

INTERNATIONAL LAW AND ITS BREACHES WITH RESPECT TO THE OCCUPIED PALESTINIAN TERRITORIES¹

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Terminology:

Obligations:

The obligations of an occupying power are defined by:

- the Regulations Respecting the Laws and Customs of War on Land, annexed to the Fourth Convention Respecting the Laws of War on Land signed in The Hague on 18 October 1907 (“*the Hague Regulations*”); these are part of customary international law and are therefore binding on Israel.
- the Fourth Convention Relative to the Protection of Civilian Persons in Time of War signed in Geneva on 12 August 1949 (“*the Fourth Geneva Convention*”). Israel claims the Fourth Geneva Convention doesn’t apply to it because the territories were not under the sovereignty of another state; the International Court of Justice in its advisory opinion on the Wall ruled that the Convention does apply wherever there is armed conflict between two contracting parties.

Occupied Areas:

West Bank: occupied in 1967, previously occupied by Jordan, designed by the 1947 UN partition plan to form part of a future Palestinian state. The 1995 Oslo II Agreement divided the West bank into three areas: A (where Palestinian Authority [PA] had full civil and security control, but Israel had the right to conduct military incursions into the area without the PA’s consent), B (overriding Israeli responsibility for security to protect Israelis and confront terrorism), and C (full Israeli security control).

Gaza Strip: Israel retains full authority over: the right to enter and leave international waters, Gaza airspace, the supply of essential products and services (e.g. fuel, telecommunication frequencies, electricity, water, etc.), the population registry (allowing it to decide who qualifies for residency status), taxes owed to the Gaza authorities, a terrestrial “no go zone” (comprising 17 per cent of the land mass of the strip).

Golan Heights: a part of Syria, occupied in 1967, annexed in 1980, never recognised internationally and the UN Security Council censured it.

Part of West Bank considered to be within City of Jerusalem and annexed by Israel in 1980 (never recognised internationally and strongly censured by the UN Security Council).

Occupation:

Defined by Article 42 of the Hague Regulations as a “territory placed under the authority of the hostile army”.

Examples of breaches of International Law by Israel with respect to the Occupied Palestinian Territories (OPT)

1. ***Israel’s continued occupation of the OPT:*** Violates Article 43 of the Hague Regulations which sees occupation as a temporary and not a permanent state – Israel has occupied the OPTs for 47 years.
2. ***Israel deliberately ignores its basic obligation to exercise its powers for the benefit of the occupied area:*** Violates Article 43 of the Hague Regulations
3. ***Israel has brought changes to existing Palestinian legislation in violation of international law:*** Violates Article 43 of the Hague Regulations
4. ***Israel’s settlement policy:*** Violates article 49(6) of the Fourth Geneva Convention which prohibits an occupying power from transferring its own population into the territory it occupies, which Israel has done in area C where built settlements cover 3,25 per cent of the West bank but jurisdictional space around these settlements as well as special access roads comprise 67 per cent of area C. Israel’s argument is that article 49 does not cover voluntary population relocation, an argument that has been rejected by the International Court of Justice (ICJ).
5. ***The Wall:*** Following a decision in 2002 Israel had been building a security wall the stated purpose of which is to prevent the infiltration of Palestinian terrorists into Israel. The wall is built on Palestinian territory, and cuts off 16,6 per cent of the surface space of the West Bank in a closed area where there are severe restrictions on the right of movement of Palestinians. In Wall Opinion the ICJ said that the Wall is contrary to International Law for the following reasons:
 - It impedes Palestinians’ right to self-determination
 - It creates a “fait accompli” that could well become permanent despite Israel’s assurances that it is temporary
 - The route consolidates Israel’s illegal settlements
 - Construction has resulted in destruction/requisition of properties in breach of articles 46 and 52 of the Hague Regulations and article 53 of the Fourth Geneva Convention
 - Substantial restrictions of freedom of movement and to choose residence impact negatively on Palestinians’ access to agricultural production, health and educational services and water sources

Israel's response is that Advisory Opinions are not binding.

6. Destruction of real and personal property

Violates article 53 of the Geneva Convention. Israel destroys houses and property for the following stated reasons: punishment for engaging in violent action against the occupation, an absence of construction permits, establishing archaeological sites, reserving space for a settlement or military base.

7. Confiscation of private property

Violates article 46(2) of the Hague Regulations. Due to the taking of Palestinian land for settlement, military and nature conservation purposes, 68 per cent of Area C is reserved for Israeli settlements, 21 per cent for closed military zones and 10 per cent for nature reserves, leaving less than one per cent for Palestinian occupation.

8. Exploitation/destruction of natural resources (including water)

Violates articles 43 and 55 of the Hague Regulations through the following examples of Israeli actions:

- Uprooting trees and destroying farms and greenhouses.
- Destroying vital (water and sewage) infrastructure.
- Diverting water resources to benefit Israeli settlements and unavailability of permits for Palestinians to build water wells, conveyance and wastewater treatment and reuse infrastructure.
- The right given to Israeli companies, such as Ahava Dead Sea Laboratories, to extract valuable mineral deposits from the Dead Sea.
- Israeli companies extract stone and gravel quarries in the West Bank (where they were already being exploited at the beginning of the occupation) (including new sites) whereas no new permits have been issued to Palestinian firms since 1994 although the Oslo Accords provided for this.
- Multinational companies operate quarries for cement production since 1967.

9. Condoning settler violence

Violates article 43 of the Hague Regulations. The occupation authorities seldom if ever intervene to put an end to these activities.

10. Appropriation of cultural property

Violates article 5(1) of the Hague Convention, mainly through unilateral archaeological digs and the exhibition of archaeological artifacts.

11. Administrative detention and treatment of detainees

Administrative detention: The routine use of administrative detention violates article 78(1) of the Fourth Geneva Convention – it needs to be an imperative for

reasons of security. Administrative detention in the OPT (six months renewable) is more severe than in Israel itself (48 hours).

Treatment of detainees: Violates article 46 of the Fourth Geneva Convention which prohibits detention outside the occupied areas – in the case of the OPT all but one detention centre are located in Israel.

12. The Gaza closure

The restrictions on Gaza in respect of the fishing boundary, the export of goods to the West Bank and Israel, the limitation on goods entering the territory, travel by individuals (e.g. students) between the West bank and Gaza, as a form of collective punishment for jihadist rocket attacks, violates article 50 of the Hague Regulations (against collective punishment) and article 33(2) of the Fourth Geneva Convention (also against collective punishment).

SELECTED GOLDSTONE FINDINGS ON OPERATION ‘CAST LEAD’ IN GAZA²

‘The Mission’ refers to the United Nations Fact-Finding Mission on the Gaza Conflict. Where there is no reference to Israeli government position on issues this is because the Israeli government neither made submissions nor responded to Mission requests for input, or also failed to respond publically through the media.

1. The Gaza Strip

1.1 Military Operations

- Deliberate Attacks on Gaza Government Infrastructure.
 - These were Israeli strikes against the Legislative Council building and the main prison. The Israeli position was that because of the alleged nature of the Hamas government in Gaza the distinction between the civilian and military parts of the government infrastructure no longer applied.
 - The Goldstone Mission’s view was that International Humanitarian Law (IHL) is based on the principle of distinction and that it prohibits attacks on targets that do not make an effective contribution to military action.

- Deliberate Attacks on Gaza Police
 - More than one out of every six casualties was a member of the Gaza police. The Israeli position was that due to their military functions these internal security forces were not immune from attack generally granted to civilians.
 - Factual Findings: There was insufficient information to conclude that the Gaza Police were incorporated into the armed forces of Gaza. Membership

in Hamas could also not be verified which is not the same as membership in the al-Quassam Brigades. Thirty-four policemen without any affiliation to Hamas were killed on the first day of the attacks.

- Legal Analysis: IHL as a rule sees law enforcement agencies as part of the civilian population unless incorporated into the armed forces. There was insufficient information to conclude that the Gazan police as a whole had been incorporated into the armed forces. IHL also requires proportionality in attacks, i.e. that a balance should be struck between death and injury to civilians and damage to civilian institutions and a direct military advantage – the killing of 99 policemen during the first minutes of military operations failed to strike that balance.

1.2 Obligations on Palestinian Armed groups in Gaza to take feasible precautions to protect the Civilian Population.

- Launching Attacks from within Civilian Areas and from within or in the Immediate Vicinity of Protected Sites (includes booby trapping houses, using mosques to launch attacks, misusing medical facilities and ambulances for military purposes and using civilians as human shields).
- The Mission investigated: two incidents in which Israel alleged that Palestinian combatants had fired on Israeli armed forces from within a United Nations protected site or its immediate vicinity in densely populated urban areas; a missile attack on the al-Maqadmah mosque; attacks on the al-Quds hospital in Tal el-Hawa, and the al-Wafa hospital in Gaza City; cases where ambulances were denied access to wounded Palestinians.
- Factual Findings: The Mission was unable to form an opinion on the exact nature or the intensity of combat activities by armed groups in residential areas that could have placed civilians at risk, but did establish their presence in these areas as combatants. Nor did it establish that civilians were put at risk through booby-trapping of houses. It found no evidence that al-Maqadmah mosque was used to store weapons. The Mission excluded the possibility that there were combatants inside the said hospitals at the time of the attacks. The Mission concluded that usage of ambulances for combat would have been the exception rather than the rule. The Mission also did not find cases where Hamas combatants used civilians as shields.

1.3 Obligations on Israel to take feasible precautions to protect the Civilian Population.

- Warnings

- Israel says that it warned civilians about the attacks through phone calls, roof-knocking and radio broadcasts and leaflet dropping.
 - Factual Findings: the Mission found that despite the warnings to vacate buildings about to be attacked, the shock caused by the first attacks gave people a sense of “nowhere to go”. Furthermore the attacks on the al Maqamah mosque, the United Nations shelter in al-Fakhura street and the UNRWA compound in Tal el-Hawa (Gaza City), reasonably made people conclude that it could be unsafe to leave their homes. Accordingly it was unreasonable to conclude that those that stayed behind had to be combatants.
- UNRWA Compound, Gaza City
 - The compound came under sustained shelling from Israeli forces on 15 January 2009.
 - Factual and Legal Findings: The Israeli armed forces had all the information to appreciate the danger to civilians of their firing at the UNRWA facility. They did not take all feasible precautions in their choice of method and warfare – this refers to the use of white phosphorus in the line of fire. The Mission concluded that Israeli armed forces violated international customary law to take precautions and avoid or minimise loss of civilian life or injury to civilians.
- Al-Quds Hospital, Tal El-Hawa, Gaza City
 - This building and surrounding buildings suffered significant damage during the course of an Israeli bombardment on 15 January 2009, which included the use of white phosphorus.
 - Factual findings: The Mission concluded that it was unlikely that there was any armed presence in any of the hospital buildings at the time of the attack, that no warning was given of an imminent strike, and that there were reasonable grounds to believe that the hospital and ambulance depot were the target of a deliberate attack and that the hospital could not be described as a military objective.
 - Legal findings: The Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention which provide for protection of civilian hospitals, and also that they violated customary international law in relation to proportionality (through the use of white phosphorus and a high explosive artillery shell).

1.4 Indiscriminate Attacks by Israel resulting in Loss of Life and Injury to Civilians.

- Shelling in Al-Fakhura Street

- On afternoon of 6 January at least four mortar bombs fired by Israeli armed forces exploded near the al-Fakhura junction in the al-Fakhua area of the Jabaliyah camp in Northern Gaza. 16 hours prior to the shelling a Mr Abu Askar received a call from the IDF to warn him that his house was about to be destroyed by an air strike. The extended family (40) evacuated the house. Shortly after that the house was destroyed in an air strike. There was a further mortar bomb attack on the same street at about 4 P.M. with about 150 people in the street, including Mr Askar and others whose houses had also been damaged in the earlier strike, people who were coming from a nearby UNRWA school and others seeking shelter. Mr Askar lost three family members in this attack: Imad (13), his brother Khaled (19) and their uncle, Arafat (33). Up to 24 people were said to have been killed and up to 40 injured in these blasts – The Mission while not being able to verify each casualty found that these estimates did not appear to be exaggerated.
- Israel said that through the mortar bombardment it had used proportionate force, taking consideration of civilians, in responding to Hamas fire that had been directed at its troops from within the school grounds. The Mission found that a number of the statements released by Israel regarding the circumstances under which it launched the mortar bombardment were erroneous or contradictory. For example, they initially responded to the outcry of this attack by justifying why they had hit the school, a point that they later denied – the school itself had in fact not been hit. The Mission commented on the fact that the Israelis had high-level aerial photography and should have been able to see that the school had not been hit. It concluded that the initial narrative put out by Israel, and subsequently revised, was probably in response to the outcry at the attack shortly after it took place rather than reflecting real events. In particular the Mission was unable to confirm the names of seven of the 12 dead (nine allegedly militants) provided by Israel. It confirmed that nine members of the al-Deeb family were killed immediately in this (second) strike, and two died later (four were women and four were children). The Mission considered the Israeli estimates of non-combatants killed to be unreliable. Mark Regev of Israel indicated that Imad Askar was involved with Hamas rocket-launching operations. The Mission was satisfied that he was not partly because of his age but mainly because of the Israeli's warning his father to evacuate the house and thereby allowing him to escape.

1.5 Deliberate Attacks against the Civilian Population.

- The Mission investigated 11 incidents in which serious allegations of direct attacks with lethal outcome were made against civilians. There appeared to be no justifiable military objection in any of them. This practice contradicts the

Israeli armed forces rules of engagement, which define distinction between military and civilian targets as follows: “Strikes shall be directed against military objectives and combatants only. It is absolutely prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm)”.

- Attacks on the houses of Ateya Al-Samouni and Wa’el Al-Samouni in Zeytoun, resulting in the death of 23 members of the Al Samouni Family

Credible testimony was presented in respect of the killing of Ateya al-Samouni and his son Ahmad, the attack on the house of Wa’el al-Samouni and the attempts of the Palestinian red C ross Society and the International Red Cross to rescue civilians in the al-Samouni area.

Factual findings: there was some indication of Palestinian combatants in the al-Samouni neighbourhood during the first hours of the Israeli ground attack. Based on reports about how soldiers entered houses (i.e. by knocking on doors) as well as a submission from an Israeli researcher, it appeared that by 04 January Israeli armed forces were in full control of the neighbourhood. Notwithstanding the relatively calm circumstances there was a violent attack on Ateya al-Samouni;’s house, killed him and severely wounded his son, and also opened gunfire in a room where approximately 20 members of the family were standing. The surviving family members with the son were ordered out of the house and to start walking. The Israeli armed forces obstructed ambulance services and after 20 hours the four-year old son too died.

- Killing of Civilians attempting to leave their homes to walk to safer areas

This testimony covered the shootings of Ibrahim Juha, Rouhiyah al-Najjar, and the Abu Halima family case,

Factual findings: the Juha family lived in a house a few metres north of where al-Samouni Street goes off Salah ad-Din street to the west, the house was struck by several missiles during the night of 3 to 4 January 2009. Israeli soldiers entered the house on 4 January, fired into the room where the Juha family were assembled and told them to leave and walk to Rafah. Another neighbour, Abu Zur invited them to his house and they stayed for the night. Next morning this house was subjected to fire by Israeli soldiers and the occupants were evacuated and told to continue walking. They later entered the house of another family, but decided to leave and keep walking with Ibrahim Juha carrying a white flag in front. He was shot dead and died six hours later in another house where the scattered individuals had

congregated. There were no combat operations in the area. The Israeli armed forces deliberately opened fire on a group of people they had interacted with during the preceding 24 hours and therefore knew to be civilians and killed the child.

Rouhiyah al-Najjar was shot by Israeli forces in Khuza'a. Israeli forces attacked Khuza'a at 10 P.M. on 12 January 2009. They used white phosphorus in the al-Najjar neighbourhood. The soldiers ordered the men to come out and they were separated at the tanks and then held in two separate houses while the women were told to walk with their children to the town centre. In the course of this walk Rouhiyah al-Najjar and her baby Hiba and her relative Yasmine were walking together when Rouhiyah was shot in the temple by Israeli soldier sheltering with others at the house of Faris al-Najjar. The single shot was followed by concentrated gunfire causing women and children to scramble back into nearby houses. They were later able to walk to a safer part of the town. The soldiers had full view of the group approaching them and only fired warning shots at them when they scattered so were clearly under no threat. Rouhiyah was deliberately shot by an Israeli soldier who had no reason to assume that she was a combatant.

On 3 and 4 January 2009 there was heavy aerial bombardment of open areas around Siyafa village. The Abu Halima family was sheltering in the home of Muhammad Sa'ad Abu Halimah. Sixteen members of the immediate family were sheltering on the upper floor. At 4:30 P.M. a white phosphorus shell came through the ceiling into the room where they were sheltering. Five members died immediately or within a short period. Ambulances were not permitted to enter because the Israeli armed forces declared the area a closed military zone. Some family members attempted to continue to transport the wounded and injured towards hospitals and several were stopped by Israeli soldiers. In one of these incidents two young men (aged 16 and 17) were shot and killed by Israeli soldiers. The Mission was unable to make a finding whether or not the attack on the house had been a justifiable military operation or an indiscriminate attack on civilians. However it did find that shooting of the young men, Muhammad Hekmat Abu Halima and Matar Abu Halima was an attack on under age civilians who posed no military threat.

- Information concerning the Instructions given to the Israeli Armed Forces with regard to the opening of fire against Civilians

There is a policy in the Israeli Defence Force to shoot whenever a soldier is in doubt whether a civilian is indeed a civilian or rather a terrorist with bombs strapped to him/her trying to get close enough to the soldiers to harm them. A second policy is to draw red lines – which civilians might or might not be aware of – and should anyone cross those lines they will get shot as a matter of rules of engagement. The Mission found that there was not necessarily a standing order to kill civilians and indeed some soldiers' testimony indicates that there were soldiers who ignored the two policy rules mentioned.

- The Attack on the Al-Maqadmah Mosque, 3 January 2009
At least 15 people were killed and about 40 injured when Israeli armed forces struck the mosque with a missile. The Israeli government claimed that the mosque had not been attacked at all but that the supposed uninvolved civilians killed were in fact Hamas operatives while fighting against the IDF. The Mission however found that the penetration pattern on the concrete ramp and stairs underneath was consistent with that which would be expected of a shrapnel fragmentation sleeve fitted onto an air-to-ground missile. The Mission also found that the strike killed at least 15 people and very seriously injured several others. There was no suggestion that the mosque was being used at the time to launch rockets, store weapons or shelter combatants. Given that there was no other damage in and around the area the Mission concluded that this was an isolated strike and in connection with an ongoing battle or exchange of fire.
- Attack on the Abd Al-Dayem Condolence Tents
- 1.5 Attacks on the foundations of Civilian Life in Gaza: Destruction of Industrial Infrastructure, Food Production, Water Installations, Sewage Treatment Plant and Housing.

- **The Destruction of El-Bader Flour Mill**

On 9 January 2009 at around 3 or 4 A.M. the flour mill was hit by an air strike, possibly by an F-16. The owners were forced to evacuate the buildings twice because of pre-recorded messages about imminent strikes. However when it was hit it was hit without prior warning. The result was that all the employees were out of work and the capacity of Gaza to produce flour was greatly diminished. There was no evidence that the mill buildings were at any time being used by Palestinian armed groups.

- **The Destruction of the Sawafeary Chicken Farms**

Sameh Sawafeary is a chicken farmer in the egg production business and the family owned 11 chicken farms in Zeytoun, housing more than 100 000 chickens as of December 2008. At 10 P.M. a missile struck his house passing over several of his children and grandchildren who were lying on the floor. Soon thereafter Israeli soldiers occupied the house and instructed the family to walk to Rafah – they spent some time in the houses of neighbours Abu Zur and Mughrabi and suffered violations at the hands of Israeli forces including the killing of the child Ibrahim Juha (referred to earlier). While they were forced by circumstances to stay in the Mughrabi house Mughrabi and Sawafeary witnessed the systematic destruction of land, crops, chickens and farm infrastructure by armed bulldozers. The Mission found that the destruction of land and farms in Zeytoun was not justified militarily as Israeli armed forces took control of the area within a matter of hours but remained there until 18 January.

- **The Destruction of Water and Sewage Installation**

The Gaza waste-water treatment plant is located was built in 1977 and is located in the area south-west of the Gaza City. Between 23 January and 10 January 2009 a missile hit the northernmost wall of Lagoon number 3 causing a massive outflow of raw sewage which travelled 1.2 kilometers and damaged 5.5 hectares of land. The Mission found that the strike on Lagoon 3 must have occurred after Israeli armed forces took control of the plant and surrounding areas and could not find any justification for striking the plant. It was highly unlikely that Palestinian armed groups were operating in the area after the occupation. The precise point of the strike suggests that it was deliberate and calculated to cause outflow of raw sewage.

The Mission found that the Namar Wells group in the Jabaliyah refugee camp were destroyed by multiple air strikes on the first day of the Israeli aerial attack and that civil administration buildings located at approximately 50 meters were also destroyed. The Mission also found that these strikes were intentional because of the precision technology systems for launching missiles from F-16 fighters and UAVs. There were no grounds to suggest that Palestinian armed groups had used the wells for any purpose.

- **The Destruction of Housing**

Figures about overall damage to residential housing vary according to the source, time of measurement and methodology. Human Rights NGO Al Mezan reports 11 135 houses partially or fully destroyed. Human rights NGO Al Dameer-Gaza reported 2011 civilian and **cultural** premises destroyed of which 1404 were completely demolished houses and 453 partially destroyed or damaged. A UNDP Survey reported 3354 houses completely destroyed and 11 112 partially damaged.

The destruction was more serious in the north where 65 per cent of houses were completely destroyed. At the height of the military operations UNRWA was providing shelter to 50 896 displaced persons in 50 shelters. This number was estimated to be a fraction of those who had become homeless and who sought shelter with relatives. In the specific instances examined by the Mission it found that in a number of cases Israeli forces launched direct attacks against residential houses, destroying them. Information strongly suggested that in the Juhr ad-Dik, al-Samouni neighbourhood and Izbat Aqbd Rabbo when the houses of Hajaj, al-Samouni and Khaled Abd Rabbo families were destroyed this was done outside any combat engagements with Palestinian groups.

- **Analysis of the Pattern of Widespread Destruction of Economic and Infrastructure Targets**

Witnesses indicated that 324 factories had been destroyed during the Israeli military operations at a cost of 40 000 jobs. With the support of the Konrad Adenauer Foundation the Palestine Federation of Industries produced a report detailing the destruction. The following sectors were covered in detail in the Missions abridged report: construction industry and water installations.

Construction: In the case of the former Israeli armed forces began striking the only cement-packaging plant in Gaza first from the air, damaging it significantly. Later ground forces – equipped with bulldozers and tanks – moved in and used mines and explosives to destroy the silo that used to contain 4 000 tons of cement. Helicopters launched rockets to destroy the main manufacturing line and fired holes into cement containers. Bulldozers destroyed the factory walls. Over four days the factory was systematically destroyed. The owner's house was also destroyed by rocket fire. The owner is one of 100 business men who are in possession of the Businessman Card issued by Israel. The plant was systematically reduced to rubble over several days at the end of the military campaign. The Mission could find no military reason or justification for destroying the factory.

¹ <http://www.eccpalestine.org/wp-content/uploads/2014/01/Israëls-obligations-as-an-occupying-power-under-international-law-its-violations-and-implications>

² Horowitz, A Ratner, L and Weiss, P (eds) *The Goldstone Report – The Legacy of the Landmark Investigation of the Gaza Conflict*, Nation Books, New York, 2011 (This is an abridged edition of *The Goldstone Report*)