In the Supreme Court sitting as a High Court of Justice

High Court 2280/24

before: The Honorable President Yitzhak Amit
The Honorable Justice Noam Solberg
The Honorable Justice David Mintz

The petitioners: 1. Gisha – Center for the Protection of the Right to Movement
2. HaMoked for the Protection of the Individual, founded by Dr. Lotte Salzberger 3.
Physicians for Human Rights – Israel 4. Association for Civil Rights in Israel 5. Adalah – Legal Center for the Rights of the Arab Minority in Israel

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Respondents: 1. The Government of Israel
2. The Prime Minister 3.
The Minister of Defense
4. The Coordinator of Government Activities in the Territories

Those wishing to join: 1. Attorney Yitzhak Buntzel and 18 others

Objection to making the conditional order into an absolute order

Meeting dates: 24th of Adar 2, 5774 (4.4.2024) 27th of Nisan 5774 (5.5.2024) 4th of Bison 5774 (10.6.2024) 15th of Tammuz 5774 (21.7.2024) 23rd of Cheshvan 5775 (24.11.2024)

On behalf of the petitioners: Attorney Osnat Lifshitz; Attorney Siggi Ben Ari

On behalf of the respondents: Attorney Jonathan Berman; Attorney Jonathan Seton

On behalf of those wishing to join: Attorney Yehuda Eliyahu Pua; Attorney Michael Litvak

Judgment

President Yitzhak Amit:

.1 The petition before us concerns humanitarian aid intended for the civilian population.

In the Gaza Strip during the "Iron Swords" War - which began following the brutal terrorist attack suffered by the State of Israel on October 7, 2023. In that attack, thousands of terrorist operatives infiltrated the territory of the state under the cover of extensive rocket fire from the Gaza Strip, invaded population centers, including residential communities and IDF bases, and committed unbearably terrible atrocities against those in their path. In the process, approximately 1,200 people were murdered; thousands more were injured; and 251 men, women, children, and the elderly were violently abducted to the Gaza Strip. On that day, a severe and bloody war broke out between the State of Israel and the terrorist organizations in the Gaza Strip, which spread to additional arenas and left its mark on all

Aspects of life in the country. Many families have lost what is most precious to them, tens of thousands of Israelis have been forced to evacuate their homes due to security constraints, and even today, dozens of kidnapped men and women

They are still held captive by terrorist organizations.

.2 Throughout the months of the war, many changes occurred in the factual situation. The discussion of petitions against the conduct of the state during a state of war – when the factual picture is constantly changing – raises various complexities, but the need to conduct judicial review during wartime “is not foreign to us, given the reality of our lives, which is constantly dealing with terror directed against the civilian population of

Israel, and the need to respond to it while fulfilling the obligations imposed by law even during times of war" (HCJ 201/09 Physicians for Human Rights v. Prime Minister, paragraph 12 (19.1.2009) (hereinafter: HCJ 201/09)); and elsewhere it was emphasized that "it is precisely when the guns are firing that we need laws" (HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel, 507/02(1) (2006) (hereinafter: Public Committee case)). This is despite the fact that the circumstances of the war naturally affect the practical possibility of addressing certain claims of the parties, in particular with regard to

For such and such concrete incidents (ibid., at paragraph 13; see also the position of Honorable Justice D. Beinisch in HCJ 4764/04 Physicians for Human Rights v. Commander of IDF Forces in Gaza, P.D. Noach (5), 385-411 410 (2004) (hereinafter: HCJ 4764/04)).

As will be explained below, the State of Israel generally does not provide humanitarian aid itself, but throughout the period of the petition's hearing, the State of Israel allowed the entry and transfer of such aid. This, as explained to us by the respondents' representatives, was in accordance with the directives of the

The political and "clear instructions from the Prime Minister, the Minister of Defense, the Chief of Staff," which

"We are dealing with this issue with the understanding that our war is against the terrorist organizations and not against the civilian population, and that aid, food, and the humanitarian situation of the civilian population is also an Israeli interest [...]" (statements of the respondents' counsel in the hearing of 21.7.2024, on p. 8, p. 33-35 of the minutes; see also paragraph 31 of the respondents' statement of 23.5.2024; paragraphs 8, 36, and 285 of the reply affidavit; paragraph 9 of their statement of 20.8.2024; paragraph 8 of their statement of 14.11.2024).

It should be noted that after writing this ruling and shortly before signing it, the parties were informed of the decision of the political echelon from early March 2025 to order the halting of the entry of goods and supplies into the Gaza Strip via Israeli territory, as well as the decision of the Minister of Energy and Infrastructure to order the cessation of the sale of electricity to the Gaza Strip. In the circumstances of the case, I believe that the current proceedings are not the appropriate venue for appealing these decisions, which embody a significant change in the relevant factual and legal situation. The same applies to recent developments regarding the resumption of fighting after the end of the ceasefire. The ruling below will therefore address the factual and normative situation that prevailed prior to these developments.

Factual background

3. As stated, the factual picture that was relevant at the time the petition was filed, on 18.3.2024, underwent many changes in the months in which the petition was clarified. At the level of abstraction High, it can be said that in the first months of the ground maneuver in the Gaza Strip – which began at the end of October 2023 – the fighting focused on the north of the Strip, and in the following months the ground activity was expanded towards the center of the Strip and its south. Subsequently, the scope of IDF forces in the Strip was reduced, and the fighting format changed in the sense that emphasis was placed on raids and targeted operations in various areas. In the meantime, IDF forces maintained a presence on defined routes in the Strip, and at the same time carried out targeted activities in areas for years – more than once returning to areas where IDF forces had passed in the past, after the terrorist organizations had returned to these areas and established themselves in them.

Meanwhile, the IDF inflicted significant damage on the terrorist organizations in the Gaza Strip, led by Hamas – however, the scope of the clashes with the terrorist organizations, and the severe losses suffered by IDF forces in the process, indicate that these organizations maintained a significant presence in the field.

As emerges from the materials submitted, throughout the war, the terrorist organizations worked to assimilate among the civilian population in the Gaza Strip – that is, among those residents who do not belong to terrorist organizations.

terrorism and that they do not take part in the fighting. Meanwhile, the terrorist organizations sought to hide among concentrations of the civilian population, and carried out terrorist operations (including rocket fire) from the heart of the civilian population, and more than once even from within the humanitarian spaces that had been defined in advance. The terrorist organizations did not hesitate to use civilian structures – such as hospitals and schools – as bases of operations and as hiding places, and as will be explained later, they even sought to take control of humanitarian aid shipments for the purpose of military and economic strengthening, while neglecting the civilian population for which it was intended.

The aid.

.4 The IDF forces, for their part, took various steps to prevent and minimize harm to the uninvolved population in the Gaza Strip. However, and considering the conduct of the terrorist organizations, it is undeniable that the severe and prolonged fighting has also taken a heavy toll on the civilian population in the Gaza Strip. Indeed, "during fighting, as in our case, the civilian population finds itself unfavorably in the area where the fighting is taking place, and it is the first and main victim of a state of war, even when efforts are made to minimize harm to it" (HCJ 9132/07 Albassioni v. Prime Minister, paragraph 21 (30.1.2008) (hereinafter: Albassioni case)).

.5 At the same time, various international bodies operated in the Gaza Strip with the aim of assisting the civilian population, including by providing humanitarian aid free of charge. These bodies included the United Nations and various organizations on its behalf, various countries that launched aid initiatives, as well as non-governmental aid organizations (NGOs) (for convenience, all of these bodies will be referred to collectively as the aid organizations or the organizations). Various private sector entities also operated in the Gaza Strip, which sold humanitarian equipment for profit. The State of Israel, as a rule, therefore does not itself provide humanitarian goods (hereinafter also: aid or equipment) to the Gaza Strip, but rather allows their entry into the Strip as detailed below.

.6 The equipment from aid organizations was transported via several routes – by land, by sea. and by air – which will be discussed later. The process of providing aid via the land route included four main stages. In the first stage, the entry stage, the organizations submitted requests detailing the equipment they wanted to bring into the Strip, and the requests were reviewed by the IDF and by additional security agencies as necessary. As the requests were approved, the aid organizations moved the equipment to the relevant crossing, where it was inspected to ensure that the shipment matched what was stated in the request and that no equipment that would be used for terrorist purposes entered the Strip. During the collection stage, the equipment waited on the Gaza side of the crossing until the arrival of representatives of the organizations, who loaded the equipment onto trucks on their behalf;

And in the transportation phase, the organizations transferred the shipments to storage points or directly to the distribution destination. The collection phase and the aid phase were carried out, in many cases, with coordination between the IDF and the aid organizations regarding the movement of the latter in the Gaza Strip, with the aim of maintaining as much as possible the safety of the aid organization staff (however, as will be explained below, not all movements of the aid organizations in the Gaza Strip required such coordination, and not all movements were actually coordinated). In the final phase, the distribution phase, the organizations provided aid to the civilian population in accordance with their considerations and the priorities that guided their actions.

.7 Therefore, IDF forces were in constant contact with aid organizations, and worked to enable and facilitate the entry of humanitarian aid into the Gaza Strip and the organizations' efforts to deliver it to the civilians in need.

In doing so, IDF forces acted under the guidance of the senior political echelon, which emphasized on many occasions Israel's commitment to allowing the entry of aid to the civilian population.

In the Gaza Strip without quantitative restrictions. And in the words of the Coordinator of Government Activities in the Territories,

Major General Rasan Alian (hereinafter: Major General Alian), in one of the discussions held before us:

> "Since the beginning of the war, the IDF's humanitarian unit under my command has been responsible for implementing the policy and directives of the political echelon regarding the humanitarian effort in the Gaza Strip. [...] As the Prime Minister[,] the Minister of Defense and the Chief of Staff repeatedly emphasize, our war is against the terrorist organization, headed by the terrorist organization Hamas, and not against the residents of the Gaza Strip. [...] The State of Israel's humanitarian effort is an inseparable part and a necessary condition for fighting. This is our moral obligation, this is our legal obligation, and this is what allows us to realize the goals of the war" (Minutes of the discussion dated 10.6.2024, p. 24, pp. 41-35; and see also the minutes of the discussion dated 21.7.2024, p. 8, pp. 36-33; the minutes of the discussion dated 24.11.2024, p. 2, pp. 39-32 and p. 3, pp. 1-6).

The hearing on the petition and a summary of the parties' arguments

.8 The petition before us was filed by a number of human rights organizations who claim, in essence, that the provisions of international and Israeli law obligate the State of Israel to ensure the provision of humanitarian assistance to the civilian population in the Gaza Strip. The following are the remedies requested against the respondents:

> "A. Why will they not allow free, rapid and unhindered passage of all humanitarian aid shipments, equipment and personnel,

Especially to the northern Gaza Strip and the significant increase in aid
This;

b. Why will they not act in accordance with their obligations as an occupying power and immediately provide vital humanitarian assistance to the civilian population in the Gaza Strip, and especially to the north of the Strip, through the crossings between Israel and the Gaza Strip."

.9 On 4.4.2024, 5.5.2024 and 10.6.2024, hearings on the petition were held before the Court of Appeals (Acting President E. Fogelman and Justices Y. Amit and N. Solberg). After the third hearing, a conditional order was granted as requested in the petition, but this was "without taking a position, and in order to allow the court to receive a full and comprehensive factual foundation" (decision of 10.6.2024). After the submission of the reply affidavit on 28.6.2024, two hearings were held in opposition to making the conditional order into a definitive order: a hearing on 21.7.2024 before the original panel, and a hearing on 24.11.2024 (in the panel of Acting President Y. Amit and Justices N. Solberg and D. Mintz). During the hearings, arguments were heard on behalf of the respondents on an ex parte basis – with the consent of the petitioners – in which the court was presented with confidential information relating to the factual and legal issues raised by the petition. Between me and you, on 15.10.2024 – following factual developments that will be detailed below – the petitioners filed a request for an interim order ordering the respondents not to prevent the passage of humanitarian aid to the northern Gaza Strip. After receiving the respondents' response and clarifications, in a decision dated 30.10.2024 it was determined that there was no need at this stage to issue the requested interim order. An additional request on behalf of the petitioners for an interim order was submitted on March 2, 2025, following the new decision regarding the halting of supplies entering the Strip through Israel, however, since I found that the present petition is not the appropriate venue for discussing the aforementioned change in circumstances (as I noted in paragraph 2 above) – I did not find it necessary to address the petitioners' request on its merits.

It should also be noted that on September 5, 2024, a request to join the petition was submitted on behalf of various parties, including evacuees and relatives of victims and murderers of the October 7 attack. In the decision of September 8, 2024, it was noted that after reviewing the applicants' claims, the court found it sufficient to rely on written submissions, but during the hearing of November 24, 2024, the applicants' attorney was given the opportunity to present oral arguments. In some of the hearings, arguments were even presented on behalf of citizens whose relatives lost their lives in the October 7 attack and in the "Iron Swords" war.

.10 The petitioners detailed in their written submissions and in the statements they submitted throughout the petition hearing, the difficult humanitarian situation in the Gaza Strip and the hardships of the uninvolved population, many of whom were forced to evacuate their places of residence and rely on

The provision of humanitarian aid. It was further alleged that throughout the months of the war, the respondents created difficulties in the provision of aid, inter alia, by rejecting numerous requests for the entry of aid without factual justification; detaining delegations for long hours upon their entry into the Strip and during their movement therein; and refraining from protecting the delegations from incidents of looting that occurred within the Strip. In support of this, the petitioners referred to public statements and reports by various aid organizations, to press reports from around the world, as well as to analyses and position papers by academic figures. The petitioners further claimed that they are in direct contact with various diplomatic figures as well as with citizens in the Strip who fear identification.

.11 On the legal level, the petitioners argued that the respondents were under two main types of obligations. The first type concerned obligations that were negative in nature, namely the obligation to avoid harming the civilian population in the Gaza Strip, and to avoid thwarting or hindering the work of aid organizations in all matters relating to the provision of humanitarian assistance (paragraphs 91-89 and 95 of the petition). In this context, the petitioners referred, in essence, to various provisions in the international laws of war (also known as the “laws of armed conflict” or “international humanitarian law”). In addition, it was argued that the respondents had a “ positive obligation to provide for the humanitarian needs of the residents which are under the control of Israel, and with the obligation to ensure public order and the normal life of the citizens (see, respectively: paragraphs 98 and 87 of the petition; emphasis added – YA). These positive obligations arise, according to the petitioners, from the application of the international laws of belligerent occupation (also known as the "laws of occupation") – when the petition was filed, it was claimed that these laws applied to the northern Gaza Strip, and later the petitioners expanded the scope of their claim and claimed that the laws of belligerent occupation apply to the entire territory of the Strip. The petitioners found additional sources for the obligations of the State of Israel in international human rights law, which they believe applies in parallel with the laws of war; as well as in Israeli administrative and constitutional law. In addition, the petitioners claimed that the respondents are not complying with a number of additional obligations under international law, including the obligation to act humanely towards protected populations, the prohibition on collective punishment, and the prohibition on starving a civilian population as a method of warfare.

.12 The respondents, for their part, did not dispute the suffering and heavy toll that the ongoing fighting has exacted from the uninvolved population in the Gaza Strip. The respondents acknowledged the applicability of certain obligations on the part of the State of Israel in relation to humanitarian assistance to the civilian population in the Gaza Strip – and in particular obligations under the laws of war and Israeli administrative law – but they argued that Israel does not bear obligations under the laws of belligerent occupation. Hence, it is argued, the obligations of

The respondents focus on the need to enable and facilitate the entry of humanitarian aid, noting that the laws of war “do not establish an active obligation to supply food or other products, as the obligation described in the relevant sections is essentially passive – to enable and facilitate the free passage of humanitarian aid to the civilian population (subject to certain conditions and technical arrangements)” (paragraph 277 of the reply affidavit; emphasis added – YA). It was further noted that the relevant laws permit the respondents to take into account military and operational considerations when fulfilling their duties, including the need to prevent humanitarian aid from reaching terrorist organizations.

According to the respondents, the State of Israel acted throughout to enable and facilitate the transfer of humanitarian aid to the civilian population in the Gaza Strip, and in this context it met its obligations and even acted beyond what is required under the relevant laws. In this context, it was emphasized that, alongside the security-operational need to monitor the entry of aid into the Gaza Strip, there are no restrictions on the amount of humanitarian aid that can be brought into the Gaza Strip, and that the respondents' policy "is not derived from this or that figure regarding the minimum amount of aid needed [...] but rather is based on the assumption that the entry of humanitarian aid, and food in particular, should be permitted without quantitative restrictions" (paragraph 31 of the respondents' statement of 23.5.2024).

Although the parties did not dispute the existence of challenges in the provision of humanitarian aid, .13 throughout the hearing of the petition, disputes arose regarding the extent of the shortage of various types of equipment; the degree of effectiveness of the dialogue and coordination between the State of Israel and the organizations; and the degree of reliability of the factual basis presented by each party. Thus, the petitioners emphasized that they were based on the reports of objective parties who are not parties to the war, and who are acting with the aim of assisting the civilian population in the Gaza Strip and alleviating its distress; on the other hand, according to the petitioners, the data provided by the respondents express Israel's position as a party to the war, and in their opinion, this data was often presented in an incomplete or out of context manner.

The respondents, for their part, explained that when formulating the factual infrastructure, they relied on multiple sources of information: reports from IDF forces, including intelligence elements, the Coordination of Government Activities in the Territories Command (hereinafter: the CGC), as well as population officers (POs), whose role will be detailed below; open sources of various types, such as social networks and press publications; and ongoing dialogue with aid organizations and local elements in the Gaza Strip. In the respondents' view, there is no reason to rely exclusively on the organizations' reports, among other things, because sometimes it turns out that the information published by them is partial, especially since sometimes

There are differences between the organizations' examination methodology and that of the respondents themselves. For example, it was claimed that some of the requests for coordination of movements within the Gaza Strip that were classified by the organizations as rejected requests were in fact requests that were canceled by the organizations for their own reasons; and that some of the requests that were initially rejected were approved at a later stage (paragraph 46 of the respondents' announcement of August 20, 2024; also see the minutes of the hearing of May 5, 2024, p. 26, pp. 26-30). In addition, the respondents claimed that some of the data presented by the petitioners originated from institutions of the Hamas organization, which has a "known history of distorting facts and data, in order to create false public and media resonance and to slander the State of Israel" (paragraph 54 of the preliminary response; also see paragraph 211 of the reply affidavit).

Discussion and decision

.14 I will put the last before the first and say that after examining the parties' arguments and giving due weight to all the sources presented by them, I found that there is no need to issue an absolute order regarding the issues at the center of the petition.

Our approach will be as follows: We will begin by reviewing the relevant normative framework, and in doing so, we will examine whether the State of Israel bears obligations under the laws of belligerent occupation. We will then address the disputes regarding the factual framework, and we will detail the actions taken by the State of Israel with regard to the transfer of humanitarian aid intended for the uninvolved population.

Finally, and based on the conclusions that will be detailed, a number of issues will be highlighted with a forward-looking view. Future.

The State of Israel's obligations under international law

.15 In international law, it is customary to distinguish between treaty norms, which states agree to accept, and customary norms – which, as a rule, bind all states without the need to take steps to adopt them (Ruby Sibel, "The Sources of International Law," Ruby Sibel and Yael Ronen, International Law , 45-48 (Fourth Edition, Yael Ronen, ed., 2023) (hereinafter referred to as: International Law)). Israeli case law has clarified that customary international law will be considered part of Israeli law, except in the event of domestic legislation that directly contradicts it; in contrast, treaty international law does not automatically become part of the domestic law of the State of Israel (matter

The Public Committee, at p. 547; HCJ 69/81 Abu Aita v. Commander of the Judea and Samaria Region, P.D. 137(2), 197 234 (1983) (hereinafter: the Abu Aita case)). It was further clarified in the ruling that the framework

The relevant normative framework for the ongoing conflict between the State of Israel and the terrorist organizations in the Gaza Strip is the international law of warfare – and in particular the branch of law known as the law of international armed conflict (HCJ 3003/18 Yesh Din Human Rights Volunteers v. Chief of the IDF General Staff, paragraph 38 of the judgment of the Honorable Deputy President H. Meltzer and paragraph 2 of the opinion of the Honorable President A. Hayut (24.5.2018) (hereinafter: the Yesh Din case); pursuant to 6659/06 So-and-so v. the State of Israel, PD 62(4), 329 352 (2008) (hereinafter: the So-and-so case); the Public Committee case , at pp. 549-544).

16. The laws of war include various provisions – both treaty and customary – that specify the obligations of parties to a conflict towards civilians who are not participating in the fighting. In summary, it can be said that the laws of war oblige parties to allow and facilitate the passage of humanitarian aid to civilians who are in the conflict zone, even if they are civilians of the opposing party, but that when implementing this obligation, security and military considerations can be taken into account. For example, in accordance with Article 23 of the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War (hereinafter: the Fourth Geneva Convention), each party to the Convention is obliged to allow the free passage of various humanitarian goods for civilians, subject to certain conditions – including the right of the State allowing the passage of aid to determine the necessary technical arrangements; and subject to that State being satisfied that there is no real reason to fear that the aid will be diverted from its inten

no serious reasons for fearing […] that the consignments may be diverted from their destination ;("that the control may not be effective; or that this may yield a definite advantage ("advantage definite ") to the military effort or to the economy of the enemy, due to his ability to use aid instead of producing and supplying various goods himself.

In addition, Article 70 of the First Protocol Common to the Geneva Conventions of 1977 (hereinafter: the First Protocol) stipulates, inter alia, that each party to the conflict is obliged to allow and facilitate the rapid and unimpeded passage of aid missions, equipment and personnel intended for the civilian population, including that of the opposing party (Article 70(2)) – but this is subject to the right of the party allowing the transfer to establish technical arrangements for this purpose, including conducting searches (Article 70(3)(a) ((See also Articles 27 and 30 of the Fourth Geneva Convention, and in this context: High Court of Justice, 201/09, paragraphs 16 and 21; A Certain Matter , paragraph 17; and paragraph 80 of the Respondents' Preliminary Response).

17. The respondents stated that they accepted that their conduct would be examined in the light of these two rules – Article 23 of the Fourth Geneva Convention and Article 70 of the First Protocol – even without reference to the application of the Convention to the Gaza Strip. This, they said, was because, according to the accepted approach, Article 23 and the "core of Article 70" both reflect customary international law (paragraph 263 of the reply affidavit; and see also the Albesioni case, at paragraphs 13-14; HCJ 393/82 Jama'it Askan Al-Maalmon Al-Ta'uniya Al-Mahdouda Al-Masawiya v. Commander of the IDF Forces in the Judea and Samaria Region, P.D. 785 (4), 793 (1983) (hereinafter: Jama'it Askan case); HCJ, 201/09, at paragraph 15). Thus, the parties to the petition do not dispute that, under the laws of war, the State of Israel is obligated to enable and facilitate the transfer of humanitarian aid to the civilian population in the Gaza Strip, subject to Israel's right to determine the necessary technical arrangements and supervise the entry of the goods, and subject to the need to prevent the diversion of aid shipments and their reaching the hands of terrorist organizations.

18. We now turn to other obligations under international law that the petitioners have argued apply to our case. Thus, the petitioners have presented a concise argument that international human rights law – including the provisions of the 1966 Covenant on Civil and Political Rights and on the Rights of the Child – economic, social and cultural laws, to which Israel is a party, apply in parallel with the laws of armed conflict, and that the relationship between the two areas of law is complementary (paragraphs 88 and 145-141 of the petition). However, Israeli case law has long established that international humanitarian law (i.e., the laws of war) "is the 'special law' *(the specialis lex* (applicable to armed conflict), and that "where this law is lacking, it can be supplemented by 'international human rights law'" (Public Committee Matter, at p. 546; see also: A Certain Matter, at p. 353). Against this background, the respondents in our case stated that it is indeed possible to resort to international human rights law in order to supplement deficiencies in the laws of war, "However, this is, as stated, only when the applicable law is lacking – and this is not the case in our case" (paragraph 291 of the reply affidavit). Indeed, when the ruling was required to analyze the obligations of the State of Israel with regard to the civilian population in the Gaza Strip – even during periods of fighting against terrorist organizations – this was done from the perspective of the laws of war (see, for example: Yesh Din case, at paragraphs 38-39 of the ruling of Deputy President H. Meltzer; HCJ, 201/09 at paragraphs 14-16; Albesioni case, at paragraphs 12-14). In the circumstances of the case, I do not believe that there is justification to deviate from the trend This consistent case law.

19. Another branch of international law that the parties argued extensively about is the law of belligerent occupation – which establishes "unique" obligations for the occupying state towards the civilian population in an occupied territory (see, for example: HCJ 794/17 Ziada v. Commander of Forces

IDF in the West Bank, paragraph 26 (31.10.2017)). As stated, the petitioners sought to see the laws of belligerent occupation as a normative anchor for the application of positive obligations on the State of Israel, and in particular the obligation to provide humanitarian goods to the uninvolved population in the Gaza Strip. Hence the importance of the question of the applicability of the laws of belligerent occupation in our case – an issue to which I will now turn.

Does the law of belligerent occupation apply to Israel with regard to the Gaza Strip?

.20 The definition used in international law for the existence of a belligerent occupation is enshrined in Regulation 42 of the Hague Regulations Concerning the Laws and Customs of War on Land of 1907, which enjoy customary status (hereinafter: the Hague Regulations; and see the Jama'it Askan case , at p. 793; HCJ 3103/06 Waliru v. State of Israel, paragraph 33 (6.2.2011); HCJ 201/09, paragraph 15). This is the wording of Regulation 42 in English (see in this context HCJ 102/82 Tzemel v. Minister of Defense, P.D. 17(3), 365 372 (1983) (hereinafter: the Tzemel case)):

> "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation applies only to the territory where such authority is established, and in a position to assert itself."

.21 This general definition has been interpreted over the years by various international and national tribunals, as well as by scholars in legal literature. In accordance with the accepted approach, the test for belligerent occupation is a factual test that focuses on the situation on the ground as it exists, as opposed to speculations, assertions or statements by any of the parties to the conflict (Tzemel case, at p. 372; Roy Scheindorf and Eran Shamir-Borer, "(The) Absence of the Application of the Laws of Belligerent Occupation with Respect to the Gaza Strip," Legal Studies 34, 403 409 (5771) (hereinafter: Scheindorf and Shamir-Borer)). The parties to the petition focused their claims on three factual criteria, which serve as cumulative auxiliary tests for examining the existence of belligerent occupation: (a) the physical presence of the foreign force in the territory in question; (b) the ability of the foreign force to exercise governmental powers in the territory; and (c) the loss of the ability of the previous sovereign to exercise governmental powers in the territory (see paragraph 96 of the petitioners' notice of 30.9.2024; paragraph 240 of the reply affidavit; and see Hila Adler, "The Law of Occupation," International Law , 403, 409-408 (hereinafter: Adler); Shany Yuval, "Faraway, so Close: The Legal Status of Gaza after Israel's Disengagement," HEB. UNI. INT'L . **(hereinafter :** Shany L.

22. The question of the existence of a belligerent occupation in the Gaza Strip is not examined in a vacuum. This is because case law has long established that following the Israeli disengagement from the Gaza Strip in 2005 – after which Hamas took control of the Strip in 2007 – Israel no longer serves as a belligerent force.

occupier in the Gaza Strip, with all that this implies in terms of international law. In the ruling in the Albassioni case, issued in January 2008, President D. Beinisch stated:

> "Since September 2005, Israel has no longer had effective control over what is happening in the Gaza Strip. The military government that was previously imposed in this area was abolished by government decision, and Israeli soldiers are not permanently stationed in this area, nor do they manage what is happening there. Under these circumstances, the State of Israel is not under a general obligation to care for the welfare of the residents of the Strip and to maintain public order within the Gaza Strip, according to the entirety of the laws of occupation of international law. Israel also does not have the effective ability in its current status to impose order and manage civilian life in the Gaza Strip" (ibid., paragraph 12).

This determination has been confirmed several times in case law (Case Cf., at paragraph 11; High Court of Justice 9594/03 B'Tselem – Israeli Information Center for Human Rights in the Territories v. Chief Military Advocate, Paragraph 13 of the judgment of President D. Beinisch and paragraph 2 of the opinion of Justice A. Hayut (21.8.2011); Yesh Din matter, in paragraph 51 of the judgment of Deputy President H. Meltzer and paragraph 8 of the opinion of President Hayut; A.A. 993/19 Pluni v. Ministry of Defense, paragraphs 29 and 114-112 (5.7.2022) (petition for another hearing was rejected: DNA 5653/22 Pluni v. Ministry of Defense (15.2.2023)); HCJ 7439/23 Eloached v. Israel Defense Forces, paragraph 12 .((31.10.2023)

[In a footnote: The petitioners emphasized that in their view the Israeli occupation did not end with the disengagement from the Gaza Strip, but “only changed its nature” (see, for example, paragraph 57 of their statement of September 30, 2024) – although in the same breath they noted that they “do not insist” that this court will decide "whether the occupation has continued since 1967 or ended with the withdrawal of military forces in 2005" (ibid., at paragraph 79). Indeed, it seems that this issue is not necessary for deciding the petition, but I have seen fit to emphasize that the petitioners' position is contrary to the consistent case law of this Court, from which there is no room for deviation.]

We will therefore proceed to analyze the three factual criteria to which the parties referred as criteria .23
for the question of the existence of a belligerent attitude – and in this context I will already note that a significant part of the factual infrastructure that served as a basis for deciding on the issue originated in confidential information presented by the respondents in the capacity of one party. Naturally, it is not possible to provide details about the confidential material presented for our review, or about the sources that led to its formulation, and therefore it is not possible to outline in this judgment the full considerations and reasoning that led me to my conclusion. However, the situation in which parts of the judicial review and review process are not visible to the public and the petitioners is an unfortunate necessity in the security context we are dealing with (see and compare, with the necessary changes: HCJ 3128/12 Masalmani v. The Military Commander of the Judea and Samaria Region, paragraph 8 (7.5.2012); HCJ 5555/05 Federman v. Major General of the Central Command, PD Net(2), 865 869 (2005); Dafna Barak-Erez, "Administrative Evidence," Miriam Naor , 85, 118-121 (Aharon Barak, Dafna Barak-Erez, Michal Gal, Ronen Poliak, Avishalom Westreich and Stav Cohen eds., 2023); Yitzhak Zamir Administrative Authority , Volume 4 – Judicial Review Procedures, 2854 (2017)).

I say right now that based on an examination of the data presented before us, my conclusion is that .24
Israel is not serving as an occupying force in the Gaza Strip.

The first criterion – physical presence: The parties' arguments raise certain disputes regarding the requirements for the application of this criterion, for example regarding the nature and scope of the required presence, and whether actual presence ("on the ground" or "on boots ") is required or whether the ability to send forces to the area in a reasonable time is sufficient. However, although there have been certain changes in the scope and format of the Israeli presence in the Gaza Strip throughout the fighting, there is no dispute about its very existence. Under these circumstances, and bearing in mind the conclusions that will be detailed below regarding the two remaining criteria, I did not see a need to address the disputes that arose regarding the first criterion. However, more than necessary, I would point out that the petitioners' claim that Israel is capable of sending soldiers to the entire area of the Strip in a reasonable time is, in my opinion, an extremely tenuous claim, given the intense fighting that took place in the Strip and the losses that the IDF suffered during the raids in various areas (see in this context: A Certain Matter, at paragraph 11; Ariel Tzemach, "What "Israel's Legal Obligations Towards the Population of Gaza?" Law and Government 12, 83 107 (5770) (hereinafter: Tzemach); Shany, p. .(18

The second criterion – Israel's ability to exercise governmental powers in the Gaza Strip: .25

The ruling clarified that this criterion focuses on "the question of whether the military force has the ability to

to step into the shoes of the authorities of the previous regime, and not necessarily whether it did so in practice" (Tzemel case, at p. 373 (emphasis in the original – YA); see also HCJ 574/82 Al-Nawar v. Minister of Defense, PD 33(3), 449 458 (1985) (hereinafter: Al-Nawar case)). In other words, the question is not whether Israel actually exercises governmental powers in the Gaza Strip, nor whether it has declared its intention to do so or has designated a unique governmental framework for this purpose (see also Abu Aita case, at p. 309). The question that must be examined is whether Israel has established effective control over the territory of the Gaza Strip to such an extent that it allows it to step into the shoes of the previous regime, when in our case the parties agreed in their claims that the same "regime" with respect to which the criteria will be examined

The factual evidence is the terrorist organization Hamas.

In this context, it has been noted in the literature that "a mere military invasion will not automatically trigger the laws of occupation," and that "this is also true for other types of battlefields, such as areas of withdrawal, and for any other time when the occupier does not exercise effective control and for a reasonable and stable period of time" (Adler, at p. 409 and p. 28). Therefore, it has been noted, "it is necessary to show that the occupier has acquired effective and relatively stable control, geographically and over a period of time, which allows the establishment of an operational authority, with a reasonable military effort" (ibid.; see also Tzemach, at p. 88). The position was further expressed that "the laws of belligerent occupation do not apply to a territorial cell in which the military forces

Combat operations are conducted beyond a certain intensity threshold, and only the laws of conflict will apply to the area.

"The fucking one" (Scheindorf and Shamir-Borer, on p. 417; also see Tzemach, on p. 102).

26. The question of Israel's ability to exercise governmental powers in the Gaza Strip is a factual question that should be examined in light of the obligations imposed on an occupying power - that is, in light of those obligations that the State of Israel would be required to fulfill, if it were determined that the laws of belligerent occupation apply in our case. This is against the background of the understanding that there is generally no reason to impose on states obligations that they are unable to fulfill in the first place (Scheindorf and Shamir-Borer, at pp. 412, 421 and 427; Tzemach, at p. 94; Shany, at p. 19). In order to explain the matter, we note that according to Regulation 43 of the Hague Regulations, a power that has gained effective control over foreign territory is required to take all measures in its power to restore and ensure, to the extent possible, public order and life (" to

202/81 Tz"Beg and Rao"; restore, and ensure, as far as possible, public order and safety Tabiv v. Minister of Defense, P.D. 30(2), 622 629 (1982) (hereinafter: Tabiv case); Jama'it case

Askane, on p. 797).

Against this background, the ruling stated: "What is ensuring order and public life? The obvious answer is: the operation of proper government in all its branches, which are practiced today in a reformed country, including security, health, education, welfare, but also, among other things, quality of life and transportation" (Tabiv case, at p. 629). For example, the occupying power is required to do "everything in its power to prevent, to the extent possible, the reduction of trade or the development of unemployment"; to provide electricity to the local population; to "ensure, if necessary, the proper and effective operation of the penal laws and to prevent crime and anarchy"; to take measures to deal with illegal construction; and "to ensure that the doors of the courts are open to the residents of the occupied territory, and that the courts operate properly" (see, respectively: Abu Aita case, at p. 314; HCJ 256/72 Jerusalem District Electric Company Ltd. v. Minister of Defense, P.D. 27(1), 124 138 (1972); HCJ 358/88 Association for Civil Rights in Israel v. Major General of the Central Command, P.D. Magg (2), 529 539 (1989); HCJ 548/04 Amana – Gush Emunim Settlement Movement v. Commander of IDF Forces in Judea and Samaria, PD No. 3, 373, 379, 383 (2004); HCJ 337/71 Al-Jama'ah Al-Masihiya La'rashi Al-Maqdashah v. Minister of Defense, PD 22(1), 574, 583 (1972); also see the case of Jama'at Askan, at p. 804; and the case of Yesh Din, where President A. Hayut referred to "'policing and enforcement' measures such as arrest and interrogation, which are characteristic of dealing with violent disturbances occurring in the territory under belligerent occupation" (in paragraph 8 of her opinion). The occupying power was also required to serve "as the manager and producer of the fruits of the public buildings, lands, forests and agricultural farms" that belonged to the to the previous regime (HCJ 285/81 Al-Nazer v. Commander of Judea and Samaria, 701 (1), 704 (1982) (hereinafter: the Al-Nazer case); Regulation 55 of the Hague Regulations).

27. Therefore, a military force that has acquired effective control over foreign territory bears extensive and significant obligations in relation to that territory and the local population that resides therein. Does the State of Israel possess the capacity to fulfill these obligations?

I believe the answer to this is no.

As emerges from the factual data presented to us, IDF activity in the Gaza Strip throughout the fighting was generally characterized by a temporary nature, with IDF forces operating in demarcated areas in order to achieve a concrete military objective, and then withdrawing from them – and, if necessary, returning to limited sorties in these areas later (paragraphs 48-49 of the respondents' statement of September 12, 2024; paragraph 14 of their statement of November 14, 2024). Along the way, IDF forces waged intense combat against the terrorist organizations, which maintained a presence in large areas of the Gaza Strip and constantly sought to harm

IDF forces and withdraw them from the areas they entered. Although, in specific areas in the Gaza Strip – and in particular in the Netzarim Corridor and the Philadelphia Axis – IDF forces maintained a more significant presence in terms of time and the scope of forces (paragraph 48 of the respondents' statement of September 12, 2024), intense fighting against the terrorist organizations also took place throughout the area surrounding these areas. Even if I assume for the sake of discussion that IDF forces have gained effective control over some of those specific areas – and I do not believe that we have been presented with enough data to determine this positively – it is still a long way from here to determining that this establishes effective control for the IDF over the entire territory of the Strip, and unfortunately over those areas where a civilian population resides that was entitled to receive humanitarian assistance from the hands of an occupying power under the laws of belligerent occupation (see and compare in this context: Tzemach, at pp. 97, 101-102).

28. The petitioners believed that the State of Israel's conduct in relation to humanitarian aid demonstrates its ability to exercise governmental powers in the Gaza Strip, inter alia, in view of Israel's control over traffic at the crossings to and from the Gaza Strip. I cannot accept this argument, since control over routes of entry and exit from the Gaza Strip does not in itself result in the ability to control

Living within the Strip (see in this context paragraph 64 of the respondents' announcement of November 14, 2024; Eyal Benvenisti, "'If you besiege a city... you shall not destroy itself' – on proportionality in a long-term siege" Legal Studies 34, 461-464 (5771)) – just as imposing a siege on a territory does not automatically lead to the application of the laws of belligerent occupation (Tzemach, at pp. 93-94).

29. The petitioners further claimed in this context that Israel controls the movements within the Gaza Strip, and that the citizens in the Gaza Strip are dependent on Israel to receive aid. This, they claim, is because Israel's consent is necessary for the introduction of aid into the Gaza Strip and for the coordination of its movement by the organizations. However, it appears that this claim does not accurately describe the factual situation. The respondents emphasized that the dialogue with the organizations regarding the coordination of their movements within the Gaza Strip is “recommended for the organizations” in order to increase their security – however, “most of the movements of the international aid organizations in the Gaza Strip since the beginning of the war are carried out at their discretion, even without coordination with the forces, or contrary to the recommendation, and sometimes even without updating the Israeli side, and the respondents do not have control, as claimed, over the movements of the aid organizations” (paragraph 150 of the reply affidavit; also see paragraph 46 of the respondents’ announcement of August 20, 2024; paragraphs 41 and 64 of their announcement of November 14, 2024). The respondents also clarified that “the areas ‘recommended for coordination’ are areas that are located in areas where fighting is taking place or where coordination is recommended due to other operational considerations,” and that the requests for coordination in these areas are mostly approved; on the other hand, “a significant portion

of the areas in the Gaza Strip are not defined as 'recommended for coordination,' and aid organizations generally move in them without any coordination" (paragraph 45 of the respondents' statement of August 20, 2024). Therefore, I cannot accept the claim that Israel controls movement within the Gaza Strip in a way that indicates the ability to exercise governmental powers in this area - and in any case, the existence of connections, coordination, or cooperation with various bodies regarding movement within the Gaza Strip does not in itself indicate Israeli control over the Gaza Strip.

.30 The petitioners further argued that the fact that the respondents acted to evacuate the population from areas Various in the Strip, indicates Israeli control over the movements of the civilian population. I cannot accept this claim either. The respondents clarified that the IDF did indeed call on civilians to evacuate from areas where there was particularly intense fighting, using a variety of means, including leaflets and SMS messages, in order to reduce the risk posed to civilians and increase their access to humanitarian aid (Minutes of the hearing dated 4.4.2024, p. 28, p. 23-21; paragraphs 183 and 189 of the reply affidavit). Similar messages were also sent to aid organizations in the Gaza Strip (paragraph 36 of the respondents' statement dated 20.8.24). However, it was clarified that "these calls are not 'forced displacement' or 'expulsion' as the petitioners claim, but rather recommendations intended to maintain the security of civilians in the Gaza Strip" (ibid.) - and in any case, it was not alleged before us, and in any case it has not been proven, that the respondents are working to enforce the evacuation notices using policing means that are usually reserved for control mechanisms. Civilian.

Under these circumstances, I do not believe that the IDF is "capable of stepping into the shoes of the authorities of the previous regime" (Tzemel case, at p. 373), or that the State of Israel is capable of "operating proper governance in all its branches, which are practiced today in a civilized country," with all that this implies, insofar as it concerns the Gaza Strip (Tabiv case, at p. 629).

Since the three factual criteria for the application of the law of belligerent capture are Cumulative criteria , it is sufficient to determine that the second criterion is not met in the circumstances of our case – however, due to the importance of the matter, we will also examine the meeting of the third criterion.

.31 The third criterion – the previous sovereign's inability to exercise his powers:

The petitioners claimed that the war resulted in a “collapse of the civilian infrastructure in the Gaza Strip in the areas of education, health, and public order,” and that this collapse “shows that Hamas is no longer capable of governing the Strip” (paragraph 77 of the main arguments). The petitioners acknowledged that some of the local government authorities are still operating today, but in their view there is no need to prove that

"A complete collapse" of the previous government, and "the activity of local authorities or certain bodies does not rule out the possibility of occupation" (ibid.). The petitioners also acknowledged that Hamas continued to fight IDF forces throughout, but in their view these were only "pockets of fighting and military resistance" that do not rule out the existence of a belligerent attitude (ibid.).

At the outset, it should be emphasized that proving the third criterion is not a trivial matter. In order to prove the lack of ability of the previous government – that is, of the Hamas organization – to exercise its governmental powers, it is not enough to establish that Hamas' capabilities have been weakened, or to establish that various civilian infrastructures in the Gaza Strip have ceased to function or are only partially functioning. The ruling stated in this context that belligerent occupation will exist when –

> "As a result of the war, in which the one who had controlled the territory up to that time was defeated, and during which he withdrew from it, the government and all the authority associated with it passed to the military force, which now effectively controls the territory and prevents the continuation of the operation or the return to control of the previous governing authority [...] The military government is merely a temporary substitute for the previous government that was defeated in the war. Its authority and authority derive from its military status and military control, which stems from its effective control of the territory and the inability of the previous government to continue to fulfill its role and operate its forces [...] When the fog of battle cleared, and it became clear that the previous government was defeated and the military forces that had pushed it from the territory were controlling it - the obligation arose automatically to take the measures prescribed for it according to the provisions of Article 43 [of the Hague Regulations – 1999]" (Abu Aita case, at pp. 230, 270 and 309 (emphasis added – 1999)).

Rulings in a similar vein can also be found in other cases (Al-Nazar case, on p. 704; Jama'at Askan, at p. 794; HCJ 619/78 "Al Taliya" Weekly v. Minister of Defense, P.D. 33(3), 505 510 (1979); HCJ 507/72 Arnon v. Attorney General, P.D. 27(1), 233 237-236 (1973); Al-Nawar matter, at p. 458; and see also the cited reference in the matter Tsemel, at p. 372). In addition, the opinion submitted by the petitioners on behalf of expert Dr. Marco Longobardo mentions a ruling issued by the International Criminal Tribunal for the former Yugoslavia, which also uses similar language – stating that the indications for belligerent occupation include a situation in which the previous government "surrendered, was defeated or withdrew," and a situation in which the previous government "is unable to publicly function" (the occupied authorities […] must have been rendered "more incapable of functioning publicly […] the enemy's forces have surrendered, been *Prosecutor v. Naletiliÿ,* IT-98-34-T, Trial Judgement, para.) "defeated or withdrawn .((217 (Int'l Crim. Trib. for the former Yugoslavia (ICTY), Mar. 31, 2003)

.32 The petitioners did claim that in order to satisfy the third criterion, it is not necessary to prove "the complete collapse of local government" (paragraph 104 of their announcement of September 30, 2024). However, in those situations in which a local government continues to exercise some of its powers while its territory is under belligerent occupation, it seems that this is generally done due to a permit granted to that effect by the occupying power, and subject to receiving its authorization to exercise those powers. For example, in the Tsemel case, it was noted that in a situation of belligerent occupation, the occupying power is entitled to choose to what extent it will exercise the powers of government itself "and which areas it will leave in the hands of the authorities of the previous government," while "permitting the operation of these authorities does not, in itself, detract from the fact of the existence of effective military control in the territory [...]" (Tsemel case, at p. 374). In this spirit, Colonel (as he was then called) Meir Shamgar referred to the territories in which the IDF took effective control in 1967, noting that "when the territory passed into the possession of the IDF, the enemy immediately ceased to exercise any legislative, executive, or judicial function. Any official of the enemy who remained in the territory may "He could continue in his position only with the approval, express or implied, of the commander of IDF forces in the area." (Meir Shamgar, "The Law in the Territories Held by the IDF," The Advocate 23, 539-541 (5777) (emphasis added – 10); and see also the opinion of Dr. Longobardo, at paragraph 11 (" [...]
most of the rules of the law of occupation allow or even require the occupying
power to administer the occupied territory **through cooperation of local**
ÿÿÿÿÿÿ"; **authorities** still performing public functions during the occupation
Addition – 10/10).

33. Can it be said that Hamas has lost the ability to exercise governmental powers independently, without permission or approval from the IDF? I will briefly note that reality is far from meeting the threshold for proving this criterion, and that the data presented before us indicates that Hamas still retains the ability to exercise significant governmental powers on its own. Naturally, it is not possible to elaborate on the factual data presented by the respondents in a one-sided capacity, and which, as stated, received significant weight in this context, but I will clarify that this conclusion of mine is based both on the military aspect of Hamas's activity - that is, its combat capabilities and the scope of its activity against IDF forces - and on the civilian aspect, that is, Hamas' control over various aspects of the life of the civilian population.

.34 As the respondents noted, despite the significant damage that Israel has inflicted on Hamas's military capabilities, Hamas maintains a military presence in many areas of the Gaza Strip, and has worked along the way to re-establish a presence in areas where the IDF has moved (paragraph 251 of the reply affidavit;

Paragraphs 37, 49 and 52 of the respondents' statement of 12.9.2024; paragraphs 5 and 12-14 of the respondents' statement of 14.11.2024). Hence, at this stage it cannot be said that Hamas as a governmental organization was "stricken by war" (as the Abu Aita case put it), and certainly our matter is far from those specific "pockets" of opposition to which the petitioners referred. With regard to the governmental-civilian aspect, the overt and covert data presented by the respondents indicate that Hamas continues to possess significant governmental capabilities in this aspect as well. As they say:

> "The exercise of governmental functions by the Hamas organization is carried out mainly under the supervision and through the Hamas government structures, which continue to strive to preserve their rule in population centers, including the Gaza City and Jabaliya areas in the northern Gaza Strip, in the humanitarian area, in the central camps, in Khan Yunis and northwest Rafah in the southern Gaza Strip. In these areas, there is activity by Hamas policy-making bodies vis-à-vis the civilian population; by the entities responsible for providing services to civilians; and by Hamas enforcement forces. All of these receive salaries and instructions from senior leaders of the movement" (paragraph 51 of the respondents' announcement of September 12, 2024 and see also paragraph 28 ibid.; paragraphs 20, 26 and 30 of the respondents' announcement of November 14, 2024; and paragraph 253 of the reply affidavit).

The respondents further emphasized that “holding power in the Gaza Strip is essential for the Hamas movement” and is part of the organization’s strategy, and that Hamas’s efforts to preserve its authority are reflected, among other things, in “outlining policy, operating security mechanisms, and establishing new security bodies to handle public order whose purpose is to take over aid and allocate it to the movement’s needs, injecting funds into the Gaza Strip, distributing salaries, and distributing aid” (paragraph 50 of their statement of September 12, 2024). The respondents also pointed out that Hamas exploited the goods brought into the Gaza Strip by the private sector for the purpose of economic and military strengthening – in a way that led the respondents to stop at a certain point the introduction of goods from the private sector into the Gaza Strip (paragraph 26 of the statement of September 12, 2024). Respondents dated 14.11.2024).

35. There is no dispute that the prolonged fighting has disrupted and even prevented the regular existence of many aspects of civilian life in the Gaza Strip. This reality is a product of the prolonged fighting, and of Hamas's efforts to assimilate into the civilian population and operate from its proximity. However, these disruptions and difficulties do not indicate Hamas's lack of ability "to continue to fulfill its role and deploy its forces" (as stated in the Abu Aita case, at p. 270). In particular, I cannot accept the petitioners' argument that the incidents of looting and seizure of humanitarian aid, which have been documented to varying extents,

Throughout the months of fighting, these facts in themselves indicate the collapse of Hamas's governmental capabilities (see, for example, paragraph 37 of the main arguments). According to the data presented before us, some of the looting incidents were carried out by Hamas forces themselves or by someone on their behalf (paragraph 142 of the reply affidavit; also see paragraph 28 of the respondents' statement of November 14, 2024) - and in this context, the petitioners' laconic and unfounded claim that Hamas's conduct "does not indicate the existence of governmental authority but is more similar to the manner in which criminal organizations that oppose the government and act in opposition to it" (paragraph 108 of the petitioners' statement of September 30, 2024) is unclear.

Nor can I accept the petitioners' claim that the continued activity of the local authorities in the Gaza Strip "like the Water Authority, depends, inter alia, on Israel's approvals and decisions" (paragraph 104 of their statement of September 30, 2024). As stated above, Israel's involvement in coordinating activities related to the local authorities – such as coordinating work to repair water lines by local entities within the Gaza Strip (see ibid., paragraph 112; and also see paragraph 202 of the reply affidavit) – does not in itself indicate Israeli control over the activities of these authorities.

36. Therefore, based on the factual data presented to us openly and ex parte, I have come to the conclusion that the factual reality on the ground does not meet the second and third criteria for the application of the laws of belligerent occupation, and that there is no reason to attribute to Israel the obligations that apply to an occupying power in foreign territory.

37. In addition to the three factual criteria above, the petitioners sought to refer to another source to support their claims regarding the laws of belligerent occupation: an Advisory Opinion (issued by the International Court of Justice in The Hague on July 19, 2024, which included *Legal Consequences Arising from the Policies and* Legal Status of the Gaza Strip *Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,* Advisory Opinion (2024, 19 Jul.) ; hereinafter, respectively: the Advisory Opinion; and the International Court of Justice or the court).

[For the sake of completeness, it should be noted that the petitioners also referred to another proceeding being conducted before the International Court of Justice: a claim filed by the State of South Africa after the outbreak of the "Iron Swords" War, and concerning claims under the Convention on the Prevention and Punishment of the Crime of Genocide, 1948-1965 (opened for signature in 1948) (hereinafter: the South African claim). However, the petition

This case does not deal with this Convention or the South African claim, and no remedies were sought in the petition in this regard. Accordingly, the proceedings before us are not the place to address the petitioners' claims regarding the enforcement of the Tribunal's decisions in the South African claim. I would also clarify that I do not find it necessary to address those aspects of the advisory opinion that go beyond the issues raised in the petition.]

.38 The advisory opinion was given in a procedure that was opened at the Court in January 2023 following a UN General Assembly resolution of December 2022, in which the Court was asked to provide an opinion regarding the "legal implications arising from Israel's policies and actions." "in the occupied Palestinian territory, including East Jerusalem" (free translation). The State of Israel submitted a written submission to the Tribunal, but did not participate fully in the proceedings (paragraph 19 of the respondents' notice of 12.9.2024; paragraph 47 of the advisory opinion).

The advisory opinion contained a number of concise paragraphs regarding the legal situation that prevailed in the Gaza Strip after the Israeli disengagement in 2005 (paragraphs 91-94). It was noted that when an occupying power establishes effective control over a certain area, and subsequently withdraws its physical presence from the area, the occupying power may continue to bear obligations under the laws of belligerent occupation, depending on the extent to which it retains its ability to exercise the powers of the local government (and exercises them in practice). The Court subsequently ruled (in paragraphs 93-94 of the advisory opinion; emphasis added – 1999):

> "Based on the information before it, the Court considers that **Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip,** including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, **despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023.**
>
> In light of the above, the Court is of the view that Israel's withdrawal from the Gaza Strip has **not entirely released it of its obligations** under the law of occupation. Israel's obligations have remained **commensurate with the degree of its effective control over the Gaza Strip."**

.39 It should be noted, however, that some of the judges on the panel reserved their opinions or added clarifications regarding these conclusions. For example, Judge Cleveland noted that the actions requested by the Court

to examine following the UN resolution of 2022, did not include actions taken by Israel following the events of October 7, 2023 (in paragraph 9 of her opinion). Judge Cleveland further emphasized that the Court did not specify which obligations continued to apply to Israel after 2005, and did not find violations of these obligations (in paragraphs 10-11 of her opinion). Judge Iwasawa also noted that events that occurred after October 7, 2023 – when the situation in the Gaza Strip changed drastically – exceed the time period that the Court was asked to examine; and that although the advisory opinion determined that Israel continues to bear certain obligations under the law of belligerent occupation, the Court did not take a position on the question of whether after 2005 the Gaza Strip remained under occupation, as the term is defined in the law of belligerent occupation (in paragraph 8 of his opinion).

.40 There is no dispute about the need to give "full due weight to the norms of international law, as developed and interpreted by the International Court of Justice in The Hague," which is the highest judicial body in international law (HCJ 7957/04 Mara'aba v. Prime Minister of Israel, P.D. S(2), 477, 523, 536 (2006) (hereinafter: Mara'aba case)). However, an advisory opinion from the International Court of Justice is not binding, and does not constitute a judicial act against the State of Israel and this Court (ibid., at pp. 522-523). Accordingly, in certain circumstances this Court may reach a factual or legal conclusion different from that reached by the Court in its opinion.

Advising.

.41 It is also worth emphasizing that the main question on which the Court focused in the paragraphs cited above – which concerns the obligations of the State of Israel towards the Gaza Strip after the disengagement in 2005 – is in any case not up for our decision in the present petition, which deals with the factual situation at the present time, after the outbreak of the "Iron Swords" war. True, the Court noted that its decision regarding the obligations that Israel bears is even more correct after 7.10.2023. However, the factual foundation on which the Court relied in this context was different and limited from the foundation

The factual situation that faced us during the hearing of this petition, due to a number of cumulative circumstances.

As stated, the State of Israel did not fully participate in the proceedings before the Court, and hence its full position and complete picture of the data on its behalf were not presented to it (see and compare: Mara'aba case, at p. 533). In this context, it is worth recalling that during the hearing of the petition, the respondents presented a significant amount of confidential information – some of which was even formulated after the date of the advisory opinion – and it can be assumed that this information was not presented to the International Court either. Furthermore, and without losing sight of the Court's determination that it was provided with a sufficient factual foundation for the purpose of

The Opinion (paragraph 47 of the Advisory Opinion) – It should be noted that the Court was not asked, as stated, to examine actions taken by Israel after October 7, 2023, so that in this context too it can be assumed that it was not presented with a factual foundation at a level of detail similar to that presented to us (see p. 2 and paragraph 81 of the Advisory Opinion, as well as paragraph 39 above).

42. Considering that the test for the existence of belligerent occupation is essentially a factual test, which depends on examining the reality on the ground, the significant differences between the factual infrastructure presented before the Tribunal and before us are sufficient to explain the difference in conclusions on this issue. This is also true, with the necessary changes, with respect to what is stated in the opinions attached by the petitioners on the issue of belligerent occupation (the opinion of Dr. Longobardo mentioned above, as well as the opinion of a number of experts in public international law dated 1.4.2024 regarding the existence of belligerent occupation in the northern Gaza Strip).

.43 In this respect, the circumstances of the present case are similar to the Mara'aba case, which also dealt with a situation in which this Court and the International Court of Justice reached different conclusions on a similar issue. In 2004, at the end of a proceeding to which the State of Israel was not a party (Mara'aba case, at p. 533), the Court issued an advisory opinion in which it examined claims regarding the separation barrier erected by Israel, and reached a different conclusion than that reached by this Court in the Beit Sourik case (HCJ 2056/04 Beit Sourik Village Council v. Government of Israel, PD Noh(5) 807 (2004)). Following this, President E. Barak stated in the Mara'aba case, and the following applies to our case with the necessary changes:

> "Our starting point is that the basic normative foundation on which the International Court of Justice in The Hague and the Supreme Court in the Beit Sourik case based their decisions is common. Despite this, the two courts reached different conclusions. [...] We asked ourselves what the explanation for this difference was. We answered this question by saying that the difference stems from the different factual foundation that was placed before the International Court of Justice in The Hague on the one hand and before the court in the Beit Sourik case on the other. We also noted that the difference in the trial model also contributed to the difference in the result. [...] The Supreme Court of Israel will give full weight to the norms of international law, as developed and interpreted by the International Court of Justice in The Hague in its opinion. In contrast, the conclusion of the Court, based on a foundation
> A factual statement that is different from the one presented to us does not constitute an act
> court, and does not bind the Supreme Court of Israel [...]" (Mara'aba case, on p. 536; emphasis in the original – 10).

.44 In light of the significant differences between the factual basis before us and the basis before the International Court of Justice, I have come to the conclusion that, despite what is stated in the advisory opinion, there is no reason to change the conclusion regarding the lack of application of the laws of belligerent occupation in the Gaza Strip. However, I will note now that, as will be detailed below – and without expressing any position on the dispute that arose between the parties regarding the interpretation of the findings in the advisory opinion – it is possible that, in the final analysis, the difference between the Court's position and the position of Israeli case law regarding Israel's obligations towards the civilian population in the Gaza Strip is not as great as it may seem at first glance.

first.

The obligations of the State of Israel under Israeli domestic law

.45 In addition to the relevant obligations under public international law, IDF forces are subject at all times and in all circumstances to the provisions of Israeli law, and in particular to the rulings of this Court and the principles of administrative law from which, inter alia, the duty of state authorities to act "Fairly (substantive and deliberative), reasonably and proportionately" (HCJ, 4764/04 at p. 393; also see High Court of Justice, 201/09, paragraph 15; Beit Sourik case, at p. 828; Jama'at Askan case, at p. 810).

[For the sake of completeness, it should be noted that the petitioners also sought to analyze the respondents' conduct in light of the Basic Law: Human Dignity and Liberty, but I do not believe that it is necessary to address the question of its applicability in our case. As was ruled in a similar context: "With respect to a significant portion of the administrative actions taken by the state authorities, both within Israel and outside it, there is no need at all to address the question of the extraterritorial applicability of the Basic Laws. This is because, generally, the rights that are violated are respected in any case under Israeli administrative law , or the law international law, both of which apply extraterritorially, and bind the authorities in their actions, wherever they may be" (AA, 993/19, paragraph 82; emphasis in the original – YA).]

.46 What obligations are imposed on IDF forces in relation to humanitarian assistance intended for uninvolved civilians in the Gaza Strip? This court was called upon to consider the issue in the Albassioni case, which dealt with restrictions imposed by the state on the supply of electricity and fuel to the Gaza Strip. As stated, the ruling was given in January 2008, i.e. after the disengagement, and it ruled in this context as follows:

> "Under these circumstances, the State of Israel does not have a general obligation to ensure the welfare of the residents of the Gaza Strip and to maintain public order within the Gaza Strip, according to the entirety of the laws of occupation of the law."

> The international community. Israel also does not have the effective ability in its current status to impose order and manage civilian life in the Gaza Strip. In the circumstances that have arisen, the main obligations imposed on the State of Israel in relation to the residents of the Gaza Strip stem from the state of war that prevails between it and the Hamas organization that controls the Gaza Strip; these obligations also stem from the degree of control the State of Israel has over the border crossings between it and the Gaza Strip; and from the situation that has arisen between the State of Israel and the territory of the Gaza Strip after the years of Israeli military rule in the region, as a result of which the Gaza Strip has now become almost completely dependent on the supply of electricity from Israel" (ibid., paragraph 12).

The Court ruled that there was no need to issue an absolute order in the petition in the Albassioni case, being convinced that the State of Israel undertakes to "continue to transfer to the Gaza Strip the amount of fuel and electricity required for the essential humanitarian needs of the civilian population in the Gaza Strip" (paragraph 21). However, the Court emphasized that, given that some of the electricity and fuel that reaches the Gaza Strip is actually used by terrorist organizations, "the State of Israel is not obliged to allow the transfer of an unlimited amount of electricity and fuel to the Gaza Strip [...] The obligation imposed on it is derived from the essential humanitarian needs of the residents of the Gaza Strip" –

In other words, the state is required to "allow the Gaza Strip to be supplied only with the goods necessary to meet the essential humanitarian needs of the civilian population" (ibid., paragraph 11).

47. Therefore, it appears from the Albassioni case that the disengagement from the Gaza Strip in 2005 did not result in a complete cessation of the State's obligations in relation to the humanitarian needs of the civilian population in the Gaza Strip (see also HCJ 5841/06 Association for Civil Rights in Israel v. Minister of Defense, paragraph 7 (13.3.2007)). In the reality after the disengagement, the State of Israel continues to bear certain obligations, which stem mainly from the state of fighting with the Hamas organization; from the degree of Israel's control over the border crossings between it and the Gaza Strip; and also "from the situation that arose between the State of Israel and the territory of the Gaza Strip after the years of Israeli military rule in the region" - a situation that led to the creation of dependence on Israel in certain aspects. In this way, the decision in the Albassioni case shares a kind of common denominator in the test of the result with the advisory opinion of the International Court of Justice, which also determined that the disengagement did not completely interrupt Israel's obligations in relation to the civilian population in the Gaza Strip - Although, as stated, the court reached its conclusion based on reasons different from those presented in the Albesioni case.

Subsequent judgments confirmed the Albassioni rule and refined it (see, for example: HCJ, 201/09, paragraph 14; Case No. 11). Thus, shortly after the judgment in the case .48

A petition was filed in Alvasioni alleging that Israel is not fulfilling its obligations, since in practice the amount of fuel transferred to the Gaza Strip is less than the minimum required for humanitarian needs (HCJ 4258/08 Gisha Center for the Protection of the Right to Move v. Minister of Defense (5.6.2008) (hereinafter: Gisha case)). In response to this, the respondent (Minister of Defense) claimed, inter alia, that due to security constraints, the crossings are opened only at times when there are no warnings, and that it is not possible to transfer fuel during
The court dismissed the petition, stating that “the petitioners’ demand
To order a sweeping repeal of the restrictions imposed by the respondent on the transfer of fuel to the Gaza Strip ignores the reality prevailing in the Gaza Strip and at the crossings between it and the State of Israel" (in paragraph 8). It was further determined that in circumstances in which Hamas is working to harm the crossings and their operators, and given the fact that the state of fighting is hindering the regular transfer of goods to the Gaza Strip - the disruptions in the transfer of fuel to the Gaza Strip are not caused by the conduct of the state, "but rather by the conduct of the Hamas authorities and the security constraints created by the events caused by the Palestinian side" (ibid., in paragraph 11). Against this background, the court ruled in the Gisha case:

> "The petitioners' claim that the respondent must pump fuel into the Gaza Strip at any time during a lull in the fighting taking place at the crossings, beyond the weekly quota that the respondent committed to in the Albassioni affair, means taking a risk on human lives on the Israeli side of the crossing and giving the Hamas organization the opportunity to stockpile fuel in order to use it in the armed struggle it waged daily against the State of Israel, while taking advantage of the short hours of the lull to resupply.
>
> [...]
>
> Within the framework of the balances required as a result of the State's obligation to allow the transfer of fuel through the crossing as required by our ruling [in the Albassioni matter – YA], and its obligation to protect the lives of its citizens and soldiers, the State should not be required to take upon itself the opening of the crossing and the flow of fuel in a situation that causes a real risk to human life. [...] We do not see any change from what is stated in our ruling in the Albassioni matter, and we see it necessary to emphasize that in applying what is stated therein, the Respondent is entitled to take into account the existence of circumstances that create a real and significant risk to human life" (paragraphs 8 and 10-11; emphasis in the original – YA).

49. Therefore, the Israeli ruling determined that the State of Israel bears certain humanitarian obligations in relation to the civilian population in the Gaza Strip, but that in this context, the fear of the strengthening of terrorist organizations due to the transfer of equipment must be taken into account, as well as Israel's obligation to protect its own citizens and soldiers. [In the margins, it should be noted that the Albusiuni ruling and its derivatives dealt, as stated, with fuel and electricity specifically, but the respondents did not dispute the relevance of the ruling.

This applies to humanitarian assistance in general (see also paragraph 15 of the judgment in the Albassioni case).] Alongside this, it should be emphasized that Israeli case law has consistently emphasized the importance of humanitarian assistance to civilians not involved in the Gaza Strip, and the State of Israel's obligation to extend a helping hand to them.

For help:

> "Even though the Gaza Strip is currently controlled by the Hamas movement, which has been declared a terrorist organization, residents live there who need essential services to maintain a reasonable and humane quality and standard of living. Israel is required to provide assistance in order to enable the local population to meet essential needs, without which they will not receive a response. [...] The innocent public living in the Gaza Strip cannot remain cut off from the means of subsistence and basic supply lines necessary for a dignified life, and where the provision of these means is conditional on Israel's cooperation, the government is entitled, and sometimes even obliged by virtue of its responsibility, to assist in transporting them to their destination. The state's duty to deal effectively and resolutely with the war on terror does not obscure its duty towards the civilian population in the region" (HCJ 1169/09 Legal Forum for the Land of Israel v. Prime Minister, paragraph 21 (15.6.2009)).

[In the margins, it should be noted that throughout the discussion of the petition, the respondents claimed that the obligations detailed in the Albassioni case have gradually weakened over the years, mainly due to the establishment of Hamas as a governing entity in the Gaza Strip since 2007, and according to them, it is doubtful whether these obligations are still relevant. However, it is clear that the "Iron Swords" War brought about a significant change in circumstances in the reality of life in the Gaza Strip – and given the fact that the implications of this change have not yet been sufficiently clarified, at this stage I see no reason to address the question of whether it is appropriate to deviate from the Albassioni ruling (cf.: High Court of Justice 201/09, paragraph 14).]

The obligation to establish a factual foundation regarding the humanitarian situation in the Gaza Strip

.50 So far, our discussion has focused on defining the State of Israel's essential obligations regarding humanitarian assistance intended for the civilian population in the Gaza Strip. During the discussion of the petition, a related question arose in this context, regarding the formation of the factual infrastructure regarding the needs of the population and the humanitarian situation on the ground.

The respondents made it clear along the way that they monitor the scope and types of aid entering the Gaza Strip, among other things, through appropriate staff work (paragraphs 104-105 of the affidavit).

The answer). However, at a certain point, the petitioners insisted that the respondents were required to estimate not only the aid that actually arrived – but that they should also examine the scope of the aid required for the population (see in this context paragraph 1(b) of the decision of 4.4.2024). Subsequently, the respondents were asked to clarify whether, in their opinion, Israel has the obligation to formulate a factual infrastructure regarding the aid.

Required in the Gaza Strip (decision dated May 6, 2024).

The respondents believed that there was no need to decide this question, since they were already working to monitor the humanitarian situation in the Gaza Strip. However, in the more than necessary examination, it was noted that in their view, “a legal obligation to establish a factual basis will arise when a party to an armed conflict is requested to introduce essential humanitarian assistance into an area where fighting is taking place, and considers whether to grant or refuse the request” (paragraph 69 of the respondents’ statement of 23.5.2024). This, in their view, is because “an examination of the humanitarian situation of the civilian population will constitute a necessary consideration in a party to the conflict’s decision to approve or refuse the entry of humanitarian assistance” (ibid.). Hence, according to the respondents, the obligation to formulate a factual infrastructure will arise "only in a situation where a party to an armed conflict seeks not to allow and facilitate the passage of humanitarian aid" - however, it was explained, this is not the case in our case, since the respondents' position was in any case to facilitate and allow the entry of humanitarian aid "without quantitative restrictions", and the state even took steps to increase the scope of the aid transferred (ibid.; emphasis added - YA). In response, the petitioners stated that they "do not believe that the respondents must formulate a factual infrastructure themselves and there is even doubt whether they have the expertise required to do so", however, it was argued that the respondents are obliged to rely on a factual infrastructure regarding humanitarian needs, and "to the extent that they are unable or unwilling to formulate it themselves in a reliable and professional manner, they must rely on data from expert organizations [...]"

(paragraph 81 of the petitioners' response of 30.5.2024; emphasis added - 10th).

51. It seems, therefore, that the dispute regarding the issue of the factual infrastructure is narrower than initially thought, and that it is not necessary to discuss now the precise scope of the state's obligations regarding the formation of a factual infrastructure regarding what happened in the Gaza Strip. However, I found it appropriate to

add a comment in this context, in a forward-looking manner and without setting any precedents.

The data before us indicates that throughout the period of the petition's discussion, no quantitative restrictions were imposed on the entry of aid into the Gaza Strip, nor was there a categorical refusal to admit any types of aid. But even in the absence of quotas or rigid restrictions, it appears that monitoring and controlling the entry of aid - actions that are indisputably within the scope of the rights of parties to an armed conflict - is a matter of public policy.

– may affect the actual entry of aid. Such an impact may result, for example, from logistical measures such as limiting the days and hours of operation of the crossings; from inspection, supervision and search operations carried out on aid shipments; or from increased supervision over the entry of “dual-use” equipment, i.e. equipment that is intended for civilian use but may in fact also be used for military purposes and terrorist purposes (for example, chemical agents such as chlorine, or communications equipment).

.52 In my view, the obligation to act to establish a factual infrastructure regarding the needs of the civilian population in the Gaza Strip does not depend on the nature of the step that the respondents take in relation to the transfer of aid – whether imposing a quantitative quota, limiting the opening hours of the crossings, or any other step that could significantly affect the quantities or types of aid that is transferred. Establishing a factual picture regarding the humanitarian needs of the civilian population is an important component of the decision-making process and policy-making regarding humanitarian aid – and it is an ongoing and continuous task that must be carried out continuously. As noted in a ruling in a similar context: "The task of implementing the rules that are also binding on the military system requires adaptation and examination of what is happening on the ground. If in the fields of civil law the law is derived from the facts, all the more so is this perspective appropriate in everything related to the laws of war - given the complexity of their application in a vague and dynamic reality" (Judge N. Hendel in the Yesh Din matter, in paragraph 4 of his opinion; and see also: paragraphs 3-7 of the decision in the Albesioni matter of November 29, 2007; paragraphs 6, 10 and 19 of the ruling in the same proceeding).

.53 In addition to the above, it cannot be denied that the practical ability to formulate a comprehensive and reliable factual infrastructure regarding the needs of the civilian population in the Gaza Strip may be affected.
Security constraints and the difficulties involved in gathering information in hostile territory during wartime. It has been ruled in the past that "during the conduct of hostilities, it is not always possible to gather all the information necessary for the operation of the Judicial review, in light of the changes that occur dynamically and continuously" (High Court of Justice, 201/09 in paragraph 13; see and compare also: HCJ, 4764/04 at p. 410; Yoav Dotan Judicial Review of Administrative Discretion 2 833-832 (2023); Dafna Barak-Erez Administrative Law 1 443 (2010)) – and this is true, with the necessary changes, also in the stage preceding the judicial review, that is, in the stage of formulating the factual infrastructure by the respondents in order to make a decision on the ground (Liron A. Libman, “There is no judicial review without law and there is no law without facts: On judicial review in military-operational matters,” Harat Din 13, 1 3 (5779)). This is particularly true with regard to the collection of information about the humanitarian needs of a civilian population that terrorist organizations are working to assimilate into.

and to disguise themselves in its midst (cf.: remarks by His Excellency Vice President Ehud Rivlin regarding the Committee Public, at p. 594).

.54 These difficulties in formulating the factual situation were expressed concretely in the later stages of the hearing of the petition. In early October 2024, there was a significant decrease in the amount of humanitarian aid entering the northern Gaza Strip, for reasons that will be detailed below, and against this background, the petitioners submitted their request for an interim order dated 15.10.2024. In their response to the request, the respondents stated, inter alia, that the decision to close the relevant land crossings "was made against the background of the MHRA's assessment that there are sufficient reserves in the northern Gaza Strip" of humanitarian aid stocks (paragraph 5 of the response dated 24.10.2024). The request for an interim order was rejected, as stated, and in the hearing held before us on 24.11.2024, the respondents' attorney explained that in their assessment, "a few thousand of the civilian population" remained in the area where intense fighting is taking place.

In the northern Gaza Strip (on page 3, paragraph 26 of the minutes).

However, in a statement dated December 17, 2024, the respondents stated that after monitoring the size of the population that evacuated from the Beit Lahiya area in the northern Gaza Strip, it became clear that "the estimate of the size of the population that evacuated does not correspond to the estimate of the size of the population that remained in the area, in a way that raises concerns about a deviation from the data presented in the hearing dated November 24, 2024, such that the amount of the civilian population in the area is larger" (paragraph 3 of the statement). In their statement, the respondents emphasized that the IDF is working to investigate the gap and draw lessons, and in any case that their conduct during the relevant period took into account a strict assumption regarding the amount of population residing in the area and took into account the possibility of a deviation in the data. The petitioners, for their part, claimed that the gap in the respondents' data raises doubts as to the veracity of other data they presented (paragraphs 2 and 4-5 of the petitioners' response of December 25, 2024; and paragraph 6 of their statement of January 1, 2025).

.55 The errors that led to the gap in the respondents' factual assessment should be regretted. On such a fundamental issue, and it must be assumed that the relevant elements in the IDF are working as much as possible to ensure that such an oversight does not happen again. Along with this, I would emphasize that the respondents did well to bring their This issue is brought to our attention, and in my opinion, this shows the seriousness with which they take their duty to work to formulate a factual infrastructure that is as up-to-date and reliable as possible regarding The situation and needs of the civilian population in the Gaza Strip. However, this example illustrates the inherent difficulty in formulating a humanitarian situation picture during the fighting in the Gaza Strip – a difficulty that is influenced, as the respondents noted, by the fact that “the Gaza Strip is not under effective IDF control and is not in any way

"administered civilianly by the respondents", and applies in particular to those areas where IDF forces are not present (paragraphs 179 and 273 of the reply affidavit).

Interim Summary: The Obligations of the State of Israel

In the past, the ruling stated in a similar context that “the petitioners, human rights organizations, act out of concern for the welfare of the residents of the Gaza Strip, and represent the interests of the civilian population in the Strip, which is undoubtedly severely affected by the situation prevailing there” (Gisha matter, at paragraph 9). However, after examining the factual and normative foundation presented to us, I have come to the conclusion that, despite the petitioners’ claims, at this stage there is no reason to change the jurisprudential approach that has been in place in Israel for over a decade – according to which Israel’s conduct in relation to humanitarian assistance intended for the civilian population in the Gaza Strip will be examined, essentially, in light of the international laws of warfare and Israeli law as applied and interpreted in the ruling. Considering the capabilities and actions of the IDF on the one hand and Hamas on the other, it cannot be said that at this stage the factual conditions for a state of belligerent occupation by Israel in the Gaza Strip exist – and therefore there is no room to put the cart before the horse and impose obligations on the State of Israel that it cannot fulfill. .56

This means that Israel's obligations in the context of our case include the obligation to facilitate and allow the transfer of the assistance necessary to meet the vital needs of the civilian population in the Gaza Strip, with all that this implies, and in doing so, the respondents are required to act, to the extent possible, to maintain constant monitoring of the vital humanitarian needs in the Gaza Strip. However, when implementing all of these obligations, security, military and operational constraints must be taken into account, as well as the difficulties inherent in the task of collecting information in wartime.

57. The question that we will address in the next stage of the discussion is how the obligations of the State of Israel should be translated into reality on the ground. This issue raises complexities in itself, since, as it was ruled, "it cannot be ignored that the legal systems currently existing in international law are not adapted to the changing reality and the phenomenon of terrorism which is changing the face of conflicts."
"The armed, their characteristics and their participants" (Statements of President D. Beinisch in the matter of a certain person, on p. 354-353; also see HCJ 7015/02 Ajuri v. Commander of IDF Forces in the West Bank, PD No. 352 (6), 382-381 (2002)). In this context, we will examine the conduct of the respondents on the practical level –

It should be noted now, as was clarified at the outset, that after examining the parties' arguments, I found no grounds for granting an absolute order in the petition.

The respondents' actions in relation to humanitarian assistance

58. Before going into detail about the respondents' conduct in relation to the transfer of the aid, we begin with three preliminary remarks that are necessary to delimit the boundary of the dispute at this stage of the discussion.

(a) Throughout the hearing of the petition, there were changes in the picture that unfolded before us regarding the conduct of the respondents. Although the respondents had already emphasized in their preliminary response that they were working to enable the transfer of aid in as large a volume as possible, and that they were not imposing restrictions on the amount of aid entering the Strip – but at the time, it seemed that there was more hidden than visible regarding the humanitarian situation in the Gaza Strip, as well as regarding the quality of the actions taken by the respondents to improve it. Following the hearings we held in the petition and the questions we asked the parties' attorneys, the picture became clearer: Various IDF officials appeared at the hearings and detailed the military's actions.

on the ground, and respondents submitted detailed references to concrete humanitarian actions

Which were taken on different levels.

However, the factual gaps in the parties' claims were and remain significant,

And on many issues, there were noticeable differences between the data presented by the petitioners and those presented by the respondents. To illustrate, at one point, the petitioners claimed that Israel had repeatedly refused requests from one of the aid organizations to bring oxygen generators into the Strip; but the respondents stated that they had approved that organization to bring 18 oxygen generators "in the context of five requests on four different dates" (see, respectively: paragraph 41 of the petitioners' response of May 3, 2024; paragraph 119 of the reply affidavit). We will also mention the dispute between the parties regarding the number of citizens who were in the northern Strip as of October 2024 and the respondents' statement in which they acknowledged an error in their estimate of real time.

As stated in paragraph 2 above, the petition before us is not the appropriate venue for an in-depth clarification of the factual disputes between the parties, or for investigating individual incidents of this or that kind. However, it is worth mentioning the "consistent approach in the court's rulings, that special weight must be given to the military opinion of the entity on which responsibility for security is vested" - and in our case, to the professional opinion of IDF officials, some of whom argued before us in hearings and some of whom submitted signed affidavits on their behalf (HCJ 10309/06 Alfei Menashe Local Council v.

Government of Israel, at paragraph 15 (29.8.2007); see also: HCJ 5841/06 Association for Civil Rights in Israel v. Minister of Defense, paragraph 9 (13.3.2007)). Indeed, insofar as this concerns those "military-professional questions, on which the court has no well-founded knowledge of its own," it is appropriate to place the
The respondents' declarants "assume that their professional reasons are sincere reasons" - a presumption that requires "very convincing evidence" to refute (HCJ 258/79 Amira v. Minister of Defense, P.D. 34(1), 90 93-92 (1979); also see: Gisha matter, at paragraph 9; Beit Sourik matter , at pp. 845-844; HCJ 10356/02 Hass v. Commander of IDF Forces in the West Bank, P.D. 34(3), 443 459 (2004); HCJ 390/79 Duikat v. Government of Israel, P.D. 34(1), 1 25 (1979)).

(b) In addition to the above, it seems that the issue of humanitarian aid to the civilian population is, in certain aspects, different and separate from those military-operational decisions that are made in order to subdue the terrorist organizations and achieve the objectives of the war. Indeed, "it is certain that this court will not take any position regarding the manner of conducting the fighting. As long as the lives of the soldiers are in danger, the decisions will be made on-
" The hands of the commanders" (HCJ 3114/02 Bracha v. Minister of Defense, PD No. 3, 11 16 (2002); Yesh Din case, at paragraphs 60-61 and 64; Jama'it Askan case , at p. 810). However, as the respondents emphasized, "the war is directed against the terrorist organizations in the Gaza Strip, and not against the residents of the Gaza Strip."
(Paragraph 4 of the reply affidavit). Therefore, the judicial review in our case will be conducted with recognition of the totality of the relevant circumstances, while giving due weight to military-security considerations, but also to the respondents' duty to act reasonably and proportionately in all their actions (see in this context
This is: High Court of Justice, 4764/04 at pp. 393 and 410-411).

(c) It is not disputed, and cannot be disputed, that the humanitarian situation in the Gaza Strip is not easy to say the least, and that the uninvolved civilian population is paying a very heavy price for the war waged by the terrorist organizations. However, I accept the respondents' argument that the suffering of the civilian population does not in itself indicate a breach of duty on the part of the State of Israel. "Suffering
This is a result of the conduct of the cruel terrorist organization that controls the Gaza Strip and operates from within the civilian population, endangering and neglecting it" (HCJ, 201/09, paragraph 29; Gisha case, paragraph 9). Therefore, the mere existence of gaps in the arrival of aid to the civilian population or its distribution does not necessarily indicate that the respondents are not fulfilling their obligations under the law. This is especially so in light of the fact that many aspects of the process of providing aid to the civilian population are not fully under the respondents' control. For example, we will quote from the respondents' statements:
As part of the reply affidavit they submitted:

"The Hamas terrorist organization continues to take control of some of the humanitarian aid entering the Gaza Strip, for its own needs, and prevents it from reaching the residents of the Gaza Strip in full. Furthermore, as far as the respondents know, in some cases international organizations in the Gaza Strip are required to coordinate their activities with Hamas, which controls the convoy routes and distribution points. This gives Hamas significant influence over the distribution chain of humanitarian aid. There are also reports that the Hamas terrorist organization threatened groups of Palestinians so that they would not cooperate with Israel in securing aid convoys, and it was even reported that it actually harmed them. Furthermore, during the fighting, there were quite a few incidents of looting of aid trucks, storage facilities, and distribution points by terrorist organizations, criminal gangs, or ordinary residents. The Hamas terrorist organization is also working to damage the humanitarian crossings into the Gaza Strip and the humanitarian roads within the Gaza Strip that allow the passage of humanitarian aid by firing at them." (in paragraph 142).

Under these circumstances, it is clear that many of the difficulties described by the petitioners regarding ensuring that aid reaches citizens who need it, are not faced by the respondents.

And now, to the substance of the matter. At this stage of the discussion, we will examine various steps taken by the respondents regarding the introduction of humanitarian aid and facilitating its transfer to the civilian population in the Gaza Strip. First, we will examine the respondents' actions in relation to the infrastructure required for the transfer of aid, including the land crossings and traffic routes used for the transfer of goods. We will then detail actions taken vis-à-vis the aid organizations themselves - with the aim of improving the channels of communication with them, enabling the entry of teams on their behalf into the Gaza Strip, and facilitating their movements within the Gaza Strip. Finally, we will review steps taken by the respondents in relation to the transfer of specific types of humanitarian aid, including food, water, medical equipment and sanitary equipment. As will be detailed below, throughout the period of the discussion of the petition, the respondents took many and varied steps to improve the process of transferring aid and to deal with obstacles that arose along the way - in a way that led me to conclude that no grounds were proven for issuing an absolute order regarding the issues detailed in the petition.

Respondents' activities in relation to infrastructure for the transfer of aid

Humanitarian aid was brought into the Gaza Strip through several main channels throughout the war. On .59 the land front, several crossings were used, including the Kerem Shalom crossing , which is located in the south of the Gaza Strip and is used to bring in goods from Israel and Egypt.

This crossing was disrupted more than once throughout the fighting due to security incidents, particularly due to gunfire.

Rockets and mortars towards the crossing. After the closure of the Rafah Crossing in May 2024, the trucks that had entered from Egypt through the Rafah Crossing up to that time were diverted to the Kerem Shalom Crossing (paragraphs 54 and 58 of the reply affidavit).

Along the way, the respondents carried out various actions to improve the infrastructure at the Kerem Shalom Crossing. Thus, the security inspection capabilities at the crossing were increased, including by improving the inspection mechanisms and adding means for rapid inspection; and in the reply affidavit, the respondents informed that a work plan had been approved for a further upgrade of the crossing, which was expected to significantly increase its throughput capacity. Following delays identified at Gate 38 – which was used to transfer goods from Egypt to inspection at the Kerem Shalom Crossing – the traffic lane on the Israeli side of the gate was widened. The respondents also reported that, at the request of aid organizations, the construction of additional routes from the Kerem Shalom Crossing towards the humanitarian space was coordinated.

60. The opening hours of the Kerem Shalom crossing were also expanded after the petition was filed; and following the petitioners' objections that the crossing was not active on Saturdays, it was clarified that the organizations could carry out the collection on all days of the week, including Saturday. The respondents expressed their willingness to further expand the opening hours of the Kerem Shalom Crossing, however, according to the data presented to us, it appears that the amount of aid that entered through the Kerem Shalom Crossing throughout most of the period of the petition's discussion was greater than the organizations' collection capabilities - and therefore the "bottleneck" was not in the stage of inspecting and bringing the goods into the Strip, but in collecting them on the Gaza side of the Kerem Shalom Crossing (paragraph 24 of the respondents' announcement of May 1, 2024; paragraphs 62-63 and 99 of the reply affidavit; minutes of the hearing of November 24, 2024, at p. 6, pp. 17-18 and p. 11, pp. 6-9). For the sake of illustration, it should be noted that in the months of July-October 2024, over 12,900 trucks carrying humanitarian aid as well as food from the private sector (paragraph 21 of the respondents' announcement dated 11/14/2024).

.61 The petitioners, for their part, acknowledged that the aid organizations had difficulty collecting aid at the Kerem Shalom crossing, but they claim that the reasons for this lie in concerns for the safety of the organization's personnel, disruptions on the roads, fuel shortages, and restrictions on their movement (paragraph 34 of the main arguments). However, it should be emphasized that these obstacles are primarily a necessary and unfortunate by-product of the fighting itself, and I do not believe that the petitioners have pointed to concrete actions that, in their opinion, the respondents should have taken in this context.

.62 Throughout most of the war, it was also possible to transfer aid via the Jordanian route: a route that was used to bring in aid both on behalf of aid organizations and via Jordanian army trucks, and which passed through the Allenby Crossing into the territory of Israel and Judea and Samaria – and from there to the Gaza Strip through the Kerem Shalom Crossing or the crossings in the north of the Strip. After disruptions that occurred in the transfer of aid via the Jordanian route in September 2024, the respondents reported that the route resumed operations in mid-October 2024 (paragraph 4 of the petitioners' request of October 15, 2024; paragraph 25 of the notice Respondents dated 14.11.2024).

.63 At the same time, Israel established a number of crossings designed to facilitate the transfer of aid to the northern Gaza Strip. In March 2024, Israel opened Crossing 96 – a goods crossing created through a designated opening in the fence between Israel and the Gaza Strip, in the northeastern part of the Gaza Strip, with the equipment passing through it being inspected at the Kerem Shalom Crossing. The respondents insisted on the existence of security complexities in the operation of Crossing 96, and in the reply affidavit, the respondents stated that the use of Crossing 96 is irregular, but that it "continues to be operated on several occasions at the request of the organizations" that seek to transport aid through the center of the Gaza Strip, and to transport it to the north and south of the Gaza Strip (paragraph 70 of the reply affidavit). The respondents further stated that Israel is prepared to allow the UN to bring in a larger amount of aid through Crossing 96 (paragraph 31 of the respondents' statement of 20.8.2024).

.64 In May 2024, two additional crossings were opened for the entry of goods into the northern Gaza Strip – Erez East Crossing, and Erez West Crossing near Zikim (hereinafter collectively: the Erez Crossings) – with the aim of expanding the possibility of transferring equipment directly to residents of the northern Gaza Strip, and reducing the risk of looting of convoys moving within the Gaza Strip. The reply affidavit stated that trucks intended for these crossings undergo inspection at the Ashdod Port or at the Allenby Crossing, and that their combined capacity was, at that time, 200 trucks per day (paragraphs 73 and 184 of the reply affidavit). The respondents clarified that in practice there was no need to open two Erez Crossings simultaneously – however, it was emphasized that if the need arose due to requests from aid organizations, the respondents would be willing to examine operating them simultaneously. As emerges from the respondents' statements, in the months of July-October 2024, more than 3,300 trucks of humanitarian aid and food from the private sector were brought in through the Erez crossings (paragraph 21 of the statement of 14.11.2024). In their statement of 14.11.2024, the respondents added that the IDF had prepared another crossing in the center of the Gaza Strip – the Kissufim crossing – which would allow the entry of Assistance in another axis (ibid., paragraph 32).

.65 In addition to land crossings, throughout most of the period of the petition's discussion, aid was also delivered to the Gaza Strip via airdrops carried out in coordination with Israel; as well as via routes that included

Maritime transit. Thus, humanitarian goods were transferred to the Gaza Strip via the Ashdod port through one of two inspection routes: (a) initial inspection at the Ashdod port, and additional inspection at the Kerem Shalom crossing; or (b) a higher level of inspection that allowed the goods to be released directly from the port into the Gaza Strip, mainly through the northern crossings. Initially, the Ashdod port was operated mainly for the purpose of transferring flour shipments, and the petitioners even claimed that Israel had prohibited the entry of other types of goods through the port. However, the respondents emphasized that the Ashdod port was opened to the passage of goods of all types, and that their representatives acted proactively with the aid organizations to present to them the possibility of introducing a more diverse range of aid through the port (paragraphs 76-77 of the reply affidavit). In addition, in November 2024, it was decided to establish an accelerated route for the release of humanitarian aid at the Ashdod port at the request of the Ministry of Defense (paragraph 31 of the respondents' announcement of 14.11.2024). [For the sake of completeness, it should be noted that in May 2024, the US military established a temporary pier in the northern Gaza Strip, in order to allow the unloading of humanitarian aid that arrived via the maritime corridor from Cyprus. In July 2024, the pier's operations were suspended, and the goods destined for it were transferred to the port of Ashdod.]

.66 In parallel with the establishment and expansion of the various crossings, the respondents worked to streamline the land traffic routes used for transporting aid, both in Israel and in the Gaza Strip – inter alia, in order to allow for the bypassing of areas where looting incidents occurred (Minutes of the hearing dated November 24, 2024, p. 8, p. 31-29). Thus, work was carried out to upgrade Highway 10, which runs near the border between Israel and Egypt and was used to bring in aid through the Kerem Shalom Crossing; and work was also carried out to upgrade the infrastructure on the Netzarim Highway. The respondents also facilitated, in coordination with local organizations, the execution of work to prepare the Salah a-Din Highway near the Erez Crossings before their opening; they worked to create a two-lane highway ("Polat Highway") that connects the Kerem Shalom Crossing to the Salah a-Din Highway; and in addition, repairs were coordinated on part of the Philadelphia Highway, with the aim of facilitating access to the Kerem Shalom Crossing. The respondents added that when updates were received about blocked roads within the Strip, the IDF assisted in establishing contact with various organizations in order to facilitate the arrival of teams to these areas and enable their repair.

Improving relations with aid organizations

.67 Throughout the debate on the petition, the respondents emphasized that they maintain ongoing contact with representatives from various countries and with aid organizations, with the aim of identifying gaps and resolving obstacles. Thus, at the beginning of the war, the IDF established a team tasked with assessing the humanitarian situation in the Gaza Strip, in cooperation with foreign countries and international organizations; and in June 2024, the Chief of Staff ordered the establishment of

Working groups in collaboration with international organizations in the areas of aid collection and distribution, coordination of movements and communications, medical response, and sanitation. At the same time, the respondents worked to improve the mechanisms for handling organizations' inquiries: a hotline was established in the Tax Authority to promote handling of the customs aspects of the transfer of aid; a hotline was established in the Gaza DCO (the Coordination and Liaison Headquarters for Gaza) that operated around the clock to respond to organizations' inquiries; a joint coordination room was also established in the Gaza DCO (hereinafter: the coordination room), whose activities were later merged with the joint coordination room of the US Army Central Command; and easements were also provided in granting customs exemptions when importing donations into the Gaza Strip. The respondents emphasized that the Gaza DCO held daily meetings with representatives from aid organizations, in which they "reviewed the coordination that was scheduled to take place that day and the coordination that was scheduled to take place the next day, including existing gaps, in order to facilitate the activity of aid organizations in areas where there was operational activity by IDF forces, in real time" (paragraph 161 of the reply affidavit). In addition, throughout the war, the IDF employed population officers (POs), who had special training in dealing with the civilian population; the POs were assigned to the operational units and worked, among other things, to hold meetings with humanitarian elements and to link humanitarian activity with the activity of the security forces.

On the logistical level, the respondents enabled the transfer of various types of support equipment for the aid .68 organizations – such as forklifts and storage facilities, as well as protective equipment such as helmets and vests – and also assisted in coordinating the purchase of empty trucks for the UN and in relocating warehouses to the humanitarian space. The introduction of communication items for the organizations, such as satellite phones, was also approved; location trackers were purchased and introduced for the benefit of the UN teams; a pilot was launched in which the locations of the delegations are broadcast directly to the coordination room; and the IDF also worked to purchase communication means to maintain direct contact between the KAL in the field and the organizations.

69. At this stage, it is worth noting, for the sake of completeness, that throughout part of the period of the petition's discussion, it was possible to bring equipment and goods into the Strip not only on behalf of humanitarian aid organizations, but also on behalf of private sector entities who sold their goods to civilians for profit. Following the closure of the Rafah Crossing in May 2024, it was also decided to proactively approach private sector entities and promote the introduction of goods in this area, with the aim of providing a practical solution for supplying food to the Strip. After the resumption of truck traffic from Egypt through the Kerem Shalom Crossing

At the end of May 2024, the respondents significantly reduced the coordination of the entry of goods from the private sector, in order to make it easier for aid organizations to collect and transfer the goods. Later – following indications that Hamas was using the private sector for economic and military gain – with the reopening of the Kerem Shalom crossing in early October 2024, it was decided not to allow

Continued importation of goods by private traders into the Strip (paragraph 26 of the respondents' notice of .(14.11.2024

However, it seems that the goods from the private sector are not considered, in the petitioners' position, as "humanitarian aid" that should be taken into account for the purpose of discussing the petition - since the petitioners emphasized in their arguments that the term "humanitarian aid" refers to their approach to equipment. which is "distributed free of charge by aid organizations" (see paragraphs 23-29 of the petitioners' response dated 30.5.2024; also see paragraph 27 of the respondents' announcement dated 14.11.2024). Therefore, as noted by the Head of the Economic Branch at the Gaza Strip, Lt. Col. Nir Azuz (hereinafter: Lt. Col. Azuz), in the hearing dated 24.11.2024 (on page 11, paragraphs 20-16 of the minutes) - the petitioners' claims regarding high prices of goods in the private market do not necessarily indicate the humanitarian situation in the Gaza Strip or the supply data. The aid.

Bringing aid and humanitarian teams into the Gaza Strip

.70 The respondents emphasized that since the beginning of the war, the entry of humanitarian personnel has been possible, including medical teams, as well as the rotation of staff working in the Gaza Strip. The respondents stated that they approved the “vast majority” of the requests to allow the movement of professional-humanitarian teams into the Gaza Strip, and that some of the requests that were initially denied were approved at a later stage (paragraph 136 of the reply affidavit) (For the sake of completeness, it should be noted that a petition was filed with this court regarding the granting of visas to foreign workers of aid organizations (HCJ AIDA **– The Association of International Development Agencies** 32300-10-24 Government of Israel (3.3.2025))). The respondents further informed that the IDF is working to increase the number of drivers who are authorized to transport goods through Crossing 96 (paragraph 32 of the respondents’ notice of .(14.11.2024

As stated, throughout the hearing in the petition, the respondents maintained their principled policy of not imposing restrictions on the amount of aid entering the Strip, and that Israel is prepared to allow the entry of larger amounts of aid than the aid organizations request. This is particularly true in light of the gap between the capabilities of inspection and entry of goods at the crossings, and the organizations' collection and distribution capabilities – a gap that has often resulted in significant quantities of goods waiting to be collected after entering the Strip. For example, as of June 24, 2024, approximately 26,000 aid containers were waiting to be collected on the Gaza side of the Kerem Shalom crossing; and Major General Alian later noted that in the two months preceding the hearing

As of July 21, 2024, 1,200 trucks had accumulated waiting to be collected on the Gaza side of the crossing (see respectively: paragraph 140 of the reply affidavit; minutes of the hearing dated July 21, 2024, p. 13).

.(14-10

Alongside this, with regard to dual-use equipment specifically, the respondents emphasized the concern that this .71 equipment would fall into the hands of terrorist organizations – and therefore, it was explained, requests for its import were forwarded for further assessment by the Shin Bet. The respondents emphasized that most requests for the import of dual-use equipment were approved, and in their words:

> "As of June 20, 2024, 318 such requests had been submitted, of which 216 were fully approved; 23 were partially approved; 13 were rendered irrelevant for various reasons (delayed, duplicate requests, the organization withdrawing the request, etc.); 5 requests require completion from the organizations; 21 requests are still being processed; and 40 requests were rejected for security reasons related to the ability to use the equipment for military purposes and the difficulty in supervising this. In addition, it should be noted that with respect to some of the equipment that was rejected, the requesting party was informed that there were suitable replacements that could be brought into the Strip. With respect to another part of the equipment that was rejected, it was informed that the equipment could be brought in if it arrived at the crossing complete and assembled and not disassembled into parts" (paragraph 112 of the reply affidavit).

In November 2024, the respondents informed that the Ministry of Foreign Affairs is working to exempt various products from the need for coordination (paragraph 32 of the respondents' announcement of November 14, 2024).

Therefore, it seems that it can be said in general that when gaps arose throughout the war in the arrival of humanitarian aid to civilians in the Gaza Strip, the reason for this did not lie, as a rule, in the stage of the aid entering through the Israeli-controlled crossings.

However, at this stage, it is appropriate to refer to one of the significant events that was reported to us as part of .72 the petition hearing – and I mean the sharp decline in the entry of aid into the Gaza Strip, and in particular into the northern Gaza Strip, in the first two weeks of October 2024. As emerges from the respondents' claims, until 1.10.2024 (inclusive), aid trucks were allowed to enter the northern Gaza Strip from both the Erez and Kerem Shalom crossings, but on 2-5.10.2024, the crossings were closed "in light of the Sabbath days" of Rosh Hashanah (paragraph 5 of the respondents' response of 24.10.2024). The crossings remained closed

On October 6-7, 2024, following concrete intelligence alerts about attempts to carry out terrorist activity; and on October 8, 2024, the Kerem Shalom crossing was opened.

Between me and you, on 5.10.2024, the IDF began intense operational activity in the northern Gaza Strip. Due to operational constraints, the Erez crossings remained closed until 13.10.2024 and resumed operation on 14.10.2024, initially in a reduced format and later in a full format. At the same time, passage through the drains from the south of the Gaza Strip to its north was reduced "to the necessary minimum" until 15.10.2024 due to intelligence alerts and the constraints of the fighting; and due to the intense operational activity in the Jabaliya area, no movement coordination was carried out for this area at that time "except for specific coordination for the introduction of medical equipment and medical teams to the hospitals in the area" (paragraph 11 of the respondents' response of 24.10.2024). However, in their statement of On November 14, 2024, the respondents clarified that they had conducted ceasefires in recent weeks, during which it was possible to bring aid and humanitarian teams to the hospitals in the area; and that coordination of movements was carried out for the purpose of distributing aid within the area where the fighting was taking place, even though many trucks were looted on their way to their destination (paragraph 18 of their statement of November 14, 2024).

The respondents emphasized that as of October 15, 2024, "there is no longer a general restriction on the .73 coordination of humanitarian movements from south to north, except due to concrete operational constraints"; that there is no longer a restriction on the entry of humanitarian aid through the Erez Crossings; and that near the opening of the Erez Crossings, the Jordanian route also returned to operation (paragraphs 9-10 of the respondents' response of October 24, 2024). In fact, on October 8-12, 2024, 299 aid trucks entered the Strip; and in the period from October 13, 2024 to November 9, 2024, 2,201 aid trucks entered (paragraph 33 of the respondents' announcement of November 14, 2024). It was further noted that on October 16, 2024, "the political echelon instructed the IDF and the Ministry of Foreign Affairs to act to increase the volume of aid entering the Gaza Strip" (Respondents' announcement of November 14, 2024, paragraph 14); and that on November 10, 2024, the Ministerial Committee for National Security Affairs ordered "to allow the entry of 250 trucks of humanitarian aid per day into the Gaza Strip, at a minimum, while ensuring that a sufficient quantity enters the northern Gaza Strip" (ibid., paragraph 31).

The respondents also reiterated that their decisions regarding the closure of the crossings were made against the background of assessments that at that time there were “sufficient reserves” of humanitarian aid, and in particular food, in the northern Gaza Strip (paragraphs 5, 7 and 10 of the response dated 24.10.2024). As stated, in retrospect it became clear that the respondents had erred in estimating the size of the population that was in the relevant areas, but it was clarified that the amount of humanitarian aid that was brought into the area during the operation “took into account

"A strict operational assumption in relation to the amount of the civilian population in the area, inter alia in light of the possibility of a deviation in the data" (paragraph 5 of the respondents' announcement dated December 17, 2024).

.74 The petitioners, for their part, sharply criticized the respondents' conduct in relation to these events. I would point out that on the face of it, this criticism includes a dimension of "hindsight wisdom" - since, as stated, the respondents' decisions were based on assessments of the situation that only later turned out to be incorrect; and when the crossings were closed during Rosh Hashanah, it is doubtful whether they had the full picture regarding the warnings and operational activity that only occurred afterwards. I would reiterate and emphasize that in implementing their humanitarian duties, the respondents are entitled to take into account security and operational considerations, and the need to prevent risk to IDF forces.

However, at the end of the day, the test of results recorded a period of about two weeks during which a very limited amount of aid entered the Gaza Strip, and in particular its north – and it seems that the situation This occurred not as a result of a deliberate political or operational decision, but rather due to a combination of circumstances and specific constraints that accumulated over that period of time. Bearing in mind the normative infrastructure that I discussed above, and the commitment expressed by the respondents throughout “to enable aid organizations and the international community to bring in a large amount of humanitarian aid into the territories of the Gaza Strip, all while the heavy fighting continues” (paragraph 8 of the respondents’ statement of 14.11.2024; emphasis added – 10) – This state of affairs requires serious consideration by the respondents, and it requires drawing lessons in order to reduce as much as possible the fear of its recurrence. I do not find it necessary to express a position regarding the concrete steps that should be implemented in this context, since this issue lies at the core of the respondents' professional judgment, but I found it appropriate to emphasize at this stage the importance inherent in planning and preparing in advance for the fulfillment of the State of Israel's obligations in the humanitarian sphere, even during active combat (cf., with the necessary changes: the position of Justice D. Beinisch in the High Court of Justice, 4764/04 at pp. 409 and 411).

.75 I would add that in the first months of the petition's discussion, the petitioners referred to attempts to disrupt the activities of the aid convoys from the Israeli side, as part of civil protests that broke out in Israeli territory against the delivery of aid. Subsequently, the respondents clarified that in January 2024, the areas around the Nitzana and Kerem Shalom crossings were declared closed military areas, and that the Israel Police set up checkpoints and arrested a number of protesters who violated the closure orders. In response, the petitioners claimed that the enforcement actions they detailed were not effective enough, but the respondents rightly noted that the discussion of this issue goes beyond the scope of the current petition. I would also add that I found no reason to

In the present proceedings, the provisions of the UNRWA Termination of Activities Law in the Territory of the State of Israel, 5775-2024 and the UNRWA Termination of Activities Law, 5775,2024, which entered into force on January 30, 2025 and were not argued by the parties. For the sake of completeness, it should be noted that a petition against these laws is pending before this court (HCJ 41922-01-25 Alkam v. Knesset); and as part of the response submitted by the respondents to the request for an interim order in that petition (a copy of which was submitted to the present petition file on February 2, 2025), it was noted that steps are being taken to provide alternatives to UNRWA activities in the Gaza Strip, and that the assessment of the IDF is that the activities of the other aid organizations are expected to enable the required scope of assistance to be met.

Coordination of the organizations' movements within the Strip

.76 As stated, throughout the war, the respondents maintained ongoing coordination with aid organizations regarding their movement within the Gaza Strip during the stages of collecting, transporting, and distributing aid. The respondents explained that they approved the “vast majority” of requests for coordination of movements within the Strip, and that when such requests were denied, this generally stemmed from security reasons – such as concerns that the aid would be diverted from its intended destination and used by Hamas – or from the existence of operational activity along the requested coordination route, which could jeopardize the safety of the humanitarian teams. For illustration purposes, it was noted That in August 2024, approximately 78% of the 1,556 coordination requests submitted were approved; in September 2024 Approximately 83% of approximately 1,624 requests were approved; and in October 2024, approximately 75% of approximately 1,218 requests were approved (paragraph 37 of the respondents' statement of November 14, 2024). In addition, the respondents noted that some of the coordination requests that were approved were not ultimately carried out, for example due to technical difficulties of the organizations or due to difficulties in accessing certain areas of the Gaza Strip. The respondents also detailed various improvements they made in the process of handling coordination requests, including setting fixed deadlines for submitting and reviewing requests, closely monitoring schedules with the involvement of commanders during prolonged waits, and establishing command procedures for handling requests and "outbreak" events. (Ibid., paragraph 40).

77. When the aid mission was put into action, coordination usually began in advance (even before the movement was carried out) and continued until arrival at the destination. Whenever the humanitarian team whose movement was coordinated encountered a problem in the field, a hotline from the Gaza DCO was in contact with it to examine solutions. However, as detailed in paragraph 29 above, the respondents emphasized that most of the aid organizations' movements within the Strip were carried out at the organizations' discretion, without coordination or contrary to IDF recommendations, and that significant areas in the Strip were not initially designated as "recommended for coordination."

In their claims, the petitioners described cases of disrespectful treatment by IDF forces towards aid shipments, and .78
also claimed that many aid shipments were delayed for long hours within the Gaza Strip or were subject to restrictions
announced at the last minute. In response, the respondents noted that many of the petitioners' claims did not include indications
of concrete incidents, and in any case, in their opinion, "when examining cases in which it is alleged that Israel prevented or
delayed movement within the Gaza Strip, it is revealed that these are exceptions, and when they occur they arise due to
operational constraints,
And sometimes due to factors beyond the IDF's control, including false alarms and firing at targets.
"Our forces or inadequate infrastructure" (paragraph 155 of the reply affidavit). However, the respondents acknowledge that
throughout the fighting there have been cases in which aid convoys have been damaged due to the activities of IDF forces, and
they emphasized that these unfortunate cases are being examined and investigated and that lessons are being drawn from them.
The appropriate ones (ibid., at paragraph 162).

The respondents' actions in relation to the various types of assistance

79. Following the detailed description of the respondents' conduct regarding the methods of transferring the aid, I will move on
to a review of various actions carried out regarding the humanitarian aid itself, divided according to
Main types.

80. One of the most important, if not the most important, types of humanitarian aid is food.
which is intended for the civilian population in the Gaza Strip. Throughout the discussion of the petition, the petitioners
referred to several reports on behalf of the International Famine Review Committee (FRC) , which was established
On behalf of the IPC (Classification Phase Security Food Integrated) project , which promotes food security issues.
The IPC offers a five-stage scale to describe the food security situation of populations: from stage 1 (minimal or non-
existent risk) to stage 5, the most severe (Famine / Catastrophe). According to the petitioners, throughout the period
of discussion of the petition, the IPC warned several times about a difficult nutritional situation in the Strip, and
pointed to significant limitations on food accessibility. The respondents, for their part, stated that they do not take the
IPC's determinations lightly, but in their opinion there are various inaccuracies in its reports. [For the sake of
completeness, it should be noted that on November 8, 2024, the IPC issued a warning regarding the fear of a famine
situation throughout the Strip
Between November 2024 and April 2025 – and this is based on a forecast that an escalation in fighting is expected during this
period. Without expressing a position on the report’s conclusions, it seems that the ceasefire

In the months of January–March 2025, a different factual situation was created than that on which the organization's forecast was based.]

.81 In essence, the respondents noted that the entry of water and food trucks into the Gaza Strip was approved "automatically during the coordination phase"; that they worked with aid organizations to facilitate the opening of bakeries in the Strip, in order to increase self-production in the area; And that when the Ministry of Agriculture and Rural Development received reports of a shortage of fuel or any raw material essential for bakeries, it acted to provide an immediate response (see, respectively: paragraph 25 of the respondents' notice of April 15, 2024 and paragraphs 224 and 194 of the reply affidavit). For the sake of illustration, it was noted that in the months of March-June 2024, an average of 146 food trucks entered the Gaza Strip per day (paragraph 102 of the reply affidavit). The respondents later reiterated and emphasized that "Israel allows the entry of cooking gas and food to the extent required by the organizations" (paragraph 44 of the respondents' notice of August 20, 2024; also see paragraph 56 of the respondents' notice of November 14, 2024). Further to the petitioners' claim regarding the failure to enter cooking gas into the northern Gaza Strip for a long period, the respondents noted that there is no impediment to the transfer Cooking gas for the northern Gaza Strip, however, the Ministry of Foreign Affairs does not recognize requests from organizations in this context, "and to the best of our knowledge, they are not working to distribute it, but are relying on fuels that are transferred daily to the northern Gaza Strip" (ibid.).

.82 Another type of essential humanitarian aid is water – both for drinking and for sanitation purposes. Before the outbreak of the war, 90% of the water in the Gaza Strip did not come from Israel but from the Gaza Strip itself, and the remaining 10% was brought in from Israel through three water lines (the Nahal Oz line in the north of the Gaza Strip, the Birkat Said line in its center, and the Bani Suheila line in its south). As the respondents claim, thanks to improvement efforts made in this area – there is a sufficient amount of water in the Gaza Strip to meet the humanitarian needs of the population, and it was emphasized that the Palestinian Authority acted to facilitate and enable requests for the rehabilitation of water infrastructure in the Gaza Strip in coordination with the Palestinian Water Authority (see, inter alia: paragraph 9 of the respondents' statement of 20.8.2024; paragraph 59 of their statement of 14.11.2024).

In addition, in the first months of the war, Israel facilitated the construction of two water lines on behalf of the United Arab Emirates – although as of the date of submission of the reply affidavit, the lines were temporarily out of operation, and the respondents emphasized that they were facilitating the work to repair them – and the reply affidavit noted that Israel had acted to assist in the construction of a third line by the United Arab Emirates (ibid., at paragraphs 196 and 203). The operation of a “sling line” – an electricity supply line that runs from Israel to the Gaza Strip – was also approved for the purpose of operating a desalination plant located in Khan Yunis; at the same time, Israel facilitated the transfer of fuel

to water wells in the Gaza Strip, as well as on the introduction of water in bottles and tankers (ibid., paragraphs 196, 205 and 209; see also paragraph 44 of the petitioners' announcement of September 30, 2024; paragraph 59 of the announcement Respondents dated 14.11.2024).

.83 An area closely related to the water issue is the area of hygiene and sanitation. Throughout the discussion of the petition, certain deficiencies were evident in the level of addressing sanitary issues, and in particular in the sewage infrastructure – but the respondents emphasized that Israel had acted to enable the continuous operation of wastewater treatment facilities, and to facilitate the performance of various activities in the field of sanitation (such as the construction of pumping and piping facilities, and the provision of septic tanks and mobile wastewater treatment facilities; paragraph 198 of the reply affidavit). It was also emphasized that permits were granted for the introduction of dual-use materials in the field of sanitation – such as chlorine – despite the risk inherent in this. The respondents also reported on the formulation of a joint work plan with the UN's WASH (water, hygiene and sanitation) cluster , within the framework of which the introduction of dual-use sanitation equipment such as sewage pumps and water desalination units was approved (paragraph 9 of the respondents' statement of 20.8.2024). At the same time, the Ministry of Public Works and Transport officials were in contact with various organizations with the aim of improving waste treatment processes. Following reports of the presence of the polio virus in the Gaza Strip, the respondents acted to facilitate the introduction of vaccines intended for the civilian population, and took part in planning a system for distributing the vaccines - during which, it was reported, approximately 1,107,541 children were vaccinated throughout the Gaza Strip (paragraph 52 of the respondents' statement of 14.11.2024). Earlier, the respondents reported that Israel had allowed the introduction of 2,286,330 vaccine doses for various diseases, including polio, Hepatitis, tuberculosis and diphtheria (paragraph 1

84. Regarding medical equipment, it was noted that the respondents acted to facilitate the entry of various types of equipment – including anesthetics, wheelchairs, hospital beds, incubators, infusions, anesthesia machines, oxygen generators, etc., including dual-use equipment; and that to the extent that a shortage was reported, Israel acted to assist in coordinating the entry of appropriate equipment (paragraphs 220-219 of the reply affidavit, paragraph 50 of the respondents' announcement of 14.11.2024). During the hearing of 21.7.2024, Major General Alian noted that following work with UN bodies, it was decided to give special importance to the issue of medical equipment, and that requests regarding trucks carrying medical equipment were given special priority (hearing minutes of 21.7.2024, p. 22, pp. 30-27). Alongside this, the respondents emphasized that "Israel does not restrict the entry of medicines into the Gaza Strip, and it is the organizations that

"which determine the volume of medicines that enter, their type, their delivery, and their distribution to hospitals and medical centers" (paragraph 29 of the respondents' announcement dated August 20, 2024).

In addition, the respondents noted that the IDF facilitated and coordinated the establishment of a .85
number of field hospitals, clinics, and floating military hospitals in the Gaza Strip. In this context, it should be noted, for the sake of completeness, that throughout the discussion of the petition, various data were presented to us regarding the activities of the health institutions in the Gaza Strip, and the disruptions that occurred in these activities due to the events of the war. Continuing with the claims regarding the evacuation of hospitals due to IDF activity, the respondents noted that in some of the cases reported, the evacuation actually resulted from an independent decision by the hospitals or from an order by Hamas personnel, while the IDF did not act to evacuate them or to stop the functioning of the hospitals and even made this clear to the organizations in real time (paragraphs 212, 214, and 222 of the reply affidavit; paragraph 23 of the respondents' statement of August 20, 2024). In addition, the respondents emphasized that "during the fighting, Hamas terrorists made military use of medical facilities, while operating from a hospitals, disguise themselves as medical staff, and store weapons in the hospital compound" (paragraph 19 of their announcement of November 14, 2024; see also paragraph 54 ibid.). The respondents added that when the need arose for IDF forces to operate inside the hospitals as a result, the IDF acted to protect the patients as much as possible, and to ensure their continued treatment or evacuation to other hospitals in the Gaza Strip (ibid.; see also paragraphs 215-216 of the reply affidavit). The respondents also worked to formulate a plan for evacuating patients from the Gaza Strip to a third country insofar as there was no appropriate treatment for them in the Gaza Strip (this issue was discussed in HCJ 4621/24 Physicians for Human Rights – Israel v.
Government of Israel (2.3.2025)).

86. Regarding equipment for constructing shelters: Since the beginning of the fighting, the State of Israel has allowed the entry of tens of thousands of tons of this type of equipment, and has even purchased 40,000 tents itself (which can provide a solution for approximately 400,000 people) – of which 26,000 tents had been brought into the Strip as of the date of submission of the reply affidavit; and the remainder, it was stated, were ready for collection but requests for their collection had not yet been submitted (paragraphs 28 and 190 of the reply affidavit). The respondents further detailed various actions that were carried out in order to enable preparations for winter in the Strip, including granting centralized approval for the entry of essential equipment (such as designated tents, raised platforms and heaters) in accordance with the organizations' requirements, and coordinating
Bringing in medical equipment and vaccines.

87. Regarding the field of communications, the respondents explained that Israel acted to facilitate the preservation of access to communications services in Gaza; allowed the introduction of equipment to restore the Internet and cellular communications network in the Strip; and responded to requests for the introduction of additional communications equipment, as a backup to the public infrastructure that exists in the Strip. However, it was clarified that because communications equipment

May be considered dual-use equipment. Requests to bring communications equipment into the Strip were forwarded for security assessment and were sometimes refused for security reasons (paragraphs 120 and 167 of the reply affidavit).

88. As for the fuel sector , the picture seems to be a little more complex. First, it should be noted, for the sake of completeness, that the respondents claimed that fuel “is not directly included in the relevant legal sources as humanitarian goods that there is an obligation to allow their entry in times of war” – however, in the same breath, the respondents emphasized that Israel recognizes the humanitarian implications involved.

In bringing fuel into the Strip (paragraph 267 of the reply affidavit). Indeed, the fuel issue directly affects the humanitarian response in other aid categories: fuel is needed, among other things, to operate bakeries that provide a response in the food sector, water pumping and desalination facilities, and wastewater treatment facilities (which affect the sanitation sector, which in turn affects the health sector); and fuel is also needed to operate certain aspects of the health system, such as ambulances and hospital equipment. The fuel issue is also closely related to the electricity situation in the Gaza Strip: before the outbreak of the war, approximately 50% of the electricity consumed in the Strip came from Israel via high-voltage lines, and at the same time, electricity was produced in the Strip through self-production. With the beginning of the war, nine out of ten power lines from Israel were hit by rocket fire from terrorist organizations, and against this background, Israel allowed the entry of fuel for aid organizations to operate generators for various humanitarian needs (paragraph 33 of the preliminary response).

.89 However, it is not disputed that the fuel that enters the Gaza Strip and is intended for civilian-humanitarian purposes may end up in the hands of terrorist organizations that seek to exploit it to harm the State of Israel and its citizens. Against the background of these considerations and complexities, the respondents emphasized that the State of Israel "enables and facilitates the entry of limited quantities [of] fuel into Gaza on a regular basis and in coordination with aid organizations operating in the Gaza Strip" (paragraph 267 of the reply affidavit). In practice, it was explained, the IDF maintains a table in cooperation with the UN, within the framework of which the issue of fuel is continuously monitored, divided into several parameters: a list of civilian facilities in the Gaza Strip that need fuel; the amount of fuel needed for each facility (as reported by the UN); the amount of fuel distributed to each facility; the amount of fuel in the UN storage facilities on any given day; and the history of fuel distribution (paragraph 127 of the reply affidavit). [For the sake of completeness, it should be noted that according to the respondents' statement of 2.2.2025, until recently, UNRWA was involved in the transportation and supply of fuel to the humanitarian facilities in the Gaza Strip, but at some point this area was transferred to another UN agency.] In order to ensure that the fuel entering the Gaza Strip would be used for humanitarian needs, the respondents conducted a detailed examination of the quantities of fuel that were needed each day (Minutes of the hearing).

of 4.4.2024, p. 32, p. 40-32; Minutes of the hearing of 5.5.2024, p. 30, p. 20-16; Minutes of the hearing of 21.7.2024, p. 7, p. 12-10). Lt. Col. Azuz explained in this context that the respondents monitored the status of the fuel reserves in the UN warehouses, and coordinated the introduction of fuel according to the status of the reserves: when the amount of fuel in the UN warehouses fell below a certain level, the introduction of fuel was increased, and vice versa (Minutes of the hearing of 4.4.2024, p. 41, p. 7-9). However, on a principled level, the respondents emphasized their willingness to allow the introduction of fuel for humanitarian needs; and in their words, that –

> "The amount of fuel entering the Strip is determined in accordance with the request of the various organizations based on their needs; and that there is no obstacle on the part of the respondents to bringing in an additional amount of fuel [...] The respondents "They do not limit the quantity and frequency of fuels for humanitarian needs, and as requests for the introduction of additional fuels are received, the respondents will adjust their introduction" (emphasis added – YA; paragraph 9 of the respondents' announcement of August 20, 2024).

Summary of the Respondents' Conduct at a Glance

.90 Throughout the hearing of the petition, we were presented with a variety of steps that the respondents are taking in order to help humanitarian aid reach the uninvolved civilian population in the Gaza Strip. Gaza. This, while balancing the State of Israel's humanitarian obligations with security-operational considerations, including the fear of aid leaking into the hands of terrorist organizations. In doing so, the respondents showed attention to the changing reality and the needs anticipated by aid organizations, and a willingness to continue to streamline the format of their activities.

It appears that at the current stage of the discussion, the petitioners' objections are focused on two main levels: one, "in the steps that the respondents did not take" (paragraph 11 of the main arguments; emphasis in the original - Y.A.); and the other, in military moves that created indirect damage to the civilian population and made it difficult for the organizations to operate - including repeated evacuations of population centers, damage to civilian infrastructure, particularly roads, and various actions that, in the petitioners' opinion, are inconsistent with the principle of distinction and the precautionary principle (paragraphs 4-5 and 16 of the petitioners' response of May 30, 2024; paragraphs 13-15 and 77 of the main arguments).

.91 As far as the first level is concerned – the question of what steps were not taken by the respondents – I would like to point out that during the discussions that took place before us, we asked the petitioners to specify where, in their opinion, the “bottlenecks” were in the introduction of humanitarian aid, and what steps, in their opinion, should have been taken.

Many of the issues raised by the petitioners were addressed later: this was the case, for example, with regard to the request to open additional crossings, particularly in the northern Gaza Strip, and to expand their operating hours (Minutes of the hearing dated 4.4.2024, p. 18, p. 25; paragraph 70 of the petitioners' response dated 19.4.2024; paragraph 10 of the petitioners' notice dated 30.9.2024); to open the Ashdod port for the transfer of additional types of goods (paragraph 70 of the petitioners' response dated 19.4.2024; Minutes of the hearing dated 5.5.2024, on page 24, p. 25-26); and to clarify that the organizations are also able to purchase goods in Israel and Judea and Samaria (paragraphs 6 and 27 of the petitioners' response dated April 19, 2024; paragraph 64 of the respondents' notice dated May 1, 2024; minutes of the hearing dated May 5, 2024, on page 24, p. 12-5; paragraph 44 of the respondents' notice dated May 23, 2024; paragraphs 80-81 of the reply affidavit).

.92 In addition to the above, some of the petitioners' claims were presented at a level of abstraction that was too high for concrete steps to be derived from them for implementation by the respondents (see, for example, the request to grant "broader authorizations for the collection of aid and its transportation within the Gaza Strip," and the request to allow coordination "in a simpler and more urgent manner"; see, respectively: the minutes of the hearing of 4.4.2024, p. 18, p. 24-25; the minutes of the hearing of 10.6.2024, p. 16, p. 27). On other levels, the respondents found it necessary to reject or partially grant the requests presented by the petitioners – particularly in aspects related to security considerations (see, for example, the petitioners' request for the transfer of the aid trucks "without [them] encountering checkpoints on the way [to] the army deployed in the area" and without being delayed (Minutes of the hearing dated 10.6.2024, p. 16, p. 33; paragraph 95 of the petition)). After examining the details and reasoning provided by the respondents on these issues, in light of their obligations under international and Israeli law – I do not believe that the petitioners have indicated a reason for interfering with the respondents' professional judgment and their decision not to adopt certain measures that the petitioners sought to implement.

93. As for the military operations that led to indirect harm to the civilian population in the Gaza Strip or to difficulties in the activities of the organizations – it seems that the petitioners' claims in this context are in fact objections to the manner in which the fighting was conducted, and in particular to the IDF's decision to operate in certain areas and during certain periods of time. Bearing in mind that the remedies requested in the petition do not deal with criticism of the military operations per se, the discussion of this issue goes beyond the scope of the present proceedings. In any case, I would reiterate and emphasize that it is not the practice of this Court to intervene in military and security decisions regarding the nature of the fighting (see paragraph 58 above); and that international humanitarian law recognizes, as stated, that the implementation of a party to a conflict's obligations may be influenced by military considerations. and operational.

94. Therefore, after examining all the circumstances of the case, I am convinced that there is no need to issue an absolute order in this petition. For the avoidance of doubt, I will clarify that, taking into account the totality of the actions taken by the respondents with the aim of improving the humanitarian situation in the Gaza Strip throughout the period of time examined in the petition, as detailed above, I do not believe that the petitioners were able to establish – not even approximately – a violation of the prohibitions on starvation of a population as a method of warfare and on collective punishment.

Finally, and looking to the future

95. The "Iron Swords" war was forced upon the State of Israel and its citizens due to the murderous attack initiated by the terrorist organizations in the Gaza Strip on 7.10.2023. At the same time, the war was also forced upon the uninvolved citizens in the Gaza Strip, who did not take a direct or indirect part in terrorist activity, but who are experiencing severe suffering due to the consequences of the fighting and the conduct of the terrorist organizations, who are hiding among the civilian population and are working to take control of the aid intended for it. As stated, it is the terrorist organizations that bear responsibility for the suffering of the uninvolved population -

However, this human suffering is not a given that the State of Israel is entitled to ignore. As ruled

In a similar context:

> "Cicero's saying that in times of war the laws are silent does not reflect modern reality. [...] The reason underlying this approach is not only pragmatic, a product of political and normative reality. The reason underlying this approach is much deeper. It is an expression of the difference between a democratic state fighting for its life and the fight of terrorists who rise up against it. The state fights in the name of the law and in order to preserve it. Terrorists fight against the law and in violation of it. The war against terrorism is also the war of the law against those who rise up against it [...] But beyond that, the State of Israel is a state whose values are Jewish and democratic. We have established here a law-abiding state, which fulfills its national goals and the vision of generations, and which does so while recognizing human rights, in general, and human dignity, in particular, and their fulfillment. Between these two there is harmony and compatibility, not contradiction and alienation" (HCJ 3451/02 Almadani v. Minister of Defense, PD No(3), 30 35-34 (2002)).

Alongside this, I would like to reiterate that the implementation of the State of Israel's humanitarian obligations, .96

It should be carried out while constantly monitoring the humanitarian situation in the Gaza Strip and the needs of the population there. This picture was and is being formed, among other things, on the basis of the respondents' dialogue with the various aid organizations, which in itself helped to streamline their activities.

The respondents in relation to humanitarian assistance. It must therefore be assumed that the respondents will continue to monitor the humanitarian needs picture, including continued contact with aid organizations; and will continue to adapt their conduct to the situation on the ground, to the extent possible given the constraints of the fighting.

As stated at the outset, after this ruling was written, a significant change in circumstances occurred in the form of decisions by the political echelon regarding the halting of goods entering the Strip via Israel and regarding the halting of the sale of electricity to the Gaza Strip. These new decisions significantly alter the factual and legal infrastructure that underpinned the parties' arguments throughout the months of the petition hearing, and under the circumstances of the case, I am convinced that there is no room to address this significant change within the framework of the current petition (as for the electricity issue, a separate petition has also been filed in the meantime (HCJ 30312-03-25 Cohen v. Government of Israel)). The parties' arguments regarding these new circumstances are reserved to them.

I will conclude with the words of Major General Alian, Commander of the IDF, who did a good job of explaining what underlies the .97 State of Israel's policy - which the respondents insisted on time and again throughout the period of the petition's discussion, and which stemmed from the explicit instructions of the political echelon - to allow the entry of humanitarian aid into the Gaza Strip without any restriction on quantity, even in the midst of fighting:

> "The IDF's humanitarian unit, under my command, has been working since the beginning of the war to advance the humanitarian effort. We are constantly working to improve existing mechanisms and promote new initiatives that will serve the Gaza residents, with the understanding that they are not our enemy and that our enemy is Hamas and the other terrorist organizations. These are the values of the State of Israel and the IDF, and this is our moral duty. We are committed to the mission assigned to us by the leadership."
>
> The political [...]" (emphasis added – Y.A.) (Minutes of the hearing dated 21.7.2024, p. 20, pp. 40-37).

I will therefore reiterate and emphasize that the respondents themselves did not dispute the applicability of obligations under international and Israeli law with regard to humanitarian assistance.

In the circumstances of the case, I will suggest to my friends that no order for costs be made.

Yitzhak Amit
President

Judge Noam Solberg:

.1 The opinion of my colleague, President Y. Amit, is detailed and comprehensive. His conclusion is correct. Indeed, there is no reason for our intervention; even after the issue has been decided , there is room for reflection (see and compare: HCJ 15663-01-25 Calderon v. Government of Israel, paragraph 6 of the legal ruling (22.1.2025)). Therefore, I saw fit to join the conclusion reached by my colleague, according to which the petition should be dismissed.

.2 Regarding Didi, there is no need to elaborate. I will explain. The request for an interim order filed by the petitioners on March 2, 2025, as well as the respondents' response to the request, show that since the conditional order was issued, and the parties' arguments were heard, the factual infrastructure underlying the petition has completely changed; not for the first time since the petition was brought to our attention. There is no dispute about that. Under these circumstances, the petition should have been struck out, while maintaining the arguments.

.3 This is nothing new. This is how we always act, as a court, in the case of petitions that come before us in our capacity as a high court of justice. This is how this court acted only recently, in another petition, which also dealt with matters of humanitarian aid to the Gaza Strip, and it was determined that it should be struck out: "The respondents' statement shows that since the petition was filed, changes have occurred in the factual basis at the basis of the petition, and that further changes are expected in the future. Under these circumstances, it appears that the petition has exhausted itself in its current form [...]. It is clear that there is no place [...] to continue to manage the petition "Despite the frequent changes in the factual infrastructure" (Judge A. Grosskopf, concurring) Justices Y. Elron and Y. Kasher, in High Court 65686-11-24 Palestinian Pioneer Association v. State Israel, paragraph 4 (6.3.2025)).

.4 The same is true of this petition, which has exhausted itself and should be struck out. In view of the change in the factual basis, which in turn also affects the legal basis, I did not see fit to go into detail and address the substance of the matter in detail; anything that adds to it is subtracted. The bottom line in the opinion of my colleague the President is clear, decisive, and agreed upon. Let it be so.

Because these are government decisions based on clear security-political considerations, at a difficult and bitter time of fighting against a murderous and cruel enemy; this may be due to the fact that the humanitarian aid introduced to the Gaza Strip so far has been extensive, far beyond what is required under international law.

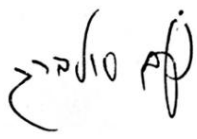
.5 On the sidelines, and perhaps this is the gist of it: During the lengthy discussions that took place before us – some in open doors, some confidential – it became clear that the true factual picture

The situation we were exposed to is different from what the petitioners seek to present; completely different, in several aspects. In parallel with the management of the war effort, the senior IDF officials were engaged in the integration of logistical and security needs, in order to enable the frequent transportation of humanitarian aid – of a wide variety, in a huge and extensive scope – to the Gaza Strip. Many good people, soldiers and commanders, were engaged in this matter day and night; they did so, both before and after the law, even at the expense of operational activity. To our knowledge, there were also casualties among our forces, a result of the malicious criminality of Hamas, which at times did not hesitate to launch barrages of fire, even at points of concentration and assessment of humanitarian aid.

.6 It is important for historical truth to be spoken in a clear and loud voice in the face of detractors: "False lips shall be cut off" (Psalms 30:19). However, this has no bearing on the present or the future. I accept the respondents' position, according to which "even if during the past year [...] The respondents' policy was, in view of broad political-security aspects and the fighting situation, Allowing large-scale entry of supplies and goods into the Gaza Strip does not change the legal framework governing the matter or establish that this policy must continue even during "The current one, taking into account the change in circumstances."

.7 This is also worth remembering and mentioning: Hamas' murderous hand was also on the ground, In a hostile takeover of humanitarian aid shipments. However, Hamas's cruelty did not weaken the hands of IDF soldiers. But common sense is easy: excessive humanity (=humanism), which is not focused on its destination, misses its purpose. "Humanitarian" aid that arrives in the hands of Hamas as a ripe fruit, is an oxymoron; the human becomes animalistic. The fighting cannot come to an end like this. Such 'humanism' does not bring the message of peace on its wings, but perpetuates pain and suffering.

.8 And one last method. From the mouths of experts and experienced people from abroad, we learned (albeit more in private than out loud): the mobilization of the Israel Defense Forces to bring humanitarian aid deep into Gaza, in parallel with intense combat activity, has no equal among the armies of the world.



Noam Solberg

judge

Judge David Mintz:

I agree with my colleagues regarding the result that the petition should be dismissed. I also rely on the comments of my colleague Justice N. Solberg in this matter. I believe that the State of Israel and its army, the Israel Defense Forces, have gone above and beyond in providing the possibility of extending humanitarian aid to the residents of Gaza. Often while taking considerable risks that some of the aid will reach the hands of the terrorist organization Hamas and will benefit it, not only for survival purposes, but also in its criminal war effort against the State of Israel (and see: paragraph 89 of the opinion of my colleague President Y. Amit). The respondents' conduct is an expression of the values on which the state in general and the IDF in particular are founded, as we are a Jewish and democratic state. Even more than that. Therefore, I saw fit to give a taste, certainly not to encompass the issue in all its aspects, details and grammar, of the halakhic law on the issue (and in this regard, see paragraphs 4-8 of my opinion in HCJ 5555/18 Hasson v. Knesset of Israel).

.((8.7.2021)

Woe is me, for I have sojourned
with the tents of Kedar. My
soul has dwelt long with
them that hate peace.
I am peace, and I speak of
war (Psalm 122:5-7).

A look into the past that anticipates the future

.1 In Jewish law, it is customary to distinguish between a war of commandment and a war of permission. A war of commandment is a mandatory war, and it includes three types: "the war of the seven nations and the war of Amalek and the help of Israel from the hand of the enemy that came upon them" (Mishnah Torah, Shofitim, Laws of Kings, Chapter 5, Halacha 1; and see the Tannaim dispute on the matter: Bavli, Sotah 44, 2). A war of permission, according to the Maimonides, is "the war that [the king] fights with the other nations in order to expand the borders of Israel and increase its greatness and its fame" (ibid.). One of the practical differences between a war of commandment and a war of permission is expressed in the fact that in a war of commandment the king does not "need to obtain the permission of the court" to go to war, while in a war of permission, "the people do not go out to it except according to a court of seventy-one" (ibid., Halacha 2). Another type of exception concerns "returnees from the war," i.e. those who are exempt from participating in a war of permission: those who "built a new house and did not dedicate it"; Who "planted a vineyard and did not destroy it"? And who "bequeathed a wife and did not take her" (Deuteronomy 20:5-7; Mishnah Torah, Judges, Laws of Kings and Wars, Chapter 7, Halacha 4. See more on the war of authority: Rabbi Yehuda Amital, "Wars of Israel according to Maimonides," Tecumin 8:454 (5787); and also the distinction between war

Permission for a Mitzvah War: Rabbi Dr. Nariv Gotal "Fighting in an Area Saturated with a Civilian Population"

Tecumin 23, 18 23 (5763)).

.2 As for the first type of mandatory war, the Seven Nations War is aimed at a war over the territory of the land. It originates from the Book of Deuteronomy, where the Torah refers to the seven nations that lived in the Land of Israel during the Exodus from Egypt, and explicitly commands that "only of the cities of these nations that the Lord your God has given you as an inheritance, not a soul shall live" (Deuteronomy 20:16). However, if "these nations" refuse to surrender - "you can revive them" despite the Torah's command to destroy them (Rashbam, ibid., i.e. "not a soul shall live"). This commandment refers, as stated, to "these nations" whose land was given to Israel as an inheritance, in contrast to other cities to which the Torah commands to call for peace before fighting them, since it was a war of authority and not a war of commandment Rashi, Deuteronomy 20:10 i.e. "when you come near a city"). According to Maimonides, the war of the Seven Nations is limited to the initial entry of the people of Israel into the Land of Israel after its Exodus from Egypt (and see: Avraham Yisrael Sharir "Military Ethics According to Halacha" Tachumin 25:426 (5765) regarding finding a source for the Rambam's words). On the other hand, the Ramban's opinion is different, and according to him, this is a commandment that applies to this day (the Ramban's errors on the Book of Mitzvot, forgetting to do the deed 4).

.3 As for the second type of mitzvah war, regarding the Amalek War, the Torah tells us and commands us as follows:

"And Amalek came and fought with Israel in Rephidim. And Moses said unto Joshua, Choose us men, and go out, fight with Amalek: to morrow I will stand on the top of the hill with the rod of God in mine hand. And Joshua did as Moses had said unto him, to fight with Amalek: and Moses, Aaron, and Hur went up to the top of the hill. And it came to pass, as Moses lifted up his hand, and a mighty man Israel, and when he had laid his hand and defeated Amalek... And Joshua utterly destroyed Amalek and his people with the edge of the sword. And the Lord said unto Moses, Write this for a memorial in a book, and rehearse it in the ears of Joshua, that I will utterly blot out the remembrance of Amalek from under heaven. And Moses built an altar, and called the name thereof, The Lord is my strength. And he said, For the hand is upon the cup of the Lord, and the battle is against the Lord. "Amalek from generation to generation" (Exodus 17:8-16).

The Torah even repeats this commandment in the Book of Deuteronomy, thus:

"Remember what Amalek did to you on the way, when you were coming out of Egypt. How he attacked you on the way and made all the weak behind you to fight against you, so that you would be weary and weary, and would not fear God. And when the Lord your God gives you rest from all your enemies all around in the land that the Lord your God is giving you as an inheritance,

"You shall utterly destroy the remembrance of Amalek from under heaven; you shall not forget it" (Deuteronomy 25:17-19).

.4 In this regard, the prophet Samuel's response to King Saul's failure to carry out his command is also well-known – "Now go and strike Amalek and utterly destroy all that he has. Do not spare him, but kill both man and woman, ox and suckling, camel and donkey" (1 Samuel 15:3) – and he spared Agag, the king of Amalek, and the best of the cattle and sheep. This omission resulted in Saul losing the kingdom, as it is said, "And Samuel said to him, The LORD has torn the kingdom of Israel from you today and has given it to your neighbor, who is better than you" (Ibid., 28). And it is not without reason that things are like this. The Ramban, in his commentary on the Torah, expresses the power of the command to exterminate Amalek:

"The hand of the Blessed One was raised to swear on His throne that He would have war and enmity with Amalek worldwide." And what is a throne and it is not said throne, and even the name is divided into halves, the Blessed One swore that the throne is not complete and the name is not complete until the name of Amalek, son of Esau, is erased, and when his name is erased, the name of the Lord will be complete and the throne complete, as it is said (Psalms 9:7) The enemy is destroyed forever, this is Esau, as it is said and his transgression is eternal (Amos 1:11), their memory is lost (Psalms 9:7), what is written after him and the Lord will sit forever (Ibid. 8), then the name is complete, he established his throne for judgment (Ibid.), then the throne is complete" (Ramban, Exodus 17:16, i.e. "For a hand is upon the throne of the Lord"; for an expansion on the purpose of the commandment, see: Moreh Nevuchim, Part 3, Chapter 40; regarding the scope of the commandment and the reason underlying it, see: Pesikta Rabati, Meni Ephraim, paragraph 13 (Ish Shalom edition, 35b); and regarding the question of who is that Amalek to whom the commandment applies, which It has received various interpretations throughout the generations, see for example: Rashi, Deuteronomy 25:18, i.e., "Whoever is cut off on the way"; (Rabbi Y.D. Soloveitchik in his article Kol Dodi Dopak 33 (5737); Melodemei Miliah 24 (5753). And see also on the subject of the Midianite War: Bamidbar 30-20; Midrash Tanhuma, Bamidbar, Parashat Pinchas, Section 3; Rabbi Chaim David Halevi "The Law of 'He Who Comes to Kill You Early to Kill Him' in Our Public Life" Tecumin 1, 343-345 (5740)).

.5 The third type of war that Maimonides refers to as the war of commandments, the relevant Most relevant to our case is the war of "helping Israel from the time of distress that comes upon them." Simply put, it is about In a war that is necessary for the existence of the Jewish people, intended to protect and save them from attempts to "destroy Israel" (Rabbi Yishai Yesselson, "War of Mitzvah and War of Authority," Torat Har Etzion) https://www.etzion.org.il/he/halakha/studies-halakha/laws- Koshitsky Israel Sha'a Part , Benim Beni 550 : and see; state-and-society/milchemet-mitzva-umilchemet-reshut 2, Part of the Articles, Article 3). Nowadays, the widespread opinion is that Israel's wars today are considered "help for Israel from a difficult time," and therefore they constitute a war of commandment (see, for example, the opinion of Rabbi

Yosef Shalom Elyashiv and Rabbi Ovadia Yosef (Collection of Responses to Rabbi Elyashiv, Part 1, Section

Ramg; Responsa Yachava Da'at, Part 2, Mark 14). This is all the more so in the "Iron Swords" war,

In which our enemies launched a terrible attack against the State of Israel, which clearly comes to "help"

"Israel is from the hand of the oppressor" (and see the words of Rabbi Yehuda in the Jerusalem Talmud, Sota Chapter 8, Halacha 10; Mishnah

Torah, Times, Sabbath Laws, Chapter 2, Halacha 23; Mishnah Bread on Mishnah Torah, Judges, Laws

Kings and Wars, Chapter 5, Halacha 1; Right-hand column, Signs 16-17; Responsa Bnei Bnei, Part 2,

Part of the Articles, Article 3; Rabbi David Eshel "Is the War of Iron Swords a War of Mitzvah?"

country legal institute this?" definition of The consequences And what?

The Mother War "Sharlo Yuval Rabbi; https://www.dintora.org/Show_article/1228

Ethics Noon coordinator Is war a commandment? iron" "Swords"

.(https://ethics.tzohar.org.il/qa

Alongside the distinction between a war of command and a war of authority, and despite the strict commandments .6

Regarding the way one should treat the enemy, a generation has been turning to international law for years.

Today, Jewish law has addressed the protection of a population that does not wish to take part

In fighting in enemy territory and in the assistance that must be provided to it.

The limitations of combat, aid, and its limitations

One of the sources for providing assistance to the civilian population of another nation under halakhic law is .7

The principle of "for the sake of the ways of peace." By virtue of this principle, the Mishnah states, "And they hold the hands of the Gentiles

On the seventh... and they ask about their welfare from the paths of peace" (Mishnah, Shevi'it 5:9; and see: Bavli, Gittin

6a, where Rashi interprets that the intention is that it literally means "to help" foreigners.) Due to

This principle is also ruled in halakhic law that "it is permissible to support the poor [of non-Jews], visit their sick, and bury their dead."

"To their dead, to their mourning, and to comfort their mourners, for the sake of the ways of peace" (Shulchan Aruch, Yoreh Deah, Siman Kanna,

Section 12; Ibid., Section 667, Section 1). However, it should be noted that in any case there is a prohibition

Selling a "vessel of corruption" to the enemy (Mishnah Torah, Science, Laws of Idolatry and Laws of the Gentiles, Chapter

9, Halacha 8).

Additionally, the Torah contains a number of unique commandments concerning the behavior required of a person. .8

Israel during war. One of these commandments is the command to call for peace to a city before attacking it.

(Deuteronomy 20:10-11). When the enemy refuses this call, his city must be besieged (Deuteronomy 20:20).

However, the halakha has ruled that even in such a case there is a commandment not to surround a city from its four winds,

As Maimonides says:

"When they besiege a city to capture it, they do not surround it from its four winds, but from its three winds. And they leave room for escape and for anyone who wishes to escape to save his life" (Mishnah Torah, Judges, Laws of Kings and Wars, Chapter 6, Halacha 7).

The reason for the command, as the Radbaz explains on Atar, is to allow those who do not wish to fight to flee the place "from the paths of the Torah, all the paths of which are peace" (Radbaz, ibid., cf. "When necessary"; and see also: Rabbi Yehuda Gershuni "On Heroes and on Wars" Tecumin 4:61 (5783)). The Ramban, who believes that this obligation exists only in a war of authority, gave this a second meaning:

Flavors:

"We were commanded when we besieged a city to place one of the winds without a siege, so that if they wanted to escape, they would have a way to escape from there, because in this we learn to behave with compassion even with our enemies during war, and in it is another virtue that an opening is opened for them to flee and not to strengthen themselves against us. As it is said, And they set up camp against Midian, as the Lord commanded Moses and instructed in the books of the encirclement of three of its winds. Rabbi Nathan says, Give them a fourth wind so that they may flee. This is not a temporary mitzvah in Midian, but it is a mitzvah for generations in all wars of the state [emphasis added], and so is the Rabbi in his great group in the laws of kings and their wars" (The Ramban's Misunderstandings on the Book of Mitzvot, Forgetting to Do 5).

[As a side note, it should be noted that there are differences of approach between the Maimonides and the Ramban regarding the various stages of war in which a policy of opening an escape route should be adopted, as well as regarding the law of starving the civilian population (Rabbi Yishai Yesselson, "Besieged in War," Torat Har Etzion ÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿÿ, https://www.etzion.org.il/he/halakha/studies-halakha/laws- Koshitsky Israel bemilchama-matzor/society-and-state). The following Hochma (Numbers 35, 7, "And they fought") explains the boundaries of the dispute between the Maimonides and the Ramban. According to him, the reason for the command to leave a fourth wind open according to the Maimonides is a kind of tactical military guidance, and the Maimonides included it in his halakhah so that we would remember this consideration and take it into account in times of war, depending on the circumstances. The Ramban, on the other hand, believes that the reason for the command is that we learn to act with compassion, and therefore it constitutes a mitzvah for all intents and purposes. See also: Resisting War, Volume 3, Section 5, Section 1; Binyamin Farm, Section 2, Mark 15]

In this regard, it should be noted that, in the opinion of Rabbi Shlomo, the jurists of the most recent generations

The commandment to leave one spirit open applies both in a war of commandment and in a war of authority:

"In conclusion, it follows that, according to the Rambam, this commandment is also binding at this time, that if we are besieging the towns of our enemies, whether in a war of commandment or in a war of authority, whether within the borders of Israel or outside the borders of Israel, it is forbidden to close the besieged city from all winds, but one wind must be left open in the outward direction to allow anyone who wishes to escape from the besieged city to escape and save his life, provided that this wind is not exploited to bring in reinforcements in men, weapons, and food"
(Meshiv War, Volume 3, Chapter 5, Section 1).

.9 Alongside the command to call for peace and allow those who wish to escape from the siege zone to escape, some believed that it was permissible to deal harshly with those who did not flee the fighting zone (Seferi, Devarim 20:12). However, there are those who interpreted the words of the midrash to mean a situation in which the siege is imposed on the enemy as a response to a war that he initiated. In that case, harsh measures can be used against him (Seferi Devi Rav, Shoftim, paragraph 17, cf. "when he comes near"). Some also distinguished between the time of calling for peace, when there is no room for harsh measures against the population, and the time of fighting itself, when there is no room for mercy (Emek Hanetziv, Seferi, Devarim 20:12; Torah Temima, Devarim 20:10, 664). Some distinguished between a war of authority and a war of mitzvah (Havat Binyamin, Shaar 2, Section 15, where Rabbi Yisraeli summarizes the halakha that in a war of mitzvah, the decision to allow the besieged to escape is given At the sole discretion of the commanders of the army and the government. On the other hand, the uninvolved civilian population is not included in this category and must be allowed to leave the besieged area without hindrance. And see: A Warrior, Volume 3, Chapter 5, Section 1; Retz Katzvi – A Man of War, Section 10; and see also: Pearls of Halacha, Time, Month of Adar, 7-9).

.10 In addition to the above, some believed that the efforts that must be made according to the Torah's command to prevent harm to a population that does not wish to participate in the fighting are limited. For example, this obligation is withdrawn where there is a real danger to our soldiers and citizens. These things were expressed in a question that was frequently asked of the former Chief Rabbi, Rabbi Avraham Elkana Kahane-Shapira, regarding the War of Peace in Galilee, in 1983 (cited in Tecumin 4:182) as follows:

"Question: What is the law regarding the enemy civilian population during war? Is it permissible under the law to harm it in order to prevent possible harm to Israeli soldiers? Answer: As long as there is no real danger to our soldiers, there is no permission to harm life or property. However, when the danger is tangible, it must be remembered that what is at stake is not only the unit fighting against the civilian population, but also its loss.

> of one unit or part of it may harm the entire war system. Therefore, when required and when the danger is obvious, there is no place to measure the number of our soldiers who may, God forbid, be harmed against the number of citizens of the enemy state who hate Israel, who may pay the price of war. There is a clear rule in the Rambam on this in the laws of war, and it is obligatory to save the life of every Jewish soldier" (and see also: Rabbi Aharon Lichtenstein, Rabbi Dov Lior, Dr. Yaakov Hasdai and Rabbi Shear Yeshov Cohen "Moser ve Mallah" Techumin 4 186 (5783)).

Likewise, some have interpreted that one should not refrain from killing an enemy even if innocent people are harmed as well (and see also: Minchat Asher, Deuteronomy 23:6; Amud Yamini, Sign 16, Chapter 5). This is even more so in a situation where distinguishing between enemy terrorists and the civilian population in the area is impossible (In the Footsteps of the Sheep, Chapter 23, Raz).

.11 From the review presented above, it is therefore possible to learn about the existence of points of convergence between halakhic law and the state's obligations under international law and Israeli law, which my colleague the President emphasized, in all matters concerning conduct in relation to the enemy's uninvolved population. In both cases, there is a respectful reference to the population that does not participate in the fighting, but at the same time, expression is given to the need to protect the state's citizens and soldiers and to the state's ability to take measures to prevent the transfer of equipment that may be used for fighting in it.

12. In a footnote, it will also be noted that, in parallel with "internal" law (halakha), there is an opinion that provisions of international law can be applied regarding the laws of war by virtue of the rule of "dina demalchuta dina" (a rule that originates in private law and means that the general law that exists in a place also applies according to Torah law). This is based on the perception that dina demalchuta dina "is not only in what concerns within the kingdom itself but also in what concerns between kingdoms" (right page, point 16; and see also: Rabbi Yehuda Shaviv "'Zachor milah al tosuf' the validity of wars between nations" Tecumin 9, 205, 225 (5748); Responsa Mishpat Cohen, Mark 133 (Rabbi Kook Institute Edition) (Satz).

.13 And back to our present day. The State of Israel is in the midst of a full-scale war of commandments. The meaning of the word. As a Jewish state that desires life, it is obliged to resolutely defend its sovereignty, security and national interests. Even if there is a legal basis for allowing the provision of humanitarian aid to a civilian population not involved in the fighting, this does not mean an obligation to allow the provision of extensive and unlimited aid or "dual-use" aid that could end up in the hands of the enemy and even

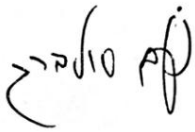
to be used in his hands to fight against Israel. In our case, the IDF and the respondents went above and beyond to enable Providing humanitarian aid to the Gaza Strip, even while taking the risk that the aid transferred will reach the hands of the terrorist organization Hamas and be used by it to fight against Israel. On this matter, I agree with the words of my colleague Justice Solberg. As stated above, the provision of aid, the manner and scope of the aid is at the broad discretion of the government and the IDF, and there is no reason for us to intervene in this matter.

Judge David
Mintz

It was unanimously decided to reject the petition.

Given today, 27 Adar 5775 (27.3.2025).

Judge David
Mintz



Noam Solberg
judge

Yitzhak Amit
President