

3. Law and order in the occupied Palestinian territory

Which authority is responsible for the implementation of International Humanitarian Law (IHL) in the occupied Palestinian territory (oPt)?

All parties to a conflict must adhere to and ensure respect for IHL. When it comes to administrating the occupation, Israel as the Occupying Power has the primary responsibility for the respect of IHL. It is also responsible for ensuring that Israeli laws comply with international obligations and that its authorities, including the IDF, respect IHL. The Chief of General Staff, subordinate to the Minister of Defence, has the highest responsibility for the armed forces.

What are the main rules of IHL applying to an occupation?

IHL adds responsibilities to the Occupying Power towards the welfare of the occupied population. The occupier must ensure public life and order, while respecting the laws of the territory.¹ Civilians shall be treated as protected persons, and are entitled to respect and humane treatment. IHL prohibits forcible transfer, the demolition of private property and collective punishment. [For more information about the rules of IHL, see Fact Sheet 2].

How does the Government and the Israeli military administer the occupation?

Upon occupation in 1967, Israeli military orders established a military administration for the oPt² which subordinated existing local laws to

the military administration and empowered the Israeli Military Commander (IMC) to administer the territory. In 1981 the IMC delegated some powers to the Israeli Civil Administration (ICA), subject to the control of the IMC. The ICA “[...] shall run all regional civil matters [...] with the purpose of providing and operating the public services, considering the need to maintain a proper governance and public order”.³

The Government of Israel has also established the Coordinator of Government Activities in the Territories Unit (COGAT) that reports to the Minister of Defence. COGAT is responsible for the implementation of government policy, including the tasks of the security forces and military, infrastructure issues and the needs of the settlements. In the West Bank, part of this is delegated to the Civil Administration (ICA).

Military investigations into conduct of Israeli soldiers in 2012 ⁴	103/240 Petitions
Indictments against Israeli soldiers in 2012 ⁵	1
% of Palestinian complaints about tree vandalism by settlers that lead to investigation ⁶	0.06% or 1/162 cases
Guilty verdicts in military cases against Palestinians ⁷	99,74 per cent

¹ Article 43, Hague Regulations (1907)

² Proclamation No. 1 Concerning the Takeover of the Administration by the Israel Defense Forces, followed by Proclamation No 2 Concerning Administrative and Judiciary Procedures (West Bank Area) (5727–1967)

³ Military decree # 947, by the 1981 military government of the West Bank and Gaza: “We hereby establish a Civil Administration in the region [West Bank and Gaza]. The Civil Administration

⁴ Yesh Din, Data Sheet, January 2013, Law Enforcement upon IDF Soldiers in the Territories, Figures for 2012

⁵ Ibid.

⁶ Police investigation of vandalization of Palestinian trees, in the West Bank, Yesh Din monitoring data, 2005–2012, Data sheet, October 2012

⁷ In the year of 2010, Haaretz, 29 Nov 2011

For the Gaza Strip, coordination goes through the District Coordination Office for Gaza. East Jerusalem is administered by Israel as part of the Jerusalem municipality, as a result of the unlawful annexation of the city. [See Fact Sheet 10 on Annexation].

Who ensures law and order in the oPt?

According to international law, Israel, as the Occupying Power, has the overall responsibility for security in the oPt. In practical terms some law enforcement responsibilities have been delegated through bi-lateral agreements to the Palestinian Authority (PA). According to the Oslo Accords, Israel (through the IDF) provides for security in Area C and B (61 per cent and 21 per cent of the West Bank respectively). In Area A (18 per cent of the West Bank, mainly Palestinian cities), the PA has nominal authority.

According to Israeli law, settlers and their actions in the West Bank fall under the authority of the Samaria & Judea District Police and the jurisdiction of the civilian Israeli court.

Which Court is technically responsible for the enforcement of IHL in the oPt?

Criminal and disciplinary investigations of Israeli soldiers being accused of violations of IHL should be the responsibility of the IDF's Military Police and Military Advocate General. Such cases, if they proceed to Court, end up before the military courts. Yet, many of the policies and practices which violate IHL are in fact state policies, in many cases condoned by the Israeli judiciary. Palestinian civilians charged by the IDF with criminal offenses are also tried in the military courts. The Israeli Supreme Court, sitting as the High Court of Justice, exercises judicial oversight of the IMC, and as such, petitions submitted by Palestinians regarding the actions of the IMC are dealt with by the Israeli High Court.

How do Israeli Courts apply IHL to the occupied territory?

Since 1967, the Supreme Court of Israel has referred to certain rules of IHL in many rulings relating to the oPt, but has made the application arbitrarily dependent on a broad set of inconsistent circumstances leading to interpretations in favour of the occupation, as opposed to positioning international law as the foundation of its policies and practices in the oPt. It has also stated that where there is a conflict between Israeli and international law,

Israeli law supersedes, even over customary international law.

For example, the Court has ruled that the Israel's security concerns grants a right to employ measures of forced transfer, arguing that IHL prohibits mass deportation only of the magnitude of World War II, thus not applicable to transfer of Palestinian individuals or communities. This ignores the clear language of the Fourth Geneva Convention, which states that "individual or mass forcible transfer" is prohibited.

Is Israel bound by international law?

Like all states, Israel is bound by international law and must ensure that national law and practices are in conformity with its obligation under international law. Israel takes a dual approach to international law, meaning that treaties must be incorporated into Israeli law before they can be applied. International customary law can in theory be applied directly by the Courts.

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