

Israel's obligation to Gaza in a pandemic and post-pandemic reality

Israel is obligated to protect the health and safety of all people living under its control, including by ensuring that the vaccine is available in Israel, the West Bank, and Gaza. It also has a vested interest to do so as viruses cannot be subjected to the permit regime.

This will necessarily require close cooperation with Palestinian authorities and the international community, but their involvement does not absolve Israel from its ultimate responsibility toward Palestinians under occupation.

Source of Israel's obligations toward Palestinians in Gaza

Israel controls Gaza's land crossings, airspace and territorial waters (medical equipment, medication, and humanitarian aid do not enter the Gaza Strip via Egypt). By these means and others, Israel controls [key elements](#) of life in Gaza. This ongoing control, including in the last 15 years since the implementation of the Disengagement Plan, places obligations on Israel towards residents of Gaza pursuant to international humanitarian law, as well as international human rights law, and Israeli law, as follows:

- Regulation 43 of the Hague Convention on the Law of War on Land (1907) and its annexed regulations imposes an obligation on Israel to ensure the safety and security of the residents of the Gaza Strip. This duty encompasses a variety of topics related to health and well-being.
- Article 55 of the Fourth Geneva Convention (1949) specifically states that "to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuff." This article imposes an obligation on the occupying power to bring the necessary medical equipment, such as medications and vaccines, into the occupied territory when the occupied area's resources do not suffice.
- Article 56 of the Fourth Geneva Convention expressly refers to preventive measures necessary to combat the spread of communicable diseases and epidemics: "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics." These measures include, inter alia, the provision of medications, tests and medical disinfectants, the dispatch of medical teams, and the establishment of hospitals and medical centers to assist persons suffering from infectious diseases.

- Article 12 of the International Covenant on Economic, Social and Cultural Rights, to which Israel is bound, imposes an obligation to take the necessary measures to ensure, inter alia, “the prevention, treatment and control of epidemic, endemic, occupational and other diseases, treatment of these disease and supervision over them” (article 12.2(C) of the covenant). In addition, it must take the steps necessary for the “creation of conditions which would assure to all medical service and medical attention in the event of sickness” (article 12.2(D) of the covenant).
- The UN Committee on Economic, Social and Cultural Rights published its concluding observations in November 2019 following an examination of the state of the Palestinian health system. The committee expressed its concerns in view of the fact that Palestinians who live in the Occupied Territory, and particularly in the Gaza Strip, have very limited and inadequate access to health facilities, apparatus, and health services. This is chiefly due to restrictions on the entry of goods defined by Israel as "dual-use equipment" which include essential medical equipment, and to the permit regime. The committee recommended to the State of Israel that it, inter alia, allow unrestricted access to health facilities and services, including urgent medical services, and permit medical professionals to travel to and from the Gaza Strip. These recommendations - which Israel disregarded - derive from its obligation in accordance with the provisions of the covenant that are all the more valid at the present time.
- Alongside Israel's duties under international law, its obligations also derive from High Court of Justice rulings, which determined that in light of Israel's ongoing control of the crossings, and the dependence on Israel that Gaza residents developed in relation to many aspects of life, it is obliged to ensure the humanitarian needs of the population and make certain that its basic rights and needs are respected (HCJ 9132/07 [Albassiouni v. the Prime Minister](#), January 30, 2008) and HCJ 201/09 Physicians for Human Rights v. the Prime Minister (January 19, 2009)). Protection from the spread of the COVID-19 epidemic and the provision of appropriate medical care to those infected with the virus are undoubtedly the most basic humanitarian needs of the residents of the Gaza Strip and, hence, Israel must act to guarantee them.

Israel's position: Maintaining control without responsibility

Israel [baldly denies](#) most of its obligations to residents of Gaza, citing the 2005 disengagement, despite its ongoing and deeply felt control over various aspects of life in the Strip. It justifies severe, often sweeping restrictions on movement of people and goods based on the erroneous claim that it 'withdrew' from the Strip, and also on far-reaching and often unclear "security-political" goals in response to Hamas's *de facto* control of local government functions and militant activity by Hamas and other factions. At the same time, Israel reserves a *sui generis*, or legally unique, interpretation whereby it absolves itself of responsibility for the impact of its ongoing control over movement of people and goods, as well as the limits it imposes on access in areas on land, at sea, and in Gaza's airspace.

The permit regime that Israel imposes on the Gaza Strip is characterized by a [general prohibition on travel](#) between Gaza, Israel, the West Bank, and abroad via Erez Crossing, except for the few individuals who receive special permission. Since March 2020, Israel has [tightened the closure](#) on Gaza to an even greater extent, denying almost all travel via Erez, even to the few people who previously would have met its criteria for permits. All goods that enter and exit Gaza via Kerem Shalom, its sole, official commercial crossing, also operated by Israel, must be coordinated with representatives of the Israeli army, subject to its procedures and policy.

In this way, Israel has played and still plays an active part in suppressing and preventing the development of an adequate healthcare system or functioning economy in the Gaza Strip. Recurrent Israeli military operations have also directly affected the healthcare system, the economy, and civilian infrastructure in the Gaza Strip, which all struggle to meet the basic needs of the population and function, depending on the moment, along a spectrum of impending collapse. As a result, funding from international donors has been allocated throughout the years to address basic humanitarian needs, maintain the healthcare system and improve basic infrastructure in the Gaza Strip, but these efforts fall far short of need.

[Statements by Israeli officials](#) allude to a willingness to allow passage of aid designated for the coronavirus response and also vaccines, but an unwillingness *to supply or pay* for these from its own coffers. Gisha is not aware of incidents of Israeli officials blocking entrance of items, medicine, or equipment needed for the pandemic response directly. Yet, refraining from blocking the entrance of necessary materials does not, in and of itself, meet Israel's obligations, nor can it relieve Israel of its duties in the context of the pandemic. Israel's actions more broadly, continuing to restrict entrance and exit of [people](#) and [goods](#), its sometimes [total closure of the crossings](#), and frequent [attacks on fishermen](#) and [destruction of farmlands](#) within the Strip, indicate its reluctance to desist from harming the [economy](#), [food security](#) and [well-being](#) of civilians in Gaza undergoing unprecedented hardship during the pandemic.

The role of Palestinian actors

Fifty-three years of occupation and decades of harsh restrictions on movement have undermined the ability of Palestinian authorities in Gaza and the West Bank to assume full responsibility for health as defined in the Oslo Agreement.

A [November 2020 report](#) by the World Health Organization (WHO) Director-General notes:

Chronic occupation has profound implications for the sustainability of health-care provision by public authorities, in terms of both revenue raising and affordability. Responsibilities for the right to the highest attainable standard of health for Palestinians are divided between Israel as occupying power, the Palestinian Authority, the de facto authority in the Gaza Strip and third States. The Palestinian Authority holds responsibilities for the provision of health care to the Palestinian population in the West Bank and Gaza Strip upon its establishment under the Oslo Accords. However, lack of control over natural resources (including water), points of entry and other potential sources of revenue, have created a situation of aid dependency that constrains the capacity of the Palestinian Authority to fulfil such responsibilities. Evisceration of the economy and productive base have further deepened this profound dependency, which has particularly affected the Gaza Strip.

According to [the WHO](#), some 88 percent of funds for the Palestinian health system comes from the central taxation system, while just 12 percent comes from insurance contributions. That means that the healthcare system relies on tax contributions and the functioning of the economy more broadly.

While responsibility for health care and other areas of civilian life were ostensibly transferred to the Palestinian Authority in the Oslo Accords, to this day, more than 25 years later, Palestinian authorities both in Gaza and the West Bank do not control their own borders, taxation system, or population registry. Israel's continued control over these has had severe ramifications on the economic reality in the Palestinian territory.

Each item needed for the COVID-19 response must be coordinated for entry by Israel. Israel determines which sectors of the [economy can function](#), including by determining which goods can be sold and where, which individuals can travel and also the extent of to which electricity, water, and communications infrastructure can operate.

As a result of the difficult humanitarian situation in Gaza, created in large part by Israel's military campaigns and ongoing restrictions on access, including on access to natural resources, Palestinians have turned to the international community for financial assistance and support. This assistance seeks to prevent humanitarian collapse, but even large influxes of aid are a symptom of ongoing occupation and lack of sovereignty, not a solution or a salve for gaping needs. Humanitarian relief provided by third state actors in any case does not absolve Israel of its obligations to Palestinians living under occupation.

The Palestinian Authority is working closely with the WHO and its other international partners in order to secure needed equipment and tests for the pandemic response, as well as vaccines. This neither [reduces nor replaces Israel's obligations](#).

Conditioning aid/vaccine on negotiations for hostages/bodies

[Recent media reports](#) have indicated that Israeli officials are conditioning the distribution of vaccines and other necessary equipment for the COVID-19 response on the outcome of negotiations with Hamas for [two Israeli citizens](#) they are allegedly holding, as well as the return to two bodies of soldiers killed in the 2014 military operation Protective Edge.

The citizens being held in apparent absence of legal cause and due process must be released, unconditionally. Hamas's violations of international humanitarian law, however, do not absolve Israel of its positive duties to the civilian population in Gaza, who is in effect being punished for political developments out of its control, nor do they justify Israel's own violations of international law.

The health and human rights of the Palestinian population living under Israeli occupation, including access to medicine, medical treatment, and vaccines, must not, in any circumstances, be made conditional on the outcome of negotiations or political maneuvering of other kinds.

Recommendations

Gisha calls on Israel to fulfill its obligations and protect the health and safety of Palestinians in the Gaza Strip and the West Bank.

As the new year begins, two million residents of Gaza are facing unprecedented uncertainty and hardship. The world will hopefully emerge from the pandemic lockdown in 2021. Gaza must not be left behind. Residents of Gaza cannot return to the reality they faced before the onset of the pandemic. Respect for human rights and international law must guide policy choices. Useless restrictions on movement that curtail freedom and hope have no place in a post-pandemic reality.

While only an end to the occupation can ensure full protection of rights, Israel's responsibilities at the present time include the following:

- Ensuring that the coronavirus vaccine is available and distributed swiftly, and, where necessary, contributing to covering the costs of the vaccine and its distribution.
- Giving assurance that it will allow safe and swift access to Gaza and the West Bank for medical personnel, humanitarian actors, medicine and medical equipment and other inputs critical to maintaining civilian health infrastructure such as hospitals and clinics, as well as patients needing access to medical treatment.
- Refraining from conditioning movement, aid and distribution of the vaccine on political developments. Hamas authorities must release the individuals and bodies it holds, but its violations of IHL do not absolve Israel of its obligations or justify Israel's violations.
- Lifting the closure on the Gaza Strip to enable the proper functioning of its economy and healthcare system in face of the coronavirus pandemic as well as meeting its obligation to the civilian population of the Strip as a whole.
- Working in close cooperation with all relevant actors, Palestinian and international, for the safety and well-being of all residents of the region.