



ISRAEL'S OBLIGATIONS UNDER INTERNATIONAL LAW IN GAZA: A BRIEFING NOTE ON SIEGE, HUMANITARIAN SUPPLIES & EVACUATIONS

1. Siege

Siege is a permissible means of warfare **unless** the intention is to starve the civilian population.¹ As stated in the UK's Manual of the Law of Armed Conflict, "*Siege is a legitimate method of warfare as long as it is directed against enemy armed forces.*"² Siege warfare can be more humane than other forms of warfare, such as bombardment, and can shorten a conflict. However, even if a siege results in the starvation of civilians, it is not prohibited by international law as long as the **purpose** is to achieve a military objective and not to starve the civilian population.³

2. Food, fuel, electricity and medical supplies

There is **no obligation** on a State engaged in an armed conflict **to supply** food, fuel, electricity or medical supplies to a territory under enemy control. On the contrary, there is an obligation under UN Security Council Resolution 1373 on all States not to provide economic resources or any form of support directly or indirectly to terrorists.⁴

There is an **obligation to facilitate the supply by third parties** of food, medical supplies and other supplies essential to the survival of the civilian population into a territory under enemy control, but **only if** the facilitating party is satisfied that there are no serious reasons for fearing that

- a. the supplies may be diverted from their destination, or
- b. the control (over their use) may not be effective, or
- c. the enemy may obtain a military advantage through substitution.⁵

3. Evacuating a civilian population

Parties to a military conflict are not only permitted to remove the civilian population from the vicinity of military objectives but also **required** to endeavour to do so. They must also **avoid** locating military objectives within or near densely populated areas.⁶ The use of **human shields** is prohibited.⁷ Israel was right to advise Gaza civilians to evacuate parts of the Gaza Strip where intensive military activity was expected.

4. Is the Gaza Strip occupied territory?

Under international law "*Territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.*"⁸ Israel removed its military and civilian presence from the Gaza Strip in 2005 and has not occupied the territory since then, at least until very recently. Israel may now occupy part of the territory if and where it has secured effective control on the ground. If so, Israel has a duty to ensure food and medical supplies as far as it can to the population in these parts of the territory.

Has Israel complied with its obligations during its siege of the Gaza Strip?

Israel **has** complied with its obligations as set out above since the Hamas attacks on 7 October, according to the information that is currently available:

- a. **Fuel** is required in the Gaza Strip for the supply of drinking water, the operation of hospitals and other humanitarian requirements. However, there were substantial stores of fuel in the Gaza Strip on 7 October 2023.⁹ Despite daily claims that hospitals were about to run out of fuel required to generate electricity and maintain their operations, it appears that they have continued to operate until the Israeli forces engaged terrorists in their immediate vicinity. Photographs and broadcast footage appear to show that they have even been able to provide external lighting to entrance areas.¹⁰ Israel is not legally obliged to permit passage of fuel supplies when they are not essential to the survival of the civilian population and there are serious reasons for fearing diversion to Hamas military use.
- b. Israel would have no legal obligation to supply **electricity** to the Gaza Strip, even if it were only used for civilian purposes. In fact, electricity is used by Hamas and other terrorists to launch the rockets which they have continued to fire at Israeli civilians and to ventilate the miles of tunnels from which they conduct military operations. Hamas would undoubtedly divert electricity supplied by Israel for these purposes. In any case, 9 out of the 10 electricity supply lines from Israel into the Gaza Strip are now inoperative due to damage in the Hamas-led attacks on Israeli communities on 7 October 2023; this would substantially restrict the electricity that could be supplied by Israel even if it decided to resume supplying it to the territory.
- c. Prior to 7 October 2023, over 90% of the **water** used in the Gaza Strip came from within the territory. Water for drinking was provided by desalination of water from the aquifer or the sea. Some of the desalination was solar-powered, but some required fuel, and fuel was also required to distribute water through pipes to users.

9% of water consumed in the Gaza Strip was supplied through three pipelines from Israel. One of these remains broken from Palestinian terrorist attack on 7 October. Although initially closed by Israel, the other two have reopened and are now supplying 58% of the pre-war volume.¹¹ Water has also been brought into Gaza through the Rafah crossing since it reopened.¹²

Israel is not required to supply water itself to the Gaza Strip and, as matters stand, additional fuel is not currently required in the Gaza Strip to ensure essential water supplies to the civilian population.

- d. Prior to 7 October 2023, the Gaza Strip had become self-sufficient in many **foodstuffs**¹³ and there were stocks of food in the Gaza Strip as at 7 October. The main entry point for foodstuffs and other goods into the Gaza Strip was the Kerem Shalom terminal. This was attacked by Palestinian terrorists on 7 October and taken out of commission; the area was also a war zone.¹⁴ The terminal was repaired and reopened for humanitarian supplies on 17 December.¹⁵

The Rafah crossing was closed by Egypt on 7 October and reopened for humanitarian supplies on 21 October. Israel had and continues to have serious reasons for fearing that humanitarian supplies will be diverted to Hamas or used to conceal supplies intended for Hamas. Oxygen concentrators intended for use in Hamas tunnels were found concealed in humanitarian supplies at Rafah.¹⁶ Israel was and is entitled and bound to insist on arrangements to reduce this risk as far as practicable.

Israel is not limiting the supply of food by third parties into the Gaza Strip. The Israeli authorities have monitored the needs of the civilian population and have permitted sufficient supplies to avoid mass starvation, although there have been problems distributing them inside the Gaza Strip.¹⁷

¹ [Additional Protocol I to the Geneva Conventions \(“Additional Protocol I”\), Art. 54; Additional Protocol II to the Geneva Conventions \(“Additional Protocol II”\), Art. 14](#)

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/27874/JSP3832004Edition.pdf at 5.34.1

³ [ICRC Rules of Customary International Humanitarian Law, Rule 53](#)

⁴ This Resolution was passed under Chapter VII of the UN Charter and is binding on all UN member states.

⁵ [4th Geneva Convention, Art. 23; Additional Protocol I, Art. 70; Additional Protocol II, Art. 18](#)

⁶ [Additional Protocol I, Art. 58; ICRC Rules of Customary International Humanitarian Law, Rule 24](#)

⁷ [Additional Protocol I, Art. 51\(7\); ICRC Rules of Customary International Humanitarian Law, Rule 97](#)

⁸ [Hague Regulations of 1907, Art.42; ICJ Case 131, *Construction of a Wall*, para 78; *Sargsyan v Azerbaijan* \(ECHR\) para 94; \[UK Manual of the Law of Armed Conflict\]\(#\) 11.2 and 11.7. Although it has been claimed that Israel remained in occupation of the Gaza Strip after 2005, this special treatment of Israel is fundamentally inconsistent with both \(i\) the concept of law as comprising rules that apply generally and \(ii\) the obligations imposed on an occupier by international law, which presuppose that the occupier is in control of the territory and able to direct resources to the civilian population.](#)

⁹ <https://www.timesofisrael.com/amid-concern-for-humanitarian-situation-how-much-water-and-power-does-gaza-have/>

¹⁰ e.g. <https://www.theguardian.com/world/2023/oct/17/gaza-main-hospital-overflows-with-living-dead-dar-al-shifa>

¹¹ <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza/#:~:text=COGAT%20said%20that%20with%20the,humanitarian%20situation%20in%20the%20territory>

¹² <https://www.reuters.com/world/middle-east/evacuations-gaza-strip-resume-through-egypts-rafah-crossing-2023-11-09/#:~:text=Rafah%20is%20also%20the%20only,according%20to%20the%20United%20Nations>.

¹³ <https://www.al-monitor.com/originals/2016/05/al-monitor-interview-ziad-al-zaza-gaza-2016.html>; https://www.gov.il/en/departments/news/gaza_growth

¹⁴ <https://www.camera.org/article/is-israels-siege-denying-water-and-food-to-gaza-just-the-facts/>

¹⁵ [https://www.reuters.com/world/middle-east/aid-enters-gaza-through-israels-kerem-shalom-crossing-first-time-war-2023-12-17/#:~:text=JERUSALEM%2C%20Dec%2017%20\(Reuters\),been%20closed%20after%20an%20Oct](https://www.reuters.com/world/middle-east/aid-enters-gaza-through-israels-kerem-shalom-crossing-first-time-war-2023-12-17/#:~:text=JERUSALEM%2C%20Dec%2017%20(Reuters),been%20closed%20after%20an%20Oct).

¹⁶ https://www.timesofisrael.com/liveblog_entry/israeli-officials-oxygen-concentrators-for-gaza-tunnels-found-hidden-in-aid-shipment/

¹⁷ <https://govextra.gov.il/cogat/humanitarian-efforts/home/>