

BELGIAN GROUP · INTERNATIONAL SOCIETY FOR MILITARY LAW AND THE LAW OF WAR

Consent, control, and the threshold to starvation

The conditional obligation to consent to impartial humanitarian relief once the civilian population suffers undue hardship

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Four steps from the treaty text to a contemporary conflict

I

The legal framework

Consent under Art. 18 AP II, its limits, and the right of control

II

The tipping point

When refusal to give consent becomes a prohibited method of warfare and a violation of the prohibition on starvation

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Siege

The two lawful paths — and what happens when neither is taken

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The non-international armed conflict in Sudan

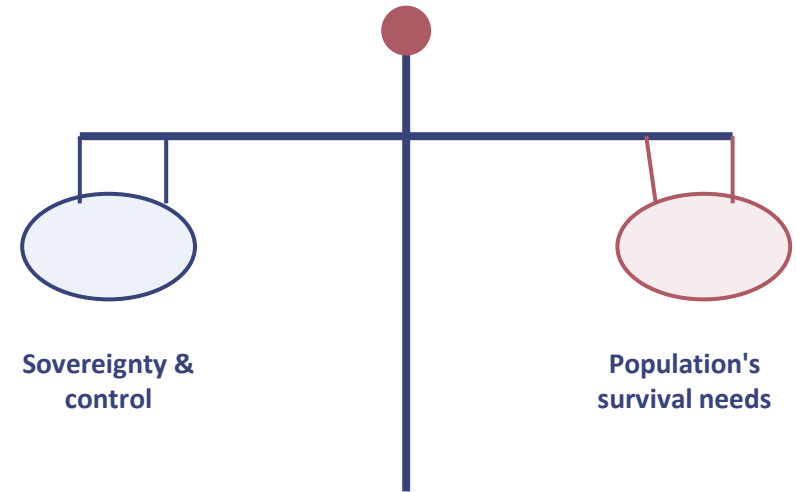
Documented patterns

Responsibility

Each party to the conflict bears the primary **responsibility** for meeting the basic needs of the population under its control.

Humanitarian aid is complementary and temporary

a mechanism that steps in once that responsibility is no longer being met, not a substitute for it.



The conditional obligation to consent to impartial humanitarian relief

Art. 18(2) AP II

Binds the State party

Applies once the civilian population is **suffering undue hardship** owing to a lack of the supplies essential for its survival, relief actions are of an exclusively humanitarian and impartial nature conducted without adverse distinction, and the High Contracting Party consents.

Common Art. 3

Confirms the offer of services

“An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.”

CIHL Rule 55

Fills the NIAC treaty gap

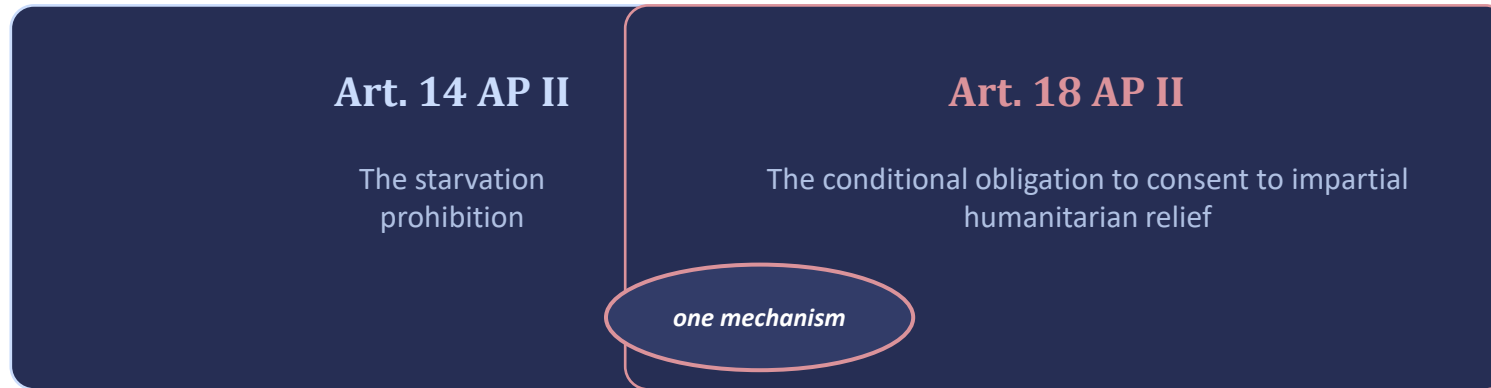
“The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.” Binds all parties, including non-State armed groups.

CIHL Rule 56

Freedom of movement

Parties must ensure the freedom of movement of authorised humanitarian relief personnel essential to the exercise of their functions; movement may be restricted only temporarily, where required by imperative military necessity.

One protective regime



Art. 18 is the mechanism that keeps Art. 14 enforceable in every circumstance.

Consequence:

the power to consent to, or refuse, relief operations is not unlimited. It meets an absolute limit the moment its exercise deprives the population of objects indispensable to the survival of the civilian population.

Consent

TRAVAUX PRÉPARATOIRES, AP I — EXTENDED BY THE COMMENTARY TO AP II

“[The consent requirement] did not imply that the Parties concerned had absolute and unlimited freedom to refuse their agreement to relief actions. A Party refusing its agreement must do so for valid reasons, not for arbitrary or capricious ones.”

1

ICRC Commentary, Art. 18 AP II —

once survival is threatened and an impartial organisation is able to relieve it, the authorities responsible for the population cannot refuse life-saving assistance without valid grounds. Consent is not left to free discretion.

2

Customary law confirms it —

CIHL Rule 55: consent may not be withheld on arbitrary grounds. This applies in NIAC exactly as it does in IAC.

What makes a refusal arbitrary?

The Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict sets out three grounds

1 Breaches another obligation

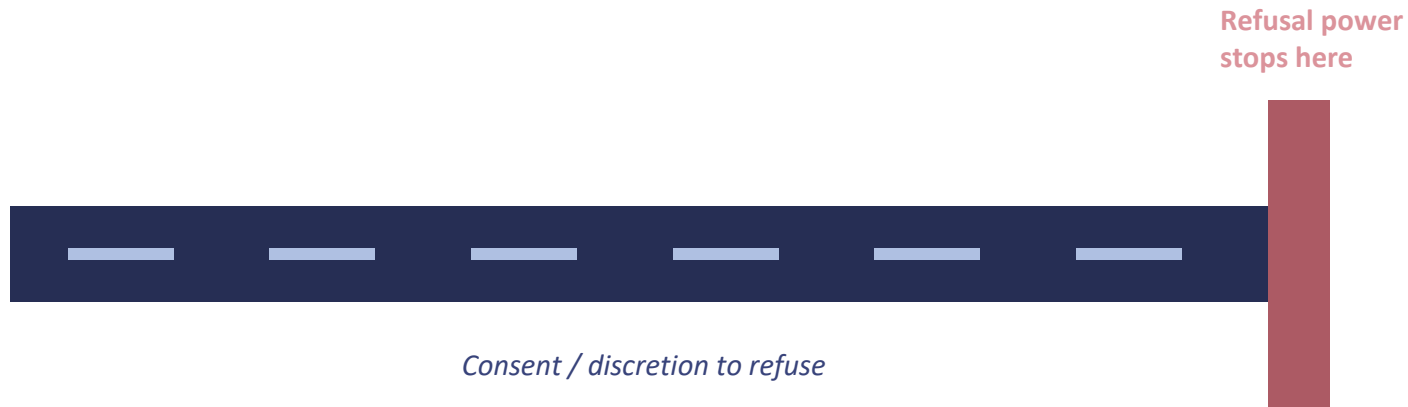
Withholding consent puts the State in breach of its other international obligations toward the population

2 Disproportionate or unnecessary

Withholding runs contrary to the principles of necessity and proportionality.

3 Withholding is unreasonable, unjust, unpredictable, or otherwise inappropriate in the circumstances

The absolute limit



Consent in the access provisions cannot grant a party the authority to do what the starvation prohibition forbids, it stops the instant its exercise deprives the population of indispensable objects.

The right of control

WHAT IT COVERS

Rule 55 preserves the right; Art. 70(3) AP I spells out its content:

- the right to prescribe technical arrangements, including search, under which passage is permitted
- may make passage conditional on distribution being locally supervised

Once relief is accepted in principle, a positive duty to cooperate follows.

WHAT IT DOES NOT COVER

A limitative list of powers, not a general power to restrict.

Art. 70(3)(c): consignments shall in no way be diverted from their purpose, nor their forwarding delayed, except in cases of urgent necessity in the interest of the civilian population itself.

Control over content and delivery, not deliberate obstruction

Control, or disguised obstruction? A three-part test

- 1 A real and legitimate control purpose exists**
the measure targets the consignment, its content, its route, or its distribution — not the beneficiary population as such.
- 2 The measure is suitable and strictly necessary**
to achieve that purpose.
- 3 A real access route remains**
after the measure is applied, aid can, in practice, still get through.

Fail any one of the three, and the measure is not a legitimate exercise of the right of control, it is an unlawful circumvention of the duty to grant humanitarian access.

The fear of diversion

A frequently invoked justification for withholding consent: aid might end up benefiting the opposing side.

Safeguards already exist

Compliance with agreed conditions, transit run to a fixed timetable and route, convoy inspection, and monitored distribution already neutralise the diversion risk.

You can't reject the safeguard and keep the fear

Rejecting those safeguards while still invoking the diversion fear means relying on a risk you yourself keep alive.

When access obstruction becomes a prohibited method of warfare and a violation of the prohibition on starvation

- 1 The civilian population endures unnecessary suffering from a lack of indispensable goods, and the party is aware of it or cannot be unaware of it.
- 2 An impartial, non-discriminatory organisation has offered aid and is able to remedy the situation.
- 3 Consent is withheld, delayed, or rendered meaningless and arbitrary, or facilitation simply does not follow.
- 4 There is no valid ground within the right of control; the measure exceeds temporary imperative military necessity; or less intrusive means were available and rejected.

Art. 18 — access

Art. 14 — starvation



all four conditions met

The consequence of crossing the line

BELOW THE THRESHOLD

A denial, delay, or obstruction of access is a breach of Art. 18.

ABOVE THE THRESHOLD

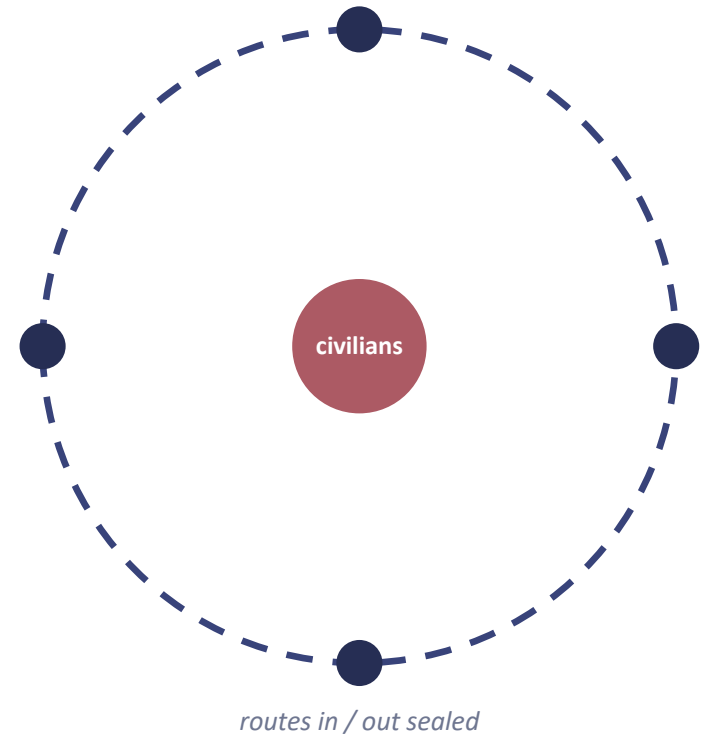
The omission itself becomes the prohibited method of warfare.

Denying or impeding relief is equivalent to attacking, destroying, removing or rendering the objects indispensable to the survival of the civilian population useless.

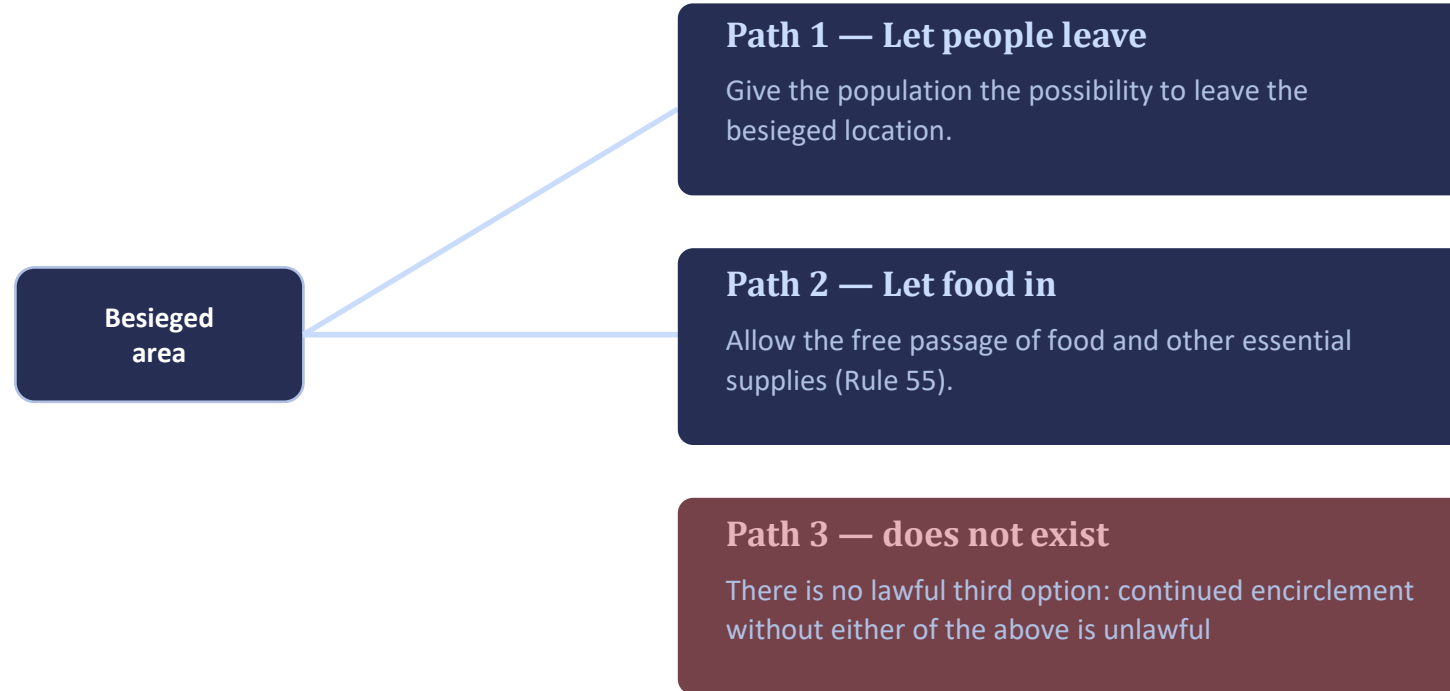
Siege

No absolute prohibition. The Commentary and customary law confirm siege and blockade remain lawful methods of warfare, provided they are directed exclusively against combatants.

A siege's military value depends on total isolation of the encircled area. The starvation prohibition demands the opposite: that civilians be shielded from exactly that isolation.



Only two ways to protect the civilian population from starvation



The customary law study (Rule 53 commentary): the besieging party must offer one of these two paths.

If neither path is taken

CONSEQUENCE

The tipping point from Part II is triggered as a matter of course. The siege itself, not just individual acts within it, becomes the prohibited method of warfare.

One path does not substitute for the other. Letting people leave does not excuse failing to feed those who stay; allowing food in does not excuse trapping people who wish to leave.

The duty not to deprive the population of indispensable objects runs *alongside* the duty to let people leave, not instead of it.

The non-international armed conflict in Sudan (2023-)

Patterns documented: access obstruction

- 1 Consent invoked and withheld**
citing fear that aid would benefit the opposing party.
- 2 A border crossing**
closed to humanitarian aid for roughly six months.
- 3 Visa, travel-permit, and transport approvals**
delayed arbitrarily, for humanitarian staff and cargo alike, sometimes for months at a time.
- 4 Aid convoys blocked or intercepted**
including convoys already cleared for passage.
- 5 Registration, permit, and mandatory-supplier requirements**
reaching well beyond any legitimate control purpose.

Patterns documented: a city under siege

~18
months

May 2024 – October 2025

Phase 5 /
Phase 4

Famine / Emergency classification for well over a year

0 of 2
paths taken

Neither departure nor free passage of aid

- 1 Food, medical supplies and aid**
cut off almost entirely for the duration of the siege.
- 2 Earthen berms and checkpoints ringed the city**
making departure physically impossible; people attempting to flee were intercepted.
- 3 Independent monitors**
classified the area at Famine “with reasonable evidence” or Emergency levels for well over a year.

The threshold

- ✓ **The civilian population endures unnecessary suffering from a lack of indispensable goods, and the party is aware of it —** Famine classifications by independent monitors establish that the party in control could not have been unaware.
- ✓ **An impartial, non-discriminatory organisation has offered aid and is able to remedy the situation —** International organisations repeatedly offered aid and demonstrated real capacity to deliver it.
- ✓ **Consent is withheld, delayed, or rendered meaningless and arbitrary, or facilitation simply does not follow —** Consent was withheld, delayed, or administratively hollowed out through closure of borders and roads, refusals and delays in visa, travel-permit, and domestic-transport approvals and blockades and looting of convoys
- ✓ **No valid ground within the right of control, the measure exceeds temporary imperative military necessity or less intrusive means were available and rejected —** Measures targeted the population's access as such; less intrusive means existed and went unused.

Measured against this framework, the access obstruction documented in this conflict crosses from a breach of the duty to admit relief into a direct breach of the starvation prohibition itself.

CLOSING REMARKS

One regime

The conditional obligation to consent to impartial humanitarian relief & the prohibition on starvation form one regime.

Whoever violates these norms cannot hide behind the conditional nature of the requirement to obtain permission in order to evade the unconditional nature of the prohibition against starvation.

Neither the conditionality of consent nor the right of control can be turned into a shield for depriving people of what keeps them alive.

Thank you — I welcome your questions.