

Israel, Gaza & International Law

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LEGAL STATUS OF THE GAZA STRIP

- While Hamas nominally controls most of the territory inside the tiny Gaza Strip, Gaza remains under overall Israeli military occupation according to international law. Although Israel withdrew its soldiers and some 8000 settlers from the interior of Gaza in 2005, it continues to control virtually all entry and exit, as well as Gaza's airspace and coastline, therefore retaining "unconsented-to effective control," the legal definition for qualifying as an occupying power.
- Israel's continuing status as an occupying power in Gaza has been affirmed by the United Nations and international humanitarian and human rights organizations such as the International Committee of the Red Cross, Amnesty International, and Human Rights Watch, as well as the U.S. State Department.
- According to an October 2004 Human Rights Watch statement entitled Israel: 'Disengagement' Will Not End Gaza Occupation: Israeli Government Still Holds Responsibility for Welfare of Civilians:

The Israeli government's plan to remove troops and Jewish settlements from the Gaza Strip would not end Israel's occupation of the territory. As an occupying power, Israel will retain responsibility for the welfare of Gaza's civilian population. Under international law, the test for determining whether an occupation exists is effective control by a hostile army, not the positioning of troops... **Whether the Israeli army is inside Gaza or redeployed around its periphery and restricting entrance and exit, it remains in control.**

LEGAL STATUS OF ISRAEL'S BLOCKADE OF GAZA

- In September 2011, the UN released the Palmer Report on Israel's attack against the Gaza Freedom Flotilla in May 2010, which left 9 Turkish human rights activists dead, including one American citizen. It deemed Israel's blockade legal, however it was criticized as a politicized whitewash by human rights groups and the report itself contained the crucial caveat that **"its conclusions can not be considered definitive in either fact or law."**
- Shortly after the Palmer Report was released, an independent UN panel of experts released a separate report concluding that Israel's blockade of Gaza does violate international law, stating that it amounts to collective punishment in **"flagrant contravention of international human rights and humanitarian law."** In reference to Palmer, the independent experts wrote:

In pronouncing itself on the legality of the naval blockade, the Palmer Report does not recognize **the naval blockade as an integral part of Israel's closure policy towards Gaza which has a disproportionate impact on the human rights of civilians.**

- In June 2012, a group of 50 international aid agencies, including the World Health Organization and Oxfam, called on Israel to lift its siege and blockade of Gaza, stating:

For over five years in Gaza, more than 1.6 million people have been under blockade in violation of international law. More than half of these people are children. We the undersigned say with one voice: "end the blockade now."

- In September 2010, a UN fact-finding mission into Israel's attack on the 2010 Gaza Freedom Flotilla concluded:

The Mission considers that **one of the principal motives behind the imposition of the blockade was a desire to punish the people of the Gaza Strip** for having elected Hamas. The combination of this motive and the effect of the restrictions on the Gaza Strip leave no doubt that **Israel's actions and policies amount to collective punishment as defined by international law.** In this connection, the Mission supports the findings of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, the report of the United Nations Fact-Finding Mission on the Gaza Conflict and most recently the ICRC that **the blockade amounts to collective punishment in violation of Israel's obligations under international humanitarian law.**

- In June 2010, the International Committee of the Red Cross released a statement entitled Gaza closure: not another year! which noted:

The whole of Gaza's civilian population is being punished for acts for which they bear no responsibility. **The closure therefore constitutes a collective punishment imposed in clear violation of Israel's obligations under international humanitarian law.**

- Israeli officials have acknowledged that the siege is not motivated primarily by security concerns, but is part of a strategy of "economic warfare" against the people of Gaza, which amounts to amounts to collective punishment. In 2006, senior advisor to then-Prime Minister Ehud Olmert, Dov Weisglass, said the goal of the Gaza siege was to put the people of Gaza "on a diet, but not to make them die of hunger."

ISRAEL'S OBLIGATIONS AS AN OCCUPYING POWER

- As the occupying power, Israel is ultimately responsible for the safety and welfare of the civilian population in the territories under its control, including the 1.8 million people of Gaza.
- These obligations are set out in international humanitarian law, primarily as contained in The Hague Convention Regulations (1907) and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949).
- Article 33 of the Fourth Geneva Convention prohibits collective punishment of civilians, stating: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of

terrorism are prohibited."

- Article 55 of the Fourth Geneva Convention stipulates that the "Occupying Power has the duty of ensuring the food and medical supplies of the population."
- Article 56 of the Fourth Geneva Convention states that "the Occupying Power has the duty of ensuring and maintaining... the medical and hospital establishments and services, public health and hygiene in the occupied territory."

Tags: , Siege , Blockade