

LEGAL BRIEF: IHL RULES APPLICABLE TO PRIVATE ACTORS IN GAZA

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I. Introduction

Private actors perform a wide variety of roles in contemporary armed conflicts, spanning combat functions and spying, guarding military assets and interrogating prisoners, to catering for the armed forces and distributing aid to affected populations. The ‘privatisation’ of war and its potentially harmful humanitarian consequences are challenging – and possibly reshaping – the traditional boundaries of international humanitarian law (IHL).¹

IHL is the body of international law that applies specifically to situations of (international and non-international) armed conflict. It imposes the same obligations on all the parties to the conflict – States and organised armed groups alike. The growing role of private actors – ranging from private military and security companies (PMSCs) to private (nonprofit) foundations and corporations – that do not legally qualify as ‘parties’ to an armed conflict has created an increasingly pressing need to clarify whether and to what extent they are bound to respect IHL rules and how they can be held accountable when they fail to do so.

The urgency of the matter is illustrated by the pivotal role that private actors have played in the debacle surrounding the Israeli-imposed scheme purporting to deliver aid to Gaza. This scheme, which has been implemented since May 2025, entails several violations by Israel, including – but not limited to – violations of its obligations to consent to, allow, and facilitate humanitarian activities, to respect and protect civilians, and the prohibitions of

¹ Lindsey Cameron and Vincent Chetail, *Privatizing War: Private Military and Security Companies Under Public International Law* (CUP 2013) 288.



Members of a private US security company, contracted by the so-called 'Gaza Humanitarian Foundation' (GHF), a private US-backed aid group which the UN refuses to work with over neutrality concerns, direct displaced Palestinians as they gather to receive relief supplies at a distribution centre in the central Gaza Strip on June 8, 2025. Eyad BABA/AFP. All rights reserved.

starvation and forced displacement.² The scheme also raises questions about the contribution of private actors to these violations, as well as their involvement in other possible violations.³ The Israeli scheme is implemented, at the time of writing, by the so-called 'Gaza Humanitarian Foundation' (GHF – hereafter 'the Foundation').

The Foundation is a private, nonprofit corporation incorporated in the US and based in Switzerland, with no formal international legal status.⁴ The Foundation reportedly hires a

² 'A Legal Appraisal of Israel's Purported Aid Delivery Scheme in Gaza' (IHL Centre, 20 June 2025) <<https://www.diakonia.se/ihl/news/a-legal-appraisal-of-israels-purported-aid-delivery-scheme-in-gaza/>> accessed 14 July 2025.

³ Julia Frankel and Sam Mednick, 'US Contractors Say Their Colleagues are Firing Live Ammo as Palestinians Seek Food in Gaza', *The Associated Press* (Beersheba, 3 July 2025) <<https://apnews.com/article/palestinians-israel-gaza-contractors-aid-distribution-fe27f3ea83e06a09d66424eed7a5d56f>> accessed 14 July 2025.

⁴ Letter from Center for Constitutional Rights, 'Risk of Legal Liability for Complicity in Serious International Law Violations' (10 June 2025) 17-21 <https://ccrjustice.org/sites/default/files/attach/2025/06/6_10_2025_Letter%20and%20Exhibits%20to%20GHF.pdf> accessed 14 July 2025.

number of contractors, notably to provide logistics and security services, including from US-based PMSCs.⁵ While positioning itself as a humanitarian actor and claiming 'strict adherence to humanitarian principles',⁶ its operating modalities suggest, on the contrary, that its actions fail to conform to humanitarian principles.

This legal brief aims to clarify whether and how IHL and humanitarian principles apply to private actors operating in conflict-affected settings, with a focus on corporations such as the Foundation and its contractors. It does not aim to analyse potential violations committed by the Foundation and its contractors, but rather to clarify some aspects of the legal framework that establishes their obligations, the protections to which they are entitled, and the avenues to hold them accountable. This legal brief builds on the IHL Centre's June 2025 report, *Legal Appraisal of Israel's Purported Aid Delivery Scheme in Gaza*, which focused on Israel's obligations under IHL.⁷

II. Are private actors bound by IHL?

IHL, like international law in general, has traditionally been State-centric, developed by, addressed to, and implemented through States.⁸ However, in both practice and legal doctrine, there is increasing recognition that private actors are required to act in conformity with IHL rules.⁹

First, it should be clarified that, when the conduct of a private actor is legally attributable to a State party to an armed conflict,¹⁰ the State would incur international responsibility for violations of IHL by this private actor.¹¹ Attribution arises, for example, when private companies and their employees are entrusted with 'elements of governmental authority'

⁵ *ibid* 8.

⁶ *ibid* 'Exhibit C, Gaza Humanitarian Foundation (GHF): Safe, Transparent Aid for Gaza' 4.

⁷ A Legal Appraisal of Israel's Purported Aid Delivery Scheme in Gaza (n 2).

⁸ Marco Sassoli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Elgar 2024) para 10.143. There are, however, some exceptions to this. For instance, GC I art 18 and AP I art 17 confer obligations to the civilian population with regard to the respect owed to wounded and sick combatants. See Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (GC I) art 18; Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (AP I) art 17.

⁹ See Cameron and Chetail (n 1) 308.

¹⁰ As provided by the rules on attribution laid out in the International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' [2001] II(2) Yearbook of the International Law Commission 26 (ARSIWA) arts 4, 5, 6, and 8.

¹¹ See Sassoli (n 8) para 10.156 and International Commission of Jurists, 'Corporate Complicity and Legal Accountability: Facing the Facts and Charting a Legal Path' (International Commission of Jurists 2008) vol I, 9.

(and not just public functions).¹² It has been argued that attribution does not necessarily presuppose a delegation of authority via domestic law – thus unilateral acts of authority, including arrest, interrogation, and maintenance of public order can be attributable to a State.¹³ Attribution also arises when private actors act as ‘auxiliaries’ of a State, i.e., under its instruction, direction, or control.¹⁴ While attribution engages the State’s own responsibility for violations of IHL, this does not mean that the State’s IHL obligations are incumbent upon the private actor whose conduct is attributable to the State.

Rather, there are other grounds on the basis of which private actors may be legally required to act in conformity with IHL as entities (such as corporations), and as individuals (as employees or members of private entities, or autonomously).

Corporations as entities

There are several legal means through which entities, and particularly corporations such as the Foundation, may be placed under a legal obligation to act in conformity with IHL.

First, a growing body of scholarship considers that corporations may possess limited international legal personality, especially where conferred by internationalised contracts,¹⁵ specific treaties,¹⁶ or customary law.¹⁷ Second, corporate complicity may also be used as an avenue for binding corporations by IHL rules. According to the corporate complicity doctrine, corporations may be bound by IHL rules when they knowingly assist, aid, or abet a State or non-State party to the conflict in their IHL violations.¹⁸ This is particularly relevant for corporations providing logistical, intelligence,

¹² ARSIWA (n 10) art 5. While acknowledging that ‘defining “elements of the governmental authority” is the most challenging aspect in applying Article 5 ASR’, Cameron and Chetail provide useful examples, such as running a prison, interrogating prisoners to collect intelligence, policing an area, and spying or guarding a military base. They also address the case of PMSCs used to transport or dispatch humanitarian relief in an armed conflict. They consider that if the activity implies elements of State power, characterised by their unilateral character and their capacity of coercion, it will be considered as being exercised with elements of governmental authority. See Cameron and Chetail (n 1) 177, 182, 202–03.

¹³ Sassoli (n 8) para 10.152.

¹⁴ ARSIWA (n 10) art 8, which stipulates that non-State actors’ conduct can be attributed to the State if there is a sufficient link, such as effective control or direct instruction, between the actors and the State.

¹⁵ The term ‘internationalised contract’ is used to refer to a contract concluded between a host State and a corporation with a clause stating that the contract is governed by international law.

¹⁶ For instance, the UN Convention on the Law of the Sea (UNCLOS) confers specific and direct obligations for corporations. See Cameron and Chetail (n 1) 299.

¹⁷ For a summary and analysis of this growing body of scholarship, see Cameron and Chetail (n 1) 293–305. According to Cameron and Chetail (n 1) 305, ‘the current state of international law does not permit us to consider that PMSCs are a subject of international law’.

¹⁸ Cameron and Chetail (n 1) 324–335.

or training support, or guarding places where violations occur.¹⁹ Third, domestic regulation presents another mechanism that may impose a legal obligation on corporations to abide by IHL rules.²⁰ National legislation can substantively regulate the activities of corporations including by effectively requiring them to adhere to IHL standards,²¹ while registration and licensing schemes can make authorisation to operate conditional upon compliance with IHL.²² Contracts between corporations and their clients can incorporate clauses requiring respect for IHL – a violation of an IHL rule on the part of the corporation would then constitute a breach of the contract.²³

For States, adopting domestic regulation that creates IHL obligations for corporations is one way to implement their obligation to ‘ensure respect’ for the Geneva Conventions by private actors under their jurisdiction.²⁴

Individuals

Individuals as well are bound to respect IHL rules.²⁵ A number of arguments suggest that IHL indeed creates obligations for all individuals involved in armed conflict,²⁶ including corporations’ employees.

This idea is demonstrated, first, on the basis of the ‘principle of effectiveness’, which stipulates that while States are ‘abstract entities’, it is individuals who concretely violate IHL rules.²⁷ In order for IHL to be effective in alleviating human suffering, it must apply to everyone involved in a conflict – whether a fighter or a civilian, or whether their acts may legally be attributable to a party to the conflict or not.

The second, and most visible, manifestation of IHL’s binding character on all individuals, including private individuals, is through individual criminal responsibility.²⁸ Since at least

¹⁹ *ibid* 325.

²⁰ *ibid* 339–350.

²¹ One example of such national legislation is the US Alien Tort Claims Act (ATCA). As noted by Cameron and Chetail (n 1) 343, ‘[i]n so far as the jurisprudence flowing from these [ATS] cases begins to define a body of law that applies to them, the ATS may be seen as a vehicle through which international obligations are made directly applicable to PMSCs as corporations.’

²² For instance, in South Africa, the double licensing system for PMSCs provides that licensing can be refused if the activities of the company conflict with the country’s obligations under international law. See Cameron and Chetail (n 1) 345–346.

²³ Cameron and Chetail (n 1) 347–350. Sassoli (n 8) para 10.156.

²⁴ See below Section IV.

²⁵ For arguments relating to how IHL treaties – at least their self-executing provisions, that is most of their provisions – and customary IHL bind individuals, see Cameron and Chetail (n 1) 367–382.

²⁶ As noted by Cameron and Chetail (n 1) 350–1, this is now consensus in scholarly writings.

²⁷ *ibid* 352–353; Ernst Schneeberg, ‘The Responsibility of the Individual under International Law’ (1946–7) 35 *Georgetown LJ* 482–3.

²⁸ Sassoli (n 8) para 10.163.

the end of World War II, it is established that individuals can be held criminally responsible for war crimes, as demonstrated notably by the jurisprudence of the International Military Tribunal (IMT) at Nuremberg, the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC), and many domestic courts.²⁹ Since war crimes constitute serious violations of IHL, the fact that international and domestic courts have held individuals criminally responsible for such acts indicates that those individuals were subject to the underlying rules of IHL (i.e., those rules whose breach amounts to war crimes) in the first place. Amongst the criminalised rules of IHL binding upon private actors one may cite the prohibition of murder,³⁰ the prohibition of forced displacement,³¹ or the prohibition on the use of starvation of the civilian population.³² Accordingly, the violation of these IHL rules may implicate the individual criminal responsibility of the staff of the Foundation and its contractors for war crimes.

It can also be argued that even IHL rules not internationally criminalised, or 'less serious' infringements of IHL, are still binding upon individuals.³³ Some international lawyers see manifestations of this idea in States' duty to suppress all acts contrary to IHL treaties.³⁴

A third possible manifestation of the fact that individuals are addressees of IHL is States' obligation to disseminate IHL 'as widely as possible' to their armed forces and civilian

²⁹ As early as 1946, the IMT rejected the defence that international law only applied to sovereign States, or only to those carrying out acts of States. It famously stated that 'crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.' Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, Judgment, Sept. 30 and Oct 1, 1946, 6 F.R.D. 69, 110 (citing *Ex Parte Quirin*, 317 U.S. 1 (1942)).

³⁰ Eg common art 3(1) and GC IV art 27 (prohibiting 'all acts of violence'). This IHL prohibition may give rise to the war crime of wilful killing under the Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute) art 8(2)(a)(i), for instance.

³¹ Eg GC IV art 49(1). This prohibition may give rise to the war crime of unlawful transfer under Rome Statute art 8(2)(a)(vii), for instance.

³² Eg AP I art 54(1). This prohibition may give rise to the war crime of intentionally using starvation of civilians as a method of warfare under Rome Statute art 8(2)(b)(xxv), for instance.

³³ Cameron and Chetail (n 1) 343.

³⁴ Noting that the four Geneva Conventions and Additional Protocol I all call for the suppression of all breaches of their provisions (see arts 49(3), 50(3), 129(3), and 146(3), respectively of the four 1949 Geneva Conventions and AP I art 85(1)), Cameron and Chetail consider that 'the fact that some provisions of IHL are not criminalized internationally does not mean that those rules do not bind individuals: they ought to be deemed responsible for those infringements as well and are therefore bound to respect the rules in question in the first place'. Cameron and Chetail (n 1) section 1.2.2, 362-3.

populations.³⁵ According to some commentators, the importance accorded to ensuring that everyone is aware of IHL rules buttresses the argument that individuals have duties under these rules.³⁶

Finally, it can be argued that the obligation of States parties to the 1949 Geneva Conventions to 'ensure respect' for IHL by individuals on their territory or under their jurisdiction implies that these individuals have an independent obligation to respect IHL.³⁷

III. How can private actors be held accountable for IHL violations?

Under both international law and domestic litigation mechanisms, the Foundation and other private actors may face legal consequences for its alleged involvement in IHL violations in Gaza. Public information suggests that the activities of the Foundation and its contractors have resulted in significant civilian harm, and that they may be contributing to serious violations of IHL committed by Israel, including starvation of civilians as a method of warfare, forced displacement, and wilful killing of civilians.³⁸

First, if the activities of the Foundation amount to violations of IHL or materially contribute to such violations, its personnel and leadership may incur individual criminal responsibility. In particular, they could be prosecuted for war crimes before the ICC.³⁹

³⁵ GC I art 47, GC II art 48, GC III art 127, and GC IV art 144. This duty primarily imposes the repression of breaches (through domestic legal systems, possibly via administrative penalties) which implies that individuals are responsible for such breaches and therefore bound by IHL rules in the first place.

³⁶ Cameron and Chetail (n 1) 364, 366. See also, David, *Principes de Droit des Conflits Armés* (4th edn, Bruylant 2008) para 1.222, 251.

³⁷ 'The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances', common art 1 of the four Geneva Conventions of 1949. See ICRC Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War (2nd ed, ICRC 2020) (2020 Commentary to GC III) para 183; Sassoli (n 8) para 5.154.

³⁸ On violations and potential war crimes committed by Israel in connection to the scheme, see A Legal Appraisal of Israel's Purported Aid Delivery Scheme in Gaza (n 2).

³⁹ The ICC opened an investigation into the Situation in the State of Palestine on 3 March 2021. On 21 November 2024, the Court issued arrest warrants against Israeli Prime Minister Benjamin Netanyahu, former Israeli Defence Minister Yoav Gallant, and the Commander-in-Chief of Hamas' military wing, Mohammed Diab Ibrahim Al-Masri, for war crimes and crimes against humanity allegedly committed in Israel and the oPt since 7 October 2023. When seeking these arrest warrants, the ICC Prosecutor clarified that his Office 'will not hesitate to submit further applications for warrants of arrest if and when [it] consider[s] that the threshold of a realistic prospect of conviction has been met'. See 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine' (ICC, 20 May 2025) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>> accessed 14 July 2025. Individuals falling under the jurisdiction of the ICC include anyone alleged to have committed a crime in Gaza and the West Bank, including East Jerusalem. For a Q&A on the ICC's mandate, competence, and legal process in general and specifically for its investigation of the Situation in Palestine, as well as legal updates

Additionally, all States parties to the Geneva Conventions have an obligation to investigate and either to extradite or prosecute before their own courts persons alleged to have committed grave breaches of IHL.⁴⁰ States may also exercise universal jurisdiction to prosecute persons alleged to have committed other war crimes, regardless of where they were committed or of the nationality of the perpetrator.⁴¹

Both international and domestic courts have made it clear that war crimes can also be committed by individuals who are not members of the armed forces of the parties to the conflict. In the aftermath of World War II, the IMT at Nuremberg and the International Military Tribunal for the Far East in Tokyo as well as national courts convicted a range of civilians for war crimes, including civilian State agents,⁴² and also businessmen and other individual civilians with no connection to a party to the conflict.⁴³ The view at the time was already that 'the laws and customs of war are binding no less upon private individuals than upon government officials and military personnel'.⁴⁴ More recently, international and domestic courts have also reaffirmed that individual responsibility under IHL is not limited

on the investigation, see 'The ICC Investigation into the Situation in the State of Palestine' (IHL Centre) <<https://www.diakonia.se/ihl/jerusalem/proceedings-before-international-courts-relating-to-israel-and-the-opt/the-icc-investigation-into-the-situation-in-the-state-of-palestine/>> accessed 14 July 2025.

⁴⁰ GC IV art 146(2), AP I art 85.

⁴¹ For an overview of ongoing cases brought under universal jurisdiction (as well as under the principles of active and passive personality) see for instance TRIAL International and others, 'Universal Jurisdiction Annual Review 2025' (2025) <https://trialinternational.org/wp-content/uploads/2025/04/03_TRIAL_UJAR_2025_FINAL_DIGITAL.pdf> accessed 14 July 2025.

⁴² See for instance United Nations War Crimes Commission, 'Trial of Albert Bury and Wilhelm Hafner, Case N°16, United States Military Commission, Freising, Germany, 15th July, 1945', *Law Reports of Trials of War Criminals*, vol III (His Majesty's Stationery Office 1947) 61; United Nations War Crimes Commission, 'Trial Of Robert Wagner, Gauleiter and Head of the Civil Government of Alsace during the Occupation, and Six Others, Case N°13, Permanent Military Tribunal At Strasbourg, 23rd April to 3rd May, 1946, and Court Of Appeal, 24th July, 1946', *Law Reports of Trials of War Criminals*, vol III (His Majesty's Stationery Office 1947) 23.

⁴³ See for instance United Nations War Crimes Commission, 'Trial of Bruno Tesch and Two Others (The Zyklon B Case), Case N°9, British Military Court Hamburg, 1-8 March 1946', *Law Reports of Trials of War Criminals*, vol I (His Majesty's Stationery Office 1947); United Nations War Crimes Commission, 'Trial of Erich Heyer and Six Others (The Essen Lynching Case), Case N°8, British Military Court for the Trial of War Criminals, Essen, 18-22 December, 1945', *Law Reports of Trials of War Criminals*, vol I (His Majesty's Stationery Office 1947); United Nations War Crimes Commission, 'Trial of Peter Back, Case N°15, United States Military Commission, Ahrweiler, Germany, 16th June, 1945', *Law Reports of Trials of War Criminals*, vol III (His Majesty's Stationery Office 1947).

⁴⁴ United Nations War Crimes Commission, 'Trial of Alfried Felix Alwyn Krupp von Bohlen und Halbach and Eleven Others (The Krupp Case), Case N°58, U.S. Military Tribunal, Nuremberg, 17th November, 1947 - 30th June, 1948', *Law Reports of Trials of War Criminals*, vol X (His Majesty's Stationery Office 1947) 150.

to members of a State's armed forces.⁴⁵ Article 25 of the Rome Statute further institutionalises this principle, confirming that 'a person who commits a crime within the jurisdiction of the Court shall be *individually responsible* and liable for punishment in accordance to this Statute'.⁴⁶

While international courts and tribunals currently lack direct jurisdiction over corporations and other entities, the Foundation's US incorporation opens potential avenues for accountability under domestic law. In the US, the Alien Tort Claims Act (ATCA), or the Alien Tort Statute (ATS), grants federal courts jurisdiction over civil actions by an alien for a tort committed in violation of the law of nations or a US treaty, rooted in customary international law principles. It has been used to hold corporations and private actors liable for international law violations abroad, including in cases like *Al Shimari v. CACI Premier Technology, Inc.*, and *Doe v. Unocal*, which affirmed that private entities can face civil liability for aiding and abetting serious violations of international law.⁴⁷ Beyond the ATCA, other US statutes provide additional mechanisms for criminal liability.⁴⁸ However, it must be acknowledged that accountability for the Foundation in US domestic courts faces significant challenges.⁴⁹

⁴⁵ See for example, *Prosecutor v Dusko Tadic* (Trial Chamber Opinion and Judgment), IT-94-1-T, (7 May 1997); *Prosecutor v Dusko Tadic* (Appeal Judgment) IT-94-1-A (15 July 1999); and *Prosecutor v Delalic, Mucic, Delic and Landzo* (Celebici Trial Judgment) IT-96-21-T (16 November 1998).

⁴⁶ Rome Statute art 25.

⁴⁷ *Al-Shimari v CACI Premier Technology, Inc.* No 1:08-cv-00827-LMB-JFA (ED Va, 12 Nov 2024) (jurors awarded each plaintiff USD 3 million compensatory and USD 11 million punitive damages in this torture case filed under the ATCA). In *Doe I v Unocal Corp.* 395 F3d 932 (9th Cir 18 September 2002) (appeal from CD Cal, 110 FSupp 2d 1294), Burmese villagers sued Unocal under the ATS, alleging that the company was complicit in human rights abuses committed by the Myanmar military during the construction of a gas pipeline. The 9th Circuit held that the plaintiffs had sufficiently alleged that Unocal could be held liable for aiding and abetting the Myanmar military's actions, allowing the case to proceed.

⁴⁸ Such statutes include the Genocide Convention Implementation Act and the War Crimes Act. These laws criminalise genocide and grave breaches of the Geneva Conventions, respectively, and apply to individuals as well as corporations, including nonprofit entities.

⁴⁹ These challenges include the difficulty of establishing the requisite level of State control over specific operations or acts under the ATCA (see Jackson Nyamuya Maogoto and Benedict Sheehy, 'Private Military Companies & International Law: Building New Ladders of Legal Accountability & Responsibility' (2009) 11 Cardozo Journal of Conflict Resolution 99, 112) and the judiciary's tendency to invoke the political question doctrine, as demonstrated in *Defense for Children International--Palestine v. Biden* (see, *Defense for Children International--Palestine v. Biden* (No 4:23-cv-05829-JSW, ND Cal, 31 January 2024), and *Defense for Children International--Palestine v. Biden* (No 24-704, 9th Cir, 15 July 2024). See also Ingrid Brunk, 'Residents of Gaza Sue President Biden' (*Transnational Litigation Blog*, 28 May 2024) <<https://tlblog.org/residents-of-gaza-sue-president-biden/>> accessed 14 July 2025). Additionally, the legislative intent underlying the ATCA remains ambiguous, leading to inconsistent judicial interpretations and the absence of clear precedents from the Supreme

IV. What role do States have in ensuring that private actors comply with IHL?

Under IHL treaties, States have specific obligations that contribute to stopping and preventing IHL violations by private actors.⁵⁰ These obligations – which are obligations of result⁵¹ – include disseminating IHL treaties as widely as possible, repressing grave breaches, and taking measures necessary for the suppression of all other acts contrary to the Geneva Conventions.⁵²

In addition, all States parties to the Conventions have an obligation not only to ‘respect’ IHL rules (they must guarantee respect by their own organs, including their armed forces and other persons or groups whose conduct is attributable to them), but also to ‘ensure respect’ for such rules.⁵³ As highlighted above, the obligation to ensure respect extends to everyone on their territory or under their jurisdiction, i.e., private persons whose conduct is not attributable to the State.⁵⁴

The obligation to ensure respect is not an obligation of result but an obligation of means, which is to be exercised with due diligence. This means that States must take such steps as can reasonably be expected of them in the given circumstances; this depends on a number of parameters, including the gravity of the violation and the State’s knowledge thereof, the imminence of further violations, available resources, and the degree of influence the State exercises over the private persons.⁵⁵ Obviously, States that contract or host corporations, and home States in which corporations are registered or headquartered have a significant degree of influence which they must use to ensure respect for IHL by these corporations – for instance, by integrating IHL into contracts and national legislation regulating corporations’ activities, issuing guidance to corporations, and monitoring compliance.

Court. See Sonia Jimenez, ‘The Alien Tort Claims Act: A Tool for Repairing Ethically Challenges U.S. Corporations’ (2004) 16 St. Thomas Law Review 721, 722. For example, the ongoing debate as to whether to apply aiding and abetting liability to corporations under the ATCA reflects this inconsistency. See Rachel Chambers, ‘The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses’ (2005) 13 Human Rights Brief 14, 16.

⁵⁰ Robin Geiss, ‘The Obligation to Respect and to Ensure Respect for the Conventions’ in Andrew Clapman, Paola Gaeta, and Marco Sassoli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) vol III, para 14.

⁵¹ In contrast to an obligation of means, where the duty is to act diligently regardless of the result, an obligation of result is fulfilled only when the predefined result is actually achieved.

⁵² See GC I art 47, GC II art 48 GC II, GC III art 12, GC IV art 144, AP I art 83, AP II art 19, as well as GC I art 49, GC II art. 50, GC III art 129, GC IV art 146, and AP I art 85. See also above section II.

⁵³ Common art 1 to the four Geneva Conventions. See 2020 Commentary to GC III paras 176–216.

⁵⁴ 2020 Commentary to GC III para 183; Sassoli (n 8) para 5.154. See also Oona A Hathaway and others, ‘Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors’ (2017) 95 Texas Law Review 539.

⁵⁵ 2020 Commentary to GC III para 183; Geiss (n 50) para 12.

States have other due diligence obligations in relation to the conduct of private actors, which would entail taking measures to ensure their compliance with international law. Under IHL, States parties to an armed conflict have various obligations to ‘protect’ individuals affected by the conflict (including from private actors) – and occupying powers have additional obligations in that regard.⁵⁶ In parallel, under international human rights law (IHRL), States must protect individuals from interference by private actors.⁵⁷

It is also worth highlighting that certain obligations incumbent on States may concern activities carried out by third parties, including private actors. Correspondingly, the conduct of private actors may have a bearing on a State’s *respect* for IHL, or failure thereof. This is the case for rules governing humanitarian activities, which the parties to the conflict must consent to, allow, and facilitate. For instance, under IHL, Israel is responsible to ensure that the civilian population in Gaza is adequately supplied, whether it elects to provide the supplies itself or via a third actor.⁵⁸ Since May 2025, it has imposed a series of restrictive and coercive conditions on the delivery of supplies; the Foundation is the only actor delivering supplies under this Israeli-imposed scheme. In this context, the Foundation’s ineffective and unsafe operating modalities are relevant in establishing Israel’s failure to comply with its obligation to consent to humanitarian activities. The severe (and deadly) shortcomings in the planning and implementation of the distributions run by the Foundation have contributed to preventing many Palestinians from accessing the supplies they desperately need.⁵⁹ Because the Foundation is unable to satisfy the legal standard incumbent upon Israel (i.e., adequately supplying the population), Israel remains under the obligation to consent to other offers from impartial humanitarian organisations that can effectively satisfy this standard. Correspondingly, its failure to do so constitutes a continuous violation of IHL.⁶⁰

⁵⁶ Sassoli (n 8) para 10.153. For occupying powers, these additional obligations stem notably from Hague Regulations: Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 (Hague Regulations) art 43.

⁵⁷ At least when private actors operate in territories under the jurisdiction of the State or when the State exercises a ‘high degree of control’ over the victim. See Sassoli (n 8) para 10.153.

⁵⁸ As noted by the IHL Centre in a recent publication, offers of relief may emanate from any actor – third States, humanitarian organisations, private entities, or individuals. However, the legal standard binding on the occupying power concerning the nature of the aid that it must consent to, i.e., that must be provided, remains the same: the population must be adequately supplied, in an impartial manner (including without discrimination). See *A Legal Appraisal of Israel’s Purported Aid Delivery Scheme in Gaza* (n 2) 11.

⁵⁹ *ibid* 27–29.

⁶⁰ *ibid* 29.

V. Are armed private actors protected from attack under IHL?

The question of whether and to what extent armed private actors, including PMSC staff, are protected from attacks under IHL depends on the 'category' to which they belong in the conduct of hostilities.⁶¹



Photograph: Palestinians gather as they return from a food aid distribution point set up by the so-called 'Gaza Humanitarian Foundation' (GHF) on the Salaheddin road, at the Nuseirat refugee camp in the central Gaza Strip on June 24, 2025. Eyad BABA/AFP. All rights reserved.

IHL rules on the conduct of hostilities foresee only two categories of persons: civilians and combatants (or 'fighters').⁶² In international armed conflicts (IACs), a civilian is any person who is not a member of the armed forces of a (State) party to the conflict.⁶³ In

⁶¹ "'Attacks' means acts of violence against the adversary, whether in offence or in defence' (AP I art 49(1)). They are an act of hostilities and are regulated by rules on the conduct of hostilities, including the principles of distinction, proportionality, and precautions.

⁶² In NIACs, the category of 'combatant' does not exist, so the term 'fighter' is often used to designate individuals who are members of the State armed forces or of an organised armed group. On the mutual exclusiveness of the concepts of civilian, armed forces, and levée en masse in IACs, and the concepts of civilian, armed forces, and organised armed groups in NIACs, see Nils Melzer, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law' (ICRC 2009) 20–21 and 27–28.

⁶³ AP I art 50(1).

non-international armed conflicts (NIACs), a civilian is any person who is not a member of State armed forces or organised armed groups of a party to the conflict.⁶⁴ In both IACs and NIACs, civilians are protected from attacks. They may lose their protection only and for such time as they directly participate in hostilities.⁶⁵

PMSC staff and other private actors rarely qualify as members of the armed forces of a party to the conflict, and therefore usually fall under the category of civilians, even if they are armed.⁶⁶ As such, they are protected from attack unless and for such time as they directly participate in hostilities. Examples of acts of direct participation in hostilities include defending combatants or military objectives by firing at the adversary, clearing mines placed by the adversary, delivering ammunition to an active firing position at the front line, or certain 'law enforcement' tasks mandated by an occupying power against an armed group.⁶⁷ The fact that PMSC personnel are contractually obliged to carry out certain activities (such as defending the assets of a party to the conflict) has no bearing on whether these activities may result in a loss of protection from attack under IHL. If the act satisfies the conditions of an act of direct participation in hostilities under IHL,⁶⁸ the PMSC staff engaging in the act loses protection against attack for the duration of such act.

VI. Are private actors bound by humanitarian principles?

While the core humanitarian principles of humanity, impartiality, neutrality, and independence are not legally binding in the same way as IHL norms, they are essential to the effective and ethical delivery of humanitarian assistance.⁶⁹ These principles, championed by the International Red Cross and Red Crescent (ICRC) and widely adopted by humanitarian organisations globally, facilitate access to conflict-affected populations, and help safeguard the integrity of aid operations and the safety of humanitarian personnel.⁷⁰

By deviating from these principles, private actors like the Foundation risk compromising both the effectiveness of the relief operations and the civilian population's trust in

⁶⁴ Melzer (n 62) 27.

⁶⁵ AP I art 51(3); AP II art 13(3); Study on Customary IHL by the International Committee of the Red Cross (ICRC) 'Customary IHL Database' (ICRC, first published in 2005) (CIHL) r 6.

⁶⁶ This is unless, in IACs, they are under a 'command responsible to' one of the parties (AP I art 43(1)) or, in NIACs, they are under a 'command responsible to' the State party to the conflict, or have a 'continuous combat function' in an organised armed group party to the conflict. Melzer (n 61) 27. As pointed out by Sassoli, PMSC staff rarely meet the restrictive criteria of the definition of mercenaries. See AP I art 47; Sassoli (n 8) para 10.157.

⁶⁷ Melzer (n 62) 596-97; Sassoli (n 8) para 10.161.

⁶⁸ For these conditions, see Melzer (n 62) 41-68.

⁶⁹ A Legal Appraisal of Israel's Purported Aid Delivery Scheme in Gaza (n 2).

⁷⁰ See Statutes of the International Red Cross and Red Crescent Movement (adopted October 1986, amended 1995, 2006), Preamble.

genuinely humanitarian activities. Resorting to US armed contractors or other security measures associated with one party to the conflict (Israel) and its allies, and closely coordinating operations and communications with that party's military, undermines aid providers' neutrality and independence. Such associations may give the impression that humanitarian activities are aligned with the strategic interests of one side, which erode their acceptance by the opposing side, thereby jeopardising their access to civilians in need and the safety of such civilians. In addition, the lack of objective and predictable eligibility criteria and processes to ensure that aid is distributed and prioritised exclusively based on humanitarian needs (rather than in a discriminatory manner) raises serious doubts about the Foundation's ability to conform to the principles of humanity and impartiality.⁷¹ These principles uphold the inherent dignity of all individuals and affirm that every human life has equal value, regardless of the context or sides in a conflict. Upholding them is vital for maintaining the credibility, acceptance, and effectiveness of humanitarian activities.

While not a matter of formal legal obligation, adherence to these principles thus remains a crucial best practice for any actor engaged in genuine humanitarian relief.⁷²

VII. Conclusion

The evolution of warfare and humanitarian assistance has brought private actors like the Foundation to the forefront of certain conflict settings. Their involvement raises pressing humanitarian and legal challenges. IHL applies to all persons and entities engaged in or affected by armed conflict, including corporations and their personnel. The private nature of these actors does not shield them from accountability when their actions constitute or contribute to violations of IHL. The activities of the Foundation and of the armed contractors it employs in Gaza must therefore be rigorously scrutinised in light of applicable IHL rules.

⁷¹ These modalities also seem incompatible with the principle of non-discrimination, binding on Israel as the occupying power. See A Legal Appraisal of Israel's Purported Aid Delivery Scheme in Gaza (n 2) 25-27.

⁷² Benjamin Perrin, 'Humanitarian Assistance and the Private Security Debate: An International Humanitarian Law Perspective' in *On the Edges of Conflict Policy Papers* (Canadian Red Cross 2008).