



PALESTINIAN CENTRE FOR HUMAN RIGHTS

PCHR Disengagement Fact Sheet No. 1

The Gaza ‘Disengagement’ is not an end to Occupation: Occupation of the Gaza Strip will continue in both its legal and physical form.

- **What is the Israeli claim?**

Israel contends that “[t]he completion of the [disengagement] plan will serve to dispel the claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip”.¹ Such a statement is in response to the repeated confirmation by the international community, including United Nations (UN) bodies and the International Committee of the Red Cross (ICRC), of the applicability of international humanitarian law² to the areas which Israel occupied as a result of the Arab-Israeli War of 1967 (including the West Bank and the Gaza Strip). In 2004, the International Court of Justice (ICJ) unanimously confirmed that Israel must comply with its obligations as an Occupying Power in the Occupied Palestinian Territory (OPT).

However, Israel has its own self-serving interpretation of international law – Israel has never accepted the applicability of the Fourth Geneva Convention to the OPT and thus has not complied with the stipulated regime of protection for the civilian population living under occupation. Such obligations include protection against deportation, transfers and evacuation (Article 49), obligation to facilitate the functioning of education facilities for children (Article 50), protection against excessive destruction of civilian property (Article 53) and the obligation of ensuring food and medical supplies and maintaining medical services (Articles 55 & 56).

Faced with increasing pressure from the international community to comply with its clear duties as an Occupying Power, Israel’s has attempted to subvert such calls through announcing their ‘disengagement plan’. According to Israel, the removal of settlers and the redeployment of military units in Gaza Strip will quell discussions about Israeli responsibilities as an Occupying Power toward the Palestinian population of the Gaza Strip.

However, the proposed ‘disengagement’ is just another attempt by Israel to cut-off the Gaza Strip from their legal responsibilities through the continued denial of application of international humanitarian law. As detailed below, what remains clear under international law is that Israel’s ‘disengagement’ from the Gaza Strip will not end the occupation and thus their responsibilities for the protection of approximately 1.4 million Palestinians in the Gaza Strip.

¹ The original draft went even further when it declared that after disengagement “there will be no basis for the claim that the Gaza Strip is occupied territory”. It was later revised because Israel has never formally acknowledged that it is the Occupying Power in Gaza Strip.

² The law of occupation forms part of the laws of war generally and is commonly referred to as ‘humanitarian’ law. The main instruments governing situations of occupation are the Hague Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land and the Fourth Geneva Convention Relative to the Protection of Civilians Persons in a Time of War of 1949.



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- **The Israeli military will retain control over the Gaza Strip**

Under Article 42 of the 1907 Hague Regulations, widely recognised as customary international law, a territory remains occupied when an Occupying Power can exert “effective control” over the territory.³ The test is not the military presence of the occupying forces in all areas of the territory but the ability of the Occupying Power to exert control over the territory in terms of both military and administrative control.

Under the ‘disengagement’ plan, the Israeli military will continue to control all land borders (they will continue to be deployed along the “Philadephi Road” border between Gaza and Egypt), air space and sea access to the Gaza Strip and therefore continue to exercise effective control of the Gaza Strip. The ‘disengagement’ is in fact only a redeployment of Israeli military to the border areas.

This redeployment to the border areas satisfies further elaboration of the “effective control” test by various international tribunals of whether the Occupying Power could “at any time they desired assume physical control of any part of the territory”⁴. The capability to exert control has also been recognized as the threshold for occupation by the Israeli Supreme Court.⁵

- **The Israeli military “reserves the fundamental right” to operate in the Gaza Strip**

Further, the text of the disengagement plan clearly states that Israel “reserves the fundamental right” to use force against Palestinians living in the Gaza Strip in terms of self-defense. This right to use force is explicitly stated by the Israelis to include the use of force for preventative self-defense measures. The doctrine of pre-emptive self-defense is groundless in international law and has been the direct cause of countless civilian casualties.

Israeli rhetoric has included statements that they will continue to pursue wanted members of the Palestinian resistance (i.e. military incursions) and will continue with their policy of assassinating Palestinian civilians (extra-judicial executions) inside the Gaza Strip.

The continued presence of the Israeli military along the land and sea borders of the Gaza Strip means that the Israeli military after ‘disengagement’ will continue to carry out military incursions using ground forces in Palestinian towns and villages and by using F-16 Fighter Jets and Helicopter Gun-ships to fire into densely populated civilian areas.

- **Even members of the Israeli government say the occupation won’t end.**

Most notable among these was, Dr. Shavit Matias, Israeli Deputy Attorney General, who was heavily criticised by many of her colleagues in the Justice and Foreign Ministries for stating clearly that

³ Article 42 of the Hague Regulations states “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to territory where such authority has been established and can be exercised”.

⁴ United States Military Tribunal at Nuremberg, *USA vs Wilhelm List et al.*(1949).

⁵ Israeli High Court, *Tsemel et al v. Minister of Defence et al* (1983).



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disengagement will not put an end to the occupation of Palestine, including the Gaza Strip.⁶ Dov Weisglass, Chief Advisor to the Israeli Prime Minister stated clearly that the purpose of disengagement was to put the possibility of a Palestinian state “in formaldehyde”.⁷

⁶ See Aluf Ben, *Ha'aretz*, October 25th, 2004. Similar comments were made by Dr. Matias at a convention in December 2004. Yuval Yoaz, *Ha'aretz* Internet edition, December 18th, 2004.

⁷ A. Shavit, “Weisglas: Disengagement is Formaldehyde for Peace Process,” *Ha'aretz*, 8 October 2004.