

ISRAELI VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN GAZA

FACT SHEET

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While all eyes were focused on Lebanon, Israel violated and, indeed, continues to violate international law in Gaza with near total impunity.

In spite of its redeployment of forces and evacuation of settlers from Gaza almost a year ago, Israel continues to effectively control Gaza, frustrating the Palestinian Authority's efforts to govern it and contributing to a humanitarian crisis.

In yet another concerted display of its military control, Israel has intensified its offensive against Gaza since late June, using indiscriminate and disproportionate measures intended to terrorise Gaza's population, which amount to grave breaches and war crimes. As occupying power, Israel must be held accountable.

- ***Israel has severely restricted the movement of people and goods in and out of Gaza even after its “disengagement”, crippling the Gazan economy and, hence, the Palestinian Authority’s ability to generate tax revenues, and has withheld customs revenues belonging to the Palestinian Authority (PA), which themselves account for 60 per cent of the PA’s tax revenues.***
 - There is nothing in international humanitarian law or in the Oslo Agreements that permits Israel to withhold the customs revenues belonging to the PA.
 - On the contrary, Israel is ultimately responsible for restoring and maintaining public order and civil life within the Occupied Palestinian Territory (OPT), including Gaza.¹ It must put the withheld tax revenues towards the administration of the OPT.² If Palestinian tax revenues are insufficient, Israel has to finance public services for the occupied population from its own coffers.³
 - This is particularly true since Israel interferes with the PA’s ability to generate tax revenues from the Palestinian population through its 39-year occupation that has crippled the Palestinian economy.
- ***Between 27 June and 22 August, Israel killed 146 Palestinian civilians, as compared with 35 combatants, and injured an additional 547 in Gaza alone.***
 - Civilian immunity is a fundamental tenet of international humanitarian law. Deliberate attacks against civilians,⁴ including reprisals,⁵ are prohibited.
 - Likewise, attacks that do not distinguish between military and civilian objects (*i.e.*, indiscriminate attacks), including attacks that may cause injury to civilians or civilian objects in excess of the anticipated military advantage (*i.e.*, disproportionate attacks), are prohibited.⁶
 - During this same period, no (zero) Israeli civilians and 2 Israeli combatants were killed and an additional 26 injured, in attacks originating in Gaza.⁷ The overwhelming disparity between Palestinian and Israeli casualties raises serious doubts about the proportionality between the military threat to Israel and the injury caused to Palestinian civilians by the military operations Israel purportedly employs to neutralize the threat.

- Furthermore, this disparity raises concerns about whether Israel really exercises the care it is legally bound to,⁸ to minimize injury to Palestinian civilians.⁹ Even if hostilities occur in densely-populated areas, Israel is still required to protect civilians from military operations.¹⁰
- ***In June alone, Israel extra-judicially assassinated 8 Palestinians in Gaza.***
 - Whereas a civilian who has, in the past, taken a direct part in hostilities may be arrested and prosecuted in accordance with fundamental standards of due process, he may not be attacked unless he is engaged in hostilities at the time of attack, not even if it is suspected that he may take a direct part in hostilities at some future time.¹¹ Moreover, extra-judicial assassinations violate fundamental guarantees of due process.¹²
 - For example, on 6 June, the Israeli army extra-judicially assassinated two Palestinian civilians in northern Gaza by launching an aerial attack on the car they were traveling in. The two were not engaged in hostilities at the time of the Israeli attack.
 - In all cases, Israel must still take “constant care ... to spare the civilian population, civilians and civilian objects”,¹³ particularly in densely-populated areas.
- ***On 28 June, the Israeli army destroyed the substation of the only power plant in Gaza, which provides electricity to 60 per cent of the population. As a result of the attack, supply of electricity to 1.4 million Gazans has been disrupted, and Gaza has electrical power for only a few hours a day. The shortage of electricity has impeded the ability of hospitals to provide services and has paralyzed water supply and water management facilities, as well as other public service institutions. It will take months and millions of dollars to repair the power plant.***
 - No person may be punished for offences that they have not personally committed.¹⁴ Likewise, all measures of intimidation or of terrorism are prohibited.¹⁵
 - As evidenced by the foreseeable consequences of Israel’s destruction of the electricity substation and of other civilian infrastructure and property (discussed below), Israel uses such measures to punish the Palestinian civilian population for the acts of a few others or, at a minimum, to intimidate Palestinian civilians in the hope that they will exert pressure on Palestinian combatants to cease their resistance against Israel’s occupation.
 - Indeed, Israeli Prime Minister Ehud Olmert himself confirmed the intent of this unlawful action by announcing that “[o]ur aim is not to mete out punishment but rather to apply pressure so that the abducted soldier will be freed. We want to create a new equation - freeing the abducted soldier in return for lessening the pressure on the Palestinians.”¹⁶ In fact, the Israeli government has been contemplating cutting off Gaza’s electricity in order to pressure the civilian population since at least December 2005.¹⁷
- ***Between 27 June and 8 August, the Israeli army perpetrated 177 incidents of destruction of property in Gaza, the vast majority of which property served civilian purposes. Among these incidents were the destruction of three main bridges, dividing Gaza into three isolated units, and the damaging of government buildings and a university.***

- Destroying property is prohibited except when “absolutely necessary by military operations.¹⁸ Military necessity requires that the destruction be directed at a military target and that the military advantages reasonably anticipated from the destruction be proportionate to the civilian damages reasonably foreseen.¹⁹
- In most cases, Israel attacked these objects without adequately explaining how or why their destruction or damage was necessitated by military operations. In many cases, there was, at best, real doubt as to whether the destruction of these objects was necessitated by military operations. In the case of such doubt, the interests of the civilian population should prevail.²⁰
- ***Beginning in late July, the Israeli military took to notifying Palestinian civilians of its intention to attack their homes and to ordering their evacuation. There have been at least 40 such reported incidents. In many cases, Israel alleged that mortars were fired from the vicinity of these homes or that they contained weapons caches.***
 - As in the case of public infrastructure and institutions, private property may not be destroyed except when absolutely necessitated by military operations.²¹ Deliberate attacks,²² including reprisals,²³ and indiscriminate attacks, including disproportionate ones, on civilian property,²⁴ are prohibited. Furthermore, civilian objects may not be attacked unless and for such time as they are used to make an effective contribution to military action.²⁵ In cases of doubt that a civilian object is being used to make an effective contribution to military action, the presumption is that it is not so used.²⁶
 - In this context, this means that Israel may not attack homes just because it suspects that attacks were launched from the area in the past. Moreover, whereas actions may be taken to collect weapons, civilian property in occupied territory may not be attacked solely for containing weapons.
 - In all cases, measures taken must be proportionate to the foreseeable civilian damage. In cases where there is doubt that the anticipated military advantage would outweigh civilian damage, the interests of the civilian population should prevail.²⁷
 - While the duty to warn is intended to increase protection of the civilian population, it is *not* intended to supplant a belligerent’s obligation to take other precautions. Israel cannot absolve itself of its responsibility to distinguish and to use proportionate force by simply warning civilians.
- ***In addition to attacking civilians and civilian infrastructure:***
 - ***On 25 June, Israel forced the closure of Rafah Crossing Point, stranding over 5,000 Palestinians on the Egyptian side of the Gaza-Egypt border. Only after 7²⁸ of them died while waiting for days with no shelter and inadequate water did Israel finally agree to reopen the border crossing for limited movement over four and a half days in order to let the thousands return home.²⁹ Apart from those times, Rafah, the only point of entry/exit for Gaza, has remained closed, trapping Gaza’s 1.4 million Palestinians inside.***
 - ***Israeli F-16 combat aircraft have repeatedly broken the sound barrier, breaking the windows of civilian houses and causing psychological damage to the civilian population, half of which is under 15 years of age.***

- As in the case of the bombing of the power plant, Israel uses such measures to punish the Palestinian civilian population for the actions of a few others and to intimidate Palestinian civilians in the hope that they will exert pressure on Palestinian combatants to cease their resistance against Israel's occupation.
- ***At least 5,000 Palestinians from the As Shoka, Beit Hanoun and Beit Lahia areas were displaced by Israel's recent military activities in Gaza.*³⁰**
 - Individual or mass forcible transfers are prohibited, regardless of their motive. An occupying power may only evacuate an area if the security of the population or imperative military reasons so demand, and must ensure, to the greatest practicable extent, that evacuees are provided proper food, shelter and protection. Evacuees must be returned to their homes as soon as hostilities cease.³¹
 - To the extent that they are a result of the kinds of indiscriminate and disproportionate Israeli attacks discussed above, the displacements themselves are unlawful.
- ***Since late last year, the Israeli army has enforced a free fire zone in a 9.5 km² strip of northern Gaza, threatening to fire upon anyone found within the area.***
 - Shortly before 28 December 2005, Israel air-dropped leaflets over the area, warning the population that anyone present in the area would be placing his life in "real danger". One hundred eighty (180) civilians live within the area. Palestinian security forces also ordinarily occupy positions within the area. In practice, Israel has been targeting individuals in the zone without taking precautions to ascertain whether they are civilians or not.
 - While the duty to warn is intended to increase protection of the civilian population, it is *not* intended to supplant a belligerent's obligation to take other precautions. Israel cannot absolve itself of its responsibility to distinguish and to use proportionate force by simply warning civilians.
 - Shooting or otherwise attacking with potentially lethal force an individual who enters a closed zone is a disproportionate response to an entry into the zone.

¹ 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, 18 October 1907, U.K.T.S. 9 (1910), Art. 43 [Hague Regulations].

² *Ibid.*, Art. 48.

³ Gerhard von Glahn, "Taxation under Belligerent Occupation" in Emma Playfair, ed., *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford: Clarendon Press, 1992) 341 at 350-51 and 352; and Marc Stephens, *Taxation in the Occupied West Bank 1967-1989* (Ramallah: Al-Haq, March 1990) at 96.

⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 12 August 1949, 75 U.N.T.S. (1950) 287, Arts. 27 and 32 [Fourth Geneva Convention]; and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 12 December 1977, 1125 U.N.T.S. (1979) 3, Arts. 48 and 51(2) [Additional Protocol I]. Although Israel has not ratified *Additional Protocol I*, many of its provisions, including all those cited here unless stated otherwise, are declaratory of customary international law.

⁵ *Fourth Geneva Convention*, *supra* note 4, Art. 33.

⁶ *Additional Protocol I*, *supra* note 4, Arts. 51(4) and (5).

⁷ Israeli Ministry of Foreign Affairs; and United Nations Office for Coordination of Humanitarian Affairs, *Gaza Strip: Situation Report (7-24 August 2006)*, online: United Nations Office for Coordination of Humanitarian Affairs – OPT http://www.humanitarianinfo.org/opt/docs/UN/OCHA/GazaStripOCHA%20sitrep_24August06.pdf.

⁸ *Additional Protocol I*, *supra* note 4, Art. 57(1).

⁹ *Ibid.*, Art. 57(2).

¹⁰ *Ibid.*, Arts. 50(3) and 51(8).

¹¹ *Ibid.*, Art. 51(3). “It is only during such participation that a civilian loses his immunity and becomes a legitimate target. Once he ceases to participate, the civilian regains his right to the protection under this Section, i.e., against the effects of hostilities, and he may no longer be attacked. However, there is nothing to prevent the authorities, capturing him in the act or arresting him at a later stage, from taking repressive or punitive security measures with regard to him in accordance with the provisions of Article 45.” (*Commentary on 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, para. 1944, online: ICRC <http://www.icrc.org/ihl.nsf/COM/470-750065?OpenDocument>). See also Antonio Cassese, “Expert Opinion on Whether Israel’s Targeted Killings of Palestinian Terrorists is Consonant with International Humanitarian Law,” prepared at the request of the petitioners in *The Public Committee Against Torture v. Government of Israel* (Israeli High Court of Justice, H.C. 769/02), online: Harvard Law Project <http://www.stoptorture.org.il/eng/images/uploaded/publications/64.pdf>.

¹² *Fourth Geneva Convention*, *supra* note 4, Arts. 64-77; and *Additional Protocol I*, *supra* note 4, Arts. 45 and 75.

¹³ *Additional Protocol I*, *ibid.*, Art. 57.

¹⁴ *Hague Regulations*, *supra* note 1, Art. 50; and *Fourth Geneva Convention*, *supra* note 4, Art. 33.

¹⁵ *Fourth Geneva Convention*, *ibid.*, Art. 33. See Jean S. Pictet, ed., *Commentary on IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958) at 225-26 [*ICRC Commentary*]; and ICRC, *International humanitarian law and the challenges of contemporary armed conflicts: Excerpt of the Report prepared by the International Committee of the Red Cross for the 28th International Conference of the Red Cross and Red Crescent Geneva, December 2003*, (March 2004) I.R.R.C. Vol. 86 No. 853 at 223.

¹⁶ Amos Harel, Avi Issacharoff, Aluf Benn & Gideon Alon, “IDF launches first Gaza operation since 2005 withdrawal Olmert: Won't balk at 'extreme action' to rescue soldier” in *Ha'aretz* (28 June 2006).

¹⁷ Jonathan Lis, Nir Hasson & Ze'ev Schiff, “Palestinian sources: Hamas man killed by IDF in Jenin raid” in *Ha'aretz* (21 December 2005), online: From Occupied Palestine <http://fromoccupiedpalestine.org/node.php?id=1593>.

¹⁸ *Fourth Geneva Convention*, *supra* note 4, Arts. 53 and 147. See also *Hague Regulations*, *supra* note 1, Art. 23(g); and *Additional Protocol I*, *supra* note 4, Art. 52(2).

¹⁹ *ICRC Commentary*, *supra* note 15 at 302.

²⁰ *Additional Protocol I*, *supra* note 4, Art. 52(3).

²¹ *Fourth Geneva Convention*, *supra* note 4, Arts. 53 and 147.

²² *Additional Protocol I*, *supra* note 4, Arts. 48 and 52(1).

²³ *Fourth Geneva Convention*, *supra* note 4, Art. 33; and *Additional Protocol I*, *ibid.*, Art. 52(1).

²⁴ *Additional Protocol I*, *ibid.*, Arts. 51(4) and (5).

²⁵ *Ibid.*, Art. 52(2).

²⁶ *Ibid.*, Art. 52(3).

²⁷ *Ibid.*, Art. 57(2)(b); and *ICRC Commentary*, *supra* note 15 at 224.

²⁸ Palestine Red Crescent Society.

²⁹ United Nations, *Eighteenth Report: Implementation of the Agreement on Movement and Access (12-25 July 2006)* (1 August 2006), online: Office for the Coordination of Humanitarian Affairs – OPT <http://www.humanitarianinfo.org/opt/docs/UN/OCHA/Movement%20and%20Access%20report%20No.%2018.pdf>; and *Gaza Strip: Situation Report (7-24 August 2006)*, *supra* note 7.

³⁰ United Nations Office for Coordination and Humanitarian Affairs, *Situation Report: Gaza Strip (7 August 2006)*, online: United Nations Office for Coordination and Humanitarian Affairs – OPT.

³¹ *Fourth Geneva Convention*, *supra* note 4, Art. 49.