IHL and Humanitarian Assistance

Introductory text

IHL recognizes that the civilian population of a State affected by an armed conflict is entitled to receive humanitarian assistance. It regulates in particular the conditions for providing humanitarian assistance, in the form of food, medicines, medical equipment or other vital supplies, to civilians in need.

During an international armed conflict, belligerents are thus under the obligation to permit relief operations for the benefit of civilians, including enemy civilians.

Art. 23 of Convention IV outlines the basic principles applicable to relief assistance for particularly vulnerable groups among the civilian population: children under fifteen and pregnant and nursing mothers. It also grants the States concerned the right to inspect the contents and verify the destination of relief supplies, as well as to refuse the passage of relief goods if they have well-founded reasons to believe that they will not be distributed to the victims but rather used in the military effort.

Art. 70 of Protocol I has considerably developed the right to humanitarian assistance. Under this provision, relief operations must be carried out for the benefit of the entire civilian population if there is a general shortage of indispensable supplies. However, Art. 70 contains a severe limitation: it stipulates that the consent of all the parties concerned – including that of the State receiving the aid – is necessary for such assistance.

In occupied territories, the occupying power has to make sure that the population receives adequate medical and food supplies. If this proves impossible, the occupying power is obliged to permit relief operations by third States or by an impartial organization, and to facilitate such operations.

The rules regulating humanitarian assistance during non-international armed conflicts are far less developed. However, Art. 18(2) of Protocol II stipulates that: “If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.”

Although Art. 18 undoubtedly enhances the protection of the civilian population, it has been strongly criticized because it also makes relief actions contingent on government consent. Art. 18 can, however, also be construed as implying that the government has to give this consent when the stipulated conditions are fulfilled.

CASES AND DOCUMENTS

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 127-149]

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:

1. Principles

CASES AND DOCUMENTS

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 130)
- Counterterrorism and IHL, Humanitarian Exemptions

a) starvation of civilians: a prohibited method of warfare
   P I, 54(1); P II, 14 [CIHL, Rule 53]

Cases and Documents

- Angola, Famine as a Weapon
- The armed conflict in Syria
- Israel, Blockade of Gaza and the Flotilla Incident
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 76)

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:


b) the right of the civilian population to be assisted

[CIIHL, Rules 55 and 56]

Cases and Documents

• UN, Secretary-General’s Reports on the Protection of Civilians in Armed Conflict
• France, Accession to Protocol I [Part B., para. 17]
• Israel/Gaza, Operation Cast Lead [Part II, paras 311-326, 1305-1331]
• ICRC, Iran/Iraq, Memoranda
• UN Security Council, Sanctions Imposed Upon Iraq
• UN, Security Council Resolution 688 on Northern Iraq [Para. 3]
• UN, UN Forces in Somalia
• Case Study, Armed Conflicts in the former Yugoslavia [3 and 13]
• Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
• UN, Security Council Resolution on the Conflict in Syria
• Somalia, the fate of Children in the conflict
• ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
• Israel, Blockade of Gaza and the Flotilla Incident
• ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 130, 136]
• Libya, Report of the Office of the UN High Commissioner for Human Rights (2014/15)
• Yemen: Naval Blockade
• Yemen, Potential Existence and Effects of Naval Blockade

sPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:


c) the belligerents bear primary responsibility

Cases and Documents

• Colombia, Response of armed groups to COVID-19
• ICRC, Assistance Policy
• Israel, Power Cuts in Gaza
• ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
• Israel, Blockade of Gaza and the Flotilla Incident
• UN, Report of the Secretary-General for the World Humanitarian Summit
• ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Paras 130, 132)
• Yemen, Potential Existence and Effects of Naval Blockade

SPECIFIC BIBLIOGRAPHY
d) medical assistance may benefit civilians or combatants

Cases and Documents

- Gaza: Health situation in the Gaza Strip
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- Health Care in Pakistan’s Tribal Areas
- Syrian Statement at the UN on the Medical Treatment of Enemy Fighters
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Afghanistan, Attack on Kunduz Trauma Centre
- Counterterrorism and IHL, Humanitarian Exemptions

2. Definition and characteristics of humanitarian assistance

[CJHL, Rule 55]

Cases and Documents

- ICRC, Assistance Policy
- UN, Guiding Principles on Internal Displacement [Principle 24(1)]
- ICJ, Nicaragua v. United States [Paras 242 and 243]
- UN Security Council, Sanctions Imposed Upon Iraq [Part B.]
- United States of America, Holder v. Humanitarian Law Project
- Yemen: Naval Blockade
- Yemen, Potential Existence and Effects of Naval Blockade
- Counterterrorism and IHL, Humanitarian Exemptions [see Document B, paras 21-29]

sPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:

3. The rules of treaty law

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- ROTTENSTEINER Christa, "The Denial of Humanitarian Assistance as a Crime under International Law", in IRRC, No. 835, September 1999, pp. 555-582.

Further reading:


a) the starting point: Art. 23 of Convention IV
   aa) addressed to all “High Contracting Parties”, not only the parties to the conflict
   bb) but limitations
      ○ with regard to the beneficiaries
      ○ with regard to the kind of assistance
      ○ conditions

CASES AND DOCUMENTS

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 148)

b) in occupied territories: Art. 59 of Convention IV: the occupying power has an obligation to accept relief

Cases and Documents

- Israel/Gaza, Operation Cast Lead [Part II, paras 311-326, 1305-1331]
- Israel, Power Cuts in Gaza [Part A., paras 15-17]
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident

(c) a broad right to assistance: Art. 70 of Protocol I and Art. 18(2) of Protocol II
   aa) but subject to the consent of the State concerned

Cases and Documents

- UN, Security Council Resolution 688 on Northern Iraq
- Sri Lanka, Conflict in the Vanni [Paras 24-26]
- UN, Security Council Resolution on the Conflict in Syria
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident
- UN, Report of the Secretary-General for the World Humanitarian Summit
- Yemen, Potential Existence and Effects of Naval Blockade

bb) the conditions on which a belligerent may make its agreement to humanitarian assistance contingent

Cases and Documents
cc) is the State concerned obliged to give its consent if the conditions are fulfilled?

Cases and Documents

- UN, Security Council Resolution 688 on Northern Iraq
- Sri Lanka, Conflict in the Vanni [Paras 24-26]
- UN, Security Council Resolution on the Conflict in Syria
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Paras 141-144)
- Yemen, Potential Existence and Effects of Naval Blockade

SPECIFIC BIBLIOGRAPHY

Suggested reading:


4. Protection of those providing humanitarian assistance

[CIHL, Rules 31 and 32]

Cases and Documents

- The International Criminal Court [Part A., Art. 8(2)(b)(iii)]
- ICRC, Protection of War Victims [Para. 3.3.]
- ICRC’s Approach to Contemporary Security Challenges
- First Periodical Meeting, Chairman’s Report [Part II. 1]
- UN, Secretary-General’s Reports on the Protection of Civilians in Armed Conflict [Part B., paras 58-60]
- UN, UN Forces in Somalia
- Somalia, the fate of Children in the conflict
- Israel, Blockade of Gaza and the Flotilla Incident
- United States of America, Holder v. Humanitarian Law Project

- Counterterrorism and IHL, Humanitarian Exemptions [Document B, para. 33; Document C, para. 30]

SPECIFIC BIBLIOGRAPHY

Suggested reading:


Further reading:

5. The protection of water supplies and water engineers

Cases and Documents

- Water and Armed Conflicts

Suggested reading:

- See supra, Conduct of Hostilities, II, The protection of the civilian population against the effects of hostilities.9. Protected objects, b) specially protected objects bb) objects indispensable to the survival of the civilian population – Water

Footnotes

- [1] See GC IV, Arts 55 and 56
- [2] See GC IV, Art. 59; PI, Art. 69