

## FAQ: ISRAEL'S MILITARY ASSAULT ON GAZA

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### 1. What is the current situation in Gaza following Israel's 22-day military assault?

The current situation in Gaza following Israel's 22-day military assault is dire. Palestinian civilians bore the full force of Israel's assault, with Israel indiscriminately targeting residential neighbourhoods and public facilities such as schools, hospitals, mosques and even buildings belonging to the UN. Gaza's water and electricity networks were also extensively damaged. The result has been a rapid deterioration in the humanitarian situation.

According to figures cited by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 1,440 Palestinians were killed over a three week period, including 431 children and 114 women. A further 5,380 Palestinians, including 1,872 children and 800 women, were injured.<sup>1</sup>

An initial survey by the United Nations Development Programme (UNDP) found that more than 14,000 homes in Gaza had been either totally or partially damaged.<sup>2</sup> Estimates by the Palestinian Central Bureau of Statistics (PCBS) put the number of Palestinians left homeless at 50,000, with an additional 100,000 Palestinians displaced.

Poverty, unemployment and destitution are at endemic levels, with 88 percent of Gaza's population now reliant on foreign food aid from the World Food Programme (WFP) and the United Nations Relief and Works Agency (UNRWA).

As a result of the damage done to Gaza's water network, 50 percent of Gaza's population currently has access to running water for only 6-8 hours every second day; 30 percent has access only every third day; and ten percent of the population receives water only every five days. Ten percent of Gaza's population, or approximately 140,000 people, have no access to running water at all and depend entirely on tankered water.<sup>3</sup> Similarly, figures cited by UN OCHA show a power deficit in the Gaza Governorate of 64 percent, and 50 percent in both north Gaza and the middle area leading to rolling blackouts.<sup>4</sup>

Approximately 48 percent of Gaza's health facilities have been damaged or completely destroyed, including 15 hospitals and 41 primary health centers.<sup>5</sup>

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<sup>1</sup>UN OCHA, *Field Update on Gaza from the Humanitarian Coordinator: 3-5 February 2009*, available from [http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_humanitarian\\_situation\\_report\\_2009\\_02\\_05\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_humanitarian_situation_report_2009_02_05_english.pdf)

<sup>2</sup>UNDP, *Press Release: Rubble Removal is Urgently Needed to Restore Basic Services to Gazans*, 4 February 2009, available from <http://www.undp.ps/en/newsroom/pressreleasespdf/2009/3.pdf>.

<sup>3</sup> UN OCHA, *supra* note 1.

<sup>4</sup> *Ibid.*

<sup>5</sup> WHO, *Health Situation in Gaza – 4 February 2009*, available from [http://www.who.int/hac/crises/international/wbgs/sitreps/gaza\\_4feb2009/en/index.html](http://www.who.int/hac/crises/international/wbgs/sitreps/gaza_4feb2009/en/index.html).

Most pressing of all are the chronic shortages in food, clean water, cooking gas, fuel and essential medical supplies in Gaza. Getting humanitarian aid into Gaza is currently a priority for international agencies like the UN, yet Israel refuses to allow sufficient passage of much needed humanitarian aid and essential supplies through Gaza's borders. UN OCHA reported that an average of only 122 trucks per day containing humanitarian aid and relief supplies, were allowed entry into Gaza over the month of January. This compares with 631 trucks per day in January 2007, and is far below what is needed.<sup>6</sup>

## **2. Isn't Hamas to blame for the conflict by violating its 6-month ceasefire agreement with Israel?**

No. Blaming the different Palestinian factions for the conflict ignores Israel's own repeated violations of the ceasefire agreement, the key components of which were a suspension of hostilities, as well as an easing of Israel's crippling blockade over Gaza's borders in order to allow for the entry of much needed humanitarian aid.

From the outset of the ceasefire agreement, Israel refused to ease its relentless stranglehold over Gaza, denying 1.5 million Palestinians access to basic necessities such as food, medicine, fuel, electricity and clean water. Israel also started to prevent the international media from gaining entry into Gaza.

Furthermore, the first significant military attack during the cease-fire was an Israeli raid into Gaza on 4 November 2008 during which 6 Palestinians were killed. The raid was unprovoked and led to a rapid escalation in cross-border hostilities. Neither then, nor at any time over the period of the truce, were any Israelis killed.

Media outlets, including Israel's own leading daily *Ha'aretz*, suggest that, rather than responding to violations of the truce, Israel had begun drawing up plans for a military assault on Gaza at least 6 months earlier.<sup>7</sup> Israel's exploitation of the truce as a cover for its pre-planned offensive makes the assault all the more egregious.

## **3. Didn't Israel end its occupation over Gaza in 2005? Why has the situation in Gaza not improved since the Israeli disengagement in 2005?**

No. Israel continues to occupy Gaza. In September 2005, Israel evacuated its 8,500 settlers and redeployed its ground troops to the periphery just outside Gaza under its 'Disengagement Plan'. Since then however, it has intensified its effective control over Gaza's air space, sea space, and all points of access in and out of the Gaza Strip, severely restricting the movement of goods, people and much needed supplies like food, fuel and medicines into Gaza, as well as exports out of Gaza.

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<sup>6</sup> *Ibid.*

<sup>7</sup> Haaretz, *Disinformation, secrecy and lies: How the Gaza offensive came about*, 31 December 2008, available from <http://www.haaretz.com/hasen/spages/1050426.html>.

Palestinians living in Gaza require permits from Israel to travel to and from Gaza, and to take their goods to Palestinian and foreign markets. Israel's permit system also covers the entry of food and medicine into Gaza, as well as fuel need to generate electricity and ensure water supplies. Even before the rise of Hamas in Gaza, the Palestinian National Authority, without Israel's permission, could not perform such basic functions of government as providing social and health services or security, setting immigration policy, developing the Palestinian economy or allocating resources.

It is for this reason that international law continues to regard Israel as an occupying power in Gaza, one bound by its obligations under international humanitarian law (IHL), including the *Hague Regulations* and the *Fourth Geneva Convention*.

After the disengagement in November 2005, Israel began to introduce complete closure. By June 2007, the complete closure became the norm. Imports into Gaza were drastically cut, and Israel barred all exports out of Gaza. Gaza's economy was effectively destroyed, and with it the livelihoods of countless Palestinians. In the 15 months to September 2008, 98% of Gaza's industrial operations became inactive as a result of the closures, with just 23 industries left operating out of Gaza's 3,900 industries.<sup>8</sup> Nearly 40,000 farmers in the agricultural sector and more than 70,000 workers in other sectors lost their jobs.<sup>9</sup> The poverty rate in Gaza, based on household income, soared to 79.4%.<sup>10</sup> In terms of imports, an average of 9,400 trucks per month entered into Gaza before June 2007. Between June 2007 and June 2008, that number had fallen to an average of just 1,930 trucks per month.<sup>11</sup>

Gaza's shattered economy now denies Palestinians the very foundations on which to rebuild their lives following Israel's latest assault.

Gaza's civilian infrastructure was also severely affected and teetered on the verge of collapse for lack of fuel and spare parts to carry out much needed repairs. For example, in June 2008 the amount of fuel Israel allowed into Gaza accounted for only 54% of Gaza's needs, severely affecting Gaza's electricity and water supplies.<sup>12</sup>

All the while, Palestinians were held as virtual prisoners on their own land.

#### **4. Surely, Israel has a right to protect its citizens?**

Like any other state, Israel does have the right to protect its citizens, and the right of self defense. However, it must exercise these rights within the limits set by international law on the resort to force, as well as international humanitarian law.

Article 51 of the UN Charter provides that states have "the inherent right of individual or collective self-defense if an armed attack occurs". For an attack to be classified as an "armed attack", it must be of such a scale and gravity as to amount to an actual armed attack

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<sup>8</sup> World Bank, *Palestinian Economic Prospects: Aid, Access and Reform*, 22 September 2008.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

conducted by regular armed forces and not a mere frontier incident.<sup>13</sup> Even cumulative attacks may not constitute an “armed attack”.<sup>14</sup>

Additional requirements for the exercise of the right of self defense under customary international law are necessity and proportionality.<sup>15</sup> Only measures that are proportional to an armed attack, and necessary to respond to it, are warranted.<sup>16</sup>

The rocket attacks on Israel from Gaza did not, in terms of scale and effect, amount to an armed attack entitling Israel to rely on self-defense. The sheer scale of Israel’s massive assault on Gaza was disproportionate to the threat presented by random and sporadic rockets, and indiscriminate in its effect, harming mainly civilians and civilian targets and infrastructure. Furthermore, the assault on Gaza was not an act of last resort as required by the principle of necessity when Israel could have agreed to renew the truce with Hamas. Therefore, Israel’s assault on Gaza was an unnecessary and disproportionate act taken in response to actions not amounting to an armed attack from Gaza and as such, constitutes aggression rather than self-defense under international law.

Moreover, the use of force under the law of self defense must, in order to be lawful, also meet the requirements of the law applicable in armed conflict.<sup>17</sup> In general terms, deliberate<sup>18</sup>, indiscriminate and disproportionate<sup>19</sup> attacks harming civilians or their property are all prohibited by international humanitarian law.

During Israel’s offensive, 1,440 Palestinians were killed and another 5,380 were injured. Over the same period, 14 Israelis were killed, including 11 soldiers, whilst 183 Israeli civilians and 340 Israeli soldiers were injured.<sup>20</sup> The stark disparity between Palestinian and Israeli casualties raises serious doubts about the proportionality between the military threat to Israel and the injury caused to Palestinian civilians by the military operations Israel purportedly employed to neutralize the threat. And there is increasing evidence that many of the injuries to persons and damage to property occurred in attacks targeting civilians or at least indiscriminately harming them.

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<sup>13</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14, para. 194.

<sup>14</sup> *Oil Platforms (Islamic Republic of Iran v United States of America)*, Judgment, ICJ Reports 2003, p. 161, paras. 51 and 64.

<sup>15</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226, para. 245.

<sup>16</sup> *Nicaragua*, *supra* note 13, paras. 94 and 103.

<sup>17</sup> *Legality of the Threat or Use of Nuclear Weapons*, *supra* note 15, para 245.

<sup>18</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949*, 12 August 1949, 75 U.N.T.S. (1950) 287, Arts. 27 and 32 [*Fourth Geneva Convention*]; and *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 12 December 1977, 1125 U.N.T.S. (1979) 3, Arts. 48 and 51(2) [*Additional Protocol I*]. Although Israel has not ratified *Additional Protocol I*, many of its provisions, including all those cited here unless stated otherwise, are declaratory of customary international law.

<sup>19</sup> *Additional Protocol I*, *ibid.*, Arts. 51(4) and (5).

<sup>20</sup> UN OCHA, *supra* note 1.

Furthermore, this disparity raises concerns about whether Israel really exercises the care it is legally bound to,<sup>21</sup> to minimize injury to Palestinian civilians.<sup>22</sup> Even if hostilities occur in densely-populated areas, Israel is still required to protect civilians from military operations.<sup>23</sup>

Moreover, no person may be punished for offences that they have not personally committed.<sup>24</sup> Likewise, all measures of intimidation or of terrorism are prohibited.<sup>25</sup> Israel uses the closure on Gaza to punish the Palestinian civilian population for the acts of a few or, at a minimum, to intimidate Palestinian civilians in the hope that they will exert pressure on Palestinian combatants to cease their resistance against Israel's occupation.

## **5. Will Israel's assault in Gaza deliver long term security to Israel?**

No. Israel's latest assault on Gaza will do little in the way of delivering long term security to Israel. Instead, it has exacerbated Palestinian anger and despair, further isolated Gaza from the West Bank, and deepened internal Palestinian divisions. In Israel, where the assault on Gaza received substantial support, it helped precipitate a further swing to the right in public attitudes to security and peace.

Security and peace can only come about by addressing the underlying causes of the Palestinian-Israeli conflict, namely Israel's ongoing occupation of Palestinian lands and the displacement and dispossession of Palestinians before, during and after the 1948 war. Only negotiations aimed at ending Israel's occupation and delivering justice to Palestinians dispossessed and oppressed for more than six decades, will achieve peace and security for both parties.

Like Israelis, Palestinians have a right to live in security within sovereign borders. Security and self-determination remain at the very heart of the historic compromise Palestinians made to negotiate a viable Palestinian state on only 22 percent of historic Palestine.

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<sup>21</sup> *Additional Protocol I*, *supra* note 18, Art. 57(1).

<sup>22</sup> *Ibid.*, Art. 57(2).

<sup>23</sup> *Ibid.*, Arts. 50(3) and 51(8).

<sup>24</sup> *1907 Hague Convention IV Respecting the Laws and Customs of War on Land*, 18 October 1907, U.K.T.S. 9 (1910), Art. 50 [*Hague Regulations*]; and *Fourth Geneva Convention*, *supra* note 18, Art. 33.

<sup>25</sup> *Fourth Geneva Convention*, *ibid.*, Art. 33. See Jean S. Pictet, ed., *Commentary on IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958) at 225-26 [*ICRC Commentary*]; and ICRC, *International humanitarian law and the challenges of contemporary armed conflicts: Excerpt of the Report prepared by the International Committee of the Red Cross for the 28th International Conference of the Red Cross and Red Crescent Geneva, December 2003*, (March 2004) I.R.R.C. Vol. 86 No. 853 at 223.