

Of Humanitarian Windows, Pause(s), Truces and Ceasefires, and Israel's Right of Self-Defence Against the Hamas Terrorist Attack

Stefan Talmon

2023-10-30T18:57:51

Published: 30 October 2023 Author: Stefan Talmon

In response to Hamas' barbaric terrorist attack against Israel on 7 October 2023, in which more than 1,400 Israelis, mainly civilians, were brutally killed, more than 5,300 wounded, and some 230 abducted to the Gaza Strip, the Israel Defence Force (IDF) bombed Hamas targets in Gaza and, on 9 October 2023, declared a total siege of the Gaza Strip. Israeli Defence Minister Yoav Gallant announced that '[t]here will be no electricity, no food, no water, no fuel, everything is closed.' Hamas, nevertheless, continued to fire rockets indiscriminately towards Israel. By 13 October 2023, Israeli airstrikes had killed some 1,800 Palestinians, including some 580 children, and injured about 7,300. In addition, some 423,000 civilians were displaced within the Gaza Strip due to the military strikes. Against the background of an impending humanitarian catastrophe, the International Committee of the Red Cross (ICRC) called for 'pauses in the fighting' to provide humanitarian assistance to the people of Gaza. On 13 October 2023, the Russian Federation put forward a draft resolution for consideration by the Security Council, which called for 'an immediate, durable and fully respected humanitarian ceasefire'. On 18 October 2023, UN Secretary-General António Guterres joined the call for an 'immediate humanitarian ceasefire to provide sufficient time and space ... to ease the epic human suffering we are witnessing.'

On 23 October 2023, European Union (EU) foreign ministers meeting in Luxembourg failed to agree on a common position on the situation in the Middle East, which was to be adopted by EU leaders at a summit later that week. In particular, no agreement could be reached on whether the EU was to follow the lead of the UN Secretary-General and call for a 'humanitarian ceasefire'. In order to reach agreement, the draft text discussed had referred to a 'humanitarian pause' to allow rapid, safe and unhindered humanitarian access and aid to reach those in need, rather than to a humanitarian ceasefire. The EU's High Representative for Foreign Affairs and Security Policy, Josep Borrell, explained the difference between the terms as follows:

A ceasefire is certainly much more than a pause. A pause, as the name suggests, is an interruption of something that would then continue. It is much less ambitious than a ceasefire, which means an agreement between both sides. A pause can be agreed much quicker, and I believe the ministers consider that a pause is needed so that humanitarian aid can enter.

Agreement, however, could not even be reached on a 'humanitarian pause' because Germany and some other member States were opposed to any wording that could have been interpreted as a call for a definitive halt to hostilities and thus may have called into question Israel's right to self-defence at a time when Hamas rocket attacks on Israel continued and more than 200 Israeli hostages were still held in the Gaza Strip.

On 24 October 2023, a compromise formula emerged. Before a meeting of the UN Security Council, Federal Foreign Minister Annalena Baerbock stated that it had become clear that 'humanitarian pauses are extremely important for humanitarian supplies.' The term 'humanitarian pauses' in the plural, rather than 'pause' in the singular, was then also used by US Secretary of State Antony Blinken in the Security Council meeting. During the meeting itself, Foreign Minister Baerbock introduced another term, referring to 'humanitarian windows' to get help into Gaza. A spokesperson for the Federal Foreign Office explained the term of 'humanitarian windows' as follows:

These are spatial and temporal windows in which there is no shelling and in which it is then possible to safely provide supplies to people in need.

The new term of 'humanitarian pauses' was then also adopted by the European Union after days of wrangling. In the EU Council conclusions, adopted by EU leaders on 26 October 2023, it was stated:

The European Council expresses its gravest concern for the deteriorating humanitarian situation in Gaza and calls for continued, rapid, safe and unhindered humanitarian access and aid to reach those in need through all necessary measures including humanitarian corridors and pauses for humanitarian needs.

At the same time, at the UN General Assembly's tenth emergency special session on 'Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory' another compromise formula emerged. In its non-binding Resolution ES-10/21, the General Assembly called 'for an immediate, durable and sustained humanitarian truce leading to a cessation of hostilities'.

None of the terms employed – humanitarian 'window', 'pause(s)', 'truce' and 'ceasefire' – are legal terms of art. The relevant international humanitarian law treaties use only the terms 'armistice' and 'suspension of fire'. An armistice can be defined as an agreement between the belligerent parties – either political leaders or military commanders – to suspend military operations. It may be general or localised; it may be for a certain limited period of time or of unspecified duration. Even in the latter case, it is considered a temporary suspension, not a termination of hostilities. The state of armed conflict between the parties continues. A 'suspension of fire' is a particular kind of local armistice. All the expressions employed with regard to the Israel-Hamas conflict describe forms of armistice. The question thus arises why so much importance was ascribed to the terminology used.

The term ceasefire has acquired a more specialist meaning denoting a negotiated formal agreement that suspends hostilities for an indefinite period of time. It is intended to be long-term and usually covers the entire conflict area. Ceasefires usually freeze the armed conflict and may last for decades. They are arranged as a consequence of political negotiations or give rise to such negotiations and frequently involve a third party or international organisation. A ceasefire has not just military but also political connotations.

A humanitarian pause denotes a temporary suspension of hostilities purely for humanitarian purposes. It is generally considered less formal than a ceasefire. It does not have any political implications and is usually for a defined limited period and specific geographic area where the humanitarian activities are to be carried out. However, there is no generally agreed definition of the term, and 'humanitarian pause' and 'humanitarian ceasefire' have occasionally been used interchangeably.

A truce denotes a temporary suspension of hostilities for a certain limited period of time. It is considered less formal than a ceasefire and is based on an ad-hoc arrangement, rather than a negotiated agreement. It usually is not part of a political process. By calling for a 'durable and sustained humanitarian truce leading to a cessation of hostilities', the UN General Assembly, however, indicated that it considered the truce a first step to a ceasefire.

Humanitarian pauses or windows, on the other hand, describe short intervals of just a few hours, during which hostilities are suspended to allow for the delivery of humanitarian assistance. For example, the draft resolution submitted on 18 October 2023 by Brazil called for

humanitarian pauses to allow full, rapid, safe and unhindered humanitarian access [to Gaza] for United Nations humanitarian agencies and their implementing partners, the International Committee of the Red Cross and other impartial humanitarian organizations, and encourages the establishment of humanitarian corridors and other initiatives for the delivery of humanitarian aid to civilians.

The terminology made little difference with regard to the *jus in bello* as all the terms referred to different forms of armistice. The real significance of the different terms lay with the *jus ad bellum*. Israel responded to the terrorist attacks by Hamas, exercising its inherent right to self-defence. That right is subject to the principle of necessity. Lawful self-defence is thus restricted to what is necessary to repel the armed attack and 'must not acquire a retaliatory, deterrent or punitive character.' In particular, the total destruction of the enemy may neither be necessary nor proportionate to achieve the legitimate aim of ending the actual attack. In cases where there is no belligerent occupation of the State's territory, there is no longer a necessity to use force to repulse the attack once a 'durable and sustained' suspension of hostilities has been achieved. A humanitarian ceasefire, a humanitarian pause, and a humanitarian truce would thus have seriously curtailed Israel's right to self-defence. After a general and indefinite suspension of hostilities it would have been very difficult, if not impossible, for Israel to argue that military operations in self-defence were still necessary, especially if the situation on the

ground had not significantly changed since the suspension of hostilities. It was for that reason that Germany and other States that did not want to tie Israel's hand and prevent it from defending itself against the Hamas terrorist organisation chose to call for 'humanitarian windows' and 'humanitarian pauses' only. Such short breaks in the fighting for humanitarian purposes did not call into question the continuing necessity of self-defence.

Against the background of the wider implications of the UN General Assembly's call for a 'durable and sustained humanitarian truce leading to a cessation of hostilities' for Israel's right to self-defence, one would have expected Germany to vote against the resolution. This is even more so since Germany had – unsuccessfully – advocated that the resolution adopts the language of the European Council statement, namely 'humanitarian pauses'. In the end, Germany was one of forty-five countries abstaining, while 120 States voted in favour and only fourteen voted against the resolution. Surprisingly, Germany did not explain its abstention with the call for a 'humanitarian truce' but with the fact that the resolution did not 'explicitly [condemn] the terrorist attacks by Hamas and [call] out Hamas' responsibility for killing civilians, taking hostages and indiscriminately firing rockets against civilian targets.'

Category: [Armed Conflict and International Humanitarian Law](#)

<intR>²Dok-Lizenz: Eine Nachnutzung dieses Beitrags ist im Rahmen des Gesetzes über Urheberrecht und verwandte [Schutzrechte](#) (<https://www.gesetze-im-internet.de/urhg/>) möglich.