

State Sovereignty and Humanitarian Assistance: Navigating the Tension in International Armed Conflicts

Elisabeth Septin Puspoayu ^{a,b}✉, Setyo Widagdo ^a,
Adi Kusumaningrum ^a, Rika Kurniaty ^a

^a Faculty of Law, Universitas Brawijaya, Malang,
Indonesia

^a Faculty of Law, Universitas Negeri Surabaya,
Indonesia

✉ Corresponding email: elisabethpuspoayu@unesa.ac.id

Abstract

The purpose of this paper is to examine and analyze the position of a country's sovereignty with respect to the provision of humanitarian assistance during an international armed conflict. This research uses legal research with primary and secondary legal materials and legal analysis. The results of this study indicate that state sovereignty is still full and intact in situations of armed conflict, but the state also has responsibilities as a sovereign holder regarding the situation that occurs within its territory, so the state is still obligated to meet the needs of its citizens, even in situations of armed conflict, in accordance with the theory of responsible sovereignty. The concept of sovereignty focuses not only on the ability of the state to implement or apply the rule of law, but also in situations of armed conflict, the state is obliged to provide protection and fulfillment,



Copyrights © Author(s). This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. (CC BY-SA 4.0). All writings published in this journal are personal views of the author and do not represent the views of this journal and the author's affiliated institutions.

without considering that humanitarian assistance coming from outside the country is a form of intervention in its territory.

KEYWORDS *Sovereignty, International Armed Conflict, Responsibility*

Introduction

State sovereignty in international law is a fundamental concept recognized and respected by states as a basic norm of relations between states in the international community. Sovereignty is philosophically an absolute power over a certain territory, which is the basis and one of the conditions for the formation of a state.¹ Different approaches to sovereignty lead to different categorizations of sovereignty itself, sovereignty can refer to domestic sovereignty, interdependence sovereignty, international law sovereignty, and absolute state sovereignty². The state as the primary legal subject in international law, in its relations with other countries is not always good. There are often conflicts between countries as subjects of law, which develop into conflicts between countries, resulting in disruption of good relations between these countries. Conflicts between countries can be caused by many factors, including: differences in political views between countries; differences in economic systems adopted by countries; differences in ideological systems; and a combination of differences in these interests³.

As a branch of international law, international humanitarian law (IHL) is distinguished by its specific focus on regulating conduct during armed conflicts. In addition to its general principles, IHL imposes particular obligations on parties to a conflict as well as on third States, especially in cases involving serious violations. The primary responsibility

¹ Sigit Riyanto, "Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer," *Yustisia Jurnal Hukum* 1, no. 3 (2012): 5–14, <https://doi.org/10.20961/yustisia.v1i3.10074>,

² Riyanto.

³ Emi Eliza, Heryandi Heryandi, and Ahmad Syofyan, "Intervensi Kemanusiaan (Humanitarian Intervention) Menurut Hukum Internasional Dan Implementasinya Dalam Konflik Bersenjata," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 4 (2015): 629–41, <https://doi.org/10.25041/fiatjustisia.v8no4.316>.

for adhering to the rules of IHL lies with the parties engaged in the armed conflict. IHL classifies armed conflicts into two main categories: international armed conflicts (IACs) and non-international armed conflicts (NIACs). The key distinction between these two types lies in the legal status of the actors involved. IACs occur between two or more States, whereas NIACs involve conflicts between a State and non-State armed groups, such as rebel factions operating within its own territory.⁴

The first obligation of parties to an armed conflict is to respect humanitarian law. "Respect" means that all state institutions, including individuals and entities under their authority, must comply with the rules of the Geneva Conventions. A state has an obligation to do everything in its power to ensure that the laws of war are respected by all parties⁵. A key element of a state's obligations under the Geneva Conventions is the dissemination of humanitarian law standards and the education of armed forces and the general public⁶.

The state in a state of armed conflict has an obligation under humanitarian law to protect citizens within the territory of the state itself who are affected by the armed conflict, as well as citizens who leave the country to seek protection because of the armed conflict on the territory of the state. The civilian population in several armed conflicts, for example, the conflict in Afghanistan by the UN Assistance Mission in Afghanistan found that 8,820 civilians were victims in 2020, of which 30% of these victims were

⁴ Dieter Fleck, *The Handbook of International Humanitarian Law, The Handbook of International Humanitarian Law*, second edi (Oxford: oxford university press, 2008), <http://discovery.lib.harvard.edu/?hrciid=%7Clibrary%2Fm%2Faleph%7C011447840>.

⁵ The Diakonia International Humanitarian Law Centre, "ENFORCEMENT OF IHL (Accountability for Violations of International Humanitarian Law)," International Humanitarian Law Centre, 2022, <https://www.diakonia.se/ihl/resources/international-humanitarian-law/enforcement-ihl/>.

⁶ *Ibid.*, p.3

children.⁷⁸ Art. 70(1) of the Fourth Geneva Convention on the Protection of Civilians in Armed Situations states that the leader in the territory under occupation or the state has the responsibility to take care of and meet the needs of the civil population affected by the armed conflict.⁹

In 2011, the beginning of the conflict in Syria resulted in civilian casualties, in this case students demonstrating against the policies of President Assad¹⁰, which eventually led to a non-international armed conflict. In this conflict, President Assad denied humanitarian aid provided by UNHCR, FAO, and UNICEF, which have a UN mandate, on the grounds of state sovereignty¹¹. In the ASEAN region, there is a conflict between the Rohingya and Myanmar, which has resulted in the Rohingya ethnic population leaving the territory of Myanmar and the Rohingya who are in Myanmar being persecuted by the Myanmar government¹². Myanmar also refused to open the door to humanitarian aid for the Rohingya ethnic group, citing state sovereignty.

Research on the provision of humanitarian aid has been conducted by several researchers, including Fransiska A. Susanto¹³ which focuses on

⁷ Watson Institute International & Public affair, "AFGHAN CIVILIANS," watson institute international & Public affair Brown University, 2023, <https://watson.brown.edu/costsofwar/costs/human/civilians/afghan>.

⁸ Children and Armed Conflict in Afghanistan, "Afghanistan: Alarming Scale of Grave Violations Against Children as Current Security Situation Collapses, Country Facing the Unknown," office of the special representative of the secretary General of Child and armed conflict, 2021, <https://childrenandarmedconflict.un.org/2021/08/138737/>.

⁹ Article 70(1) protocol additional to the Geneva convention of 12 august 1949 and the protection of victims of International armed Conflict 1977

¹⁰ Matias Thomsen, "The Obligation Not to Arbitrarily Refuse International Disaster Relief: A Question of Sovereignty," *Melbourne Journal of International Law*. 16, no. 484 (2015): 1–38, <https://heinonline.org/HOL/License>.

¹¹ "Syria: Defying Security Council on Aid Access Rejects Desperately Needed Cross-Border Routes," Human Rights Watch, 2014, <https://www.hrw.org/news/2014/03/28/syria-defying-security-council-aid-access>. diakses pada 13 desember 2023

¹² Fransiska Ayulistya Santoso, "Penolakan Pemberian Bantuan Kemanusiaan Dari PBB Oleh Myanmar Dalam Prespektif Hukum Hak Asasi Manusia Internasional," *Jurnal Arena Hukum* 13, no. 3 (2020): 593.

¹³ Santoso.

the study of the provision of humanitarian assistance by the United Nations against the conflict that occurred in Myanmar adjusted to the concept of International Human Rights, the results of this study show that the act of refusing to provide access to humanitarian assistance has violated the right to life, the right to health and the right to a safe life by not allowing humanitarian assistance to enter. Olga Bogatyreva¹⁴ explained that humanitarian assistance is one of the means of diplomacy that countries and international organizations can do to help countries that are in conflict. This research aims to examine the position of state sovereignty in relation to the provision of humanitarian assistance during international armed conflicts. Studies related to the position of state sovereignty in the context of providing humanitarian assistance, especially in international armed conflicts are still very limited, according to the author, this limitation is related to more separate discourses between state sovereignty and the provision of humanitarian assistance in international armed conflicts.

This study employs a normative legal research method, utilizing both conceptual and comparative approaches to analyze the principle of State sovereignty within the context of international armed conflicts. The research focuses on how sovereignty is interpreted and exercised, particularly in situations involving the denial of humanitarian assistance. To deepen the analysis, the study examines comparative case studies of selected countries—Venezuela, Myanmar, and Syria—where States have refused or restricted access to humanitarian aid during conflict. The research methodology is further supported by doctrinal analysis and employs qualitative techniques grounded in a prescriptive approach, aimed at assessing legal norms, identifying gaps, and proposing recommendations. This combination of methods allows for a critical examination of the interplay between State sovereignty and international legal obligations related to humanitarian access during armed conflict.¹⁵

¹⁴ O. Bogatyreva, "Humanitarian Diplomacy: Modern Concepts and Approaches," *Herald of the Russian Academy of Sciences* 92, no. 1 (2022): S1349–66, <https://doi.org/10.1134/S1019331622200047>.

¹⁵ Nur Barokah Uswatun Khasanah and Marc Johan Astawin, "Mechanism for Addressing Space Debris from the Prespective of International Law," *International*

The Evolution of the Sovereignty in International Law

The concept of state sovereignty is broad in scope and encompasses various nuances. Many scholars contend that state sovereignty emerges with the formation of new states, as postulated by Mills. This phenomenon is distinguished by a decentralized structure at the international level, diverging from the conventional, hierarchical system¹⁶. The notion of sovereignty was first articulated by Jean Bodin, who posited the concept of *souveraineté*, defined as providing a legitimate source for law¹⁷. Sovereignty subsequently evolved from this initial concept in response to historical circumstances, namely the conflict between secular and religious authority¹⁸. The notion that sovereignty is the supreme authority vested in the state leads to the conclusion that it possesses omnipotence, power, ability, liberty and authority¹⁹. A manifestation of state sovereignty is the principle of non-intervention, as articulated in Article 2(7) of the UN Charter. This stipulates that “*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*”

The term "sovereignty" refers to the supreme authority of a state to conduct all activities in a manner that aligns with the interests of the state and does not contravene the interests of other countries or international law. In accordance with international law, the concept of sovereignty can

Law Discourse in Southeast Asia 3, no. 1 (2024): 107–34, <https://doi.org/https://doi.org/10.15294/ildisea.v3i1.78885>.

¹⁶ Lely Frilia Melisa Dwi Nada and Agustina Merdekawati, “Kedaulatan Atas Wilayah,” in *Hukum Internasional*, ed. Fajri Matahati Muhammadin, 1st ed. (yogyakarta: CV Buku Belaka Maju Jaya, 2023), 186–261.

¹⁷ Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*, 2005. <https://doi.org/10.1017/cbo9780511614262>.

¹⁸ Jawahir Thintowi and Pranoto Iskandar, *Hukum Internasional Kontemporer* (Bandung: Refika Aditama, 2006).

¹⁹ *Loc.cit.*,

be divided into three main aspects.²⁰: (a). The external aspect is defined as the freedom of states to determine their own relationships without external intervention or pressure; (b). The internal aspect concerns a state's autonomy in establishing its own form and structure, including the creation and implementation of laws within its territory, as well as the authority to enforce these laws; (c). The final aspect concerns the territory itself, whereby a state has exclusive rights over individuals and objects within the boundaries of its sovereign jurisdiction.

The exercise of sovereignty is divided into sovereignty in a positive sense, namely “*the ability of a state to effectively exercise authority over its territory and population, and the ability the develop and implement public policy*”²¹ In this context, the state is accorded supreme authority over its citizens, with the mandate to enact legislation and undertake any requisite measures within its territorial boundaries for the advancement of the general welfare within the country. While this assertion of authority is often understood in a negative sense “*Legal right not to be interfered with, based on legal status as a state*”²² This signifies that states are not obliged to submit to any authority without the explicit consent of the concerned state to comply with international legal norms. The concept of sovereignty in the context of international law is inextricably linked to the notion of state territory. This is succinctly captured in Article 1 of the 1933 Montevideo Convention, which states: “the very nation of the state has these essential componets: a permanent population, a defined territory, government and capacity to enter into relation with other states”. In the case of the Palmas Islands, Judge Huber provided a meaningful interpretation of the concept of sovereignty “...sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular state...”²³.

²⁰ Boer Mauna, *Hukum Internasional (Pengertian, Peran Dan Fungsi Dalam Era Dinamika Global)*, 1st ed. (Bandung: PT. Alumni, 2001).

²¹ Dominik Zaum, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding*, 1st ed. (Oxford: oxford university press, 2007).

²² Zaum.

²³ Andrey Makarychev, “Russian War, Estonian Exceptions: Sovereignty, Governmentality, Biopolitics,” *New Perspectives* 32, no. 3 (2024): 290–306, <https://doi.org/10.1177/2336825X241240929>.

In the context of international humanitarian law, the principle of state sovereignty is acknowledged as the paramount authority. As the primary legal entity within the domain of humanitarian law, the Geneva Convention establishes the rights and obligations of member states. Among these obligations is the provision of humanitarian assistance (humanitarian assistance) to civilians who are victims of armed conflicts, both international and non-international. The provision of humanitarian assistance in an armed conflict within the territory of a particular country cannot be directly entered into, even in instances where some countries may reject humanitarian assistance provided by the state²⁴²⁵. The provision of humanitarian assistance within the parameters of international humanitarian law is accomplished via a number of avenues. These include the collaboration of regional organizations within countries experiencing internal armed conflict, which have a stated humanitarian objective of assisting civilians who are victims of such conflicts occurring within their territory. Additionally, international humanitarian agencies may provide assistance independently or under the umbrella of an international organization, such as the United Nations, to facilitate the distribution of said assistance.

²⁴ In *The February 1, 2021 military coup also triggered widespread infrastructure collapse and a severe devaluation of the Myanmar currency, leading to increasingly dire banking and supply chain crises and shortages of food, medicine, and other essentials. Myanmar's military junta is blocking desperately needed humanitarian aid from reaching millions of displaced people and others at risk, Human Rights Watch said today. The United Nations, the Association for Southeast Asian Nations (ASEAN), and concerned governments should press the State Administration Council (SAC) junta to urgently allow aid to reach all those in need. In recent months, the junta and its security forces have imposed new travel restrictions on humanitarian workers, blocked access roads and aid convoys, destroyed non-military supplies, attacked aid workers, and shut down telecommunications services. (Human rights Watch. Myanmar: Junta Blocks Lifesaving Aid. <https://www.hrw.org/news/2021/12/13/myanmar-junta-blocks-lifesaving-aid> . Diakses pada 7 desember 2023)*

²⁵ Kumajaya Kumajaya and Rachmat Setiawan, "Venezuelan Government Disclaimer toward Humanitarian Assistance of International Communities," *Jurnal Hubungan Internasional* 8, no. 2 (2019), <https://doi.org/10.18196/hi.82156>.

State Sovereignty and the Provision of Humanitarian Assistance During International Armed Conflicts

This section will examine how state sovereignty impacts the provision of humanitarian assistance during periods of international armed conflict. It is a primary obligation of the state, as a party to an armed conflict, to continue to assist the civilian population affected by that conflict²⁶. The concept of sovereignty as responsiveness represents a form of state responsibility towards its population. However, this state sovereignty can also act as a barrier to the entry of humanitarian assistance if access is restricted or prohibited by the state. This was evidenced in the Venezuelan conflict, where the government enacted measures to limit the provision of humanitarian assistance, including food and medical provisions, to its civilian population²⁷. The primary rationale for Venezuela's rejection pertains to the domain of state sovereignty.²⁸

The provision of humanitarian assistance is of vital concern for states experiencing or involved in armed conflict, particularly when the government is unable to fulfill its obligations to meet the needs of the civilian population affected by the conflict. International organizations with humanitarian objectives in providing assistance must also respect state sovereignty. In providing humanitarian assistance, humanitarian officers must adhere to three fundamental principles:

- a. *Humanity*, as defined by the International Committee of the Red Cross (ICRC), humanitarian assistance refers to the provision of aid in accordance with humanitarian principles to individuals and communities affected by armed conflict. The objective is to provide relief from suffering and support to those affected by armed conflict, particularly civilians in affected areas who bear the brunt of the

²⁶ Emilie Ellen Kuijt, "Humanitarian Assistance and State Sovereignty in International Law: Towards a Comprehensive Framework Issue," *Leiden University* (leiden University, 2020).

²⁷ *Loc.Cit.*,

²⁸ *Ibid.*,

consequences of war²⁹. The principle in question has been codified, firstly, by the 1899 Marten clause and subsequently in Article 1(2) of the 1977 Additional Protocol 1, which states that: “*in cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience*” It can be seen that the implementation of the humanitarian principle is closely related to the principle of distinction as set forth in the laws of war.

- b. *Impartiality*, the ICRC states that the provision of humanitarian assistance is to be provided without discrimination to all parties engaged in an armed conflict, especially to the civilian population, wounded people, prisoners of war, and individuals who are no longer involved in the armed conflict, in accordance with Article 59, paragraph IV of the Additional Protocols of 1977 to the Geneva Conventions. In the event of a shortage of essential supplies for the civilian population in an occupied territory, the occupying power is obliged to approve a humanitarian plan and permit the free movement of goods intended for the civilian population. Furthermore, the great powers are permitted to conduct inspections to guarantee the safety and protection of humanitarian workers delivering aid³⁰; Article 18 of AP II emphasizes that humanitarian agencies situated in regions experiencing armed conflict are able to provide humanitarian assistance to the civilian population. This is to be done in accordance with the principles of humanity, neutrality, and impartiality³¹. Article 70 AP I of the Geneva Conventions states that if the civilian population in an occupied territory is experiencing a shortage of supplies, the state responsible for the conflict must fulfill its obligations to provide for their needs. In the event that the state is unable to do so, the international community is permitted to provide

²⁹ Denise Plattner, “ICRC Neutrality and Neutrality in Humanitarian Assistance,” *International Review of the Red Cross* 36, no. 311 (1996): 161–80, <https://doi.org/10.1017/s0020860400084072>.

³⁰ Article 59 The Fourth Geneva Convention Protects of Civilian 1949

³¹ Article 18 Protocol additional to the Geneva convention of 12 august 1949 and The Protection of Victims of Non-International armed conflict 1977

assistance and organize humanitarian actions for the civilian population in the conflict area³². In accordance with the tenets of impartiality, Jean Piecet delineates three fundamental principles: non-discrimination, proportionality, and impartiality. These principles constitute the foundational tenets that guide the actions of the ICRC in conflict zones³³.

- c. *Neutrality*, the principle of neutrality is a fundamental concept in the provision of humanitarian assistance. It is imperative that state parties and humanitarian organizations engaged in providing such assistance maintain their neutrality, as this enables them to fulfill their primary objective of assisting civilians who have been victimized by the conflict in a targeted and impartial manner. This principle entails the avoidance of any form of involvement or bias in the context of armed conflicts³⁴.

Humanitarian assistance provided to civilian populations in situations of armed conflict may take the form of supplies, such as food, clothing, shelter, medical supplies, and money, which are used to meet the needs of victims of armed conflict. Assistance may also take the form of services, such as the provision of medical personnel or protection from possible attacks by military guards in refugee areas. In the context of armed conflicts in occupied territories, ensuring access to populations deprived of essential supplies for their survival is a fundamental prerequisite for any humanitarian assistance operation. The Fourth Geneva Convention and Additional Protocol I place significant emphasis on the importance of providing humanitarian assistance to civilian populations, regardless of whether the actors in question are state or non-state entities. It is imperative that humanitarian assistance provided to the civilian population be safeguarded. Such assistance must be intended to benefit the civilian population exclusively and must not be intended for any other

³² Article 70 (1) protocol additional to the Geneva convention of 12 august 1949 and the protection of victims of International armed Conflict 1977

³³ Frits Kalshoven, "Impartiality and Neutrality in Humanitarian Law and Practice," *International Review of the Red Cross* 29, no. 273 (1989): 516–35, <https://doi.org/10.1017/s0020860400074866>.

³⁴ Anahita Bordoloi, "How Important Is Neutrality in Providing Humanitarian Assistance?," *E-International Relations*, 2020, 1–7.

purpose than the provision of supplies necessary for the civilian population. Furthermore, humanitarian assistance must be provided in an impartial manner. Relief measures must not be diverted or provided in a way that favors a particular group or individual for political, discriminatory, or personal preference reasons³⁵.

A key issue within humanitarian law is the question of whether states have the power to allow humanitarian aid to enter their territories³⁶. It is argued that there is a legal obligation to provide assistance in accordance with Article 70 paragraph 1 Additional Protocol 1. This stipulates that parties engaged in armed conflict – encompassing both state and non-state actors controlling territory – must undertake relief operations. Such actions should not be considered an interference in the armed dispute; however, there is also a view that there is not only an obligation to provide assistance but also an obligation to receive it, provided there is an agreement between all relevant parties³⁷. In the context of the ongoing conflict in Syria, the Syrian government has officially prohibited the provision of humanitarian assistance from external sources on the grounds that the conflict is an internal matter and therefore beyond the scope of international law. However, this assertion can be refuted by examining the significant influx of refugees fleeing the country, which is indicative of the conflict's expansion and its impact on the civilian population. In 2014, the Syrian government introduced new requirements for the UN to provide assistance. Specifically, the government demanded cooperation with Syrian-run humanitarian organizations in the distribution of services and humanitarian assistance. However, this directive was misused by the

³⁵ Heike Spieker and Et.al, *International Law and Humanitarian Assistance A Crosscut Through Legal Issues Pertaining to Humanitarianism*, ed. Hans-Joachim Heintze and Andrej Zwitter, *Springer*, 1st ed. (Dublin: Springer-Verlag Berlin Heidelberg, 2011), <https://doi.org/10.1007/978-3-642-16455-2>.

³⁶ Jean Marie Henckaerts and Louise Doswald-Beck, *International Committee of the Red Cross: Customary International Humanitarian Law*, *International Committee of the Red Cross: Customary International Humanitarian Law*, 3rd ed., vol. 1 (Cambridge: cambridge university press, 2005), <https://doi.org/10.1017/CBO9780511804700>.

³⁷ Henckaerts and Doswald-Beck

Syrian government, which distributed aid unevenly, favoring only select areas deemed worthy of assistance by the Syrian government.³⁸

The case of the armed conflict that has occurred in Yemen since late 2014 can be attributed to a civil war within Yemen that was subsequently internationalized due to the complex and unstable situation within Yemen, encompassing political, economic, and environmental crises. Furthermore, the conflict is characterized by the presence of armed rebel groups that are in conflict with one another.³⁹ It is evident that the delivery of humanitarian assistance to Yemen presents a multitude of challenges, not least due to the involvement of various humanitarian organisations operating both within and outside of the country.⁴⁰ The context of Yemen illustrates the limitations of the advantages of humanitarian access for the local population, as risks are distributed equally between locals and internationals. The challenges faced by humanitarian workers providing assistance to the region of Yemen include the following: (a) Restrictions on the movement of humanitarian workers, both from humanitarian organizations based in the Yemeni region and from international organizations, have been imposed.⁴¹; (b). Acts of violence directed towards personnel, facilities, and infrastructure designated for humanitarian purposes⁴²; (c). The interference in the implementation of humanitarian interventions represents a significant challenge.⁴³; (d). The continued existence of hostilities, military operations, and landmines represents a

³⁸ Iida Maria Tammi, "Fighting with Words: Humanitarian Security and the Changing Role of Law in Contemporary Armed Conflict," *Disasters* 47, no. 4 (2023): 870–90, <https://doi.org/10.1111/disa.12580>.

³⁹ Ghassan Elkhoulout et al., "Localisation of Humanitarian Action in War-Torn Countries: The Experience of Local NGOs in Yemen," *International Journal of Disaster Risk Reduction* 75, no. February (2022): 102921, <https://doi.org/10.1016/j.ijdrr.2022.102921>.

⁴⁰ Elkhoulout et al.

⁴¹ Elkhoulout et al.

⁴² Tom Gal, "Territorial Control by Armed Groups and the Regulation of Access to Humanitarian Assistance," *Israel Law Review* 50, no. 1 (2017): 25–47, <https://doi.org/10.1017/S0021223716000285>.

⁴³ Elkhoulout et al., "Localisation of Humanitarian Action in War-Torn Countries: The Experience of Local NGOs in Yemen."

significant challenge to the stability of the region.⁴⁴; (e). In addition to these constraints, the area is characterised by a lack of paved roads and challenging geographical conditions.⁴⁵; dan (f) working in an area with armed groups⁴⁶. The access of humanitarian workers in Yemen to areas where their assistance is needed has been severely constrained. This is because these areas are under the control of armed groups, and the government of Yemen has been involved in limiting the distribution of goods and services provided to the civilian population in the region.

Furthermore restrictions on the provision of humanitarian assistance have also been observed during the Myanmar conflict between the Rohingya ethnicity and the Myanmar government. Since the commencement of the conflict between the Rohingya and the Myanmar military junta government, the Myanmar government has consistently rejected the entry of humanitarian aid aimed at the Rohingya population/ethnicity in the designated conflict area.⁴⁷ The Myanmar government and military collectively demonstrated their disapproval of the proposed assistance by refusing to provide essential supplies and medical assistance.⁴⁸ This situation has caused significant suffering for the Rohingya people, who have been the victims of this conflict. Myanmar's refusal to allow the delivery of humanitarian aid from outside the country presents a challenge to the Myanmar government as it attempts to eliminate terrorism in Myanmar. The government of Myanmar has rejected reports on the situation of the Rohingya, for example *World Food*

⁴⁴ John Odle, "Targeted Killings in Yemen and Somalia: Can the United States Target Low-Level Terrorists," *Emory International Law Review* 27, no. 1 (2013), <http://law.emory.edu/eilr/content/volume-27/issue-1/comments/targeted-killings.html>; Elkhoulout et al., "Localisation of Humanitarian Action in War-Torn Countries: The Experience of Local NGOs in Yemen."

⁴⁵ John Odle, "Targeted Killings in Yemen and Somalia: Can the United States Target Low-Level Terrorists."

⁴⁶ Elkhoulout et al., "Localisation of Humanitarian Action in War-Torn Countries: The Experience of Local NGOs in Yemen."

⁴⁷ Fransiska ayulistya santoso, "Penolakan Pemberian Bantuan Kemanusiaan Dari PBB Oleh Myanmar Dalam Presfektif Hukum Hak Asasi Manusia Internasional."

⁴⁸ Dewa Gede Sudika Mangku, "Pemenuhan Hak Asasi Manusia Kepada Etnis Rohingya Di Myanmar," *Perspektif Hukum* 21, no. 1 Mei (2021): 1–15.

*programme Report*⁴⁹⁵⁰ A report indicated that more than 80,000 Rohingya children required specialized care due to malnutrition. Additionally, the report noted that increasing food shortages were contributing to a deteriorating situation. However, the Myanmar government rejected the conclusions of the report⁵¹. A comparison of data on humanitarian aid delivery in Myanmar between 2023 and 2024 indicates a notable increase in the number of people who received assistance in 2024 compared to 2023. However, despite this apparent improvement, the proportion of the population receiving humanitarian assistance declined from 27% in 2023 to 18% by May of 2024⁵²⁵³. This decline was attributable to a number of factors, the most significant of which was the lack of funding, compounded by a challenging operating environment both at the hands of the Myanmar government, which has imposed restrictions on access to humanitarian assistance, and the pervasive threats faced by humanitarian workers operating in the region.⁵⁴⁵⁵. In Myanmar, the government has imposed significant limitations on the provision of humanitarian assistance. These restrictions have had a particularly adverse impact on the civilian population, with ethnic Rohingya communities facing significant challenges in accessing essential services such as healthcare, food, sanitation and shelter.

⁴⁹ Katie Hunt, "Rohingya Crisis: How We Got Here," *CNN*, 2017, <https://www.cnn.com/2017/11/12/asia/rohingya-crisis-timeline/index.html>.

⁵⁰ "Rohingya Crisis: UN Warns 80,000 Children 'Wasting' from Hunger in Myanmar," n.d., <https://www.theguardian.com/world/2017/jul/17/rohingya-crisis-un-warns-80000-children-wasting-from-hunger-in-myanmar>.

⁵¹ Danish Siddiqui, "Burma: Memastikan Bantuan Sampai Ke Orang Rohingya," human right watch, 2018, <https://www.hrw.org/id/news/2017/09/12/308712>.

⁵² OCHA, "Myanmar: Humanitarian Response Plan 2024 - Quarter One Dashboard (Jan - Mar 2024)," 2024, <https://www.unocha.org/publications/report/myanmar/myanmar-humanitarian-response-plan-2024-quarter-one-dashboard-jan-mar-2024>.

⁵³ UNICEF, "Myanmar Country Office Humanitarian Situation" (myanmar, 2024).

⁵⁴ Vy Nguyen, "The Rohingya Crisis in Myanmar: Rethinking International Engagement Toward Better Humanitarian Protection," 2018, <https://repositories.lib.utexas.edu/handle/2152/68393>.

⁵⁵ Fransiska Ayulistya Santoso, "Penolakan Pemberian Bantuan Kemanusiaan Dari PBB Oleh Myanmar Dalam Presfektif Hukum Hak Asasi Manusia Internasional."

The restrictions on humanitarian assistance are justified by concerns regarding national security and the potential for external interference. However, this justification has been challenged given the lack of evidence to suggest that external assistance is a cause of concern. Instead, the restrictions appear to be motivated by broader socio-political considerations. In 2016, the Myanmar government permitted access to the distribution of humanitarian assistance through the UN and Humanitarian agencies in the Kachin state region. There are an estimated 87,000 individuals in this region who require humanitarian assistance. However, the government has placed restrictions on this distribution by requiring that refugees cross the line of conflict to receive assistance.⁵⁶ In other regions of Rakhin State, communities of ethnic Rohingya are unable to access healthcare.⁵⁷ Myanmar's restrictions of access to humanitarian workers are causing the suffering of civilians in conflict areas to intensify. The Myanmar government is also committing violations of the right to life in two ways: firstly, by failing to protect the lives of those in areas affected by armed conflict; and secondly, by killing civilians in such areas. The limitations on humanitarian assistance in Myanmar and Yemen violate Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that states should "achieve the full realization of economic, social and cultural rights through international assistance and co-operation." It is therefore necessary to consider whether the ICESCR can be interpreted as an obligation on states to accept international humanitarian assistance following a disaster, a responsibility that applies to both Yemen and Myanmar as parties to the Convention.⁵⁸ *The right to life is a fundamental right belonging to every individual. This right cannot be diminished or revoked under any circumstances in accordance with the aforementioned article 6(1) International Covenant on Civil and Political Rights*, says that "Every human

⁵⁶ Amnesty International, "Myanmar: Lift Restrictions Immediately on Humanitarian Aid," amnesty international, n.d., <https://www.amnesty.nl/actueel/myanmar-lift-restrictions-immediately-on-humanitarian-aid>.

⁵⁷ Amnesty International.

⁵⁸ Arenca Trashani, "Humanitarian Intervention and Its Impact on State Sovereignty and Human Rights.," in *Territorial Politics and Secession. Federalism and Internal Conflicts*, ed. M Belov (Palgrave Macmillan, 2021).

being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” From this article it can be ascertained that the right to life of every individual is an inherent, fundamental right, and that both the state of Yemen and Myanmar have a duty to protect the civilian population affected by armed conflict.⁵⁹⁶⁰ It is the obligation of the state, as manifested by its government, to safeguard the interests of the civilian population in situations of armed conflict. This is to prevent them from losing their fundamental rights as civilians.

In the context of armed conflict, the concept of state sovereignty is of significant importance in relation to the provision of humanitarian assistance to civilian populations⁶¹. The principle of state sovereignty is a concept that is utilized to substantiate a state's authority over its defined territory and internal affairs. However, in situations of armed conflict, the question of state sovereignty is particularly complex when the suffering of the civilian population is widespread and there is a delicate balance to be struck between respecting a state's sovereignty and addressing humanitarian needs. International humanitarian law provides a framework that recognizes the importance of ensuring assistance to civilians affected by armed conflict. This is based on Article 70, paragraph 1 of the 1977 Additional Protocol, which states that humanitarian action aimed at the benefit of civilian populations suffering as a result of armed conflict must be respected and permitted to enter the conflict area.

A fundamental principle is the principle of humanity, which aims to alleviate the suffering of the civilian population during armed conflict. In the event of a conflict within a country, humanitarian workers must maintain neutrality when carrying out their duties. The neutrality of these humanitarian workers is demonstrated by providing services and assistance to all parties to the conflict, regardless of their position. This is evidenced by the provision of services and assistance to all parties to the armed

⁵⁹ Fransiska ayulistya santoso, “Penolakan Pemberian Bantuan Kemanusiaan Dari PBB Oleh Myanmar Dalam Prespektif Hukum Hak Asasi Manusia Internasional.”

⁶⁰ Heike Spieker, “The Right to Give and Receive Humanitarian Assistance,” in *International Law and Humanitarian Assistance*, ed. H.-J. Heintze and A. Zwitter (Dublin: Springer-Verlag Berlin Heidelberg, 2011), 1–141, <https://doi.org/10.1007/978-3-642-16455-2>.

⁶¹ *Op. cit.*, Anahita Bordoloi, p. 5

conflict, irrespective of the position of the parties involved. Furthermore, humanitarian workers must demonstrate impartiality in their provision of humanitarian assistance, which should be provided without discrimination. This entails that assistance can be provided to all parties in the conflict, as well as to those who are victims of armed conflict. Humanitarian assistance should be provided in accordance with the needs of the civilian population, those who are no longer involved in the armed conflict, and those affected by the armed conflict, without discrimination and without consideration of political considerations.

A situation in a state in which the government In such instances, the international community may engage in the provision of humanitarian assistance. Such assistance may be provided by third states, international organizations, or non-state actors who operate independently or in collaboration with countries affected by armed conflict. The provision of humanitarian assistance in situations of armed conflict must adhere to the principle of non-intervention, which is realized by respecting the sovereignty of the state that is being engulfed in armed conflict. Balancing the obligation to alleviate human suffering with the principle of state sovereignty represents a significant challenge for the international community, which often engages in diplomatic efforts to facilitate the delivery of humanitarian assistance while respecting the autonomy of the affected state.

Conclusion

The provision of humanitarian assistance to civilians is an integral aspect of state sovereignty in situations of armed conflict, particularly those of an international nature. The existence of state consent, which is an important aspect of respecting a state's sovereignty, even in situations of armed conflict, should not be used as a means of impeding assistance directed towards civilian populations. The refusal of humanitarian assistance itself constitutes a form of violation of humanitarian law that can have a significant impact on civilian populations in situations of armed conflict that occur within a given state's territory.

References

- Amnesty International. "Myanmar: Lift Restrictions Immediately on Humanitarian Aid." amnesty international, n.d. <https://www.amnesty.nl/actueel/myanmar-lift-restrictions-immediately-on-humanitarian-aid>.
- Arenca Trashani. "Humanitarian Intervention and Its Impact on State Sovereignty and Human Rights." In *Territorial Politics and Secession. Federalism and Internal Conflicts*, edited by M Belov. Palgrave Macmillan, 2021.
- Boer Mauna. *Hukum Internasional (Pengertian, Peran Dan Fungsi Dalam Era Dinamika Global)*. 1st ed. Bandung: PT. Alumni, 2001.
- Bogatyreva, O. "Humanitarian Diplomacy: Modern Concepts and Approaches." *Herald of the Russian Academy of Sciences* 92, no. 1 (2022): S1349–66. <https://doi.org/10.1134/S1019331622200047>.
- Bordoloi, Anahita. "How Important Is Neutrality in Providing Humanitarian Assistance?" *E-International Relations*, 2020, 1–7.
- Centre, The Diakonia International Humanitarian Law. "ENFORCEMENT OF IHL (Accountability for Violations of International Humanitarian Law)." International Humanitarian Law Centre, 2022. <https://www.diakonia.se/ihl/resources/international-humanitarian-law/enforcement-ihl/>.
- Children and Armed Conflict in Afghanistan. "Afghanistan: Alarming Scale of Grave Violations Against Children as Current Security Situation Collapses, Country Facing the Unknown." office of the special representative of the secretary General of Child and armed conflict, 2021. <https://childrenandarmedconflict.un.org/2021/08/138737/>.
- Danish Siddiqui. "Burma: Memastikan Bantuan Sampai Ke Orang Rohingya." human right watch, 2018. <https://www.hrw.org/id/news/2017/09/12/308712>.
- Dieter Fleck. *The Handbook of International Humanitarian Law. The Handbook of International Humanitarian Law*. Second edi. Oxford: oxford university press, 2008. <http://discovery.lib.harvard.edu/?hrciid=%7Clibrary%2Fm%2Fale>

ph%7C011447840.

- Eliza, Emi, Heryandi Heryandi, and Ahmad Syofyan. "Intervensi Kemanusiaan (Humanitarian Intervention) Menurut Hukum Internasional Dan Implementasinya Dalam Konflik Bersenjata." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 4 (2015): 629–41. <https://doi.org/10.25041/fiatjustisia.v8no4.316>.
- Elkahlout, Ghassan, Sansom Milton, Taha Yaseen, and Elham Raweh. "Localisation of Humanitarian Action in War-Torn Countries: The Experience of Local NGOs in Yemen." *International Journal of Disaster Risk Reduction* 75, no. February (2022): 102921. <https://doi.org/10.1016/j.ijdr.2022.102921>.
- Gal, Tom. "Territorial Control by Armed Groups and the Regulation of Access to Humanitarian Assistance." *Israel Law Review* 50, no. 1 (2017): 25–47. <https://doi.org/10.1017/S0021223716000285>.
- heike spieker. "The Right to Give and Receive Humanitarian Assistance." In *International Law and Humanitarian Assistance*, edited by H.-J. Heintze and A. Zwitter, 1–141. Dublin: Springer-Verlag Berlin Heidelberg, 2011. <https://doi.org/10.1007/978-3-642-16455-2>.
- Henckaerts, Jean Marie, and Louise Doswald-Beck. *International Committee of the Red Cross: Customary International Humanitarian Law. International Committee of the Red Cross: Customary International Humanitarian Law*. 3rd ed. Vol. 1. Cambridge: cambridge university press, 2005. <https://doi.org/10.1017/CBO9780511804700>.
- John Odle. "Targeted Killings in Yemen and Somalia: Can the United States Target Low-Level Terrorists." *Emory International Law Review* 27, no. 1 (2013). <http://law.emory.edu/eilr/content/volume-27/issue-1/comments/targeted-killings.html>.
- Kalshoven, Frits. "Impartiality and Neutrality in Humanitarian Law and Practice." *International Review of the Red Cross* 29, no. 273 (1989): 516–35. <https://doi.org/10.1017/s0020860400074866>.
- Katie Hunt. "Rohingya Crisis: How We Got Here." *CNN*, 2017. <https://www.cnn.com/2017/11/12/asia/rohingya-crisis-timeline/index.html>.
- Khasanah, Nur barokah Uswatun, and Marc Johan Astawin. "Mechanism for Addressing Space Debris from the Prespective of International

- Law.” *International Law Discourse in Southeast Asia* 3, no. 1 (2024): 107–34.
<https://doi.org/https://doi.org/10.15294/ildisea.v3i1.78885>.
- Kuijt, Emilie Ellen. “Humanitarian Assistance and State Sovereignty in International Law: Towards a Comprehensive Framework Issue.” *Leiden University*. Leiden University, 2020.
- Kumajaya, Kumajaya, and Rachmat Setiawan. “Venezuelan Government Disclaimer toward Humanitarian Assistance of International Communities.” *Jurnal Hubungan Internasional* 8, no. 2 (2019).
<https://doi.org/10.18196/hi.82156>.
- Makarychev, Andrey. “Russian War, Estonian Exceptions: Sovereignty, Governmentality, Biopolitics.” *New Perspectives* 32, no. 3 (2024): 290–306. <https://doi.org/10.1177/2336825X241240929>.
- Mangku, Dewa Gede Sudika. “Pemenuhan Hak Asasi Manusia Kepada Etnis Rohingya Di Myanmar.” *Perspektif Hukum* 21, no. 1 Mei (2021): 1–15.
- Nada, Lely Frilia Melisa Dwi, and Agustina Merdekawati. “Kedaulatan Atas Wilayah.” In *Hukum Internasional*, edited by Fajri Matahati Muhammadin, 1st ed., 186–261. Yogyakarta: CV Buku Belaka Maju Jaya, 2023.
- Nguyen, Vy. “The Rohingya Crisis in Myanmar: Rethinking International Engagement Toward Better Humanitarian Protection,” 2018.
<https://repositories.lib.utexas.edu/handle/2152/68393>.
- OCHA. “Myanmar: Humanitarian Response Plan 2024 - Quarter One Dashboard (Jan - Mar 2024),” 2024.
<https://www.unocha.org/publications/report/myanmar/myanmar-humanitarian-response-plan-2024-quarter-one-dashboard-jan-mar-2024>.
- Plattner, Denise. “ICRC Neutrality and Neutrality in Humanitarian Assistance.” *International Review of the Red Cross* 36, no. 311 (1996): 161–80. <https://doi.org/10.1017/s0020860400084072>.
- Riyanto, Sigit. “Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer.” *Yustisia Jurnal Hukum* 1, no. 3 (2012): 5–14. <https://doi.org/10.20961/yustisia.v1i3.10074>.
- “Rohingya Crisis: UN Warns 80,000 Children ‘Wasting’ from Hunger in Myanmar,” n.d.

- <https://www.theguardian.com/world/2017/jul/17/rohingya-crisis-un-warns-80000-children-wasting-from-hunger-in-myanmar>.
- Santoso, Fransiska Ayulistya. "Penolakan Pemberian Bantuan Kemanusiaan Dari PBB Oleh Myanmar Dalam Prespektif Hukum Hak Asasi Manusia Internasional." *Jurnal Arena Hukum* 13, no. 3 (2020): 593.
- Spieker, Heike, et.al. *International Law and Humanitarian Assistance A Crosscut Through Legal Issues Pertaining to Humanitarianism*. Edited by Hans-Joachim Heintze and Andrej Zwitter. Springer. 1st ed. Dublin: Springer-Verlag Berlin Heidelberg, 2011. <https://doi.org/10.1007/978-3-642-16455-2>.
- Human Rights Watch. "Syria: Defying Security Council on Aid Access Rejects Desperately Needed Cross-Border Routes," 2014. <https://www.hrw.org/news/2014/03/28/syria-defying-security-council-aid-access>.
- Tammi, Iida Maria. "Fighting with Words: Humanitarian Security and the Changing Role of Law in Contemporary Armed Conflict." *Disasters* 47, no. 4 (2023): 870–90. <https://doi.org/10.1111/disa.12580>.
- Thantowi, Jawahir, and Pranoto Iskandar. *Hukum Internasional Kontemporer*. Bandung: Refika Aditama, 2006.
- Thomsen, Matias. "The Obligation Not to Arbitrarily Refuse International Disaster Relief: A Question of Sovereignty." *Melbourne Journal of International Law*. 16, no. 484 (2015): 1–38. <https://heinonline.org/HOL/License>.
- UNICEF. "Myanmar Country Office Humanitarian Situation." myanmar, 2024.
- Watson Institute International & Public affair. "AFGHAN CIVILIANS." watson institute international & Public affair Brown University, 2023. <https://watson.brown.edu/costsofwar/costs/human/civilians/afghan>.
- Zaum, Dominik. *The Sovereignty Paradox: The Norms and Politics of International Statebuilding*. 1st ed. Oxford: oxford university press, 2007.

"Even wars have limits. International humanitarian law protects those who are not, or no longer, participating in hostilities."

International Committee of the Red Cross (ICRC)

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

None

PUBLISHING ETHICAL AND ORIGINALITY STATEMENT

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

GENERATIVE AI STATEMENT STATEMENTS

N/A