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Artificial Intelligence and Humanitarian Assistance: Reassessing the Role of State Consent

Abstract

The author analyses the notion of State consent in the delivery of humanitarian assistance supported by artificial intelligence (AI) systems from the perspective of the existing applicable international legal regimes, in particular, the general legal regime of humanitarian assistance and the specific rules deriving from international humanitarian law and international human rights law. She argues that the notion of consent lies at the heart of these rules with a distinction made between strategic and operational consent to humanitarian assistance. The former refers to a State's general consent to the delivery of humanitarian assistance on its territory, while the latter refers to the consent required at the operational level for the delivery of a particular type of humanitarian assistance in a specific geographically defined area. It is argued that valid reasons for withholding operational consent to AI-supported humanitarian assistance under international humanitarian law must be distinguished from the arbitrary withholding of strategic consent. While withholding operational consent may be legally justified, the arbitrary withholding of strategic consent to humanitarian assistance is prohibited under the relevant international legal regimes when it amounts to a violation of other existing obligations of the State concerned (e.g., under international humanitarian law or human rights law). In such situations the non-consensual delivery of humanitarian assistance could be legally justified either through United Nations Security Council authorisation or by secondary rules of international law, in particular countermeasures.

Key words

artificial Intelligence, humanitarian assistance, consent, arbitrary withholding of consent, countermeasures.

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1. Introduction**

Humanitarian assistance is increasingly being carried out by relying on digital information technologies, including artificial intelligence (AI). AI systems,[1] which typically draw on large amounts of data[2], including the biometric data of aid recipients, have the potential to significantly enhance the accuracy and effectiveness of aid delivery, while also helping to prevent the misuse of humanitarian aid. By making the distribution of aid conditional on the use of AI and biometric data, the organisations mandated to deliver aid in the aftermath of man-made or natural disasters aim to ensure that the assistance reaches those in need, thereby preventing it from being diverted and used for other purposes. However, the use of AI in a humanitarian context raises numerous important legal questions, including whether the aid-receiving State consents to the use of AI systems in its territory, and whether it might withhold consent due to concerns over the potential dual use of the collected data and the security of that data. Indeed, there have been instances where parties engaged in armed conflict have declined AI-supported humanitarian assistance provided by international humanitarian organisations, as evidenced by the situation in Yemen.

This paper analyses the notion of State consent in the delivery of humanitarian assistance supported by AI systems, viewed from the perspective of the applicable international legal regimes—particularly the general legal regime of humanitarian assistance, as well as specific rules derived from international humanitarian law and international human rights law. It argues that consent lies at the heart of the rules governing the provision of humanitarian assistance, with a distinction drawn between strategic and operational consent. Strategic consent refers to a State's general consent to the delivery of humanitarian assistance on its territory, while operational consent refers to the consent required at the operational level for delivering a particular type of humanitarian assistance in a specific geographic area. It is argued that valid reasons for withholding operational consent to AI-supported humanitarian assistance under international humanitarian law must be distinguished from the arbitrary withholding of strategic consent. While the withholding of operational consent may be legally justified, the arbitrary withholding of strategic consent

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1 There is currently no uniform definition of the AI. Arguably, the most authoritative definition was provided for in the UNESC Recommendation (2021), whereby AI systems are understood as "systems which have the capacity to process data and information in a way that resembles intelligent behaviour, and typically includes aspects of reasoning, learning, perception, prediction, planning or control". UNESCO (2021), § 2. It is acknowledged, however, that the definition of AI will have to be changed over time in accordance with the rapid technological developments. T. Veber, 2023, pp. 14–15.

2 Beduschi, 2022, pp. 1149–1169.

to humanitarian assistance is prohibited under the relevant international legal regimes. When analysing the consequences of arbitrarily withheld consent, this paper concludes that such withholding of consent cannot automatically confer legality on the non-consensual delivery of AI-supported assistance in such situations.[3] Rather, it argues that in certain limited cases, where the arbitrary withholding of consent amounts to a violation of other existing obligations of the State (e.g., under international humanitarian law or international human rights law), the non-consensual delivery of humanitarian aid could be legally justified either by United Nations Security Council (UNSC) authorisation or by existing secondary rules of international law, in particular the law of countermeasures.

It is acknowledged that, apart from the issue of State consent, the question of the consent of individuals—namely the consent of recipients of humanitarian aid delivered with the support of AI—also arises in this context. Specifically, the use of AI in humanitarian assistance raises various questions relating to data protection and the right to privacy of the individuals concerned.[4] However, an analysis of this topic lies beyond the scope of this paper. It also must be noted that this paper focuses solely on the delivery of aid by international organisations, such as UN specialised agencies, rather than the work of non-governmental organisations (NGOs) mandated with delivering aid. Since NGOs are not subjects of international law *stricto sensu*, they are primarily governed by national laws, and the application of international legal rules applies differently to them than to international organisations.[5] Finally, this paper focuses on the notion of consent in the context of AI-supported humanitarian assistance, a concept specific to the broader question of the possible non-consensual provision of humanitarian assistance under international law.

Following this introduction, the paper briefly presents the practice of using AI by international humanitarian organisations (section 2). Section 3 discusses the AI-specific legal regimes, while section 4 analyses relevant international legal regimes governing the provision of humanitarian assistance under international law. The paper then outlines the modalities and the distinction between withholding operational consent and withholding strategic consent to humanitarian assistance (section 5) and discusses the (il)legality of the non-consensual provision of humanitarian assistance under international law (section 6). The final section (7) presents possible legal justifications for the non-consensual delivery of humanitarian assistance under the UNSC collective security regime and the secondary rules on responsibility, with special emphasis on the law of countermeasures. Finally, section 8 offers concluding remarks.

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3 This argument is put forward for example by Barber, 2023.

4 More on this see: T. Veber, 2025. See also Narbel & Sukaitis, 2021; European Data Protection Board, 2022, p. 10; FRA, 2020; Wills, 2019; Kuner & Marelli, 2020, pp. 280–296.

5 Kuner, 2020, p. 81; Generally, on non-governmental organizations see: Lindblom, 2009.

2. AI-Supported Humanitarian Assistance

Humanitarian assistance is increasingly provided through reliance on digital information technologies, including AI. For example, the World Food Programme (WFP), in partnership with the United Nations High Commissioner for Refugees (UNHCR), introduced an iris-scan payment system in a Jordanian refugee camp, enabling 76,000 Syrian refugees to purchase food from camp supermarkets using only an iris scan instead of cash, vouchers, or e-cards.[6] This system connects with different databases within seconds (e.g., the UNHCR and bank databases), thereby enabling quick and efficient aid delivery. By making the distribution of aid conditional on the use of AI and biometric data, these organisations aim to ensure that the assistance goes directly to those in need, preventing its diversion for other purposes.[7] However, the use of AI in a humanitarian context also raises numerous important legal questions.

One particular concern is that AI systems in humanitarian assistance may be problematic because of the possible dual use of the data these systems collect. AI systems run on a variety of datasets and produce large amounts of data, which may help improve aid delivery. Yet, that same data can easily be used for other purposes and become tools for surveillance, security checks, tracing, or deportation.[8] The issue of data security and the potential compromises of sensitive data is particularly relevant since, in the past, cyberattacks on humanitarian organisations exposed the personal data of about 500,000 vulnerable people around the world.[9] Moreover, requests have been made by different States to access biometrics data on refugees from humanitarian organisations, to use such data for security checks and deportation procedures.[10]

In addition, international organisations mandated with, for example, food assistance are increasingly relying on private commercial actors to support their humanitarian activities. One illustrative example is the WFP, which pledged to "become a digitally enabled and data-driven organization, with investments in new technology",[11] and recently partnered with Palantir to use its software to provide faster and more efficient food assistance.[12] Palantir is a leading US company specialising in data analytics, which is also increasingly integrating AI into various aspects of its operation, ranking among the top AI software platforms.[13] Palantir has, however, been the subject of criticism, with allega-

6 WFP, 2016.

7 Reuters, 2019.

8 Martin *et al.*, 2023, pp. 1363–1397.

9 Macdonald, 2022.

10 In the past, Bangladesh, Lebanon, Malaysia, and the US, for example, requested access to UNHCR biometric data on refugees. Martin *et al.*, 2023, p. 1382.

11 WFP strategic plan (2022-2023), WFP/EB.2/2021/4-A/1/Rev.2, 12 November 2021, § 130.

12 Parker, 2019.

13 Businesswire, 2022.

tions that it provided controversial data-sifting software to US government agencies.[14] In this context, the term "surveillance humanitarianism" is sometimes used to describe the potential widespread collection of data in a humanitarian context without adequate safeguards—an approach that may "inadvertently amplify the vulnerability of individuals in need of humanitarian aid".[15] Others refer to "techno-colonianism", wherein practices of digital innovation "can lead to reproducing the colonial relationships of dependency and inequality amongst different populations around the world."[16]

Due to these concerns, parties to an armed conflict have, on occasion, refused AI-supported humanitarian aid. For example, in 2019, the WFP decided to suspend the delivery of food aid in Yemen because of a disagreement on about using technology that employed biometric data (via iris scans, fingerprints, or facial recognition) to support aid delivery to food recipients.[17] The principal objection was the concern that utilising AI and collecting data could jeopardise the security of the State.[18]

3. The AI-Specific Legal Framework

In 2024 two legally binding AI-specific documents were adopted. The Council of Europe adopted the first international treaty regulating the development and use of AI systems, which stresses the need for the application of existing human rights obligations to the development and use of AI systems, and provides some concrete safeguards in this respect. The Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Framework Convention on AI)[19] is based on the following fundamental principles: human dignity and individual autonomy, equality and non-discrimination, respect for privacy and personal data protection, transparency and oversight, accountability and responsibility, and reliability and safe innovation.[20]

On the other hand, at the European Union (EU) level, the AI Act[21] was adopted, governing the development and use of AI. In terms of substantive provisions, the AI Act is based on the so-called 'risk-based' approach. This means that it categorises AI

14 Martin *et al.*, 2023, p. 1363; BBC, 2020.

15 Latonero, 2019, as cited in Beduschi, 2022, p. 1152.

16 Madianou, 2019, as cited in Beduschi, 2022, p. 1152.

17 Reuters, 2019; Welsh, 2019.

18 Martin *et al.*, 2023, p. 1364.

19 Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Council of Europe Treaty Series – No. [225], 2024.

20 More on this see T. Veber, 2025.

21 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144

systems according to the level of risk they might pose from the perspective of health, safety, fundamental rights, the environment, democracy or the rule of law, into: prohibited AI practices, high-risk systems listed in Annex III, general-purpose AI models with systemic risk, and general-purpose AI models. While AI systems with unacceptable risks are prohibited, high-risk systems are subject to certain requirements in terms of data quality[22], transparency, [23] human oversight, [24] fundamental rights impact assessment[25] and registration.[26] Under the AI Act certain biometric identification[27] systems fall under prohibited practices, e.g. biometric categorisation systems that categorise individual natural persons[28] and 'real-time' remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement (except in certain limited cases).[29] On the other hand, uses of other types of biometrics (e.g., remote biometric identification systems) would have to comply with requirements for high-risk AI systems.[30]

While these documents regulate the development and deployment of AI systems, including biometric systems, their relevance for the present paper is limited for the following two reasons:

1. Humanitarian international organisations, such as WFP, are not parties to these treaties and, even in cases where the use of AI systems by humanitarian international organisations would fall under the material and territorial scope of these laws, the enforcement of these rules is foreclosed by the privileges and immunities to which IOs are entitled under international law[31];
2. These two documents regulate AI products within their member States/signatories and provide safeguards concerning the protection of the human rights of individuals possibly affected by the use of AI. They do not explicitly address the possible non-consensual use of AI in the territory of a country affected by a humanitarian catastrophe of a sort.

and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689, 12 July 2024 (AI Act).

22 AI Act, Article 10.

23 AI Act, Article 13.

24 AI Act, Article 14.

25 AI Act, Article 27.

26 AI Act, Article 49.

27 According to Article 3(35) AI Act 'biometric identification' means the automated recognition of physical, physiological, behavioural, or psychological human features for the purpose of establishing the identity of a natural person by comparing biometric data of that individual to biometric data of individuals stored in a database.

28 AI Act, Article 5(1)(g).

29 AI Act, Article 5(1)(h).

30 AI Act, Section 2.

31 For a detail analysis of this see T. Veber, 2025. See also Kuner, 2019, p. 174.

At the United Nations (UN) level, which is most relevant to our discussions, AI is mainly being addressed through soft-law documents. Arguably, the most important development in this respect is the adoption of the 'Principles for the Ethical Use of Artificial Intelligence in the United Nations System' by the Inter-Agency Working Group on Artificial Intelligence in 2022.[32] These principles aim to guide the design, development, deployment and use of AI by UN agencies through the following principles: do no harm; defined purpose, necessity and proportionality; safety and security; fairness and non-discrimination; sustainability; right to privacy, data protection and data governance; human autonomy and oversight; transparency and explainability; responsibility and accountability; and inclusion and participation. While these principles provide valuable guidance for the use of AI by UN agencies, including those mandated with the provision of humanitarian assistance, their primary aim is to safeguard the rights of individuals subject to AI systems. In this respect, no explicit legal obligations can be derived from these principles for international organisations providing AI-supported humanitarian assistance in terms of the consent of the concerned, aid-receiving State, to the use of AI on its territory.

However, the foregoing does not mean that the delivery of AI-supported humanitarian aid by humanitarian international organizations remains unregulated as a *legal lacuna*. Activities of international organisations utilising AI in their humanitarian delivery missions are governed by the existing applicable international legal regimes, which are analysed in the remaining part of this paper.

4. International Legal Regimes Governing Humanitarian Assistance and the Issue of Consent

Deriving from the principle of sovereignty and its corollary, the principle of non-intervention,[33] it is the primary responsibility of the affected State to ensure, organise, coordinate, and implement the protection of affected persons and provision of humanitarian assistance in cases of natural disasters and other emergencies occurring on its territory, or on the territory under its jurisdiction or control.[34] When States possess adequate

[32] UN, Principles for the Ethical Use of Artificial Intelligence in the United Nations System, 20 September 2022.

[33] Articles 2(1) and 2(7) Charter of the United Nations (UN Charter) (24 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter); Declaration on Principles on International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA resolution 2625 (XXV), 24 October 1970, UN Doc. A/RES/2625(XXV).

[34] Draft Article 10, Draft articles on the protection of persons in the event of disasters, YILC 2016, vol. II Part Two; UNGA Resolution 46/182, 19 December 1991, UN Doc. 46/182, Annex, Guiding Principles, § 4. See also Institute of International Law, Resolution of Humanitarian Assistance, Bruges Session – 2003, 8 September 2003 (IIL Resolution 2003), p. 5.

capacities to respond to man-made or other humanitarian disasters, the issues of consent will generally not arise. However, in cases where a disaster exceeds national response capacities, civilians in need are inadequately provided with essential supplies. The assistance of other actors, including international organisations as part of the international community, is warranted through the provision of impartial humanitarian assistance to the affected State.[35] The question that hereby arises is whether the concerned State has an obligation to accept such humanitarian assistance and whether humanitarian assistance could potentially be provided in the absence of the affected State's consent. In the context of AI-supported humanitarian assistance, the use of AI technology, such as iris scanning, may be the main reason for withholding consent.

Three relevant legal regimes applicable to situations of the delivery of humanitarian assistance in cases of man-made or natural disasters are: the general humanitarian assistance legal regime, the international human rights regime and the international humanitarian law regime. The first two will generally apply to humanitarian situations not involving an armed conflict. In times of armed conflict, however, a specific regime concerning the provision of humanitarian assistance exists under international humanitarian law. Even though the general humanitarian assistance legal regime and international human rights law continue to apply in such situations, in times of war, the human rights regime is to be interpreted in light of the rules of international humanitarian law, which are applicable as *lex specialis*.[36]

4.1. General Humanitarian Assistance Legal Regime

Humanitarian assistance in cases of both natural[37] and man-made[38] disasters and emergencies has continuously occupied the agenda of the UN, with the UN General Assembly (UNGA) Resolution 46/182 (1991)[39] outlining the guiding principles of humanitarian assistance as the cornerstone of this regime. Among the key guiding principles embedded in this document are the principles of humanity, neutrality and impartiality.

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35 Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, 2016, § 6.

36 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep. 136, §§ 106–113.

37 UNGA Resolution 2034 (XX), 7 December 1965, UN Doc. A/RES/2034; UNGA Resolution 44/236, 22 December 1989, UN Doc. 44/236. The Institute of International Law, classified »disasters« as either natural, man-made disasters of technological origin or disaster caused by armed conflicts or violence. IIL Resolution 2003.

38 The Institute of International Law, classified »disasters« as either natural, man-made disasters of technological origin or disaster caused by armed conflicts or violence. IIL Resolution 2003. UNGA Resolution 2816 (XXVI), 14 December 1971, UN Doc. A/RES/2816.

39 UNGA Resolution 46/182, 19 December 1991, UN Doc. 46/182.

In terms of the consent of the affected State to external humanitarian assistance, the third guiding principle centres around the prior consent of the affected State:

> "[T]he sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected community."[40]

The issue of consent has also been debated within the International Law Commission's (ILC) work on the Draft articles on the protection of persons in the event of disasters, which explicitly acknowledge that "the provision of external assistance requires the consent of the affected state."[41] Similarly, the notion of consent is central in the work of the Institute of International Law (IIL) on the matter, whereby its resolution on humanitarian assistance stresses that "States and organizations have the right to provide humanitarian assistance to victims in the affected States, subject to the consent of these States."[42] Accordingly, State sovereignty and the notion of consent seem to lie at the heart of the general humanitarian assistance regime.

Simultaneously, however, both the ILC and the IIL recognise that in cases of disasters exceeding national response capacities, the concerned State "shall seek" [43] or "has a duty to seek"[44] assistance from competent international organisations, third States and other actors. As explained in the commentaries, the ILC embedded this reasoning on the basis of the principle of sovereignty, which does not only confer rights upon States but also imposes certain duties.[45] However, at the same time, the ILC, in the commentary, stressed that the term "seek" cannot be equated with a duty to give consent to humanitarian assistance but rather "entails the proactive initiation by an affected State of a process through which agreement may be reached."[46] Consent to humanitarian assistance, therefore, remains central to this regime, with the ILC acknowledging that "the provision of

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[40] UNGA Resolution 46/182, 19 December 1991, UN Doc. 46/182, Annex, Guiding Principles, § 3. See also UNGA Resolution 67/87, UN Doc. A/RES/67/87, 26 March 2013 ("*Emphasizing* also the fundamentally civilian character of humanitarian assistance, and, in situations in which military capacity and assets are used to support the implementation of humanitarian assistance, reaffirming the need for their use to be undertaken with the consent of the affected State and in conformity with international law, including international humanitarian law, as well as humanitarian principles.").

[41] Draft articles on the protection of persons in the event of disasters (2016), Article 13.

[42] IIL Resolution 2003, § IV(2).

[43] IIL Resolution 2003, § III(3).

[44] Draft articles on the protection of persons in the event of disasters (2016), Article 11.

[45] Draft articles on the protection of persons in the event of disasters (2016), Commentary to Article 10, § 3.

[46] Draft articles on the protection of persons in the event of disasters (2016), Commentary to Article 11, § 6.

external assistance requires the consent of the affected State [which] is fundamental to international law."[47]

4.2. International Human Rights Law Regime

The obligation to provide humanitarian assistance to civilian populations in need also stems from the international human rights law regime, particularly from the provisions on the right to life deriving from Article 6 of the International Covenant on Civil and Political Rights (ICCPR)[48] and the right to food as enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[49]. As already mentioned, it is generally confirmed that the obligations of States under international human rights law continue to apply in times of armed conflict[50], including in times of occupation.[51]

The right to life under Article 6(1) ICCPR is non-derogable under the ICCPR[52] even in "time of public emergency which threatens the life of the nation," which includes situations of armed conflict and other public emergencies.[53] The Human Rights Committee explained States' obligations deriving from this provision in its General Comment 36, whereby it affirmed that the right to life "should not be interpreted narrowly" and includes "the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."[54] Moreover, it expressly recognised that the positive obligations of States (the duty to protect life) include taking "appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity", including "widespread hunger and mal-

47 Draft articles on the protection of persons in the event of disasters (2016), Commentary to Article 13, § 2.

48 International Covenant on Civil and Political Rights, 16 December 1966, UNTS, vol. 999, p. 171 (ICCPR).

49 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS, vol. 993, p. 3 (ICESC).

50 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep. 136, §§ 106–113.

51 See, e.g., UN Human Right Committee (UN HRC), General Comment No. 31 UN Doc. CCPR/C/Rev.1/Add.13 (2004), § 10; Akande and Gillard, 2016, p. 504.

52 ICCPR, Article 4(2).

53 See also UN HRC, General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11.

54 UN HRC General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, § 3 (General comment no. 36).

nutrition and extreme poverty and homelessness."[55] In this respect, it confirmed that the right to life includes the obligation to ensure access to humanitarian assistance:

> "The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations."[56]

On the other hand, according to the International Covenant on Economic, Social and Cultural Rights, the right to food as embedded in Article 11 includes the obligation that:

> "The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."[57]

Unlike civil and political rights, economic, social and cultural rights may not be derogated from in times of emergency, which is compensated by the fact that they are subject to progressive realisation, i.e. dependent on the available resources of States. Therefore, even in emergencies, States have to do their best to work towards the progressive realisation of these rights and guarantee the minimum content of the core obligations.[58]

The Committee on Economic, Social and Cultural Rights expressly stressed in General Comment No. 12 on the Right to Adequate Food that violations of the right to food:

> "can occur through the direct action of States or other entities insufficiently regulated by States. These include […] the prevention of access to humanitarian food aid in internal conflicts."[59]

While indeed economic, social and cultural rights are subject to progressive realisation, States are under an obligation to ensure "minimum essential levels" of these rights.[60] In this respect, the Committee also stressed the need to seek international assistance to secure available resources for the realisation of the right to food. For a State not to be in breach of Article 11 by failing to ensure "at the very least, the minimum essential level required to be free from hunger" in cases of natural or man-made disasters, it has to

55 UN HRC General comment no. 36, § 26.

56 *Ibid*.

57 ICESCR, Article 11(1).

58 Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, Report on Violations of International Humanitarian and Human Rights Law, War Crimes And Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022), ODIHR. GAL/36/22/Corr.1, 14 July 2022, p. 83.

59 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, E/C.12/1999/5, § 19.

60 UN CESCR General Comment No. 3: The Nature of States Parties Obligations, UN Doc. E/1991/23, 14 December 1990, § 10.

"demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations," including that it has sought to obtain international support.[61]

Moreover, according to the Special Representative of the UN Secretary-General on internally displaced persons, the obligation to allow for third-party provision of humanitarian assistance also stems from other rights, such as the right to an adequate standard of living, health and education.[62]

Against this background, certain obligations concerning the provision of humanitarian assistance, including a duty to seek assistance from the international community, explicitly derive from international human rights law. To fulfil their international obligations towards individuals, States may, therefore, have to resort to international support in cases where their resources are inadequate to meet protection needs.[63] If they fail to do so, they risk breaching their above-mentioned obligations under the ICCPR and ICESCR.

However, these obligations cannot be translated into a general obligation to give unconditional consent to the provision of humanitarian assistance on the territory of the concerned State to protect the right to life of its citizens and realise its progressive obligation under the right to food. As will be explained below, within the international human rights legal framework, the question of States' human rights obligations and possible violations is to be determined against the background of the concrete circumstances of a situation, whereby the question of whether denial of consent to humanitarian assistance is necessary and proportionate to achieving legitimate ends is generally assessed in the context of arbitrariness.

4.3. International Humanitarian Law Regime

The obligation to provide humanitarian assistance to the civilian population in times of armed conflict is one of the central aspects of international humanitarian law. It is acknowledged that under this regime different modalities of humanitarian assistance arise in different contexts: international armed conflict, non-international armed con-

61 UN CESCR General Comment 12, 1999, § 17.

62 "A State is deemed to have violated the right to an adequate standard of living, to health and to education, if authorities knew or should have known about the humanitarian needs but failed to take measures to satisfy, at the very least, the most basic standards imposed by these rights. State obligations thus include the responsibility to follow up on these situations of concern and assess relevant needs in good faith, and ensure that humanitarian needs are being met, by the State itself or through available assistance by national or international humanitarian agencies and organizations, to the fullest extent possible under the circumstances and with the least possible delay." Report of the Representative of the Secretary-General on the human rights of internally displaced persons, UN Doc. A /65/282, 11 August 2010, § 69.

63 Draft articles on the protection of persons in the event of disasters (2016), Commentary to Article 11, § 3.

flict, occupation, and provision of humanitarian assistance on territories controlled by non-state actors.[64] Outlining all modalities of the relevant rules governing the provision of humanitarian assistance in these contexts is beyond the scope of this paper. Rather, this section merely clarifies the role of the consent of the concerned State in the provision of humanitarian assistance, which seems to lie at the centre of the international humanitarian law regime.

At the outset, it has to be explained that under the international humanitarian law regime, two different levels of consent exist:

1. At the strategic level, humanitarian international organisations have to seek the consent of the concerned State to enter the territory or territories in question (the so-called strategic consent); and
2. At the operational level, once this strategic consent has been obtained, the provision of humanitarian assistance is subject to the right of control by the parties to the conflict.[65]

In other words, parties to the conflict are to give operational consent to the provision of specific humanitarian aid in a certain geographic area and may prescribe technical arrangements for the passage of such humanitarian assistance, search for humanitarian aid to verify the humanitarian nature of supplies, prevent convoys from affecting or being affected by military operations and ensure supplies meet health and safety standards.[66] While this section primarily addresses strategic consent, operational consent is analysed in the following section.

In terms of strategic consent under international humanitarian law, parties to the conflict are obliged to allow free passage of humanitarian assistance to those in need.[67] The International Committee of the Red Cross (ICRC) emphasised on numerous occasions the importance of unimpeded access to humanitarian assistance by civilian populations in times of armed conflict, in accordance with the applicable rules of international humanitarian law.[68] According to customary international humanitarian law applicable to international and non-international armed conflicts,

> "[P]arties to the conflict must allow and facilitate unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction subject to their right of control."[69]

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64 Ryngaert, 2013, pp. 6–9.

65 See also Sharpe, 2023.

66 Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, 2016, §§ 65–72.

67 Henckaerts, 2005, Rule 55.

68 International Humanitarian Law Databases, Customary IHL, Rule 55, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55#refFn_E763511D_00020> (accessed 30 April 2023).

69 Henckaerts, 2005, Rule 55.

The provision of humanitarian assistance in international[70] and non-international[71] armed conflicts is also governed by relevant treaty law. The Fourth Geneva Convention obliges States to allow for "the free passage of all consignments of essential foodstuffs,"[72] whereby Additional Protocol I broadens this obligation to the "rapid and unimpeded passage of all relief consignments, equipment and personnel."[73] In times of occupation, the occupying power "shall agree to relief schemes on behalf of the respective population and shall facilitate them by all the means at its disposal."[74] The obligation to allow for and facilitate access to humanitarian relief for civilians in need is also enshrined in national military manuals and is supported by State practice.[75]

The question that often arises in situations of armed conflict is whether there exists an obligation of parties to a conflict to give strategic consent to humanitarian assistance and whether assistance could be provided without such strategic consent. In this respect, relevant rules specifically regulating humanitarian assistance in non-international and international armed conflicts emphasise the central role of the consent of the affected State, whereby the obligation to allow for the free passage of humanitarian assistance is preconditioned by "consent of the High Contracting Party concerned,"[76] or is "subject to the agreement of the Parties concerned in such relief actions."[77] The requirement of consent also clearly stems from Additional Protocol II, which preconditions delivery of humanitarian assistance in non-international armed conflicts with the explicit consent of the parties to the conflict. It has sometimes, therefore, been argued that, in relation to non-signatories of the AP II, delivery of aid in non-international armed conflicts could be non-consensual.[78] However, the requirement of consent can also be implied from other provisions and customary international law, as it is hard to imagine how parties to a con-

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70 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, Articles 23 and 59; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, Articles 69–71.

71 Common Article 3(2) of the Geneva Conventions; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, Article 18.

72 Fourth Geneva Convention, 1949, Article 23.

73 Protocol I, 1977, Article 70(2). See also Protocol II, 1977, Article 18(2).

74 Fourth Geneva Convention, 1949, Article 59. See also Fourth Geneva Convention, 1949, Article 62.

75 International Humanitarian Law Databases, Customary IHL, Rule 55, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55#refFn_E763511D_00020> (accessed 30 April 2023).

76 Protocol II, Article 18(2).

77 Protocol I, Article 70(1).

78 Barber, 2023, p. 2; Sproson & Olabi, 2023, p. 1 ff; see also: American Relief Coalition for Syria, 2022, pp. 25–36.

flict could make use of their right to "control"[79] the provision of humanitarian assistance (operational consent) without previously giving strategic consent to such assistance.[80]

It is (probably) against this background that the ICRC concludes it is considered "self-evident" that a humanitarian organisation cannot "operate (in states) without the strategic consent of the party concerned," both in international and non-international armed conflicts,[81] and that some scholars talk about the "absolute" nature of the requirement of consent.[82] This is not without problems and does not mean that States have no obligations concerning humanitarian assistance, nor that they can arbitrarily withhold consent. As will be explained in the following section, arbitrarily withholding consent to humanitarian assistance typically amounts to a violation of international law. It does, however, confirm that humanitarian organisations generally would not operate in affected States without their consent.

This seems to be endorsed by the UNSC, which in its resolutions often called for unimpeded access to humanitarian assistance in conflict situations,[83] while at the same time also reaffirming the commitment of UN member States to respect the sovereignty, territorial integrity and political independence of the aid-receiving State,[84] and urging all parties in a particular situation to facilitate the delivery of humanitarian assistance in accordance with international humanitarian law.[85] The important role of strategic consent is also implied in relevant resolutions of the UNGA, whereby it called on affected States to facilitate the work of humanitarian organisations,[86] not outlining, however, that they are legally obliged to do so unconditionally.

The question of consent under international humanitarian law is especially pertinent in situations whereby part of the territory of the conflict-affected State is controlled by non-state actors. In such situations, States are especially inclined, for military reasons, to deny humanitarian assistance in these areas, as was, for example, the case in Syria.[87]

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79 Henckaerts, 2005, Rule 55.

80 Similar conclusion is reached in the Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, 2016, § 30.

81 Henckaerts & Doswald-Beck, 2005, Commentary to Rule 55, pp. 195–200. See also Report of the Secretary-General on the protection of civilians in armed conflict, UN Doc. S /2013/689, 22 November 2013, § 58.

82 Akande & Gillard, 2016, p. 489.

83 See, e.g., UNSC Resolution 853, 29 July 1993, UN Doc. S/RES/853 (1993). For more relevant UNSC resolutions see International Humanitarian Law Databases, Customary IHL, Rule 55, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55#refFn_E763511D_00020> (accessed 30 April 2023).

84 See, e.g., UNSC Resolution 688, 5 April 1991, UN Doc. S/RES/688, § 3.

85 UNSC Resolution 2216 (2015), UN Doc. S/RES/2216 (2015), 14 April 2015.

86 UNGA Resolution 46/182, 19 December 1991, UN Doc. 46/182, Annex, Guiding Principles, § 6.

87 See below, section 5.3.

Views on such situations are diverse. Some scholars contend that the host State in such situations is not concerned with humanitarian relief operations provided in opposition areas, especially when a non-state actor controls part of the territory of a State and takes over governance functions.[88] The prevailing view, however, seems to be that the strategic consent "of the High Contracting Party concerned"[89] as framed in Protocol II refers to the State party to the conflict.[90] Deriving from the principle of sovereignty over a State's territory, it is, therefore, the prerogative of a State to give consent, even on territories that it does not fully control. Although this is highly controversial in situations where the civilian population suffers from the lack of necessities, in practice, humanitarian organisations will typically require the consent of the concerned State to provide humanitarian assistance on territories controlled by non-state actors.[91]

Based on the foregoing, the notion of strategic consent seems to be at the heart of the international humanitarian law regime governing humanitarian assistance in times of armed conflicts. However, as will be explained below, at the operational level, parties to the conflict may, for valid reasons (e.g., military necessity), deny operational consent to the provision of humanitarian assistance in a particular situation.[92]

It has been explained in this section that the notion of consent lies at the heart of the humanitarian assistance regimes. As a 'hallmark' of these regimes, lack of consent is often the major practical limitation to humanitarian relief operations.[93] However, as is well known, the principle of sovereignty, from which the notion of consent derives, cannot be perceived as unlimited.[94] In the context of humanitarian assistance, this translates into the prohibition of arbitrarily withholding consent. In the following two sections, this paper will distinguish between occasions of legally justified withholding of operational consent on the one hand and the prohibition of arbitrarily withholding strategic consent to humanitarian assistance on the other. While States, as parties to the conflict, may rely on military necessity to withhold operational consent to humanitarian assistance, it will be explained that this is not possible at the strategic level. The final section will explain that while arbitrarily withholding consent at the strategic level typically amounts to a violation of international law, such withholding of consent cannot be considered a legal justification for a *per se* argument on the legality of non-consensual humanitarian assistance. Rather, the underlying violation (arbitrarily withholding consent) triggers the

88 Bothe, 1982, p. 696; Barber, 2009, pp. 384–385.

89 Protocol II, Article 18(2).

90 See, e.g., Akande in Gillard, 2016, p. 17; Gal, 2017, p. 45.

91 This question was especially pertinent in the context of Syria. See Landgren *et al.*, 2023.

92 Similarly, Ryngaert, 2013, pp. 6–9.

93 Ryngaert, 2013, p. 9.

94 Discussions on "sovereignty as responsibility" or "relative sovereignty" were especially brought forward in the context of the principle of the Responsibility to Protect. See Sancin, 2010, pp. 33–49.

application of relevant secondary rules of international law, under which non-consensual provision of humanitarian assistance could be justified.

5. Withholding of the Operational and Strategic Consent to Humanitarian Assistance

When analysing the possible withholding of consent to humanitarian assistance, one has to distinguish between the following two situations:

1. Withholding of operational consent under international humanitarian law, whereby parties to a conflict may have valid legal reasons for withholding consent because humanitarian assistance, for example, does not comply with their technical modalities of humanitarian assistance (which is embedded in most relevant primary rules on humanitarian assistance) or due to military necessity; and
2. The possible arbitrary withholding of strategic consent, which is prohibited under the analysed humanitarian assistance regimes.

5.1. Withholding of Operational Consent

It is generally acknowledged that States and parties to conflicts may withhold their operational consent to humanitarian assistance under certain circumstances. In this respect, consent to humanitarian assistance may be lawfully withheld in cases where humanitarian assistance is not aligned with the prescribed technical modalities established by the aid-receiving State. Consent may also be withheld for imperative reasons of security if, for example, foreign relief personnel could hamper military operations in the concerned State,[95] as well as on occasion of non-compliance with the principles of humanity, neutrality, impartiality,[96] and non-discrimination by the external aid provider.

For example, under international humanitarian law, parties to the conflict may exercise control over the relief action.[97] In this respect, the aid-receiving State generally has the right to "prescribe the technical arrangements" of the humanitarian assistance and may make its permission "conditional on the distribution of this assistance being made under the local supervision."[98] Moreover, those providing humanitarian relief must not "exceed the terms of their mission" and "shall take account of the security requirements of the Party in whose territory they are carrying out their duties."[99]

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95 Akande & Gillard, 2016, p. 499.

96 Stoffels, 2004, pp. 539–544.

97 See, e.g., Fourth Geneva Convention, 1949, Article 23; Protocol I, Article 70(3); Henckaerts, 2005, Rule 55.

98 Fourth Geneva Convention, Article 23; Protocol I, Article 70(3).

99 Protocol I, Article 71(4).

Similarly, the ILC explicitly recognised in its work on the protection of persons in the event of disasters that "the affected State may place conditions on the provision of external assistance."[100] This is also confirmed in practice, whereby international organisations providing humanitarian assistance to affected States typically sign a specific agreement and negotiate these technical modalities of humanitarian assistance before they engage with a concerned State. In this sense, they also secure the advance consent of the concerned State.[101]

Determining the modalities of the provision of humanitarian assistance—i.e. whether it will include the use of AI—could arguably fall under this 'technical' category of valid legal reasons to deny humanitarian assistance. In situations where humanitarian assistance is rejected due to its AI component, as was the case in Yemen, the question of alternative means to provide humanitarian assistance arises. For example, could a UN agency assist without relying on AI technology? Arguably, denying the use of AI on the territory of a State cannot be seen as breaching rules on humanitarian assistance in instances where adequate alternative solutions exist.

In this respect, the possibility of denying humanitarian assistance due to technical modalities, such as the use of AI, seems to be embedded in the primary rules governing humanitarian assistance and cannot be seen as a violation of these rules. It has to be acknowledged, however, that technical arrangements have to be applied in good faith, whereby their imposition or effect must not be arbitrary.[102] According to the ICRC, military necessity can only "be invoked in exceptional circumstances in order to regulate —but not prohibit— humanitarian access, and can only temporarily and geographically restrict the freedom of movement of humanitarian personnel."[103] Unjustified withholding of operational consent would amount to a violation of relevant rules of international humanitarian law. However, as will be explained below, in instances where such denial would be all-encompassing and unjustified and would amount to serious violations of the State's other international obligations relating to the civilian population, and where the use of AI would be the only way to distribute such assistance or would be proportionally the most appropriate and efficient way to distribute the assistance, one could discuss the issue of the arbitrary withholding of consent and the subsequent responsibility of the concerned State.

5.2. Arbitrary Withholding of Strategic Consent

Withdrawal of operational consent due to technical modalities of humanitarian assistance has to be distinguished from the arbitrary withholding of strategic consent to

[100] Draft articles on the protection of persons in the event of disasters, 2016, draft Article 14.

[101] See, e.g., Article XI (Assistance agreements), General Regulations and General Rules, WFP (2022) <https://executiveboard.wfp.org/document_download/WFP-0000141150> (accessed 20 April 2023).

[102] Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, 2016, § 71.

[103] ICRC, 2014, p. 364.

humanitarian assistance. While the first is a right of States deriving from primary rules governing humanitarian assistance, strategic consent is a precondition for the delivery of humanitarian aid in the first place, and its arbitrary withholding is generally prohibited by these same primary rules.[104] It seems to be generally accepted that strategic consent to humanitarian assistance cannot be arbitrarily withheld.[105]

The modalities of arbitrariness are, however, not generally defined under international law. Arbitrariness is, therefore, typically dependent on the circumstances of a concrete situation. Some guidance as to arbitrariness can be found under international human rights law, whereby the question of whether withholding of consent is necessary and proportionate to achieving legitimate ends is crucial.[106] In this respect, arbitrariness has been understood as refusing consent in a manner that is "unjustified" and not "in pursuit of [a] legitimate aim"[107]; "unreasonable, unjust, lacking in predictability or […] otherwise inappropriate"[108] or not pursued for "reasons that are valid and compelling."[109] It is often argued that conduct which would violate other obligations of a State under international law should be regarded as arbitrary.[110] According to Sivakumaran, refusal is arbitrary if it

> "results in the violation by a state of its obligations under international law concerning the civilian population in question (such as its human rights obligations), or if it violates the principle of necessity and proportionality, or if it discriminates against a particular group."[111]

In this sense, there seems to be agreement among scholars and institutions that if the withholding of consent results in mass atrocities, such as war crimes or crimes against humanity, it could arguably be considered arbitrary.[112] In this respect, under international humanitarian law, a denial of humanitarian assistance to cause, contribute, or perpetuate starvation would amount to a violation of the prohibition of starvation of the civilian pop-

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104 International Humanitarian Law Databases, Customary IHL, Rule 55, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55#refFn_E763511D_00020> (accessed 30 April 2023); Draft articles on the protection of persons in the event of disasters, 2016, draft Article 13; Institute of International Law, Santiago de Compostela Resolution, 1989, Article 5; see also IIL Resolution, 2003.

105 Report of the Secretary-General on the protection of civilians in armed conflict, UN Doc. S /2013/689, 22 November 2013, § 58; Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, 2016, section E; Akande and Gillard, 2016, pp. 489 ff; Henckaerts & Doswald-Beck, 2005, p. 197; IIL Resolution, 2003, § VIII; Draft articles on the protection of persons in the event of disasters, 2016, draft Article 13(2).

106 See also Akande & Gillard, 2016, pp. 498–499 and 505–507.

107 Sivakumaran, 2015, pp. 517–521.

108 Akande & Gillard, 2016, p. 22.

109 Gillard, 2013, p. 360.

110 Akande & Gilliard, 2016, pp. 494–495.

111 Sivakumaran, 2015, p. 521.

112 Rottensteiner, 1999, pp. 555–581; IIL Resolution, 2003, § VIII.

ulation as a method of warfare[113] and may also amount to a war crime under international criminal law.[114] Moreover, "intentional inflictions of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population" may amount to extermination as a crime against humanity.[115] Similarly, systematic rejection of humanitarian assistance in areas populated by a particular ethnic group would amount to a violation of the rule prohibiting adverse distinction under international humanitarian law[116] and the prohibition of discrimination under international human rights law,[117] and could possibly amount to a crime against humanity.[118]

The question of the withholding of consent to humanitarian assistance has been extensively addressed outside the AI context, especially in cases where it resulted in gross violations of international humanitarian law and international human rights law. This was the case in Ethiopia, where the Mengistu regime banned the movement of relief supplies during the famine that emerged in 1989[119] and more recently, in the case of Syria's denial of consent to international humanitarian aid on the territories controlled by non-state actors.[120] In these situations, it has been argued that arbitrary denial of humanitarian assistance violates the aforementioned rules of international humanitarian law and international human rights law governing humanitarian assistance.[121] In the past, the Human Rights Committee has considered arbitrary denial of humanitarian assistance as violating international human rights obligations of States, including the right to life.[122]

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113 Protocol I, Article 54(1); Protocol II, Article 14; Akande & Gilliard, 2016, pp. 495–496.

114 Rome Statute of the International Criminal Court, UNTS 2187, 17 July 1998, EIF 1 July 2002, p. 3 (Rome Statute), Article 8(2)(b)(xxv).

115 Rome Statute, Articles 7(1)(b) and 7(2)(b); ILC Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, YILC 2019, vol. II, Part Two, p. 28. See also national criminal legislations, e.g., Criminal Code of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 50/12 – official consolidated version, 6/16 – corr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP and 16/23, Article 101.

116 Common Article 3 of the Geneva Conventions. See also Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135, Article 16; Fourth Geneva Convention, Article 13; Protocol I, Article 75(1); Protocol II, Article 4(2).

117 See, e.g., ICCPR, Article 26; Akande & Gilliard, 2016, p. 497.

118 Rome Statute, Article 7(1)(h).

119 International Humanitarian Law Databases, Customary IHL, Rule 55, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55#refFn_E763511D_00020> (accessed 30 April 2023).

120 Ryngaert, 2013, pp. 5–19. See below, section 5.3.

121 UNSC, Statement by the President of the Security Council, UN Doc. S/PRST/2013/15, 2 October 2013. See also UNSC Resolution 2216 (2015), UN Doc. S/RES/2216 (2015), 14 April 2015; UNGA Resolution 68/182, UN Doc. A/RES/68/182, 30 January 2014, § 14.

122 See, e.g., Human Rights Committee, Concluding observations on the fourth periodic report of the Sudan, UN Doc. CCPR/C/SDN/CO/4, 19 August 2014, § 8.

As already explained, conditioning consent to humanitarian assistance with certain technical reasons, i.e. the non-use of a particular AI system, seems to be supported by the relevant primary rules of international law governing humanitarian assistance. However, when such denial would amount to serious violations of the State's other international obligations relating to the civilian population, and where the use of AI would be the only way to distribute such assistance or would be proportionally the most appropriate and efficient way to distribute the assistance, the issue of the arbitrariness of such withholding of consent comes to the forefront. The assessment of arbitrariness has to be made on a case-by-case basis, taking into consideration the above-mentioned elements and is fraught with difficulty in the decentralised international legal reality. While on these occasions the arbitrariness of the withholding of consent seems self-evident, stemming from the gravity of the underlying breach, this is not always the case. Under international human rights law, there may be a need for a more nuanced balance between the provision of humanitarian assistance and the realisation of the right to life and the right to food on the one hand and, for example, the right to privacy, which the use of AI on the territory of the State concerned may undermine, on the other. It is beyond the scope of this paper to provide a detailed overview of the cases and arguments relating to the arbitrary withdrawal of consent. For our discussion, it is important to determine what legal consequences stem from the arbitrary withdrawal of consent to humanitarian assistance: does it result in the *per se* legality of non-consensual humanitarian aid, or does it trigger justification of non-consensual provision of humanitarian aid under the secondary rules of international law? This is important because it essentially determines the legal analysis and course of action to be undertaken in such situations by international organisations.

5.3. Legal Consequences of Arbitrary Withholding the Strategic Consent

Some argue that in instances of arbitrary withholding of consent, the provision of non-consensual humanitarian assistance is to be considered as *per se* lawful.[123] These scholars seem to make the argument that there exists, at the level of the primary rules governing humanitarian assistance, a customary international legal rule allowing for the non-consensual provision of humanitarian relief in such cases. This view became particularly vocal in the case of Syria, whereby, despite the deterioration of the humanitarian situation due to an ongoing conflict in the country, the Syrian government refused to give consent to "cross-border" operations, to reach more than three million people who were located in remote areas. Already in 2014, a coalition of international lawyers made a statement arguing that "there is no legal barrier to the UN directly undertaking

[123] Barber, 2023, p. 1; Barber, 2009, pp. 371–397; Stoffels, 2004, p. 536; American Relief Coalition for Syria, 2022, pp. 25 ff.

cross-border humanitarian operations"[124] to opposition-controlled areas because they meet all conditions for legality, neutrality, impartiality, and non-discrimination, and due to the prior arbitrary withholding of consent by Syria causing a serious humanitarian situation in the country.[125]

This view was reinstated in 2023, after a devastating earthquake in southern Turkey, which seriously affected thousands of people in northwest Syria, destroying the border crossing between the countries, Babal-Hawa, the only crossing the UN Security Council (UNSC) has authorised for humanitarian assistance to the opposition-held territory in Syria. This caused significant delays in international aid deliveries. Some scholars[126] and a group of eminent academics and professionals adopted the statement "There is Still No Legal Barrier to UN Cross-Border Operations in Syria Without a UN Security Council Mandate,"[127] in which they argue, among other things, that refusal to permit cross-border aid in this situation is unlawful as it is arbitrary and necessitates continuous cross-border provision of aid to prevent possible distress, strife, and starvation.[128]

Without a doubt, in such situations, where the lives of millions of people who rely on cross-border aid are put at risk, allowing the non-consensual delivery of (possibly AI-supported) humanitarian aid seems reasonable and humane. However, it is argued here that legal analysis in these cases should nevertheless be nuanced. Rather than arguing that non-consensual humanitarian assistance is *per se* lawful in such situations, one should carefully analyse and apply relevant primary and secondary rules of international law accordingly. In particular, the question that has to be addressed in such situations is whether a non-consensual, "clandestine", AI-supported humanitarian assistance operation would be in line with the principles of sovereignty and territorial integrity and the principle of the prohibition of intervention in the internal affairs of a State. And subsequently, whether a violation of these primary rules could be justified under international law on the basis of the secondary rules of international law, such as countermeasures.

6. Non-Consensual AI-Supported Humanitarian Aid and the Principles of Non-Intervention and Sovereignty

The provision of non-consensual humanitarian assistance is in fundamental tension with two fundamental principles of international law: the principle of sovereignty and its corollary, the principle of non-intervention. This conclusion is embedded in the primary

[124] The Guardian, 2014.

[125] *Ibid*.

[126] Barber, 2023, p. 1.

[127] There is Still No Legal Barrier to UN Cross-Border Operations in Syria Without a UN Security Council Mandat, 2023.

[128] *Ibid*. See also Barber, 2023; Sproson & Olabi, 2023.

rules governing humanitarian assistance, which, as explained above, are preconditioned on the consent of the concerned State.[129]

Discussions on the provision of humanitarian aid are generally centred on the principle of non-intervention as interpreted by the International Court of Justice (ICJ) in the *Nicaragua* case. This principle, often labelled as controversial,[130] is commonly perceived as consisting of two elements: (1) the act in question relates to the internal or external affairs of the targeted State, and (2) the act is coercive in nature.[131] In the *Nicaragua* case, the Court analysed these two elements when discussing the support of the US to the Contras in the form of financial support, training, supply of weapons, intelligence, and logistic support. The ICJ considered this support a clear breach of the principle of non-intervention due to its purpose, i.e. coercing Nicaragua and supporting the Contras to overthrow the government. In contrast, however, the Court stressed that the provision of humanitarian assistance cannot be considered as violating the principle of non-intervention:

> "The Court has however taken note that, with effect from the beginning of the United States governmental financial year 1985, namely 1 October 1984, the United States Congress has restricted the use of the funds appropriated for assistance to the contras to 'humanitarian assistance' (paragraph 97 above). There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law."[132]

The ICJ further stressed that there cannot be an intervention in internal affairs in cases where humanitarian assistance is limited to preventing and alleviating human suffering, protecting life and health, and ensuring respect for human beings, whereby it must be given without discrimination.[133] This passage is commonly cited as confirming that the provision of humanitarian assistance cannot be considered as violating the principle of non-intervention.[134] However, it is argued here, that the ICJ's statement necessitates a more nuanced analysis.

The question that this passage raises is whether the ICJ was referring to the provision of humanitarian assistance without crossing the border of the concerned State (Nicaragua) or to humanitarian assistance, including direct engagement with relief operations inside the country. Given the context in which the Court reached its conclusions—where it had previously found that US aid and support to the Contras (without crossing the border) was contrary to the principle of non-intervention due to the purposes of such aid, i.e.

[129] Gillard, 2013, p. 369; Stoffels, 2004, p. 535.

[130] Jamnejad & Wood, 2009, p. 346.

[131] Schmitt (ed.), 2017, p. 314.

[132] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Judgment (1986), ICJ Rep. 14, § 242 (*Nicaragua* case).

[133] *Ibid.*, § 243.

[134] Barber, 2020, pp. 9–10.

coercing Nicaragua in respect of matters in which each State is permitted by the principle of state sovereignty to decide freely, and the purpose of Contras to overthrow the government of Nicaragua—one could deduce that the Court was referring to humanitarian assistance without crossing the border. Thus, at the centre of the decision was not the issue of consent and physical intrusion into the territory, but rather the purpose and nature of the aid provided by the US,[135] without crossing the border.

An essential element of the principle of non-intervention is coercion, whereby a "prohibited intervention must constitute an attempt to coerce the targeted State by directly or indirectly interfering in the internal or external affairs of this State."[136] In this respect, the element of 'coercion' in the principle of non-intervention has two facets: (1) coercion in a physical, direct, sense, e.g. with the use of force, and (2) non-physical, indirect sense, as was the case with, e.g., the provision of financial support.[137]

In cases of non-consensual humanitarian assistance, neither of these elements will typically be met, as the mere provision of impartial humanitarian assistance does not by itself constitute a coercive act aimed at affecting the freedom of decision of the targeted State.[138] The *Nicaragua* decision, which asserts that humanitarian aid does not violate the principle of non-intervention because it does not seek to coerce the free will of the State concerned, must, therefore, be read in this context.

Against this background, one could hardly conclude that the cited passage of the ICJ could be understood as permitting the cross-border provision of humanitarian relief inside the affected State without the consent of the concerned State under international law.[139] Indeed, an offer of humanitarian assistance cannot be considered a violation of the principle of non-intervention, as it does not fulfil the "coerciveness" criterion. However, for it to be physically provided on the territory of a concerned State, that State's consent is necessary. This is because such physical non-consensual provision of humanitarian assistance would breach another principle of international law: the principle of sovereignty.

Non-consensual, "mere" physical intrusion into the territory of another State, without a coercive element and the aim of affecting the internal or external affairs of the concerned State, is typically analysed in the context of the principle of sovereignty, which is a separate principle, albeit intrinsically related to the principle of non-intervention.[140] According to this central[141] principle of international law, States have supreme authority over their land, territory and appurtenances (e.g., internal waters, territorial seas,

[135] *Nicaragua* case, 1986, §§ 239–244.

[136] Delerue, 2020, p. 235.

[137] *Nicaragua* case, 1986, § 205.

[138] Similarly Delerue in relation to cyber espionage and the principle of non-intervention. Delerue, 2020, p. 258.

[139] For a similar conclusion, see: Gillard, 2013, p. 370; Sproson & Olabi, 2023.

[140] *Nicaragua* case, 1986, § 202.

[141] *Ibid.*, § 263.

archipelagic waters, airspace, and subsoil).[142] It is in the context of this principle that clandestine, non-consensual operations, while being physically present in the territory of a foreign State, are typically discussed.[143] This can also be buttressed by the fact that in the *Nicaragua* case, violations of sovereignty by way of physical intrusion—e.g. by unauthorised overflights of Nicaragua's territory by aircraft belonging to or under the control of the government of another State (the US)—were addressed separately from the principle of non-intervention.[144]

In a similar way conducting espionage by State agents on the territory of another State violates the principle of sovereignty[145] (and on some occasions, if the criteria are fulfilled, also the principle of non-intervention[146]), the non-consensual provision of AI-supported humanitarian assistance in the territory of the concerned State also amounts to a violation of the principle of sovereignty. According to Buchan, any "non-consensual incursion by one State into the territory of another State violates the rule of territorial sovereignty, regardless of whether that infraction produces damage."[147] Similarly, Deleure concludes that "an unauthorised act by a State on the territory of the targeted State violates the territorial sovereignty of the latter"[148] and that damage need not occur.[149] Therefore, unauthorised physical intrusions, even of a neutral and humanitarian nature, violate the principle of sovereignty. It also has to be acknowledged, however, that whether the provision of humanitarian aid in a concrete case violates the principle of sovereignty and non-intervention must be assessed on a case-by-case basis.[150]

Finally, it has to be acknowledged that the non-consensual provision of humanitarian assistance with the use of AI also triggers another facet of the principles of non-intervention and sovereignty: the question of possible unauthorised, clandestine gathering of large amounts of data on the territory of a concerned State through AI systems. In the past, such clandestine activities were considered to amount to a violation of the principle of sovereignty and non-intervention by States and courts. For example, in 2008, the Federal Court of Canada published its response to a request from the Canadian Security Intelligence Service (CSIS) to approve a warrant under Section 12 of the Canadian Security Intelligence Service Act 1984 to conduct surveillance against individuals locat-

142 *Ibid.*, § 212; Delerue, 2020, p. 200.

143 Jennings & Watts, 2008, pp. 385–386.

144 See *Nicaragua* case, 1986, §§ 251 ff.

145 Delerue, 2020, p. 212.

146 Wright, 1962.

147 Buchan, 2021, p. 51.

148 Delerue, 2020, p. 212.

149 *Ibid.*, pp. 213 and 215–219.

150 It has been argued, for example, with respect to the situation in Syria that UN agencies are not providing cross-border aid. Sproson & Olabi, 2023, p. 4.

ed within the territory of other States. Under Canadian law, the Court could only issue the warrant if the activities being authorised were compliant with international law. In refusing to grant the warrant, the Court observed that:

> "The intrusive activities […] are activities that clearly impinge upon the above--stated principles of territorial sovereign equality and non-intervention […] By authorizing such activities, the warrant would therefore be authorizing activities that are inconsistent with and likely to breach the binding customary principles of territorial sovereign equality and non-intervention, by the comity of nations. These prohibitive rules of customary international law […] have evolved to protect the sovereignty of nation states against interference from other states."[151]

In the context of cyber espionage, other States like Argentina, Bolivia, Brazil, Uruguay, and Venezuela condemned the clandestine activities of the US as unacceptable behaviour that violates their sovereignty. Against this background, scholars have concluded that "pulling" data without the consent of a concerned State is contrary to international law, in particular the principle of sovereignty.[152]

To conclude, the non-consensual provision of humanitarian assistance is potentially in violation of two fundamental principles of international law: the principle of sovereignty and the principle of non-intervention. However, as will be explained in the last part of this paper, the consent of the concerned State could be substituted by a UNSC authorisation under Chapter VII of the UN Charter or justified under the secondary rules of international law, countermeasures in particular.

7. Possible Legal Justifications for the Non-consensual Provision of Humanitarian Aid Under International Law

Indeed, while the arbitrary withholding of consent could be considered as violating the rules governing humanitarian assistance, in particular international humanitarian law and international human rights law, this unlawfulness itself, does not justify the non-consensual delivery of humanitarian assistance at the level of the primary rules due to its tensions with fundamental international legal principles. Rather, recourse to the UNSC or to secondary rules of international law is necessary to justify non-consensual humanitarian assistance in cases of withholding of consent.

7.1. The Authorisation of the UNSC

In situations where humanitarian assistance is being arbitrarily withheld, deliberately denied or obstructed, and where such denial may constitute a threat to international

[151] Federal Court, Canadian security intelligence service act (re) (f.c.), SCRS-10-07, 2008 CF 301.

[152] Buchan, 2021, pp. 54–55.

peace and security, the UNSC may adopt appropriate measures under Chapter VII of the UN Charter[153] to remedy the situation. The role of the UNSC in substituting the consent of the State for the provision of humanitarian assistance has been extensively analysed in the context of the situation in Syria, whereby the Syrian government denied humanitarian access to civilians in opposition-controlled areas. In response to this, the UNSC first demanded the Syrian authorities to allow the delivery of humanitarian assistance.[154] Failing to do so, and due to the deterioration of the humanitarian situation in Syria, whereby the number of people in need of assistance exceeded 10 million, and disturbed by the "continued, arbitrary and unjustified withholding of consent to relief operations," the UNSC with resolution 2165 (2014),[155] authorised UN agencies to provide humanitarian assistance in Syria through four designated international border crossings without the consent of the Syrian government.[156] This resolution was continuously renewed until 2019, whereas in 2020, due to the veto of Russia and China, which were concerned over the sovereignty of Syria,[157] the authorisation for the cross-border humanitarian operation was reduced to only include one international border crossing (Turkey).[158] This authorisation was considered necessary since the Syrian government restricted the delivery of humanitarian assistance to the areas not under its control.[159]

The UNSC authorisation to substitute the consent of a concerned State is a reasonable solution in cases of arbitrary withholding of consent by a concerned State. However, in cases where the modalities and technical details for the provision of humanitarian assistance are in question and the primary reason for denying AI-supported humanitarian assistance, it seems less likely that the UNSC would intervene. Only in a situation where there is no appropriate technical alternative to the use of AI, and the consequences of refusing to allow the use of AI when distributing humanitarian assistance cause significant damage to the civilian population in need—amounting, for example, to starvation—would the adoption of a UNSC resolution be reasonable. Rather, the issue of technical modalities should be negotiated among concerned parties, i.e. the humanitarian organisation and the State. It is only reasonable that the humanitarian organisation tries to comply with the technical requirements proposed by the host State to distribute assistance to those in need.

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153 UNSC Resolution 1265, 17 September 1999, UN Doc. S/RES/1265; IIL Resolution 2003, § VII(3).

154 UNSC Resolution 2139, 22 February 2014, UN Doc. S/RES/2139, 2014. See also Presidential Statement of 2 October 2013, UN Doc. S/PRST/2013/15.

155 UNSC Resolution 2165, 14 July 2014, UN Doc. S/RES/2165, 2014.

156 UNSC Resolution 2165, § 2.

157 UNSC SC/14066, 20 December 2019, UN Doc. SC/14066.

158 See UNSC Resolution 2504, 10 January 2020, UN Doc. S/RES/2504; UNSC Resolution 2533,13 July 2020, UN Doc. S/RES/2533.

159 Barber, 2020, p. 1

7.2. Necessity

Under secondary rules of international law, the most commonly proposed legal justifications for the provision of non-consensual humanitarian assistance are necessity and countermeasures, as one of the circumstances precluding wrongfulness of conduct that would otherwise not conform with the international obligations of the concerned humanitarian organisation. In other words, because the non-consensual provision of humanitarian assistance arguably violates the principle of sovereignty, this last part of the paper addresses the question of whether international humanitarian organisations could justify such a breach by relying on necessity or countermeasures as circumstances precluding wrongfulness.

According to Article 25 ARIO, an international organisation may invoke necessity as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that organisation, where that act is

> "the only means for the organization to safeguard against a grave and imminent peril an essential interest of its member States or the international community as a whole, when the organization has, in accordance with international law, the function to protect that interest."[160]

Additionally, to be able to rely on necessity, an international organisation must not seriously impair an essential interest of the concerned State.

The idea of the ILC, when introducing this circumstance, was that it would be used in exceptional and limited cases, under narrowly defined conditions[161], where an irreconcilable conflict between an essential interest on the one hand and the obligation of the concerned State or international organisation invoking necessity on the other exists.[162] The ILC, however, explicitly stated in the commentaries that (forcible) humanitarian intervention cannot be justified on necessity as a circumstance precluding wrongfulness.[163] What is more, the ILC concluded that the plea of necessity should not be invocable by international organisations as widely as by States and thereby limited the possibility of international organisations to rely on the necessity to instances where the essential interest of its member States or the international community as a whole is at stake, and the organisation has, in accordance with international law, the function to protect that interest.[164] Against this background, three conditions have to be met for an international organization to invoke necessity:

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[160] Articles on Responsibility of International Organizations (ARIO), YILC 2011, vol. II, Part Two, Article 25(1)(a).

[161] Commentary to Article 25 ARIO, § 1.

[162] Commentary to Article 25, Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), YILC, 2001, vol. II (Part Two), p. 80, §§ 1–2.

[163] Commentary to Article 25 ARSIWA, § 21.

[164] Commentary to Article 25 ARIO, p. 52, § 4.

1. Grave and imminent peril to an essential interest of its member States or the international community as a whole;
2. A concerned international organisation has the function to protect that interest;
3. The course of action, i.e. non-consensual humanitarian assistance, is the only available way to safeguard that interest.

There is, however, very little practice whereby international organisations would rely on the notion of necessity to justify their actions.[165]

Regarding the first criterion, a situation whereby denial of humanitarian assistance leads to suffering and grave violations of the rights of the civilian population, possibly amounting to war crimes or crimes against humanity, could be considered as *erga omnes* obligations, and thus in the essential interest of the international community as a whole.[166] Regarding the second condition, UN agencies generally are mandated with the provision of humanitarian assistance and have the function to protect the concerned essential interest (helping the civilian population in need, preventing humanitarian catastrophes[167]). While necessity has been considered by scholars as a possible legal basis for the provision of non-consensual humanitarian assistance,[168] its application to AI-supported humanitarian assistance is questionable. In particular, it is the third condition that is problematic in our context, as typically, an alternative to AI-supported humanitarian assistance should be available to international organisations. If there are other (non-AI) means by which humanitarian assistance could be delivered, even if they are more costly or less convenient, this condition will not be met.[169]

7.3. Countermeasures

Whether non-consensual humanitarian relief operations can be characterised as countermeasures has already been considered (albeit briefly) by other scholars.[170] Countermeasures are one of the circumstances precluding wrongfulness, allowing for the response to a previous breach of international law with the adoption of measures that would otherwise them-

[165] Commentary to Article 25 ARIO, p. 51, § 2.

[166] For discussions whether ensuring safety of civilian population and severe suffering of civilian population amounts to the essential interest, see: Commentary to Article 25 ARSIWA, p. 83; Barber, 2023, p. 3; Gillard, 2013, p. 373; Ryngaert, 2013, p. 15.

[167] See, e.g., Article II (The purposes and functions of WFP), General Regulations and General Rules, WFP, 2022, <https://executiveboard.wfp.org/document_download/WFP-0000141150> (accessed 20 April 2023).

[168] Barber, 2023, p. 3; American Relief Coalition for Syria, 2022, pp. 37–43.

[169] Commentary to Article 25 ARSIWA, p. 83, § 15.

[170] See, e.g, Akande & Gillard, 2016, pp. 54–55; Ryngaert, 2013, p. 15; Stoffels, 2004, p. 537.

selves be contrary to international law.[171] Countermeasures aim to ensure the cessation of the alleged breach and, where appropriate, ensure reparation for injury.[172] They are thus of temporary or provisional character, aiming at the restoration of legality. If the responsible subject complies with its obligations of cessation and reparation, the countermeasures are to be discontinued, and the performance of the obligation resumed.[173]

Countermeasures may be adopted by international organisations to protect their individual interest when they are injured by the previous internationally wrongful act,[174] or to safeguard a general interest of a sort.[175] It is the latter, more controversial type of countermeasures that could be relevant for our discussion. In brief, the idea of the so-called third-party countermeasures is that it gives States and international organisations the entitlement to invoke responsibility and adopt countermeasures in instances where they are not directly injured by a prior breach of international law, that is, in response to *erga omnes (partes)* obligations. Due to their fundamental character these obligations are "the concern of all States", because "all States can be held to have a legal interest in their protection";[176] they are owed to the international community as a whole. The question of the legality of the adoption of countermeasures in response to violations of *erga omnes* obligations as codified by the ILC, has received a lot of attention among scholars.[177] It is not the purpose of the present research to further explore extensive debates on the legality of the adoption of countermeasures in response to violations of *erga omnes* obligations. It is important to note that from 2001 onwards acceptance of the legality of such measures, also against the background of increased practice, is becoming firmly established amongst international lawyers[178] and other important professional organisations on international law.[179] It is, therefore, premised here, that such an entitlement exists in international law.

In cases of withholding of consent to humanitarian assistance, it is the civilian population that suffers and is, therefore, directly affected by the activities of their host State. While the civilian population as such has limited options if invoking the responsibility of

[171] Article 22 and Part three, Chapter II ARSIWA; Article 22 and Part four, Chapter II ARIO. *Naulilaa Incident Arbitration (Portugal v. Germany)*, 31 July 1928, RIAA, vol. 2 (UN publications 1949), p. 1012; *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment (1997) ICJ Rep. 7, pp. 55–56; *Air Services Agreement of 27 March 1946 between the United States of America and France*, 9 December 1978.

[172] Articles 22 and 49 ARSIWA; Articles 22 and 51 ARIO.

[173] Commentary to Article 49, ARSIWA, pp. 130–131, § 7.

[174] Article 22 ARIO (and Article 22 ARSIWA). 42. ARSIWA and Article 43. ARIO.

[175] Article 48 and 54 ARSIWA and Article 49 and 57 ARIO.

[176] *Barcelona Traction, Light and Power Company, Limited, (Belgium v. Spain)*, Judgment (1970) ICJ Rep. 3, §§ 33–34.

[177] Frowein, 1987; Alland, 2002; Tams, 2005, pp. 198–251; Gaja, 2011; Dawidowicz, 2017.

[178] See T. Veber, 2022, p. 311, footnote 2375.

[179] IIL, Resolution on Obligations *erga omnes* in international law, Krakow, 2005.

this State, in cases where denial of humanitarian assistance amounts to a violation of an *erga omnes* obligation, e.g. crime against humanity, genocide or war crime, it is the other actors of the international community that have the entitlement to react on such occasions through the adoption of countermeasures in the form of non-consensual delivery of humanitarian assistance. As already explained, non-consensual humanitarian assistance generally amounts to a violation of the sovereignty of the concerned State. However, in situations where denial of AI-supported humanitarian assistance leads to a violation of an *erga omnes* obligation, States and international organisations are entitled to provide non-consensual humanitarian assistance through the adoption of countermeasures.[180]

8. Concluding Remarks

Careful analysis of relevant regimes governing humanitarian assistance reveals that the consent of the concerned State continues to have a central role in the general humanitarian assistance regime, the international human rights regime and the international humanitarian law regime. The notion of consent lies at the heart of these rules, and subsequently the lack of consent is often the major practical limitation to humanitarian relief operations. This paper distinguished between two different types of consent to AI-supported humanitarian assistance: strategic consent and operational consent. The former refers to the general consent of a State to the delivery of humanitarian assistance on its territory, while the latter refers to the consent required at the operational level for the delivery of a particular type of humanitarian assistance in a specific geographically defined area. States can have valid legal reasons for withholding the operational consent, including because humanitarian assistance, for example, does not comply with their technical modalities of humanitarian assistance, which is embedded in most relevant primary rules on humanitarian assistance. Against this background, States may validly withhold operational consent to AI-supported humanitarian assistance and request an alternative (non-AI) distribution of humanitarian assistance. On the other hand, strategic consent, which is a prerequisite to the delivery of humanitarian aid to a particular State, cannot be arbitrarily withheld, which is the case where such denial would amount to serious violations of the State's other international obligations relating to the civilian population, and where the use of AI would be the only way to distribute such assistance or would be proportionally the most appropriate and efficient way to distribute the assistance. In such an instance, the issue of the responsibility of a concerned State arises, and subsequently also possible non-consensual AI-supported humanitarian assistance.

It has been explained that the provision of non-consensual humanitarian aid cannot be considered as *per se* legal under international law. Careful analysis of relevant ICJ case-

[180] For a view that the law of countermeasures cannot be applied to non-consensual humanitarian assistance, see Stoffels, 2004, p. 536.

law and State practice reveals that the non-consensual provision of humanitarian assistance would amount to a violation of the principle of sovereignty and non-intervention. However, non-consensual humanitarian assistance could nevertheless be justified by a UNSC authorisation or under the secondary rules of international law, countermeasures in particular. This latter possibility is limited to instances whereby denial of AI-supported humanitarian assistance would simultaneously lead to a violation of an *erga omnes* obligation, thereby triggering the entitlement for the provision of non-consensual humanitarian assistance through the adoption of countermeasures.

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