

NAVIGATING WAR CRIME COMPLEXITY: THE WAR CRIME OF STARVATION OF CIVILIANS AS A METHOD OF WARFARE

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I. INTRODUCTION

This is the second time that I am here in Lubbock speaking about the war crime of starvation. Two years ago, my presentation was prompted by the war in Ukraine. A discussion of issues raised by that conflict was not surprising. More surprising was why the war crime of starvation was being considered. It was not because of the impact of hostilities on food production and distribution, but because some argued that electricity was an “object indispensable to the survival of the civilian population” and consequently, that attacks against energy infrastructure amounted to the war crime of starvation.¹

I did not find that line of argument compelling. Neither did the Prosecutor of the International Criminal Court (ICC Prosecutor), who, instead, chose to investigate the attacks as the war crime of causing excessive incidental harm to civilians or damage to civilian objects (i.e., “disproportionate” attacks).²

On that occasion, I agreed with the approach adopted by the Office of the ICC Prosecutor. I am less comfortable with the approach taken in relation to the charges of the war crime of starvation in relation to the conflict in Gaza—at least at the time the arrest warrant was issued.

My presentation is a legal analysis, but it would be callous to enter into a legal discussion without first acknowledging the immense suffering that such a devastating and prolonged conflict has wrought upon the civilian population of Gaza. Or the fact that scores of hostages remain in the hands of militants.

In November 2024, in response to a request of May 2024 from the ICC Prosecutor, an ICC trial chamber issued an arrest warrant for the Israeli Prime Minister, Benjamin Netanyahu, and for the Minister of Defense, Yoav Gallant. Among other things, they were charged with the war crime of starvation of civilians as a method of warfare.³ The facts underlying the

1. Emanuela-Chiara Gillard, *Hunger Crimes and the Conflict in Ukraine*, 56 TEX. TECH L. REV. 81, 83, 88–89 (2023) (referring to Article 54(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter AP I]).

2. See *Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov*, INT’L CRIM. CT. (Mar. 5, 2024) [hereinafter *Situation in Ukraine*], <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and-viktor-nikolayevich-sokolov> [https://perma.cc/GN6K-JZD8]. While disproportionate attacks is a more suitable avenue for investigating these attacks, proving the war crime will remain challenging. There is little jurisprudence generally on this type of crime, and establishing the crime in relation to attacks against electrical infrastructure is likely to be particularly difficult. See Gillard, *supra* note 1, at 88–89. The defendants are also accused of the crime against humanity of inhumane acts under Article 7(1)(k) of the Rome Statute of the International Criminal Court. See *Situation in Ukraine*, *supra*.

3. *Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel’s Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant*, INT’L CRIM. CT. (Nov. 21, 2024) [hereinafter *Situation in Palestine*], <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> [https://perma.cc/N3AH-XXXX].

charges were not that military operations had caused damage or destruction of assets necessary for food production and distribution, but that the defendants deprived the civilian population of objects indispensable to their survival by impeding humanitarian aid in violation of international humanitarian law. The charges related to conduct in the period from October 8, 2023, until at least May 20, 2024.

This brief contribution presents the war crime in the Rome Statute of the International Criminal Court (ICC Statute) on which these charges are based; identifies the rules of international humanitarian law (IHL) underlying the war crime, with a particular focus on the rules regulating humanitarian relief operations; and highlights some of the complexities of these provisions.

This Article memorializes the presentation given in March 2025 at the Texas Tech School of Law Criminal Law Symposium on Wartime Accountability, which outlined the application of the relevant rules in Gaza until that date. The position on the ground changed significantly as of the beginning of March 2025. From March 2 to May 19, 2025, Israel prevented *any* humanitarian assistance from entering Gaza.⁴ Since then, some assistance has been allowed to enter but has been provided by privatized arrangements that raise significant protection concerns.⁵ This Article does not address these developments. As far as the ICC proceedings are concerned, they would be of relevance to the charges against Benjamin Netanyahu, as his codefendant, Gallant, was dismissed from office in November 2024.⁶

II. THE ICC STATUTE WAR CRIME OF STARVATION OF CIVILIANS

The war crime of starvation under the ICC Statute in international armed conflicts is framed as: “Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions[.]”⁷

MTTV].

4. See Hannah Ellis-Peterson, *No Plans to Allow Any Aid Gaza, Says Israeli Minister*, THE GUARDIAN (Apr. 16, 2025, at 19:25 EDT), <https://www.theguardian.com/world/2025/apr/16/no-humanitarian-aid-gaza-israeli-minister-israel-katz-hamas> [https://perma.cc/FCM3-2RVY]; *Situation in Palestine*, *supra* note 3.

5. See Riley Sparks, *Compliant Aid: Who Are the Israel-Approved NGOs Scaling up in Gaza*, THE NEW HUMANITARIAN (Feb. 11, 2026), <https://www.thenewhumanitarian.org/investigations/2026/02/11/compliant-aid-who-are-israel-approved-ngos-scaling-gaza> [https://perma.cc/Q8MJ-RSMU]; *Situation in Palestine*, *supra* note 3.

6. *Benjamin Netanyahu Fires Defense Minister Yoav Gallant, Replaces Him with Israel Katz*, NPR (last updated Nov. 5, 2024, at 15:40 ET), <https://www.npr.org/2024/11/05/nx-s1-5179904/israel-defense-minister-gallant-fired-netanyahu> [https://perma.cc/Z5AK-C35L].

7. Rome Statute of the International Criminal Court art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 3 [hereinafter ICC Statute]. The ICC war crime applicable in non-international armed conflicts in Article 8(e)(xix) of the ICC Statute is framed in similar but not identical terms. *Id.* art. (8)(e)(xix). At the time of writing, Palestine has not ratified the amendment to the ICC Statute establishing this war crime.

This is a Frankenstein's monster of a war crime (or, as Rob Loughlin recently more elegantly put it, a "curious amalgam").⁸

The ICC war crime brings together two sets of rules of IHL, which, although they share the same objective of minimizing severe need among civilians, are completely distinct as a matter of the structure of IHL: the rules regulating humanitarian relief operations and the prohibition of starvation of civilians as a method of warfare. The two sets of rules are not just distinct. Both are also far from clear-cut, making them far from ideal anchors for war crimes. The rules on humanitarian relief leave a considerable margin of maneuver to belligerents, which means that it is extremely difficult to establish as a matter of fact and law whether they have been violated. While the prohibition of starvation of civilians as a method of warfare is an extremely complicated provision, significant divergences of views exist as to key aspects of it.⁹

Moreover, violations of both sets of rules are not grave breaches of Additional Protocol I. Individual criminal responsibility for their violation only appeared in the ICC Statute in 1998. This means, *inter alia*, that there is no judicial guidance on how to interpret the crime.

The analysis would have been somewhat easier if there had been two distinct crimes in the ICC Statute—one addressing violations of the rules regulating relief operations, and the second focusing exclusively on the war crime of starvation—but both the wording used in the ICC Statute war crime, and how it brought together the two sets of rules, leaves considerable uncertainty and lack of clarity.

The first step in interpreting a war crime is understanding the underlying rules of IHL. While a war crime may be framed more narrowly than the underlying rule of IHL, it cannot be broader in scope. Because war crimes are grave violations of preexisting laws and customs of war, acts which do not even amount to violations of IHL cannot *a fortiori* be interpreted as coming within the scope of a war crime.

The present short Article highlights some points of particular relevance to the arrest warrants issued in relation to Gaza. As these focused on starvation caused by willfully impeding relief operations, consideration will focus on this dimension of the ICC Statute war crime.

8. See Rob McLaughlin, *Israel-Hamas 2025 Symposium-Conditionality and the ICC's Gallant "Starvation as a Method of Warfare" Charge*, ARTICLES OF WAR (Mar. 21, 2025), <https://lieber.westpoint.edu/conditionality-iccs-gallant-starvation-method-warfare-charge/> [https://perma.cc/575Y-GBEL].

9. See CONFLICT, HUNGER AND INTERNATIONAL HUMANITARIAN LAW: A PRACTITIONER'S LEGAL HANDBOOK 59–65 (United Kingdom, UK Foreign Commonwealth and Development Office and Ministry of Defence, 2025) [hereinafter CONFLICT, HUNGER, AND INTERNATIONAL LAW], https://assets.publishing.service.gov.uk/media/681386adb0ef2c985052544f/Conflict_Hunger_and_International_Humanitarian_Law_A_Practitioners_Legal_Handbook.pdf [https://perma.cc/4T9P-JPJM].

III. THE RULES OF IHL REGULATING HUMANITARIAN RELIEF OPERATIONS

A first point to consider in the ICC Statute war crime is the expression “willfully impeding relief supplies.”¹⁰ “Willfully impeding” is not phrasing that is found in the underlying rules of IHL on relief operations.¹¹ These do not mention “impeding.” On the contrary, they expressly allow conduct that could be considered an *impediment* to relief operations in certain circumstances. For example, belligerents are entitled to temporarily restrict the freedom of movement of humanitarian workers for imperative military necessity.¹² It is clear that not every impediment to relief operations is a violation of IHL.

In view of this, how should the term willfully impeding in the ICC Statute’s war crimes provision be interpreted? I suggest that the notion covers situations when the underlying rules of IHL have been violated. This can occur in two ways: first, when *initial* consent to conduct relief operations has been withheld unlawfully; and second, when the subsequent obligation to allow and facilitate rapid and unimpeded passage of relief supplies has been violated.

Initial consent to conduct relief operations is withheld unlawfully in two situations: first, when belligerents are required to consent to offers to conduct humanitarian relief operations, but fail to do so. This covers situations of occupation where an occupying power fails to meet the basic needs of the civilian population and does not authorize relief operations;¹³ or situations where the Security Council has adopted a binding decision requiring consent to be given or has imposed relief operations. Second, when states whose consent is required withhold it arbitrarily.¹⁴

The problems in Gaza do not relate to this *initial* authorization to conduct relief operations. It is not new humanitarian actors trying to respond in Gaza and not being given the necessary authorization. Instead, the challenges arise at the subsequent step: the obligation of belligerents to allow rapid and unimpeded passage of relief operations. Humanitarian actors that have been authorized to operate—UN agencies such as the World Food Programme and the World Health Organization, and numerous non-governmental organizations—are struggling to do so.

As a matter of law, IHL grants belligerents considerable margin of maneuver in terms of how the obligation to allow and facilitate passage of

10. ICC Statute, *supra* note 7.

11. For a comprehensive analysis of the rules of IHL regulating humanitarian relief operations, *see generally* DAPO AKANDE & EMANUELA-CHIARA GILLARD, OXFORD GUIDANCE ON THE LAW REGULATING HUMANITARIAN RELIEF OPERATIONS IN SITUATIONS OF ARMED CONFLICT (2016), <https://www.elac.ox.ac.uk/wp-content/uploads/2022/06/oxfordguidancepdf.pdf> [<https://perma.cc/VFN6-WJP7>].

12. Art. 71(3) AP I.

13. *See* AKANDE & GILLARD, *supra* note 11, at 16–20.

14. *Id.* at 21–25.

relief operations is to be discharged in practice. It also entitles them to impose certain measures of control on such passage. These can include conducting searches or prescribing particular routes or times for the passage of humanitarian convoys.

Moreover, as a matter of fact, in most situations where relief operations are conducted, a range of factors can contribute to preventing or delaying humanitarian assistance from reaching people in need. These include active hostilities, the intensity of which can flare up and abate on an hourly basis in active combat zones; security requirements the humanitarian organizations impose for the safety of their staff that limit freedom of movement; the state of infrastructure necessary for the movement of humanitarian convoys such as roads and bridges; onerous administrative procedures for searches or passage that belligerents impose; and also looting or other forms of interference with the convoys and assistance by parties to armed conflict or by other actors. While all of these factors can contribute to people not receiving the assistance they need, they are not all necessarily violations of the rules of IHL on relief operations. There can be considerable deprivation without violation of the rules of IHL on relief operations. As is the case for other rules of IHL, even severe negative consequences do not necessarily indicate unlawful conduct.

A second point to consider is the reference in the ICC Statute to the Geneva Conventions. The war crime refers to “wilfully impeding relief supplies as provided for under the Geneva Conventions.”¹⁵ This is odd, because it is the Additional Protocols of 1977 that contain the majority of the rules regulating humanitarian relief operations, not the Geneva Conventions of 1949. Several possible explanations have been provided for this reference.

One is that the expression “Geneva Conventions” was used in the ICC Statute to refer to both the Geneva Conventions and the Additional Protocols. This is because there were states involved in the negotiations of the ICC Statute that had not ratified the Additional Protocols and that were unwilling to include a reference to them.

A second possible explanation provided is that the premise of the ICC negotiations was that the list of war crimes would only include those that were generally accepted as existing under customary law at the time. Reference was not made to Additional Protocol I because violation of the rules on relief operations was not considered as leading to individual criminal responsibility as a matter of customary law.

This is an important point of interpretation in relation to Gaza, because some of the provisions on relief operations in the Geneva Conventions, and, in particular in the Fourth Geneva Convention of 1949, expressly foresee the possibility for belligerents to deny passage of relief consignments in certain

15. Art. 8(2)(b)(xxv) ICC Statute.

situations.¹⁶ In particular, Article 23 of the Fourth Geneva Convention makes the obligation to allow free passage of relief consignments conditional on several factors, including that parties allowing such passage are satisfied that there are no serious reasons for fearing that the consignments may be diverted from their destination, or that measures of control to prevent such diversion may not be effective. Article 70 of Additional Protocol I does not expressly include the caveats contained in the Fourth Geneva Convention.¹⁷

Israel is not a party to Additional Protocol I but is bound by the Geneva Conventions and customary IHL. In discussions in the international arena, and in domestic litigation, it appears to be taking the position that its obligations in relation to Gaza are regulated by Article 23 of Fourth Geneva Convention.¹⁸

IV. PROHIBITION OF STARVATION OF CIVILIANS AS A METHOD OF WARFARE

A further set of issues to consider relates to the interplay between the reference in the ICC Statute war crime to “willfully impeding relief supplies” with the opening words of the crime, and, indeed, the focus of the crime: using starvation of civilians as a method of warfare.¹⁹

One question is whether there is a threshold of need or deprivation that must be met. As the war crime relates to the starvation of civilians, presumably, it can only occur when the deprivation caused by violations of the rules regulating relief operations reaches the threshold of starvation. Although not defined in any IHL instrument, *starvation* implies a high degree of deprivation, where survival is threatened. It is more extreme than the “not adequately provided” standard that brings into play the rules of IHL regulating humanitarian relief operations.²⁰

Another question is related to the underlying prohibition of the starvation of civilians as a method of warfare. A war crime cannot be broader

16. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 23, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter GC IV]. Art. 59 of GC IV, which regulates the position in situations of occupation, takes a different approach, granting parties the right to search the consignments, to regulate their passage according to prescribed times and routes.

17. AP I, art. 70.

18. See *Informal Translations of Submissions Filed to the Supreme Court in the Context of a Petition on Israel's Humanitarian Policy Towards the Gaza Strip During the 2023-4 Israel Hamas War* (HCJ 2280/24 Gisha et al. v. Government of Israel et al.), ALMA-IHL, <https://www.alma-ihl.org/ihl-translations> [<https://perma.cc/HWQ4-NJAA>] (last visited Mar. 1, 2026). In particular, see the respondent's sixth submission, dated June 30, 2024. See *id.*

19. ICC Statute, *supra* note 7.

20. See AP I, art. 70. In international armed conflicts, pursuant to Article 70(1) of AP I, the rules on relief operations come into play “[i]f the civilian population of any territory under the control of a [p]arty to the conflict . . . is *not adequately provided*” with food, medical supplies, clothing, bedding, means of shelter, and other supplies essential to their survival. (emphasis added). In situations of occupation, the rules on relief operations apply “[i]f the whole or part of the population of an occupied territory is *inadequately supplied*.” See GC IV, art. 59 (emphasis added).

in scope than the underlying rules of IHL. There is a divergent view as to the general prohibition of starvation of civilians as a method of warfare in Article 54(1) of Additional Protocol I which only covers situations where starving civilians was the purpose of particular conduct—that is the approach of those states that have specifically addressed this point to which I also subscribe—or whether it also covers situations where although not its purpose, starvation of civilians was a foreseeable consequence of particular conduct.²¹

This issue is also relevant for the ICC Statute war crime. As far as the rules regulating relief operations are concerned, this would mean that the war crime would only be committed where the impediments were imposed for the *purpose* of starving the civilian population.

A further question is whether there needs to be an actual increase in need for the ICC Statute war crime to have been committed. In the negotiations that led to the adoption of the war crime provision, it was made clear that there was no need for anyone to actually die for the war crime of starvation to be established. Some commentators rely on this part of the negotiations to conclude that the war crime of starvation is a crime of conduct.²² Yet, the rejection of a proposal that the crime can only be committed if a *particular* result occurs—the death of at least one individual²³—does not mean that the war crime does not require *some* negative consequence, such as increased levels of deprivation.

If no negative result at all were required, it would be sufficient to *order* conduct that has the purpose of leading to the starvation of civilians, even if it does not in fact have that result, because there are sufficient goods indispensable to the survival of civilians arriving through other channels.

In this regard, a comparison can be drawn to the war crime of declaring that no quarter may be given.²⁴ For the violation of IHL and the corresponding war crime to be committed, it is sufficient for the *order* to be given. There is no need for it to actually be implemented in practice.

The position with regard to the prohibition of starvation is different. The war crime is not declaring that civilians must be starved. Some degree of enhanced deprivation is necessary for the prohibition to be violated and the war crime to be committed.

21. See CONFLICT, HUNGER AND HUMANITARIAN LAW, *supra* note 9, Chapter 5. For the most comprehensive argument for a non-purposive interpretation of the prohibition on starvation of civilians as a method of warfare, which acknowledges that the common reading of the prohibition entails a purpose element, see generally Tom Dannenbaum, *Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence*, 55 VAND. J. TRANSNAT'L L. 681 (2023).

22. See Michael Cottier, *Article 8*, in ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY 295, 518–19 (Otto Triffterer & Kai Ambos eds., 3d. ed. 2016).

23. See Preparatory Commission for the International Criminal Court, Proposal submitted by the United States of America for the Draft Elements of Crimes, U.N. Doc. PCNICC/1999/DP.4/Add.2 (Feb. 4, 1999), <https://digitallibrary.un.org/record/1491413?ln=en> [<https://perma.cc/2T8N-DR8C>].

24. ICC Statute, art. 8(2)(b)(xii).

V. CONCLUDING REMARKS

These are just some of the questions that the less-than-ideal wording of war crime in the ICC Statute gives rise to.

Where does this leave us? I think that some rules of IHL are simply not a good fit for individual criminal responsibility. The same is the case with regard to the rule of proportionality.

The rules of IHL relating to relief operations leave considerable discretion to belligerents to determine how they can be implemented. Additionally, it is extremely difficult in the majority of situations to establish that the deprivation caused civilian populations to suffer, due to there often being a range of factors that contribute to it. These factual challenges become even more pronounced in relation to criminal proceedings, where rules and procedures regarding incriminating evidence are strict.

This does not mean that the rules regulating humanitarian relief operations are irrelevant. They establish an important framework for putting measures in place to minimize the impact of military operations on humanitarian action, and importantly for negotiating arrangements between belligerents and humanitarian access for passage.

My concerns are different regarding the rule prohibiting the starvation of the civilian population. Article 54 of Additional Protocol I is a poorly drafted provision. My presentation focused on the *general* prohibition on starvation of civilians as a method of warfare in Article 54(1) of the Protocol because this is the focus of the ICC arrest warrants in relation to Gaza. But the separate rules relating to damage, destruction, or rendering useless objects indispensable to the survival of the civilian population in Article 54(2) of Additional Protocol I are even more complicated.

Finally, what about Gaza? For the purposes of the present analysis, the conflict can be divided into distinct phases. The first runs from the ninth to the twenty-first of October 2023, when Israel blocked the entry of all humanitarian assistance into Gaza. This was accompanied by public statements by high-ranking Israeli officials, including then Defense Minister Yoav Gallant, National Security Minister Itamar Ben-Gvir, and then Energy Minister Israel Katz, expressing their aim to deprive civilians in Gaza of food, water, and fuel. These statements were deeply troubling—even if they did not reflect actual government policy, but rather the nefarious views of these ministers—inflammatory war rhetoric, or irresponsible attempts to score political points with certain domestic audiences. More significantly, as commercial goods and humanitarian supplies were available in Gaza before this closure, the conduct, even though accompanied by these statements suggesting its purpose was indeed to cause the starvation of civilians, did not lead to the requisite level of deprivation required to violate the prohibition of starvation during this time period.

The second phase runs from October 21, 2023, to March 2, 2025. During this period, several factors contributed to civilians not receiving basic goods, including in the form of humanitarian assistance. Although it is difficult to reach conclusions without having access to information relating to each instance when relief operations could not be conducted, it seems reasonable to conclude that some instances, but by no means all of them, may have been due to violations of the rules of IHL regulating relief operations. However, for the prohibition of starvation to have been violated, it is necessary to determine that these obstructions had the purpose of causing starvation. As far as the ICC Statute crime is concerned, the prosecution will have to prove this beyond a reasonable doubt. Doing this will require a granular examination of the factors that led to impediments to the delivery of relief in each instance.

A third phase is the period from March 2nd to May 19th, 2025, when Israel prevented *any* humanitarian assistance from entering Gaza. The context in which this conduct occurred is very different from that of the October 2023 closure. By March 2025, there were virtually no basic goods available through commercial channels that were accessible to the majority of the civilian population, which had been displaced multiple times and lost access to livelihoods. Humanitarian operations had been severely disrupted for nearly eighteen months, even though some stockpiles had been replenished during the ceasefire between January and March 2025.

In these circumstances, there is no doubt that preventing humanitarian assistance from entering can exacerbate already severe deprivation to starvation levels.²⁵

Article 54(1) Additional Protocol I prohibits such conduct only if it has the purpose of causing starvation of civilians. To date, no judicial or other body has provided guidance on possible indicators for determining the existence of such a purpose. At a minimum, such a purpose could be inferred in situations where there is no credible military necessity for the measures that will result in the starvation of civilians.

Such a purpose is unlikely to be stated in official government policies or statements.²⁶ Instead, most frequently it will have to be inferred from the totality of strategic and operational facts and circumstances. In relation to

25. See Yuval Shany & Amichai Cohen, *Limited Protection: Israel's High Court of Justice Rejection of Gaza Humanitarian Aid Petition*, JUST SEC. (Apr. 1, 2025), <https://www.justsecurity.org/109731/israel-court-rejects-gaza-aid-petition/> [<https://perma.cc/4KXQ-6W2G>]. Israel claims it is monitoring the levels of need. *See id.*

26. Statements are often contradictory. *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Verbatim Record, 12–75 (Jan. 12, 2024, at 10:00 CET), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf> [<https://perma.cc/7ZAT-4AQ3>]. In relation to Gaza, compare the abovementioned statements by certain ministers in October 2023 with the government's submission to the Israeli Supreme Court regarding its humanitarian policy, or the account it provided during the oral hearings in the genocide advisory opinion case before the International Court of Justice in 2024. *See id.*

Gaza, this circumstantial evidence points to a much more troubling conclusion in relation to the period from March to May 2025, when all humanitarian assistance was blocked, that supports an inference that no credible military necessity justified the measures. Rather, it seems that at least certain aspects of Israel's policy on aid distribution within Gaza stem from a strategy of pressuring Hamas to release hostages as part of a ceasefire agreement on more favorable terms from Israel's perspective.

In my view, the situation on the ground when the Office of the ICC Prosecutor issued the request for the arrest warrant in May 2024 did not justify the charges of the ICC war crime of starvation. The situation has changed significantly since then. It is clear from our discussion today that in considering allegations relating to the ICC war crime of starvation, the ICC will have to consider many unsettled legal questions. Allegations that the defendants have committed starvation by *willfully impeding relief supplies* cannot be addressed in a sweeping manner. Instead, they will need to be addressed phase-by-phase, analyzing the range of factors that can have contributed to obstructing humanitarian response.

It is equally clear that if Israel is truly committed to the policies it presents to the world and to courts, it must urgently find solutions to alleviate the humanitarian situation in Gaza.