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Israel's Weaponization of Water: An Urgent Call to Provide Full Access to Water Services in Gaza

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“Wadi Gaza 2010” (Credits: @CaraFlowers)

“

This might be my last email to you [... while] we [with my wife and my five kids] have been deprived completely from water, electricity and food [...]. Please [...] do whatever you can to stop the genocide [...] [we] may not be the same colour as [you] but [we] are not ‘human animals’.

– A Palestinian academic living in Gaza.

The weaponization of water and its infrastructure has become increasingly evident in recent armed conflicts. These acts seriously threaten the lives of the civilian population, especially the most vulnerable groups, such as children. Two days after Hamas launched its attack, Israel imposed a “total” blockade and cut the water supplies into the already besieged Gaza Strip –home to approximately 2.3 million people. On 9 October, Yoav Gallant, the Israeli Defence Minister, announced “a complete siege on Gaza No electricity, no food, no water, no gas – it’s all closed”.

The people of Gaza are in terrible peril now and the blockage of water supplies only compounds the misery of the millions of civilians in Gaza. In this post, we join the call to both parties to stop the war, and seek to briefly highlight some notable implications of Israel's act of water blockage. We refer our discussion to the relevant framework of international humanitarian law in relation to freshwater supplies, in particular the draft Geneva List of Principles on the Protection of Water Infrastructure that sets out international rules that are applicable during armed conflicts and makes valuable recommendations. We urgently call for solidarity with all people on both sides of the war. Millions of defenceless people, including women and children in Gaza, face a deepening humanitarian crisis, a catastrophic chain of events, and a lack of the most basic human needs – water and food.

Even in times of conflict, States are obligated to protect the fundamental rights of civilians by prohibiting the use of water as a means of warfare, and respecting water as a fundamental human right.

A prohibition of the use of water as a means of warfare

The International Law Association in the Madrid Rules of 1976 addressed the use of water infrastructure, and water itself, in the context of armed conflict. Article III sets forth specific prohibition for the protection of the civilian population and the environment:

“The diversion of waters for military purposes should be prohibited when it would cause disproportionate suffering to the civilian population or substantial damage to the ecological balance of the area concerned. A diversion that is carried out in order to damage or destroy the minimum conditions of survival of the civilian population or the basic ecological balance of the area concerned or in order to terrorize the population should be prohibited in any case.”

The following proposal during the drafting of the UN 1997 Watercourses Convention on the use of water and water infrastructure as means of warfare is applicable in this case:

“Withholding, by diversion or other means, of water from a system State so as to place in jeopardy the survival of the civilian population or to imperil the viability of the environment is prohibited in peacetime and in time of armed conflict.”

Article 29 of the Watercourses Convention also applies:

“International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.”

More recently, the 2019 Geneva List of Principles on the Protection of Water Infrastructure has restated the obligation upon States to, “refrain from using water infrastructure and water-related infrastructure as a means of warfare”.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has confirmed that water has now become a “matter of life and death” for people in Gaza. While Israel’s act of water blockage has no direct ‘military purpose’, it is, as announced by Israeli military authorities, seen as a military tactic to put in “jeopardy the survival of the civilian population”, and to put pressure on people in Gaza. It is therefore unlawful.

Water is a fundamental human right

The human right to water requires that everyone should have “access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use” (UNGA Res 72/178 (29 January 2018), § 2.). All States are obliged to respect the human right to water through both positive and negative obligations. Under Articles 11(1) and 12(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the human right to water is legally binding.

General Comment 15 – adopted in 2002 by the UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of the ICESCR – declares that “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights”. The rights to water and sanitation are also included in other instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities.

General Comment 15 by the CESCR clearly stated that States, in accordance with international humanitarian law, must refrain from “limiting access to, or destroying, water services and infrastructure as a punitive measure” during armed

conflicts.

A shortage of water and lack of access to sanitation may cause or aggravate other devastating crises, such as malnutrition and spread of diseases. This means that depriving people of water and sanitation during armed conflict may violate other human rights, which in turn can affect vulnerable groups, such as women and children, disproportionately.

General Comment 15 also makes a link between the fulfilment of the right to water and the realization of the right to adequate food. Additional Protocol I, Art. 54(1) and Additional Protocol II, Art. 14 to the Geneva Conventions, specifically stipulate that the use of starvation of the civilian population as a method of warfare must be prohibited. This rule is part of customary international law. Starvation not only means “killing by deprivation of water and food”, but also the deprivation of any essential commodity or thing necessary for survival. Therefore, international humanitarian law prohibits the use of starvation of the civilian population both in international and non-international armed conflicts.

Under Art. 49(1) and Art. 51(5)(b) of Additional Protocol I to the Geneva Conventions, such “acts of violence against the adversary, whether in offence or in defence” is disproportionate if it “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” The devastating effects of Israel’s water blockage to the civilian population in Gaza is unequivocally disproportionate. Furthermore, Israel, as the occupying power, is also obliged to respect, protect and fulfil the human rights of Palestinians. The government of Israel’s act of cutting Gaza’s water, food, and electricity supplies is therefore in violation of its international law obligations, conventional and customary, under both international humanitarian law and international human rights law.

In addition to the violation of international humanitarian law and international human rights law, according to the Art. 85(3)(c) of Additional Protocol I to the Geneva Conventions, the illegal act of cutting water, food and power to civilians in Gaza raises significant questions relating to war crimes.

We call upon the government of Israel to respect its obligations under international law, to provide full access to water services to Gaza, and to refrain from targeting necessary water infrastructure and related personnel.

We ask both parties to stop the war. As human beings we are all dependent on water for life. To remain human, we must do all we can to ensure the humanitarian access to water for all the people in Gaza. We call on the international community and on all States and relevant actors to join us in this call.