

# Israel contrôle toujours la bande de Gaza - ce que dit le droit - GISHA (ONG israélienne) - en anglais

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GISHA: LEGAL CENTER FOR FREEDOM OF MOVEMENT  
גִּישָׁה - מְרִכֵז לְשִׁמּוּרָה עַל הַחֲבֵרָה לְנוֹעַ (ע"ר)  
مركز للدفاع عن حرية الحركة

A new position paper by Gisha offers a legal framework for the complex situation in the Gaza Strip :

- The international law of occupation applies to Israel with respect to the Gaza Strip in the spheres in which it continues to exercise control.
- The closure - restricting movement of civilians and civilian goods to and from Gaza by air, sea and land - is unlawful.
- Israel may determine the routes by which goods and people enter and leave Gaza and may run security checks. Israel may enforce these conditions, including against ships.
- Changes in control over Rafah Crossing mitigate Israel's responsibility but do not eliminate it because of Israel's control over travel between Gaza and the West Bank, travel via air and sea, and other spheres of life, as well as due to post-occupation duties.

- [Read the full position paper »](#)

- [Read the executive summary »](#)

Since the disengagement, the legal status of the Gaza Strip and the degree of Israel's responsibility toward its residents have been the focal point of a heated public and legal debate with significant ramifications for the lives of Palestinians and Israelis. Is the closure of Gaza lawful ? Can Israel intercept ships on their way to Gaza ? How much responsibility do other actors, such as Hamas and the Palestinian Authority, bear for what occurs in Gaza ?

Scale of Control, written by Adv. Sari Bashi and Adv. Tamar Feldman of Gisha, offers a legal framework which applies to the complex reality of the Gaza Strip, the West Bank and perhaps to other parts of the world as well. The authors suggest that the "end of occupation" should be viewed as a process that takes place over time. We are currently located somewhere on the spectrum between occupation and the end of occupation, a situation in which Israel has ceded some governmental powers to Palestinian actors but

continues to exercise other governmental powers exclusively. Where control is divided between the occupying power and Palestinian representatives, responsibility is allocated among them accordingly. Gisha argues that the international law of occupation continues to apply to Israel in the spheres in which it continues to exercise control over the lives of the Palestinian residents. In spheres in which Israel has transferred powers, its responsibility toward the civilian population is diminished.

This position is a middle ground between two extremes that have developed in the debate over Gaza, which were expressed in the legal opinions that Israel and Turkey presented to the Palmer Commission : one claiming that following the 2005 disengagement, Israel is no longer responsible for what transpires in Gaza other than « minimum » humanitarian duties, and the other maintaining that Israel maintains control and responsibility for all spheres of life in Gaza, despite reducing its control. Scale of Control argues the closure of the Gaza Strip is unlawful, because Israel still bears significant responsibility for facilitating normal life in Gaza. On the other hand, the position paper acknowledges that as the occupying power, Israel is authorized to determine the routes by which goods and people are to enter the Gaza Strip and to conduct searches for weapons. For this reason, Israel may demand that ships transport their cargo to Gaza via the Ashdod port, and if necessary, intercept those who refuse to do so using reasonable force. It must, however, allow the free passage of goods and people into and out of Gaza – subject to individual security checks.

According to Adv. Sari Bashi, Executive Director of Gisha : “We offer a legal analysis that can serve as a tool for designing sound policies concerning Gaza – policies which safeguard Israel’s security interests while protecting the rights of civilians vis-à-vis those who control their ability to lead normal lives”.

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