondents' Supplemental Brief, HCJ 2280/24 Gisha (Sept. 12, 2024) (Isr.) [hereinafter HCJ 2280/24, Respondents' Supplemental Brief (Sept. 12, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_Supplementary_Update_120924.pdf [https://perma.cc/TXY2-KR6F].

61. HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶ 263; *see also* HCJ 9132/07 Jaber Al-Bassiouni Ahmed v. Prime Minister and Minister of Defence, ¶¶ 13–15 (Jan. 30, 2008) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts/07/320/091/n25&fileName=07091320_n25.txt&type=4 [https://perma.cc/T8DM-4XL5] (for prior proceedings).

62. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 14–15; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 115, 281. *See generally* HCJ 2280/24 Gisha, Respondents' Reply to Petitioners' Supplemental Notice (Nov. 14, 2024), *supra* note 60.

63. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 13–41; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 50–172. *See generally* Respondents' Supplemental Update, HCJ 2280/24 Gisha (Apr. 15, 2024) (Isr.) [hereinafter HCJ 2280/24, Respondents' Supplemental Update (Apr. 15, 2025)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_Supplementary_Update_He_150424.pdf [https://perma.cc/HT4P-QASG] (unofficial translation of excerpts by Gisha available at https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Excerpts_State_supplementary_update_En_150424.pdf [https://perma.cc/VW6Z-DEVW]).

Similar to its submissions in ongoing international proceedings before the ICJ,[64] the Israeli government's response to the *Gisha* petition recognized, in passing, the immense suffering of Gaza's civilian population.[65] However, the Israeli government framed this suffering as resulting from Hamas's deliberate attacks from within civilian populations and infrastructure, as well as the diversion and looting of aid.[66] Israel also pointed to alleged failings of international humanitarian organizations to collect and distribute the aid after it entered the Strip at different time points.[67]

On the very day that the petition was filed, an international famine "early warning system"—the Integrated Food Security Phase Classification ("IPC")[68]—issued a grave warning of imminent famine in North Gaza, predicting that the crisis would worsen by mid-2024.[69] As deliberations of the Gisha proceedings continued, the IPC reported on continued and severe food insecurities and repeatedly warned of a critical risk of famine.[70]

While the petitioners relied extensively on the IPC's assessments and projections to establish Israel's alleged violation, Israel sharply criticized the

64. *See, e.g.*, S. Afr. v. Isr., Observations of the State of Israel on the Request Filed by the Republic of South Africa on 6 March 2024 for the Indication of Additional Provisional Measures and/or the Modification of Measures Previously Indicated, ¶¶ 11, 18, 37 (I.C.J. Mar. 15, 2024); S. Afr. v. Isr., Verbatim Record, CR 2024/2, ¶¶ 36–38, 42–43 (I.C.J. Jan. 12, 2024) [hereinafter: S. Afr. v. Isr., Verbatim Record (Jan. 12, 2024)].

65. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 2, 11; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 4, 22.

66. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 3, 10, 23, 26, 38–39; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 5, 11, 21, 26, 142.

67. HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 11, 99, 140, 143; *see also* Whyte, *supra* note 17, at 11.

68. The Integrated Food Security Phase Classification ("IPC"), a joint mechanism of several multinational and U.N. agencies, humanitarian organizations, and governments, provides a scientific, five-level classification of food security ranging from one (full food security) to five (famine). Under IPC criteria, famine is declared when at least twenty percent of households face extreme food insecurity, thirty percent of children suffer from acute malnutrition, and two adults or four children per 10,000 people die each day. *See* IPC, *IPC Famine Fact Sheet* (Oct. 2025), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Factsheet.pdf [https://perma.cc/HZF5-LZHR]; *see also* DE WAAL, *supra* note 10, at 17–18.

69. *See* IPC, *Feb.–Mar. 2024*, *supra* note 32.

70. In November 2024, for instance, IPC's Famine Review Board called for urgent action "within days not weeks" as "[f]amine thresholds may have already been crossed or else will be in the near future." IPC FAMINE REVIEW COMMITTEE, *IPC Famine Review Committee Alert: Gaza Strip* (Nov. 8, 2024), *supra* note 32. In August 2025, parts of the Gaza Strip were declared famine-stricken, see IPC Famine Review Committee, *Gaza Strip, August 2025: Conclusions and Recommendations* 2 (Aug. 22, 2025), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_Aug2025.pdf [https://perma.cc/D929-PQ9D For additional reports of acute food insecurities following the *Gisha* ruling, see discussion *infra* notes 349–59.

IPC's methodologies and conclusions, alleging a series of substantive flaws and biases in its findings, both publicly[71] and within its judicial submission.[72] Yet, Israel offered little alternative assessment.

This is but one example of the many specific factual divides between the parties—including expert witnesses—that extend beyond differences of opinion on estimating and projecting famine.[73] A close reading of all the submissions reveals that, in many instances, the parties seemed to be not only presenting conflicting versions of certain events but also discussing two entirely different realities.[74]

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71. For Israel's refuting report, see Coordination of Government Activities in the Territories, *COGAT Assessment: Food and Food Security in the Gaza Strip: Response to IPC Report* (Dec. 2024), https://govextra.gov.il/media/dgibjjca/cogat-assessment-food-and-food-security-in-the-gaza-strip-response-to-ipc-report.pdf; Press Release, Israel Ministry of Foreign Affs., The Third IPC Report on Gaza (June 2024) (July 10, 2024), https://www.gov.il/en/pages/the-third-ipc-report-on-gaza-june-2024-3-sep-2024 [https://perma.cc/FM26-G8SG]. For a report published after the Gisha ruling was delivered, see Coordinator of Gov't Activities in the Territories & Israel Ministry of Foreign Affs., *Politics Disguised as Science: Systematic Distortions in the IPC's Gaza Report of August 25* (Sept. 11, 2025), https://govextra.gov.il/media/orumgksl/politics-disguised-as-science_systematic-distortions-in-the-ipcs-gaza-report-of-august-2025.pdf [https://perma.cc/LM6J-BXEG].

72. HCJ 2280/24, Respondents' Supplemental Update (Apr. 15, 2025), *supra* note 63, ¶¶ 20–22, annex 2; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 232–34; Respondents' Supplemental Notice, ¶ 48, HCJ 2280/24 Gisha (Aug. 20, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha, Respondents' Supplemental Notice (Aug. 20, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_Supplementary_Update_En_200824.pdf [https://perma.cc/N8LM-F3JY].

73. There are deep-rooted differences in projecting famine, which this paper will not address. *See generally* Alex de Waal, *How to Measure Famine*, 47 London Rev. Books (Feb. 6, 2025), https://www.lrb.co.uk/the-paper/v47/n02/alex-de-waal/how-to-measure-famine [https://perma.cc/V68P-BSE6]; Alba Linares Quero, Karlos Pérez de Armiño & Manuel Sánchez Montero, *Improving Famine Early Warning Systems: A Conflict-Sensitive Approach*, 23 Conflict, Security & Dev. 1 (2023).

74. In the context of food security, for example, Israel presented an expert assessment that found the aggregate food aid entering the Gaza Strip sufficient in quantities and nutritional components for the population. In response, the petitioners offered a statement by food security and legal researchers (the author among its signatories), contending that such assessments are insufficient to preclude the risk of famine without fully examining the pillars of food security: the physical and economic accessibility of food, and its utilization, stability, and sustainability. *See* Naomi Fliss-Isakov et al., *Nutritional Assessment of Food Aid Delivered to Gaza via Israel During the "Swords of Iron" War* (Working Paper, May 22, 2024), app. to Respondents' Supplemental Notice, HCJ 2280/24 Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel (May 23, 2024) [hereinafter HCJ 2280/24 Gisha, Respondents' Supplemental Notice (May 23, 2024)] (Isr.), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_supplementary_update_he_230524.pdf [https://perma.cc/2K4S- 8J7T] [hereinafter Respondents' Supplemental Notice, HCJ 2280/24 (May 23, 2024)]; *cf.* Alon Shepon et al., *Food Insecurities and Fear of Famine in Gaza* (May 29, 2024), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Expert_Opinion_Food_Insecurity_290524.pdf, app. to Petitioners' Response to Respondents' Supplemental Notice of 24.05.2024, HCJ 2280/24 Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Isr., (May 30, 2024) [hereinafter HCJ 2280/24 Gisha, Petitioners' Response to Respondents' Supplemental Notice of 24.05.2024 (May 30, 2024)], (Isr.) https://

Notably, this vast factual discrepancy between the parties' accounts regarding the extent of the humanitarian catastrophe in Gaza and Israel's actual policies led—and allowed—Israel's Supreme Court to delay its final judgment and issue several interim decisions, repeatedly requesting additional factual updates from the parties regarding the dynamic landscape of humanitarian access into and within Gaza and scheduling five public hearings of the petition.[75] This urgent petition was debated before Israel's Supreme Court for over a year. Over the course of these proceedings (March 2024–March 2025), the IPC and other U.N. bodies repeatedly warned of an escalating risk of famine across different areas of the Gaza Strip, including malnutrition among children and women that risked causing irreversible harm.[76] As time ticked by, the court received detailed updates from government and military representatives, both publicly and ex parte. Yet, as this Article describes next, the Supreme Court of Israel concluded its legal discussion of the case without making any clear judicial determination on many of these factual issues. Beyond factual challenges, this vagueness also stemmed from legal norms that lend themselves to the reframing of facts and policies. Simultaneously, the divergence between

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gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_response_He_300524.pdf [https://perma.cc/UN62-VT5M]. Another example of this deep rift concerned Gaza's health system. In one of the hearings, petitioners described what they characterized as a catastrophic collapse of Gaza's health system and a critical shortage of life-saving medical supplies, while Israel's military representative responded that the system remained "stable" and "functional" throughout the Gaza Strip. *See* Hearing Transcript, at 28, ll. 20–21, 27–28, HCJ 2280/24 Gisha (May 5, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha, Hearing Transcript (May 5, 2024)], https://static.gisha.org/uploads/2024/06/2280-24-%D7%93%D7%99%D7%95%D7%9F-%D7%A9%D7%A0%D7%99.pdf [https://perma.cc/P5QX-D8GH].

75. *See generally, e.g.*, Decision, HCJ 2280/24 Gisha (Apr. 4, 2024) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m15&fileName=24022800.M15&type=4 [https://perma.cc/RLD7-872R]; Decision, HCJ 2280/24 Gisha (Apr. 21, 2024) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m17&fileName=24022800.M17&type=4 [https://perma.cc/5E36-JK65]; Decision, HCJ 2280/24 Gisha (May 6, 2024) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m18&fileName=24022800.M18&type=4 [https://perma.cc/55B6-ZCDG]; Decision, HCJ 2280/24 Gisha (Jun. 6, 2024) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m42&fileName=24022800.M42&type=2 [https://perma.cc/M92A-SDT9]; Decision, HCJ 2280/24 Gisha (Jul. 21, 2024) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m42&fileName=24022800.M42&type=2 [https://perma.cc/Q7G3-RXEJ]; Decision, HCJ 2280/24 Gisha (Nov. 21, 2024) (Isr.) at https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2024/11/21/2024-0-2280-70-1&fileName=8d97594e930100000090037f6abe3d729&type=2 [https://perma.cc/2ZF7-YUAR]. As reflected in these interim decisions, the Israeli Supreme Court conducted hearings in the *Gisha* proceedings on April 4, May 5, June 10, July 21, and November 24, 2024.

76. *'Looming Catastrophe': Experts Warn of High Risk of Famine in Northern Gaza*, U.N. News (Nov. 8, 2024), https://news.un.org/en/story/2024/11/1156746 [https://perma.cc/PHN6-AV5F]; *see also* sources cited *supra* note 32; IPC, *Famine* Review Committee, *supra* note 70.

the parties was not merely factual or evidentiary but also related to substantive legal positions on the applicable legal norms and their scope.

Israel's Supreme Court conducted its discussion of the *Gisha* petition in the shadow of multiple international proceedings addressing the deprivation in Gaza through the lens of international criminal law, the Genocide Convention, and additional international legal frameworks.[77] However, the court largely refrained from explicitly discussing those proceedings, except when hearing arguments on the ICJ 2024 Advisory Opinion.[78]

A. The Gisha Ruling

On March 27, 2025, after a year of deliberations, five public judicial hearings, and dozens of submissions, Israel's Supreme Court ruled that Israel's conduct concerning humanitarian aid in Gaza did not merit judicial intervention.[79] The court offered only forward-looking remarks on the Government's duty to collect data to produce an updated factual justification for its actions, primarily based on Israeli domestic law.[80] The court, sitting as Israel's High Court of Justice—the country's highest judicial authority reviewing state action[81]—rejected the petition in a detailed judgment that upheld the legality of Israel's policies on humanitarian access to the Gaza Strip under both international and domestic law.

Briefly, with respect to the relevant legal framework, the court held that the threshold necessary to trigger obligations under the law of occupation was not met by Israel's presence in Gaza[82] and that, therefore, the relevant rules to apply were those regarding humanitarian aid during active hostilities *without* the more robust legal obligations enshrined under the law of occupation. The justices recognized that their conclusion was contrary to the ICJ Advisory Opinion of July 2024, in which the majority deemed Gaza part of the Occupied Palestinian Territories and thus occupied (both prior to and following Oct. 7, 2023,

77. *See* discussion *supra* notes 41–52.

78. For parties' submissions addressing the International Court of Justice ("ICJ") 2024 Advisory Opinion, see Petitioners' Supplementary Notice, ¶¶ 60–74, HCJ 2280/24 Gisha (Sept. 29, 2024) (Isr.) [HCJ 2280/24 Gisha, Petitioners' Supplementary Notice (Sept. 29, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_Supplementary_Update_en_290924.pdf [https://perma.cc/6N98-JS3J]; HCJ 2280/24, Respondents' Supplemental Brief (Sept. 12, 2024), *supra* note 60, ¶¶ 18–29; *see also* HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 37–42. *See generally* 2024 ICJ Advisory Opinion on the Legal Consequences of Israel's Policies in the Occupied Palestinian Territory, *supra* note 50.

79. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 14, 94.

80. *Id.* ¶¶ 51–55, 95–96.

81. *See* Basic Law: The Judiciary, 5744–1984, §§ 15(c)–(d), SH No. 1110 at 78 (Isr.) (establishing the Supreme Court's authority, sitting as the High Court of Justice, to issue orders to state authorities and exercise judicial review).

82. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 20–44.

when Israel launched its military campaign in Gaza).[83] Notwithstanding, the court held that the Advisory Opinion was neither legally binding nor factually substantiated, arguing that "significant differences between the factual foundations presented before the [international] court and before us may account for the divergence in conclusions on this issue."[84]

As the law of occupation offers stronger protections for civilians' basic needs than the law on the conduct of hostilities,[85] its applicability and scope bear critical importance. Although a full discussion of the occupation threshold and "functional occupation" lies beyond the scope of this Article, these issues frame how deprivation is regulated, and inadvertently legitimized and extended, within IHL.[86]

Additionally, in *Gisha*, the court reiterated previous Israeli jurisprudence framing IHL as the lex specialis during armed conflict, with international human rights law portrayed as a complementary source invoked only to fill gaps within IHL's normative framework. Given this doctrinal stance, the court found no justification for turning to IHRL when examining humanitarian obligations toward the civilian population during active hostilities.[87] Hence, the judicial assertion of IHRL's lack of relevance to the case justified the court's circumnavigation of any discussion relating to the alleged infringements of Gazan civilians' human rights.[88]

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83. *Id.* ¶¶ 37–44.

84. *Id.* ¶ 42. Viewing the application of occupation law as a factual threshold subject to the on-the-ground reality, Israel's Supreme Court noted that Israel had not fully participated in the advisory proceedings and that, consequently, the ICJ lacked access to the full factual record concerning the situation in Gaza. *Id.* ¶¶ 41–42. The court further emphasized that the Gisha proceedings allowed the Israeli Supreme Court to receive more detailed information—including confidential material—some of which concerned developments that occurred after the Advisory Opinion had been issued. *Id.*

85. Eliav Lieblich & Eyal Benvenisti, Occupation in international law 36–37 (2022); *see* ICRC, Commentary: Geneva Convention Relative to the Protection of Civilian Persons in Time of War 309 (Jean Pictet ed., 1958) [hereinafter 1958 Commentary to GC IV]; Yoram Dinstein, The International Law of Belligerent Occupation 69–72 (2019).

86. Scholars underscore that the indeterminate boundaries and substance of occupation law serve "in some contexts, a central feature of control." Aeyal Gross, The Writing on the Wall: Rethinking the International Law of Occupation 53 (2017); Lieblich & Benvenisti, *supra* note 85, at 36. *See generally* Aeyal Gross, *Reducing the Friction: A Functional Analysis of the Transformed Occupation of the Gaza Strip*, *in* Prolonged Occupation and International Law 66 (Nada Kiswanson & Susan Power eds., 2023).

87. On the relationship between IHL and international human rights law ("IHRL") as part of IHL's functions as facilitative of violence, see Lieblich, *supra* note 8, at 330–32.

88. Importantly, IHL approaches "victims" predominantly through protective and preventative lenses, rather than through an explicit legal recognition of a right to remedy or redress for proportionate and necessary harm resulting from a lawful attack. *See generally* Moffett & Narayan, *supra* note 22. While the relationship between IHL and IHRL is beyond the scope of this Article, Israel's Supreme Court's reliance on lex specialis is difficult to reconcile with the

As to the substantive humanitarian obligations under the law of armed conflict, the court found that Israel's actions concerning humanitarian aid had fulfilled Israel's legal obligations to "allow and facilitate" such assistance.[89] Accepting Israel's factual depiction of its actions and its rebuttal of opposing accounts, the court then detailed the Government's efforts to improve the required infrastructure of land crossings and roads, enhance communications with aid organizations, and engage in movement coordination.[90] Based on this assertion, the court dismissed, in a brief statement, the petitioners' allegations of collective punishment and use of civilian starvation as a method of warfare while remaining silent on the IHL ban on attacking indispensable civilian infrastructure.[91]

Undoubtedly, the *Gisha* judgment presented several highly salient limitations. It was issued during active hostilities, by the domestic court of a belligerent state, and against the backdrop of ongoing international proceedings alleging genocide, war crimes, and crimes against humanity perpetrated by that very state.[92] Notwithstanding these limitations of the *Gisha* ruling, this Article's aim is not to provide a critique here. Rather, I wish to use these proceedings and the Supreme Court ruling to expose some inherent shortcomings of IHL—and international law more generally—concerning the protection of civilians' basic needs, as this case offers critical insights well beyond its specific context. Without accepting the court's position on Gaza's status, this Article analyzes the case within the law of armed conflict framework that the court employed.

II. Theoretical Framework: Indeterminacy, Bureaucracy, and Temporality in IHL

A vast body of critical scholarship has exposed how international humanitarian law not only fails to restrain violence but often facilitates and sustains it,[93] revealing inherently indeterminate norms and irreconcilable

ICJ's longstanding jurisprudence on their parallel application, including in Gaza. *See* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, ¶ 25 (July 8) [hereinafter Nuclear Weapons Advisory Opinion]; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004, I.C.J. Rep. 136, ¶ 126 (July 9); 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶¶ 147–50 .

89. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 90–94.

90. *Id.* ¶¶ 58–71, 77–89.

91. *Id.* ¶ 94.

92. For additional domestic context, see generally Yaniv Roznai, Rosalind Dixon & David E. Landau, *Judicial Reform or Abusive Constitutionalism in Israel*, 56 Israel L. Rev. 292 (2023).

93. David Kennedy, Of War and Law 41–42 (2006); Lieblich, *supra* note 8, at 326–28; Anne Orford, Reading Humanitarian Intervention: Human Rights and the Use

contradictions.[94] Accordingly, these norms can be viewed not as a source of substantive legal guidance but as an argumentative practice that derives meaning and authority through the ways they are invoked and contested, continuously oscillating between the pragmatic and the normative, and between apologetic tendencies and utopian aspirations.[95] IHL, described as "a vocabulary common to humanitarians and to the military or political leadership they seek to restrain,"[96] is particularly susceptible to this oscillatory movement.

With the rise of IHL as a form of professionalized, technical, and bureaucratic discourse,[97] civilian suffering has increasingly been regulated and managed through "routine default practices" that circumvent and replace on-the-ground assessments of suffering and harms or discussion of the broader justification of a given conflict.[98] Generally, a salient feature of IHL is that the very action of setting prohibitions establishes their equally significant exceptions or scope of non-applicability. Thus, IHL prohibitions of certain acts and forms of deprivation are simultaneously legitimizing and facilitative of others, or at least offer grounds for permissive interpretation.[99]

As one site of this dynamic, the gradual creation of humanitarian obligations—often celebrated as aiming to protect civilians' basic needs in times of armed conflict[100]—stands in sharp contrast to the broad conditionalities, exceptions, and limited substance that this doctrinal infrastructure ultimately provides. A critical reading of the *Gisha* judgment and parties' submissions illustrates not only the instability and circular nature of relevant IHL norms but also how these permit radically divergent readings of belligerents' conduct and enable the legal re-narration of material realities. The Article's critical reading further incorporates temporality as a main analytical lens.

When examining the Gaza war that broke out in 2023, scholars have argued that IHL faces growing challenges in fulfilling its protective functions within

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of Force in International Law 38–81 (2003). *See generally* Carl Schmitt, The Concept of the Political (George Schwab trans., 2007).

94. Koskenniemi, *supra* note 5, at 21.

95. *Id.* at 68–69.

96. Kennedy, *supra* note 6, at 272.

97. *See* Kennedy, *supra* note 93, at 32.

98. Kennedy, *supra* note 6, at 298.

99. Lieblich, *supra* note 8; Kennedy, *supra* note 16, at 165 (pointing to the "confusing mix of principles and counter-principles, firm rules and loose exceptions"); *cf.* Anne Quintin, The Nature of International Humanitarian Law: A Permissive or Restrictive Regime? 23–30 (2020).

100. Mika Nishimura Hayashi, *The Principle of Civilian Protection and Contemporary Armed Conflict*, *in* The Law of Armed Conflict: Constraints on the Contemporary Use of Military Force 105, 106 (Howard M. Hensel ed., 2007); *cf.* Theodor Meron, *The Humanization of Humanitarian Law*, 94 Am. J. Int'l L. 239, 240–41 (2000) (noting that to "speak of the humanization of humanitarian law or the law of war is thus in many ways a contradiction in terms").

an environment marked by the aforementioned "epistemic fissures," which lead to polarized disagreements over even basic facts.[101] They have called upon IHL, for instance, to offer "the doctrinal resources to navigate the uncertainty and contestation that characterizes armed conflict."[102] While this Article shares the premise that there is an epistemic instability inherent to contemporary warfare, it argues that, nonetheless, IHL plays a key role in generating and deepening epistemic rifts. IHL norms themselves, by virtue of their silences and ambiguities, can be strategically deployed by parties-to-conflict for their own purposes in ways that intensify and entrench uncertainties and disputes. Far from merely being a casualty of epistemic breakdown, this Article contends that IHL provides the very discursive and doctrinal tools through which competing narratives of the same events can be contested, obscured, or reformulated.

For instance, IHL imposes an obligation upon belligerents to "allow and facilitate" humanitarian relief while granting them discretion to prescribe "technical arrangements" governing the distribution of aid.[103] These technical arrangements refer to a variety of operational, logistical, and procedural measures, including time and route designations, searches and inspections, and other administrative requirements and procedures under which aid may be entered, delivered, and distributed.[104] As this Article demonstrates in Part III, in the *Gisha* proceedings, the indeterminacy of the legal terms "allow and facilitate" and "technical arrangements" was used to destabilize and undermine the factual distinction between aid facilitation and aid obstruction, as well as the legal distinction between compliance and violation. This illustrates how the law may be stretched to accommodate factual contradictions and epistemic uncertainty, and in fact, may be instrumental in constituting them.

Such a reading invites us to move beyond merely identifying indeterminacies and toward engaging with the underlying assumptions, mechanisms, and structures that actualize these contradictions. To do so, we must first address the exceptionally complex context of conflict-induced deprivation.

What this Article terms *deprivation atrocities* represents a unique challenge for legal institutions and normative frameworks, one that is inherent to the nature

101. Dannenbaum & Dill, *supra* note 9, at 660.

102. *Id.*

103. Fourth Geneva Convention, *supra* note 11, art. 23; AP I, *supra* note 11, art. 70; AP II, *supra* note 11, art. 18; ICRC Customary IHL Database, *supra* note 11, r. 55.

104. ICRC Customary IHL Database, *supra* note 11, r. 55; *see also Oxford Guidance*, *supra* note 17, at 28; Rebecca Barber, *Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law*, 874 Int'l Rev. Red Cross 371, 390 (2009); Tzvi Mintz, *Substantive Technicalities: Understanding the Legal Framework of Humanitarian Assistance in Armed Conflicts Through the Prescription of Technical Arrangements*, 227 Mil. L. Rev. 275, 277 (2019) *See also* discussion *infra* notes 138–42.

of deprivation itself.[105] Deprivation is committed and aided by, and through, a dense ecosystem of interacting perpetrators, profiteers, enablers, and bystanders. It stems from on-the-ground decisions of belligerent parties to deny civilians' basic needs, yet is facilitated, or exacerbated, by preexisting local vulnerabilities. In other words, deprivation atrocities reflect the juxtaposition of both direct and structural violence[106] and the multilayered implications produced at this nexus.[107] The denial of basic needs is not always directly intended to cause starvation, yet it is often accompanied by awareness of that very possibility—that is, it frequently involves inaction and omission rather than direct action, rendering intent difficult to legally demonstrate and prove.[108]

Together, these factors help explain why deprivation atrocities are murky, elusive, and difficult for legal frameworks, including IHL, to fully grasp. In *Gisha*, the integral complexity of deprivation processes allowed Israel to deny any *intent* to starve civilians and, thereby, to reject its *legal* responsibility for the deprivation in Gaza. Instead, Israel attributed the situation to Hamas's violations, humanitarian organizations' failings, and technical and preexisting barriers to distributing aid during active hostilities.[109] Furthermore, Israel's claims were made possible and assisted by the legal norms themselves, which served as effective tools for disguising belligerent agency while highlighting technical and managerial issues.

Significantly, deprivation is a prolonged process, producing harms well beyond any singular moment or immediate circles of victims.[110] Deprivation has

105. *Cf.* Evelyne Schmid & Aoife Nolan, *Do No Harm? Exploring the Scope of Economic and Social Rights in Transitional Justice*, 8 Int'l. J. Transitional Just. 362, 373 (2014) (among others, offering critiques of Sankey's refusal to position starvation as a violation of social-economic rights and reliance upon narrow construction of violation solely through a criminal lens). *See generally* Henry Shue, Basic Rights: Subsistence, Affluence and U.S. Foreign Policy (1996); Global Basic Rights (Charles R. Beitz & Robert E. Goodin eds., 2009). For alternative conceptualization of mass deprivation, see generally Scheffer, *supra* note 10 (suggesting 'atrocity crimes', as a unified compilation of international crimes under the existing international criminal infrastructure); Sankey, *Towards Recognition*, *supra* note 10 (proposing to recognize intentional subsistence harms, including wellbeing and mental health aspects, while leaving unintentional deprivation and structural dimensions outside the scope of its proposed category); Dannenbaum, *supra* note 17 (reconceptualizing siege starvation as a form of "societal torture").

106. On structural violence generally, see Johan Galtung, Carl G. Jacobsen & Kai Frithjof Brand-Jacobsen, Searching for Peace: The Road to TRANSCEND 17 (2002); Johan Galtung, *Cultural Violence*, 27 J. Peace Res. 291, 291 (1990).

107. For an instructive example, see James A. Tyner & Stian Rice, *To Live and Let Die: Food, Famine, and Administrative Violence in Democratic Kampuchea, 1975–1979*, 52 Pol. Geo. 47, 48–49 (2016).

108. David Marcus, *Famine Crimes in International Law*, 97 Am. J. Int'l. 245, 246–47 (2003).

109. *See* sources cited *supra* notes 65–67.

110. Deprivation is also carried out spatially, as evident in the *Gisha* proceedings where the legal discussions encompassed topics such as relief entry-points and border passages; routes and roads within Gaza; and wide-scale forced displacement. On spatial dimensions of violence, see

been found to inflict long-term implications on its survivors and can potentially trigger adverse intergenerational effects.[111] In effect, as deprivation represents a layered intersection of temporalities between past, present, and future, enduring structural vulnerabilities and past wrongdoings by belligerents merge with, and are intensified by, their contemporary practices of restriction, delay, denial, and systematic neglect. As such, if we are to acquire a more complete understanding of deprivation, we must briefly engage with the complex relations between law, violence, and time.[112]

Importantly, "law can be understood as not just existing in time, but as creating and sustaining temporal ideas through diverse legal practices" that bear "wide significance within and beyond law itself."[113] Simply put, law *generates* temporal modalities. Law predominantly perceives time as progressing linearly,[114] from a moment of violation or a troubled past, for instance, toward a law-abiding future.[115] In the case of humanitarian norms of jus in bello, these operate specifically within a confined temporal frame marked by the presence of active hostilities that are sufficiently intense to be recognized as such.[116] IHL, too, tends to conceptualize violence in temporally bounded terms, treating it

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generally Eyal Weizman, The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza (2011); Lisa Bhungalia, *A Liminal Territory: Gaza, Executive Discretion, and Sanctions Turned Humanitarian*, 75 Geo. J. 347 (2010).

111. In the context of Gaza, see Maha Rabayaa & Doha Rabaya, *Starved Futures in the Gaza Strip: Long-Term Outcomes of Childhood Malnutrition as a Humanitarian Emergency*, BMJ Global Health 1–3 (2026). *See generally* Ekrema Shehab et al., *"Every Day My Children Ask Me When They Will Eat": Mothers' Voices on Starvation as a Weapon of Genocide in Gaza*, J. Hunger & Environmental Nutrition 1 (2025); *see also* de Waal & Conley, *supra* note 17, at 274.

112. *See generally* International Law and Time: Narratives and Techniques (Klara Polackova Van der Ploeg, Luca Pasquet & León Castellanos-Jankiewicz eds., 2022); The Times and Temporalities of International Human Rights Law (Kathryn McNeilly & Ben Warwick eds., 2022); Law and Time (Sian Beynon-Jones & Emily Grabham eds., 2019); Sivan Shlomo Agon & Michal Saliternik, *Just About Time: International Law's Temporalities and Our Moment in History*, 118 Am. J. Int'l L. 751 (2024) (discussing temporal frameworks in international law); Rosemary Higgins, *Time and the Law: International Perspectives on an Old Problem*, 46 Int'l & Comp. L. Quarterly 501 (1997) (examining the role of time in structuring international adjudication and jurisdiction).

113. *See generally* Kathryn McNeilly & Ben Warwick, *Introduction*, *in* Times and Temporalities, *supra* note 112, at 1.

114. Carol Greenhouse, *Just in Time: Temporality and the Cultural Legitimation of Law*, 98 Yale L.J. 1631, 1633 (1989); Agon & Saliternik, *supra* note 112, at 758–61.

115. Thomas Skouteris, The Notion of Progress in International Law Discourse 162 (2009) (referring to the rise of new international tribunals).

116. *See* Moffett & Narayan, *supra* note 22, at 1236. *See generally* Jann K. Kleffner, *The Legal Fog of an Illusion: Three Reflections on 'Organization' and 'Intensity' as Criteria for the Temporal Scope of the Law of Non-International Armed Conflict*, 95 Int'l L. Stud. 162 (2019); Ellen Policinski & Jovana Kuzmanovic, *Protracted Conflicts: The Enduring Legacy of Endless War*, 101 Int'l Rev. Red Cross 965 (2019).

as event-based, acute, and contained within a discrete and discernible period of conflict.

This framing, this Article argues, obscures slower, cumulative, or structurally embedded forms of harm and relegates them beyond the scope of the law. Within IHL norms, temporality is implicitly instrumentalized by belligerents to reinvent their past actions and reconstruct deprivation atrocities as either beyond legal relevance or as patent and unavoidable, disguising the political origins and agency underlying such atrocities. In other words, the discourse and terminology of IHL are all too readily employed to reframe the unique violence of deprivation as an inevitable byproduct of armed conflict itself, rather than as also a result of policy decisions, acts, and omissions. In doing so, IHL thus obscures belligerents' agency and responsibility. To better capture these dynamics, this Article analyzes deprivation through three interrelated concepts: slow, invisible, and bureaucratic violence.

In this context, the concept of *slow violence* refers to harms committed gradually and over time through mundane, and at times seemingly legal, acts.[117] The term draws attention to the brutality embedded in the temporal dimension, often disproportionately impacting society's most vulnerable. Crucially, the phenomenon of slow violence is not merely characterized by the time lag between harmful political decisions and practices, and their distant, indirect consequences. Instead, slow violence effectively offers these harmful practices a "prevaricative cover for the forces that have the most to profit from inaction."[118] Emerging in the context of environmental harms,[119] recent scholarship has extended this lens to international criminal law, calling to expand the "comparatively 'fast' dramatic explosions of horrific violence typically associated with the commission of genocide, crimes against humanity, and war crimes."[120] Against the prolonged timeframe of deprivation processes, slow violence thus serves as a central analytical vehicle to assess the Gisha proceedings and IHL obligation more broadly.

Complementing this is the notion of "*invisible violence*," advanced by Randall DeFalco, which describes forms of harm that lack the visual "hallmarks" typically associated with violence—such as visceral and theatrical images of direct, kinetic attacks causing immediate and visible suffering.[121] Instead, invisible violence is produced out of sight, including through seemingly banal

117. Nixon, *supra* note 7, at 4. *See generally infra* Section III.B.1.

118. Nixon, *supra* note 7, at 40.

119. *Id.*; *see also* Thom Davies, *Slow Violence and Toxic Geographies: 'Out of Sight' to Whom?*, 40 Env'r. & Plan. C: Pol. & Space 409, 410–11, 414 (2022).

120. Randle C. DeFalco, *Time and the Visibility of Slow Atrocity Violence*, 21 Int'l Crim. Law Rev. 905, 907 (2021); *see also* Tyner & Rice, *supra* note 107, at 48–49.

121. *See* Randle C. Defalco, Invisible Atrocities: The Aesthetic Biases of International Criminal Justice 10–11 (2022).

actions and omissions, thus presenting challenges to international legal efforts to mitigate such violence.[122]

While deprivation atrocities can produce horrific images of human suffering, their emergence often stems from protracted and mundane processes that quietly erode life-sustaining systems and gradually create the conditions for widespread food insecurity or mass denial of medical care. Such cumulative developments, as harmful as they are, generally remain invisible to outsiders until it is too late and rarely generate the visceral reactions that other forms of violence do.

To these two analytical frameworks of violence, we may add the concept of *bureaucratic violence*, understood as a form of violence enacted and perpetrated through ostensibly neutral administrative procedures that both enable and obscure their coercive effects across wide populations.[123] Such systems weaponize the procedures for obtaining permits and approvals—through opaque rules, exhaustive paperwork, and resource-draining compliance demands—as powerful tools to exclude and deny. In this way, bureaucratic systems administer a state's violence while simultaneously obfuscating its realities, thus shielding these forms of coercion from legal scrutiny. For example, petitioners in *Gisha* cited relief organizations' warnings that Israel's convoluted and non-transparent permit processes for the entry, coordination, and distribution of humanitarian aid into Gaza had severely impeded access and caused protracted delays.[124] In this way, the legal right afforded to belligerents to determine the "technical arrangements" regulating the entry and distribution of aid might, in turn, become a site of slow, invisible, and bureaucratic violence.

These three related concepts—slow, invisible, and bureaucratic violence—challenge hidden legal assumptions regarding what violence looks like and the temporality attached to it. Specifically, they contest the law's foregrounding of the concentrated, immediate, and visual over the diffuse, slow, and invisible, particularly during armed conflict. These approaches reposition violence as extending into unremarkable, technical, and bureaucratic sites, seemingly

122. *Id.*

123. David Graeber, The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy (2015); Erin R. Eldridge & Amanda J. Reinke, *Introduction: Ethnographic Engagement with Bureaucratic Violence*, 4 Conflict & Soc'y 94, 95 (2018). In another field, see generally Akhil Gupta, Red Tape: Bureaucracy, Structural Violence, and Poverty in India (2012).

124. *See, e.g.*, HCJ 2280/24 Gisha, Petitioners' Supplementary Notice (Sept. 29, 2024), *supra* note 78, ¶¶ 8–18.

distant from the international legal order.[125] Within the domain of IHL, this Article argues that these insights fundamentally unsettle prevailing doctrinal assumptions about what counts as violence and is treated as such. Indeed, when examining humanitarian obligations on the facilitation of aid or norms on the prohibition on civilian starvation as a method of warfare, there is an inherent difficulty in legally accounting for the effects of time on affected civilians and in recognizing and countering violence absent direct, immediate, and acute presentations of it.

Equipped with these understandings, this Article now turns to examine how the legal framework grapples (or fails to grapple) with the complexities of slow and invisible violence amid doctrinal indeterminacies. The following Part briefly outlines the relevant humanitarian provisions governing the obligation to enable humanitarian relief and the prohibition on civilian starvation. This Article then demonstrates their inadequacies, as illustrated by their deployment in the *Gisha* proceedings.

III. Humanitarian Obligations and Doctrinal Indeterminacies

This Part examines how IHL's humanitarian obligations—despite their protective framing—remain structurally indeterminate in ways that shape the regulation of deprivation. Section A focuses on the obligation to allow and facilitate humanitarian relief, showing how its inherent vagueness operates as a key doctrinal mechanism through which access can be delayed, diluted, or constrained under the technical language of coordination and management. Section B then turns to the prohibition on the usage of civilian starvation as a method of warfare, tracing parallel indeterminacies surrounding the intent to starve. Together, these Sections demonstrate how doctrinal elasticity enables courts and belligerents to navigate prolonged, cumulative harms through ostensibly compliant legal vocabularies, as the *Gisha* proceedings demonstrate. As this Part further shows, the obligation to facilitate humanitarian relief and the prohibition on starvation—often understood as mutually reinforcing safeguards—may instead interact in ways that diffuse and dilute each other's normative force.

125. For related critique, see, for example, Luis Enslava & Sundhya Pahuja, *Beyond the (Post) Colonial: TWAIL and the Everyday Life of International Law*, 45 Verfassung und Recht in Übersee 195, 218–19 (2012); Luis Enslava & Sundhya Pahuja, *The State and International Law: A Reading from the Global South*, 11 Humanity 118, 131 (2020). Their insights refer to international legal institutions and norms more generally but are relevant also to the context discussed here.

A. The Obligation to Allow and Facilitate Humanitarian Aid: Technical Arrangements and Substantive Limitations

Warring parties are obligated to *allow and facilitate* rapid and unimpeded humanitarian aid to civilians in need, subject to their right to prescribe *technical arrangements* under which aid will be delivered and distributed.[126] Widely considered to reflect customary international law[127] and pivotal to the protection of basic civilian needs, the obligation raises questions regarding its scope, as the *Gisha* proceedings illustrate. While the petitioners in *Gisha* maintained that Israel was severely curtailing humanitarian access, the Israeli government claimed it was actually exceeding its legal obligation to facilitate aid while also implementing necessary security arrangements amid lootings and Hamas's alleged aid diversion, as mentioned earlier. In its ruling, Israel's Supreme Court concurred with the Israeli government and found no grounds for judicial intervention. This example illustrates the structural contradictions within IHL and its circular nature: De facto delays and restrictions of humanitarian assistance are justified through the very obligations arguably set to protect it.

The following Section demonstrates how the open-textured nature and terms of this obligation enable practices that may restrict or delay aid to be framed as lawful compliance. In doing so, it demonstrates how the court's analysis in *Gisha* implicitly collapsed the distinction between facilitating aid and obstructing it, by casting "allow and facilitate" and "technical arrangements" in the neutral language of coordination and management. Understood thus, the absence of clearer normative benchmarks to assess the obligation is not limited to the court's judgment in *Gisha* but reflects IHL's broader structural indeterminacy. To establish these claims, this Section maps the relevant legal infrastructure, examines the doctrinal positions advanced in the *Gisha* proceedings and their role in narrating contested realities of humanitarian access, and situates this analysis in relation to subsequent international jurisprudence to clarify the broader implications of these interpretive dynamics.

126. The Fourth Geneva Convention, *supra* note 11, art. 23; AP I, *supra* note 11, art. 70; AP II, *supra* note 11, art. 18; ICRC Customary IHL Database, *supra* note 11, r. 55.

127. 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶ 91 (referring to customary nature of the obligation to facilitate humanitarian aid for civilian in need subject to a limited right to control); ICRC Customary IHL Database, *supra* note 11, r. 55; 2025 COMMENTARY TO GC IV, *supra* note 28, ¶ 2024 (noting that art. 70 of Additional Protocol I ("AP I"), which anchors the obligation to facilitate humanitarian aid during armed conflict, is "widely regarded as reflecting customary international humanitarian law").

1. Doctrinal Infrastructure and Gaps—"Allow and Facilitate" Aid Subject to "Technical Arrangements"

The Fourth Geneva Convention anchored an obligation on belligerents in international armed conflicts to grant free passage for civilian relief convoys, albeit only for enumerated items and specific vulnerable groups.[128] This already-thin obligation was narrowed further by broad conditions permitting the denial of access, including "serious reasons for fearing" that consignments could be diverted, inadequately controlled, or provide advantages to the enemy's military efforts or economy by replacing goods that would otherwise be supplied.[129] Sieges were widely permitted, with parties merely encouraged to pursue "local agreements" for evacuating vulnerable civilians, absent any binding obligation.[130]

The 1977 Additional Protocols expanded the protection of humanitarian relief significantly.[131] In international armed conflicts, Additional Protocol I introduced a broader duty to allow and facilitate the "rapid and unimpeded passage of all relief consignments, equipment and personnel" when the civilian population has inadequate supplies.[132] The obligation to facilitate relief remains "subject to the agreement of the Parties concerned," but Security Council

128. Fourth Geneva Convention, *supra* note 11, art. 23. The humanitarian goods listed included aid such as medical supplies, objects of religious worship, and "essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases." *Id.* This reference to medical supplies was thus limited to certain vulnerable populations. *See* 1958 Commentary to GC IV, *supra* note 85, at 180; *see also* 2025 Commentary to GC IV, *supra* note 28, ¶¶ 2039–51. In non-international armed conflicts ("NIAC"), Common Article 3 allowed impartial humanitarian actors to offer services, including aid delivery. *See* Geneva Convention Relative to the Treatment of Prisoners of War art. 3, ¶ 2 Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

129. Fourth Geneva Convention, *supra* note 11, art. 23(1)(c). For additional analysis of these conditions, see Heike Spieker, *The Right to Give and Receive Humanitarian Assistance*, *in* International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism 7, 12 (Hans-Joachim Heintze & Andrej Zwitter eds., 2011). The Fourth Geneva Convention, *supra* note 11, arts. 55–56, imposed a comprehensive obligation on occupying forces to ensure "the food and medical supplies of the population," and "medical and hospital establishments and services, public health and hygiene;" and, if segments of the population are inadequately supplied, to agree and facilitate adequate relief by all available means. *See* Marcus, *supra* note 108, at 266–67. *See generally* René Provost, *Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait*, 30 Columbia J. Transnational L. 577 (1992).

130. These populations include the "wounded, sick, infirm, and aged persons, children and maternity cases." Fourth Geneva Convention, *supra* note 11, art. 17.

131. AP I, *supra* note 11, art. 70; AP II, *supra* note 11, art. 18; ICRC Customary IHL Database, *supra* note 11, r. 55; *see also* Jelena Pejic, *The Right to Food in Situations of Armed Conflict: The Legal Framework*, 83 IRRC 1097, 1103 (2001); Spieker, *supra* note 130, at 12–14.

132. AP I, *supra* note 11, art. 70(2); *see also* AP II, *supra* note 11, art. 18(2) (covering items essential for the civilian population "such as foodstuffs and medicine").

resolutions and international guidelines have clarified that such consent may not be denied arbitrarily.[133] Once consent is granted, belligerents retain the right to prescribe the technical arrangements under which humanitarian aid will be facilitated and distributed.[134] The ICRC considers the obligation to allow and facilitate humanitarian aid, under adequate technical arrangements, to reflect customary international law and, thus, to be binding in both international and non-international armed conflicts.[135] This position was strengthened further by the ICJ's Advisory Opinion on Israel's obligations and the ICRC 2025 commentary on the Fourth Geneva Convention, both published after the *Gisha* proceedings.[136]

Article 23 of the Fourth Geneva Convention and Additional Protocol I grant belligerents the right to prescribe technical arrangements[137]—administrative measures regulating the entry and distribution of humanitarian relief, such as inspections, timing and routing requirements, or external supervision.[138] Mediating between the formal obligation to facilitate aid and the operational discretion retained by belligerents, technical arrangements are far from merely

133. S.C. Res 2417, *supra* note 11; S.C. Res. 2165, pmbl., U.N. Doc. S/RES/2165 (July 14, 2014); S.C. Res. 2139, pmbl., U.N. Doc. S/RES/2139 (Feb. 22, 2014); ICRC Customary IHL Database, *supra* note 11, rs. 53, 55; Hum. Rts. Comm., Concluding Observations: Sudan, ¶ 8, U.N. Doc. CCPR/C/SDN/CO/4 (Aug. 19, 2014). For international guidelines, see United Nations High Commissioner for Refugees, Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (Jul. 22, 1998); Inst. of Int'l L., *Resolution on Humanitarian Assistance* (2003); *Oxford Guidance*, *supra* note 17. *See generally* Emanuela-Chiara Gillard, *The Law Regulating Cross-border Relief Operations*, 95 Int'l Rev. Red Cross 351 (2013); Dapo Akande & Emanuela-Chiara Gillard, *Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict*, 92 Int'l L. Stud. 483 (2016).

134. AP I, *supra* note 11, art. 70(2)–(3). Note that neither Common Article 3(2) of the Geneva Conventions nor Article 18(2) of Additional Protocol II ("AP II") addresses this aspect in reference to NIACs, yet it is considered a part of customary norms across all armed conflicts, international and non-international alike. *See* Fourth Geneva Convention, *supra* note 11, art. 3(2); AP II *supra* note 11, art. 18(2).

135. ICRC Customary IHL Database, *supra* note 11, r. 55. In the context of NIAC, the position was taken despite the lack of explicit prohibition within AP II on impeding humanitarian assistance. *See* AP II, *supra* note 11, art. 18 (humanitarian assistance during NIACs "shall be undertaken" when civilians suffer "undue hardship" due to lack of essential supplies); *cf.* U.S. Dep't of Def., *Law of War Manual*, ¶ 17.8.1 (June 2015, updated July 2023) [hereinafter *U.S. Law of War Manual*], https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF [https://perma.cc/NP5X-63JL] (while rejecting arbitrary refusal to grant aid access, noting that "[s]tates may withhold consent for, inter alia, legitimate military" during NIACs). *See generally* Watts, *supra* note 17 (doubting that Additional Protocol texts, drafting history, and underlying logic support this position rather than granting states discretion to determine the scope of consent to humanitarian aid).

136. *See* 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27 ¶ 91; 2025 Commentary to GC IV, *supra* note 28, ¶¶ 2024, 2057.

137. Fourth Geneva Convention, *supra* note 11, art. 23; AP I *supra* note 11, art. 70(3)(a).

138. AP I, *supra* note 11, art. 70(3)(b).

'technical.' Rather, they directly shape the scope, speed, and effectiveness of humanitarian access. Although framed as neutral procedural measures, this Article argues that technical arrangements necessarily embody political judgments about acceptable levels of humanitarian deprivation, security risk, and military priority. In other words, decisions regarding inspection intensity, authorization procedures, and the classification of "dual-use" items reflect discretionary determinations about which humanitarian needs are considered permissible, tolerable, or deferrable. Crucially, however, legal texts provide little guidance regarding the permissible scope or governing criteria of technical arrangements, leaving what commentators have described as "difficult problems of interpretation."[139]

To fill in these normative gaps, practical manuals were developed, such as the 2016 *Oxford Guidance*, commissioned by the U.N. Office for the Coordination of Humanitarian Affairs.[140] Importantly, ICRC commentaries, as well as the *Oxford Guidance*, highlight that technical arrangements must "only be used without infringing the obligation to facilitate the rapid and unimpeded passage of relief."[141] Despite these limitations, the indeterminate scope of permissible technical arrangements leaves significant discretion to belligerents in determining the conditions under which humanitarian relief is delivered. In other words, even when consent is formally granted, aid access can readily be delayed, diluted, or hampered through these bureaucratic measures.

Legal and scholarly debates on humanitarian access have traditionally focused on different aspects of the parties' required consent to humanitarian passage, including arbitrary denials of consent, the legality of unauthorized

139. Michael Bothe, Karl Josef Partsch & Waldemar A. Solf, New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949, at 433 (1982).

140. *See generally Oxford Guidance*, *supra* note 17.

141. Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 ¶ 2831 (Yves Sandoz, Christophe Swinarski & Bruno Zimmermann eds., 1987) [hereinafter AP Commentary 1987]; *see* 2025 Commentary to GC IV, *supra* note 28, ¶ 2065 (noting that "technical arrangements may not be such that they de facto amount to a refusal of consent, unduly hinder humanitarian operations or make their implementation impossible"); *see also Oxford Guidance*, *supra* note 17, at 71 (adding that technical arrangements "must not violate the relevant party's obligations under international law with respect to the civilian population in question, including, in particular, its obligations under international humanitarian law and international human rights law"). In the context of humanitarian relief under occupation law, see 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶ 97 (similarly holding that while Article 59 of the Fourth Geneva Convention—governing humanitarian relief in occupied territories—"accords certain rights to a State granting free passage to consignments," including "*inter alia*, the right to inspect consignments and the right to be reasonably satisfied that these consignments are to be used for the relief of the deprived population," "no State may exercise these rights to impede the delivery of relief consignments in a manner that undermines the performance of its obligations as set out in Article 59").

assistance, and whether non-state actors can legally grant such consent.[142] Yet, technical arrangements for the provision of aid garnered less scholarly engagement.[143] Tellingly, technical arrangements are, at times, referred to as "right of control."[144] In the dissonance between these two terms—technical arrangements and measures of control—lies the tension underpinning the issue.

This shift from consent to control, coupled with the tensions surrounding technical arrangements, goes to the heart of the *Gisha* proceedings and, more generally, speaks to the core contradictions of the IHL obligation to facilitate humanitarian aid. While Israel claimed it had exceeded its legal obligations to facilitate humanitarian aid by granting full consent to humanitarian entry, Israel imposed dense layers of logistical conditions—scheduling, item restrictions, and route designations—that the petitioners claimed acted as de facto barriers to relief efforts. As the next subsection demonstrates, Israel was able to successfully employ this strategy because IHL endows such restrictive practices with the legal vocabulary to be cast and litigated as compliance.

2. The Gisha *Proceedings: A Synthesis of Aid Restrictions*

Analysis of the *Gisha* proceedings reveals the extent to which the obligation to allow and facilitate aid is doctrinally susceptible to being used to curtail and dilute aid distribution, rather than to guarantee it. This subsection identifies the mechanisms through which such dilution operates, including the layering of restrictions drawn from successive and overlapping legal sources; the invocation of military and security considerations as independent legal exceptions; and the conflation and embedding of such considerations within technical arrangements and other elastic legal terms.

In the *Gisha* proceedings, this process unfolded through the court's interpretation of Article 23 of the Fourth Geneva Convention alongside the Additional Protocols. In its submissions, Israel claimed it was legally entitled

142. *See generally* Cedric Ryngaert, *Humanitarian Assistance and the Conundrum of Consent: A Legal Perspective*, 5 Amsterdam L. F. 5 (2013); Barber, *supra* note 104; Françoise Bouchet-Saulnier, *Consent to Humanitarian Access: An Obligation Triggered by Territorial Control, Not States' Rights*, 96.893 Int'l. Rev. Red Cross 207 (2014); Akande & Gillard, *supra* note 134; Michael Bothe, *Expert Opinion Relating to the Conduct of Prolonged Occupation in the Occupied Palestinian Territory* (2017), https://www.nrc.no/globalassets/pdf/legal-opinions/bothe.pdf [https://perma.cc/55QC-E664]; American Relief Coalition for Syria, *2014 Is Not 2022: Why the Continuation of Un-Coordinated Cross-Border Aid into Syria Absent a UN Security Council Resolution Is Lawful* (2022), https://www.crossborderislegal.org/ [https://perma.cc/E9AH-NGDH].

143. Mintz, *supra* note 104, at 278 (noting that "[a] binary concept such as consent and arbitrariness can only serve as a guiding principle in the most extreme cases").

144. ICRC Customary IHL Database, *supra* note 11, r. 55; *see also* 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶ 91 (referring to a limited right of control); Mintz, *supra* note 104, at 227 (referring to "measures of control").

"to set terms that will ensure that aid is not diverted . . . and not used to advance the military efforts of the enemy,"[145] citing the exceptions in Article 23 of the Fourth Geneva Convention.[146] De facto, however, such arguments recast procedural "technical arrangements" as substantive grounds for limiting aid. The court embraced this position, reading the broad condition upon aid access of Article 23 *in conjunction* with the provisions of the Additional Protocols. Accordingly, the *Gisha* judgment de facto permitted Israel to condition relief aid upon its consent and the implementation of adequate technical arrangements, while also allowing it to deny the entry of aid altogether, should it fear aid diversion.[147]

This reading is doctrinally contentious; both the ICRC commentaries[148] and scholars[149] view the Additional Protocols as rectifying the permissive regime of Article 23, rendering its exceptions "obsolete."[150] Instead, the court's approach revived an already-superseded legal framework, permitting the denial of aid based on the vague premise of "fears," rather than concrete evidence, thus enabling potentially sweeping and indefinite restrictions.[151] Even when citing Article 23, the ruling neglected to mention the robust protection accorded to medical relief, including to enemy combatants, within the Geneva

145. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶ 74, 80 (in which Israel claims to facilitate aid "even in circumstances where the law of armed conflict would have permitted it to refrain from doing so").

146. *Id.* ¶¶ 76–78. Israel has also invoked IHL's justifications. *See* S. Afr. v. Isr., Verbatim Record (Jan. 12, 2024), *supra* note 64, at 48, ¶ 65 ("Because Hamas for years has used aid consignments to smuggle weapons, security checks of all goods going into Gaza are required, as acknowledged by international humanitarian law.").

147. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 16–17, 56, 90.

148. AP Commentary 1987, *supra* note 141, at 827 ¶ 2848–52; *see also* 2025 Commentary to GC IV, *supra* note 28, ¶¶ 2024, 2055–57. The 2025 ICRC Commentary on the Fourth Geneva Convention ("GC IV") that emerged months after the *Gisha* ruling was delivered recognizes the conditions of Article 23 "would allow virtually any consignment to be blocked. This is particularly true for condition (c), as it is impossible to guarantee that a consignment will not even marginally benefit the enemy." 2025 Commentary to GC IV, *supra* note 28, ¶ 2055. The commentary finds that Article 70 of the Additional Protocol "modifies" Article 23, and as reflective of customary international law, applies also to non-members of the protocols. *Id* ¶ 2056.

149. *See, e.g.*, Pejic, *supra* note 131, at 1103 (noting "[t]he obviously limited scope of this provision [Article 23 of the Fourth Geneva Convention] was remedied to a large extent by Additional Protocol I"); Tom Dannenbaum, *Encirclement, Deprivation, and Humanity: Revising the San Remo Manual Provisions on Blockade*, 97 Int'l L. Stud. 307, 325, 374–79 (2021) (noting the tighter limits on discretion introduced by AP I Article 70 and emphasizing that they must be further read in conjunction with the prohibition on civilians' starvation).

150. AP Commentary 1987, *supra* note 141, at 827 ¶ 2851.

151. *See generally* Cordula Droege & Eirini Giorgou, *How International Humanitarian Law Develops*, 104 Int'l Rev. Red Cross 1832 (2022) (on the non-linearity of IHL and the considerable space for belligerents to gradually change IHL through their interpretations or practical usage of its norms).

Conventions.[152] The court thereby effectively merged the most restrictive elements of both regimes.

Further, Israel's Supreme Court built on this mosaic of restrictions to conclude that belligerents may weigh "security and military considerations" upon implementing the obligation to allow and facilitate aid.[153] In fact, the ruling implicitly subordinated humanitarian obligations to security priorities, describing Israel's aid-access policy for Gaza as a necessary "balance between Israel's humanitarian duties and security-operational considerations, including concerns about the leakage of aid to terrorist groups."[154] At first glance, the indeterminate penumbra of these norms notwithstanding, this interpretation may appear to overstep the limits set by different IHL provisions, which frame such restrictions on humanitarian access as exceptional, requiring them to be temporary, narrowly defined, and clearly justified. Additional Protocol I, for instance, explicitly limits even temporary restrictions on the activities and movements of humanitarian personnel to instances of "imperative military necessity" under Article 71, while its commentary emphasizes that delays to aid should be limited to extreme cases only.[155] Israel's Supreme Court's broad interpretation of these exceptions could be read as constituting a risk of hollowing out the humanitarian obligation to facilitate aid.

Importantly, this is a legal conclusion that might echo beyond these domestic proceedings.[156] In an advisory opinion on Israel's obligations towards U.N. agencies, international organizations, and third states, delivered several months after the *Gisha* ruling, the ICJ clarified that military and security concerns are not a "free-standing exception" to IHL norms, but instead must be weighed within existing IHL rules.[157] This judicial clarification reinforces concerns of

152. *See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field arts. 9, 12–15, 19, 22–24, 33–35 (Aug. 12, 1949), 6 U.S.T. 3114, 75 U.N.T.S. 31; *see also* AP I, *supra* note 11, art. 10. This point was stressed by Neve Gordon and Muna Haddad. Neve Gordon & Muna Haddad, *How Did the Israeli Supreme Court Legitimise Starvation as a Weapon of War? An Autopsy of a Ruling (Part 1)*, OpinioJuris (May 14, 2025), https://opiniojuris.org/2025/05/14/how-did-the-israeli-supreme-court-legitimise-starvation-as-a-weapon-of-war-an-autopsy-of-a-ruling-part-1/ [https://perma.cc/6T5E-QZJZ].

153. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 16–17, 56, 90, 93.

154. *Id.* ¶ 90.

155. AP I art. 71(3); AP Commentary 1987, *supra* note 141, ¶ 2846 ("In concrete terms, the delay can only really be justified if it is impossible for reasons of security to enter the territory where the receiving population is situated, or to cross some part of the territory of the Party allowing the transit, particularly if this is a Party to the conflict.").

156. *See* HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 16.

157. 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶ 89 (while the Advisory Opinion analyzed Israel's humanitarian obligation under the law of occupation, its statement on military and security concerns was phrased more generally in stating that "the protection of security interests is not a free-standing exception permitting a State to depart from the otherwise applicable rules of international humanitarian law").

undermining humanitarian protections under the guise of military concerns, and attempts to alleviate them by offering greater normative clarity.

Nonetheless, this Article argues that these risks remain. IHL rules themselves are marked by significant indeterminacy that allows for precisely such outcomes. Specifically, the obligation to facilitate humanitarian aid is structurally prone to being undermined: the obligation enshrines humanitarian access *and* permits its erosion through granting belligerents significant discretion upon prescribing "technical arrangements."[158] Viewed in this light, the protective veneer of its obligation to facilitate humanitarian aid may conceal a deeper permissiveness stemming from the "right" to determine technical arrangements accorded to belligerents that might effectively constrain vital relief.[159] In this way, technical arrangements could be deployed to operationalize military and security concerns.

In *Gisha*, the court thus not only offers an expansive—and highly disputed[160]—reading of the law but also exposes the underlying ambivalence within the IHL normative framework itself. IHL provides limited doctrinal constraints on indirect methods of restricting humanitarian aid, revealing how technical arrangements may function as legally authorized instruments of control, eroding substantive humanitarian obligations.[161]

On the one hand, the *Gisha* ruling explicitly acknowledged that "[e]ven in the absence of quotas or strict limitations, monitoring and control over aid entry—actions that are undisputedly within the rights of belligerents—may affect the actual inflow of aid."[162] In other words, seemingly neutral arrangements could significantly impact the actual entry of aid, and might de facto restrict or delay it without formal limitations.[163] At the same time, however, the court offered little doctrinal or judicial safeguards to mitigate the profound impact and possible restrictions stemming from this reality. It briefly mentioned the duties, under domestic Israeli law, to act reasonably and proportionally as well as collect sufficient factual data to support its policies on humanitarian aid. Yet the court neither evaluated whether specific technical arrangements were necessary or proportionate against their humanitarian

158. AP I, *supra* note 11, art. 70; ICRC Customary IHL Database, *supra* note 11, r. 55.

159. In the *Gisha* ruling, for instance, the term "right" is mentioned only in reference to the state's prerogative to prescribe technical arrangements. *See* HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 16–17.

160. *See* sources cited *supra* notes 148–50.

161. Israel's Supreme Court accepted the State's position that it had fulfilled its obligation to facilitate humanitarian aid, by invoking not legal standards, but rather factual descriptions of technical measures and practical limitations. In doing so, the court could be argued to de facto create domains of *infra-legality*: "relegating certain issues, experiences and elements to international law's margins, as the natural, the incidental." JOHNS, *supra* note 9, at 10, 185–214.

162. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 51.

163. *See id.*

consequences, nor imposed any conditions on their use. The court thus legitimized broad state discretion to control humanitarian access without requiring firm and robust doctrinal safeguards in the deployment of technical arrangements, vividly demonstrating that the indeterminacies within IHL can be harnessed to legitimize and further violence. The court's interpretation, hence, did not merely create this permissiveness but rather amplified features already present within existing IHL.

This doctrinal elasticity is not unique to Israel's arguments or its jurisprudence.[164] The *Oxford Guidance*, for instance, notes that the purposes of "technical arrangements" include banning items that "may be used for military purposes"[165] and "prevent[ing] humanitarian relief convoys from being endangered or from hampering military operations."[166] While these aims may reflect valid operational concerns, their phrasing implicitly establishes a contested normative hierarchy that could be read to privilege military considerations over civilian protection. The very structure of such formulations may entrench restrictive interpretations of the obligation to facilitate aid and risk its substantial erosion, particularly when combined with their nebulous phrasing. Against the backdrop of intense hostilities in urban and densely populated areas, as was the case in Gaza during the period addressed by the *Gisha* proceedings, this legal architecture could potentially be understood as expanding the space for aid restrictions.

3. Facilitation or Obstruction? Practical Examples and Normative Benchmarks

Law, and IHL in particular, is deployed by belligerents not only to legitimize and intensify violence but also to articulate what is—and what is not—violence in the first place. Rather than solely regulating the conduct of hostilities, IHL thus lends itself to belligerents to give a validating meaning to their actions and decisions. In many contexts, IHL's malleable standards, including its language like "allow and facilitate aid" and "technical arrangements," might blur and destabilize the possibility of distinction between compliance and

164. *But see* 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, at 100 (interpreting, in the context of the law of occupation, Article 59 of the Fourth Geneva Convention as requiring an occupying power to "do more than simply allow the passage of essential items into the occupied territory" and to "use all means at its disposal" to ensure their regular, fair, and non-discriminatory distribution, without defining the precise scope of this obligation. Notably, while providing additional normative guidance into the obligation, the requirement to use "all means at its disposal" remains open-textured and the court did not anchor compliance in any concrete standard of humanitarian sufficiency. *Id.* Therefore, this statement could be read as similarly preserving ambiguities regarding the obligation's precise scope and operational limits).

165. *Oxford Guidance*, *supra* note 17, ¶ 67.

166. *Id.* ¶ 66.

violations.[167] This narrative (dis)function of IHL is especially evident in the *Gisha* proceedings.

When addressing its IHL obligations, Israel asserted that it had made "great efforts" to enable humanitarian aid, claiming it allowed more aid than organizations could process and worked to prevent Hamas from seizing it. Endorsed by Israel's Supreme Court, this position emphasized the belligerent's purported actions to improve aid access while sidestepping the actual impact upon the civilian population whose deprivation had triggered the legal obligation in the first place.[168] Crucially, by decoupling the efforts from their outcomes and ignoring whether civilians remained undersupplied, the facilitation of aid became indistinguishable from its obstruction.[169] Legal categories are mobilized to deliver a narrative of compliance even in the face of continued humanitarian failures. In other words, if the delivery of aid is consistently delayed, hampered on various decision-making levels, and fails to meet humanitarian needs, then claims of "efforts" could hardly be accepted as evidence of compliance.[170]

While Israel's position may seem to prioritize humanitarian relief, a closer examination reveals that the intricate interplay between restriction and facilitation also disguises structural dimensions of deprivation, to which IHL seems largely oblivious. Notably, the absence of conclusive information regarding the situation of Gaza's civilians from Israel's factual assessment is striking, as is the focus on its efforts and actions towards aid facilitation rather than the structural dimensions of control that might have played a role in creating both Gaza's current humanitarian catastrophe and pre-existing vulnerabilities.[171] Further,

167. *See generally* KENNEDY, *supra* note 6, at 309; *see also* KOSKENNIEMI, *supra* note 5.

168. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 58(c) (maintaining that the mere existence of gaps in the arrival of aid to civilians does not translate into a violation of Israel's obligation).

169. *See* 2025 COMMENTARY TO GC IV, *supra* note 28, ¶ 2063. The Commentary, published after the *Gisha* ruling was delivered, could be read as objecting to such decoupling of efforts and outcomes, noting that the obligation to facilitate aid "is an obligation of result." *Id.*

170. This further creates a circular dynamic: The obligation arises precisely because the population is inadequately supplied, but its legal analysis by the court averts scrutiny of this aspect and instead focuses on alleged efforts.

171. With respect to factual assessment, Israel maintained that it was generally monitoring humanitarian conditions in Gaza, but argued that a legal obligation to collect comprehensive factual information arises "only in a situation where a party to an armed conflict seeks not to allow and facilitate the passage of humanitarian aid"—a circumstance Israel claimed does not arise in Gaza, given its position that it allows and facilitates humanitarian assistance. *See* HCJ 2280/24 Gisha, Respondents' Supplemental Notice (May 23, 2024) *supra* note 74, ¶ 69. The petitioners, nonetheless, claimed that unless the Israeli government collects a full factual basis for its humanitarian access policies, it must rely upon information gathered by relevant organizations. HCJ 2280/24 Gisha, Petitioners' Response to Respondents' Supplemental Notice of 24.05.2024 (May 30, 2024), *supra* note 74, ¶ 81. As noted above, Israel's Supreme Court merely observed, for future purposes and without deciding the matter conclusively, that the obligation to allow and facilitate humanitarian aid may include monitoring humanitarian needs, while emphasizing the need to consider security, military, and operational constraints, as well as the

Israel's claim that it acted *beyond* its legal obligation to facilitate humanitarian aid, resulting in relief provided in excess of the absorption capacity of humanitarian organizations, which appears to shift responsibility onto relief organizations.[172] In doing so, such narratives hide the highly controlled context into which aid is delivered and the possibility that Israel's long-standing decisions and policies contributed to—or stood at the core of—both deprivation and NGOs' restricted capacities across Gaza. By highlighting the technical dimensions of aid facilitation as naturally flowing from IHL's own vocabulary on humanitarian assistance, Israel's narrative may serve to divert attention from its structural responsibilities and obligations. As critical scholars note, this invocation of humanitarian law risks neutralizing and stemming critique by channeling human suffering into a managerial logic.[173] Such a logic merely rationalizes deprivation as an unavoidable technical problem for states to circumvent, rather than a violation and a form of structural harm to be confronted at its roots and in its terms of production.

Viewed in this light, the collapse of factual distinctions between aid facilitation and obstruction is actualized by the technical and bureaucratic language of IHL. Israel's rhetoric serves to frame the situation as one of humanitarian management, rather than exposing the deeper political and structural realities that underlie the ongoing deprivation.

A specific example of this erosion of distinctions between enabling and curtailing aid is the issue of "dual-use items"—goods that can be utilized for both civilian and military purposes. The inclusion of dual-use items in humanitarian relief efforts can generate concerns that belligerents could divert and use them in their military efforts. The *Oxford Guidance* itself allows for verification procedures to exclude items that potentially "may be used for military purposes."[174] Yet, this language is highly elastic. Neither the Additional Protocols and their commentaries nor the *Oxford Guidance* actually defines dual-use items or references international standards on the issue, such as the Wassenaar Arrangement or European Union dual-use schedules.[175] This ambiguity endows states

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inherent difficulties in collecting such information. *See* HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 56; *see also id.* ¶¶ 50–55.

172. Respondents' Supplemental Notice, ¶ 24, HCJ 2280/24 Gisha, (Apr. 30, 2024) (Isr.) [hereinafter HCJ 2280/24 Gisha, Respondents' Supplemental Notice (Apr. 30, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_Supplementary_Update_He_300424.pdf [https://perma.cc/GGL3-2YT5]; HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 60; *see also* Whyte, *supra* note 17, at 11.

173. *See* KENNEDY, *supra* note 93, at 116.

174. *Oxford Guidance*, *supra* note 17, ¶ 67.

175. *See* Wassenaar Arrangement Secretariat, *Public Documents, Vol. II: List of Dual-Use Goods and Technologies and Munitions List* (2024), https://www.wassenaar.org/app/uploads/2024/ 12/ List-of-Dual-Use-Goods-and-Technologies-and-ML-2024.pdf [https://perma.cc/KTZ4-GJME]; *see also* Council Regulation 2021/821, of 20 May 2021, Setting up a Union Regime for the

with considerable discretion to institute protracted authorization processes and to expand the categories of "dual-use goods" to which these apply, in ways that could deeply undermine humanitarian efforts.[176]

In the *Gisha* proceedings, the petitioners maintained that Israel was banning or significantly delaying the entry of vital supplies, including key field communication devices, oxygen generators, and scalpels, by citing their potential military use.[177] Israel, for its part, responded that, under its domestic legislation, dual-use items are not banned, but subject to a specific authorization process.[178] Yet Israel advanced such reasoning also in reference to water pipes, for instance, not often considered "items that might be used for military purposes."[179] This framing signals a broader practice: In Gaza, civil society organizations have expressed concerns since at least 2007 over Israel's expansive, and often opaque, application of the dual-use category to justify sweeping restrictions on essential civilian goods.[180]

In its final ruling, the *Gisha* court treated the issue of dual-use items as merely factual, technical, and bureaucratic—in essence, a legitimate form of "technical arrangement."[181] Generally, the ruling held that Israel's humanitarian

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Control of Exports, Transfer, Brokering, Technical Assistance, and Transit of Dual-Use Items, as amended, annex I, 2021 O.J. (L 206) 1 (EU), https://eur-lex.europa.eu/eli/reg/2021/821/oj [https://perma.cc/9RUL-R9Y8]; *see also* AP I, *supra* note 11, art. 52. This paper does not undertake a substantive analysis of the parties' arguments with respect to these standards.

176. Mintz, *supra* note 104, at 293 (contending that belligerent parties might deploy technical arrangements to detect and remove "foodstuffs or other products intended for the fighting forces of the other side," without the article mentioning any required evidence for such use prior to their removal, as well as "goods which are not humanitarian" and are "not necessary for the survival of the civilian population").

177. *See* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶ 34 (maintaining that the equipment in question "is essential for humanitarian aid and includes water pipes, water quality control kits, candles and special blankets and is not [considered] dual-use equipment according to the internationally accepted lists").

178. *See* HJCJ 2280/24 Gisha, Respondents' Supplemental Notice (May 23, 2024), *supra* note 171, ¶ 24 https://www.nevo.co.il/law_html/law00/73252.htm[https://perma.cc/V9X8-4NYT]; *see also* HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶ 104 (referencing Israel's Defense Export Control Law, 5767–2007 (Isr.), Nevo Legal Database, https://www.nevo.co.il/law_html/law00/74192.htm [https://perma.cc/XS8P-Y8DM] and Defense Export Control Order (Controlled Dual-Use Equipment Transferred to the Palestinian Civil Responsibility Areas), 5768–2008 (Isr.), Nevo Legal Database, https://www.nevo.co.il/law_html/law00/73252.htm[https://perma.cc/V9X8-4NYT]) (further noting that the "Hamas terror organization systemically uses dual-use equipment and measures towards military enhancement at the expense of the civilian population, and thus there is a need to supervise the entry of goods and deny entry of goods that might be used for military purposes") (unofficial translation by author).

179. HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 104.

180. *See* Gisha, Legal Center for Freedom of Movement, *Red Lines, Gray Lists* (Jan. 11, 2022), https://features.gisha.org/red-lines-gray-lists/ [https://perma.cc/8CLZ-LQQ9].

181. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 51.

obligations in relation to Gaza's civilian population must also bring into consideration the "concern that the transfer of equipment may strengthen terrorist organizations."[182] Citing the respondents' submissions, the Court noted, as dual-use equipment raises "concern that such equipment might reach terrorist organizations," the "requests for its entry were referred for additional examination by the Israel Security Agency" and the majority of which were ultimately approved.[183] Yet in doing so, the technical language surrounding "dual-use" items circumvented possible normative safeguards offered by IHL, such as the principle of proportionality,[184] and thereby allowed the court to refrain from addressing them. For instance, the court could have required a specific demonstration of the military necessity[185] underlying the classification of particular withheld items as "dual-use," to verify that such items could indeed be used for military purposes, conducted a proportionality assessment of the civilian harm resulting from their non-entry or delay, or required consideration of less restrictive measures.[186] This judicial deference not only cemented opaque restrictions but also rendered *impeding* aid inseparable from *facilitating* it.

Conversely, although exerting a similar effect, the *Oxford Guidance* reiterates that technical arrangements "must not be arbitrary[,] . . . must be necessary and proportionate[, and] . . . must not be imposed in a manner that is unreasonable."[187] Yet, these constraints rely on open-textured terms, such as

182. *Id.* ¶ 49.

183. *Id.* ¶ 71.

184. AP I, *supra* note 11, arts. 51(1), 51(2), 51(5)(b), 57; ICRC Customary IHL Database, *supra* note 11, r. 14; Prosecutor v. Kupreškić, Case No. IT-95-16-T, Judgment, ¶ 524 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000); *see also id.* ¶¶ 51–54 (in which the judgement states it is not necessary to classify whether the crimes occurred in international or non-international armed conflict).

185. On military necessity, see YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 9–12 (4th ed. 2022) (perceiving military necessity, together with humanitarian consideration as governing IHL, and describing necessity, inter alia, as establishing "a reasonable connection between those measures and the goal of ultimate victory" and as measures "leveraged to gaining a military advantage"); *see also* U.S. v. List, 11 N.M.T. 1230, 1253 (U.S. Mil. Trib., Nuremberg, 1948); Marco Pedrazzi, *The Principles of Military Necessity and Humanity in Light of International Human Rights Law*, *in* RESEARCH HANDBOOK ON HUMAN RIGHTS AND HUMANITARIAN LAW 76, 77–79 (2022).

186. *See, e.g.*, HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 87 (reiterating the respondents' position that "[b]ecause communications equipment may be considered dual-use equipment, requests for the entry of communications equipment into the Gaza Strip were referred for security screening and were at times denied on security grounds"); *id.* ¶ 83 (further noting that "the entry of dual-use sanitation equipment—such as sewage pumps and desalination units—was approved"). The legal justification for requiring heightened and often lengthier authorization processes regarding these specific items remained unknown and unexamined. Notably, this example also features a strong temporal dimension, in light of the possible additional delays brought by the categorization of a relief item as "dual-use."

187. *Oxford Guidance*, *supra* note 17, ¶ 71; *see also id.* ¶¶ 56, 69, 72 (for additional standards). In a similar vein, the 2025 COMMENTARY TO GC IV, *supra* note 28, at 2054, 2058, highlights

"good faith," "necessary," or "proportionate," that are, themselves, vulnerable to expansive interpretation. Beyond the circular nature of referencing these multiple additional obligations, the *Oxford Guidance* does not engage with the question of whether subjecting technical arrangements to proportionality assessments might risk blurring the inherent distinction between humanitarian imperatives and military considerations and might, in fact, be understood as permitting aid restriction when a military advantage seemingly justifies it.

The *Gisha* ruling, then, offers few normative benchmarks, while the *Oxford Guidance* offers an overabundance of open-textured standards. In both approaches—the multiplicity of normative benchmarks in the *Oxford Guidance* and their virtual absence from the *Gisha* ruling—the term "technical arrangements" has been muddied by either excessive or insufficient doctrinal standards. Be that as it may, the discussion of technical arrangement reflects IHL's managerial turn, under which substantive legal and ethical dilemmas are conflated and reduced to meager, pseudo-neutral, doctrinally hollow technicalities. Both approaches, albeit at different ends of the doctrinal spectrum, converge in their failure to protect humanitarian relief access. The result is a legal framework that prioritizes bureaucratic mechanisms over substantive humanitarian protections, obscuring and diluting core IHL obligations rather than reinforcing them.

B. The Prohibition on Starvation: Legal Boundaries and Interpretive Evasions

Alongside its framework for regulating humanitarian relief, IHL prohibits the use of civilian starvation as a method of warfare. Anchored in the Additional Protocols,[188] the prohibition is now widely considered to have crystallized into customary status, applicable in both international and non-international armed conflicts.[189] Further, Additional Protocol I forbids belligerents to "attack,

that the conditions to facilitate aid under Article 23 of the Fourth Geneva Convention "must be applied in good faith" and "are based on military necessity and must therefore comply with the requirement of proportionality." Nonetheless, as noted above, the Commentary maintains that the conditions set under Article 23 of the Fourth Geneva Convention to the facilitation of humanitarian aid have been modified by the adoption AP I, with AP I now reflects customary international law regarding the obligation to facilitate humanitarian aid.

188. *See* AP I, *supra* note 11, art. 54(1); AP II, *supra* note 11, art. 14; ICRC Customary IHL Database, *supra* note 11, r. 53. In NIAC, AP II uses the slightly different wording of "method of combat." AP II, *supra* note 11, art. 18.

189. *See* ICRC Customary IHL Database, *supra* note 11, r. 53; 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶¶ 143–44 (reaffirming, subsequent to the *Gisha* ruling analyzed here, that the prohibition on starvation of civilians as a method of warfare reflects customary international law).

destroy, remove or render useless objects indispensable to the survival of the civilian population."[190]

In *Gisha*, the petitioners maintained that Israel had breached the starvation ban and imposed prohibited collective punishment, but the Israeli government highlighted its relief coordination efforts as negating any intent to starve the Gazan civilian population.[191] Beyond factual schisms, each of the parties advanced diverging positions regarding the intent required under the prohibition on civilian starvation as a method of warfare. In its ruling, the Supreme Court briefly concluded that prohibited collective punishment and the deployment of civilian starvation as a method of warfare were "not even remotely" established.[192] Notably, Israel's Supreme Court offered no in-depth analysis of the prohibition on the use of civilian starvation in support of its judgment. Nor did it mention the ban on attacking or rendering useless indispensable civilian infrastructure in its sixty-four-page judgment, despite detailed reports of such destruction having been issued by the U.N. and other international organizations, which were extensively cited by the petitioners.[193]

In this Section, this Article examines this interpretive divergence: a narrower reading of the prohibition, requiring a direct and specific intent to cause civilian starvation; a broader reading that attaches intent to the act (or omission) of deprivation; and an even broader reading under which awareness and conscious risk-taking of civilian starvation may suffice. Both the restrictive and more expansive readings of the prohibition in *Gisha* struggle to fully mitigate the multifaceted and protracted dynamics of deprivation.[194] Moreover, this Article argues that they reflect IHL's flawed assumptions of a monolithic belligerent employing a visible, tangible "method of warfare." Turning to the court's striking silence on attacks against indispensable civilian infrastructure, this Article further contends that IHL's formal division between humanitarian relief and infrastructure protection fails to reflect their inextricably interconnected role in shaping deprivation on the ground.

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190. AP I, *supra* note 11, art. 54(2); AP II, *supra* note 11, art. 14; ICRC Customary IHL Database, *supra* note 11, r. 54.

191. *See* sources cited *supra* notes 42–49.

192. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 94.

193. *See* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 24–25, 40, 51, 116. *See generally* Petitioners' Supplemental Notice, HCJ 2280/24 Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Isr. ¶¶ 5–58 (Nov. 22, 2024) (Isr.) (unofficial translation posted on the Gisha website) [hereinafter HCJ 2280/24 Gisha, Petitioners' Supplemental Notice, (Nov. 22, 2024)], https://static.gisha.org/uploads/2024/11/Respondents_Response_en_141124.pdf [https://perma.cc/HHA4-U4ES].

194. For a fuller analysis of intent in the context of Israel's 2023 Gaza war and in reference to issues of genocide, see generally Dannenbaum & Dill, *supra* note 9.

1. Prohibition on Civilian Starvation as a Method of Warfare: Narrow vs. Broad Interpretation

In landmark provisions, Additional Protocols I and II both prohibit "starvation of civilians as a method of warfare"[195] by denying the civilian population "its sources of food or of supplies."[196] In the context of these provisions, starvation is centered around deprivation of items vital to civilians' survival, assessed in relation to their specific circumstances;[197] causing suffering or "weakening" among the civilian population is sufficient, even if it does not lead to death.[198] This prohibition is not included in the grave breaches enumerated in the Geneva Conventions, and thus does not in itself trigger the treaty-based obligation to investigate and prosecute perpetrators.[199] Nonetheless, internationally using starvation of civilians as a method of warfare constitutes a war crime under international criminal law, as reflected in the Rome Statute of the ICC[200] and the statutes of other hybrid and regional tribunals.[201]

Notwithstanding its normative importance, the prohibition on civilian starvation as a method of warfare raises several doctrinal debates regarding its interpretation and scope, compounded by the relative scarcity of international[202]

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195. AP I, *supra* note 11, art. 54(1); *see also* discussion *supra* notes 190–91.

196. AP Commentary 1987, *supra* note 141, ¶ 2089.

197. *See* Emanuela-Chiara Gillard, *Hunger Crimes and the Conflict in Ukraine*, 56 Tex. Tech L. Rev. 81, 84 (2023) (suggesting that starvation might encompass goods such as "heating, fuel, and blankets in a cold climate").

198. *Id. See* AP Commentary 1987, *supra* note 141, 1456 ¶ 4795 (commentary further reiterates, in relation to AP II Article 14, that this obligation does not allow derogation).

199. On the grave breaches regime, see Fourth Geneva Convention, *supra* note 11, arts. 147–48; AP I, *supra* note 11, art. 85; ICRC Customary IHL Database, *supra* note 11, rs. 147–48.

200. Rome Statute of the International Criminal Court art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute]. The 2019 amendment to Article 8 of the Rome Statute broadened the war crime of starvation to NIACs, though it applies only to states parties that ratify it, a step taken by over 20 as of 2026. Starvation-related deprivation may also give rise to additional international crimes, depending on the circumstances, including the crime against humanity of extermination, the crime of genocide, and the war crime of torture or inhumane treatment. *See id.* arts. 7(1)(b), 6, 8(2)(a)(ii). For an analysis of relevant international criminal jurisprudence, see Global Rights Compliance & World Peace Foundation, *The Crime of Starvation and Methods of Prosecution and Accountability, Accountability for Mass Starvation: Testing the Limits of the Law*, ¶ 78 (Policy Paper No.1 2019); *Starvation Jurisprudence Digest—Courts and Tribunals*, Global Rights Compliance (updated Oct. 2024), https://starvationaccountability.org/wp-content/uploads/2024/10/Starvation-Jurisprudence-Digest-September-2024-Courts-and-Tribunals.pdf [https://perma.cc/4YEL-ZHHA] (for full research).

201. *See* Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, S.C. Res. 827, art. 5(b), U.N. Doc. S/RES/827 (May 25, 1993); Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994).

202. *See, e.g.*, Prosecutor v. Elizaphan and Gérard Ntakirutimana, Cases No. ICTR-96-10-T & ICTR-96-17-T, Judgement and Sentence ¶¶ 137–53 (Int'l Crim. Trib. for Rwanda Feb. 21, 2003) (acquitting the defendant of "other inhumane acts" for locking a hospital pharmacy and

and domestic jurisprudence.[203] In particular, the term "as a method of warfare"[204] remains a source of uncertainty, with successive commentaries of the Additional Protocols providing little clarity.[205]

The ambiguity of the prohibition on starvation allows for a spectrum of possible interpretations regarding the intent needed under the IHL prohibition, which will be explored in this subsection. A *narrow* reading bans only deliberate acts undertaken with the specific purpose of starving civilians. *Broader* interpretations might prohibit any deliberate use of civilian deprivation, thus attaching intent to the act of deprivation itself, regardless of its ultimate military aim. *Broader still*, some interpretations might encompass acts undertaken with oblique intent, where civilian starvation is a foreseeable consequence, even if not specifically intended or wanted. To understand the distinction between these interpretations, intent might encompass direct intent, meaning acting deliberately to achieve a purpose, as well as indirect intent, meaning acting with knowledge that a consequence will occur or is virtually certain to occur. A separate question is whether such intent—deliberate or oblique—attaches to the act of deprivation itself or to the resulting starvation as its consequence, and how intent could be established as a matter of evidence.[206]

The rift between these interpretations is reflected in the *Gisha* proceedings. Israel insisted that it had upheld the prohibition, interpreting it as applying only to "deliberate acts intended to deny civilians the necessary means for their survival."[207] In contrast, the petitioners, while attempting to demonstrate Israel's intent to indiscriminately starve those in Gaza, also implicitly advocated for a more expansive interpretation of the prohibition that would include oblique intent—that is, knowledge and conscious disregard of foreseeable starvation—as

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denying hundreds of patients under the defendant's care access to medicine, viewing the deprivation as "part of the general context," while convicting him of genocide for other conduct). *See generally* Sigrid Mehring, *Medical War Crimes*, 15 Max Planck Y.B. U.N. L. 229 (2011).

203. For a rare example, see Dist. Ct. of Zadar, *Public Prosecutor v. M.P. et al.* (K. 74/96), Verdict (Apr. 24, 1997) (Croat.), http://www.internationalcrimesdatabase.org/Case/1053 [https://perma.cc/U4M9-HC54] (conviction in absentia for the siege of Zadar).

204. *See generally* Nils Melzer & Gloria Gaggioli, *Methods of Warfare*, *in* Oxford Guide to International Humanitarian Law 235 (Dapo Akande & Ben Saul eds., 2020).

205. AP Commentary 1987, *supra* note 141, ¶ 1957 (referring to methods or means of war as addressing weapons and the ways in which they are used). Melzer and Gaggioli criticize this definition as overly narrow, and instead offer to read methods of warfare as "referring to any particular manner of using weapons or of otherwise conducting hostilities, irrespective of permissibility or appropriateness, and ranging from the use of emblems, flags, uniforms, and weapons or other equipment to the choice of targets for attack." Melzer & Gaggioli, *supra* note 204, at 237–38.

206. For a fuller discussion of these questions, see Tom Dannenbaum, *Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence*, 55 Vand. J. Transnat'l L. 681, 727–28 (2023).

207. HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 282, 280–86.

sufficient mens rea under this IHL prohibition.[208] Both positions shed light on some of the failings of the prohibition, and IHL more generally, albeit in very different aspects.

The Additional Protocol I Commentary explains that "[t]o use [starvation] as a method of warfare would be to provoke it deliberately, causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies,"[209] a formulation cited by the ICJ in its 2025 Advisory Opinion.[210] Several commentators have read this language as supporting a narrower interpretation of the prohibition, under which starvation as a method of warfare requires a specific intent to starve the civilian population.[211] Based on the *travaux préparatoires* of the Additional Protocols and the overall structure of Article 54,[212] scholars further argue that only the *deliberate* use of starvation against *civilians* as a mechanism of fighting is forbidden;[213] deprivation practices aimed at weakening combatants, for instance, are not prohibited under this clause even if they harm civilians as well. Accordingly, when civilian starvation is an unintended consequence of legitimate military aims, the prohibition on starvation might not apply, even if starvation was foreseeable.[214] Instead, unintentional civilian starvation is cast as equivalent to collateral

208. *See* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶ 129 (arguing that public statement of Israeli governmental official raise concern "are indicative of prohibited political motives" and that "there is a concern that the starvation of the civilian population is used as a method of warfare," while also stressing that "Israel knew that its actions would lead to mass starvation and was even warned by different bodies immediately at the outbreak of the war of a rapid deterioration which would lead to this disaster." Thus, petitioners maintain "even if the intent of starvation cannot be proven, Israel has consciously disregarded the possibility of a mass starvation and fails to take the necessary measures").

209. AP Commentary 1987, *supra* note 141, at 2089.

210. 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶ 144.

211. Akande & Gillard, *supra* note 17, at 757 (maintaining that "[e]very method of warfare that has the purpose of causing the starvation of civilians is prohibited," yet suggesting other IHL prohibitions and obligations could be applicable in the situation of unintended starvation); *see also* Drew, *supra* note 17, at 313–14 (interpreting "method of warfare" as requiring civilian starvation to be pursued as a purpose rather than being a "side effect," in the context of the argued legality of starvation blockades); *c.f.* Dannenbaum, *supra* note 206, at 727 (suggesting that other statements in the Commentary point to a broader prohibition).

212. *See, e.g.*, Akande & Gillard, *supra* note 17, at 761–65 (supporting a narrow interpretation of Article 54(1) in light of Articles 54(2)–(3), which extend protection to foreseeable starvation resulting from attacks on indispensable civilian objects, whereas Article 54(1) applies only where starvation is used with the purpose of starving the civilian population; noting that "in cases where starvation or food insecurity arises not because of attacks on objects indispensable for the survival of the civilian population but because of other acts (e.g. denial of humanitarian access) it is the general prohibition in Article 54(1) that applies, and the conduct in question must have the purpose of causing the starvation of the civilian population").

213. Gillard, *supra* note 197, at 85.

214. While some national military manuals suggest the prohibition on destroying indispensable civilian infrastructure is purposive, scholars reject this position in light of Article 54(2) and 54(3) of AP II. *See* AP II, *supra* note 11, art. 54(2)–(3); ICRC Customary IHL Database,

damage, to be weighed against the military advantages under the principle of proportionality.[215]

In practice, this permissive view risks legitimizing wide-scale civilian starvation across multiple armed conflicts, particularly where combatants operate within the civilian population, such as during urban warfare in densely populated areas.

Normatively, requiring a direct and specific intent to starve to trigger IHL prohibitions risks undermining IHL's normative capacity to guide belligerents during hostilities.[216] Simply put, an overreliance on intent shifts IHL's focus from what belligerents do (or should do) to what belligerents think and intend. This concern was illustrated in the *Gisha* proceedings, where Israel's position relied on a narrow interpretation of the starvation prohibition, emphasizing the absence of intent to starve civilians in Gaza.[217] Adhering to this narrow interpretation might operate as a vehicle for belligerents to sidestep other normative obligations under IHL, such as providing a proportionality assessment of their conduct, as illustrated by Israel's position before its Supreme Court.

Further, under this narrow view of the prohibition, incidental yet foreseeable starvation may fall within the bounds of legality, provided it is not employed as a method of warfare and adheres to proportionality and other IHL principles. Here, incidental civilian starvation refers to starvation arising because of military operations directed at lawful military objectives, rather than as their intended purpose, even if civilian starvation was anticipated. Yet, even when assessed through proportionality, incidental civilian starvation raises deep

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supra note 11, r. 54; Akande & Gillard, *supra* note 17, at 764–65; Dannenbaum, *supra* note 206, at 729–33.

215. *See U.S. Law of War Manual*, *supra* note 135, § 5.20.2 (noting that "[m]ilitary action intended to starve enemy forces, however, must not be taken where it is expected to result in incidental harm to the civilian population that is excessive in relation to the military advantage anticipated to be gained"); *see also* Akande & Gillard, *supra* note 17, at 764–65; Watts, *supra* note 17, at 19. *But see* Dannenbaum, *supra* note 206, at 728–29 (stipulating that, since IHL defines an "attack" as "acts of violence against the adversary," all non-violent deprivation practices could be argued to fall outside this definition and, consequently, beyond the regulatory scope of proportionality; under such narrow view, a blockade established for a military purpose would lie not only outside the prohibition on civilian starvation but also beyond the regulatory orbit of the IHL principles of proportionality, necessity, and precaution).

216. Dannenbaum & Dill, *supra* note 9, at 660.

217. HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶ 282 (arguing that Israel "allocates considerable resources and implements numerous measures aimed at allowing the entrance of vital humanitarian aid . . . and acts to coordinate the movement of relief organizations in the strip for the delivery of this aid. These acts do not align with claims of using starvation as a method of warfare"); *see also* HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶ 88 (noting that "[t]he clear directives of the political leadership, alongside the conduct of state authorities on the ground, unequivocally indicate that Israel does not intend to bring about starvation among the civilian population and is actively working to improve the humanitarian response to the civilian population in the Gaza Strip").

concerns. Proportionality calculations might be ill-suited to capture the slow violence of deprivation in several important ways.

First, such assessments inherently fail in terms of fully accounting for the gradual, cumulative harms of starvation—that is, not only the immediate suffering of individuals but also long-term, evolving, and even inter-generational harms affecting an incalculable number of civilians that starvation uniquely produces.[218] Nor are such assessments equipped to deal with the deeply destabilizing impact of starvation practices on community structures, social services, and local capacities.[219]

Second, when foreseeable yet unintended civilian starvation is accepted as legally permissible—on the basis of proportionality to military advantage—civilian suffering is reduced to a utilitarian calculation. The principle of proportionality itself, which permits some unintended civilian harm as collateral damage, has drawn extensive moral, political, and legal critique for normalizing and justifying foreseeable civilian harm as long as it is not "excessive."[220] Extending this logic to foreseeable starvation could be argued to cross a distinct normative threshold.[221] As indicated by the IHL prohibition, the *manner* in which civilian harm is inflicted matters deeply. Starvation, even when unintended, is often not merely incidental; during armed conflict, starvation emerges not from an isolated event but from systemic and persistent choices to dismantle life-sustaining infrastructures and capacities.[222] When these foreseeable outcomes are treated as legally tolerable, proportionality ceases to mitigate harm and, instead, rationalizes its measures.[223] In doing so, it erodes the normative clarity that the prohibition sought to enshrine in the first place: that civilian starvation, as a method of warfare, is categorically prohibited.

Further, the *Gisha* proceedings vividly highlight the extent of the difficulty of establishing a direct and specific intent to starve under a narrow view, resulting

218. Maxime Nijs, *Humanizing Siege Warfare: Applying the Principle of Proportionality to Sieges*, 102 Int'l Rev. Red Cross 683, 703 (2020). *See generally* Noam Lubell & Amichai Cohen, *Strategic Proportionality: Limitations on The Use of Force in Modern Armed Conflicts*, 96 Int'l L. Stud. 159 (2020). *See also* discussion *supra* note 111.

219. de Waal & Conley, *supra* note 17, at 274. *See also* Dannenbaum, *supra* note 17, 439–441.

220. Adil Ahmad Haque, Law and Morality at War 176–77, 180 (2012); Kennedy, *supra* note 94, at 265.

221. For a normative discussion of siege starvation, see generally Dannenbaum, *supra* note 17.

222. On the famine as a political project, see generally de Waal, *supra* note 10; de Waal, *supra* note 35. *See also* Stephen Devereux, *Sen's Entitlement Approach: Critiques and Counter-Critiques*, 29 Oxford Dev. Stud. 245, 258–59 (2001).

223. One might see proportionality in this context as managing rather than protecting civilians' "bare life." Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life 11 (1998).

in the prohibition serving as a legal justification rather than a constraint.[224] The petitioners cited Israeli officials' public statements, including the words of Israel's then-Minister of Defense Yoav Gallant: "Complete siege will be imposed on the city of Gaza. There will be no electricity, there will be no food, there will be no fuel. We are fighting human animals and will act accordingly."[225] In the face of several condemning declarations by senior government officials, Israel claimed that such statements did "not indicate, either explicitly or implicitly, an intent to harm the civilian population in Gaza and particularly an intent to starve it,"[226] and counterbalanced it with other statements and directives by governmental officials and agencies, calling for the minimization of civilian harm in Gaza.[227] As noted earlier, Israel further rejected any intent to starve civilians by citing its concerted efforts and resource allocation to "actively improve the humanitarian response for the civilian population in the Gaza Strip."[228] Israel's Supreme Court endorsed this later argument, finding that the "array of actions taken by the respondents [the Israeli government] to improve the humanitarian situation in Gaza" negated any alleged breach of the civilian starvation prohibition.[229] Against a background of contradictory governmental statements and practices, the court focused on concurrent efforts to facilitate humanitarian assistance as sufficient to reject an intent to starve, even where deprivation practices persisted and harms accumulated.

This exchange suggests that a direct and specific intent to starve might be highly challenging to prove. Against the backdrop of multiple and at times conflicting statements and acts by different governmental officials and branches, coupled with the inherent vagueness of both deprivation practices and legal obligations, distilling such intent and pointing to deliberate acts undertaken with the purpose of starving might prove exceptionally difficult.

Perhaps more worryingly, this argued plurality of statements, acts, and omissions by different governmental officials and branches in the context of deprivation in Gaza raised questions as to how to establish what method of

224. In the context of Israel's claims before the ICJ in *S. Afr. v. Isr.*, see Whyte, *supra* note 17, at 6, 10–11. *See generally* KENNEDY, *supra* note 6.

225. *See* Yoav Gallant, Minister of Defense, YNET (Oct. 9, 2023, 12:43 PM), https://www.ynet.co.il/news/article/b13rvrbzp [https://perma.cc/S6ZV-XK6Z] (unofficial translation of Gallant's recorded statement by author) (video of statement declaring siege on Gaza); *see also* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 28, 128 (claiming that statement, and others, demonstrate an intent to starve the civilian population as a method of warfare).

226. HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶ 283 (unofficial translation by the author).

227. *Id.* ¶¶ 283–85; *see also* HCJ 2280/24 Gisha, Respondents' Preliminary Response (Apr. 2, 2024), *supra* note 2, ¶¶ 86–88.

228. HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶ 285; *see also id.* ¶ 282.

229. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 94.

warfare was employed. This difficulty exposes a deeper structural assumption in international law: the notion of a monolithic belligerent pursuing a single, coherent "method of warfare." The legal notion of a "method of warfare" tends to presuppose a coherent course of conduct attributable to a single and unified belligerent. This may not reflect the fragmented reality of deprivation practices and their diverse perpetrators, across different levels of decision-making and command. Deprivation is perpetrated through both acts and omissions, and, at times, reinforced through institutional silence and selective supervision. In practice, belligerent conduct may simultaneously include measures that restrict humanitarian access and target civilian infrastructure, alongside parallel measures aimed at facilitating aid. Public statements and aid policies may also be shaped to anticipate and negate potential legal violations. De facto acts and omissions may appear contradictory or misaligned, as they are implemented by numerous governmental entities, diverse military forces, and a range of individuals, across time and space. Given the inherently multifaceted nature of deprivation, the legal emphasis on intent could thus pose serious obstacles to proving starvation was used as a method of warfare, even when emerging practices are relatively visible or when harms are extreme.

In contrast, other scholars propose a *broader* interpretation of the civilian starvation prohibition, which does not require a direct intent to *cause* civilian starvation. International legal scholar Tom Dannenbaum, for example, proposes a transitive reading, situating intent in reference to the *act* of depriving civilians of vital supplies rather than to the *effects* or *consequences* of actually causing starvation.[230] Applying this perspective, the prohibition on civilian starvation forbids acts undertaken to deny civilians the sustenance value of vital goods deliberately *because* of their sustenance value and, thus, regardless of the acts' "ultimate objective, and irrespective of military advantage."[231] For instance, "denying sustenance to the civilian population as the predicate purpose to squeezing embedded enemy forces" is prohibited.[232]

230. Dannenbaum, *supra* note 17, at 384 (reading the war crime of starvation as relates to "the *practice* of denying civilians sustenance, rather than that of seeking to weaponize the harm they suffer as a *result*" (emphasis added); *see also* Dannenbaum, *supra* note 207, 734–37. A transitive understanding of the prohibition could be read in the *U.S. Law of War Manual*, *supra* note 135, § 5.20.1, noting that "it would be prohibited to destroy food or water supplies for the purpose of denying sustenance to the civilian population," whereas *id.* § 5.20.4 "would not prohibit destroying a field of crops to prevent it from being used as concealment by the enemy or destroying a supply route that is used to move military supplies but is also used to supply the civilian population with food."

231. Dannenbaum, *supra* note 206, at 755. In this context, Dannenbaum recalls that starvation is widely understood as inflicting suffering but not inherently necessitating civilians' death, thus emphasizing *actions* rather than *outcomes*.

232. Dannenbaum & Dill, *supra* note 9, at 670.

Under such a reading, however, the unintended denial of essential civilian supplies by actions performed in pursuit of a legitimate military purpose falls outside the scope of this prohibition. Accordingly, actions such as bombarding greenhouses and burning fields to remove the cover they provide to enemy forces may be permissible, contingent upon their proportionality and the precautionary measures taken, and whether they are "expected to deny civilians nourishment sufficient to sustain life."[233] Thus, some of the concerns regarding unintentional yet foreseeable civilian starvation outlined above may persist under this interpretation as well, notwithstanding its broader framing; this formulation, too, leaves a residual gap for significant civilian deprivation falling short of this threshold, which may instead be assessed under the more permissive framework of proportionality.

An additional reading of the IHL civilian starvation prohibition suggests the required intent may also be oblique, in the sense that knowledge and awareness that belligerent actions would lead to civilian starvation would suffice.[234] In *Gisha*, the petitioners leaned toward this broader reading of intent, contending that "even if intent to starve cannot be definitively proven, Israel has consciously disregarded the possibility of mass starvation and has failed to take the necessary measures required to meet the immediate needs of the population."[235]

Still, this broader construction of the prohibition is not without doctrinal difficulties. More expansive interpretations are said to impose unattainable burdens on military commanders, particularly in the fluid and chaotic conditions of active hostilities, as demonstrated in Gaza.[236] Critics further argue that "notion of oblique intent is not, however, compatible with starvation as a violation of

233. Dannenbaum, *supra* note 206, at 736 (viewing the deliberate deprivation of intrinsically indispensable objects, such as food or farmlands, as constituting starvation as a method of warfare, unless "inflicted due to a function of those objects unrelated to their indispensability," such as providing enemy combatants with cover; nonetheless noting that "the destruction of food as cover for the enemy" may amount to "starvation as a method of warfare if expected to deny civilians nourishment sufficient to sustain life," reflecting a logic more closely aligned with the protections afforded under Articles 54(2)–(3) to indispensable); *see also id*. at 734–38 (more generally).

234. This analysis is based on a reading of Article 54(1) together with 54(2)–(3), as well as the default mens rea detailed within Article 30 of the Rome Statute. Wayne Jordash, Catriona Murdoch & Joe Holmes, *Strategies for Prosecuting Mass Starvation*, 17 J. Int'l Crim. Just. 849, 854–60 (2019); *see also* Dannenbaum & Dill, *supra* note 9, at 670; Rome Statute, *supra* note 200, art. 30.

235. HCJ 2280/24 Gisha Petition, *supra* note 1, ¶ 129.

236. Geoff Corn & Emanuela-Chiara Gillard, *The War Crime of Starvation: The Irony of Grasping at Low Hanging Fruit*, Articles of War (May 15, 2024), https://lieber.westpoint.edu/war-crime-starvation-irony-grasping-low-hanging-fruit/ [https://perma.cc/2U4X-HU3K]; *see also* Amichai Cohen & Yuval Shany, *The Prosecutor's Uphill Legal Battle?: The Netanyahu and Gallant ICC Arrest Warrant Requests*, Just Security (May 25, 2024), https://www.justsecurity.org/96135/the-prosecutors-uphill-legal-battle-the-netanyahu-and-gallant-icc-arrest-warrant-requests/ [https://perma.cc/DUT8-JFH2].

either IHL or the ICC offense," as "[t]his oblique intent approach necessitates treating both the IHL and ICC prohibitions as result or consequence-based, when the textual nature of each of them is conduct-based."[237] In other words, they maintain that the prohibition on civilian starvation centers on the deliberate use of starvation as a method of warfare, rather than the foreseeable or actual occurrence of such starvation.

This doctrinal concern, however, rests on assumptions that the petitioners in *Gisha* subtly but forcefully contested, regarding the factual framework through which intent and responsibility are to be assessed. The *Gisha* petition positions Israel's conduct within a broader structural and systemic context, one that preceded and amplified the effects of specific acts of deprivation and thus extends beyond the narrow lens of intent. In practice, the petitioners argued:

> The State of Israel was fully aware of the limited local means of production, the poverty rate, the lack of resources and the dire economic situation in the Strip. In view of the above, it had to immediately, as soon as the war broke out, see to [it] that the civilian population [was] provided with sufficient food and clean water.[238]

Accordingly, the petitioners viewed cumulative pre-existing vulnerabilities in Gaza, shaped by prolonged occupation, blockades, poverty, and dependency, as legally relevant to assessing the scope of IHL's prohibitions and obligations, particularly the civilian starvation prohibition.[239] Under this framing, starvation is not a discrete act but the result of sustained, policy-driven incapacitation of life-sustaining civilian systems, services, and capacities, including the food system, water and sanitation facilities, medical infrastructure and services, and other vital services. Implicitly rejecting this approach, Israel's Supreme Court focused on Israel's alleged efforts to facilitate aid, thereby leaving unexamined the underlying conditions, protracted processes, and systemic structures of deprivation—all factors that rendered civilians vulnerable to starvation in the first place.

Yet, strikingly, the court's limited framing of deprivation was enabled by IHL's lack of engagement with the structural dimensions of the starvation prohibition. Beyond a mere doctrinal gap, what emerges is a more fundamental issue, emanating from the very constitutive logic of IHL, which turns its gaze exclusively on isolated, immediate, and visible acts of deprivation violence. The *Gisha* ruling thus spotlights how, by overlooking the structural and long-term

237. Corn & Gillard, *supra* note 236.

238. HCJ 2280/24 Gisha Petition, *supra* note 1, ¶ 127 ("Instead, Israel destroyed all the means of production and supply of food and water and prevented the entry and distribution of food in the Gaza Strip and especially in northern Gaza in different ways.").

239. *See* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶ 127; *see also id.* ¶¶ 24–25, 50, 126–29.

harms brought about by belligerents, IHL allows these forms of harm to fall outside its (supposed) protective ambit.

Israel's Supreme Court did not take a position on the interpretive dispute regarding the prohibition on the use of civilian starvation, at least not explicitly. It briefly and generally concluded that this prohibition was not breached without analyzing it further. Nevertheless, its ruling exemplifies the danger of applying an intent-based approach to IHL obligations: a growing disjunction between subjective assessments of intent and the objective outcomes of harm and deprivation. These are adverse outcomes that IHL *claims* to regulate but structurally excludes, its framework being particularly unfit to capture harms produced through long-term, systemic processes rather than discrete, intentional acts. Illustrating the perils of such a framework, the *Gisha* judgment ends without the justices explicitly making any clear judicial determination regarding the on-the-ground reality and impossible living conditions faced by Gazan civilians, whose suffering stood at the core of the petition. This circumvention by the judges was possible because Israel's alleged efforts vis-à-vis humanitarian aid were interpreted as negating any intent to starve.

2. Implications for Encirclement Warfare, Sieges, and Blockades

After ascertaining the interpretive divergence over the civilian starvation prohibition, this subsection will move to explore the profound implications this divergence carries for the legality of encirclement strategies, such as blockades and sieges.

In this context, the ICRC customary law study takes the position that the prohibition does not prohibit siege nor naval blockade, insofar as their "purpose is to achieve a military objective and not to starve a civilian population."[240] Thus, a narrow reading of the prohibition, as merely outlawing the *deliberate* starvation of civilians, might affirm the legality of encirclement practices insofar as they are intended to achieve a legitimate military aim.[241] A broader interpretation of the prohibition could potentially render encirclement warfare illegal in certain situations.

At the same time, the discussion of encirclement-induced starvation exposes contradictions that go to the core of IHL protections of basic civilian needs.

240. ICRC Customary IHL Database, *supra* note 11, r. 53.

241. Sean Watts, *Siege War*, Articles of War (Mar. 4, 2022), https://lieber.westpoint.edu/siege-law/ [https://perma.cc/YJS5-J58H] (cautioning that interpreting "intentional" starvation strictly as requiring solely the *deliberate* aim to cause civilians to die or suffer life-threatening malnutrition dramatically weakens the protective ambit of the rule); *see also* Watts, supra note 17, 19, 47–48 (suggesting that considerations of military necessity undermine an interpretation that would categorically prohibit siege starvation tactics involving encircled areas with civilian populations). Contesting this latter view, see Dannenbaum & Dill, *supra* note 9, at 669.

These contradictions were also hinted at in the *Gisha* petition, yet remained unresolved. Encirclement warfare is prevalent in modern armed conflicts, often producing large-scale deprivation and inflicting immense suffering on the encircled civilian population.[242] Doctrinally, sieges and blockades are often articulated as outliers within IHL, exempt from the prohibition on civilian starvation.[243] This view relies on reading Article 49(3) of Additional Protocol I[244] as preserving earlier legal standards on encirclement warfare[245] and thus, permitting civilian starvation through blockades so long as it is not the explicit aim but merely an unfortunate consequence of pursuing a legitimate military objective.[246]

Nonetheless, critics of this narrow approach point to the risk of diluting the normative force of the civilian starvation prohibition by enabling belligerents to invoke almost any military objective to justify starvation-producing encirclement tactics.[247] Because an intent-based standard requires that starvation was the specific purpose of the operation, belligerents may lawfully pursue encirclement strategies while characterizing civilian starvation as an incidental or unintended consequence of otherwise legitimate military objectives—even where such starvation is foreseeable or even functionally integral to the strategy itself. They argue an intent-based reading is highly lenient toward belligerents and ineffectively regulates their conduct.

Moreover, a narrow reading of the prohibition might stand at odds with, or contradict, core IHL principles, primarily the principle of distinction between

242. Analyzing encirclement warfare, see generally Dannenbaum, *supra* note 149.

243. *See* Drew, *supra* note 17, at 321 (stating "it is not possible to conclude that the humanitarian initiatives outlined in the [*San Remo*] *Manual* have crystalized into customary international law," and thereby raising questions about the existence of a customary prohibition on civilian starvation in the context of naval blockade).

244. AP I, *supra* note 11, art. 49(3) ("[P]rovisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on *land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.*") (emphasis added).

245. *See* Drew, *supra* note 17, at 314 (further maintaining that "the fact that the paragraph does not change the law of naval blockade is made clear by article [49]" and the Committee Report); Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974–1977), vol. XV, at 279 (1978), https://tile.loc.gov/storage-services/service/ll/llmlp/RC-records_Vol-7/RC-records_Vol-7.pdf [https://perma.cc/L8DR-GDZT]. Importantly, note that AP Commentary 1987, *supra* note 141, at 2092, explicitly mentions that the exemption of blockades "appears to be correct."

246. Dannenbaum & Dill, *supra* note 9, at 668 (noting that "IHL does not prohibit sieges per se").

247. *See* Dannenbaum, *supra* note 206, at 726–42.

civilians and combatants[248] and the prohibition on collective punishment.[249] Doctrinally, even when combatants are embedded within a civilian population, civilians remain protected under IHL.[250] When belligerents impose sieges and blockades on civilians, they do so *by definition* because of the presence of adversary forces. Therefore, as generalized and unified practices encompassing combatants and civilians, sieges and blockades are in tension with, and likely to violate, the principle of distinction.

More broadly, IHL is largely silent on the power disparities between belligerents and civilians in the context of encirclement warfare. While state and non-state armed forces can organize and prepare for encirclement, civilians often cannot.[251] As a result, the effects of encirclement warfare are often not evenly distributed, but instead tend to hit first and most severely on society's most vulnerable. In practice, this often includes those who lack independent access to resources, mobility, or alternative means of survival,[252] such as children, older persons, persons with disabilities, as well as civilians whose vulnerability stems from poverty, displacement, or other structural constraints that remain legally invisible within IHL doctrinal framework. Encirclement thus not only raises concerns under the principle of distinction due to the harm it

248. AP I, *supra* note 11, arts. 48, 50, 51(2), 52(2), 85(3)(b); AP II, *supra* note 11, art. 13(2); Rome Statute, *supra* note 200, art. 8(2)(b)(iv); Nuclear Weapons Advisory Opinion, *supra* note 88, at 75, 98; ICRC Customary IHL Database, *supra* note 11, rs. 1, 6, 14.

249. AP I, *supra* note 11, arts. 48, 51(2), 52(2); ICRC Customary IHL Database, *supra* note 11, r. 1 (applicable in both international and non-international armed conflicts).

250. AP I, *supra* note 11, art. 50(3); *see also* Dannenbaum, *supra* note 17, at 407.

251. In *Gisha*, Israel asserted a similar point, by mentioning Hamas's alleged actions to seize, capitalize on, and divert aid while sacrificing Gazan civilians. Yet Israel raised this argument in support of its restrictions on humanitarian access, which foreseeably impact the civilian population, and refrained from providing clear data regarding civilians' food security or adequacy of supplies in Gaza. Beyond the specific dispute in Gisha, this dynamic illustrates how encirclement frameworks operate through restrictions on access to essential goods and infrastructure, which are formally directed at military objectives but functionally mediated through the civilian population. HCJ 2280/24 Gisha, Respondents' Preliminary Response, (Apr. 2, 2024), *supra* note 2, ¶ 39; HCJ 2280/24 Gisha, Respondents' Supplemental Notice (Aug. 20, 2024), *supra* note 72, ¶¶ 9, 11, 37. For views contesting Israel's claims expressed following the Gisha proceedings, see Jonathan Landay, *Exclusive: USAID Analysis Found No Evidence of Massive Hamas Theft of Gaza Aid*, REUTERS (July 25, 2025), https://www.reuters.com/world/middle-east/usaid-analysis-found-no-evidence-massive-hamas-theft-gaza-aid-2025-07-25/ [https://perma.cc/4GS2-F6L3]; Natan Odenheimer, *No Proof Hamas Routinely Stole U.N. Aid, Israeli Military Officials Say*, N.Y. TIMES (July 26, 2025), https://www.nytimes.com/2025/07/26/world/middleeast/hamas-un-aid-theft.html [https://perma.cc/QD6Y-MMTU].

252. *See* DE WAAL, *supra* note 10, at 49, 55, 183–95 (discussing how famine mortality reflects underlying social and economic vulnerabilities and disproportionately affects groups with the weakest access to resources and coping mechanisms, and pointing to the reemergence of conflict-induced famine atrocities in recent decade); *see also* Michael Fakhri (Special Rapporteur on the Right to Food), *Starvation and the Right to Food, with an Emphasis on the Palestinian People's Food Sovereignty*, U.N. Doc. A/79/171 (July 17, 2024).

inflicts on civilians but also produces patterns of deprivation that often disproportionately burden the most vulnerable members of the protected civilian category.

Thus, returning to the interpretive dispute surrounding the prohibition on starvation, an intent-based interpretation (one permitting unintentional yet foreseeable civilian starvation) is at odds with the logic of the principle of distinction. Even if civilian starvation is not the primary objective of a military action, its impact on civilians might render it an indiscriminate attack or a form of collective punishment, thus possibly violating the humanitarian principle of distinction and the prohibition on collective punishment.[253] This concern was raised, though not fully developed, by the petitioners in *Gisha*. Arguing that Israel's actions amounted to prohibited collective punishment, they stressed that "[a]n entire population which is not involved in combat suffers immensely on a daily basis . . . The residents of Gaza are 'captives.'"[254] Israel's Supreme Court dismissed the claim without substantive engagement, avoiding direct discussion of Israel's current or historical encirclement practices in Gaza[255] or their compatibility with the principle of distinction.[256]

What this silence highlights is a deep structural fracture within IHL: While certain IHL norms explicitly prohibit direct attacks on civilians, they provide much space for legitimation in the face of protracted, cumulative, life-threatening deprivation brought about by sieges and blockades. Civilians might be legally shielded from direct violence but are left exposed to the equally devastating deprivation harms of sieges and blockades. In this manner, IHL's conception of violence as immediate inadvertently grants belligerents the argumentative tools with which to conceal its slow and invisible commission.

253. *See* Melzer & Gaggioli, *supra* note 204, at 248 (asserting that the prohibition upon civilian starvation "[d]erived from the principle of distinction"); Dannenbaum, *supra* note 206, 743–44, 746.

254. HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 116–17.

255. Earlier commissions of inquiry (2010–2011) adopted differing positions as to the legality of Israel's blockade on Gaza, yet similarly determined that the blockade, in itself, did not constitute a violation of the prohibition on civilian starvation as a method of war. *Compare* Hum. Rts. Council, Rep. of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance, U.N. Doc. A/HRC/15/21 (Sept. 27, 2010), *with* U.N. Secretary-General, *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident* (July 2011) (also known as the Palmer Commission), *and* The Public Commission to Examine the Maritime Incident of 31 May 2010, Report—Part One (Jan. 2011) (also known as the Turkel Commission). *See* Melzer & Gaggioli, *supra* note 204, 249.

256. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 94.

3. Protection of Indispensable Civilian Infrastructure: Omissions and Distinctions

Alongside prohibiting the use of civilian starvation as a method of warfare, the Additional Protocols forbid the attacking, destruction, removal, or rendering-useless of objects indispensable to civilian survival, a prohibition considered to reflect customary international law binding in both international and non-international armed conflicts.[257] The Additional Protocols provide a non-exhaustive list of such objects, including "foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works,"[258] while additional protected objects might further include means of shelter, clothing, medical supplies, and infrastructure, and other objects.[259]

Combined with the obligation to facilitate humanitarian aid, these prohibitions form a broad foundation for protecting civilians' access to basic needs. This subsection will present the protection of indispensable civilian infrastructure, to advance the following argument: IHL draws a doctrinal distinction between the facilitation of humanitarian aid and the protection of essential infrastructure, fragmenting what, in practice, is an interdependent network that must operate as a unified whole if it is to sustain life. This is also illustrated in the *Gisha* proceedings, where, despite repeated references by petitioners to the destruction of vital infrastructure,[260] the court addressed civilians' needs primarily through the lens of aid flows and did not explicitly engage with the protection afforded to indispensable civilian infrastructure under IHL, even though the factual claims before it directly implicated such protections.[261] Beyond overlooking a critical doctrinal obligation, the omission

257. AP I, *supra* note 11, art. 54(2-3); AP II, *supra* note 11, art. 14; ICRC Customary IHL Database, *supra* note 11, r. 54.

258. AP I, *supra* note 11, art. 54(2); AP II, *supra* note 11, art. 14.

259. AP Commentary 1987, *supra* note 141, at 2103 (noting that this item list "should be interpreted in the widest sense, in order to cover the infinite variety of needs of populations in all geographical areas"); *see also id.* at 2012; ICRC Customary IHL Database, *supra* note 11, r. 54; Knut Dörmann, Louise Doswald-Beck & Robert Kolb, Elements of War Crimes Under the Rome Statute of the International Criminal Court: Sources and Commentary 363–64 (2003); Akande & Gillard, *supra* note 17, at 758–60.

260. *See, e.g.*, Petitioners' Main Argument, ¶¶ 13–14, 17–38, 45–73, HCJ 2280/24 Gisha (July 11, 2024) (Isr.), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_Main_Argument_He_110724.pdf [https://perma.cc/KBK4-JBNY]; HCJ 2280/24 Gisha, Petitioners' Supplemental Notice, (Nov. 22, 2024), *supra* note 193, ¶¶ 12, 14, 26, 36, 48–49; *see also* HCJ 2280/24 Gisha Petition, supra note 1, ¶¶ 121–27 (citing AP I, *supra* note 11, art. 54(1)–(2)) (referring to objects indispensable to civilian survival, specifically mentioning alleged destruction of agricultural land, fisheries, and production facilities in Gaza, without specifically addressing paragraph three).

261. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 93 (characterizing claims of "indirect harm to the civilian population" as objections to the "manner in which hostilities are being

masks how deprivation might stem not only from the obstruction of external relief but also from dismantling local life-sustaining infrastructure. It further erases the linkages between these two dimensions.

As noted earlier, both Additional Protocols safeguard indispensable civilian infrastructure.[262] Article 54(3) of Additional Protocol I creates an exception to this prohibition when these indispensable objects are used to sustain or support a belligerent's armed forces.[263] Nonetheless, it clarifies that such attacks remain prohibited, even if indispensable objects are used "in direct support of military action," if they are expected to result in civilian starvation or forced movement.[264] Therefore, foreseeable starvation triggers an absolute protection against harm to indispensable infrastructure even if it contributes to the enemy's war effort. This explicit protection, however, is absent from the provision on the facilitation of humanitarian aid, de facto establishing a distinction between starvation linked to humanitarian restrictions and that caused by the destruction of vital infrastructure.[265]

While the obligation to protect essential civilian infrastructure may appear distinct and separate in its legal formulation from the obligation to safeguard humanitarian access, the two operate in close conjunction on the ground, with the fulfillment of one often contingent on the observance of the other. Protecting civilians' access to their basic needs must be understood as a holistic, cumulative, and interdependent array of actions, systems, and capacities.

The difficulties caused by this doctrinal separation, and the refusal of Israel's Supreme Court to engage with infrastructure-related deprivation, are particularly evident in the context of Gaza's water crisis. In *Gisha*, the petitioners initially challenged Israel's closure of the water pipelines from Israel to Gaza.[266] Over time, their argument evolved into a broader claim of

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conducted," and therefore as falling outside the remedies sought in the petition); *see also id.* ¶¶ 16–18 (summarizing applicable legal obligations without reference to the protection of indispensable civilian infrastructure); *id.* ¶¶ 50–92 (addressing civilian needs primarily through facilitation of humanitarian aid).

262. *See* sources cited *supra* notes 256, 259.

263. AP I, *supra* note 11, art. 54(3). AP II does not include a similar provision in relevant Art. 14. *See* AP II, *supra* note 11; *see also* ICRC Customary IHL Database, *supra* note 11, r. 54 (noting "it is doubtful, however, whether this exception [to the protection of indispensable objects] also applies to [NIACs], because Article 14 of Additional Protocol II does not provide for it and there is no practice supporting it").

264. AP I, *supra* note 11, art. 54(3). The ICRC customary IHL study affirms state practice recognizing such protection in the face of civilian starvation, including among non-members of AP I. *See* ICRC Customary IHL Database, *supra* note 11, r. 54.

265. Akande & Gillard, *supra* note 17, at 765. *But see* Dannenbaum, *supra* note 206, at 729–38 (arguing for an integrated reading of Article 54 of AP I, according to which denial of indispensable goods for reasons unrelated to sustenance is prohibited whenever the perpetrator knows, with virtual certainty, that civilian starvation will occur as a result).

266. HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 25, 28, 41, 73.

multilayered deprivation, linking aid obstruction with the destruction of essential infrastructure.[267] They cited reports of Israel's attacks on, and deliberate impairment of, water and sanitation infrastructures, combined with restrictions, delays, and denials of vital supplies (including fuel for water pumps and chlorine used in water treatment facilities) as well as complete or partial limitations on Israel's sale of electricity to Gaza.[268] The Israeli government, for its part, recognized that "the war has reduced water availability due to infrastructure damage—including the destruction of Hamas' ground and underground infrastructure," but claimed that "the current water supply meets the population's humanitarian needs."[269] Meanwhile, outside the scope of the *Gisha* proceedings, international human rights organizations deemed Israel's practices in the context of the water supply to amount to acts of genocide and international crimes of extermination.[270]

The court echoed the Israeli government's view, noting that approximately ninety percent of Gaza's water supply came from local sources before the hostilities, not Israeli pipelines.[271] It concluded that, "thanks to improvement efforts," Gaza had adequate water to meet humanitarian needs.[272] Leaving aside the veracity of Israel's account of Gaza's local water supply, the Supreme Court focused solely on the Israeli government's efforts to restore water transfers while silencing discussion of the impact of Israeli military operations upon these local water sources and infrastructure,[273] as cited by the petitioners.[274] More generally, and notwithstanding the doctrinal discussion of the humanitarian

267. HCJ 2280/24 Gisha, Petitioners' Supplemental Notice, (Nov. 22, 2024), *supra* note 193, ¶¶ 5–58.

268. *Id.* ¶¶ 44–50.

269. HCJ 2280/24 Gisha, Respondents' Reply to Petitioners' Supplemental Notice (Nov. 14, 2024), *supra* note 60, ¶ 59; *see id.* ¶¶ 58–62 (implicitly attributing infrastructural harm to Hamas' embedders within civilian populations and infrastructure in the water and sanitation sector); *see also* HCJ 2280/24 Gisha, Respondents' Supplemental Notice (Aug. 20, 2024), *supra* note 72, ¶ 9.

270. Human Rights Watch, *supra* note 43.

271. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 82–83; *see* HCJ 2280/24, Respondents' Response to Petitioners' Supplemental Notice (Nov. 14, 2024), *supra* note 269, ¶ 58 (noting that Gaza's water sources comprise "three water pipelines from Israel, which continue to supply volumes similar to pre-war levels; desalination facilities in central Gaza; and approximately 170 water wells in Gaza").

272. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 82.

273. The limited treatment of this issue in the Gisha pleadings may also explain the court's lack of engagement with this prohibition's dimension. Additionally, as mentioned before, Israel is not a party to the Additional Protocols, and has not explicitly acknowledged within this proceeding the customary nature of the prohibition to attack objects indispensable to the survival of the civilian population. Nonetheless, the prohibition is widely recognized as customary international law. *See* ICRC Customary IHL Database, *supra* note 11, r. 54.

274. *See* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶ 126–29; Petr's Main Argument, HCJ 2280/24 Gisha - Legal Ctr. for Freedom of Movement v. Gov't of Isr., supra note 260, ¶¶ 13–14 (translation by petitioners, https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/

obligation to safeguard relief access, the *Gisha* ruling did not address whether continued attacks on indispensable civilian systems were legally prohibited under Article 54(3) of Additional Protocol I, particularly where starvation or forced displacement were foreseeable.[275] Instead, the court noted that the petitioners' claims concerning what it termed "military actions that created indirect harm to the civilian population and hindered the [relief] organizations' operations, including repeated evacuation of population centers, damage to civilian infrastructure, and specifically roads," amounted to a request for judicial scrutiny of the conduct of hostilities, which fell outside the scope of the legal remedies sought in the petition and involved matters subject to particular judicial restraint.[276]

This example also exposes deeper flaws in the court's analysis and in IHL's treatment of deprivation more generally: artificial division between external relief and internal infrastructure and capacities, which, in turn, leads to uneven doctrinal protection against deprivation and a failure to address the linkages and compounding effects between the two. The discourse of deprivation, as forcefully illustrated by the *Gisha* proceedings, often tends to focus on humanitarian relief while neglecting civilian infrastructure and local capacities and systems. Amid IHL's fragmented normative framework, the extent of doctrinal protection that civilians receive against deprivation hinges on how harm is legally characterized and litigated—whether as aid obstruction or as unlawful destruction of essential infrastructure.

C. Humanitarian Rules and Standards as Mutually Disabling

Thus far, this Article has used the *Gisha* case to attempt to untangle the tensions and contradictions between two core IHL provisions: the obligation to facilitate humanitarian aid and the prohibition on civilian starvation. Before concluding this doctrinal exploration, this Section will take a step back and

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Petitioners_Main_Argument_En_110724.pdf [https://perma.cc/2P47-U7GE]) (noting that, on the linkage between humanitarian aid and vital infrastructure:

> the ongoing hostilities throughout the Gaza Strip have resulted in the mass destruction of civilian infrastructure, residential buildings, roads, essential facilities and more. As the hostilities continue and humanitarian conditions remain dire, the strain on the healthcare system and hospitals grows. Medical crews have been working around the clock, in horrific conditions, for many months, to treat the masses of wounded and sick. The evacuation orders have forced residents to uproot themselves repeatedly, pushing them into inhumanely overcrowded areas with no basic infrastructure or services. 14. Creating impossible conditions that hinder the work of even the most professional and effective aid organizations is incompatible with "allowing and facilitating." Expanding the hostilities and uprooting hundreds of thousands of members of the protected population time and time again, without prior notice and without giving humanitarian organizations the opportunity to make preparations, ensures that they will not succeed in their role).

275. *See* sources cited *supra* note 264.

276. HCJ Gisha Ruling, *supra* note 1, at 90, 93; *see also id*. 91–92.

briefly examine the relations between the two. While ideally these IHL provisions would be perceived as mutually reinforcing and complementary in the protections they offer, this Article cautions that they can be read and deployed as mutually disabling. In the *Gisha* proceedings, the starvation rule and the aid-facilitation standard deflected and diluted each other's normative force. This dynamic stems, in part, from the uneasy juxtaposition of rules and standards within IHL, a tension that has long been identified as central to the structure of IHL and law more generally.[277]

In the context of the protection of basic needs under conditions of armed conflict, the prohibition on using civilian starvation as a method of warfare is often structured as a rigid rule, triggered by intent, while the obligation to facilitate humanitarian relief operates as a flexible, context-sensitive standard, activated when civilians are inadequately supplied for.[278] Yet, instead of alleviating civilian suffering, this *combination* of doctrinal tools might; narrow legal scrutiny and undermine doctrinal safeguards.

As the *Gisha* proceedings demonstrate, on the one hand, the elasticity of the standard on facilitating humanitarian aid can be used to neutralize the rule prohibiting civilian starvation. In practice, the ruling foregrounded Israel's efforts to facilitate aid, rather than humanitarian outcomes, to establish that Israel had upheld the standard of facilitating aid. Following this logic, the court held that Israel had not met the threshold for starvation. Yet the court concluded so without defining the standard of "allow and facilitate aid," and by refraining from engaging other IHL standards, including evaluating the military necessity for—or the proportionality of—aid restrictions. In other words, the court set aside the starvation prohibition by harnessing the vague standard of "allow and facilitate aid." More broadly, reliance on indeterminate facilitation standards might hollow out the normative force of otherwise clear prohibitions.

On the other hand, the rigidity of the starvation prohibition rule, understood here as a prohibition on the *intent* to starve, enabled the court to shift its legal analysis away from civilian outcomes and toward the motives of the State. The obligation to facilitate humanitarian aid is explicitly activated by concrete conditions and impacts on the ground, specifically when civilians are "not adequately provided" with essential supplies.[279] Yet, in the *Gisha* ruling,

277. KENNEDY, *supra* note 6, at 298. For a seminal work on the issue, see generally Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976).

278. AP I, *supra* note 11, art. 70; AP II, *supra* note 11, art. 18; ICRC Customary IHL Database, *supra* note 11, r. 55.

279. AP I, s*upra* note 11, art. 70(1). The close term "inadequately supplied for" also appears in the context of the law of occupation, triggering an obligation upon occupying force to agree to impartial relief efforts. *See* Fourth Geneva Convention *supra* note 11, art. 59; 2025 ICJ Advisory Opinion on Israel's Obligation, *supra* note 27, ¶¶ 102–09; Tamar Luster, *The ICJ Obligations*

the core question of whether the population's basic needs were being met, in practice, was displaced by a much narrower inquiry into whether Israel was showing willingness to facilitate aid, however limited. While the proceedings and final ruling did include discussion of specific and detailed aspects of relief efforts,[280] this Article reads this debate as significantly filtered through the implicit lens of intent. No determination was made on the living conditions faced by Gaza civilians, nor on whether their needs were fulfilled under Israel's aid access policies and restrictions. Under the court's intent-focused discussion of humanitarian aid access, the starvation prohibition effectively weakened the humanitarian aid-facilitation standard. Rather than complementing each other as one might expect, the two became mutually disabling, each deflecting the force of the other and undermining the critical scrutiny each was meant to enable.

IV. Critical Analysis: Temporality, Bureaucratic Logic, and the Slow Violence of Law

Having examined the limited nature of the obligations to meet civilian basic needs under IHL, this Article now turns to a key mechanism, *temporality*, through which these limitations are operationalized. In particular, the Article demonstrates how temporality can be deliberately employed by belligerents to structure how violence and harms are perceived, recognized, or silenced, especially within judicial proceedings such as *Gisha*.

Within legal adjudication, time is not merely a background condition but an object of legal construction and contestation, as parties advance competing temporal narratives to shape factual accounts and attribute—or rebut—legal responsibility. The passage of time can conceal or obscure violations of humanitarian obligations, especially when those violations stem from a series of actions that may seem mundane and merely technical but actually constitute an abusive impact over time and space. For example, as discussed earlier, the heightened authorization process governing the entry of "dual-use" items into Gaza[281] illustrates how administrative procedures can generate temporally extended uncertainty and delays, whose cumulative humanitarian effects may only become visible over time. Simultaneously, temporality distributes deprivation harms among their present and future victims and obscures their very victimhood. Children who endure starvation, for instance, may face

of Israel Advisory Opinion—Mass Deprivation and Preventive Protection, Articles of War (Feb. 4, 2026), https://lieber.westpoint.edu/mass-deprivation-preventive-protection/ [https://perma.cc/P2PZ-3PLC].

280. *See, e.g.*, HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶¶ 58–91.

281. *See* discussion *supra* note 177–180.

long-term physical and cognitive impairments that only become visible years later.[282] More generally, harms that unfold gradually may become visible only long after the initial acts that produced them, complicating the legal recognition of deprivation victims.

Humanitarian law, and perhaps law more generally, presupposes—and is structured to assess—specific obligations at discrete points in time and under relatively static conditions. Therefore, legal frameworks face structural challenges in responding to dynamic and evolving violations due to their inherent rigidity, as well as their inherent difficulties in "connecting the dots" between dispersed actions and harms that manifest only gradually, such as through slow and bureaucratic violence. In the case of IHL, the temporal dimension of relevant obligations often remains underdeveloped. More fundamentally, questions arise as to whether IHL can avoid reproducing and entrenching such forms of violence. Further, can the slow, invisible, and often bureaucratic aspects of deprivation be litigated at all?

The discussion that follows examines temporality along two intersecting planes. The first concerns how time is defined, and often concealed, within the structure of IHL obligations and doctrinal language. The second engages with the ways in which temporality is embedded in legal procedures and deployed by different actors, taking the competing temporal narratives advanced by the parties in *Gisha* as an illustrative example.

A. The Temporality of IHL Obligations

After presenting key IHL terms such as "technical arrangements" as doctrinally thin, I further claim that temporality operates as a mechanism through which this doctrinal indeterminacy persists. In practice, this indeterminacy enables these IHL terms to remain blurred and thereby legitimize deprivation violence rather than unearthing and mitigating it, through delays, deferrals, and temporal uncertainty regarding the scope and timing of humanitarian access.

On the surface, IHL rules pertaining to civilian basic needs, such as the obligation to facilitate humanitarian aid, imply urgency through phrasing such as rapidly.[283] Specifically, Article 70 of Additional Protocol I anchors

282. In the context of Gaza, see Ruby Mellen et al., *Gaza Is Going Hungry. Its Children Could Face a Lifetime of Harm*, WASH. POST (Apr. 19, 2024), https://www.washingtonpost.com/world/interactive/2024/gaza-food-famine-malnutrition-children-aid/ [https://perma.cc/5VX6-QSZG].

283. Fourth Geneva Convention, *supra* note 11, art. 23 (noting that "[s]uch consignments shall be forwarded as rapidly as possible"); AP I, *supra* note 11, art. 70(2) ("facilitate rapid and unimpeded passage"); *id.* art. 70(3)(c) ("nor delay their [relief consignments] forwarding"); *id.* art. 70(4) (facilitate their rapid distribution); ICRC Customary IHL Database, *supra* note 11, r. 55 (articulating a customary obligation to facilitate the "rapid and unimpeded passage of humanitarian relief"); *see also* AP I, *supra* note 11, art. 71(3) (on protection of relief personal,

an obligation to facilitate the "rapid and unimpeded passage of all relief consignments, equipment and personnel" and its "rapid distribution."[284] However, these norms provide no clear temporal standards. This indeterminacy is not resolved by authoritative interpretive sources. [285] Echoing this ambiguous treatment of temporality, the 2025 ICRC Commentary—published after the *Gisha* ruling was delivered—forcefully highlights the importance of rapid aid facilitation while also recognizing some delays are to be "expected" due to technical arrangements and inspections.[286] The tension remains unresolved, and more so, no clear normative benchmarks are offered to map the terrain of temporality.

In *Gisha*, for instance, the petitioners outlined how Israel's inspection, entry, and coordination procedures for humanitarian aid translate into delays and instability of aid access and in turn caused material conditions of concealed and remote deaths, injuries, and harms.[287] In response, Israel maintaining it worked to streamline and expedite necessary processes, and invoked its legal authority to determine necessary "technical arrangements" for humanitarian relief.[288] Nonetheless, the question of what temporal criteria technical arrangements must meet remains unasked and unanswered. What would be considered an unreasonable delay, for instance, how could such delays be detected, and how should their cumulative impacts be assessed? The *Oxford Guidelines* suggest assessing "undue" impediments by observing their impact on the civilian population.[289] Yet, such impact may not always be immediately visible, but may instead remain hidden and remote, both temporally and geographically.[290]

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noting that "only in case of imperative military necessity may . . . their movements temporarily restricted").

284. AP I, *supra* note 11, art. 70(2), 70(4).

285. The 1958 ICRC Commentary emphasizes that humanitarian aid "should be forwarded as rapidly as possible," without ascertaining any further temporal benchmarks. 1958 Commentary to GC IV, *supra* note 85, at 184. For similar views, see AP Commentary 1987, *supra* note 141, ¶ 2845.

286. *See* 2025 Commentary to GC IV, *supra* note 28, ¶ 2065. Further, while mentioning that "technical arrangements may not be such that they *de facto* amount to a refusal of consent, unduly hinder humanitarian operations or make their implementation impossible," the content of such undue hindrance remains vague.

287. *See, e.g.*, Petitioners' Response to the Supplementary Notice on Behalf of the Respondents in Preparation for Hearing, ¶ 44, HCJ 2280/24 Gisha (May 3, 2024) (Isr.), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2023/petitioners_response_030524.pdf [https://perma.cc/696K-6RTT] (unofficial translation) ("MSF also notes the lengthy process of coordinating with various authorities: . . . for a total of four or five weeks." Israel disputed these timelines and descriptions in its legal responses.); *see also id.* 42–43.

288. *See, e.g.*, HCJ 2280/24 Gisha, Respondents' Supplemental Notice (May 23, 2024), *supra* note 75, ¶¶ 20–26, 69; HCJ 2280/24 Gisha, Respondents' Response (June 28, 2024), *supra* note 2, ¶ 155, 264–66; *see also supra* notes 60–61.

289. *Oxford Guidance*, *supra* note 17, ¶ 72.

290. For an illustration of the difficulty of assessing such impacts in real time, see discussion *infra* note 295 (discussing impediments and delays affecting humanitarian medical missions to

As a result, its effects may be deferred and diffused, often materializing only beyond the temporal bounds of IHL's legal assessments.

Similar tensions arise in relation to the coordination of humanitarian convoys and their cancellation due to urgent military needs. Article 71 of Additional Protocol I allows temporary movement restrictions upon relief personnel only in cases of "imperative military necessity,"[291] with the Commentary further highlighting that even under these conditions, restrictions "should not be prolonged beyond what is necessary."[292] The cancellation of humanitarian aid distribution due to urgent military need in an isolated event thus might initially appear justifiable under the framework of relevant IHL obligations.

However, when viewed over time, the emergence of a recurring pattern of frequent cancellations might lead to a different conclusion on the legality of such cancellations, particularly against a structural background of widespread destruction of civilian infrastructure and collapse of life-sustaining systems. This temporal dimension matters because repeated short-term cancellations may cumulatively frustrate the effective delivery of relief, even where each individual decision is presented as operationally justified.

In the *Gisha* proceedings, petitioners cited data from the Office for the Coordination of Humanitarian Affairs to argue for frequent relief-mission cancellations and deteriorating aid access.[293] By contrast, Israel underscored in its different submissions the alleged efforts to continuously coordinate humanitarian relief missions and deconflict their routes, amid intense hostilities, operational constrains, and Hamas's use of civilians as human shields.[294] The court accepted Israel's account, citing Israel's report that seventy-five to eighty-three percent of requests to coordinate such humanitarian missions were approved between August and October 2024, and noting that some approved requests were not carried out due to "the organization's technical difficulties or difficulties accessing certain regions."[295] Taking such approval rates at face value, and without attempting to adjudicate competing factual claims regarding humanitarian access, the figure alone remains difficult to interpret in the absence of a broader factual context and timeline. In one submission, for instance, the petitioners relied on online statements by the Director-General of

North Gaza).

291. AP I, *supra* note 11, art. 71(3).

292. AP Commentary 1987, *supra* note 75, ¶ 2896.

293. *See, e.g.*, HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 20, 42, 44; Petitioners' Response and Request for Order *Nisi*, ¶¶ 47, 50, 60, HCJ 2280/24 Gisha (Apr. 19, 2024) (Isr.), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_Response_He_190424.pdf [https://perma.cc/R2KP-ZZA4]; HCJ 2280/24 Gisha, Petitioners' Response to Respondents' Supplemental Notice of 24.05.2024 (May 30, 2024), *supra* note 171, ¶¶ 32–35.

294. HCJ 2280/24 Respondents' Response (June 28, 2024), *supra* note 2, ¶¶ 149–61; HCJ 2280/24 Gisha, Respondents' Supplemental Notice (Aug. 20, 2024), *supra* note 72, ¶¶ 44–47.

295. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 76.

the World Health Organization indicating that, following the cancellation of several humanitarian missions to North Gaza, critically injured patients could not be evacuated from the area to medical facilities, nor could urgently needed medical equipment and blood units did reach hospitals there.[296] Thus, even a single cancelled or delayed mission to North Gaza may carry life-saving consequences. Hence, missing from this account was any judicial inquiry into baseline civilian needs in Gaza at these points in time, the cumulative impact of the cancellation of humanitarian missions on aid availability or medical and other services and systems relying on it, and the question of whether repeated cancellations and cumulative delays rendered the alleged aid facilitation as legally hollow.[297]

In this context, however, the normative guidance offered by the *Oxford Guidance* might again prove double-edged. The guidance accepts belligerents' determination of convoy timing and routing as necessary to protect humanitarian personnel *and* military operations,[298] but offers no clear standard for assessing the point at which military considerations *must* yield to humanitarian imperatives.

These uncertainties are not merely practical or operational but doctrinal in nature, reflecting the absence of clear temporal standards within IHL itself. Time itself—its thresholds, its interpretation, its legal relevance, and its normative consequences—remains underexplored and insufficiently defined within IHL. It remains unclear how long a hold-up must persist before it becomes a denial; how many disruptions must occur before a deliberate pattern

296. HCJ 2280/24 Gisha, Petitioners' Urgent Request for Interim Order, ¶ 9, (Oct. 14, 2024) (Isr.) [hereinafter HCJ 2280/24, Petitioners' Urgent Request for Interim Order (Oct. 14, 2024)], https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_Interim_Decision_Request_en_151024.pdf [https://perma.cc/C223-N67R]. In a later statement, the World Health Organization asserted that during October 2024, six humanitarian missions were facilitated out of twenty-one requests; the remaining requests were denied or impeded, and that the relevant mission took place near ten days later, on October 21. *See* Press Release, World Health Organization, Patients Transferred, Critical Supplies Denied as High-Risk, on WHO-Led Joint Mission in Northern Gaza Amid Intense Hostilities (Oct. 22, 2024), https://www.who.int/news/item/22-10-2024-patients-transferred--critical-supplies-denied-as-high-risk--on-who-led-joint-mission-in-northern-gaza-amid-intense-hostilities [https://perma.cc/32V4-LC2F]; *see also* Respondents' Response to Request for Interim Order, ¶¶ 2–3, 9–10, HCJ 2280/24 Gisha (Oct. 23, 2024) (Isr.) [hereinafter HCJ 2280/24, Respondents' Response to Request for Interim Order (Oct. 23, 2024)] (unofficial translation) https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_Response_Interim_Order_Request_EN_231024.pdf [https://perma.cc/74B9-YB3B] (acknowledging temporary restrictions on aid entry to northern Gaza due to security alerts and operational constraints, while asserting that humanitarian access had resumed at the time of the submission, subject to localized limitations stemming from ongoing military activity).

297. In the context of the legal obligation regarding aid facilitation, see Fourth Geneva Convention, *supra* note 11, art. 23; AP I, *supra* note 11, art. 70; AP II, *supra* note 11, art. 18; ICRC Customary IHL Database, *supra* note 11, r. 55; *see also* discussion *supra* notes 129–134.

298. *Oxford Guidance*, *supra* note 17, ¶¶ 66–67.

is recognized; or whether the accumulation of humanitarian destruction and harms shifts the normative benchmark of proportionality and necessity, and if so, at which point. Against this backdrop, the temporal under-development of legal terms such as "technical arrangements" leaves actors with considerable grounds to justify "slow violence," passing it off as an operational glitch.

More profoundly, however, this Article suggests that the logic and unit of analysis within IHL are episodic, isolated, and immediate, while deprivation is interconnected, evolving, and cumulative. Thus, deprivation is inherently prone to be sidelined and enabled.[299] In *Gisha*, as demonstrated above, the implicit refusal of Israel's Supreme Court to engage with cumulative, time-based harm[300] precisely reflects this structural omission: a legal indifference to the temporality and interconnectedness of deprivation. But rather than a mere doctrinal blind-spot, this omission allows the slow violence of deprivation to unfold, through the temporal gaps in legal protection and adjudication.

B. Legal Proceedings and Narratives of Time

Moving from the doctrinal level, this Section focuses on temporalities within legal processes, an, using the *Gisha* proceedings as a case study. The Article shows how the parties in *Gisha* advance competing temporal narratives—rooted in lived experience, procedural requirements, or bureaucratic logic—and how the court exercise discretion in defining temporal frameworks and delimiting the temporal scope of legal review. More broadly, this Section demonstrates how temporal frameworks structure the legal visibility of deprivation harms, exposing the inherently temporal nature of adjudicating, litigating, and judging these atrocities.

To illustrate, in early March 2025, the Israeli Government announced it was halting all humanitarian aid into Gaza and terminating its electricity sales to the Strip.[301] Despite the petitioners' request for urgent judicial interventions and interim measures,[302] the court concluded in its final ruling, issued three weeks later, that "the present proceeding is not the proper forum to address

299. *See* Eyal Weizman, Forensic Architecture: Violence at the Threshold of Detectability, 20 (2017); *see also id.* at 13–44 (discussing the "threshold of detectability," under which violence cannot be distilled, identified, or named).

300. *See generally* HCJ 2280/24 Gisha Ruling, *supra* note 1.

301. Emily Rose, Nidal Al-Mughrabi & Jaidaa Taha, *Israel Blocks Aid into Gaza as Cease-fire Standoff Escalates*, Reuters (Mar. 2, 2025) https://www.reuters.com/world/middle-east/israel-agrees-us-plan-temporary-ceasefire-gaza-pms-office-says-2025-03-01/ [https://perma.cc/PD7X-47CP].

302. *See generally*, HCJ 2280/24 Gisha, Ptrs' Urgent Request for an Interim Order (Mar. 2, 2025) (Isr.) [hereinafter HCJ 2280/24, Petitioners' Urgent Request for an Interim Order (Mar. 2, 2025)] (unofficial translation), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_Urgent_Request_Interim_Order_En_020325.pdf [https://perma.cc/NK5W-ZW6E].

these decisions, which reflect significant factual and legal changes."[303] By declining to substantively address this drastic development within the current proceedings, the court effectively excluded it from the temporal scope of its immediate judicial scrutiny and instead deferred any possibility of legal redress to future Supreme Court petitions. Amid the prolonged and evolving nature of deprivation, such determinations of timing and temporal scope are neither self-evident nor neutral. Instead, they condition which harms are legally mitigated, which are deferred, and which remain beyond judicial scrutiny.

At a surface level, the parties in *Gisha* differed on whether judicial intervention was necessary and, if so, on what timeframe. The petitioners sought immediate judicial measures to ensure rapid aid access and prevent further irreversible harm, while also pointing to pre-existing vulnerabilities that affected civilians in Gaza that predated the present hostilities.[304] In contrast, the state argued that judicial intervention was unwarranted and underscored its ongoing and future efforts to facilitate aid, framing the relevant temporal baseline as beginning with the events of October 7, 2023.[305]

Yet disagreements ran deeper, with the parties advancing clashing constructs of temporality and injecting different meanings into the protracted nature of deprivation processes.

On the one hand, the claims of the *Gisha* petitioners urge the Israeli government and the court to engage with the *lived time* of Gaza: the slow and invisible violence perpetrated on civilians forced to endure agonizing suffering in their prolonged wait for critical aid and medical relief, amid starvation and a healthcare system on the verge of collapse.[306] This narrative transforms time from a neutral, incidental backdrop into an active force of control. From this perspective, a close reading of the petition highlights the biopolitical[307]

303. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 2.

304. Petitioners attributed these pre-existing vulnerabilities to Israel's longstanding blockade and to what they characterized as a functionally continuous occupation. Petitioners further argued that Israel's obligations regarding civilian basic needs arise, inter alia, under the law of occupation. *See* HCJ 2280/24 Gisha Petition, *supra* note 1, ¶¶ 24–28, 126–29.

305. Respondents' Preliminary Response, HCJ 2280/24 (Apr. 2, 2024), *supra* note 2, ¶¶ 2, 7–11; Respondents' Response, HCJ 2280/24 (June 28, 2024), *supra* note 2, ¶¶ 2–24. As noted earlier, the state rejected the characterization of Gaza as occupied following Israel's 2005 disengagement and instead framed its obligations primarily within the law governing the conduct of hostilities and humanitarian access. *See* sources cited *supra* note 60.

306. *See* sources cited *supra* notes 33–38.

307. *See* Michel Foucault, The History of Sexuality, Vol. I: An Introduction 135–40 (Robert Hurley trans., 1978) (1976) (on bio-politics) (describing the shift from the sovereign "ancient right to take Life" to biopolitical power concerned with the administration and regulation of life at the level of populations, including the capacity to "disallow it [life] to the point of death"); *see also* Michel Foucault, Society Must Be Defended: Lectures at the Collège de France 240–45, 254 (Mauro Bertani & Alessandro Fontana eds., David Macey trans., 2003) (1975–76) (further describing the emergence of "new right . . . to make live

and necropolitical[308] power of time amidst Gaza's daily reality; under conditions of acute shortages, "daily life is militarized,"[309] and time itself can be harnessed as a coercive governance tool, precisely by subjecting access to life-sustaining resources to bureaucratic timing, procedural sequencing, and indefinite delays—delays that, in necropolitical terms, effectively shape who lives and who dies.[310] When deprivation is prolonged, every second matters, and every moment is engulfed in the possibility of death. Herein lies the horror of deprivation atrocities, constituting "an entire crowd of people who specifically live at the edge of life, or even on its outer edge—people for whom living means continually standing up to death."[311] Thus, the *Gisha* petitioners foregrounded the violence and weaponization of time.

On the other hand, the Israeli Government's legal representatives invoked time and temporality very differently. The state's litigators and, occasionally, the judges presiding over the case, framed *legal–procedural time* as an immanent logic of the judicial apparatus and litigation proceedings, as reflected in the exchanges discussed next.

The state, for instance, invoked the waiting periods observed after formally approaching the authorities before a petition may be filed with the Supreme Court,[312] emphasizing such periods were "not merely a formal requirement, but rather granting the relevant authorities the time to address the issue and respond to the claims."[313] Accordingly, the passage of time was measured institutionally, not by lived human experience but by the internal—and legally prescribed—rhythms of litigation. This framing of *legal–procedural time* reveals a paradoxical relationship to time within the legal system: Time is ever-present as a legal fiction structuring and governing procedure yet absent as a material coercive force capable of compelling responsiveness to human urgency in the face of life-threatening deprivation.

Additionally, the legal representatives of the Israeli government implicitly introduced *bureaucratic time*, which is associated with rational, structured, and ostensibly benign organizational decision-making processes. For example, Israel maintained that "the approval process for requests to bring in dual-use equipment [was] conducted in a professional and expeditious manner, with

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and to let die," grounded in state power over the biological life of populations); Jamie Allinson, *The Necropolitics of Drones*, 9 Int'l Pol. Socio. 113, 118–19 (2015).

308. *See generally* Achille Mbembe, Necropolitics (2019).

309. *Id.* at 82.

310. *Id.*; *see also* Bhungalia, *supra* note 110, at 355.

311. Mbembe, *supra* note 307, at 37.

312. *See also* Respondents' Supplemental Notice, HCJ 2280/24 (May 23, 2024) *supra* note 75, ¶ 10. On exhaustion of remedies, see generally sources cited *supra* note 26.

313. *See* Respondents' Supplemental Notice, HCJ 2280/24 (May 23, 2024) *supra* note 75, ¶ 10 (unofficial translation by author).

consistent efforts made to improve and streamline it."[314] In doing so, Israel narrated the passage of time during aid authorization and inspection processes as transparent, a managerial necessity that is inseparable part of legally allowed technical arrangements for the facilitation of humanitarian aid.[315]

In sharp contrast, the petitioners sought to recast this *bureaucratic time* as arbitrary and knowingly harmful, explicitly describing it as "bureaucracy that kills."[316] Returning to the theoretical concept of *bureaucratic violence*,[317] the petitioners' submission attempted to link temporality, bureaucratic procedures, and civilian deprivation. To this end, for instance, they gave accounts of the passage of time in the context of approval procedures for dual-use equipment as a forceful form of violence: "[T]he [medical aid organizations] describe schedules, schedules that I can call deadly because . . . our patients are dying while we wait for the State to approve entry of oxygen generators. They say these people could live if we had the medical equipment we need."[318] Thus, the petitioners depicted a unique form of violence, whose power (and ultimate justification) was rooted and camouflaged in bureaucratic regulations and directives that only *appeared* technical and neutral. In fact, they argued, these bureaucratic delays were actually disastrous when examined within their specific factual and structural context of severe supply shortages and continued risk of famine, demonstrated by various IPC assessments.[319] The petitioners' lead advocate implored the court to comprehend the gravity of the situation: "[W]e are talking about lethal bureaucracy, bureaucracy that kills people. So, the respondents can say, at the end of the day, 'we approve.' But what happens until the permits arrive?"[320]

During their deliberations, the Supreme Court justices appeared to have recognized the importance of time from the outset yet refrained from issuing

314. *See* Respondents' Response, HCJ 2280/24 (June 28, 2024), *supra* note 2, ¶ 122; HCJ 2280/24 Gisha, Respondents' Supplemental Notice (May 23, 2024), *supra* note 75, ¶ 20–26 (responding to court's request regarding medical equipment requests and approval timelines). *See generally* HCJ 2280/24 Gisha, Respondents' Supplemental Notice (Apr. 30, 2024), *supra* note 172 (arguing alleged delays in humanitarian convoy movements were exceptional and attributable to operational and security constraints).

315. *See* discussion *supra* notes 128–139, 287, 293and accompanying text.

316. HCJ 2280/24 Gisha, Hearing Transcript (May 5, 2024), *supra* note 74, at 4, ll. 28–29.

317. *See* discussion *supra* note 123.

318. HCJ 2280/24 Gisha, Hearing Transcript (May 5, 2024), *supra* note 74, at 4, ll. 25–27.

319. *See generally, e.g.*, HCJ 2280/24 Gisha, Petitioners' Supplemental Notice, (Nov. 22, 2024), *supra* note 193, (noting that residents in northern Gaza struggled for over forty days with severely limited aid despite an IPC warning of an imminent risk of famine requiring immediate action); Stéphane Dujarric, Spokesman U.N. Secretary-General, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General (Nov. 19, 2024), https://press.un.org/en/2024/db241119.doc.htm [https://perma.cc/573N-HMXW]; IPC Famine Review Committee, *supra* note 32.

320. HCJ 2280/24 Gisha, Hearing Transcript (May 5, 2024), *supra* note 74, at 4 ll. 28–29.

certain interim measures and excluded crucial developments from the temporal scope of review.

First, the court extended the case over multiple hearings, frequently requesting swift updates from the state regarding its purported timelines and measures to expand humanitarian access and capacities.[321] Unlike the provisional measures indicated by the ICJ within the genocide proceedings[322] (their questionable effectiveness aside), Israel's Supreme Court confined its interim decisions to procedural updates and legal clarifications. The court neither issued decisive interim relief nor reached a timely final determination, irrespective of the substantive content of any such ruling.[323] As noted earlier, the petition was debated for a year (March 2024 to March 2025), during which international reporting indicated an increased risk of famine, critical shortages of vital supplies, and severe limitations of health services, all accumulating over time.[324]

Further, while the court repeatedly extended proceedings to monitor evolving conditions and policies, it declined to incorporate into its legal analysis Israel's decision to halt all incoming humanitarian aid through its territory.[325] The announcement of Israel's decision in early March 2025, blocking humanitarian aid delivered on its territory and halting the sale of electricity to Gaza amidst "Hamas's refusal to accept the outline proposed by the U.S. President's envoy for the return of the hostages"[326] unlawfully abducted and suffering agonizing

321. *See* HCJ 2280/24 Gisha, Hearing Transcript (Apr. 4, 2024), *supra* note 75; *see also e.g.*, HCJ 2280/24 Gisha, Interim Decisions (Apr. 4, Apr. 11, Apr. 21, and May 6, 2024) (Hebrew) (requesting detailed factual updates regarding humanitarian access, water supply, medical equipment, and aid delivery mechanisms); *id.* (July 2 and July 21, 2024) (requesting additional submissions on legal issues, including the applicability of the law of belligerent occupation and references to proceedings before the ICJ). *See generally* Order *Nisi*, HCJ 2280/24 Gisha (June 10, 2024) (Isr.), https://supreme.court.gov.il/Pages/SearchJudgments.aspx?&OpenYearDate=2024&CaseNumber=2280&DateType=1&SearchPeriod=8&COpenDate=null&CEndDate=null&freeText=null&Importance=null&CaseMonth=null [https://perma.cc/8YXC-J7K6] (issued without taking a position on the petition and to obtain a comprehensive factual record, without granting operative interim relief).

322. *See* sources cited *supra* note 44.

323. *See* sources cited *supra* note 318. *See generally* Petitioners' Request for a Final Ruling, HCJ 2280/24 Gisha (Nov. 4, 2024) (Isr.), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/Petitioners_Verdict_Request_He_041124.pdf [https://perma.cc/AW2K-BGW2]; Decision, Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, HCJ 2280/24, (Nov. 5, 2024) (Sup. Ct. Nov. 5, 2024) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2024/11/5/2024-0-2280-65-1&fileName=85c4779d147040cc8ff539f0cffb0401&type=4[https://perma.cc/WU3M-UCS7] (declining to issue judgment at that stage in light of 'dynamic factual developments' and an upcoming judicial hearing).

324. *See, e.g.*, sources cited *supra* notes 32, 36–37, 70.

325. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 2.

326. *See generally* Respondents' Response to Petitioners' Request for an Interim Injunction, HCJ 2280/24 Gisha (Mar. 12, 2025) (Isr.), https://gisha.org/UserFiles/File/LegalDocuments/HCJPetition2024/State_response_He_120325.pdf [https://perma.cc/9Z3N-QHRL].

captivity, prompted the petitioners to seek urgent interim legal orders to ensure continued aid passage into Gaza.[327] However, rather than attempting to deliver a quick judicial decision—for either party—the court granted the state a ten-day response period during which critical aid remained blocked, and later refrained from granting any interim decisions on the matter prior to its final ruling.[328] As noted earlier, the final ruling deemed Israel's March 2025 ban on the entry of humanitarian aid into Gaza to lie outside the scope of the current legal proceedings, thereby leaving Israel's most drastic aid restriction devoid of immediate legal scrutiny.[329] This judicial choice,[330] particularly without referencing in this context the protections provided by IHL against the use of civilian starvation as a method of warfare,[331] is extremely telling.

Deferring the issue to future and uncertain legal proceedings, the final ruling laid the legal-temporal ground for extreme deprivation to persist in Gaza for the ensuing months. In doing so, the court could be seen as effectively allowing actions that raise grave concerns about potential violations of international law to continue unchecked and free of immediate judicial inspection. Further, the ruling could be perceived as providing these actions with the legal cover of a recently issued judicial decision of non-intervention. The legal proceedings thus became entwined with the slow violence of continued deprivation in Gaza, illustrating how legal inertia may allow such conditions to persist over time.

At the very least, this approach can be understood as a form of *judicial timelessness*, where the court outwardly appears to provide immediate legal responsiveness while simultaneously deferring substantive action.[332] This is a

327. *See generally* HCJ 2280/24, Petitioners' Urgent Request for an Interim Order (Mar. 2, 2025), *supra* note 301.

328. Decision, HCJ 2280/24 Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, HCJ 2280/24 (Mar. 4, 2025) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2025/3/4/2024-0-2280-76-1&fileName=643f1b89fe844e159a7352f358470866&type=4 [https://perma.cc/69QK-FBZB]. The court later denied the petitioners' subsequent request for a temporary order against Israel's decision to halt the sale of electricity to Gaza. *See* Decision, HCJ 2280/24 Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, HCJ 2280/24 (Mar. 10, 2025) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2025/3/10/2024-0-2280-77-1&fileName=1771f7f481724f26a9a358a2baf842bc&type=4 [https://perma.cc/WU3M-UCS7].

329. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 2.

330. *Id.* ¶ 2. (noting that the proceedings "are not the appropriate forum for addressing these decisions, which reflect a significant change in the relevant factual and legal circumstances. The same applies to recent developments concerning the resumption of hostilities following the end of the ceasefire").

331. *See, e.g.*, sources cited *supra* notes 188–192.

332. The term *timelessness* appears in legal scholarship in a different context concerning the adjudicating historical abuses, particularly emphasizing the "ongoing nature" of these injustices beyond conventional timeliness legal requirements. *See* Harison Citwaran, *Temporalities and the Epistemology of Historical Injustice Adjudication*, *in* Research Handbook on Epistemologies of Law 34, 42–44 (Luca Siliquini-Cinelli & Joshua Neoh eds., 2025).

paradoxical legal posture in which a court can appear responsive, yet evade temporally meaningful action including through its decision on relevant timeframes. In *Gisha*, the court arguably adopted this posture in response to the rapidly evolving factual and policy landscape, which allowed the court, on the one hand, to request frequent updates, but on the other hand to frame certain developments as exceeding the temporal scope of the existing petition rather than requiring immediate legal determination. By doing so, the court effectively relegated urgent and important legal adjudication to a limbo of ongoing updates and submissions, with no judicial resolution, and later deferred key decisions to future legal challenges.

Another example of this approach unfolded when, in mid-October 2024, the petitioners argued that humanitarian access into Northern Gaza had been severely curtailed and demanded that the court issue an urgent interim injunction.[333] After being granted a week to submit its response, the Israeli government maintained that the circumstances had changed and that humanitarian aid could be delivered into Northern Gaza.[334] The court chose neither to issue any interim measure nor to reach a final decision, instead scheduling the petition for a fifth judicial hearing.[335]

In the ruling itself, temporal issues were not entirely absent but rather circumscribed, as the treatment of this issue reflects: The court indeed recognized that during a two-weeks period in October 2024, "a sharp decline in the entry of aid into Gaza, and particularly into the North Strip" had occurred, due to the discrete circumstances of a national holiday in Israel followed by military-security constraints.[336] Yet, in response, the ruling merely stressed the "[i]mportance of planning and anticipatory preparedness to fulfill Israel's humanitarian obligations."[337] In doing so, the court thereby framed temporality primarily as a forward-looking administrative concern rather than a basis for immediate intervention or remedy, or as a cumulative process capable of generating harms that extend beyond the temporally delimited period under review. Further, the ruling leaves unexamined the cumulative effects that such

333. *See generally* HCJ 2280/24, Petitioners' Urgent Request for Interim Order (Oct. 14, 2024), *supra* note 295.

334. HCJ 2280/24, Respondents' Response to Request for Interim Order (Oct. 23, 2024), *supra* note 295, ¶¶ 2, 10. This statement was subject to temporary and localized coordination limitations "given the ongoing intensive operational activity in the Jabalia area." *Id.* ¶ 11.

335. Decision, Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, HCJ 2280/24, (Nov. 5, 2024) (Sup. Ct. Nov. 5, 2024), *supra* note 322.

336. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 72. Further, the court acknowledged that the Israeli government had underestimated the population residing in Northern Gaza during this period, while noting the state's clarification that the amount of humanitarian aid delivered to this area took into consideration a "stringent operational assumption regarding the size of the civilian population in the area, inter alia due to the possibility of discrepancies in the data." *Id.* ¶¶ 73–74.

337. *Id.* ¶ 74.

reductions may have on an already weakened community, its vital supplies, and life-sustaining services. Thus, this example further illustrates the ways in which the court neglected to situate events temporally or contextualize them, instead addressing Israel's actions and policies separately and in isolation, thereby constraining effective judicial scrutiny.

Like the White Rabbit from *Alice in Wonderland*, always looking ahead yet perpetually late,[338] the court never saw itself as positioned quite at the "right" moment in time and remained enmeshed in a self-perpetuating temporal bind. At one extreme, the Supreme Court justices explicitly clarified that the court's remedies were exclusively forward-looking, emphasizing that past events fell outside its judicial mandate and should be addressed through other mechanisms, such as a national commission of inquiry.[339] In doing so, the court implicitly positioned itself as arriving too late to effectively grapple with the implications of Israel's policies, which—given the cumulative and prolonged nature of deprivation—may only become visible in hindsight.[340] At the other extreme, the court deemed it was too early to intervene decisively, for example in response to Israel's complete block on humanitarian aid,[341] or deferred action based on the state's promises of imminent improvement, such as opening additional crossings or streamlining relief procedures.[342] The result was a temporal framing deployed to repeatedly justify judicial non-intervention.

The court operated within—and reinforced—the limited temporal framework it adopted, which in turn enabled judicial non-intervention and deferred legal scrutiny at critical moments. In this sense, Israel's Supreme Court did more than merely regulate and resolve a legal dispute; its judicial

338. *See generally* Lewis Carroll, Alice's Adventures in Wonderland (1866).

339. HCJ 2280/24 Gisha, Hearing Transcript (Apr. 4, 2024), *supra* note 75, at 8, ll. 31–32, 36, 40.

340. *See* IPC Famine Review Committee, *supra* note 70, at 2, 6, 17 (in the context of Gaza, plausibly affirming the onset of famine in parts of Gaza and noting that "[i]ncreasing reports of malnutrition-related deaths indicate that the most vulnerable in society are beginning to succumb," that "[t]he cumulative impact of the previous 22 months of conflict on populations and critical infrastructure is significant," and that "[s]hort periods of barely adequate food cannot compensate for long periods of inadequate food"). On the prolonged and cumulative nature of deprivation, see de Waal & Conley, *supra* note 17, at 274.

341. HCJ 2280/24 Gisha Ruling, *supra* note 1, ¶ 2.

342. *See, e.g.*, HCJ 2280/24, Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, Decision (Apr. 4, 2024) (Isr.) https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m15&fileName=24022800.M15&type=4 [https://perma.cc/YUA6-XAA2]; HCJ 2280/24, Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, Decision (Apr. 21, 2024) (Isr.) https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m17&fileName=24022800.M17&type=4 [https://perma.cc/MKY3-ABS5]; *See* HCJ 2280/24, Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, Decision (May 6, 2024) (Isr.) , https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/24/800/022/m18&fileName=24022800.M18&type=4 [https://perma.cc/CLU3-RD4K].

timelessness actively structured the legal and temporal conditions under which deprivation unfolded.[343]

Epilogue and Concluding Remarks

Following the *Gisha* ruling in late March 2025, Israel's complete closure, which cut off all humanitarian and commercial supplies into Gaza through Israel's territory, continued until May 2025.[344] Within days of Israel's Supreme Court's decision, the World Food Program announced that all twenty-five of its supported bakeries in Gaza had shut down "due to a lack of flour and fuel."[345] Its last remaining stocks for communal kitchens were exhausted the following month.[346] By early May 2025, the IPC's Famine Early Warning System was again signaling a resurgence of famine across the Strip, stressing that "[p]rolonged deprivation has progressively intensified vulnerability."[347] Between March and May 2025 alone, over fifty children were reported to have died of malnutrition,[348] a figure likely to underrepresent the true scale of casualties due to the near-collapse of Gaza's health system.[349] Starting in May 2025, Israel implemented a new aid-distribution model comprising a few centralized distribution centers operated by private entities—the Gaza Humanitarian Fund

343. Importantly, Israel specifically cited the *Gisha* proceedings before the ICJ in *S. Afr. v. Isr.* to demonstrate the robust judicial review of Israel's Supreme Court. *See* S. Afr. v. Isr., Verbatim Record, CR 2024/28, ¶ 60 (I.C.J. May 17, 2024), https://www.icj-cij.org/sites/default/files/case-related/192/192-20240517-ora-01-00-bi.pdf [https://perma.cc/K5NM-TJT2]. For additional arguments of Israel's legal system as ensuring accountability, see S. Afr. v. Isr., Verbatim Record (Jan. 12, 2024), *supra* note 64, ¶¶ 13–14.

344. Press Release, Security Council, Resumed Hostilities, Blocked Aid Destroying Ceasefire Gains in Gaza, Security Council Hears, U.N. Press Release SC/16023 (Mar. 18, 2025), https://press.un.org/en/2025/sc16023.doc.htm [https://perma.cc/K28V-XLC6]; Wafaa Shurafa, Samy Magdy & Tia Goldenberg, *Israel Says It Will Allow 'Basic' Aid into Gaza After Nearly 3 Months of Blockade*, AP News (May 18, 2025), https://apnews.com/article/mideast-wars-israel-gaza-hamas-hostages-18-05-2025-f325044576f1ac31e6083622242c9990 [https://perma.cc/X3LT-HLAK].

345. Press Release, World Food Programme, WFP Runs Out of Food Stocks in Gaza as Border Crossings Remain Closed (Apr. 25, 2025), https://www.wfp.org/news/wfp-runs-out-food-stocks-gaza-border-crossings-remain-closed [https://perma.cc/6XAD-P34F].

346. *Id.*

347. IPC, *2025 Update*, *supra* note 37 (further noting "[t]he situation remains highly dynamic as food stocks are exhausted, water becomes increasingly scarce, health care ceases to function, and social cohesion starts to break down").

348. *Gaza: 57 Children Reported Dead from Malnutrition, Says WHO*, U.N. News (May 13, 2025), https://news.un.org/en/story/2025/05/1163166 [https://perma.cc/CH42-669R]; Press Release, Office of the U.N. High Comm'r for Hum. Rts. [OHCHR], Gaza: UN Child Rights Committee Condemns Mass Starvation of Children amid Aid Blockades (May 21, 2025), https://www.ohchr.org/en/press-releases/2025/05/gaza-un-child-rights-committee-condemns-mass-starvation-children-amid-aid [https://perma.cc/9U3W-94M7].

349. IPC, *IPC Alert: Worst-Case Scenario of Famine Unfolding in the Gaza Strip* (July 29, 2025), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_GazaStrip_Alert_July2025.pdf [https://perma.cc/KU24-FGKD].

("GHF")[350]—in a manner that U.N. agencies and international organizations found to have severely violated humanitarian principles,[351] critiques echoed further within the ICJ Advisory Opinion on Israel's obligations.[352] The shift has forced thousands of Palestinians to travel long distances across difficult terrain to reach aid, often for limited supplies available only during short distribution windows.[353] Frequent use of force at or near these centers was reported, resulting in hundreds of additional casualties.[354] In August 2025, with reports of increased daily mortality linked to starvation, particularly among children,[355] IPC's Famine Review Committee has officially affirmed famine is occurring in parts of the Strip.[356] Behind the reporting of increasing malnutrition-related mortality are shattered lives, stories of untold resilience and struggles, largely unknown and unaccounted for. Following the October 2025 ceasefire agreement between Israel and Hamas, the IPC documented "notable improvements in food security and nutrition," yet reported that over 1.6 million people in Gaza were experiencing high levels of food insecurities, among which 100,000 people are estimated to experience catastrophic conditions, the most severe level of food insecurities under the IPC matrix.[357] Moreover, the situation remains

350. *See generally* Respondents' Update Notice, HCJ 44576/05/25 Gisha—Legal Ctr. for Freedom of Movement v. Gov't of Israel [hereinafter HCJ 44576/05/25 Gisha] (July 25, 2025) (Isr.), https://static.gisha.org/uploads/2025/07/State-Response-25.7.25.pdf [https://perma.cc/F8YF-6RGK].

351. Press Release, OHCHR, UN Experts Call for Immediate Dismantling of Gaza Humanitarian Foundation (Aug. 5, 2025), https://www.ohchr.org/en/press-releases/2025/08/un-experts-call-immediate-dismantling-gaza-humanitarian-foundation [https://perma.cc/MFD2-EUST]. The Gaza Humanitarian Fund has de facto replaced the U.N.-operated network of hundreds of civil aid-distribution points—many of which had been supported by communal kitchens and bakeries.

352. *See* 2025 ICJ Advisory Opinion on Israel's Obligations, *supra* note 27, ¶¶ 123–24 (noting "[t]he Gaza Humanitarian Foundation, a purported replacement for UNRWA, has been widely criticized by the United Nations and other international actors, and its operations have been alleged to be inconsistent with core humanitarian principles" and concluding that "under these circumstances, the United Nations, acting through UNRWA, has been an indispensable provider of humanitarian relief in the Gaza Strip"). For a critique of the advisory opinion in this respect, see Julia Emtseva, *The ICJ Obligations of Israel Advisory Opinion—How Indispensable Is the UN After All?*, Articles of War (Nov 19, 2025), https://lieber.westpoint.edu/how-indispensable-un-after-all/ [https://perma.cc/W5SS-MUQZ].

353. *Gaza: Nearly 1,400 Palestinians Killed While Seeking Food, as UN Warns Airdrops Are No Solution*, U.N. News (Aug. 1, 2025) https://news.un.org/en/story/2025/08/1165552 [https://perma.cc/T2M5-B7PC]; *This Is Not Aid. This Is Orchestrated Killing*, Médecins Sans Frontières (Oct. 7, 2025), https://www.msf.org/not-aid-orchestrated-killing [https://perma.cc/G3W2-ZXR6].

354. U.N. OCHA, *Humanitarian Situation Update #319 | Gaza Strip* (Sept. 4, 2025), https://www.ochaopt.org/content/humanitarian-situation-update-319-gaza-strip [https://perma.cc/48QK-BWNU].

355. IPC Famine Review Committee, *supra* note 70.

356. *Id.*

357. IPC, *Gaza Strip: Famine Conditions Offset, But Situation Remains Critical | 16 October 2025—15 April 2026* (Dec. 19, 2025), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/

fragile. The IPC continues to warn that "[u]nder a worst-case scenario, which would include renewed hostilities and a halt in humanitarian and commercial inflows, the entire Gaza Strip is at risk of [f]amine."[358]

After the *Gisha* petition was rejected in the court's detailed judgment of March 2025, four of the five *Gisha* petitioning organizations have lodged a second legal challenge to Israel's humanitarian policy, challenging the complete halt of humanitarian aid[359] and, in subsequent submissions, Israel's deployment of the GHF model.[360] Despite the petition requesting an urgent judicial hearing on this second challenge, Israel's Supreme Court granted no fewer than ten extensions to the state to submit its response.[361] Amidst these delays, the petitioners requested to withdraw their petition, arguing they have "realized that, in the context of the present petition, the state would not be subject to judicial scrutiny."[362] The court accepted this request and ordered the petition deleted without prejudice, concluding—despite the significant factual and legal changes regarding Israel's humanitarian access policy outlined above—that "the issues arising in the petition were debated at length under the petitioners' previous petition."[363] This judicial statement thus forcefully demonstrated the Article's earlier claim on the legal force of temporal deferral and delays.[364]

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docs/IPC_Gaza_Strip_Acute_Food_Insecurity_Malnutrition_Oct2025_Apr2026_Special_Snapshot.pdf [https://perma.cc/8D8J-B29H].

358. *Id.*

359. *See generally* Petition for an Order Nisi and Request for an Urgent Hearing, HCJ 44576/05/25 Gisha (May 18, 2025) (Isr.), https://hamoked.org.il/files/2025/1666780.pdf [https://perma.cc/8VE2-HEMT].

360. *See generally* Petitioners' Urgent Request to Schedule a Hearing or, Alternatively, to Erase the Petition, HCJ 44576-05-25 Gisha (Aug. 4, 2025) (Isr.) [hereinafter HCJ 44576-05-25, Petitioners' Urgent Request to Schedule a Hearing or, Alternatively, to Erase the Petition (Aug. 4, 2025)], https://static.gisha.org/uploads/2025/08/petitioners-request-to-set-urgent-hearing-or-erase-the-petition.pdf [https://perma.cc/8L7N-C266].

361. Decision, HCJ 44576/05/25 Gisha (July 24, 2025) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2025/7/24/2025-5-44576-13-1&fileName=66df023d980100000090037f6ae9ac51f&type=4 [https://perma.cc/JSS6-32DX]; *see also* previous decisions extending the duration for the state to submit its response, dated 28.05.2025, 30.05.2025, 05.06.2025, 12.06.2025, 16.06.2025, 24.06.2025, 03.07.2025, 06.07.2025, 20.07.2025, 22.07.2025, https://supreme.court.gov.il/Pages/SearchJudgments.aspx?&OpenYearDate=2025&CaseNumber=44576&DateType=1&SearchPeriod=8&COpenDate=null&CEndDate=null&freeText=null&Importance=null&CaseMonth=5.

362. Petitioners' Request to Delete the Petition, HCJ 44576-05-25 Gisha at ¶ 10 (Aug. 28, 2025) (Isr.) [hereinafter HCJ 44576-05-25, Petitioners' Request to Delete the Petition (Aug. 28, 2025)], https://gisha.org/UserFiles/File/Deletion-request-Gisha.pdf [https://perma.cc/49FB-YSXP].

363. HCJ 44576-05-25 Gisha – Legal Ctr. for Freedom of Movement v. Gov't of Israel, HCJ 44576-05-25 (Sept. 14, 2025) (Isr.), https://supremedecisions.court.gov.il/Home/Download?path=NetVerdicts/2025/9/14/2025-5-44576-21-2&fileName=111ad191384c4dc99dc7bdd2551735f4&type=4 [https://perma.cc/67TP-ZNSZ].

364. *See* discussion *supra* notes 322–43; *see also supra* Section IV.B.

This epilogue is meant not to evaluate the earlier *Gisha* ruling in hindsight. Instead, these developments reinforce how international legal obligations to ostensibly protect basic human needs during warfare can also be deployed by belligerents to disguise, legitimize, and entrench deprivation, as demonstrated by the earlier *Gisha* proceedings. The Article has further advanced the argument that this outcome is enabled by the indeterminate, ostensibly neutral, and technical legal discourses of IHL obligation to allow and facilitate aid.[365] Additionally, the IHL prohibition on the use of civilian starvation as a method of warfare gives rise to an intent-based discourse that, in turn, facilitates deprivation further and institutionalizes a separation between humanitarian aid and vital infrastructure despite the practical inseparability of the two.[366] These doctrinal shortcomings of relevant IHL obligations, this Article maintains, translate to an overly narrow construct of violence that might fail to fully capture the slow, invisible, and bureaucratic violence of deprivation.[367] Even in extreme cases, the events surrounding deprivation can be curated by state representatives and courts to remain below the threshold of illegality set under international law, thereby displacing urgent ethical, moral, and political debates. Last, this Article demonstrates that temporality plays a central role in sustaining these doctrinal structures and operationalizing temporal indeterminacies in practice, allowing deprivation to unfold and deepen while remaining legally tolerable. This dynamic stems from both the temporal underdevelopment of IHL obligations[368] and from the specific constructs of temporality as seen within the *Gisha* legal proceedings.[369]

This critique does not implicate only states or armed groups. Humanitarian organizations and civil society, too, navigate this fraught legal landscape. The *Gisha* petition likely emerged out of intensive strategic discussions within civil society that attempted to balance legal possibilities with political constraints. Petitioners may have little choice but to engage the court on its own terms, as it remains the only formal domestic avenue to challenge the state's conduct. The earlier *Gisha* proceedings might have pressured the Israeli government to expand aid access, at least temporarily or locally, for instance, through the reactivation of a key water supply just the day before a significant court hearing.[370] Yet, such developments, as important as they are to the affected individuals and communities, might simultaneously legitimize deprivation practice through the inadequacies of IHL, providing a veneer of legal responsiveness while masking deeper systemic injustice. Arguably, the state was aware of this,

365. *See* discussion *supra* Section III.A.
366. *See* discussion *supra* Section III.B.
367. *See* discussion *supra* Section II.
368. *See* discussion *supra* Section IV.A.
369. *See* discussion *supra* Section IV.B.
370. HCJ 2280/24 Gisha, Hearing Transcript (Apr. 4, 2024), *supra* note 75, at 13 ll. 10–41, 14 ll. 1–6.

directly engaging with the petitioners' claims on the merits throughout its submissions and thereby constructing a narrative of legality.[371] In fact, Israel cited the *Gisha* proceedings within the ICJ genocide case to demonstrate its independent judicial system and the availability of domestic judicial oversight and scrutiny.[372] Against this background, subsequent developments—primarily the request to withdraw the second *Gisha* petition[373] amidst Israel's Supreme Court handling of these proceedings—may also suggest a growing reluctance among some civil society actors to continue engaging in litigation that risks serving less as a vehicle for securing humanitarian access and mitigating deprivation harms, and more as entrenching the very practices it seeks to challenge.

More so, the *Gisha* petition's deliberation process and final outcome urge us to look harder at the legal terrain on which the petitioners were compelled to operate, which is characterized by IHL's fluid vocabulary "shared by military and humanitarian actors."[374] By accepting the framework of "facilitation" and procedural improvement, do civil society and humanitarian actors risk becoming implicated in the administration, normalization, and "management" of deprivation rather than challenging the terms and conditions that produce deprivation? The question invites us to reflect on the inevitable risks of lending legitimacy to a legal system and framework that ultimately upholds and stabilizes, rather than interrupts, deprivation. The bind in which the petitioners found themselves reflects a deeper structural reality, in both domestic and international legal proceedings surrounding conflict-induced deprivation: To seek justice through IHL, and through law more generally, means entering a temporal and normative framework that struggles to confront slow, invisible, and bureaucratic violence and to recognize deprivation atrocities as such. What is being left unsaid when we make the law our primary language for justice?

371. For Israel's submission, see generally discussion *supra* note 2. On illegality, see generally JOHNS, *supra* note 9.

372. On Israel's independent legal system, see S. Afr. v. Isr., Verbatim Record, CR 2024/2, ¶¶ 12–14 (I.C.J. Jan. 12, 2024). Specifically, on Israel's Supreme Court review of the *Gisha* proceedings, see S. Afr. v. Isr., Verbatim Record, CR 2024/28, 17-8 ¶¶ 60-1, 25 ¶ 21 (I.C.J. May 17, 2024) *supra* note 343. Further, while the jurisprudence emerging from Israel's Supreme Court in this context might prove fundamental in the international proceedings before both the ICC and ICJ, these additional international proceedings could potentially reproduce some of the legal failings described here.

373. *See generally* HCJ 44576-05-25, Petitioners' Request to Delete the Petition (Aug. 28, 2025), *supra* note 360; HCJ 44576-05-25, Petitioners' Urgent Request to Schedule a Hearing or, Alternatively, to Erase the Petition (Aug. 4, 2025), *supra* note 358.

374. *See* KENNEDY, *supra* note 6, at 299 ("The vocabulary used to justify military tactics can become stuck—difficult to use for humanitarian criticism.").