WITHIN RANGE
AN ANALYSIS OF THE LEGALITY OF THE LAND “BUFFER ZONE” IN THE GAZA STRIP

Diakonia IHL Programme
Legal Analysis Report 1 2011
WITHIN RANGE

AN ANALYSIS OF THE LEGALITY OF THE LAND “BUFFER ZONE” IN THE GAZA STRIP

Diakonia IHL Programme
August 2011

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Acknowledgement

Diakonia International Humanitarian Law Programme wishes to thank Al Mezan Centre for Human Rights and the Gruppo di Volontariato Civile (GVC) for providing photographs and/or case studies used in this publication.

Diakonia IHL Resource Centre’s legal analyses

Diakonia IHL Resource Centre provides legal analyses of current issues of interest related to the protection of civilians and their properties in the Israeli–Palestinian conflict. Our work focuses on the application of international humanitarian law (“IHL”) and international human rights law (“IHRL”) to specific policies, practices and issues pertaining to Israel and the occupied Palestinian territory (“oPt”).

The legal analyses aim at providing humanitarian and development experts and practitioners, policy and decision makers, researchers, academics and journalists with accessible and reliable information on international law and its applicability in Israel and the oPt. IHL is a key reference and tool for people who work to increase the protection of civilians, alleviate human suffering, and promote peace, justice and development in Israel and the oPt. The objective of these analyses and the related recommendations is to facilitate policy formulation, as well as operations by other organisations and institutions.

Diakonia works together with partners from civil society in both Israel and the occupied Palestinian territory:

Al Haq, Law in service of the man, www.alhaq.org
Al Mezan Centre for Human Rights, www.mezan.org
B’Tselem, The Israeli Information Center for Human Rights in the Occupied Territories, www.btselem.org
Mossawa Center, the Advocacy Center for Arab Citizens in Israel, www.mossawacenter.org
The Association for Civil Rights in Israel (ACRI), www.acri.org
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## List of acronyms

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<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AP I</td>
<td>Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention of the Rights of the Child of 1989</td>
</tr>
<tr>
<td>GC IV</td>
<td>Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949</td>
</tr>
<tr>
<td>GVC</td>
<td>Gruppo di Volontariato Civile</td>
</tr>
<tr>
<td>HCJ</td>
<td>Israeli High Court of Justice</td>
</tr>
<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights of 1966</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights of 1966</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
</tr>
<tr>
<td>IDF</td>
<td>Israel Defense Forces</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>OCHA</td>
<td>Office for the Coordination of Humanitarian Affairs</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>PCHR</td>
<td>Palestinian Centre for Human Rights</td>
</tr>
<tr>
<td>UAV</td>
<td>Unmanned Aerial Vehicle</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights of 1948</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollar</td>
</tr>
<tr>
<td>WFP</td>
<td>World Food Programme</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

The “buffer zone” between Israel and the Gaza Strip is a military no-go area that extends along the entire northern and eastern perimeter of the Gaza Strip adjacent to Israel, but inside Palestinian territory. Following the collapse of the peace process and the outbreak of the second Intifada in 2000, Israel unilaterally enforced a 150-metre “buffer zone” within the Gaza Strip, which it extended to 300 metres in May 2009. The precise areas designated by Israel as the “buffer zone” are unknown and at times extend up to 1.5 kilometers inside the Gaza Strip, which is only 5–12 kilometers wide. Israel restricts Palestinians’ access to the land located in the “buffer zone”, sometimes through the use of live fire. From January to May 2011, at least 19 civilians have been killed, including seven children and 252 others were injured, including 73 children.

Despite the ‘disengagement’ of 2005, Israel continues to be the Occupying Power in the Gaza Strip and the relevant rules of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) apply throughout the territory.

Under the Geneva Conventions, Israel has the duty to protect the civilians in the Gaza Strip on the one hand, and the duty to ensure the security of Israel and its citizens on the other. In order to fulfill the latter, it may for example prohibit access to certain areas. There have been attacks on Israel by Palestinian armed factions mainly from the border areas within the Gaza Strip. Infiltration tunnels are moreover an additional danger facing Israeli soldiers and citizens. Israel therefore has a legitimate military interest, and military necessity in this case justifies the creation of a buffer zone. Such a buffer zone, however, must be implemented in accordance with the basic IHL principles of distinction, proportionality and precautions in and during attack.

In order to examine the legality of the “buffer zone”, it is crucial to analyze the means through which it is enforced. It should be noted that the “buffer zone” includes a large area at sea; however, this paper deals solely with the legality and the impact of the “buffer zone” on land.

(i) The use of lethal force

A high number of civilians not taking direct part in hostilities, including children, are shot at by Israeli lookouts and wounded or killed. These constitute prima facie violations of the rules of IHL in relation to the protection of civilians. All feasible precautions must be taken to avoid, and in any event, minimize incidental loss of civilian life. Moreover, the principle of proportionality prescribes that launching an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. In addition to the regular protections afforded to a civilian as outlined above, children have additional and special protections under IHL.

There are indications that demonstrate, prima facie, that on many occasions, the Israeli military is targeting civilians who bear no threat to the Israeli military or Israeli civilians. Moreover it is essential for the Israeli military to effectively distinguish between civilians and combatants and additional efforts must be deployed to make an accurate determination in this regard. Israel should consider adapting the means and methods of enforcement, including use of lethal force, in this process, to minimize the harm to civilians. Where there is doubt as to the characterization of the targeted person, the assumption should always be that the individual is a civilian.

(ii) Demolition of civilian property

With regard to demolition of property, since 2005, 305 water wells, 197 chicken farms, 377 sheep farms, 996 complete houses, 371 partial houses, three mosques, three schools,
and six factories have been destroyed within the “buffer zone”. In addition, a total of 24.4 sq. kilometres of cultivated land has been leveled in the no-go and high risk zones, all representing civilian and/or cultural properties. Israel refuses to compensate Palestinians for the damages that it caused civilians as a result of its policy of destruction.

(iii) Restriction of access

The enforcement of the “buffer zone” results in Palestinians being unable to use property necessary for the production of food. It further results in a total or partial ban on access to a number of educational and religious institutions. Overall, the land restricted area is estimated at 17 percent of Gaza Strip's total land mass, and 35 percent of its agricultural land.

Taking into account Israel’s legitimate security concerns resulting from the attacks on Israel from the Gaza Strip and Israel’s right to take measures in response to those attacks, Diakonia’s International Humanitarian Law Program finds that the unilateral expansion of the “buffer zone” and its enforcement regime result in the grave infringement of a number of rights of Palestinians.

Moreover, the imposition of an expanded “buffer zone” in the Gaza Strip by Israel and the mechanisms through which the “buffer zone” is currently enforced do not coincide with the notion of military necessity as they violate the customary principles of distinction, proportionality and precautions in and during attack. Further, they are contrary to the prohibition against seizure and destruction of land except if rendered absolutely necessary by military operations, as well as the disproportional restriction on movement of civilians to their land and livelihoods. As such, the enforcement of the “buffer zone” under the current circumstances and scope is unlawful.

As a result, Diakonia proposes a number of measures which have the potential of remedying the situation (see page 43).
I. BACKGROUND

<table>
<thead>
<tr>
<th><strong>365 sq. kilometers</strong></th>
<th>Total area of the Gaza Strip</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>45 kilometers</strong></td>
<td>Length of the Gaza Strip</td>
</tr>
<tr>
<td><strong>5-12 kilometers</strong></td>
<td>Width of the Gaza Strip</td>
</tr>
<tr>
<td><strong>1,657,155</strong></td>
<td>Number of inhabitants of the Gaza Strip</td>
</tr>
<tr>
<td><strong>4,073 pers/sq. km</strong></td>
<td>Average population density of the Gaza Strip</td>
</tr>
<tr>
<td><strong>1,400</strong></td>
<td>Approximate total number of Palestinian fatalities (of which 300 were children) during “Operation Cast Lead” of 2009</td>
</tr>
<tr>
<td><strong>60,000</strong></td>
<td>Number of families who had their homes demolished or damaged, during “Operation Cast Lead”</td>
</tr>
<tr>
<td><strong>4,455 and 3,584</strong></td>
<td>Houses completely destroyed and/or suffering major damages, respectively, during “Operation Cast Lead”</td>
</tr>
</tbody>
</table>

With a territory of 365 sq. kilometers, 45 kilometers long and between five and twelve kilometers at its widest point, the Gaza Strip is the smaller of the two areas that compose the Palestinian territories occupied in 1967, and is geographically disconnected from the West Bank. There, residents live almost entirely sealed off from the outside world by fences along both the Israeli and the Egyptian sides, guarded by heavy military infrastructure.

Following the Hamas takeover of the Gaza Strip in 2007, Israel imposed a nearly total land and naval blockade on the Strip. Qualified by the ICRC as an act of “collective punishment”, it drastically limits entry and exit of people and goods, a situation that is further exacerbated by movement restriction measures put in place by the Egyptian government on the Gaza/Egypt border at the Rafah crossing.

Among the 1,657,155 inhabitants of the Gaza Strip, over two-thirds are descendants of refugees from the 1948 war who live in or outside one of the eight breeze-block refugee camps. These camps contribute to the high average of population density of over 4,000 people per sq. kilometer, making the isolated strip of land one of the most densely-populated areas in the world.

This continuing isolation is further compounded by hardships resulting from internal dissensions between Palestinian factions, regular Israeli air-strikes, land incursions, and shelling by Palestinian armed groups of Israel. The situation for the residents of the Gaza Strip further deteriorated during and after the 22-day Israeli military offensive “Cast Lead” in late December 2008 – January 2009 during which 1,400 Palestinians were killed, including some 300 children, and over 5,000 injured. A further 60,000 families have had their homes demolished or damaged as reports counted the total destruction of 4,455 houses and the partial destruction of 3,584 others. Another 58,802 houses suffered minor damages.

Both the blockade and the war have resulted in severe degradation of the economic conditions in the Gaza Strip. Humanitarian indicators are dire: according to 2010 figures from the CIA World Fact Book, 40% of Gazans are unemployed, 70% live under the poverty line, while 80% depends on foreign aid. Despite a set of relaxation measures implemented by Israel in June 2010, the ‘easing’ of the blockade has had little impact on Gazans’ livelihoods. The entry of construction material still represents only 35% of what used to be allowed prior to the blockade, preventing core infrastructures from being repaired or built. Only 4.5% of the totally demolished houses have been reconstructed and 40% of the houses that suffered major

**Humanitarian Indicators for the Gaza Strip as of 2010**

- Unemployment rate: 40%
- Population below poverty line: 70%
- People dependent on foreign aid: 80%
- Food insecure households: 52%
damage during “Cast Lead” have been repaired.\textsuperscript{11} Israel and – at the time of writing – Egypt continue to restrict movement for Palestinians wishing to leave the Strip, making exceptions only for some business travellers and urgent medical cases. Meanwhile, shortages of goods are met through large-scale humanitarian assistance and the black market tunnel trade that flourishes on the Gaza Strip’s border with Egypt.

Furthermore, on the land and sea boundaries, Israel restricts Palestinian access to areas designated as “buffer zones”, with the stated intention of preventing attacks by Palestinian armed groups on Israel. Twelve percent of Gaza’s population (or 178,000 people) is directly affected by these restrictions. Though its precise area is unknown, the restricted land area extends de facto from the cease–fire line with Israel to between 500 meters to 1.5 kilometers deep inside the Gaza Strip, encompassing around a fifth of the Gaza Strip’s width at its widest point. This makes 17\% of the Gaza Strip’s total land mass, and 35\% of its agricultural land an impossible or dangerous place to access. The use of live fire by the Israeli army in the “buffer zone” has become more frequent since 2011. From January to May alone, at least 19 civilians – men, women and seven children – were killed and 252 others were injured including 73 children.\textsuperscript{14}

Bearing in mind the narrow width and confinement of the Gaza Strip, one must take into account that any bits of land taken in the Strip cannot be reclaimed elsewhere. In a territory where agriculture remains the main source of income, restrictions on access to land have a severe humanitarian impact on Gaza residents. With 52\% of households being food insecure,\textsuperscript{15} children, women and male workers risk their lives to earn a livelihood by collecting rubble for the gravel industry, cultivating the land, or herding their animals in the land of the “buffer zone”.

\begin{figure}[h]
  \centering
  \includegraphics[width=\textwidth]{image.png}
  \caption{Young rubble collector and his donkey cart, near the Erez humanitarian crossing point, in the northeastern Gaza Strip. © Diakonia IHL Programme}
\end{figure}
II. HISTORY AND DEFINITION OF THE GAZA “BUFFER ZONE” ON LAND

<table>
<thead>
<tr>
<th>Width</th>
<th>In practice, the width of the “buffer zone”</th>
<th>Percentage of Gaza Strip’s total land mass covered by the “buffer zone”</th>
<th>Percentage of Gaza’s agricultural lands located in the “buffer zone”</th>
<th>Percentage of Gaza’s total population affected by the land “buffer zone”</th>
<th>Number of people directly affected by the “buffer zone” on land</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 km to 1.5 km</td>
<td>In practice, the width of the “buffer zone”</td>
<td>17%</td>
<td>35%</td>
<td>7.5%</td>
<td>113,000</td>
</tr>
</tbody>
</table>

A buffer zone is a neutral area serving to separate hostile forces or nations. Buffer zones are not uncommon in international armed conflicts, especially in areas where a cease-fire is in place. Usually, a buffer zone is created in an area of separation between disputing or belligerent forces to reduce the risk of renewed conflict and is controlled by a neutral peacekeeping force. A buffer zone is sometimes also referred to as an ‘area of separation’ or a ‘demilitarized zone’.

In the “buffer zone” in the Gaza Strip (also commonly referred to as the “Israeli Access Restricted Area”) there is no neutral peacekeeping force; it is unilaterally enforced by a party to the conflict. As such, it does not fit into the traditional definition of a “buffer zone”. Nonetheless, for ease of reference, throughout this paper it will be referred to as the “buffer zone”.

An Israeli watchtower, along the Wall between the Gaza Strip and Israel, adjacent to the Erez crossing point, in the northeastern Gaza Strip. In the foreground are rubble remnants from “Operation Cast Lead”. © Diakonia IHL Programme
After briefly outlining the history and area of the “buffer zone” between Israel and the Gaza Strip, this analysis will establish the legal framework under which to analyze the legality of the existence and expansion of the “buffer zone”. In assessing the legality of the “buffer zone”, it is also essential to consider in detail its associated regime of enforcement mechanisms, especially because the area of the “buffer zone” is de facto defined via the area in which it is enforced rather than through a written order or policy or clear physical demarcation. It should be noted that the “buffer zone” includes a large area at sea; however, this paper deals solely with the legality and the impact of the “buffer zone” on land.

The “buffer zone” between Israel and the Gaza Strip is a military no-go area that extends along the entire northern and eastern perimeter of the Gaza Strip’s armistice line with Israel, inside Palestinian territory. Following the second Intifada in 2000, Israel unilaterally enforced a 150-metre “buffer zone” within the Gaza Strip. In May 2009, the Israeli military scattered thousands of leaflets from the air warning residents to maintain a distance of at least 300 meters from the armistice line or risk being fired upon. In March 2011, Israel again distributed the same leaflets (see a copy of the leaflet on the next page). It also confirmed the distance of 300 meters in writing to the Office for the Coordination of Humanitarian Affairs (OCHA).

In reality, the precise areas designated by Israel as the “buffer zone” are unknown and the area is not demarcated. Despite the notification of the area of the “buffer zone” in the pamphlets, in practice, the “buffer zone” extends up to one kilometer in most areas and 1.5 kilometers at its widest point in the North of the Gaza Strip. The total area of land restrictions is estimated to cover approximately 62,600 dunums (62.6 sq. kilometres) representing 17% of the Gaza Strip’s total land mass (365 sq. kilometres).

In August 2010, OCHA and the World Food Programme (WFP) published a special report entitled “Between the Fence and a Hard Place”, assessing the enforcement practices reported in interviews and focus groups in order to define the de facto borders of the “buffer zone”. The report concluded that the land restricted area can be schematically sub-divided into two parts (see map on page 13):

**The “no-go zone”**: covers the area between zero to 500 meters from the fence [border], where access is totally prohibited and poses an extreme threat to life if entered. The Israeli army carries out incursions into this zone a number of times a week, during which land is leveled and any property found there is destroyed.

The Israeli Defence Forces (IDF) has cleared this area of almost all vegetation and structures, which allows for strict surveillance day and night, via cameras installed on high posts in Israeli territory.

**The “high risk zone”**: covers the area located between 500 to 1,000–1,500 meters from the fence, depending on the area. Opening fire at people accessing this area, as well as land leveling and property destruction, are common and widespread practices; however, they are carried out irregularly and unpredictably. As a general rule, the deeper one enters these areas in the direction of the fence, the more likely one is to receive warning or direct fire. Some sections of this zone have been leveled in the past two years (some more than once) and subsequently re-cultivated with rain-fed crops, primarily wheat and barley.
In May 2009 and March 2011, the Israeli military scattered thousands of the above leaflets from the air, warning residents of the following:

The Israeli Defence Forces warn you not to get closer to the border’s fence (not less than 300 meters) and declare that anyone who comes closer, he/she will be subject to the necessary actions taken by the Defence Forces including the possibility of being fired on.

The terrorist groups, those who are responsible for tunnels and smuggling of weapons, are aware that the continuation of the terrorist attacks, the smuggling of weapons and the digging of tunnels are targets for the Israeli Defence Forces. Despite that, they continue to work in your neighborhoods and put your lives and your properties at risk. Therefore, do not assist those groups, as they will neither help you, nor protect you when there is a need. Take responsibility for your future!!!

Call us at 02–5830746 or send us an e-mail on: Helptogaza2010@gmail.com and provide us with information about the individuals who are involved in such actions.

The Israeli Defence Forces
The distinction made in this map with regard to the “No-Go Zone” and the “High Risk Area” is based on the information of enforcement practices available to OCHA. In addition to the fact that the “buffer zone” is not clearly marked, Diakonia stresses that civilians on the ground are not in a position to know whether they are entering a high risk area, or a no–go area as marked on this map.

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III. APPLICABLE LAW: THE LEGAL CHARACTER OF THE RELATIONSHIP BETWEEN ISRAEL AND THE GAZA STRIP

In order to establish the applicable legal framework, it is important to determine whether or not the Gaza Strip is currently a territory under Israeli occupation. After the withdrawal of the British in 1948, the Gaza Strip came under the control of Egypt. In 1967, it was occupied by Israel. Israeli forces left the Gaza Strip on 1 September 2005 as part of Israel’s ‘unilateral disengagement’ plan. All Israeli settlers were also evicted from the area as part of this plan. Israel claims that since its disengagement from the Gaza Strip in 2005, it is no longer the Occupying Power there. In other words, Israel no longer has authority in the Gaza Strip, thus ending the occupation of the territory.29

According to Article 42 of the Hague Regulations30:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

In this case therefore, the question to be answered is whether the Gaza Strip is placed under the authority of Israel in the sense of Article 42 of the Hague Regulations.

Under the disengagement plan itself, Israel retains absolute authority over Gaza’s airspace and territorial sea.31 It is manifestly exercising governmental authority in these areas. This view is reinforced by John Dugard’s “Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967”.32 Dugard maintains that because Israel controls the airspace over Gaza, the territorial waters next to it, the adjacent land crossing points and external borders, that Gaza is effectively occupied.33

In addition, it is important to recall the ruling by an American military tribunal in the “Hostages case” that even though partisans fighting the Germans were at various times able to control parts of Yugoslavia and Greece, the fact that the Germans “could at any time they desired assume physical control of any part of the country” meant that Germany was nonetheless the Occupying Power in these countries.34 Similarly, in relation to the occupation of southern Lebanon, the Israeli Supreme Court held that occupation forces do not need to be in actual control of all the territory and population, but simply have the potential capability to do so.35

Israel is to be considered the Occupying Power in the Gaza Strip and the relevant rules of international humanitarian law (IHL) therefore apply throughout the territory.
The following are a list of factors that further support the determination that Israel is indeed exercising authority over the Gaza Strip:

- Israel patrols the Gaza Strip's territorial waters and maintains exclusive control in the air space over the Gaza Strip;\(^{36}\) Also, through the use of weapons such as unmanned aerial vehicles (UAV) and satellite imagery, Israel has the ability to closely observe the situation in the Gaza Strip;
- Israel controls Gaza's external borders including Erez, Karni and Kerem Shalom. Israel also exercises strong influence over control of the Rafah crossing;\(^ {17}\)
- Israel supplies the Gaza Strip with electricity, fuel, telecommunications services, water, and sewage removal and controls the administration of these services in the Gaza Strip;\(^ {38}\)
- Israel maintains a population registry of Gazans and collects, on behalf of the Palestinian Authority, taxes on goods bound for Gaza passing through Israeli ports and, therefore, controls Gaza Strip's tax system and population registry.\(^ {39}\) If a person is not registered in the registry maintained by Israel, they are not allowed to leave Gaza;\(^ {40}\)
- Israel maintains and exercises a policy of targeted killings on a regular basis on Gazan territory;\(^ {41}\)
- Israel has identified security considerations and reserved for itself the right to re-enter the Gaza Strip for broadly self-defined “self-defence” as evidenced by regular land incursions;\(^ {42}\) and
- Israel continues to detain 720 Gazans in its prisons.\(^ {43}\)

Moreover, the UN High Commissioner for Human Rights (UNHCHR), the UN Security Council, the UN General Assembly, and the UN Human Rights Council have recognized that the situation in the Gaza Strip remains one of military occupation with Israel as the Occupying Power.\(^ {44}\) In addition, the mere fact that Israel has the ability to expand and enforce the “buffer zone” at will and unilaterally is evidence of its effective control over Gaza.

In light of the above, Israel is to be considered the Occupying Power in the Gaza Strip and the relevant rules of IHL therefore apply throughout the territory.\(^ {45}\)

Moreover, a situation of international armed conflict, especially in cases of occupation, does not release a state from its conventional human rights obligations. In its Advisory Opinion on the construction of the Wall in the occupied Palestinian territory, the International Court of Justice (ICJ) confirmed the applicability of a number of important human rights conventions in that territory.\(^ {46}\)

In addition, the UNHCHR noted in 2009 that:

> The International Court of Justice, United Nations human rights treaty bodies, successive High Commissioners for Human Rights and special procedures of the Commission on Human Rights and its successor, the Human Rights Council, consistently have averred that international human rights law and international humanitarian law apply concurrently in all of the Occupied Palestinian Territory.\(^ {47}\)

Therefore, Israel, as a state party to many of the core international human rights treaties,\(^ {48}\) continues to bear responsibility for implementing its human rights obligations in the Gaza Strip.

As the Occupying Power, Israel has certain rights and obligations in the Gaza Strip. Most important of these in relation to the “buffer zone”, are the duty to protect the civilians in the Gaza Strip, on the one hand, and the duty to ensure the security of Israel and its citizens on the other.\(^ {49}\) In order to conduct an analysis of the legality of the “buffer zone” and its enforcement, it is essential to first examine the military necessity for the creation of the “buffer zone”, and then the enforcement mechanisms that make up the regime in question.
IV. MILITARY NECESSITY AND THE CREATION OF THE BUFFER ZONE

212 and 107 Respectively, the number of rockets and mortar shells fired into Israel from the end of "Operation Cast Lead" in Dec. 2008 - Jan. 2009 to 23 November 2010
11 Number of Israeli civilians injured by rockets and mortars shelled from Gaza from the end of “Cast Lead” to 23 November 2010
11 Number of Israeli civilians killed by rockets and mortars launched from Gaza over the past five years

It is important to recall that IHL is guided by the need to balance two opposing, overarching principles: that of military necessity, and that of humanitarian protection. By taking into account the legitimate military needs of parties involved in an armed conflict, IHL aims to limit the effects of war in order to alleviate human suffering to the maximum extent possible. For example, as set out by the court in the “Hostage case” in 1948:

Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money.

Also, Articles 23(g) and 52 of the Hague Regulations provide that it is forbidden to destroy or appropriate (seize or requisition) the enemy’s property, unless such destruction or appropriation be imperatively demanded by the necessities of war. However, as noted by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), “the prohibition against attacking civilians and civilian objects may not be derogated from because of military necessity”.

Israel faces a clear threat from Palestinian armed groups in Gaza. There have been attacks on Israel by Palestinian armed factions in the Gaza Strip. According to Israeli Ministry of Foreign Affairs, from “the end of Operation Cast Lead, [January 2009 to 23 November 2010] 212 rockets and 107 mortar shells have been fired into Israel”. This resulted in 11 Israeli civilians being injured, and one security officer. In all, over the past five years, including during the Israeli "Operation Cast Lead", 11 Israeli civilians have been killed as a result of the firing of rockets and mortars from the Gaza Strip. In addition to the rocket and mortar launchings, there is a risk of infiltration which may enable terrorist attacks or kidnappings such as the abduction of IDF soldier Gilad Shalit in 2006.

Israeli authorities justify the existence and enforcement of the “buffer zone” as a means of protecting Israeli civilians and military personnel from attacks by Palestinian armed groups in the Gaza Strip. According to Israel’s Ministry of Foreign Affairs:

What is military necessity?

Military necessity has been defined as “those measures which are indispensable for securing the ends of the war and which are lawful according to the modern laws and usages of war”. It is a principle whereby a belligerent has the right to apply any measure that is required to bring about the successful conclusion of a military operation, and that is not forbidden by the laws of war. Military necessity is not a carte blanche to achieve the military goal at any price. It balances between military victory and humanity stemming from the need to minimize human suffering during armed conflicts. Some prohibitions under IHL can never be justified under military necessity. For example, the prohibition against confiscation of private property is absolute as stipulated in Article 46 of the Hague Regulations 1907.
The security fence, the “buffer zone”, and even the sections of the fence which have not been completed, limit the ability of terrorist organizations to enter Israel and present operational obstacles, especially for those organizations active in northern Samaria, making it difficult for them to carry out suicide bombing attacks within Israel.\textsuperscript{55}

In addition, Dore Gold, Israel’s former Ambassador to the United Nations and advisor to the government of Ariel Sharon stated in an article in the \textit{New York Times} that “only buffer zones can protect Israel”.\textsuperscript{56} The Israeli military has said it needs the “buffer zone” to make it more difficult for resistance fighters to fire rockets and mortars into Israel and set off explosives near the fence separating Israel from the Gaza Strip. Various physical elements were constructed on the Israeli side for securing the Gaza Strip–Israel armistice line.\textsuperscript{57}

Furthermore, Article 27(4) of Geneva Convention IV provides that Parties to the conflict “may take such measures of control and security in regard to protected persons as may be necessary as a result of the war”.\textsuperscript{58} According to the authoritative commentary to this provision, this includes prohibition of access to certain areas.\textsuperscript{59} It states, “a great deal is ... left to the discretion of the Parties to the conflict as regards the choice of means. What is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned. As has been seen, those rights must be respected even when measures of constraint are justified.”

It is therefore clear that the creation of a buffer zone to protect Israeli citizens from attacks from within Gaza is compatible with the applicable provisions of IHL. However, the modalities of the implementation of this “buffer zone” have given rise to numerous serious complaints which allege that the “buffer zone” in question is adversely affecting the fundamental rights of the persons concerned. In order to evaluate whether enforcement of the “buffer zone” complies with other important principles of IHL, in particular the key principles of distinction, proportionality, and the principle on precautions in and during attacks, it is necessary to explore the enforcement of the “buffer zone” in practice, and the impact thereof on the civilian population in the affected area.
An agricultural landscape in the northeast of the Gaza Strip, 9 December 2009. As enforced today, the “buffer zone” encompasses 35% of the Gaza Strip’s total agricultural land mass. © Pauline Beugnies
V. ENFORCEMENT MECHANISMS OF THE “BUFFER ZONE” ON LAND

The “buffer zone” is enforced by several different means including: the use of lethal force; demolition of property including homes, schools, mosques and agricultural crops within the “buffer zone”; and restriction of access to the area. Apart from specific land operations, the land “buffer zone” is primarily enforced remotely, i.e. off-site via remote control technology. According to the OCHA-WFP report, remotely–controlled weapon stations are deployed in secured pillboxes every several hundred meters along the fence, each containing machine guns protected by retractable armoured covers, whose fire can reach targets up to 1.5 km.60

(i) Lethal force and “warning”

<table>
<thead>
<tr>
<th></th>
<th>Total number of Palestinian civilian fatalities</th>
<th>Children fatalities</th>
<th>Total number of Palestinian civilian injuries</th>
<th>Children injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>12</td>
<td>4</td>
<td>158</td>
<td>37</td>
</tr>
<tr>
<td>2011 (January – May)</td>
<td>19</td>
<td>7</td>
<td>252</td>
<td>73</td>
</tr>
</tbody>
</table>

Israeli lookouts operate cameras monitoring the “buffer zone” remotely from operation rooms located around the Gaza Strip.61 In some cases, gunships or drones are dispatched in order to help spot gunmen.62 According to OCHA and the WFP, when soldiers identify potential targets, they suggest them to their battalion commanders, who decide whether the target is “incriminated” or not, i.e. whether warning or direct fire can be opened at them.63 This procedure takes less than two minutes.64 The OCHA-WFP report further notes that:

Actual fire is ultimately carried out by pressing a button, which opens the pillbox dome revealing the machine gun, and operating a joystick which allows the soldier to aim the weapon toward a designated target, guided by the images relayed from the field. The operator also draws upon images and information from ground sensors, aircrafts, and overhead drones, and is fed with real time audio of the target being struck.65

B’Tselem, The Israeli information Center for Human Rights in the Occupied Territories, has gathered testimonies indicating that the Israeli security forces have open–fire regulations in the no–go zones, permitting live fire at anyone who enters, even persons who pose no danger: “The army states that these regulations result from the daily activity of armed Palestinians in these areas to collect intelligence, organize attacks against soldiers, and attempt to abduct soldiers and cross the border”.66

The abovementioned leaflets that were distributed by Israel throughout the Gaza Strip state that “any person who approaches places himself in danger”, and that measures would

 Reliable notice of the no–go zone was never provided to Gazans, while the Israeli rules of engagement are unknown.
be taken against anyone entering the 300-metre zone, “including by gunfire”, regardless of the person’s identity or acts. B’Tselem’s investigation has revealed that some of the workers in the area have never seen such a leaflet, and that some of them are illiterate. Also, according to OCHA, the information about the size of the “buffer zone” provided by the Israeli army through leaflets has proven misleading, leading to increased risk to civilians. The Israeli army has thus far failed to physically demarcate the restricted area. Contrary to the High Court of Justice’s ruling in HCJ 741/05, that “special security areas” must be clearly marked, the no-go zones in the Gaza Strip are not marked in any way. In addition, reliable notice of the no-go zone was never provided to Gazans, while the Israeli rules of engagement are unknown.

In the absence of accurate information, civilians are forced to assess the risks before every entry. Children run the risk of being shot as they collect rubble from the ruins of buildings located in the “buffer zone” that were destroyed during “Operation Cast Lead”. Due to the ongoing blockade imposed by Israel on the Gaza Strip since June 2007, all building materials are banned from entering the Strip. As a consequence of the blockade and the subsequent lack of construction material, it has become a worthwhile activity for children to collect rubbles from the war and crush them into pebbles to make ‘concrete’ blocks.

According to OCHA, in 2010, 12 civilians were killed (including four children) and 158 were injured (including 37 children) in the vicinity of the restricted areas. From January to May 2011, 19 civilians were killed (including seven children) and 252 civilians (including 73 children), were injured in the same area. More than half of the people injured were outside the 300-metre Israeli military declared no-go zone. It should be noted that this data also includes deaths and injuries that were caused by Israeli military actions that were not necessarily related to the enforcement of the “buffer zone”.

In the buffer zone, many teenagers risk their lives for six to eight dollars a day. They collect and sell rubble from the buildings destroyed during the “Operation Cast Lead”. Because of the blockade enforced since 2007 and the lack of construction material, rubble is needed to be crushed into little stones to make concrete blocks. © Anne Paq / Active stills
Shaban Shaker Qarmout, a 67-year-old farmer from Beit Hanoun was shot dead by the Israeli forces on 10 January 2011 while working on his land close to the northern part of the “buffer zone”.

That Monday, minutes before he was killed, Shaban was being interviewed by the staff of the Italian non-governmental organisation GVC (Gruppo di Volontariato Civile), who were documenting the hardships of Palestinian farmers living and working in, or close to, the “buffer zone”, under the constant threat of confiscation of land and Israeli gunfire.

A father of five and grandfather of many, Shaban had been farming this area for as long as he could recall. He owned two dunums of land in Beit Hanoun, located 220 meters from the perimeter fence with Israel. “I bought this land to build a house for my family and farm. My fields were planted with orange, lemon, mandarin and almond trees,” he told his interviewers before his death. “I used to collect two full bags of almonds every year. At that time, we were living well, I was working hard in the orange grove but I would earn a fair living.” This all changed after the outbreak of the second Intifada in 2000. “One night during Ramadan, the Israeli army entered the neighborhood. They came exactly at the time when the fruits were ready to be picked and they uprooted the entire grove and leveled the land around with eight bulldozers. I felt as if someone had ripped out my heart. This was the most difficult thing I had to live through”.

Shaban’s testimony details the pressure he and his peers faced when working in a site of regular Israeli incursions and gunfire. “Last year, I planted 47 dunums of wheat, but it became very dangerous to access that land, as the Israeli army open fire at us regularly. Then again, the army burned all the crops. I decided to plant there this year, but when doing so, the army shot at us again, so we decided to flee the zone.”

That very day, while not yet aware of his fate, Shaban said that he still visits his crops every day. “What else can I do? I am going to buy more wheat and try to plant again. I am taking a risk, I know, but how many times does a man die?”

Shaban Qarmout was killed close to his water well, located on the map at B-4. In the north, marked in red, is the Armistice line. © Courtesy of GVC
(ii) Destruction of property / land leveling

(a) Protection of civilian property and destruction of property under IHL

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>305, 197 and 377</td>
<td>Respectively, number of water wells, chicken farms and sheep farms, that have been destroyed within the “buffer zone” since 2005</td>
</tr>
<tr>
<td>996 and 371</td>
<td>Respectively, number of houses completely and partially destroyed within the “buffer zone” since 2005</td>
</tr>
<tr>
<td>3, 3 and 6</td>
<td>Respectively, number of mosques, schools and factories that have been destroyed within the “buffer zone” since 2005</td>
</tr>
<tr>
<td>24.4 sq. km</td>
<td>Area of cultivated land that has been leveled in the “buffer zone”</td>
</tr>
</tbody>
</table>

The OCHA–WFP report details the leveling of farm land and the destruction of private property as a method to prevent or discourage access to restricted areas:

The gradual elimination of the means of production and the housing located in the restricted areas, in and by itself, reduces the number of people willing to access these areas. Moreover, the expectation of further destruction and land leveling in the future reduces the incentive to re-cultivate and reconstruct.76

Since 2005, 305 water wells, 197 chicken farms, 377 sheep farms, 996 complete houses, 371 partial houses, three mosques, three schools, and six factories have been destroyed within the “buffer zone”.77 In addition, a total of 24,413 dunums (24.4 sq. kilometers) of cultivated land has been leveled in the no-go and high risk zones,78 all representing civilian and/or cultural properties. The Israeli military has cleared this area of almost all vegetation and structures, which allows for strict surveillance, day and night, via cameras installed on high posts on the Israeli border.79 The demolition of houses generally takes place in the middle of the night without any warning being given to the residents.80 B’Tselem, in a report, has addressed the impact of the demolitions in the “buffer zone”:

“Thousands of people have been made homeless and thousands have lost their sole source of income for many years to come.” – B’Tselem

Israel calls this policy ‘clearing,’ a name that conceals the destructive and long-term consequences for the Palestinian residents in the Gaza Strip. Thousands of people have been made homeless and thousands have lost their sole source of income for many years to come. Israel caused this damage to people although it did not contend that they themselves were involved in attacks, or attempted attacks, against Israeli civilians or security forces.81

Moreover, Israel has so far refused to compensate Palestinians for the damages that it has caused civilians as a result of its policy of demolition.82

Civilian property enjoys special protection under IHL. However, a distinction ought to be made between the protection of property at a time of hostilities, and at a time of occupation. Regarding the first, customary IHL provides that attacks are limited “to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage”.83 As for the latter, the Geneva Conventions are clear that: “Any destruction or seizure by the Occupying Power of real or personal property is prohibited except where such destruction is rendered absolutely necessary by military operations”.84 Both rules apply in the current situation in the Gaza Strip since, as noted above, it is still under Israeli occupation and also as there is often use of force that amounts to the conduct of hostilities in an armed conflict (e.g. incursions, launch of missiles, air strikes).
I used to employ 25 staff and now, I rely on food coupons.

The farmhouse of Jaber Abu Rijla, in the southern Gaza Strip town of Khan Yunes about 400 meters from the perimeter fence, has been demolished twice in two years. In 2008, Israeli forces destroyed a part of the farm, the nearby well and some machines, and on 20 May 2010, the Israeli army caused additional damages worth USD 50,000. “All is gone. The army destroyed the farm, the truck and our livestock, including nine sheep, 250 chicken and some rabbits. The well was again destroyed,” he recalls. “It was a big farm, over 300 sq. meter. My father bought the land in 1967 and I invested all the money I had [in it] because I wanted to pass it on to my children. I used to employ 25 staff and now, I rely on [food] coupons.”

Abu Rijla and his family do not live on the farm anymore but have moved to another, safer, neighborhood. “My children were frightened when living on the farm and became very anxious. So I decided to leave, but I continue to sleep there some days.”
The Hague Regulations also provide that private property must be respected and that it cannot be confiscated.\textsuperscript{85} In its Advisory Opinion in the “Nuclear Weapons” case of 1996, the ICJ stated that “respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principle of necessity”.\textsuperscript{86} Because the Occupying Power has special obligations toward the civilian population, it bears an extremely heavy burden of proof that the injury was “necessary”. Furthermore, extensive destruction and appropriation of property, if not justified by military necessity, and if carried out unlawfully and wantonly, is a war crime.\textsuperscript{87}

In accordance with the principle of distinction, the parties to the conflict must at all times distinguish between civilian objects and military objectives.\textsuperscript{88} Dual-use infrastructure includes any object that serves both military and civilian purposes; for example, a home being used as a base from which to launch rockets aimed at Israel. In such situations, the time and place of the demolition should be taken into consideration, together with, on the one hand, the military advantage anticipated, and on the other hand, the loss of human life and the damage that would be caused to civilian objects.\textsuperscript{89} For the targeted building to be a legitimate military objective, accurate verifiable intelligence is necessary to confirm that the location is indeed being used as a launching pad for rockets or mortars. In addition, the attack on the structure must be timely, i.e. be carried out while the structure is being used in military operations. Once a structure is no longer being used by Palestinian armed groups, it reverts back to its civilian status and becomes once again protected. If the attack or demolition of the structure takes place once the structure is no longer being used for military purposes, its destruction is merely punitive and is therefore contrary to IHL.\textsuperscript{90}

According to the ICRC commentary on Article 53 of Geneva Convention IV, it is feared that bad faith in the application of military necessity may render the proposed safeguard valueless. Unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Geneva Convention IV. The Occupying Power must therefore interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must maintain a sense of proportionality in comparing the military advantages to be gained with the damage done.

Israeli officials contend that it is necessary to perform “clearing actions” on the land in the Gaza Strip in order to prevent future attacks.\textsuperscript{91} At least
two legitimate military objectives are conceivable: 1) prevention of attacks or launchings directed towards Israel, including through the building and use of tunnels, and 2) creation of visibility. B’Tselem’s report concludes that: “Even though the claim that some cases of destruction entailed military necessity cannot be outright rejected, there is strong reason to believe that many cases involved considerations that were extraneous to the narrow definition of military necessity”.92 Regarding proportionality, one Israeli military commander, Captain Rami Kaplan, who served in Gaza in early 2000, commented to Ha’aretz:

I always “think big” and perform my tasks in the best and most efficient way, but this time, excellence entailed razing as much citrus or olive groves as possible, regardless of whether it was necessary. It had nothing to do with problematic areas that were examined following analysis of the area and the history of the sector – the uprooting was total, taking place along the entire border and at maximum tempo... I totally agree that there are situations in which uprooting is required, but I get the impression that this matter doesn’t bother anybody, which results in the intolerable nonchalance in which the clearing actions take place...I have no doubt that the clearing actions have an element of tactical value, but the question is, where do we draw the line? According to that logic, what prevents us from destroying Gaza? If a tactical solution is involved, why don’t we turn the entire Gaza Strip into an island of ruins and finally put an end to the story? 93

Even in the case of military necessity, which can provide an exception to the prohibition on destruction of property, the Occupying Power must comply with the other provisions of IHL. Indeed, jurists and international tribunals have firmly rejected the argument that military necessity prevails over every other consideration and nullifies application of these other provisions.94 According to Y. Dinstein, if military necessity were to prevail completely, no limitation of any kind would have been imposed on the freedom of action of belligerent states.95 Thus, every act must comply with IHL. Even if military necessity exists, the other numerous violations of IHL that result from a policy of demolition make the practice illegal. Based on actions on the ground, Israel’s invocation of military necessity as a justification for the destruction of civilian property discussed above is inconsistent with the rules of IHL.

(b) Protection of cultural property, e.g. mosques, under IHL

IHL provides special protection to cultural property, i.e. objects and buildings.96 Article 4 of the Hague Convention on Protection of Cultural Property, to which Israel is a state party, provides that:

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.

2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.
According to the ICRC study on customary international law, cultural property includes buildings dedicated to religion, including mosques. Each party to a conflict must protect cultural property, and all seizure of, destruction, or willful damage done to institutions dedicated to religion is prohibited. Therefore, the destruction of mosques absent military necessity is contrary to IHL and “should be made subject of legal proceedings”. In addition, civilians are entitled in all circumstances to respect for their religious convictions and practices, which is duly undermined by the destruction of mosques.

(c) Protection of schools under IHL

The destruction of schools in the “buffer zone” impedes access to education as outlined above. Schools are protected structures and should not be the subject of an attack unless they constitute lawful military objectives.

Case study: Al Shejaeyya School

The Al Shejaeyya Secondary School for Boys caters to 500 students and is located one kilometer from the cease-fire line with Israel, overlooks the currently closed Karni crossing. The building has been shelled four times since 2004, during which several classrooms and laboratories were destroyed. “After the shelling of the school for the second time in 2006, many students stopped attending school,” says a teacher. Children continue to be faced with the real threat of being shot at on their way to and from the school. Risks are especially high for students who live between the perimeter fence and the school.
(iii) Restriction of access

Restriction of access to the area within the “buffer zone” is the primary method of enforcement of the “buffer zone”. Restriction of movement may violate international human rights standards especially when it significantly impacts on livelihoods, family life and enjoyment of property.\(^{101}\) In addition, a total ban on accessing lands on which there are homes, agricultural lands, factories, farms, schools and mosques may violate general principles of IHL. The Occupying Power has an obligation to respect the fundamental rights of protected persons pursuant to Article 27 of Geneva Convention IV, which, it could be said, implicitly includes the right to move about freely. The right of freedom of movement, however, is not absolute and the Occupying Power may take such measures of control and security in regard to protected persons as may be necessary as a result of war.\(^{102}\) As noted above, this includes prohibition of access to certain areas.\(^{103}\) Also, it ought to be recalled that, besides its duty to protect civilians in the occupied territory, Israel also has the responsibility to protect its own citizens and take appropriate measures to affect that. Ultimately, any measure to enforce limitations upon freedom of movement must be deemed necessary and proportional.

Restriction of movement may violate international human rights standards especially when it significantly impacts on livelihoods, family life and enjoyment of property.
(a) Access to basic needs

Extensive movement restrictions in the “buffer zone” affect the ability of the local population to satisfy basic needs. Thirty-five percent of Gaza’s agricultural lands are located in the “buffer zone”, providing not only foodstuffs for the entire population of the Gaza Strip, but a source of income and livelihood for the property owner and his family. Moreover, six factories, 377 sheep farms and 197 chicken farms are rendered useless because of their destruction and inaccessibility in the “buffer zone”. Under the law of occupation, the Occupying Power is obliged as much as possible to ensure that the occupied population has access to basic humanitarian provisions. Article 55(1) of Geneva Convention IV states: “(T)he 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”. Not only is Israel neglecting its obligation to provide basic needs but, through the “buffer zone” and its associated regime, Israel is actively blocking the population of the Gaza Strip from satisfying its own basic needs.

(b) Access to education

<table>
<thead>
<tr>
<th>7</th>
<th>Number of educational institutions located in the “buffer zone”. Since 2005, three have been damaged or destroyed as a result of the “buffer zone”</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,400</td>
<td>Number of students attending one of the seven educational institutions located in the buffer zone</td>
</tr>
</tbody>
</table>

A remotely-controlled Israeli weapon station, seen from the window of a classroom in the Khuza’a Martyrs Secondary School for Girls, east of Khan Yunes, 600 meters from the perimeter fence. © Courtesy of UNESCO, oPt
The OCHA–WFP Report identified seven educational institutions throughout the Gaza Strip that have facilities located within 1,500 meters from the fence. These institutions provide educational services to a student population (male and female) of approximately 4,400, ranging from elementary school to vocational training. Since 2005, three of these schools have been damaged or destroyed as a result of the existence and enforcement of the “buffer zone”.

The Occupying Power is under a positive obligation to “facilitate the proper working of all institutions devoted to the care and education of children”, as education is a basic need. The only criterion in deciding whether an institution is to be protected is whether it is devoted to the care and education of children. The Occupying Power is bound not only to avoid interfering with the institutions’ activities, but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty. This provision assures continuity in the educational work of the establishments and is very important, since it takes effect at a point in children’s lives when the general disorganization from war might otherwise do irreparable harm to their physical and mental development. Restricting children’s access to educational facilities, especially for prolonged periods of time, is in contravention of the Geneva Convention IV.

(c) Access to religious institutions

Several mosques are located in the “buffer zone”. The fact that access to these areas is restricted inhibits the protected persons’ right to their religious convictions and practices. Protected persons in the territory of a Party to the conflict or in occupied territory must be able to practice their religion freely, without any restrictions other than those necessary for the maintenance of public order and safety, including any “measures of control and security in regard to protected persons as may be necessary as a result of the war”.

“One day while I was leaving school, many shots were fired from one of the watchtowers. One bullet hit my leg and caused severe bleeding. My schoolmates took me to the hospital where I was told by doctors that I would need an artificial knee to replace the damaged one, but I still haven’t been able to receive this treatment. I remember this on the way to school and I have nightmares every night. But now, I feel I really need to be trained as a paramedic to save my life and that of others around me.”

- W, 17–year-old girl from Khuz’aa Martyrs High School for girls in Khan Yunes, 600 meters from the perimeter fence. Testimony: Courtesy of UNESCO, oPt
Children leave the Hamza Bin Abdel Muttalib Elementary School for Boys. The picture is taken from the roof of the school building.

The school is located in Beit Lahya, a Bedouin village north of the Gaza Strip. The school is 1.2 kilometers from the perimeter fence with Israel and caters to 320 children from 6 to 12 years of age. An Israeli military post is stationed north of the school. A 12-year-old student from the school recalls, “Almost every day, soldiers target me and my schoolmates with random gunfire; and this occurs more frequently when shepherds graze their sheep in the areas nearby the fence, or when gravel collectors are on site. When I go to school, we also have to pass along the border and with every step taken, the odds of getting shot become higher. When we are at school we do not feel safe either, since the school has become a target of the military. I remember that in September 2010, the school watchman was shot with a bullet in his back while he was inside the school.”

© Courtesy of UNESCO oPt / Youssef Al Ejla
VI. THE IMPACT OF THE “BUFFER ZONE” ON LAND

95%  
Percentage of industry and factories destroyed in the Gaza Strip

USD 50.2 million  
Potential annual income loss from the effects of the existence and “buffer zone” on local agriculture

80%  
Percentage of Gaza’s population dependent on international aid

52%  
Percentage of Gaza’s population that is food insecure

17% and 10%  
Respectively, percentage of Gaza’s livestock and poultry killed during “Cast Lead”

Thus, the negative consequences of the enforcement measures of the “buffer zone” outlined above have a harmful impact on the Palestinian population in relation to livelihood, food production and displacement.

(i) Loss of livelihood

Restricted access to the area within the “buffer zone” has had a significant negative impact on the livelihoods of Gazans, as they cannot access agricultural land. This further worsens the Gaza economy, which has been severely affected by the blockade and the 2009 war that led to the destruction of 95% of industry and factories in the coastal Strip. Overall, the land restricted area is estimated at 17% of Gaza Strip’s total land mass, and 35 percent of its agricultural land. The OCHA-WFP report concluded that the potential annual income loss from agriculture is USD 50,240 million. Moreover 80% of the population depends on international aid.

Targeting livelihoods

Bilal El Hassoumi was 17 years old when he got shot in the leg while collecting scrap and rubble, work on which his family depended, in the Beit Lahya neighbourhood near the northern part of the “buffer zone” with Israel. Bilal is the second son of the family to be targeted close to the “buffer zone”.

Part of a family of 15 with an unemployed father, Bilal and his brothers – like many other teenagers of the northern Gaza Strip – support their family by venturing daily into the “buffer zone” to collect gravel and rubble, remnants of the buildings destroyed during Israel’s “Operation Cast Lead” in December 2008 – January 2009. They then sell whatever they collect. Due to the blockade enforced by Israel on the Gaza Strip since 2007, very little construction material enters the Strip, making gravel collecting a worthwhile but dangerous activity.

“My brother Nidal had already been shot four times by the Israeli forces before I got injured myself,” the boy recalls. “After he got shot last time in August, Nidal has not been able to work again, leaving Mohamed, my other brother, and I, as the only ones sustaining our family.” On 4 December 2010, Bilal went to collect rubble on the site of the former Israeli settlement of Eli Sinai, about 600 meters from the northern perimeter fence, joining dozens of other collectors. “I got hit by a bullet and fell; there was blood pouring out from my left leg. Two men came and staunched my leg with a piece of fabric and carried me to the hospital where I had two surgeries. The bullet smashed the flesh and broke my leg.”
(ii) Loss of food sources

The destruction of, and impeded access to, agricultural land, as well as the destruction of chicken and sheep farms, has severely affected food supplies in the Gaza Strip. Fifty-two percent of the population is food insecure. The WFP states that the inability of Gaza's farmers to cultivate their land is depriving the territory's 1.5 million residents of an important source of otherwise scarce fresh food. The United Nations Development Programme reported that 17% of Gaza's livestock and nearly 10% of its poultry were killed during "Operation Cast Lead". Indeed, even prior to this operation, in November 2008 Gaza's Ministry of Agriculture was already warning of a "real food disaster" due to restrictions on import of animal feed and livestock, directly affecting the well-being of what livestock did exist in Gaza. More than 80% of Palestinians in Gaza are dependent on food aid handouts. Around one-fifth of school children are iodine deficient. The prevalence of anaemia among children 9–12 months of age is 61.6%; prevalence among pregnant women is around 29%; and 22% of children 12–59 months old lack vitamin A. An ICRC report indicated that "chronic malnutrition is on a steadily rising trend and micronutrient deficiencies are of great concern".

As the Occupying Power, Israel has an obligation under IHL to provide necessary food stuffs. Humanitarian assistance does not relieve the occupying power of its own obligations.
As the Occupying Power, Israel has an obligation under IHL to provide necessary food stuffs. Humanitarian assistance does not relieve the Occupying Power of its obligations. Therefore, destroying one of the main sources of food for the population of the Gaza Strip violates IHL. According to Article 55 of Geneva Convention IV, the Occupying Power is responsible, to the fullest extent of the means available to it, for the provision of supplies for the population under its control and it is under the obligation to maintain – at a reasonable level – the material conditions under which the population of the occupied territory lives.

(iii) Forcible transfer

| 1,367 | Number of houses in the “buffer zone” that have been completely or partially destroyed. |

With the complete or partial destruction of 1367 houses since 2005 in the “buffer zone”, a natural and foreseeable consequence is the displacement of people. According to a recent Save the Children UK research involving 240 households in the “buffer zone”, up to 168 households have been either temporarily or permanently displaced at least once since 2000, primarily as a result of house demolitions and heightened concerns for personal safety and security.

The notion of forced transfer also includes indirectly forcing the population to displace due to lack of necessary infrastructure/development policies which create a coercive environment and basically leave the local residents with no choice other than to leave.

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power, or to that of any country, occupied or not, are prohibited under IHL. “Forced” is not to be interpreted in a restrictive manner, such as being limited to physical force. The notion of forced transfer also includes indirectly forcing the population to displace due to lack of necessary infrastructure/de-development policies which create a coercive environment and basically leave local residents with no choice other than to leave. Article 2 of the Guiding Principles on Internal Displacement of 1988 defines “internally displaced persons [as] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human–made disasters, and who have not crossed an internationally recognized State border”. Forcibly transferring individuals or a population is a grave breach of the Geneva Conventions and subject to individual criminal liability.
VII. LEGAL ANALYSIS

Different legal tests apply to different enforcement measures. With regard to the use of lethal force, the rules of IHL that are relevant are those on attacks, as can be seen below. As to the other enforcement measures, they are better categorized as administrative measures during an occupation, and a different set of rules applies to them.

(i) Use of lethal force/attacks and the protection of civilians

It should be noted at the outset that the question of which legal framework – IHL, IHRL or a combination thereof – governs the use of lethal force in a situation of an occupation is a complex one. Given the nature and the intensity of the conflict in the Gaza Strip, i.e. the use of airplanes, tanks and other weapons by Israel, and the firing of mortars and missiles by Palestinian armed groups, it is necessary to examine the aspect of the use of lethal force from the IHL perspective. However, this does not mean that Diakonia is of the view that IHRL governing the use of force is not applicable in the “buffer zone” under any circumstances. For example, attempting an arrest instead of the use of (lethal) force should be a preferred option where possible.

(a) General protection of civilians

The targeting of civilians who do not directly participate in hostilities constitutes a violation of the rules in relation to the protection of civilians. Civilians are not to be the object of an attack, while indiscriminate attacks are prohibited. All feasible precautions must be taken to avoid, and in any event, minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Under precautionary measures, IHL specifically addresses the principle of notice: “Each party to the conflict must give effective advance warning of attacks which may affect the civilian population unless the circumstances do not permit”. In the case of the Gaza Strip, where there is long-term occupation and where hostilities are not continuous, notice is essential and easily facilitated. The pamphlets that were dropped in May 2009 and March 2011 notifying the population of a 300-metre no-go zone were a wholly inadequate form of notice as many Gazans did not receive the pamphlets and others who were illiterate were not able to read them. Furthermore, those pamphlets dropped were also misleading as many individuals have been shot beyond the 300-metre range, and therefore, this form of “notice” in fact perverts the rule of precautionary measures and increases the severity of the violation.

Moreover, the principle of proportionality prescribes that launching an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof that would be considered excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

Willfully making individual civilians the object of attack and causing death or serious injury to body or health represents a grave breach of the Geneva Conventions and is therefore subject to the highest form of sanction, namely criminal prosecution. Not only must civilians be protected from attack, they have specific entitlements and standards of treatment under IHL. Specifically in occupied territories, “protected persons are entitled, in all circumstances, to respect for their persons, their honor... They shall at all times be humanely treated and shall be protected especially against all acts of violence or threats thereof.”

The targeting of civilians who do not directly participate in hostilities constitutes a violation of the rules in relation to the protection of civilians. Civilians are not to be the object of an attack, while indiscriminate attacks are prohibited.
From left to right: Sadi’, Beha’, Maysa, Jaber and Ala’, the five children of Nasser Abu Is’ayid (seen above).

On the evening of 13 July 2010, Israeli forces positioned at the fence east of Gaza Valley fired three artillery shells that hit the Abu Is’ayid house, located 340 meters away from the eastern fence in the Juhor al Dik neighborhood. The shelling killed Ni’meh, the mother of the five children and severely injured three relatives.

“We believe that the location of the house is an important reason for its attack, as the house is located in an area that the Israeli army usually attacks as part of enforcing the security buffer zone inside the Gaza Strip,” said Al Mezan Centre for Human Rights in an affidavit of the case. Ambulances were reported as having been forced to wait over 90 minutes by the Israeli army before the ICRC coordinated with the Israeli side to allow them to enter the zone and evacuate the victims.

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On the evening of 28 April 2011, Abu Is’ayid’s house was hit again. Earlier, armed Palestinians were reported having fired mortar shells towards Israeli troops patrolling along the fence. The Israeli troops responded by firing four tank shells, of which at least one hit the Abu Is’ayid’s bedroom (picture) and the corridor where his children were playing. “I saw Ala’ under the stones, but could only see Maysa’s hand sticking out from under the rubble,’ says Nasser. Both had been wounded by shrapnels.

Other families have evacuated the area in the past decade, but Nasser lacks resources to relocate to a safer area. He is now looking for funding to build a new house on the same land, but further away from the Armistice Line. Meanwhile, he and the children are sleeping in a tent outside their house.

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“A grandfather and two boys! Are they terrorists?” wonders Ismail’s father, seen here in front of a poster in memory of his dead son. On 13 September 2010, 91-year-old Ibrahim Abu Sayed, his grandson Hussam, and 16-year-old Ismail Abu Oda were killed by an Israeli shell while shepherding on land located 700 meters from the perimeter fence. Two days after the incident, the Israeli army admitted that the three casualties were civilians “and not involved in acts of terror”.

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(b) Protection of children

In addition to the regular protections afforded civilians as outlined above, children have additional and special protections under IHL. The targeting of children who are not taking part in hostilities is strictly prohibited by IHL. Pursuant to the Convention on the Rights of the Child, “a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier”.139 The Geneva Conventions and the Additional Protocols use differing age-limits with respect to various protective measures for children. Where a specific age is not identified, the presumption should be 18 years of age, and most particularly when one considers that Article 77 of Additional Protocol I, dealing specifically with children, uses the word “persons” in paragraphs 2 and 5 in reference to a limit of 18 years. Moreover, the age of a child under Israeli law is 18 years.140

Article 77 of the Additional Protocol I, which is reaffirmed as Rule 135 in the ICRC Rules of Customary International Law, indicates that “children shall be the object of special respect”. The Plan of Action for 2000–2003, adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999, requires that all parties to an armed conflict take effective measures to ensure that “children receive the special protection, care and assistance” to which they are entitled.141 Indeed, even greater than civilian protections, children have privileges that impose on the Occupying Power positive obligations, all of which aim to protect the daily life and education of children.142
(c) Conclusion on the use of force

66% of fatalities were militants whereas 34% were civilian
17% of injured individuals were militants whereas 82% were civilian

In considering all the circumstances surrounding the shooting of civilians through the enforcement mechanism of the “buffer zone”, there appears to be prima facie evidence of deliberate targeting of civilians in the “buffer zone” which is in violation of the basic IHL principles of distinction, proportionality and precautions in and during attacks. The indicia are as follows:

1) **Nature of the injuries:** the vast majority of injuries to civilians are below the waist. This demonstrates an intention to injure, not kill;\(^{143}\)

2) **The number of militants killed versus the number of civilians injured:** Sixty-six percent of fatalities were militants whereas 34% were civilian. Seventeen percent of injured individuals were militants, whereas 82% were civilian.\(^{144}\) The difference strongly suggests that Israeli forces are indeed distinguishing between civilians and combatants;

3) **Distance of the shot (often 0.5 kilometers or more):** The distance combined with the accuracy of shots fired reveals skill and deliberate intention;

4) **Sophistication of equipment:** the complexity and sophistication of equipment reflects an ability to distinguish between military and civilian targets;

5) **Inadequate notice:** Israeli military may argue that because warning pamphlets were dropped, anyone who enters the “buffer zone” intends to cause harm to Israel. However, there is sufficient evidence collected over time that indicates that Palestinian civilians entering the “buffer zone” might not even know they are doing so, and this is affirmed by inconsistent enforcement practices by the Israeli forces and lack of clarity in the geographical limits of the zone.

6) **The targeting of children:** Several children have been targeted, injured, and some killed by Israeli forces in the “buffer zone”. The likelihood that these unarmed children are directly participating in hostilities is minimal or non-existent and yet they are still shot at, which reflects a disregard for vulnerable groups such as children. At a minimum, it seems there is a systematic lack of information gathering in order to determine the nature of the target, especially in light of the new long-distance shooting system; and

7) **Public knowledge of civilian presence in the “buffer zone”:** There have been numerous articles published in Israeli and international media about the activities of civilians in the “buffer zone”, i.e. agricultural and gravel collection as a result of the humanitarian crisis and loss of livelihood in Gaza. It is unreasonable that the Israeli forces are not aware of this fact, especially since the killing and wounding of civilians has been widely reported over a prolonged period.

The cumulative effect of all these factors taken in their totality demonstrates, prima facie, that on many occasions the Israeli military is targeting civilians who bear no threat to the Israeli military or Israeli civilians. It is essential for the Israeli military to effectively distinguish between civilians and combatants and additional efforts must be deployed to make an accurate determination in this regard. Where there is doubt as to the characterization of the targeted person, the assumption should always be that the individual is a civilian.\(^{145}\) This is particularly important given the gravity of the violations of IHL that result from the current practices.

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\(^{143}\) Where there is doubt as to the characterization of the targeted person, the assumption should always be that the individual is a civilian.
(ii) Destruction of property/land leveling, restriction of access

The entire law of armed conflict is the result of an equitable balance between the necessities of war and humanitarian requirements, with no implicit rule in IHL giving priority to military necessity. The principles of IHL are aimed at determining precisely where the limits lie, with the principle of proportionality playing an important role in this determination.

(a) General protection of civilian property

As noted above, Article 23(g) of the Hague Regulations provides that it is forbidden to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war. In addition, Article 53 of GC IV provides that:

"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."146

The ICRC commentary on this article notes that it will be for the Occupying Power to judge the importance of military requirements, and that the Occupying Power must not abuse this discretion and thereby circumvent the prohibition of destruction. It is therefore added that the Occupying Power must "try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done".147 Its actions thus ought to be both reasonable and proportionate.

In addition, it is important to note that the Israeli High Court of Justice has adopted the following test in relation to examining the legality of administrative measures taken by military commanders in the oPt. In Beit Sourik v. Israel, the Court held that, according to international law, common law (e.g. Canada), continental law (e.g. Germany) and Israeli law, there are three secondary tests for proportionality: (1) the measures taken must rationally lead to realization of the objective (the rational means test); (2) the measure must injure the individual to the least extent possible (the least injurious means test); and (3) the harm expected from the action should be proportional to the benefit gained from it (the proportionate means test). Only when all three of these secondary tests are met and satisfied simultaneously is the military's action proportional.148

Indeed, even if this system is based to some extent on a subjective evaluation, the interpretation must above all be a question of common sense and good faith on behalf of military commanders. In every individual act, they must carefully weigh the humanitarian and military interests at stake. The golden rule to be followed in such cases is the duty to spare civilians and civilian objects in the conduct of military operations.149

(b) Analysis of the situation in the “buffer zone”

The stated military necessity for the existence of the “buffer zone” is the protection of Israeli soldiers and citizens. However, even in the case of military necessity, the occupier must comply with other legal provisions applicable in a situation of occupation. Indeed, jurists and international tribunals have firmly rejected the argument that military necessity prevails over every other consideration and nullifies application of these other provisions. Every act must comply with international humanitarian and human rights law.
There is a rational link between expanding the “buffer zone” and the military aim of preventing projectiles from entering Israel, as well as preventing the infiltration of Palestinian operatives. It is logical to assume that increasing the distance between those who intend to launch projectiles at Israeli soldiers and civilians will result in fewer projectiles reaching their intended targets.

Since the expanded “buffer zone” has been in existence for some time, its effectiveness is also an important consideration in this evaluation. Proponents of the perimeter fence and the “buffer zone” examine the number of rockets fired into Israel both before and after the expansion of the “buffer zone” to justify and support the Israeli appropriation of land and enforcement mechanisms. However, it is inaccurate and misleading to engage in such reasoning as many other factors may have significantly contributed to a decrease in the number of projectiles launched. For example, following “Operation Cast Lead”, Hamas’ policies and statements indicate that it is not interested in a direct confrontation with Israel, and thus it has been known to prevent its members from firing projectiles at Israeli targets.

In fact, the link between the expansion of the “buffer zone” and Israel’s defensive aims is difficult to quantify and assess. According to Ron Ben-Yishai, a journalist from Y-Net news, the “buffer zone” does not address the threat of tunnels dug by Palestinian operatives: “To this day, the IDF does not have a solid method or good detectors that would quickly enable it to uncover tunnels, such as the one used by Gilad Shalit’s abductors”.

The sophistication of the weaponry of Palestinian armed groups has increased significantly over the years, with projectiles capable of traveling several kilometers, well surpassing the reach of the current “buffer zone”. Indeed, upgraded Grad missiles have been known to travel up to 36 kilometers. Thus, the “buffer zone” may not be the most rational means of achieving the aim of impeding rockets.

The seizure of 17% of Gaza’s territory, incorporating 35% of its agricultural land, is having a detrimental impact on civilian life. Clearly, the dislocation of civilians, as well as the damage caused to their livelihoods, results in a great deal of harm and suffering for the civilian population. This harm is accentuated by, and cannot be separated from, the means of enforcement employed by the Israeli military in the “buffer zone”, as outlined above. Perhaps an examination is required of the character of the land on the Israeli side of the “buffer zone” to determine whether some of the “buffer zone” could be relocated on Israeli territory, thereby minimizing the harm to Palestinian civilians.

A military analysis of other means of enforcement that are less harmful to Palestinian civilians is also required. Israel should consider less injurious alternatives that clearly minimize or eliminate all together the harm suffered by Palestinian civilians as a result of the “buffer zone” and its enforcement mechanisms. In particular, civilians should be able to continue farming and living off the land in a manner consistent with military necessity. Also, schools and mosques inside the “buffer zone” should be allowed to resume regular activities except in specific circumstances when military necessity or security of civilians makes it absolutely impossible. Moreover, regular reviews of the size of the “buffer zone” are necessary to ensure that military necessity does in fact exist for the entire area; it is possible that a smaller range would be sufficient.
Pivotal to any evaluation of proportionality is an assessment of damages to Palestinian civilians as a result of the expanded “buffer zone” and corresponding enforcement mechanisms. Many of these are the direct result of IHL violations. The following is a non-exhaustive list of negative effects suffered by Palestinian civilians as a result of the “buffer zone” and its enforcement regime:

- Civilian injuries and fatalities;
- Restricted access to the right to education;
- Restricted access to the right to religion;
- Destruction of cultural property;
- Destruction of civilian property;
- Seizure of civilian property;
- Loss of livelihood and ensuing humanitarian crises;
- Lack of food; and
- Forcible displacement of people.

As mentioned above, the effectiveness of the “buffer zone” regime is questionable. When weighed against the harm caused to both civilians and property, it appears that the “buffer zone” regime is in fact disproportionate to the military advantage sought.
VIII. CONCLUSION

The use of force based on military necessity must be engaged in good faith and consistent with other rules of IHL, in particular the principles of distinction and proportionality and precautions in and during attack. This does not appear to be the case in the “buffer zone” as the violations to IHL are flagrant, frequent and grave. Israel remains the Occupying Power in the Gaza Strip. In this capacity, it must protect the safety and well-being of the Palestinian population and take Palestinian needs into account. In addition, Israel must also protect Israeli civilians and soldiers, but it is not allowed to do so at disproportionate expense to Palestinian civilian lives and property.

While acknowledging Israel’s security concerns regarding attacks on Israel from the Gaza Strip, the facts and information available show that the unilateral expansion of the “buffer zone” and its enforcement regime result in violations of international humanitarian law and grave infringement of a number of rights of Palestinians.

Moreover, the unilateral expansion of the “buffer zone” in the Gaza Strip by Israel and the mechanisms through which the “buffer zone” is currently enforced cannot be justified based on military necessity as they violate the principles of distinction, proportionality and precautions in and during attack. They are further contrary to the prohibition against seizure and destruction of land except if rendered absolutely necessary by military operations, as well as the disproportional restriction on movement of civilians to their land and livelihoods. As such, the enforcement of the “buffer zone” under the current circumstances and scope is unlawful.
IX. RECOMMENDATIONS

The unilateral expansion and means of the enforcement of the “buffer zone” are not the only and least harmful means through which Israel can exercise its right and duty to protect its citizens. It is recommended that all relevant international and local actors urge Israel to comply with international law and provide protection to civilians under its effective control. In addition, pursuant to Article 1 common to the Geneva Conventions, state parties are under an obligation to ensure respect of the Conventions in all circumstances. The authoritative ICRC commentary on this Article states that “the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally”. Third states are thus bound to, as a minimum, ensure the respect of the humanitarian principles underlying the Conventions. Moreover, referring to common Article 1, the Security Council has called upon all state parties to Geneva Convention IV to ensure respect by Israel of its obligations under that Convention. The resolutions of the Security Council are legally binding on all UN member states.

International and local actors are therefore called upon to urge Israel to:

1. Avoid and minimize harm to civilians and damage to civilian property in the “buffer zone” by:
   - Irrespective of the “buffer zone’s” extent, at all times and at a minimum effectively ensuring that the rules of engagement throughout the Gaza Strip follow the IHL principles of distinction, proportionality and precautions in attack; informing the relevant armed forces of those rules before military operations; and ensuring that the rules are strictly adhered to;
   - Limiting the size of the “buffer zone” to the minimum required to achieve the military goal without disproportional harm to civilians and damage to civilian objects, and in any case not beyond the 300 meters declared by Israel;
   - Ensuring, if practically feasible, that the “buffer zone” is clearly demarcated through means such as sign posts, posters etc., and that in any case, there be an effective information campaign notifying the civilian population in the Gaza Strip of the extent of the “buffer zone” and the regime applicable to it;
   - Allowing residents of the “buffer zone” and land-owners to access the buffer zone area for the production and maintenance of livelihoods, unless absolutely prohibited for strict military reasons or their own security;
   - Taking into account the assessments made by local and international organisations of the harm to the civilian population and damage to the civilian property in light of the size and enforcement mechanisms of the “buffer zone”, and finding ways to reduce this harm and damage;
   - Allowing medical personnel unrestricted and secure access to the “buffer zone”; and
   - Allowing and ensuring safe access to local and international humanitarian and relief organizations to conduct needs assessment and provide aid to the civilian population.

2. Conduct investigations that fulfill international standards of independence, impartiality, thoroughness, promptness and effectiveness through an independent organ, with a view to possible criminal prosecution of all incidents resulting from the enforcement of the “buffer zone” that appear to violate IHL and IHRL, especially in relation to the use of lethal force that has resulted in killing and injury of civilians, destruction, appropriation of civilian property and forced displacement. Adequate remedy should be provided for the victims and their families and regular public reports issued on the progress of such investigations.
Publications on the same topics

- **Shifting Paradigms: Israel’s Enforcement of the Buffer Zone in the Gaza Strip**
  Al-Haq, June 2011
  In English: http://www.alhaq.org/pdfs/Shifting%20Paradigms--buffer--zone--23--June--2011--m.pdf

- **Fact Sheet: Rubble and Scrap Collectors: Deliberate Attacks and Lack of Protection**
  Al Mezan Center for Human Rights, December 2010
  In English: http://www.mezan.org/upload/11210.pdf

- **PCHR factsheet: The Buffer Zone in the Gaza Strip**
  The Palestinian Centre for Human Rights, October 2010,
  In English: http://www.pchrgaza.org/facts/factsheet-bufferzone-aug.pdf

- **Between the Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed Restrictions on Access to Land and Sea in the Gaza Strip**
  Office for the Coordination of Humanitarian Affairs (OCHA) and World Food Programme (WFP), August 2010,
  In English: http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf
  In Arabic: http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf
  In Hebrew: http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_hebrew.pdf

- **Farming without Land, Fishing without Water: Gaza Agriculture Sector Struggles to Survive**
  Office for the Coordination of Humanitarian Affairs (OCHA) and Food and Agriculture Organization of the United Nations (FAO), May 2010,

- **Life on the Edge: The Struggle to Survive and the Impact of Forced Displacement in High Risk Areas of the Occupied Palestinian Territory**
  Save the Children UK, October 2009,
  In English and Arabic: http://www.savethechildren.org.uk/en/54_9515.htm

- **Factsheet: Gaza Buffer Zone**
  Save the Children UK, June 2009
  In English: http://www.savethechildren.org.uk/en/54_9515.htm

- **No-go Zones Near Gaza Strip Perimeter Fence**
  B’Tselem, The Israeli Information Centre for Human Rights in the Occupied Territories,
  In English: http://www.btselem.org/english/Gaza_Strip/Forbidden_Zones.asp
Easy guide to the basics of IHL

For further information on the basics and concepts of international humanitarian law and its application to Israel and the occupied Palestinian territories, please visit: “An Easy Guide to IHL in the Occupied Palestinian Territory” at www.diakonia.se/ihl

What is international law?
International law is a combination of rules and customs governing the relations between States and, some times, with non-State actors, in various fields, such as the protection of human life and dignity, the law of the sea, space law, trade law, territorial boundaries of States, and diplomatic relations. The primary sources of international law are treaty law and customary international law.

What is treaty law?
Treaty law is composed of written agreements that States willingly sign, ratify and are bound to follow. Agreements between States govern their mutual relations and may be called treaties, conventions, charters, statutes or protocols. Agreements are only legally binding on States that have signed and also ratified them. The basis of treaty law is the principle pacta sunt servanda ("agreements must be respected").

What is customary international law?
Customary international law consists of “general practice accepted as law" (Article 38(1) (b) of the Statute of the International Court of Justice). It includes the “rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way." Customary international law can be discerned by a widespread repetition by States of similar international acts over time (State practice), which have occurred out of sense of obligation (opinio juris). Acts must be taken by a significant number of States and not be rejected by a significant number of States. International customary law is binding upon all States in the world.

What is international humanitarian law?
International humanitarian law (IHL), also referred to as the laws of war, or the law of armed conflict, defines the conduct and responsibilities of belligerent nations, neutral nations, armed groups and individuals engaged in warfare, in relation to each other and to the so-called protected persons, namely, combatants hors de combat (prisoners of war, sick, wounded and shipwrecked) and civilians.

Its fundamental purposes are to alleviate human suffering and regulate the use of means and weapons of warfare in armed conflicts. In IHL, a constant balance is maintained between the military needs and the needs of persons affected by hostilities (combatants and civilians).

When does IHL apply?
IHL applies to international armed conflicts – including situations of occupation – and non-international armed conflicts. Thus, IHL does not apply in internal disturbances or tensions such as riots, demonstrations, and isolated or sporadic acts of violence.

Armed conflicts between two or more States are called international armed conflicts. Armed conflicts within the territory of one State, i.e. between the State’s regular armed forces and one or more armed groups or between several such armed groups, are called non-international armed conflicts or internal armed conflicts.

The rules governing international armed conflicts are more extensive and more detailed than those covering internal armed conflicts. IHL applies equally to all parties regardless of the reason for the conflict.

What is international human rights law?
International human rights law (IHRL) codifies human rights in various international treaties. Fundamental human rights include, for example, the right to life, the right to food and water, the freedom of thought and expression, the right to health and the right to adequate housing.

International human rights law is applicable to the territory of a State but also extends to any territory which is under its effective jurisdiction, even outside its borders. Effective jurisdiction refers to the de facto level of control of one State over another territory or people, for example during an occupation.
What is the relation between IHL and IHRL?
The International Court of Justice (ICJ) in its Advisory Opinion on the Wall of July 2004 considered the inter-relation between the two bodies of law – international humanitarian law and human rights law. It concluded that when dealing with a situation of armed conflict, IHL is lex specialis (governs a specific subject matter) in armed conflicts while human rights law governs the applicability of rights generally, both in times of armed conflict and in times of peace. It elaborated three possible inter-relations between the two bodies of law: (i) situations in which only IHL applies; (ii) situations in which only IHRL applies and (iii) situations where the legality of the actions needs to be examined under both branches of law, for example during armed conflict. Therefore, each action needs to be examined under IHL, IHRL or both, depending on the circumstances.

What are the sources of IHL?
A major part of IHL is found in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977.

The Hague Regulations on the laws and customs of war are a set of conventions adopted at the Peace Conference held in The Hague (the Netherlands) in 1899 and in 1907. The conventions represent the long-time, commonly-accepted means and methods of warfare. They are binding on all states as customary international law.
The Four Geneva Conventions of 1949 are the core of international humanitarian law. The Geneva Conventions, which are today universally ratified, were adopted to alleviate human suffering in times of armed conflict. The Fourth Geneva Convention, in particular, focuses on the protection of civilians in times of armed conflict and occupation.

As of August 2006, 194 states – almost all states in the world – have ratified the Four Geneva Conventions. According to many scholars, the Fourth Geneva Convention is today considered to reflect international customary law, which all States should abide by regardless of their status as a State party to the convention.

The First Additional Protocol of 1977 extends the protection of civilians and includes rules on the conduct of hostilities that define the type of weapons and methods of warfare that can be used in time of armed conflict.

The Protocol generally applies in international armed conflicts and is obligatory for the States that have ratified it. Among others, Article 75 provides for the fundamental guarantees granted to all persons and reflect international customary law; thus it binds all States, regardless of its signatories.

The Second Additional Protocol of 1977 provides for additional protection in internal armed conflicts and is only binding on States that have ratified it. Some of its articles are also regarded as customary international law. For example, Article 4, which provides for the fundamental guarantees for all persons who do not, or no longer, take a direct participation to hostilities, is regarded customary international law.

The First Additional Protocol has been ratified by 166 states, and the Second Additional Protocol by 162 states. Israel has not ratified either of the Additional Protocols of 1977 and is therefore only bound by the norms that are customary within these treaties.

Customary International Law is also a source of IHL.

What is a belligerent occupation?
A “[T]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised” (Article 42 of the Hague Regulations).

Occupation does not give the Occupying Power sovereignty over the territory. Annexation of the occupied territory is unlawful; occupation is only temporary and permanent occupation may result in unlawful de-facto annexation.

The notion of military control is a factual issue. The Occupying Power can have effective military control even if it is not physically present in the territory itself. If the Occupying Power is in a position to take military control over the whole area, then effective military control persists.

Occupation ends when there is no effective military control over a territory, commonly seen when the Occupying Power no longer
performs the functions of a government. The Occupying Power cannot unilaterally decide that occupation has ended.

A consensus concerning the status of a territory among the High Contracting Parties to the Four Geneva Conventions may reflect the most accurate legal interpretation about the existence of effective control. Sources of interpretations are, among others, UN Security Council resolutions, jurisprudence of international tribunals, and precedents such as World War II, Lebanon and Iraq.

**What is the law of belligerent occupation?**
The law of belligerent occupation mainly consists of the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949. The law of occupation applies when, during an international armed conflict, a territory comes under the effective control of a foreign power.

**Who are the protected persons under IHL?**
Protected persons are those who find themselves, at any moment or under any circumstance, in the hands of a party to the conflict or Occupying Power, of which they are not nationals (Article 4 GC IV). The sick and wounded, civilians and combatants hors de combat all fall within the category of protected persons. Specifically protected persons are medical and religious personnel, humanitarian relief personnel, civilian journalists and personnel involved in peacekeeping operations.

**What are the basic principles of IHL?**

**Distinction**
The principle of distinction prohibits all means and methods that cannot make a distinction between those who do take part in hostilities – i.e. combatants – and those who do not – i.e. civilians and in particular, protected persons.

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between civilians and combatants on one hand; and between civilian objects and military objectives on the other. Accordingly, they shall direct their operations only against military objectives. (Article 48 AP I). The principle of distinction is part of customary international law.

**Proportionality**
The principle of proportionality states that even if there is a clear military target it is not possible to attack it if the incidental risk for civilians or civilian property is excessive in relation to the concrete and direct military advantage sought (Article 51(5) (b) AP I). The principle of proportionality is part of customary international law. Some measures taken by an occupying power outside the combat zone should also be proportional, such as destruction of civilian property in occupied territory (Article 53 GC IV).

A military objective is an object that effectively contributes to the military operation. This definition is difficult to apply in practice, especially when it comes to dual-use facilities. These are objects that may be used both for civilian and combat purposes. For example, a TV or a radio station can be a legitimate military target if used also by the military command or as a communication center. However, if it is used for civilian purposes only, it cannot be targeted. It is unlawful to target a dual use object if the expected damage to the civilian use of the object is excessive to the concrete and direct military advantage sought.

**Precautions in attack**
As part of the principle of distinction, the conflicting parties are obliged to respect the principle of precautions in attack, which supplements the general obligation to distinguish at all times between civilians and combatants, and between civilian and military objects. Accordingly, whenever civilians are present, the parties to an armed conflict must:

- take precautionary measures during military operations to spare the civilian population and civilian objects (Article 57 of AP I).
- take precautionary measures to protect the civilian population and civilian objects, that are under their control against the effects of military operations (Article 58 AP I).

The principle of precaution is part of customary international law.
What is military necessity?
Military necessity has been defined as “those measures which are indispensable for securing the ends of the war and are lawful according to the modern laws and usages of war”. It is a principle whereby a belligerent has the right to apply any measure that is required to bring about the successful conclusion of a military operation and that is not forbidden by the laws of war (Lieber Code, Article 14). Military necessity is not a carte blanche to achieve the military goal at any price. It balances between military victory and humanity stemming from the need to minimize human suffering during armed conflicts. Some prohibitions under IHL can never be justified under military necessity. For example, the prohibition against confiscation of private property is absolute as stipulated in Article 46 of the Hague Regulations 1907.

What does the obligation to protect mean?
The concept of protection of civilians and civilian objects derives from the principle of distinction but is extended beyond the conduct of hostilities. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs (Article 27 GC IV). Private property must be respected and not confiscated (Article 46 Hague Regulations). Parties to the conflict must respect and protect cultural property (Rules 38, 39 and 40 ICRC Customary IHL Rules), humanitarian relief objects (Rule 32 ICRC Customary IHL Rules) and medical units and transports (Rules 28, 29 ICRC Customary IHL Rules). They must protect relief objects and facilitate Relief actions (Article 70 AP I). Discriminatory measures are forbidden (Article 27 GC IV).

Protection is enhanced during military occupations, i.e. the occupying power must facilitate the work of all institutions devoted to the care and education of children (Article 50 GC IV); the work of relief organizations; (Article 59 GC IV) and civilian civil defence organizations (Article 63(1) AP I).

Protection is also provided for the civilian population as a whole: collective punishment is prohibited (Articles 33 GC IV, 50 Hague Regulations), forced transfer and deportations are prohibited (Article 49 GC IV), the occupying power must ensure food and medical supplies and requisition of civilian objects is permitted only when population needs are taken into account (Article 55 GC IV and Article 69 AP I). Objects essential for the survival of the population should not be attacked, destroyed, removed or rendered useless (Article 54 AP I) and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly amounts to war crimes (Article 147 GC IV).

Who are combatants?
Combatants are members of regular armed forces or armed groups who are clearly distinguished from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. They may be considered prisoners of war if captured, and are therefore entitled to special protection defined by the Third Geneva Convention relative to the treatment of prisoners of war.

Members of armed groups that are not part of regular armed forces need to follow four conditions:

- be commanded by a person responsible for his subordinates;
- have a fixed distinctive emblem recognizable at a distance. Article 44(3) of the Additional Protocol I sets an exception to this rule when the nature of the hostilities prevents the combatant from distinguishing himself or herself. There is an ongoing legal debate about the scope of a distinctive sign that combatants of non-regular armed forces need to wear.
- carry arms openly; and
- conduct their operations in accordance with the laws and customs of war.

In case of doubt whether a person falls under one of the above mentioned categories, she/he should be presumed to be a prisoner of war until a competent court has decided otherwise.

Members of groups that do not follow these conditions, and individuals that are not part of armed groups who take direct part in the hostilities (violent resistance) are not regarded as combatants and do not enjoy the status of prisoners of war. They are therefore protected civilians and lose their immunity only for such time as they take direct part in hostilities.
Who are civilians?
IHL defines a “civilian” as anyone who is not a combatant. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian (Article 50(1) AP I).

What are the responsibilities of a State under IHL?
The basic principle of “state responsibility” in international law provides that any State that violates its international obligations must be held accountable for its acts. More concretely, the notion of state responsibility means that States that do not respect their international duties are responsible for immediately ceasing their illegal actions, offering appropriate assurances and guarantees of non-repetition if required, and making reparations to the injured.

States have legal responsibilities both towards States and individuals according to different sources of international law.

What are responsibilities of third States?
The general principle of state responsibility not only refers to what the violating State has to do, but also includes rules on the responsibility of third States – the international community – to react against violations of international law.

Article 1 common to the Four Geneva Conventions places an obligation on third States who are not involved in the conflict “to respect and ensure respect” for IHL in all circumstances. This means that, by having ratified the Geneva Conventions, third States are bound to ensure the respect of IHL by those who violate it. Third States should not do anything to encourage a party to a conflict to violate IHL. States should also not take action that would assist in violations, such as arms transfer and sale of weapons. Article 1 should not be considered to be an illegal interference in the internal affairs of a sovereign State.

The ICRC commentary to Article 1 mentions that “the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally”.

In case of grave breaches, all States are under the obligation to search for suspected war criminals and bring them to trial or extradite them to another State or an international tribunal where they would be tried for their actions (Articles 146, 147 GC IV).

A State is responsible to cease the violation, provide guarantees for non-repetition and offer reparations if either (i) it aids or assists; (ii) it directs and controls the commission of a violation of international law; (iii) or it coerces another State to do so (Articles 16–18 International Law Commission Draft Articles on State Responsibility of 2001).

In case there is a serious breach of a preemptory norm of international law (jus cogens) there are additional responsibilities on all States also to cooperate to end the breach and not to recognize as lawful the situation created by the breach as well as not to aid or assist in the maintenance of that situation (Article 41 International Law Commission Draft Articles).

What are offenses in international criminal law?

War crimes / Grave breaches of the Geneva Conventions

War crimes are serious violations of IHL which give rise to individual criminal responsibility. For example, war crimes are serious violations of Common Article 3 to the Four Geneva Conventions, which is also applicable in internal armed conflicts, i.e. willful killing, or extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

In addition, acts described as “grave breaches” in the Four Geneva Conventions such as torture, willful killing or the taking of hostages may also qualify as war crimes. Grave breaches are defined in Article 147 of the Fourth Geneva Convention (see also Article 50 GC I, Article 51 GC II, Article 130 GC III, Article 85 AP I).

War crimes can be committed both in international and non–international armed conflicts. This was affirmed by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and it has subsequently been upheld in the International Criminal Court (ICC) Statute.
ENDNOTES

1 Article 50 (1) AP I. The ICTY has held that this article reflects customary international law, see Prosecutor v. Kordić and Čerkez, IT-95-14/2-A, Judgement, para. 97 (and references therein). See also recommendation VIII of the ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, ICRC, May 2009, pp. 17, 74–76.


4 http://www.dfid.gov.uk/Where–we–work/Middle–East--North–Africa/OPT/Key–facts

5 As a point of comparison, the West Bank counts 433 person per sq. kilometer, Israel 283 person per sq. kilometer and France 108 person per sq. kilometer.

6 Shelter Sector Gaza – Unified Shelter Sector Database (USSD), http://www.sheltergaza.org

7 Ibid.


10 Ibid.

11 Shelter Sector Gaza – Unified Shelter Sector Database (USSD), http://www.sheltergaza.org


14 Al Mezan Centre for Human Rights, Casualties in the Gaza Strip Database.


17 See e.g. the situation in Cyprus.

18 In Cyprus, the United Nations Peacekeeping Force in Cyprus (UNFICYP) supervises the de facto ceasefire there. See http://www.un.org/en/peacekeeping/missions/unficyp/index.shtml. Also, the United Nations Disengagement Observer Force (UNDOF) is tasked to maintain the cease fire between Israel and Syria and also to “supervise the areas of separation and limitation, as provided in the May 1974 Agreement on Disengagement”. See http://www.un.org/en/peacekeeping/missions/undof/mandate.shtml.

19 The armistice line or the cease–fire line referred to in this report is the armistice line agreed between Israel and Egypt with respect to the Gaza Strip in 1949.


25 Ibid.

26 Ibid.


28 OCHA–WFP Report, pp. 8–9. See also OCHA “Easing the Blockade”, p. 9 stating that “Rain–fed crops, which demand less care and have better chances of survival. However, the ability of farmers to harvest these crops is limited and the income is only a fraction of the income of the original crops”.

29 Cabinet Resolution Regarding the Disengagement Plan, Government of Israel, as published by the Prime Minister’s office, June 6, 2004, Article 6. “The completion of the plan will serve to dispel the claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip”. See also High Court of Justice of Israel, in response to Petition number HCJ 9132/07, 28 October 2007.

30 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (“Hague Regulations”).


34 “USA v Wilhelm List et al. Trials of War Criminals Before the Nuernberg Military Tribunals” (Washington, 1950) (a.k.a. “The Green Series”), vol. XI, p. 1243 where the Tribunal held that: “It is clear that the German armed forces were able to maintain control of Greece and Yugoslavia until they evacuated them in the fall of 1944. While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German armed forces of its status of an occupant”.


37 In March 2009, the Israeli NGO Gisha wrote an extensive report on the question of who controls the Gaza crossing. It concluded that “even though Israeli forces are not stationed on the Egypt–Gaza border permanently, Israel continues to exert substantial and indirect control over the possibility of opening Rafah Crossing”. Gisha further noted that Egypt considers the Gaza Strip to be occupied by Israel and does not open the Rafah crossing without Israel’s consent, except in exceptional, humanitarian cases. See Gisha report “Rafah Crossing: Who Holds the Keys?”, March 2009 (“Gisha Report”), pp. 125–132, 143–147. See further, S.D. Dikker Hupkes, What Constitutes an Occupation, Israel as the Occupying Power in the Gaza Strip after the Disengagement, E.M. Meijers Instituut/Jongbloed, pp. 73, 85 (and references therein) available at https://openaccess.leidenuniv.nl/bitstream/1887/13159/2/What+Constitutes+Occupation.pdf.

38 HRW Gaza Article.
39 B’Tselem Report.
41 HCJ 769/02 The Public Committee against Torture in Israel v. Israeli Government, 5 December 2005
45 See also Yoram Dinstein, The International Law of Belligerent Occupation, (2009), pp. 276–280.
48 Israel is a party to six of the nine core international human rights treaties. Israel ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 3 January 1979 and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child on 3 October 1991.
49 Article 27 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (“Geneva Convention IV” or “GC IV”); See also Article 64 of GC IV; See further Article 46 Hague Regulations and Article 6(1) ICCPR.
50 See e.g. Y. Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict, (2005), pp. 16–17.


OCHA–WFP Report.


See articles in Hebrew that describe the security arrangements: http://www.ynet.co.il/articles/0,7340,L-3140745,00.html and http://www.haaretz.co.il/hasite/spages/1177375.html.

Article 27 GC IV.

Commentary on Article 27(4) GC IV.

OCHA–WFP Report, p. 16.

Ibid.


OCHA–WFP Report, p. 16, referring to a Haaretz article.

Ibid.

Ibid.

http://www.btselem.org/English/Gaza_Strip/20100530_Gaza_No_entry_zones_along_fence.asp.

Ibid.

B’Tselem, Firing at workers near the Gaza perimeter fence, 3 November 2010, http://www.btselem.org/English/Gaza_Strip/20101103_Shooting_at_workers_near_the_Gaza_perimeter_fence.asp.

OCHA Easing the Blockade, p. 12.

Ibid.

Ibid.


OCHA database on casualties in the vicinity of the access restricted area on land sent upon request to Diakonia.


OCHA–WFP Report p. 16.

Ibid.

Ibid., p. 19.

http://www.ynetnews.com/articles/0,7340,L-3983391,00.html


Ibid.

Ibid.

Rule 8 International Committee of the Red Cross (“ICRC”) Customary IHL Rules; Article 52(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (“Additional Protocol I or AP I”).

Article 53 GC IV; Rules 50, 51 ICRC Customary IHL Rules.

Article 46 Hague Regulations.

ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, para. 30.

Article 147, GC IV and ICC Statute, Article 8.2.

Rule 7 ICRC Customary IHL Rules; Article 52 AP I.

90 T. Ward, "Air Power, Coercion, and Dual-Use Infrastructure: A Legal and Ethical Analysis", *International Affairs Review*, 24 Oct. 2008, http://www.iar-gwu.org/node/40: Article 52 (2) of Additional Protocol I cannot be used to justify the destruction of an object that only has the potential to become a military objective at some point in time; its destruction must be necessary at the time of the attack. If this were not the case, the principle of distinction would become void, as every civilian object could conceivably become a military object at some point in the future.

91 B’Tselem 2002 Report; Response of the state in HCJ 9252/00, Zalah Shuqri Ahmad al–Saqa et al. v. State of Israel, para. 23. An identical claim was raised in the IDF Spokesperson’s letter of 14 February 2001 to B’Tselem.

92 Ibid.

93 Ibid.; See also Akiva Eldar, “What the Head of the Civil Administration Really Thinks about the Occupation”, *Ha’aretz*, 17 January 2002.


97 Rule 40 ICRC Customary IHL Rules.

98 Rule 40 ICRC Customary IHL Rules; Article 56 Hague Regulations; Also, Article 27 Hague Regulations provides that in sieges and bombardments, all necessary steps must be taken to spare as far as possible buildings dedicated to religion provided they are not being used at the time for military purposes..

99 Article 55 GC IV, Article 43 Hague Regulations.

100 Article 60 GC IV.

101 ICRC Commentary on Article 55 GC IV.

102 OCHA-WFP Report.

103 Article 27(4) GC IV.

104 OCHA–WFP Report.

105 Ibid.

106 Article 50 GC IV.
Article 52 (2) of Additional Protocol I cannot be used to justify the destruction of an object that only has the potential to become a military objective at some point in time; its destruction must be necessary at the time of the attack. If this were not the case, the principle of distinction would become void, as every civilian object could conceivably become a military object at some point in the future.

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99 Article 56 Hague Regulations.

100 Article 27 GC IV; Article 46 Hague Regulations.

101 Movement: Article 12 ICCPR and Article 13 of Universal Declaration of Human Rights (“UDHR”); Family: Article 23 ICCPR, Article 16 UDHR; Livelihood: Article 25 UDHR; Property: Article 17 UDHR.

102 Article 27 GC IV.

103 Commentary on Article 27(4) GC IV.

104 OCHA-WFP Report.

105 Ibid.

106 Article 50 GC IV.

107 Jean S. Pictet, Commentary on GC IV (1958) (“ICRC Commentary”), Article 50 GC IV.

108 ICRC Commentary on Article 50 GC IV.

109 Article 50 GC IV.

110 Article 27 GC IV; Article 46 Hague Regulations.

111 Article 43 Hague Regulations; Article 27 GC IV; ICRC Commentary on Article 27.


119 Independent, 15 Nov 2008, http://www.independent.co.uk/news/world/middle-east/chronic-malnutrition-in-gaza-blamed-on-israel-1019521.html. See also http://palsolidarity.org/2010/06/12773/: The number of crops grown in the zone has consequently been reduced from a diverse range to wheat and other less labor-intensive harvests, which further negatively impacts the nutrition and economic condition of Gazans.

120 Article 55 GC IV, Article 43 Hague Regulations.

121 Article 60 GC IV.

122 ICRC Commentary on Article 55 GC IV.


124 The 240 households are located in the following “buffer zone” areas: North Gaza: Beit Hanoun, east of Beit Lahiya, Al Saifa, Al ‘Atatra, Eastern Cemetery area; Gaza city: east of Ash Shujaiyeh, Karni Crossing area, Nahal Oz Crossing area; Middle area: Johr al Deek area, east of Bureij refugee camp, east of Maghazi refugee camp; Khan Younis: Abasan al Kabira, Abasan al Saghira, Khoza’a; Rafah: Shoka, Gaza airport surroundings, Philadelphi Corridor.

125 Save the Children Fact Sheet.
It is, moreover, strengthened by other Articles in the cases in which its observance appeared to be least certain: in this connection mention may be made of Article 51, paragraph 2, dealing with compulsory labour, Article 76, paragraph 1, concerning the treatment of protected persons accused of offences or serving sentences and also under certain circumstances Article 70, paragraph 2, which deals with refugees. See also, The Guiding Principles on Internal Displacement of 1988. See also the definition of forcible transfer and deportation as a crime against humanity as defined in Article 7(2)(d) of the Rome Statute.

"Forced" is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment" from Prosecutor v. Radislav Krstic (Trial Judgement), ICTY (2 August 2001). The Appeals Chamber of the ICTY has held that: the term "forced", when used in reference to the crime of deportation, is not to be limited to physical force but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. See Prosecutor v. Milomir Stakić, IT-97-24-A, Judgement, 22 March 2006, para. 281.

Although not a legally binding instrument the Guiding Principles have quickly gained substantial international acceptance and authority.

Article 147 GC IV.

See e.g. Expert Meeting on the Right of Life on Armed Conflicts and Situations of Occupation, University Centre for International Humanitarian Law, Geneva, 1–2 September 2005.


Article 51(2) and 51(3) AP I.; Rules 11–13 ICRC Customary IHL Rules.

Article 57 AP I.; Rules 15–21 ICRC Customary IHL Rules.

Rule 20 ICRC Customary IHL Rules; Article 57(2) AP I.; Article 26 Hague Regulations.

See the a copy of the pamphlets on page 12.

Article 57 AP I.; Rule 14 ICRC Customary IHL Rules.

Article 147 GC IV: willful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health; See also Article 85(3)(a) AP I.
Articles 3, 27 GC IV; See also Article 75 AP I.

Article 1 CRC.

The Youth (trial punishment and modes of treatment) Law (1971) section 1.

27th International Conference of the Red Cross and Red Crescent, Res. I (adopted by consensus) para 239.

Articles 23, 24, 38, 50, 76, and 89 GC IV. See also, Articles 77, 78 AP I.

Al Mezan Center for Human Rights.

OCHA-WFP Report, p. 17.

Article 50 (1) AP I. The ICTY has held that this article reflects customary international law, see Prosecutor v. Kordić and Čerkez, IT-95-14/2-A, Judgement, para. 97 (and references therein). See also recommendation VIII of the ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, ICRC, May 2009, pp. 17, 74–76.

This article only applies to destruction and not to seizure, requisition or confiscation of property.

ICRC Commentary, Article 53 GC IV (emphasis added).

HCJ 2056/04 Beit Sourik v. Israel para. 41.

Article 57 AP I, ICRC Commentary on Article 57 AP I; Rule 15 ICRC Customary IHL Rules.

It must be noted here however that the situation in the Gaza Strip fluctuates rapidly and there are constantly new developments.


IDF Spokesperson, “IDF Map of Rocket Ranges”, 9 Jan 2009: A map showing the ranges of rockets fired from the Gaza Strip. The grey area refers to mortar shells, the yellow to Qassam rockets, the orange improvised Qassam rockets and Grade missiles, the red area refers to the range of upgraded Grade missiles. In total, nearly one million civilians living in the south of Israel are in danger from Hamas rocket fire. http://idfspokesperson.com/2009/01/09/idf-map-of-rocket-ranges-9-jan-2009.


UN SC Resolution 681 (1990), para. 5.
Diakonia is a Swedish development organisation that supports more than 400 partners in over 30 countries. We believe in a rights-based approach that recognises the discriminated individuals or groups as right holders; and put focus on empowering people to demand what is rightfully theirs. Everywhere in the world, we work towards fulfilling five main goals: human rights, democratisation, social and economic justice, gender equality and a sustainable peace and conflict management.

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