

Israel's Humanitarian Obligations Toward the Civilian Population in Gaza

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Much confusion surrounds the debate over the nature and extent of Israel's obligations toward the civilian population in Gaza. Several important questions must be addressed: Is Gaza an occupied territory? Is it permitted to prevent the supply of electricity to Gaza? Can Israel lay siege to Gaza as part of its war against Hamas? Is there a duty to allow humanitarian aid into Gaza? Is advising civilians in Gaza to evacuate to the south a form of internal displacement?

The purpose of this short paper is to clarify these issues by addressing the following points:

- Claims that the Gaza Strip is territory occupied by Israel
- Prohibition of starvation
- Obligation to allow the passage of humanitarian aid
- The rules that apply to laying a siege
- The rules that apply to notifying civilians to leave combat zones

The Law of Occupation Do Not Apply

Gaza is no longer an occupied territory under Israeli control.

Under international law, occupation is determined by the effective control of the occupying power over a territory. Following Israel's disengagement from Gaza in 2005, Israel no longer has effective control over the territory. Therefore, it cannot be considered as the occupying power in Gaza. Hamas has effective control over the territory. The magnitude and sophistication of its surprising attack against Israel from Gaza is clear proof of the lack of Israel's control over this area.

Thus, Israel has no legal obligation to ensure or actively provide for the needs of the civilian population in the Gaza Strip derived from the law of occupation. This includes water and electricity.

Israel is bound by some basic humanitarian obligations toward the civilian population in Gaza under rules of the laws of armed conflict that pertain to obligations toward the enemy's civilian population. However, these obligations are of a limited scope, as detailed below.

The Prohibition on Starvation of Civilians

The laws of armed conflict prohibit the starvation of enemy civilians as a means of warfare. Starvation includes the denial of food and water. However, it does not include denying electricity or fuel.

The prohibition on starvation does not apply to enemy fighters; they can be denied food and water supply. To the extent that preventing food and water supply from enemy fighters will harm the civilian population, the harm must be proportionate, ensuring that no excessive damage is caused to the civilians compared to the military advantage of the operation. This is also the US position, as specified in the Laws of War Manual of the US Department of Defense.

Israel may take actions designed to prevent supplies from reaching Hamas and other terrorist organizations. In doing so, it must ensure that the civilian population in Gaza does not face starvation (including water shortage).

The Obligation to Allow the Passage of Humanitarian Aid

Israel has no obligation to actively provide humanitarian aid to the civilian population in Gaza. Israel is only required to allow the passage of humanitarian aid, including food, water, medicine, and medical equipment. There is no set list of items that must be transferred, and there are different approaches to the subject.

It is possible to demand inspection and supervision to ensure that aid is directed toward the civilian population and does not reach Hamas forces and other terrorist organizations.

In practice, humanitarian aid shipments have entered Gaza through the Rafah crossing in recent days. Hamas, as a regular course of action, seizes aid intended for the civilian population for its military needs. A recent example is UNWRA's (later deleted) tweet that Hamas took fuel and medical equipment from the agency's compound that were meant to reach hospitals and civilian facilities.

Siege: Lawful Warfare

A siege is a legitimate method of warfare used to cut enemy forces off from reinforcements and vital supplies. When imposing a siege, any expected collateral harm that may be caused to civilians must be proportionate and not excessive to the military advantage it is intended to achieve.

Severing Hamas from reinforcements and supplies may provide a significant military advantage to Israel, especially in light of the grave danger Hamas poses to Israel's security. Nonetheless, a siege cannot justify the starvation of a civilian population. Thus, it is necessary to allow civilians to evacuate from the siege area or to allow humanitarian aid to prevent this outcome.

Despite the statement by Defense Minister Yoav Gallant immediately after the murderous attack by Hamas and in the midst of battles against Hamas terrorists on Israeli territory that no supplies will enter the Gaza Strip, it is not at all clear that Israel's policy toward the Gaza Strip amounts to a siege, as opposed to a wide-ranging closure of the area.

In any case – whether a siege or a wide-ranging closure – the restrictions imposed by Israel are intended to prevent the introduction of weapons and supplies to Hamas and other terrorist organizations, and therefore, they are legal. They are not aimed to punish the civilian population and thus they do not constitute unlawful collective punishment. Practically and unfortunately, there is no way to prevent supplies from Hamas without inflicting hardship on the civilian population. This incidental harm is permissible as long as it is proportionate. When assessing proportionality, one must consider the significant threat that Hamas poses to Israel's security and its citizens.

Forced Displacement vs. Lawful Evacuation

The military infrastructure and activity of Hamas and the other terrorist organizations in Gaza are conducted from within civilian structures. This makes these lawful military targets that can legally be attacked by Israel. To minimize harm to Palestinian civilians from these attacks, Israel called on the residents of Gaza to evacuate to southern Gaza, while allowing humanitarian corridors for this purpose. These actions were taken by Israel as a lawful temporary evacuation of civilians from a combat zone rather than a prohibited forced displacement for collective punishment or permanent displacement. Israel took these actions in meeting its obligation to take feasible precautions and provide, when possible, advance warnings to civilians prior to attacks.

Hamas is the governing power that controls the Gaza Strip, and only it can (and should) take care of evacuating the civilian population and distancing it from the combat zone. However, Hamas has acted to prevent civilians from evacuating to southern Gaza by blocking the roads and bombing the fleeing civilian convoys. This is meant to use the civilians as human shields against IDF attacks. In doing so, Hamas has committed another war crime, this time against its own people.

Lack of Reciprocity

Hamas has committed atrocities, which included torturing and butchering babies, children, and defenseless civilians inside Israel, and continues to commit an ongoing crime by holding more than 220 Israeli hostages, including children, the elderly, women, and men. In addition, Hamas also violates its humanitarian obligations toward the Israeli hostages. To date, there has been no release of information about their condition, no means of communication with them, and no reported meetings with Red Cross officials. Nonetheless, Israel is still required to fulfill its obligations toward the civilian population of Gaza, since the laws of war do not include the principle of reciprocity and thus are binding even when one of the parties blatantly violates them.

Editors of the series: Anat Kurtz, Eldad Shavit and Judith Rosen