

REGIONAL FOCUS & CONTROVERSIES

Israel's Claim of the “Legitimate Right of Self- Defence” regarding the Gaza Strip in Light of International Law *A Palestinian Lawyer's Position*

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Since the implementation of the disengagement plan in 2005, Israel has alleged that it no longer occupies the Gaza Strip and claimed its right to legitimate self-defence based on Article 51 of the United Nations Charter, including the suffocating blockade imposed there as well as the 'Cast Lead' military Operation and others. This paper analyzes Israeli's claim in light of international law and the objective facts taking place in the Gaza Strip resulting from the implementation of the disengagement plan.

Keywords

Israel, Gaza Strip, Disengagement Plan, Legitimate Self-Defence, Colonization, Blockade, International Humanitarian Law

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1. Introduction

Israel occupied the Gaza Strip and the West Bank including East Jerusalem after the end of the war in June 1967. It placed the Gaza Strip under direct military rule from within the Gaza Strip and lasted until Israel implemented its unilateral disengagement plan from the Gaza Strip in September 2005.¹ Upon the implementation of this plan, Israel declared that it finally relinquished the Gaza Strip and thus was no more responsible for the protection, care and welfare of its civilian population. Despite the disengagement plan, Israel has not actually given up effective control over the Gaza Strip judging that it has maintained full control of its land, sea borders, and airspace. In addition, Israel has imposed a strict military siege since Hamas took over authority in Gaza on June 19, 2007, declaring it 'enemy territory.'²

Under the disengagement plan, Israel has escalated its settlement activities in the West Bank including East Jerusalem. Furthermore, Israel has intensified military aggression and assaults in the Gaza Strip and its inhabitants through incursions and assassinations in public places and the homes of several resistance movement leaders causing many civilian deaths. Israel has also launched several large-scale military offensives in the Gaza Strip, including Operation Cast Lead,³ which left thousands either dead or wounded, destroyed tens of thousands of residential houses, schools, hospitals, places of worship and police stations, and caused massive destruction to infrastructure and all sources of livelihood in the Gaza Strip.

Israel attempts to justify its military operation in Gaza Strip (including Operation Cast Lead) as a right of self-defence in accordance with Article 51 of the UN Charter, which states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United

¹ Israel calls this the "Withdrawal Plan from the Gaza Strip (Disengagement Plan)," available at <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Revised+Disengagement+Plan+6-June-2004.htm> (last visited on July 2, 2010).

² The Israeli Security Cabinet declared the Gaza Strip 'enemy entity' on September 19, 2007. Israel declared that the Hamas-led National Authority was an 'enemy entity.' It also regarded Hamas as a terrorist movement on April 9, 2006, although Hamas won the general elections held on January 25, 2006 receiving 72 seats out of 132. The International community boycotted the Hamas-led National Authority and severed its financial aid, although the elections were democratic, civilized and enjoyed integrity and transparency, according to all international observers. See Talal Okal, *Gaza under the Triangle of Destruction: Division Siege and Aggression*, 74/75 J. PALESTINE STUD. 24 (2008).

³ This operation is also called the "War on Gaza." It was carried out between December 27, 2008 and January 17, 2009. Israel withdrew all its ground forces from the Gaza Strip on January 21, 2009 in accordance with the Security Council Resolution 1860.