Israel uses the closure as economic warfare

HCJ 9132/07 *Al-Bassiouni v. The Prime Minister* (not published 30.1.2008). Paragraphs 43, 44 in the state's response from 1.11.2007:

43) However, Article 23 sets forth three cumulative conditions whose existence is necessary for the consolidation of the obligation:

    a. **Absence of fear of extraordinary use**, based on factual knowledge (by the side in the conflict that allows the transit of the commodity) that it will not reach the population for which it is intended.

    b. **The existence of tight supervision** of the commodity, from the moment of its transit to the moment of its distribution, which the side allowing the transit is permitted to require be carried out by a third independent party (such as an international organization).

    c. **Refraining from creating a definite advantage for the opposite side**, in the sense that the side permitting the transit is allowed to stop it inasmuch as it has a substantial reason to believe that the volume and frequency of the consignments may assist the enemy's military or economic efforts, despite the fact noted by Pictet that the types of commodities the transit of which the article requires allowing are so limited that it is hard to believe they could have any real impact on the enemy's economy (ibid., pp. 182-183).

44) It goes without saying that the very inclusion of this last qualification in the article shows that **damaging the enemy's economy is in and of itself a legitimate means in warfare and a relevant consideration even while deciding to allow the entry of relief consignments.**

Subsequently, Article 70 of the Additional Protocol, which can probably be classified as having customary status in international law, creates a general obligation to allow the transit of **"vital commodities for the subsistence of the civilian population"** in an armed conflict, if under the prevailing circumstances that population is not sufficiently equipped with those commodities.

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