


ARTICLES

Why Israel Should Protect, Supply and Rebuild Water Resources and Infrastructure in the Gaza Strip: Law, Ethics and Prudence

Jens Iverson 

Grotius Centre for International Legal Studies, Leiden University Faculty of Law, Leiden, The Netherlands
Email: j.m.iverson@law.leidenuniv.nl

Abstract

This article seeks to detail what Israel owes the people who live in the Gaza Strip with respect to water. It also highlights the opportunity for Israeli security presented by the provision of reliable water resources and infrastructure to the Gaza Strip. I argue that continued provision of water is required by both international law and ethics; additionally, it is the most prudent policy choice. This was true before the terrorist attacks of 7 October 2023, during the armed conflict that followed, and will be true after the armed conflict ends. It also asserts that Israel's actions that damage the water infrastructure of the Gaza Strip are legally restricted. Further, it is in Israel's interest to build a sustainable water solution for the people of the Gaza Strip. Once that self-interest is realised and internalised, the demands of law and ethics may become politically possible as well. Realising that self-interest requires overcoming the powerful dehumanising discourse that is currently dominating 'pro-Israel' and 'pro-Palestine' communities, humanising action (such as the provision of water security) is the best way to overcome such dehumanising narratives.

Keywords: Gaza Strip; Israel; water; *jus post bellum*; transitional justice

1. Introduction: Now is the time to plan for sustainable peace, including water security

At the outset of 2025, during a ceasefire that held for some the glimmers of peace, the slow and fragile work of repair had begun in the Gaza Strip. Desalination plants were reopening.¹ Along with a renewed supply of potable water, there was an emergent hope for a just and sustainable peace. It was and is far from a secure hope. The ceasefire was broken. Hope waned again.

¹ 'Desalination Plant Resumes Work in Gaza in Small Step to Restore Public Services', *The Arab Weekly*, 28 December 2024, <https://the arabweekly.com/desalination-plant-resumes-work-gaza-small-step-restore-public-services>.

The most pressing and enduring question facing policymakers in this area is not whether *any* steps will ever be taken to improve the state of water security in Gaza. At some point the violence will pause again, and some sort of rebuilding will presumably begin. It will start in the context of unprecedented trauma for the survivors of the war in the Gaza Strip. This trauma will not be forgotten. It is part of the bodies of the wounded and malnourished. The question for Israel's government – legally, ethically and prudentially – is whether Israel will take full advantage of the opportunity presented by the improvements that could be brought to the overall state of water infrastructure in Gaza, or whether through some combination of incompetence or malignant intent the best chance for a sustainable peace will be squandered.

This article seeks to detail what Israel owes the people who live in the Gaza Strip with respect to water.² It also highlights the opportunity for Israeli security presented by the provision of reliable water resources and infrastructure to the Gaza Strip. I argue that continued provision of water is required by both international law and ethics; additionally, it is the most prudent policy choice. This was true before the terrorist attacks of 7 October 2023, during the armed conflict that followed, and will be true following the end of the armed conflict.³ It also asserts that Israel's actions that damage the water infrastructure of the Gaza Strip are legally restricted. Further, it is in Israel's interest to build a sustainable water solution for the people of the Gaza Strip; once that self-interest is realised and internalised, the demands of law and ethics may become politically possible as well. Realising that self-interest requires overcoming the powerful dehumanising discourse that is currently dominating 'pro-Israel' and 'pro-Palestine' communities, humanising action (such as the provision of water security) is the best way of overcoming such dehumanising narratives.

Water is often overlooked in international public discourse over the Gaza Strip. This is understandable. Water does not rocket through the air or explode. Suffering caused by disease is often hidden away. There are few headlines, photographs or videos showing the absence of water, or its underground degradation. The breakdown in agriculture, sanitation and the resulting suffering and death caused by

² The 'Should' in the title of this work indicates both obligation and recommendation.

³ At the time of the initial presentation of this work, the armed conflict had not ended. At the time of submission of the work, a fragile ceasefire had taken hold. At the time of revision, the armed conflict was ongoing. This in itself is a good example in miniature of the difficulty in applying a strict temporal approach to *jus ad bellum*, *jus in bello* and *jus post bellum*, rather than a hybrid approach in which *jus ad bellum* and *jus in bello* are co-extensive temporally during armed conflict and occupation, and *jus post bellum* applies during armed conflict and until a just and sustainable peace is secured. This is explained more fully in Jens Iverson, *Jus Post Bellum: The Rediscovery, Foundations, and Future of the Law of Transforming War into Peace* (Brill 2021). The most recent research and developments reinforce earlier findings about the deepening crisis (see, eg, Abderrahmane Noui and Zineb Guesbaya, 'Water Resource Crisis in the Gaza Strip: The Impact of Groundwater and Surface Water Challenges Before and After the October 2023 Conflict' (2025) 4(1) *International Journal of Middle Eastern Research* 1 (highlighting the damage and opportunities for repair); Brian Perlman, Shalean M Collins and Jamon Van Den Hoek, 'Public Health Implications of Satellite-Detected Widespread Damage to WASH Infrastructure in the Gaza Strip' (2025) 5(2) *PLOS Global Public Health* e0004221; Niku Jafarnia, 'Gaza's Water Infrastructure Desperately Needs To Be Rebuilt', *Human Rights Watch*, 13 February 2025, <https://www.hrw.org/news/2025/02/13/gazas-water-infrastructure-desperately-needs-be-rebuilt>; Nidal Al-Mughrabi and Mahmoud Issa, 'Gazans Struggle to Find Water as Clean Sources Become Increasingly Scarce', *Reuters*, 12 April 2025, <https://www.reuters.com/world/middle-east/gazans-struggle-find-water-clean-sources-become-increasingly-scarce-2025-04-11>.

water insufficiency takes place quietly. Despite this low visibility, water is of urgent concern. The reasons for this urgency are both immediate (with water deprivation and communicable diseases currently killing Gaza residents) and long-term (with current damage to aquifers and water infrastructure creating long-term crises).

There has been a good deal of scholarship about water in the Arab–Israeli context. As Fietelson claims, ‘the number of words written about water in the Israeli–Arab context, per unit of water, is significantly higher than for any other water conflict’.⁴ This article seeks in part to build upon my previous scholarship on the transition from armed conflict to peace,⁵ often described as *jus post bellum*, although called by others ‘transitional justice’, ‘*lex pacificatoria*’, ‘peacebuilding’, or other names. The central argument that I have made elsewhere is, in general terms, that there is a legal, prudential and ethical imperative to enunciate and plan for a just and sustainable peace that goes beyond just mouthing the words ‘self-defence’ during armed conflict.⁶ Here, I am attempting in part to apply this argument to the specific problem of Israel’s policies and conduct regarding water in the Gaza Strip.

The basic argument put forth by the extreme voices within the Israeli government⁷ (in effect: ‘They attack us, why should we give them anything?’) that has prompted the radical reduction in water supply must be responded to. While specific legal rules or ethical arguments can be applied, abstract appeals to law or ethics may not be sufficiently persuasive to change Israeli policy during war or in its aftermath. Appeals to enlightened self-interest, with a vision of a sustainable peace, may be more successful. Ultimately, providing and protecting water⁸ in the Gaza Strip is an act of hope, whereas failure on this front is an act of a polity already despairing of a sustainable solution.

1.1. Definitions and word choice

Too much discussion on issues in this region is derailed by essentially arbitrary vocabulary choices that symbolically align the author on one side or the other. While sidestepping these symbolic disputes is not entirely possible, I have tried, in general, to aim for clarity above all else. For example, I generally refer to the ‘Gaza Strip’ instead of ‘Gaza’, as ‘Gaza’ can refer to a city, the current area or a historical area. I discuss residents of the Gaza Strip to distinguish them from other Palestinians. No disrespect is intended by any choice of nomenclature or phraseology.

⁴ Eran Feitelson, ‘The Four Eras of Israeli Water Policies’ in Nir Becker (ed), *Water Policy in Israel: Context, Issues and Options* (Springer Science & Business Media 2013) 15.

⁵ Jens Iverson, ‘Transitional Justice, Jus Post Bellum and International Criminal Law: Differentiating the Usages, History and Dynamics’ (2013) 7 *International Journal of Transitional Justice* 413; Iverson (n 3), Jens Iverson, ‘War Aims Matter: Keeping Jus Contra Bellum Restrictive while Requiring the Articulation of the Goals of the Use of Force’ (2018) 27 *Minnesota Journal of International Law* 67; Carsten Stahn, Jens Iverson and Jennifer S Easterday (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Oxford University Press 2014); Carsten Stahn, Jens Iverson and Jennifer S Easterday (eds), *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices* (Oxford University Press 2017); Carsten Stahn and Jens Iverson (eds), *Just Peace After Conflict: Jus Post Bellum and the Justice of Peace* (Oxford University Press 2020).

⁶ Iverson (2018) (n 5).

⁷ See Section 5 below.

⁸ Including the water table and water infrastructure from harm caused by actions attributable to Israel.

1.2. Scope, limitations in research, audience and roadmap

The scope of this article is intentionally limited. It focuses on water in the Gaza Strip. It does not address issues in the West Bank.⁹ While these subjects are raised, it does not seek to exhaustively address issues of the law of armed conflict, the general prohibition on the use of force between states, occupation law, environmental law, self-determination, responsibilities regarding toxic and explosive remnants of war, human rights or peacebuilding. By limiting the focus of the inquiry to what Israel owes the people of the Gaza Strip with regard to water, the unique recent history of the Gaza Strip will necessarily be highlighted. While there has been much discussion of conflicts sparked by competition for resources in general or water in particular, there is less water-specific law and well-understood water-focused history in the context of occupation, post-occupation, active armed conflict and post-armed conflict. That said, the ethical, legal and prudential problems facing Israel and the people of the Gaza Strip today are likely to have lessons that can be applied over a wider geographical and temporal scope. The climate crisis, breakdowns in international law norms and technological changes make questions of transborder water obligations more likely to be pressing and frequent in the future.

Some readers will inevitably wish that greater emphasis would have been placed on particular legal subjects or patterns of conduct. The emphasis of this work is on obligations. The obligations of Israel with regard to water in the Gaza Strip are multiple and interconnected, much like the water infrastructure itself. Each denial of water heightens the gravity of every other related act or omission. Other works should detail violations of these obligations and related obligations with greater specificity and force. However, for those arguments to find purchase in the minds of those with the capacity to influence Israel's policies, the *denial that obligations exist* must be refuted. That is the principal focus here.

Conversely, some readers may focus on a particular legal assertion and feel that a colourable legal counter-argument on one point negates the overall thrust of this article. The problem with this approach is that the overlapping legal, ethical and prudential arguments detailed here largely reinforce each other. For example, one may (wrongly in my view) adopt the approach that planning for the day after the war is *not* mandated by the hard requirements of *jus ad bellum* proportionality and necessity, nor the reverberating effects of *jus in bello* proportionality, nor *jus post bellum*, but that does not make violations of *jus in bello* necessity, environmental law, human rights law or international criminal law less relevant; nor does it make failing to plan for a just and sustainable peace any less unethical or (in the long run) foolish.

This work will build primarily on work that has already been done on post-occupation law and on *jus post bellum* (the legal and ethical rules regarding the transition from armed conflict). With regard to post-occupation law, Yaël Ronen's

⁹ The hydrological situations in the West Bank and the Gaza Strip are very different. The West Bank has a relative abundance of approximately 750–800 million cubic metres (m³) per year of naturally available freshwater. While most West Bank groundwater is of high quality, most water in the Gaza Strip is contaminated: Clemens Messerschmid, 'Water in Gaza: Problems and Prospects' (2011) 2011/19 *Birzeit University Working Paper* 1, 1 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1764252.

work,¹⁰ with its focus on the Gaza Strip, is a valuable and persuasive foundation. Tom Dannenbaum's work on the starvation of civilian populations¹¹ has been formative in my thinking of that crime, even though most readers, thinking of starvation, will predictably focus on food. The *jus post bellum* idea that a just and sustainable peace should be the objective throughout an armed conflict¹² may seem abstract, but provides clear reinforcement for legal, ethical and prudential arguments in favour of a sustainable water solution for the people of the Gaza Strip.

There are barriers to research in the Gaza Strip for researchers in general, and my own limitations compound those barriers. I am not alone in being unable to conduct research in the Gaza Strip or communicate with people there remotely. There is much that has been reported that may profoundly affect or relate to the aquifers and water quality – such as the proposed flooding of tunnels with salt water, toxic remnants of war or an outbreak of polio – on which, at the present moment, I am unable to obtain sufficient quality information but which concern me greatly. I speak neither Arabic nor Hebrew. I am aware that this work touches on areas that are the subject of lifetimes of study but of which I have barely scraped the surface. I nonetheless feel compelled to submit this work of intentionally limited scope, partly in the event that the important work that has been done in recent decades on *jus post bellum* – the law and ethics of the transition from armed conflict to peace – can be usefully applied to the matter at hand.

This work is intended primarily for an Israeli audience, and secondarily for all readers who recognise that a just and sustainable peace is in the interests of all of those involved in the conflict. The people of Israel have the power to make better decisions to improve their own security and well-being, as well as the security and well-being of their Palestinian neighbours. The policies of the current Israeli government are not set in stone; if anything, they are written in water.

This work proceeds largely chronologically. I start by providing a summarised factual background of the realities of water in the Gaza Strip (Section 2). The obligations of Israel regarding water before 7 October 2023 are then explained (Section 3). This section responds in part to the argument of 'Why do we owe them anything?' Third, the work explains why Israel owes the people of Gaza water and water-related duties during the current armed conflict (Section 4). This section responds to the argument that 'self-defence/security justifies' the conduct in question. It explores the many legal obligations related to current health needs and the need to maintain the possibility of a future sustainable peace. The work then argues for certain obligations and opportunities regarding water and water infrastructure after the cessation of hostilities (Section 5). I conclude with a critique of current attempts to create security through the expansion of territory or displacement and instead advocate that a radical improvement in water resources for the people of the Gaza Strip

¹⁰ Yaël Ronen, 'Post-Occupation Law' in Carsten Stahn, Jens Iverson and Jennifer S Easterday (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Oxford University Press 2014) 428.

¹¹ Tom Dannenbaum, 'Siege Starvation: A War Crime of Societal Torture' (2021) 22 *Chicago Journal of International Law* 368; Tom Dannenbaum, 'Criminalizing Starvation in an Age of Mass Deprivation in War: Intent, Method, Form, and Consequence' (2022) 55 *Vanderbilt Journal of Transnational Law* 681.

¹² Iverson (2018) (n 5).

would be a relatively easy and obvious step towards building a just and sustainable peace (Section 6).

2. Factual background

The Gaza Strip is water-poor.¹³ The main source of water directly available for its residents is the coastal aquifer,¹⁴ which reaches from Northern Israel to Sinai in Egypt. The Gaza Strip is the 'downstream user' in this aquifer, whereas Israel is the upstream user.¹⁵ This creates a physical disadvantage for residents of the Gaza Strip because Israel can de facto influence the quantity and quality of water flow into the area.¹⁶ Over time, as the population of the Gaza Strip has increased, the water levels in the aquifer have decreased and inflows of saline groundwater and waste have increased. In 2005, the Gaza Strip faced an annual deficit of around 30 million m³ per year, a large fraction of the 155 million m³ per year usage.¹⁷ Saline and nitrate pollution has resulted in most groundwater being unsuitable for domestic and agricultural use.¹⁸ Water supply has not and does not meet demand, causing a water shortage.¹⁹

There is a reasonably well-established feedback cycle in the Gaza Strip between armed conflict and ecological damage. Transnational water scarcity does not necessarily and inevitably lead to conflict in all situations: in fact, agreements regarding water can be a step towards building a greater peace.²⁰ In the Gaza Strip, however, the water shortage contributes to the violence between Israel and the residents of the Gaza Strip, and has done so for decades.²¹ The United Nations Environmental Programme (UNEP) evaluated the environment of the Gaza Strip following the escalation of hostilities in December 2008–January 2009, and found that armed conflict had damaged the local environment.²² It concluded that the Gaza Strip is ecologically very vulnerable, and that sustainable agriculture in the area, situated within a few kilometres of desert-like sand dunes, was extremely difficult. The destruction and degradation of the topsoil, vegetation, and local knowledge caused by armed conflict must be considered alongside the damage to water resources in order to

¹³ At least in 2005, the Gaza Strip was the second most water-poor region in the world (after Kuwait) with 52 m³ of water available per person per year; Erika Weinthal and others, 'The Water Crisis in the Gaza Strip: Prospects for Resolution' (2005) 43 *Ground Water* 653.

¹⁴ Messerschmid (n 9).

¹⁵ The flow goes from the southeast to the northwest towards the Mediterranean Sea; see Weinthal and others (n 13) 653–54.

¹⁶ *ibid* 653.

¹⁷ *ibid* 654.

¹⁸ *ibid* 653–60.

¹⁹ *ibid* 654.

²⁰ Susanne Schmeier and others, 'Water Scarcity and Conflict: Not Such a Straightforward Link', *ECDPM Great Insights*, 31 October 2019, <https://ecdpm.org/work/the-complex-link-between-climate-change-and-conflict-volume-8-issue-4-autumn-2019/water-scarcity-and-conflict-not-such-a-straightforward-link>.

²¹ Kimberley Kelly and Thomas Homer-Dixon, 'Environmental Scarcity and Violent Conflict: The Case of Gaza' in Thomas Homer-Dixon and J Blitt (eds), *Ecoviolence: Links among Environment, Population, and Security* (Rowman and Littlefield 1988) 67, 98–99.

²² United Nations Environment Programme (UNEP), *Environmental Assessment of the Gaza Strip Following the Escalation of Hostilities in December 2008–January 2009*, (UNEP 2009).

understand the long-term impact.²³ Existing UNEP recommendations for responses to environmental degradation exacerbated by armed conflict are centred entirely on water and water-related issues.²⁴

Israel's capacity to influence the overall availability of fresh water to itself and to those in the Gaza Strip has radically altered over time. Eran Feitelson tentatively describes the current moment as the 'Fourth Era' of Israeli water policies, as a result of the creation of large-scale water desalination capacity. This capacity allows the augmentation of available freshwater, increased wastewater recycling as a result of decreased wastewater salinity, and increased water security with less dependency on variable weather and climate.²⁵

The facts relating to the restrictions of water supply and the destruction of water resources and facilities are complex. What follows is only a summary. On 9 October 2023, in response to the 7 October attack, Israel ordered a 'complete siege' of the Gaza Strip.²⁶ This included the halting of electricity, food, water and fuel sent to the Gaza Strip from Israel.²⁷ All water supply pipes into the Gaza Strip were disconnected.²⁸ While some supply was eventually restored,²⁹ it was never fully restored to its *ante bellum* levels, thus necessitating the use of unclean local water.³⁰ In the Gaza Strip, wastewater and desalination facilities have been largely inoperable since October 2023.³¹ By 12 October 2023, at least six water wells, three water pumping stations, one water reservoir and a desalination plant serving over one million

²³ *ibid* 32.

²⁴ *ibid* 70–71 (detailing the following recommendations: remove water from the ongoing conflict in the region; provide safe water for infants; carry out a study on the prevalence of methemoglobinaemia (caused by water contamination); rest the coastal aquifer; develop an alternative water supply for the Gaza Strip; improve the efficiency of the water supply network; eliminate all inflow of salty and nitrate-containing recharge into the groundwater; dispose of all sewage deep offshore; establish new sewage treatment plant(s); improve the sewage system; decontaminate sewage ponds and Wadi Gaza; establish a modern solid waste management centre and system; decommission existing landfills; improve coastal protection; rebuild environmental governance).

²⁵ Feitelson (n 4) 26.

²⁶ Isabel Kershner, Aaron Boxerman and Hiba Yazbek, 'Israel Orders "Complete Siege" of Gaza and Hamas Threatens to Kill Hostages', *The New York Times*, 9 October 2023, <https://www.nytimes.com/2023/10/09/world/middleeast/israel-gaza-siege-hamas.html>. Some electrical lines were also reportedly destroyed by Hamas, which has a secondary effect on water facilities that depend on electricity. The conduct of Hamas obviously cannot be attributed to Israel; see, eg, Seth J Frantzman, 'IDF COGAT: 'We Are Not in Fight Against Civilians of Gaza'', *The Jerusalem Post*, 29 October 2023, <https://www.fdd.org/analysis/2023/10/29/idf-cogat-we-are-not-in-fight-against-civilians-of-gaza>.

²⁷ Jonathan Yerushalmy, 'Crisis in Gaza: Why Food, Water and Power Are Running Out', *The Guardian*, 17 October 2023, <https://www.theguardian.com/world/2023/oct/17/crisis-gaza-why-food-water-power-running-out>.

²⁸ Zein Khalil, 'Israel Has Cut Off Water Supply to Gaza Strip: Energy Minister', *Anadolu Ajansı*, 10 October 2023, <https://www.aa.com.tr/en/middle-east/israel-has-cut-off-water-supply-to-gaza-strip-energy-minister/3013527>.

²⁹ Jeremy Sharon, 'Israel Reopens Second of Three Water Pipelines into Gaza', *The Times of Israel*, 29 October 2023, <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza>.

³⁰ A Kayum Ahmed, 'Israeli Authorities' Cutting of Water Leading to Public Health Crisis in Gaza: End Blockade, Restore Water and Electricity, Allow in Fuel', *Human Rights Watch*, 16 November 2023, <https://www.hrw.org/news/2023/11/16/israeli-authorities-cutting-water-leading-public-health-crisis-gaza>.

³¹ *ibid*.

people had been damaged during the hostilities.³² On 4 November 2023, the only water reservoir in the Tal Al-Zaatar neighbourhood in Beit Lahia municipality was hit by an airstrike and damaged, which affected access to drinking water for 70,000 people.³³ On 16 April, Central Gaza's only wastewater treatment facility in Al Bureij was destroyed by an Israeli air strike.³⁴ By April 2024, 83 per cent of groundwater wells were not functioning at all, not all wastewater treatment systems were operational, two desalinisation plants were at partial capacity and one was non-functional.³⁵ By 26 May 2024, water production from sources within the Gaza Strip had been reduced by 84 per cent.³⁶ By 3 June 2024, the Israeli military had destroyed 100 per cent of all water and sanitation warehouses in Gaza City and Khan Younis.³⁷ In July 2024, Israel Defence Force troops demolished a critical water infrastructure in Rafah, known as Canada Well.³⁸ These troops reportedly received approval from their brigade commander, but they did not ask for permission from senior officers in the IDF Southern Command and are reportedly being investigated for a suspected violation of international law.³⁹ By July 2024, the cutting off of external water supplies by Israel, its destruction of water facilities and aid obstruction reduced the amount of water available to residents of the Gaza Strip by 94 per cent to 4.74 litres a day per person – just under a third of the recommended minimum in emergencies.⁴⁰ Inadequate and unsafe water is contributing to decreased water consumption and unsafe practices related to contaminated food, hands and utensils.⁴¹ More than a quarter of the population of Gaza has fallen severely ill from diseases that are easily preventable with a humane water supply.⁴²

³² United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), 'OCHA Hostilities in the Gaza Strip and Israel | Flash Update #7', 13 October 2023, <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-7>; UN Human Rights Council, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 'Detailed Findings on the Military Operations and Attacks Carried Out in the Occupied Palestinian Territory from 7 October to 31 December 2023' (10 June 2024), UN Doc A/HRC/56/CRP.4 52, para 222.

³³ *ibid.*

³⁴ Lama Abdul Samad, Martin Butcher and Bushra Khalidi, 'Water War Crimes: How Israel Has Weaponised Water in its Military Campaign in Gaza', *Oxfam*, July 2024, 23, <https://oxfamlibrary.openrepository.com/bitstream/10546/621609/1/bp-water-war-crimes-180724-en.pdf> accessed 26 September 2025.

³⁵ UN OCHA (n 32) para 226.

³⁶ Samad, Butcher and Khalidi (n 34) 23.

³⁷ *ibid.*

³⁸ Emanuel Fabian, 'IDF Investigating Demolition of Water Facility by Troops in Southern Gaza', *The Times of Israel*, 29 July 2024, <https://www.timesofisrael.com/idf-investigating-demolition-of-water-facility-by-troops-in-southern-gaza>.

³⁹ Fabian, *ibid.*; Yaniv Kubovich, 'Israeli Army Commanders Gave Order to Blow Up Rafah Reservoir. IDF Suspects Breach of Int'l Law', *Haaretz*, 29 July 2024, <https://www.haaretz.com/israel-news/2024-07-29/ty-article/.premium/idf-commanders-gave-order-to-blow-up-rafah-reservoir-army-suspects-breach-of-intl-law/00000190-fd90-d5ef-a5fe-ff9ec3ea0000>.

⁴⁰ Oxfam, 'Israel Using Water as Weapon of War as Gaza Supply Plummets by 94%, Creating Deadly Health Catastrophe', 18 July 2024, <https://www.oxfam.org.uk/media/press-releases/israel-using-water-as-weapon-of-war-as-gaza-supply-plummets-by-94-creating-deadly-health-catastrophe-oxfam>.

⁴¹ Natasha Hall, Anita Kirschenbaum and David Michel Hall, 'The Siege of Gaza's Water', *CSIS*, 12 January 2024, <https://www.csis.org/analysis/siege-gazas-water>.

⁴² Oxfam (n 40).

The United Nations Office of the High Commissioner issued a report on the Gaza Strip, stating:⁴³

The Commission found that blocking water, electricity and fuel supplies, compounded with shutting borders that greatly restricted the flow of humanitarian aid into the Gaza Strip, were key components of the ISF's siege strategy. The Commission also found above that the ISF destroyed the water and electricity infrastructure in the Gaza Strip and much of the other key infrastructures that was indispensable to the survival of the civilian population there.

3. Israel owed Gaza protection and supply of water before 7 October 2023: Responding to 'Why do we owe them anything'

Whether or not the Gaza Strip was occupied by Israel in the period after it disengaged from the area and before 7 October 2023 is contested. If the Gaza Strip was occupied by Israel, despite the absence of Israeli forces and the end of direct military rule since September 2005, all of the normal obligations of occupation apply, including provision of necessities for residents of the occupied territory. More specifically, Article 43 of the Hague Regulations and Article 64 of Geneva Convention IV require the occupier to restore and ensure public order and civil life.⁴⁴ If, *arguendo*, the Gaza Strip was in a period of post-occupation before 7 October 2023, one might expect the argument that Israel does not have extraordinary duties to residents of the Gaza Strip. This argument might be put particularly strongly when considered in national security terms: if providing materials, supplies or services to the residents of the Gaza Strip is perceived to create a national security risk by supporting groups such as Hamas or Islamic Jihad, the burden of showing such duties is more difficult to shoulder. This echoes the language of the Israeli Supreme Court: 'The State of Israel is under no obligation to allow an unlimited amount of electricity and fuel to enter the Gaza Strip in circumstances in which some of these commodities are in practice being used by the terrorist organisations in order to attack Israeli civilians'.⁴⁵ The Court, however, continues:⁴⁶

The duty of the State of Israel derives from the essential humanitarian needs of the inhabitants of the Gaza Strip. The respondents are required to discharge their obligations under international humanitarian law, which requires them to allow the Gaza Strip to receive only what is needed in order to provide the essential humanitarian needs of the civilian population.

⁴³ UN Human Rights Council (n 32) para 450.

⁴⁴ Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land (entered into force 26 January 1910), *Martens Nouveau Recueil* (ser 3) 461 (Hague Regulations), art 43; and, in slightly different wording, in Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (entered into force 21 October 1950) 75 UNTS 287 (GC IV), art 64.

⁴⁵ HCJ 9132/07 *Al Basyouni and Others v The Prime Minister and Minister of Defence*, Judgment (30 January 2008), para 11, English translation available at: <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Ahmed%20v.%20Prime%20Minister.pdf>.

⁴⁶ *ibid* para 11.

The Israeli government admitted ‘the existence of their humanitarian obligations, which require the State of Israel to allow the passage of essential humanitarian goods to the Gaza Strip’.⁴⁷ This was, notably, during a period when the Israeli government maintained there was no occupation.

Ronen describes a basic rationale for post-occupation⁴⁸ duties of a former occupant in the context of Gaza as one of dependence⁴⁹ or arising from the operation of a peace treaty or agreement.⁵⁰ She proposes that ‘post-occupation law should only be concerned with immediate needs that the incoming sovereign cannot provide’.⁵¹ Short-term water needs may be one such need, although her chapter, based on Israeli court rulings, focuses primarily on electricity and fuel. The Israeli Supreme Court has also found that Israel is bound to supply electricity to residents of the Gaza Strip.⁵² This was in response to an argument that the Israeli decision to cut electricity ‘would cause certain serious and irreversible damage to the essential humanitarian needs of the Gaza Strip, its hospitals, the water and sewage system, and the entire civilian population’.⁵³ It is important to clarify for context that the case was perceived as a victory for the State of Israel – the Court ruled for the respondents (essentially for Israel). Nonetheless, the clear rule laid down and upheld by the Court is that certain aid had to be provided even in an instance when there was no military rule and ‘the Gaza Strip is controlled by a murderous terrorist organisation, which acts relentlessly to inflict harm on the State of Israel and its inhabitants, violating every possible rule of international law in its violent acts, which are directed indiscriminately at civilians – men, women and children’.⁵⁴

The arguments that convinced the Supreme Court regarding the duty to supply electricity and fuel in 2008 apply with greater force to ensuring an adequate supply of water. While one might question whether this duty is always of indefinite duration, as long as Israel remains in control of the borders and airspace of the Gaza Strip, Israel should ensure, to the fullest extent of the means available to it, that the basic needs of the population of Gaza are met.⁵⁵ As stated by the International Court of Justice (ICJ):⁵⁶

Where an occupying Power, having previously established its authority in the occupied territory, later withdraws its physical presence in part or in whole, it may still bear obligations under the law of occupation to the extent that

⁴⁷ *ibid* para 15.

⁴⁸ For a useful summary of the arguments on the ‘post-occupation’ status of the Gaza Strip, see ICJ, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, 19 July 2024, Separate Opinion of Judge Iwasawa.

⁴⁹ Ronen (n 10) 429.

⁵⁰ *ibid* 433.

⁵¹ *Ibid* 431.

⁵² *Al Basyouni* (n 45).

⁵³ *ibid* para 5.

⁵⁴ *ibid* para 22.

⁵⁵ See *Legal Consequences* (n 48) Separate Opinion of Judge Iwasawa; ICRC, ‘What Does the Law Say about the Responsibilities of the Occupying Power in the Occupied Palestinian Territory?’, 28 March 2023, <https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories>; GC IV (n 44) art 55 (relating to food and medical supplies for the population).

⁵⁶ *Legal Consequences* (n 48) para 92.

it remains capable of exercising, and continues to exercise, elements of its authority in place of the local government.

Using this functional approach, it is clear that there was still considerable dependency on the part of the people of the Gaza Strip and corresponding duties for Israel. Like the ICJ,⁵⁷ one does not need to take a position on whether Gaza is occupied to find Israel is bound by certain duties. One cannot simultaneously interfere with a people's ability to independently supply themselves with necessities and be free from an ongoing corresponding duty. While the insufficient availability of electricity can be fatal in the worst cases, adequate water is always directly essential for life. The examples given in previous litigation highlight the importance of water – electricity and fuel were assertedly vital for Gaza's 'hospitals, the water and sewage system'.⁵⁸ Water also is clearly necessary for hospitals and the sewage system. In addition to not dying directly from lack of water, water allows basic hygiene, sanitation and the growth and preparation of food. In short, certain duties flow from occupation or former occupation and the resulting dependency. This is on top of any *normal* obligations under international water law for equitable use of a water system.

International law with regard to non-navigational uses of surface water and ground water is still in development. The United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses reflects customary international law with regard to surface water and related ground water.⁵⁹ The core rules at issue for shared resources in general (not to cause significant harm, the duty of equitable and reasonable use, the obligation of prior notification, and the duty to negotiate) apply also to transboundary ground water resources.⁶⁰ Under orthodox readings of international law, Israel had these duties regarding water to the state of Palestine, and failed to fully fulfil them. Significant harm has been caused to the aquifer through the inequitable sharing of water resources, and there has been minimal notice and negotiation. If, in the alternative, Palestine is conceived of as a non-self-governing territory or part of Israel, then Israel additionally owes far more demanding duties to the residents of the Gaza Strip under human rights law (described further in 4.1.3).

When considering what Israel owes with regard to water for present health and a future sustainable peace (as is discussed in the next section), the history of dependency and the basic fact of water poverty supply essential background. The slate is not wiped clean with the latest outbreak of hostilities, nor will current obligations be entirely erased should a ceasefire hold. Any obligations that can be shown to exist in the context of the armed conflict are deepened by the pre-existing vulnerability

⁵⁷ *ibid*, Separate Opinion of Judge Iwasawa, 3.

⁵⁸ *Al Basyouni* (n 45) para 5. As noted earlier, the Court held: 'The duty of the State of Israel derives from the essential humanitarian needs of the inhabitants of the Gaza Strip. The respondents are required to discharge their obligations under international humanitarian law, which requires them to allow the Gaza Strip to receive only what is needed in order to provide the essential humanitarian needs of the civilian population': *ibid* para 11.

⁵⁹ See Convention on the Law of the Non-Navigational Uses of International Watercourses (entered into force 17 August 2014) 2999 UNTS 77; Weinthal and others (n 13) 653, 656. Customary international law regarding ground water not related to surface water is less developed.

⁶⁰ Weinthal and others (n 13) 653, 656.

of the inhabitants of the Gaza Strip. Similarly, the armed conflict must be waged with full awareness of the need to build a just and sustainable peace, keeping in mind the failures of past post-occupation regimes.

4. Israel owes what is necessary for present health and future sustainable peace during the current active armed conflict: Responding to ‘Self-defence justifies this’

4.1. Obligations on Israel to provide water and not destroy water resources for reasons of health during armed conflict

During the current active armed conflict, the legal, prudential and ethical requirements for Israel with regard to water and the population of Gaza substantially increase compared to the previous period. An initial naive impression might be that a gentler, human rights-based regime is replaced by a harsher regime based on the law of armed conduct, which would lessen or eliminate the obligations of Israel relating to water in the Gaza Strip. The opposite is the case.

The conduct of the State of Israel must now be held to a higher and more demanding standard because of the increased relevance of *jus ad bellum*, *jus in bello*, human rights and international criminal law legal regimes.⁶¹ Each of these regimes is addressed briefly below.

4.1.1. *Jus ad bellum*

If the reduction or destruction of water supply or resources is analysed as part of a general ‘use of force’ under *jus ad bellum*, it is not enough simply to argue that Israel is operating under self-defence, so normal rules are suspended.⁶² Rather, the customary international law requirements of necessity and proportionality govern the overall resort to the use of force. Water deprivation makes Israel’s claim for legitimate self-defence weaker overall. If the legal claim of self-defence is important to Israel, it should set its policy accordingly. It makes it all the more important that Israel avoids militarily useless conduct that inevitably causes suffering for those in the least powerful position in the Gaza Strip while counter-productively comparatively strengthening the well-armed, well-positioned and well-supplied Hamas fighters, as they will control remaining water supplies and have greater leverage over the non-Hamas population. It is at best militarily useless to make the weakest people in the Gaza Strip suffer without having a material impact on the position of Hamas. Israeli decision-makers do not contest, to my knowledge, that Hamas is in a dominant position within the Gaza Strip (compared to the non-Hamas population) and will be the last to suffer from water restrictions if it ever materially affects them. Widespread, systematic, severe and indiscriminate water deprivation is not

⁶¹ Analysis of occupation law, human rights and international criminal law in this section does not imply that they do not have applicability at other times.

⁶² This subsection makes the argument that *jus ad bellum* generally forbids the restriction of water supplies and destruction of water supplies in the same way that, say, the United Kingdom could not have destroyed water resources in mainland Argentina during the Falkland Islands/Malvinas conflict, as such an action would fail the tests of necessity and proportionality. Below, in [section 4.1.5](#), I respond to the more general approach that ‘self-defence allows it’ despite the arguments made in [sections 4.1.1, 4.1.2, 4.1.3 and 4.1.4](#).

necessary to achieve the legitimate war aims of Israel. The argument that the water restrictions and destruction of the water infrastructure is a *jus ad bellum* military necessity to achieve self-defence accordingly fails. The argument for *jus ad bellum* proportionality is even weaker, with the overall justification of Israeli military action significantly eroded by the choice to degrade water resources. *Jus ad bellum* necessity and proportionality analysis is not binary, is not without nuance, and does not cease at the moment the use of force is chosen. The restriction of water supplies and very likely the destruction of water facilities are close to indefensible from a *jus ad bellum* perspective. The best defence of Israel's conduct relating to water in Gaza from a *jus ad bellum* perspective is simply avoiding the question and asserting that this is purely a non-international armed conflict to which the norms and ethics, but not the law, regulating the use of transnational force do not apply.⁶³ This argument ends up making a convincing *jus in bello* justification for the degradation of water resources all the more important.

4.1.2. *Jus in bello*

During active armed conflict, one of the most basic IHL principles is the prohibition against attacking, destroying, removing or rendering useless objects that are indispensable for the survival of the civilian population.⁶⁴ Additional Protocols I and II provide drinking water installations as specific examples of objects indispensable for the survival of the civilian population.⁶⁵ Foodstuffs are also listed; the list is non-exhaustive. It is reasonable to note that the destruction of water facilities, including desalination and wastewater facilities, is likely to be prohibited by this rule. The two exceptions to the rule are limited in this context. First, Israel is not engaging in a so-called 'scorched earth policy'⁶⁶ where it destroys its own facilities to defend its own territory from invasion, in the manner of Tsarist Russia responding to Napoleon Bonaparte's invasion. Second, there is no credible evidence that these objects are 'military objectives' as they may be when they are used as sustenance solely for combatants or otherwise in direct support of military action.⁶⁷ Beyond the attacking, destroying or rendering useless water facilities in the Gaza Strip, one might reasonably ask whether damage to the water and aquifer itself are objects that are indispensable for the survival of the civilian population in the context of the extreme precarity of the water situation in the Gaza Strip. While these are less of a 'classic' protected object than, say, a silo of grain or a warehouse of food, they are

⁶³ Like the issue of occupation of the Gaza Strip, the statehood of Palestine is an important legal question that this work does not attempt to settle, for reasons of scope and because the conclusion of this work is 'overdetermined': one arrives at the conclusion that Israel's conduct with regard to water resources in the Gaza strip is in error, regardless of the determination of these matters.

⁶⁴ International Committee of the Red Cross (ICRC), 'International Humanitarian Law Database: Rule 54', <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule54>.

⁶⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (entered into force 8 June 1977) 1125 UNTS 3 (AP I), art 54(2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (entered into force 7 December 1978) 1125 UNTS 609 (AP II), art 14.

⁶⁶ AP I (n 65) art 54(5).

⁶⁷ *ibid* art 54(3).

actually more necessary and it is less defensible to destroy or render them useless than such 'classic' examples.

It is also worth noting the prohibition on the use of poison or poisoned weapons.⁶⁸ While in the submission in the *Nuclear Weapons* case, the United States and the United Kingdom asserted that this prohibition does not apply to weapons that could incidentally poison, but only to weapons that were designed to kill or injure by the effect of such poison,⁶⁹ one can imagine an argument that at some level the overwhelming effect of creating toxic remnants of war without care to minimise its effect on available water, particularly the aquifer, could breach this prohibition.

There are other rules of international humanitarian law that are implicated, given that assertions of military advantage in destroying water and wastewater facilities are hard to credit. A full exploration of potential violations of the principle of distinction,⁷⁰ the principle of proportionality,⁷¹ the principle of precaution in attack,⁷² and the prohibition of causing serious damage to the natural environment⁷³ requires a more case-by-case analysis than is possible in this work, but these elements are certainly worthy of further study and may be subject to further criminal charges and allegations of violations of the law of armed conflict. Take, for example, the principle of proportionality. At least for objects destroyed through kinetic means, proportionality analysis is best done on a target-by-target basis with full knowledge of what those in the kill chain knew at the time the decision to target was made. It is difficult to make this analysis in any specific case from outside, and unhelpful to do so by agglomerating together multiple discrete decisions. The vast majority of the discussion in the popular discourse about the current armed conflict is stale: trapped between allegations that an attack was disproportionate and assertions that it was justified by military necessity only discernible to the Israel Defense Forces. Part of the purpose of this work is to break out of this unproductive 'dialogue'. This is not in any way to undermine the importance of proportionality in attack. It is simply that one need not prove conclusively (which is difficult) that any particular action violated this norm to demonstrate the conclusions of this work. Convincingly demonstrating violations of this norm in an individual case may require an article or entire trial dedicated to a single action. That said, some of the examples in the section on factual background (Section 2) can be usefully analysed (keeping in mind that these examples are nowhere near exhaustive) while acknowledging that further information would be helpful.

The choice of Israel to disconnect all water supply pipes⁷⁴ and never restore the supply to *ante bellum* levels, thus necessitating the use of unclean local water,⁷⁵ is one example that can be examined more clearly with regard to the laws of armed conflict. I agree with Dannenbaum's approach on this matter. One need not reach

⁶⁸ ICRC (n 64) rule 72.

⁶⁹ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, Written Statement of the United Kingdom 261, Written Statement of the United States 262.

⁷⁰ ICRC (n 64) rule 7.

⁷¹ *ibid* rule 14.

⁷² *ibid* rule 15.

⁷³ *ibid* rule 45.

⁷⁴ Khalil (n 28).

⁷⁵ Kayum Ahmed (n 30).

a proportionality test to declare this conduct illegal.⁷⁶ There is no reason to distinguish between starvation caused by destruction of goods or denial of goods. He states:⁷⁷

Whether starvation is caused by destroying crops or by encircling and denying their transfer to a particular population, the impact is equally slow and torturous. In either case, it is possible that the surrender of the affected party could alleviate it. And, in either case, allowing through humanitarian aid could avert it for the population reached by that aid. If it is prohibited to destroy foodstuffs whenever they are not used exclusively for the sustenance of combatants (irrespective of the military advantage promised), why would it be permitted to deprive those combatants of the same food by encirclement if the deprivation would also impact civilians? If it is prohibited to destroy those crops when they are used for military purposes other than sustenance if the consequence would be the starvation or forced movement of civilians, why would it be permitted to encircle the same population with the same effect?

During the negotiation regarding the Elements of Crimes at the International Criminal Court, it was recognised that the definition of 'starvation' applied to both water and food deprivation as well as other essential commodities necessary for survival, such as medicine.⁷⁸ Dannenbaum's logic applies with equal (if not greater) force to water in the specific highly dependent, water-poor environment of the Gaza Strip. This conduct is also likely to fail a proportionality analysis: there is no evidence it has or would be likely to have provided any military advantage, and has caused mass suffering and death.

One could also look at other examples already provided and perform a *prima facie* proportionality analysis. The airstrike that damaged the only water reservoir in the Tal Al-Zaatar neighbourhood affected access to water for 70,000 people.⁷⁹ Central Gaza's only wastewater treatment facility was destroyed by an Israeli air strike.⁸⁰ All water and sanitation warehouses in Gaza City and Khan Younis were destroyed by Israel.⁸¹ It is possible that some colourable military advantage could be articulated in each of these cases if they were brought to trial. In context, however, the burden of showing that military necessity actually outweighed the immense civilian suffering caused by these choices is extremely likely to be far too heavy. Again, the combined effect of Israel's cutting off external water supplies, its destruction of water facilities and aid obstruction reduced the amount of water available to residents of the Gaza

⁷⁶ See also the section on international criminal law (4.1.4), discussing, *inter alia*, the war crime of starvation as a method of warfare.

⁷⁷ Tom Dannenbaum, 'Encirclement, Deprivation and Humanity: Revising the San Remo Manual Provisions on Blockade' (2021) 97 *International Law Studies* 307, 373–74.

⁷⁸ Knut Dörmann, 'Preparatory Commission for the International Criminal Court: The Elements of War Crimes – Part II: Other Serious Violations of the Laws and Customs Applicable in International and Non-International Armed Conflicts' (2001) 83 *International Review of the Red Cross* 461, 475.

⁷⁹ *ibid.*

⁸⁰ Samad, Butcher and Khalidi (n 34).

⁸¹ *ibid.*

Strip by 94 per cent – just under a third of the recommended minimum in emergencies.⁸² Merely showing information that some Hamas fighters or facilities were present is insufficient. For proportionality to have any meaning or function, if it is to do any work beyond the principle of distinction, each instance of suffering caused by this conduct – in a context where children and other civilians are immiserated and die slow, agonising deaths – has to be given due weight. Collectively, the civilian suffering is of overwhelming gravity.

A proportionality test is appropriate if the target is legitimate. A central allegation levelled at the Israeli government is not that it is misjudging the measurements in a proportionality assessment, but that it is intentionally targeting infrastructure essential for the survival of the civilian population. As stated previously, the United Nations Office of the High Commissioner noted:⁸³

The Commission found that blocking water, electricity and fuel supplies, compounded with shutting borders that greatly restricted the flow of humanitarian aid into the Gaza Strip, were key components of the ISF's siege strategy. The Commission also found above that the ISF destroyed the water and electricity infrastructure in the Gaza Strip and much of the other key infrastructures that was indispensable to the survival of the civilian population there.

While the preceding discussion focuses on the conduct of hostilities, the following paragraphs address the distinct obligations that apply when effective control gives rise to an occupation. The most common reading of the law is that the lawful sovereign over the Gaza Strip has been displaced, particularly since 9 October 2023. As referenced earlier, Article 43 of the Hague Regulations and Article 64 of Geneva Convention IV require the occupier to restore and ensure public order and civil life.⁸⁴ The argument that Israel is not occupying the Gaza Strip because it only controls the airspace and water access is far less compelling during active hostilities. While Israel has not chosen to clear and hold terrain, creating a safe space behind the battlefield for the civilian population, that does not necessarily excuse Israel from the obligations of occupation.⁸⁵ Israel now has ground presence and can assert its authority relatively quickly. This is particularly the case with water. Restoring and ensuring public order and civil life with regard to water does not require the provision of an Israeli police officer on every corner. It commands, at a minimum, that Israel does not choke off the water supply.

The contested nature of occupation of the Gaza Strip may, with analysis of duties surrounding water as a key example, allow for a nuanced approach to obligations of belligerent occupation. Rather than a purely territorial and temporal approach – in which, at any particular moment, there is a bright line between territory under the control of the sovereign power, the battle line, and territory under control of the

⁸² Oxfam (n 40).

⁸³ UN Human Rights Council (n 32) para 450.

⁸⁴ Hague Regulations (n 44) art 43; and, in slightly different wording, in GC IV (n 44) art 64.

⁸⁵ The situation in the Gaza Strip can be distinguished from any scepticism expressed by the ICJ in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, Merits [2005] ICJ Rep 168, [167]. Even then, Ituri was considered to be occupied: *ibid* [176].

occupier – an approach that relies on functional questions, asking questions such as ‘Who is best positioned to provide water as part of public order and civic life?’, is better as a matter of law and policy. This would provide the impetus for decisions that cross international borders and lines of control, reinforcing and providing modern substance to all of the customary norms that the International Committee of the Red Cross gathers in Chapter 17 of its customary international humanitarian law database: ‘Starvation and Access to Humanitarian Relief’. ‘Attacks against Objects Indispensable to the Survival of the Civilian Population’ (rule 54)⁸⁶ and ‘Starvation as a Method of Warfare’ (rule 53)⁸⁷ have been referenced above, but it is also worth noting ‘Access for Humanitarian Relief to Civilians in Need’ (rule 55),⁸⁸ and ‘Freedom of Movement of Humanitarian Relief Personnel’ (rule 56).⁸⁹

4.1.3. Human rights

During what Israel considers to be post-occupation, it had a stronger argument that the human rights obligations that flow from direct territorial control were less relevant. Since the incursion of the Israeli military into the Gaza Strip, human rights obligations are more easily addressable to Israel. The ordinary application of human rights limits is not unlimited in territorial scope. Each state is primarily responsible for human rights within its own territory, with limited responsibility for extraterritorial human rights. An exception to this is when the individuals are under the direct control of a state. While the fluid front lines of the conflict make the situation less clear-cut than the sort of belligerent occupation that follows complete victory and military rule (as was the case, for example, after the Second World War) in general, it is clear that there is no other sovereign in control of this territory to which these rights-based duties can be addressed. The more Israel controls the territory and population of the Gaza Strip, the stronger the argument that these obligations are addressable to Israel. The key thing to recognise is that the proper approach is the co-application of human rights law and international humanitarian law, not the displacement of human rights law by international humanitarian law. While, in some cases, that co-application would radically transform human rights obligations (such as the meaning of the right to be free from the arbitrary deprivation of life), the right to water undergoes no such radical application. There is no reason why the right to water⁹⁰ or, more generally, the associated rights to life, health or family life cannot be facilitated by, at a minimum, not radically reducing the amount of water available for the residents of the Gaza Strip. The right to water is articulated as follows by the United Nations Committee on Economic, Social and Cultural Rights:⁹¹

⁸⁶ ICRC (n 64) rule 54.

⁸⁷ *ibid* rule 53.

⁸⁸ *ibid* rule 55.

⁸⁹ *ibid* rule 56.

⁹⁰ See, eg, Ahmad Nehaluddin and Gary Lilienthal, ‘Right to Water as a Human Right: A Critical Overview of International Instruments’ (2021) 50 *Environmental Policy and Law* 299; Salman Salman and Siobhán McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (The World Bank 2004); Peter H Gleick, ‘The Human Right to Water’ (1998) 1 *Water Policy* 487.

⁹¹ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No 15: The Right to Water (Arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)’, 26 November 2002, UN Doc E/C.12/2002/11, 2.

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

Any argument that Israel cannot fulfil its obligations because it is unable to (even with the expenditure of the maximum of its available resources),⁹² or that not doing so was necessary to promote the general welfare,⁹³ is very unlikely to succeed.⁹⁴ Some actions, such as the complete rebuilding of the water infrastructure during war time, may be excused temporarily, but the basic actions of not cutting off water supplies and not destroying water infrastructure are achievable: in fact, they are the 'default setting' without the affirmative choice to deprive residents of the Gaza Strip of this right. To the degree that these obligations are addressable to Israel, it is plain that Israel has failed to respect, protect or fulfil this right or affiliated rights for the residents of the Gaza Strip.

4.1.4. *International criminal law*

Human rights and international humanitarian law are often enforced through international criminal law.⁹⁵ From the perspective of international observers, allegations of genocide have been lodged at the ICJ.⁹⁶ The Pre-Trial Chamber of the International Criminal Court has issued arrest warrants for the Prime Minister and Minister of Defence on a variety of charges.⁹⁷ From the perspective of a lawyer defending the Israeli state or a defence lawyer arguing for the accused on the merits or on admissibility grounds, on the basis of admissibility based on Israel's own investigations into the alleged crimes, Israel's conduct with regard to water in the Gaza Strip is

⁹² International Covenant on Economic, Social and Cultural Rights (entered into force 3 January 1976) 933 UNTS 3, art 2(1).

⁹³ *ibid* art 4.

⁹⁴ For more on financial capacity see [Section 5](#) below.

⁹⁵ International dispute settlement for state responsibility for wrongful acts will be addressed briefly in [Section 5](#).

⁹⁶ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v Israel), Provisional Measures [2024] ICJ, <https://www.icj-cij.org/case/192>.

⁹⁷ It appears that several but not all crimes in the application for arrest were confirmed in the arrest warrant: International Criminal Court, 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine', 20 May 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> (announcing an application for arrest for starvation of civilians as a method of warfare as a war crime; wilfully causing great suffering, or serious injury to body or health or cruel treatment as a war crime; wilful killing or murder as a war crime; intentionally directing attacks against a civilian population as a war crime; extermination and/or murder including in the context of deaths caused by starvation, as a crime against humanity; and persecution as a crime against humanity); International Criminal Court, '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', 21 November 2024, <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (listing reasonable grounds of belief for the war crime of starvation as a method of warfare; the crimes against humanity of murder, persecution, other inhumane acts and the war crime of intentionally directing an attack against the civilian population).

not helpful. All the allegations listed above could be based, in whole or in part, on Israeli conduct related to the water supply in the Gaza Strip. Because there is so little non-wrongful, non-criminal explanation for choking off the water supply, evidence in this area is potentially far more damning than much of the direct killing and suffering caused by traditional kinetic use of armed force.

4.1.5. *Responding to the security/self-defence justification*

Even though the legal categories of *jus ad bellum*, *jus in bello*, human rights and international criminal law all mandate protection of the water supply, it is worth acknowledging that even doing the bare minimum is potentially more politically challenging than usual for decision-makers in Israel. ‘Self-defence’ or ‘security’ may be asserted by some to provide licence for Israeli conduct. There is higher general Israeli animus towards the population of the Gaza Strip than before the horrendous attacks of 7 October 2023. Instead of the potential threat and the ongoing low-level impact on Israelis that might be described before 7 October 2023, the default framework is one of licensed violence based on security needs, and the focus of attention is the conduct of hostilities and high-profile kinetic use of force. However, the restriction of water and the damaging of water resources and facilities is low profile, unjustified by any rationale under the conduct of hostilities, and ultimately serves no defensive purpose. It does not make the people or territory of Israel safer.⁹⁸

Rather than self-defence, such conduct looks like reprisal and collective punishment. Sometimes this is directly indicated. Israel Katz, Israeli Minister of National Infrastructure, Energy, and Water, said that the water and electricity cut-off ‘is what the nation of child killers deserved’.⁹⁹ Israeli Coordinator of the Government in the Territories Maj. Gen. Ghassan Alian stated:¹⁰⁰

Hamas has turned into ISIS, and the residents of Gaza, instead of being appalled, are celebrating. Human animals must be treated as such. There will be no electricity and no water [in the Gaza Strip], there will only be destruction. You wanted hell, you will get hell.

Israel’s Defence Minister, Yoav Gallant, announced ‘a complete siege ... no electricity, no water, no food, no fuel. Everything is closed. We are fighting human animals, and we act accordingly’.¹⁰¹ More frequently, reprisal or collective punishment is not announced in those terms but rather with the adjacent term of ‘re-establishing

⁹⁸ This argument is made throughout this work. As explained in [section 4.1.1](#), one cannot credibly assert that this is justified by military necessity unless one rejects the premise that Hamas is in a dominant position within the Gaza Strip (compared to the non-Hamas population) and will be the last to suffer from water restrictions.

⁹⁹ UN Human Rights Council (n 32) para 455.

¹⁰⁰ Video statement by the Coordinator of the Government in the Territories Maj. Gen. Ghassan Alian, Coordinator of Government Activities in the Territories (COGAT), ‘Video Statement by Maj Gen Ghassan Alian’, 10 October 2023, <https://twitter.com/cogatonline/status/1711718883323752586>.

¹⁰¹ Oliver Holmes and Ruth Michaelson, ‘Israel Declares Siege of Gaza as Hamas Threatens to Start Killing Hostages’, *The Guardian*, 9 October 2023, <https://www.theguardian.com/world/2023/oct/09/israel-declares-siege-on-gaza-as-hamas-claims-israeli-strikes-killed-captives>.

deterrence.' A reasonable objective observer may conclude that even though a radical restriction in the water reply has minimal possibility of convincing the strongest elements of the population in the Gaza Strip to, for example, disband themselves or release hostages, the motivation may be to 'teach Gazans a lesson' so they are collectively deterred from supporting atrocities similar to those of 7 October 2023 in the future. The problem with this is that such reprisals and collective punishment are illegal under international humanitarian law and human rights law, respectively. The greater problem is that it is manifestly a failed strategy for building a just and sustainable peace. The people of the Gaza Strip already have a dominant narrative founded on victimisation and resistance. Reinforcing victimisation in order to break the collective will of the civilian population is, historically, an ineffective strategy.¹⁰² It is explainable more by the internal politics and short-term domestic political rewards than long-term self-interest.

What if, instead, Israel had increased the water supply? We look at that in the next section.

4.2. Obligations on Israel to preserve water resources for reasons of sustainable peace

The analysis above is a baseline legal finding based on an evaluation of immediate humanitarian needs, not an evaluation of the effectiveness of a national security approach that might itself have legal implications, and not an ethical assessment. It echoes the Israeli Supreme Court's analysis of restrictions on essential supplies to the Gaza Strip: 'We do not intervene in the question of the effectiveness or the wisdom of the security measures adopted by those responsible for security, but only in the question of their legality'.¹⁰³

What follows focuses on less immediate concerns, and so will be thought by some readers to be less legal and more prudential and ethical. I disagree with this assessment: the obligation to build towards a just and sustainable peace is part of customary international law.¹⁰⁴ Even putting aside the just-war tradition, which always included a component that involved *jus post bellum avant la lettre*, one cannot comply with the obligations of *jus ad bellum* necessity and proportionality without an eye beyond immediate concerns.¹⁰⁵

There is a temptation to think of the obligations of peacebuilding as beginning when a ceasefire is achieved. This is wrong, both factually and legally. A better approach, as I have argued elsewhere, is to take a hybrid-temporal approach to the law and ethics of the transition from armed conflict to peace (sometimes called *jus post bellum*).¹⁰⁶ Even during periods of armed conflict, there must be an underlying war aim of establishing a just and sustainable peace. Some steps in building such a peace are obviously made easier by the cessation of hostilities, but it is important to consider how to move forward towards an achievable peace even during hostilities.

¹⁰² See Jonathan Leader Maynard, *Ideology and Mass Killing: The Radicalized Security Politics of Genocides and Deadly Atrocities* (Oxford University Press 2022) 179–81, 187–88, 192.

¹⁰³ *Al Basyouni* (n 45) para 20.

¹⁰⁴ See generally Iverson (n 3).

¹⁰⁵ *ibid* 116, 120.

¹⁰⁶ *ibid* 120.

A strictly temporal approach to *jus ad bellum*, *jus in bello* and *jus post bellum* tends to consider the *jus ad bellum* questions largely closed once *jus in bello* questions are raised, and for *jus post bellum* questions to be deferred until after 'peace is achieved'. A better approach is to consider, throughout the conflict, how a sustainable peace can be achieved, just as *jus ad bellum* questions of proportionality and necessity last throughout the armed conflict, not simply at the outset.

It might be helpful to imagine an act that implicated *jus ad bellum*, *jus in bello* and *jus post bellum* at once, in order to explain the difference in the application of each area of law and normative principles. Imagine that the first act that started an armed conflict was a bombing campaign with cluster bombs, the toxic remnants of which reduced the quality of the water supply.¹⁰⁷ The question of whether resort to the use of force was legal at all is a *jus ad bellum* question, answerable by reference to the United Nations Charter,¹⁰⁸ any relevant Security Council resolutions, and perhaps customary law regarding self-defence against an imminent attack. In order to determine whether (or which) violations of *jus in bello* occurred, one would have to consider classic questions of targeting, proportionality and military necessity, means and methods of warfare, the applicability of both treaty (e.g. Geneva Convention IV, the relevant Additional Protocol, as well as potentially the 1980 Convention on Certain Conventional Weapons (CCW) and its Protocol on explosive remnants of war,¹⁰⁹ and the 2008 Convention on Cluster Munitions (CCM)¹¹⁰) and customary law. The question of whether the act could also be restricted on the basis that it would make a just peace unjustifiably difficult pursuant to the CCW (given the explosive remnants that will make the peace less just or sustainable) may also be considered a *jus post bellum* question, and the resolution of the *jus ad bellum* and *jus in bello* violations may require *jus post bellum* practice in order to determine accountability for the act, and build a just and sustainable peace.

The example above could be extended further to see how a single act could implicate multiple areas of law without necessarily confusing their application or resulting in legal fragmentation. Environmental damage might violate environmental law. The human rights of those affected by the attack, now and in the future, would implicate international human rights law under the approach taken by the Human Rights Committee with regard to human rights during armed conflict.¹¹¹

Looking at a particular targeting decision during the conduct of hostilities exclusively through *jus in bello* (also known as international humanitarian law or

¹⁰⁷ *ibid* 120.

¹⁰⁸ Charter of the United Nations (entered into force 24 October 1945) 1 UNTS XVI.

¹⁰⁹ Protocol on Explosive Remnants of War (Protocol V to the Convention on Certain Conventional Weapons) (entered into force 12 November 2006) (Protocol V to CCW).

¹¹⁰ Convention on Cluster Munitions (entered into force 1 August 2010) 2688 UNTS 39 (CCM).

¹¹¹ William A Schabas, 'Lex Specialis? Belt and Suspenders? The Parallel Operation of Human Rights Law and the Law of Armed Conflict, and the Conundrum of Jus Ad Bellum' (2007) 40 *Israel Law Rev* 592, 598; Cordula Droegge, 'Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' (2007) 40 *Israel Law Review* 310, 338; Alexander Orakhelashvili, 'The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?' (2008) 19 *European Journal of International Law* 161, 178; Anthony E Cassimatis, 'International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law' (2007) 56 *International and Comparative Law Quarterly* 623, 635.

law of armed conflict) makes a certain amount of sense. This is particularly true for the individual in a kill chain focusing on the short term, to simplify accurate decision-making. Problems arise, however, when one is reliant on *jus in bello* proportionality to do the bulk of the work of restraining an overwhelmingly more powerful armed group that is focused on force protection. Calculating harm to civilian interests at best tends to be short term and limited. Evaluating *jus in bello* proportionality is notoriously difficult from the outside, and if other areas of international law are dismissed not only for individual targeting decisions but also for strategic decisions and long-term effects, the overall effect can be one that appears to be largely lawless from the outside and from the civilian victims of armed conflict, even if from within the dominant military force it seems regulated. The debate on how to evaluate reverberating harm in armed conflict¹¹² is relevant here, and can be augmented by a *jus post bellum* perspective.

In contrast, water resources and infrastructure represent an opportunity going forward, whether during armed conflict or after the cessation of hostilities. In closing this section, I will focus on water policy during armed conflict. Attempting to supply clean and potable water to the residents of the Gaza Strip would both help to redeem the overall proportionality of the Israeli *jus ad bellum* justifications for the armed conflict and play an important role in the process of bringing hostilities to an end – what in other contexts has been called *jus terminatio*¹¹³ or *lex pacificatoria*.¹¹⁴ The present supply of water coupled with the credible promise that water resources could be restored to a humane standard in peace incentivises a swift end to hostilities with the attendant release of hostages. It could incentivise the selection of more moderate leaders within the Gaza Strip who could ‘sell’ the prospect of a negotiated peace with a potentially hopeful future rather than extreme leaders who welcome destruction and suffering as a short-term ‘necessity’. It can be framed as a project for ‘environmental peacebuilding’ instead of a locus for a negative feedback loop for environmental destruction and violence. Environmental peacebuilding is the idea that joint efforts to preserve the environment can be a starting point for establishing peace, in part because of the relatively low-profile nature and shared interest in, for example, preserving a watershed.¹¹⁵ Ultimately, Israeli policymakers have to

¹¹² On water, see Michael Talhami and Mark Zeitoun, ‘The Impact of Attacks on Urban Services II: Reverberating Effects of Damage to Water and Wastewater Systems on Infectious Disease’ (2020) 102(915) *International Review of the Red Cross* 1293–325; Mark Zeitoun and Michael Talhami, ‘The Impact of Explosive Weapons on Urban Services: Direct and Reverberating Effects Across Space and Time’ (2016) 98(901) *International Review of the Red Cross* 53–70; Isabel Robinson and Ellen Nohle, ‘Proportionality and Precautions in Attack: The Reverberating Effects of Using Explosive Weapons in Populated Areas’ (2016) 98(901) *International Review of the Red Cross* 107–45; Machiko Kanetake, ‘The Hawija Airstrike: Reverberating Effects on Civilians under International Humanitarian Law’ (2022) 35(4) *Leiden Journal of International Law* 735–42.

¹¹³ David Rodin, ‘The War Trap: Dilemmas of *Jus Terminatio*’ (2015) 125(3) *Ethics* 674.

¹¹⁴ Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford University Press 2008).

¹¹⁵ A good introduction to the subject is Daniëlla Dam-de Jong and Britta Sjöstedt, ‘The International Legal Dimensions of Environmental Peacebuilding’ in Daniëlla Dam-de Jong and Britta Sjöstedt (eds), *Research Handbook on International Law and Environmental Peacebuilding* (Edward Elgar 2023) 1. For an assessment of environmental peacekeeping and evaluating damage with reference to time, such as would be the case with long-term damage to an aquifer, see Jens Iverson, ‘Managing the Tensions between a Maximalist

decide, during the armed conflict, what kind of *post-bellum* reality they are working towards: one of desperation and return to violence or one that retains some viable path towards a just and sustainable peace. The entire legal, ethical and prudential tradition sometimes styled as the ‘just war’ tradition leans towards the latter.

For readers unconvinced of any legal obligation,¹¹⁶ I would still advocate a strong ethical and prudential rationale that puts the delivery and promise of water resources on the table as armed conflict terminates. Delivering water resources comes at an extremely low cost compared to other costs involved in the conflict, as I will discuss in the next section.

5. Israel should provide water and water infrastructure in good faith dialogue after the current armed conflict: Responding to ‘mowing the grass’ and the threat of ethnic cleansing

The obligations and opportunities following the current active armed conflict do not simply revert to their *ante bellum* status. The situation in the Gaza Strip is far worse now than it was then. In addition to the obligations and prudential rationales described above for preserving and providing water resources and infrastructure, wrongful conduct by Israel comes with responsibilities under international law. These include cessation,¹¹⁷ assurances of non-repetition,¹¹⁸ full reparation for the injury caused by the wrongful act¹¹⁹ including re-establishing the situation that existed before the wrongful act was committed (restitution),¹²⁰ and compensation for any damage not made good by restitution.¹²¹ In other words, if the water infrastructure was wrongfully¹²² damaged or destroyed, it must be repaired and replaced. Satisfaction¹²³ is also required under international law, as the wrongful acts involved cannot be fully addressed by restitution or compensation.

Turning from the demands of international law to the political economy of peacebuilding, the most difficult requirement politically may be satisfaction, which, while financially cost-free and cannot be in a form that is humiliating to the responsible state,¹²⁴ may lack support in major Israeli voting blocks. However, admitting internationally wrongful acts is not only required when it cannot be made right otherwise; it is also an essential step for environmental peacebuilding. Dialogue, and durable solutions, require some degree of honest reckoning.

Approach to Environmental Protection and Anthropocentric Peacebuilding’ in Dam-de Jong and Sjöstedt, *ibid* 89.

¹¹⁶ Again, keeping in mind the legal obligation to justify the entire scope of Israeli conduct as proportional from a *jus ad bellum* perspective.

¹¹⁷ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, UN Doc A/56/10, CH IV.E.1 (2001) (ARSIWA), art 30(a).

¹¹⁸ *ibid* art 30(b).

¹¹⁹ *ibid* arts 31, 34–39.

¹²⁰ *ibid* art 35.

¹²¹ *ibid* art 36.

¹²² If obligations do not flow from wrongful conduct but from obligations under, for example, human rights law or the law of occupation, such obligations are highly context-dependent.

¹²³ ARSIWA (n 117) art 37.

¹²⁴ *ibid* art 37.

These steps may seem politically impossible, but they should not be framed wholly as a cost. Rather, they should be seen primarily as an opportunity, and the cost should be compared with the likely alternative. Compared with zero-sum frameworks that have been at the heart of the conflict – where territory,¹²⁵ demographic dominance¹²⁶ or demilitarisation of a Palestinian State involve one side ‘winning’ and one side ‘losing’ with every metre of territory, returned descendant or armament – water is a potential ‘win-win’. In an age of large-scale desalinisation and modern waste treatment, water is merely a financial investment, one that costs nothing in terms of strategic aims and pays dividends in national security (or, more generally, a just and sustainable peace). The amount of money involved is not small compared with, for example, a city budget, but compared with the amount of money spent on national security, it is trivial.¹²⁷ The real question is not expense; it is whether the dehumanising narratives on both sides can displace current narratives. Rebuilding a functioning water infrastructure in the Gaza Strip can play an important role in that effort.

The alternative to financial expenditure to restore a humane level of water and water security to the residents of the Gaza Strip is not ‘no cost’; it is a vast non-financial cost that inevitably leads to financial cost as well. While up-to-date social science data is hard to acquire in the Gaza Strip at the moment, it is a reasonable assumption that many people there believe that Israel wishes them to be killed or forced out of the Gaza Strip. (The reverse is also true with many residents of Israel and the perceived intention of Palestinian groups.) As long as this perception remains widespread and firmly held, progress on the difficult issues listed above (land, residence, demilitarisation) becomes nearly impossible. Lessening that perception should be a priority if the end goal is a negotiated settlement.

Engaging in good faith dialogue is always a requirement with shared resources,¹²⁸ but it is particularly pressing in the case of a vital aquifer the management of which could be a critical factor in establishing a sustainable future for the people of the Gaza Strip. Conduct that could damage the aquifer – from simple overuse to drilling into the aquifer in a manner that allows it to be polluted, to the use of saltwater in the Gaza Strip – should be subject to the precautionary principle and avoided whenever possible, given the extreme difficulty in remedying this type of environmental damage.

Of course, it is possible that a negotiated settlement is not the aim of Israel. An indefinite future of endless, ‘managed’ armed conflict, fluctuating between periods of high and low intensity, glossed over with the repugnant euphemism ‘mowing the

¹²⁵ ie, the question of borders, including Jerusalem.

¹²⁶ ie, regarding the asserted right of return for descendants of former residents of Israeli territory.

¹²⁷ The 2025 budget for the Israeli Defense Ministry is between 27 and 40 billion US dollars. The war is estimated to cost more than 66 billion US dollars; see Sharon Wrobel and Sam Sokol, ‘2025 State Budget to Increase Defense Spending, Cut Social Services and Education’, *The Times of Israel*, 31 October 2024, <https://www.timesofisrael.com/2025-state-budget-to-increase-defense-spending-cut-social-services-and-education>. The costs of water projects in the Gaza Strip tend to be in the tens of millions of dollars range, rising to hundreds of millions only over the course of decades: UNEP (n 22) Table 28 (Damages to environmental sectors, necessary actions and respective costs) 84.

¹²⁸ Weinthal and others (n 13) 653, 656.

grass', may be the war aim of the Israeli government.¹²⁹ Or the war aim of the Israeli government may be even more legally, ethically and prudentially flawed than that.

6. Conclusion: Reducing security by pursuing a 'greater Israel': The fallacy of creating security through expanded territory given technological trends

Those alleging that the aims of some in the Israeli government are annexation and ethnic cleansing now include Former Israeli Defence Minister Moshe Yaalon, who stated: 'The road we are being led down is conquest, annexation and ethnic cleansing'.¹³⁰ If this, indeed, is the objective of the current Israeli government, that would not improve anything about the legality or ethics of Israel's conduct regarding water and the Gaza Strip. There are those who assert that at times during Israel's history, annexation as a result of defensive wars was not contrary to international law. It is fair to say this is a minority view. Applying this legal logic to the Gaza Strip, in the context of what are viewed widely as profound violations of international law, will be accepted by a vanishingly small group. Even if it were objectively legal, prudentially this approach is disastrously misguided.¹³¹

Despite temporarily displacing Hamas from de facto control of sections of the Gaza Strip while the Israeli army is there, the actual effect of the war has been a lesser Israel, not a greater Israel. Given technological trends, the idea that deterrence alone will keep the edges of Israel safe is a dangerous and misguided fantasy. In order for people to live in a place, they need to be secure, not for a season but for the lifetime of their children. In order to keep drones, mortars and missiles from pouring across a border, the other side of that border must have a population that is largely willing to comply with an authority that itself commands such weapons not be deployed. These weapons will keep getting cheaper, more deadly and more widely available. Russia's aggression in Ukraine has accelerated the development of militarised unmanned aerial vehicles, which have been useful in the battlefield but are likely to prove to be exceptional tools of sustained decentralised terrorism, for which walls will be useless. Even in areas where agreement is reached to suppress attacks, widespread terror and hatred, combined with increasingly deadly technology, is not a recipe for sustainable peace. Even if all of northern Gaza is emptied of residents, the idea that a generation from now, the children of the children who grew up in a state of extreme water precarity, will live and let live through collective deterrence alone is foolish beyond belief.

¹²⁹ For the importance of war aims, and the legal and ethical restricts on war aims, see Iverson (2018) (n 5) 67.

¹³⁰ 'Israel Committing Gaza War Crimes and Ethnic Cleansing, Says Moshe Yaalon', *Al Jazeera*, 2 December 2024, <https://www.aljazeera.com/news/2024/12/2/israel-committing-war-crimes-in-gaza-says-former-army-chief-moshe>.

¹³¹ At least formally, as at January 2025, Israel had committed to allow the rebuilding of infrastructure in the Gaza Strip: Yaniv Kubovich and Jonathan Lis, 'Israel Pledges to Allow Rebuilding of Gaza Strip as Part of Cease-Fire Deal' *Haaretz*, 19 January 2025, <https://www.haaretz.com/israel-news/2025-01-19/ty-article/.premium/israel-pledges-to-allow-rebuilding-of-gaza-strip-as-part-of-cess-fire-deal/00000194-7b05-db45-a5f5-ffb62ad0000>.

The residents of the Gaza Strip are entitled to water. Beyond that, it is in Israel's enlightened self-interest to provide the residents of the Gaza Strip with water security.

Israel was founded as a safe place. It will never be a truly safe place until a durable peace is established. The Israeli government's policy with regard to water in the Gaza Strip makes all Israelis less safe because it makes a durable peace less likely. It is a betrayal of Israel's founding dream.

Now is the time to plan for a real, positive, sustainable peace, including water security. By investing in water, the returns will not just be complying with Israel's legal and ethical obligations to the residents of the Gaza Strip. It will also help to establish a safer future for the next generation of Israelis.

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