

Scale of Control: Israel's Continued Responsibility in the Gaza Strip

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Executive Summary

In recent years, the Gaza Strip has been the focal point of a legal debate which has growing ramifications for the political reality in the region and for the lives of Israelis and Palestinians. The debate revolves around the question of Gaza's legal status after the removal of Israeli army bases and settlements in the September 2005 "disengagement". Israel's official position is that this marked the end of the occupation that began in 1967 and that the law of occupation ceased to apply to Israel's relationship with Gaza at that point. According to this position, Israel's sole obligations to residents of the Gaza Strip are those mandated by the law of armed conflict, which continues to apply, so long as the violent conflict between the Israeli military and armed groups in Gaza continues.

In 2007, Gisha published "Disengaged Occupiers: The Legal Status of Gaza", a position paper in which it argued that the law of occupation continues to apply to all Israeli actions toward the Gaza Strip due to the significant control it still exercises over Gaza. "Scale of Control: Israel's Continued Responsibility in the Gaza Strip" updates our previous legal analysis and adapts it to reflect the changes on the ground and in the patterns of control exercised over the Gaza Strip by the various actors since 2007, including as a result of the Hamas movement's takeover of internal control in Gaza.

This position paper illustrates how despite recent developments, Israel continues to control Gaza's airspace and territorial waters, the Palestinian population registry and passage of goods and people to and from Gaza. Israel still collects customs and value added tax for goods entering the Gaza Strip and maintains some physical presence in the Strip. Israel also controls Gaza's infrastructure by virtue of its control over supply of electricity and other inputs to the system.

Does this mean Israel is still occupying the Gaza Strip? In this position paper, we refer to the "end of occupation" both in Gaza and in the West Bank as a process that takes place over time. We are currently located somewhere on the spectrum between occupation and the end of occupation, that is, a situation in which Israel has already relinquished some governmental powers in the West Bank and Gaza Strip and allows Palestinian authorities to exercise them, yet continues to exercise other governmental powers, to the exclusion of others. Under these circumstances, it is impossible to say that the occupation of the Gaza Strip has ended and therefore, the international law of occupation continues to apply to Israel in the spheres in which it continues to exercise control over the lives of Palestinian residents. In the spheres in which Israel has transferred or relinquished powers and allows

others to exercise them, its responsibility toward the civilian population is diminished or extinguished.

In addition, for a transitional period, Israel continues to owe obligations in spheres in which it relinquished control, until the representatives of the Palestinian people are able to exercise their sovereignty independently. These obligations are owed according to the post-occupation doctrine which provides protection to the civilian population during the transition from occupation to fulfillment of lawful sovereignty. Israel also has obligations under human rights law wherever actions by its official agents have a significant and direct impact on Gaza's residents.

Despite the fact that the Palestinian authorities are non-state actors (and recognition of a Palestinian state as such will not turn them into state actors), they owe obligations in the spheres they control under human rights law and the law of armed conflict.

Israel currently interprets its obligations toward residents of the Gaza Strip (and to a lesser degree, the West Bank as well) as limited to the "minimum" standard required under the law of armed conflict. As a result of this position, Israel allows passage of people only in "exceptional humanitarian cases" and has restricted passage of goods to those "essential for the survival of the civilian population". In contrast, we argue that under the law of occupation and post-occupation, Israel is obligated to allow the movement of people and goods at the level required to maintain normal life. Israel may restrict movement only in order to meet concrete security needs, and even then while balancing the restrictions against the needs and rights of Gaza's residents.

Israel must fulfill its obligations under international law by allowing free passage of goods and people to and from the Gaza Strip, subject to individual security checks and subject to arrangements that meet both Israel's security needs and its obligation to facilitate normal life in the Gaza Strip. **Because social and economic development, family unification and access to education and proper medical care largely depend on the ability to travel and transport goods, Israel must allow freedom of movement at a level that extends beyond survival and allows for prosperity, development and the realization of individual rights.**

Although this paper focuses on the Gaza Strip, the analysis offered here may assist in understanding Israel's obligations regarding the Palestinian territory in general, particularly in light of possible future changes in the elements of control, including as a result of international recognition of a Palestinian state. Whether it concerns a state or any other entity – control creates responsibility. The scope and nature of the responsibility are determined by the scale of control.

For the complete position paper, click [here](#).