



Suleiman built a small one-room shelter for his family using the rubble of his house, which was bombed in August 2014. 'This was the only solution for us. Life is getting even more unbearable. We are hoping for one thing: reconstruction. But honestly, I don't know if I should keep hoping or not.' Photo: Anas al Baba/Oxfam

CHARTING A NEW COURSE

Overcoming the stalemate in Gaza

In 2014, after unprecedented destruction and suffering in Gaza, international donors pledged \$3.5bn and a change in approach. Six months later, reconstruction and recovery have barely begun, there has been no accountability for violations of international law, and Gaza remains cut off from the West Bank.

This paper outlines an achievable course of action to address the root causes of the recurrent conflict and put international engagement with Gaza on the right course.



This report was initiated by members of the Association of International Development Agencies (AIDA). Signatories to this report include AIDA members and members of other regional coordination networks.

REPORT SIGNATORIES

ActionAid	Médecins du Monde Switzerland
Alianza por la Solidaridad	Medical Aid for Palestinians (MAP – UK)
American Friends Service Committee (AFSC)	Medico international
Asamblea de Cooperación por la Paz (ACPP)	Medico international schweiz
CARE International	Medicos del Mundo MDM-Spain
The Carter Center	Mennonite Central Committee
CCFD-Terre Solidaire	Norwegian Church Aid (NCA)
CCP Japan	Norwegian People's Aid (NPA)
Christian Aid	Norwegian Refugee Council (NRC)
Church of Sweden	Overseas
Cooperazione per lo Sviluppo dei Paesi Emergenti (COSPE)	Oxfam
Council for Arab-British Understanding	Première Urgence – Aide Médicale Internationale
DanChurchAid (DCA)	Quaker Council for European Affairs
Diakonia	Rebuilding Alliance
GVC	Save the Children
Handicap International	Secours Catholique - Caritas France
Heinrich Böll Foundation	Secours Islamique France
HelpAge International	Swedish Development Partner (SOIR)
Horyzon - Swiss Youth Development Organization	The Swedish Organisation for Individual Relief (IM)
Japan International Volunteer Center (JVC)	Terre des Hommes Foundation
KinderUSA	Terre des Hommes Italy
The Kvinna till Kvinna Foundation	United Civilians for Peace, Netherlands
The Lutheran World Federation	
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SUMMARY

Operation Protective Edge – the codename used by Israel for the 51 day military operation¹ and the associated conflict between Israel, Hamas and other Palestinian armed groups – has inflicted unprecedented destruction and human suffering in Gaza.² This was the third such major military operation in six years, further complicating recovery for a civilian population sealed off by a blockade and separated economically, socially and politically from Palestinians in the West Bank. Shortly after Israel and Palestinian armed groups agreed to a temporary ceasefire, donors from around the world gathered in Cairo to pledge \$3.5bn for the reconstruction of Gaza. Six months later, there has been no accountability to address violations of international law, only 26.8 percent of the money has been released, reconstruction and recovery have barely begun, and people in Gaza remain in dire straits.

This paper outlines an achievable course of action that, if implemented, could make significant progress in addressing the root causes of the recurrent conflict and towards the realization of a just, durable peace that would benefit Israelis and Palestinians alike. By directly addressing the different actors that have distinct responsibilities towards Gaza – from Israel and the international community to the Palestinian Authority and Hamas – the signatories to this report outline what each party can and must do to end the conflict and ensure Palestinians in Gaza can realize their rights. It is time for these actors to work together effectively to change the course for Gaza before it is too late.

The main recommendations of this report are:

Ending the cycle of violence

All parties should immediately resume negotiations for a long-term ceasefire that addresses the need for sustainable reconstruction, tackles the root causes of the conflict and can deliver long-lasting security for both Israelis and Palestinians. Negotiations should include all concerned parties, particularly women, in keeping with UN Security Council Resolution 1325.

Both the **Government of Israel and Palestinian armed groups, including Hamas**, must abide by international humanitarian and human rights law in the conduct of hostilities.

The international community must demand an end to violations of international law, and push for greater accountability of all parties, including guarantees of non-repetition.³

Committing to principled assistance, reconstruction and recovery

States should comply with their third state responsibilities not to aid or assist rights violations with respect to companies that contribute to such violations. This should include, where appropriate, adopting clear guidance to national companies, including state-owned companies, and pension and investment funds, to ensure that they undertake adequate due diligence and to ensure they do not support companies whose actions support violations of international law.⁴

Palestinian political actors must prioritize reconstruction as a humanitarian imperative. **International donors** should work with the Palestinian **Government of National Consensus** to take a holistic approach to reconstruction in Gaza, initially through the development of ministerial action plans for early recovery efforts, adequate and sustainable housing, and large-scale infrastructure.

Egypt should also fulfil its third state obligations under international humanitarian law to facilitate the provision of humanitarian assistance.⁵

Donors should make good on the pledges made at the Cairo Conference and move forward with reconstruction and recovery projects for Gaza. Given the devastation of the economy in Gaza, **donor funding** should wholly subsidize construction materials, prioritizing the most vulnerable.

As an immediate measure, funding and technical support should be made available to enable people to buy the necessary materials and labour to complete housing repairs.

Making the necessary shift: Ending the blockade and the separation between Gaza and the West Bank

Israel must lift the blockade and open all crossings into and out of Gaza; priority should be given for the unimpeded entry and exit of goods, as a necessary prerequisite to meet humanitarian needs and to ensure sustainable economic recovery and development.

Israel must allow free movement of Palestinians across the occupied Palestinian territory, in line with their obligations as an occupying power, with individual restrictions on movement placed only in exceptional cases of legitimate security concern, as defined by international humanitarian law.

The international community, **in particular the Quartet of the US, the EU, Russia and the UN**, should propose a time-bound plan to support an end to the blockade, which can be implemented and monitored through relevant UN mechanisms.

The international community should promptly develop a common response to the government of Israel if immediate progress is not made to lift the blockade.

1 INTRODUCTION

Out of this conference must come not just money but a renewed commitment from everybody to work for peace that meets the aspirations of all, for Israelis, for Palestinians, for all people of this region.

US Secretary of State John Kerry, Cairo Conference, 12 October 2014

In the summer of 2012, the UN report *Gaza in 2020: A liveable place?* stated: 'Without remedial action now, Gaza's problems ... will only get worse over the coming years.'⁶ Two years later, following the Israeli military operation named Operation Protective Edge (OPE) in the summer of 2014, the warning in the report has become even more urgent.

OPE – the codename used by Israel for the 51 days of military conflict between Israel, Hamas and other Palestinian armed groups – has inflicted unprecedented human, physical and economic destruction on Gaza. For civilians in Gaza, this destruction occurred against a backdrop of recurrent conflict, prolonged occupation and an ongoing blockade, imposed in contravention of Israel's obligations under international humanitarian law (IHL).⁷

In October 2014, six weeks after the parties agreed to a short-term ceasefire, the international donor community gathered in Cairo. The overarching goal of the Cairo conference was to strengthen the basis for a lasting ceasefire between Israel and Palestinian actors.

Representatives of over 60 countries committed to working with the newly formed Palestinian Government of National Consensus (GNC) towards a paradigm shift that they hoped would end the violence, ensure tangible and sustainable progress on reconstruction, lift the blockade and re-establish economic, social, and political connections between Gaza and the West Bank. Norway, as Chair of the donor conference, in summing up its outcomes, affirmed the agreement that 'the Gaza Strip cannot simply be returned to what it was before'.⁸

Yet today, six months after the donor conference, little tangible change has taken place on the ground in Gaza and living conditions for women, girls, men and boys continues to worsen.

There has been no progress towards a lasting ceasefire agreement and reconstruction efforts have been far too slow to meet needs. There has been no action towards ending the illegal blockade or opening Gaza to the West Bank, including East Jerusalem. If we do not change course now to address these core issues the situation in Gaza will only continue to worsen. Without economic, social and political stability, a return to conflict – and the cycles of damage and donor-funded reconstruction that accompany it – is inevitable.

The goals of the donor conference could still be achieved with committed action by the international community. This much-needed paradigm shift is possible by ensuring the accountability of all parties in violations of international law, conditioning relations with the parties on their adherence to international law, and supporting a Palestinian government that can effectively meet the needs of Palestinians across the Occupied Palestinian Territory (OPT).

Box 1: A policy of separation

International law recognizes Gaza and the West Bank, including East Jerusalem, defined along the 1967 boundaries, as one territorial entity.⁹ For years, however, the Israeli government has implemented a policy of separation that has isolated Gaza from the West Bank, including East Jerusalem, resulting in the political, social and economic fragmentation of the OPT.¹⁰

Beginning in the early 1990s, the Israeli government introduced incremental measures to restrict the movement of people and goods between Gaza and the West Bank. These measures limited the ability of Palestinians from Gaza to work, live, seek medical treatment or study in the West Bank, including East Jerusalem, and vice versa. The number of Palestinians leaving Gaza to the West Bank and Israel in 2014 was less than 1 percent of the number in 2000.¹¹

Over the years, the economic, social and political separation of Gaza and the West Bank has become more entrenched by the Israeli blockade, which was imposed following the 2007 takeover of Gaza by Hamas, the de facto authority in Gaza.

The separation policy, as articulated by Israeli officials, consists of two parts: the blockade, in which Gaza's population and land are physically separated from the rest of the OPT; and the political isolation of Hamas, in which the majority of the international community participates.¹²

This policy has had devastating implications for civilians in Gaza, since it limits the import of essential goods, including materials necessary for reconstruction; shuts down internal trade and export to international markets; and prevents Palestinians in Gaza from leaving to visit family, seek employment, or access health and education services in the West Bank and abroad. The inability of the Palestinian government representatives to freely move between the West Bank and Gaza makes it impossible to effectively govern.

2 GAZA'S MAN-MADE CRISIS

In the absence of sustained and effective remedial action and an enabling political environment, the challenges which confront the people of Gaza now will only intensify over the coming years to 2020, a period in which another half a million people will be added to the present estimated population of 1.6 million.

UN Country Team, *Gaza in 2020: A liveable place?*¹³

CRISIS WITHIN A CRISIS

Operation Protective Edge (OPE) was the third and most destructive Israeli military operation in Gaza in the last six years (see Table 1 for details of the costs in terms of injuries and deaths). Each military offensive has been followed by rounds of international assistance and the reconstruction of damaged homes and infrastructure.

Table 1: The human impact of Operation Protective Edge¹⁴

2,132 Palestinians killed, of whom nearly 70% were civilians, including at least 501 children	71 Israelis killed, of whom five were civilians, including one child
At least 11,100 Palestinians injured	69 Israelis injured ¹⁵

The cost of relief, recovery and reconstruction in Gaza in the aftermath of the military operation was estimated at \$4bn. According to UN Secretary-General Ban Ki-moon, OPE caused an 'unprecedented level of destruction'.¹⁶ It will take decades to complete the recovery from this man-made humanitarian crisis.¹⁷

Box 2: Operation Protective Edge – Damage to essential infrastructure and livelihoods¹⁸

Shelter:¹⁹

12,400 housing units completely destroyed and 6,600 severely damaged²⁰

Over 160,000 homes affected – including major and minor damage and complete destruction

17,500 families (100,000 individuals) still homeless

1,295 families still seeking shelter in UNRWA schools

Recovery and reconstruction cost for housing and shelter estimated at \$1.182bn²¹

Explosive Remnants of War (ERWs):²²

Estimated 7,000 ERWs buried in debris, given 10 percent failure rate of munitions

At least 10 people killed and 36 people injured due to ERW accidents since the start of the temporary ceasefire

Water and sanitation:

20,000 metres of water network pipes and 15,000 metres of sewage networks and carrier lines damaged

11 water reservoirs partially damaged and five tanks completely destroyed

12 sewage pumping stations partially damaged

Health sector:

14 health facilities destroyed, including one hospital; 50 primary health clinics (PHCs) and 17 hospitals have urgent infrastructure needs

45 ambulances damaged or destroyed²³

Damage to health sector estimated at \$50m

Education:

Eight schools completely destroyed and 250 damaged during the conflict, 90 of which are UNRWA schools.²⁴

Three universities and colleges destroyed and another three severely damaged

Over 559,000 students affected by damaged schools and universities

Damage to education sector estimated at over \$27m

Energy:

Primary fuel tank of the Gaza Power Plant totally destroyed, resulting in a complete blackout throughout the Gaza Strip

20-25 percent of the population left with no electricity due to lack of spare parts to repair damage

Damage to energy sector estimated at \$56m

Agriculture:

30 percent of agricultural lands damaged

Agricultural asset losses estimated at over \$550m

Private sector:

128 businesses and workshops completely destroyed and 419 damaged

Damage to private businesses estimated at over \$186m

Lifting the closure policies is a prerequisite for any improvements in the Palestinian economy, widespread unemployment and deepening poverty.

United Nations
Conference on Trade and
Development (UNCTAD)

WHY THE SEPARATION POLICY AND BLOCKADE MATTER

The blockade constitutes collective punishment;²⁵ it is imposed in violation of IHL²⁶ and, according to the UN, may entail the commission of war crimes.²⁷ The implementation of the blockade is in breach of Israel's obligations to provide for the well-being of the Palestinian population.²⁸ Third states have also legal responsibilities to ensure respect for international law, including IHL, which includes allowing free passage for and protection of humanitarian relief.²⁹ By closing the Rafah crossing, Egypt may also be failing to uphold its humanitarian obligations.

While Israel argues that the blockade is needed for security, the blockade has in fact perpetuated human insecurity in Gaza and has failed to prevent conflict. As Israeli civil society organization Gisha³⁰ argues,

*The closure ... [imposed by Israel was], apparently, intended to undermine Hamas' control over Gaza. This has clearly failed and the civilian population of Gaza (and, to a certain extent also the civilian population of Israel) has suffered the consequences.*³¹

Recently, Israeli security experts have also warned that the restrictions on goods entering Gaza, in particular construction materials, are harmful to Israeli security, due to the economic paralysis that the blockade has created.³²

Israel and the international community's policies have further entrenched the already-problematic political split between the Palestinian Authority (PA) in Ramallah and the de facto authorities in Gaza. At the same time, the blockade prevents third states and aid agencies from delivering effective assistance.³³

Gaza's health sector is a critical example. Over the past eight years, insufficient budgeting and late transfers of both money and supplies from the PA has left Gaza's Ministry of Health chronically underfunded and understocked, compared to the Ministry of Health in Ramallah. Despite the technical integration of the ministries under the GNC, many civil servants in the health sector have still not been paid. Non-payment has led to chronic strikes by healthcare workers since May 2014, resulting in the cancellation of hundreds of non-critical surgical procedures and outpatient treatments. The impact on aid delivery is also clear; as Oxfam has previously noted, 'the duplication of nearly every governmental function between the PA government in the West Bank and the Hamas government in Gaza' makes sustainable development projects extremely difficult to deliver.³⁴

ECONOMIC DE-DEVELOPMENT

Gaza has been treated as a humanitarian disaster for so many years that it is easy to forget that the situation of aid dependency is a relatively new development. Before the start of the separation policy (see Box 1) unemployment in Gaza was just 10 percent³⁵ and productivity was high. A few years after the blockade was imposed, Gaza's real GDP had already fallen by 30 percent,³⁶ and the first major military operation resulted in the destruction of 700 private businesses and the loss of 140,000 jobs.³⁷

By contrast, if productivity had continued to increase at the levels of the early 1990s,³⁸ real GDP per capita across the entire OPT would be an estimated 88 percent higher than it is today.³⁹ Unemployment in Gaza now stands at 45 percent (63 percent for youth);⁴⁰ 80 percent of the population receives international assistance;⁴¹ and more than 70 percent of the population is food insecure or vulnerable to food insecurity.⁴²

The import and export restrictions imposed under the blockade have continuously hampered the economy in Gaza, contributing to widespread

There are, once again, severe shortages of drugs and consumables as the supplies delivered in the war run out. Many of the staff have not been paid for months, others are receiving only 60 percent of their salaries as a result of the Palestinian National Authority's financial crisis which has been compounded by Israel's withholding of tax revenues.

Tony Laurance, CEO
MAP - UK

It remains the primary responsibility of this Council to play its role in developing a new peace architecture for resolving the conflict at long last ... the Council has only passed two resolutions on Israel and Palestine and neither of these provided a strategy. Hasn't the time come ... for the Council to lead?

Robert Serry, UN Special Coordinator, 26 March 2015

poverty. Prior to 2007, Israel and the West Bank consumed more than 85 percent of Gaza's outgoing goods. Today, Gaza is allowed to export less than 2 percent of that amount.⁴³

The industries that have traditionally been the backbone of Gaza's economy – agriculture, fishing, manufacturing and construction – have all suffered from the blockade and the limits on trade between Gaza and the West Bank. Farmers cannot access 35 percent of their agricultural lands as these are located in the Access Restricted Area,⁴⁴ at an annual cost of approximately \$50m to the economy in Gaza.⁴⁵ Approximately 1,400 metric tons of catch are lost each year due to restrictions on the number of nautical miles that fisherman can go out to sea, costing the economy \$26m annually.⁴⁶ Ninety-five percent of Gaza's 3,500 fishermen receive international aid.⁴⁷ Ninety percent of factories and workshops in Gaza have had to close since the implementation of the blockade in 2007.⁴⁸

The construction industry, clearly of great importance in the repeated post-conflict reconstruction efforts and essential to the economy in Gaza, has been heavily affected due to extensive restrictions on the import of construction materials.⁴⁹ The restrictions on building materials means that schools in Gaza are running on double or triple shifts, while 16,200 families are living with relatives, in shelters or in makeshift accommodation amid the rubble of their damaged or destroyed homes.⁵⁰

BASIC SERVICES: WATER, SANITATION AND ENERGY

Efforts to revive the economy in Gaza are further undermined by overwhelming deficiencies in the energy and water sectors, both of which were already in a critical condition prior to the military operation in 2014. Gaza's sole power plant was hit by Israeli airstrikes twice during OPE. Despite having been repaired, it was recently forced to shut down as a result of a lack of funds to replenish fuel reserves, and now runs on half capacity on a system of eight hours on and eight hours off.⁵¹

Electricity shortages in turn affect water supply and wastewater treatment systems, which were already compromised by damage from military operations and the restrictions on imports of pumps and construction materials needed to make routine repairs. Even before OPE, 95 percent of Gaza's water was unfit for human consumption⁵² and the UN predicted that Gaza's aquifer will become unusable by 2016.⁵³ Energy shortages and a chronic lack of fuel also affect the functioning of health services, including hospitals and ambulances, and prevent the adequate delivery of basic services necessary to meet humanitarian needs and enable a functioning economy. The UN estimated that, by 2020, the electricity provision would have to double to meet demand.⁵⁴

It's hard to live in this caravan. Sometimes they transfer me to the hospital at night. It's too cold here – it feels like we're living in a fridge. We have no heating, no gas... everything has gone with the last war. We had everything, now we have nothing.

Fatemah, 83, a widow now living with 10 relatives in a two-room caravan next to the ruins of her home, which was destroyed during OPE

Figure 1: Exports from Gaza Strip 2005–2013 (million \$)



Source: Palestinian Central Bureau of Statistics



Eleven-year-old Manar and her friends at their school in Gaza, which was badly damaged during the 2014 conflict: 'The damage scares me. The classes are overcrowded and the water leaks in when it rains. But I love my school.' (2015) Photo: Iyad al Baba/Oxfam

3 ENDING THE STALEMATE

This must be the last Gaza reconstruction conference. The cycle of building and destroying must end.

UN Secretary-General Ban Ki-moon, Cairo, 13 October 2014

Donors at the 2014 Cairo conference declared that they could not continue to fund the reconstruction of Gaza, only to have it destroyed again a few years later. They focused on the importance of transforming the temporary ceasefire reached between Israel and Hamas on 26 August 2014 into a sustainable guarantee against further military escalations. Six months on, this has not happened.

CROSSING RED LINES

OPE was the third and most devastating military offensive in six years. Avner Gvanyahu of Breaking the Silence observed that '[t]he same red line that was crossed during Israeli Operation Cast Lead has become the starting line for OPE.'⁵⁵ The persistent absence of accountability for violations of IHL has enabled continued violence.

Operation Cast Lead (2008-09) resulted in at least 1,440 Palestinian fatalities, over 5,000 injuries and between \$659.3m and \$891.8m in infrastructure damage. The UN Fact Finding Mission which followed found evidence on the part of both the IDF and Palestinian militants of possible war crimes and crimes against humanity; it recommended further investigations leading to criminal prosecutions.

In regards to OPE, Amnesty International found that 'the repeated, disproportionate attacks on homes indicate that Israel's current military tactics are ... fundamentally at odds with the principles of international humanitarian law.'⁵⁶ These principles prohibit targeting civilians and civilian objects.⁵⁷

Amnesty also criticized Palestinian armed groups, noting that 'Palestinian armed groups, including the armed wing of Hamas, repeatedly launched unlawful attacks during the conflict, killing and injuring civilians ... they displayed a flagrant disregard for international humanitarian law and for the consequences of their violations on civilians in both Israel and the Gaza Strip'.⁵⁸

The scope of armed and military action permissible within the rules of IHL is strictly limited by the principles of military necessity, distinction and proportionality. Precautionary measures must be effective. Parties who fail to uphold these principles risk committing war crimes.

The presence of weapons fuels both conflict and the ongoing repetition of conflict. The choice of weapons in specific conflicts may also breach the

We were bombed from every side. I hid my children under the stairs, but the place got too dusty and smoky. I carried them out to the street, then I felt shrapnel on my body and my eyes burnt. My children fell from my arms, screaming. I had no idea who was dead or alive.

Jehad, 24, lost her eyesight during OPE. Her infant daughter, parents, husband and other relatives were killed in the attack.

rules of distinction and proportionality. It is illegal to use weapons in a manner which causes indiscriminate harm to civilians, as occurs when explosive weapons are used in densely populated areas. According to the International Committee of the Red Cross (ICRC), 'The use of explosive weapons in densely populated areas exposes the civilian population and infrastructure to heightened – and even extreme – risks of incidental or indiscriminate death, injury or destruction'... explosive weapons with a wide impact area should be avoided in densely populated areas'.⁵⁹

The conduct of both the Government of Israel and of Palestinian armed groups during the conflict last year, and through earlier crises, raises numerous concerns regarding violations of international law.

The UN Arms Trade Treaty – signed by 130 states and ratified by 65⁶¹ – requires the prohibition of arms transfers where the supplier has knowledge that the arms will be used to commit 'attacks on civilian objects or civilians.' Short of a total ban, the Treaty prohibits arms transfers where a pattern of breaches of IHL or human rights abuses exists.⁶²

THE CEASEFIRE THAT WASN'T

The temporary ceasefire reached on 26 August 2014 has not prevented further violence. Israeli forces continue to fire on farmers and shepherds, and on agricultural lands in border areas in the Gaza Strip. There have been more than 400 incidents of border and naval fire by Israeli forces since the ceasefire until 31 March 2015,⁶³ resulting in the death of one fisherman and injuries to other Palestinians workers.⁶⁴ Four rockets have been fired from Gaza toward Israel, resulting in no injuries. The evidence that persistent impunity begets persistent and increasingly devastating conflict is undeniable.

Since the temporary ceasefire was announced, there have been no visible efforts to translate this into a transparent, robust and enforceable agreement.

ACCOUNTABILITY FOR IHL VIOLATIONS

States and non-state actors that commit war crimes and crimes against humanity have a responsibility to cease the illegal conduct. According to the International Law Commission Draft Article on Responsibility of States for Internationally Wrongful Acts (2001) states should provide reparations in the form of restitution, compensation and satisfaction.⁶⁵ Third states also have legal responsibilities as signatories to the Geneva Conventions to ensure respect for IHL.⁶⁶

Ensuring some level of accountability is an important measure for deterring and limiting future violence. The most immediate and pressing guarantee for non-repetition of violence and IHL violations would be to develop the 26 August 2014 ceasefire into a durable agreement, with enforceable consequences for violations by any party. Efforts should also

The severe harm caused to the civilian population is graver still considering the means at the disposal of the Israeli military, which allow it to significantly reduce such harm.

B'Tselem⁶⁰

We who live here know that you can rocket-proof more and more, but there must be an agreement with the Palestinians for us to be able to live here in peace to build our homes and raise our children and grandchildren.

Binyamin Shimron,
resident of Kibbutz Nahal Oz, Israel

be made to support broad participation and engagement across Palestinian society, such as through the inclusion of women in peace negotiations, peace-building, and in post-conflict reconstructions, as agreed under UN Security Council Resolution 1325.

Furthermore, regional intergovernmental policy frameworks, such as the EU's Common Foreign and Security Policy and the Guidelines on Promoting Compliance with IHL,⁶⁷ could be utilized as tools to respond to, prevent, and deter IHL violations.

The international community has continued a pattern of providing assistance without parallel support for political and legal accountability. This results in a lack of incentives for the parties to bring their conduct into conformity with their legal obligations.

4 REBUILDING GAZA

Going back to the status quo ante won't solve the problem, it will only defer it for another day. It will not stop the bloodshed, it will make it even worse the next time the cycle rolls over the people of Gaza and plagues the people of Israel. Gaza is an open wound and Band Aids won't help. There must be a plan after the aftermath that allows Gaza to breathe and heal.

UN Secretary-General Ban Ki-moon, 21 July 2014



People are literally sleeping amongst the rubble; children have died of hypothermia. \$5.4bn was pledged at the Cairo Conference last October and virtually none of it has reached Gaza. This is distressing and unacceptable.

Robert Turner, UNRWA,
27 January 2015

Large parts of entire neighbourhoods, such as Shujaiyeh, remain in rubble (2015).

PROGRESS TO DATE?

While there have been repairs to some damaged buildings, and temporary shelter has been provided for some, almost no large-scale reconstruction projects have started to date,⁶⁸ and no permanent housing has been rebuilt.⁶⁹ Given current projections, this seems unlikely to change in the near future. The winter conditions in Gaza were particularly difficult. At least four people died during Winter Storm Huda in January 2015 due to the cold, a lack of adequate shelter, and electricity-related accidents, and tens of thousands living in inadequate shelters suffered in the freezing, wet and windy conditions.

As of January 2015, only 36 schools with minor damage have been repaired out of a total of over 258 damaged and eight destroyed in the attacks.⁷⁰ Funding has so far been made available for the rehabilitation of 10 hospitals and 10 primary health care clinics. Reconstruction has barely started on these health structures due to a lack of construction materials, while many more hospitals and health centres lack funds for reconstruction.⁷¹

Donors have raised concerns that the PA has not been effective at meeting the needs of people in Gaza, due to a lack of funds, the inability

to move between Gaza and the West Bank, political divisions and a lack of prioritization and leadership from the GNC.⁷²

WHERE IS THE MONEY?

According to the World Bank,⁷³ donors pledged \$5bn at the Cairo conference in response to the Palestinian National Early Recovery and Reconstruction Plan for Gaza. Of these pledges, \$3.5bn was pledged for Gaza (Table 2); the rest of the pledges were intended for general budgetary support to the Palestinian government and other development programmes in the West Bank. However, some of these pledges were not new money. Rather, donors reaffirmed their existing annual budgets, along with some additional funding in response to emerging needs in Gaza.

Table 2: Breakdown of top seven donor pledges for Gaza and funds released (\$)⁷⁴

	Pledged for Gaza (\$)	Released (\$)
<i>Qatar</i>	1bn	102m
<i>EU⁷⁵</i>	348m	141m
<i>US⁷⁶</i>	277m	233m
<i>Kuwait</i>	200m	0
<i>Turkey</i>	200m	0
<i>UAE</i>	200m	0
<i>Saudi Arabia</i>	500m	48.5m

While comprehensive data on individual pledges and disbursement has not yet been made publicly available, as of 7 April 2015, the World Bank found that only 26.8 percent (\$945m) of the funding earmarked for Gaza had been disbursed.⁷⁷

Certain stakeholders have confidentially disclosed that some international donors have been hesitant to disburse their reconstruction pledges without progress towards the re-establishment of the Palestinian Authority (PA) in Gaza.⁷⁸ Despite the formation of the GNC, there have been delays in implementing previous agreements for political reconciliation, and the multitude of crises in the region demanding donor attention has also made donors hesitant to rapidly disburse funds.

The paradox is that the lack of reconstruction is exacerbating the potential for conflict.⁷⁹ By refraining from releasing funds due to fear of political instability in Gaza, donors are entrenching divides that heighten instability. Over the past eight years, the political divide between Gaza and the West Bank has had an enormous impact on aid and service delivery in Gaza, with water, energy, health and education sectors suffering amidst reduced donor funding and ministerial divisions. This has resulted in significant disparities in the availability of resources to Palestinians in Gaza compared to Palestinians in the West Bank.

The ministerial splits have resulted in delayed transfers of money and supplies, leading to strikes that shut down schools and hospitals and to severe shortages of fuel needed to run Gaza's power and water pumping stations.⁸⁰

People in Gaza cannot continue to pay the price for ongoing political divisions. Likewise, donor funding for reconstruction and recovery efforts cannot be dependent upon progress towards Palestinian political reconciliation. Reconstruction and recovery must be about meeting the needs and allowing the fulfillment of the rights of the population in Gaza.

THE WORK AROUND

Recovery from the damage caused by the hostilities in 2014 entails more than simply funding and reconstruction efforts. As the National Early Recovery and Reconstruction Plan for Gaza asserts, meaningful recovery can happen only if Gaza is reconnected to the West Bank. Sustainable recovery requires the rehabilitation of Gaza's economy, the free movement of its population, and the social, economic and political reconnection of Gaza to the rest of the OPT.⁸¹

To date, the international community has failed to put forth a plan of action that effectively pressures Israel to lift the blockade; choosing instead to work around it.

The clearest example of 'working around the blockade' is the Gaza Reconstruction Mechanism (GRM). Introduced just before the Cairo conference, the GRM was presented as away to address Israel's security concerns while allowing the import of cement and other construction materials.

Israel has often stated that the enforcement of the blockade is necessary for controlling the import of cement and other items that they label as 'dual use'. It should be noted that, under the Wassenaar Arrangement,⁸² dual-use items are defined based on clearly agreed criteria, in particular, their inclusion in the globally accepted munitions list and 'the ability to make a clear and objective specification of the item' for military purposes. Aggregate, steel bars and cement (ABCs), which are essential for large-scale reconstruction, are not listed as prohibited materials, yet Israel continues to define these and many other essential goods as 'dual-use' in order to restrict their entry into Gaza.⁸³

Box 3: The Gaza Reconstruction Mechanism (GRM) at a glance

The GRM is a temporary mechanism intended to facilitate the import of essential construction materials, such as cement, aggregate and reinforcement steel bars, which would otherwise be prohibited by the Israeli government as 'dual use items'. Import of materials through the GRM is divided into two streams:

The 'Shelter Stream': For people in Gaza whose homes are still habitable, but have sustained minor or partial damages that need to be repaired (up to \$18,000). From the approximately 134,000 homes that fall into this category, so far 87,796 homes have been assessed under the mechanism as having sustained the requisite damage.⁸⁴

The 'Project Stream': For GNC, donor, aid agency and private sector reconstruction projects, including infrastructure and new housing projects. To date, 55 projects have been approved under this stream but implementation has yet to start.

Most donors have argued that the acute need for reconstruction justifies any mechanism that increases the level of construction imports. The GRM has the merit of having facilitated the highest level of construction materials since 2010. This is not remarkable, however when considering the entry rates over recent years. ABC materials were banned in 2008, when for the entire year only 20,000 tons of cement⁸⁵ was allowed into Gaza, falling to only 50 tons⁸⁶ between the end of Operation Cast Lead and March 2009. Even if the GRM is able to keep up with the demand for ABCs, it is not clear if Kerem Shalom, the sole crossing for goods between Israel and Gaza, has the capacity to meet supply. According to one senior UN source, 'Even if GRM works perfectly, the Kerem Shalom is not enough, even if it operates 24/7'.⁸⁷

There are multiple duty bearers responsible for the essential functioning of the GRM. Donors have raised concerns that the PA has not effectively performed their agreed function under the tripartite agreement of the GRM. Yet the GRM is only a mechanism to import ABC and other 'dual-use' materials needed for reconstruction. As such, it is insufficient to ensure adequate reconstruction efforts without the accompanying facilitation of exports or the movement of people, both of which are essential components of a functioning economy, which could drive reconstruction. The GRM, like previous processes that accept the blockade, provides for Israel's security concerns while failing to sufficiently support the well-functioning economy necessary to successful reconstruction efforts.

Donors have worked effectively with Israel to increase the quantity of ABCs, contributing to an improved flow of materials necessary for reconstruction. There are also reports suggesting that Israel has increased the amount of water it is supplying to Gaza.

These gestures are welcome, but their impact remains limited as long as the blockade remains in place. Improved water supply is constrained by the capacity of Gaza's damaged water infrastructure to handle increased water pressure. Through the GRM, cement to make repairs has been made available to tens of thousands of homeowners in Gaza, but the population is on the whole unable to afford it due to competing cash needs.⁸⁸

I'm waiting to rebuild my home and have registered the loss with UNRWA but haven't received any payment yet. I'm getting support from any agency I can. I've managed to get blankets, plastic sheeting and water containers but it's nothing compared to what has been lost. I just want to feel healthy and have some income for the remaining years of my life.

Salah Abu Hajjer

Box 4: 'We just want to rebuild our homes and lives'

Our house was destroyed and uninhabitable. My father received financial assistance to cover six months' rent. He used the money to prepare a new shelter for us. It was fine at the beginning, then it got colder. I'm in my first college year, studying for exams, but I can't concentrate because of the noise of the rain and wind. I feel it is dangerous for my nephews and nieces to live under a roof made of metal sheet - in the strong wind it slides and I'm afraid something will fall. We are not asking for much; we just want to rebuild our home and our life.

Dana, interviewed in Shuja'iyyeh, Gaza, January 2015

Box 5: Rebuilding to meet women's needs

Discriminatory housing, land and property laws in Gaza have compromised the ability of women to gain access to construction materials necessary to make repairs or officially register their lost assets for possible reparation claims. Secure tenure for women is often dependent upon their relationship to a man, and in many instances they may not be entitled to remain in the home upon the death of the male head of the household. In some cases, women may not be able to sign rental agreements for short-term housing, leaving them with no option but to remain in shelters or to stay with their family or in-laws, where they can suffer the loss of their independence or abuse.

The reconstruction of Gaza presents a major opportunity to advance women's rights and gender equality by enabling displaced women to exercise their housing, land and property rights. Thus far there has been limited meaningful consultation with women's rights organizations and representative bodies to ensure reconstruction efforts are designed to consider women's specific needs.

PRINCIPLED RECONSTRUCTION: PROFIT AND ACCOUNTABILITY

A principled approach to reconstruction is necessary to bring about a permanent end to violence and ensure that third states involved in the reconstruction effort comply with their own legal obligations. Prior to the Cairo Conference, the Association of International Development Agencies (AIDA) issued a briefing outlining five principles that would help donors to rebuild Gaza sustainably. One principle set forth was that of no-profit for violators of international law.

At present, there is no system of checks and balances to ensure that companies that violate international law in the OPT do not financially benefit from the reconstruction of Gaza. AIDA has recommended that appropriate due diligence guidelines would be beneficial to ensuring that the economic incentives in the cycle of destruction and reconstruction in Gaza are removed.⁸⁹

Corporations have a 'responsibility to respect human rights', as outlined in the Guiding Principles on Business and Human Rights.⁹⁰ In situations of armed conflict they should: 'respect the standards of international humanitarian law.' According to the ICRC: 'business enterprises run legal risks when operating in conflict zones, based on criminal responsibility for the commission of or complicity in war crimes or on civil liability for damages.'⁹¹

Principle 2 declares that States should 'set out clearly the expectation that all business enterprises in their territory and/or jurisdiction respect human rights throughout their operations.'⁹² Donor states, where appropriate, should therefore issue clear guidance to national companies, including state-owned companies and pension and investment funds, to ensure they not only respect international law in their own activities but do not invest in companies involved in violations of international law. Donor states, as well as aid actors generally, should adopt procurement guidelines as part of holistic due diligence procedures.

5 WAITING FOR THE PARADIGM SHIFT

Out of the rubble of war, we must find a radically new way of dealing with the whole Gaza equation.

Norwegian Minister of Foreign Affairs Børge Brende, Opening Remarks, Cairo Conference



Young children at their damaged home in Beit Hanoun. Gaping holes in the walls are now covered with tarpaulin. Anas al Baba/Oxfam

Working from the National Early Recovery and Reconstruction Plan for Gaza, donors pledged support for the Palestinian vision for Gaza,⁹⁴ which described Gaza as an ‘integral part of the Palestinian state’, noting that the development of Gaza was ‘crucial for the viability of the State of Palestine’. Donors were furthermore united in calling for a paradigm shift, but failed to concretely define what this would look like and how to make it happen.

The paradigm shift that is needed relates to how the international community engages with all parties to better ensure accountability and compliance with international law.

Gaza’s reconstruction cannot be separated from its reconnection to the West Bank, and that reconstruction means more than restoring the number of buildings in Gaza to what it was before the most recent round of fighting, or to the one that came before.

Gisha⁹³

THE ROAD TO ACCOUNTABILITY

The necessary paradigm shift cannot be delayed any further. Israel's illegal policies need to be challenged with practical measures that account for donor and third state responsibilities, specifically, accountability, conditionality, and engagement with all parties. Some states, particularly EU member states, have become more aware of the risks associated with a policy of entrenched status quo, in the face of Israel's continued violations of international law – both in the conduct of hostilities and in the longer term military occupation in the West Bank. As such, some states have started looking into accountability for the demolition of donor-funded projects in Area C of the West Bank. This is a positive initial step as a deterrent against future violations.

CONDITIONING RELATIONS ON ADHERENCE TO INTERNATIONAL LAW

A particularly powerful but under-utilized mechanism that governments can use to encourage compliance with international law is to condition the deepening of relations – be they economic, diplomatic, trade related, etc. – on adherence to international law obligations.

EU–Israeli relations, for example, are governed by the EU-Israel Association Agreement. This specifies that relations between the parties, as well as all the provisions of the Agreement itself, shall be based on *respect for human rights and democratic principles*. In view of the clear breaches of human rights in the OPT, including those resulting from the illegal blockade of Gaza and the excessive use of force against its civilians and civilian infrastructure, the EU has a clear obligation to respond by conditioning improved economic and other relations with improved compliance with international law.

Box 6: Implementing conditionality: possible EU actions

Formalizing the informal dialogue on Human Rights: Of all the European Neighbourhood Policy partner countries with Action Plans, only Israel does not have an official subcommittee on human rights as part of the structure of committees that monitor the Plan and conduct the political dialogue mandated by the Association Agreement. There is instead an 'informal dialogue' on human rights, placed within the political subcommittee. On the basis of stronger provisions on human rights found in the Lisbon Treaty, which came into force after the Association Agreement, the EU should insist that all ENP partnerships include formal dialogues on human rights. No meetings at a higher diplomatic level should take place until this subcommittee has met and made its recommendations.

Declare Action Plan expired: The 2012 Association Council determined that the 2005–8 Action Plan⁹⁵ could continue to be used as a basis to agree progress, even though it was technically out of date. The EU should formally and publicly assert that the 2005 Action Plan has expired and that no further progress will be possible until an Association Council is held. A newly elevated human rights subcommittee should discuss what human rights progress is necessary as part of developing a new Action Plan.

Review of funding under the European Neighbourhood Instrument

(ENI): Israel benefits from funding from programmes that are part of the ENI. Under the ENI 2014-2020 there are provisions for reviewing funding in the event of 'crises or threats to democracy, the rule of law or human rights and fundamental freedoms... an ad hoc review of the programming documents may be conducted. Such emergency review shall ensure that coherence between Union policies, Union support provided under this Regulation and support provided under other Union instruments for financing external action is maintained. An emergency review may lead to the adoption of revised programming documents.'⁹⁶

The EU could also make stronger use of the **Guidelines on Promoting Compliance with IHL** to increase pressure on Israel to end the blockade in Gaza.⁹⁷ In particular, the EU should complement their denunciations of Israel's illegal policies by employing the restrictive measures under Article 16(d) of the Guidelines.

ENGAGING ALL PARTIES

Since 2007, when Hamas took control of Gaza, a number of states have implemented 'no contact' or 'limited contact' policies,⁹⁸ under which their diplomatic representatives do not meet with Hamas. The UN also has limitations on the level of contact staff are permitted to have with the de facto authorities in Gaza, and some donors also require international NGO grant recipients to limit their contact with Hamas.⁹⁹

Restricted contact can undermine humanitarian access and implementation of humanitarian programmes; it also often prevents recovery and development assistance from reaching vulnerable populations. Furthermore, the ability of aid sector actors to promote sustainable development is weakened, and institution-building projects that are essential for the development of a viable Palestinian state become challenging to implement. These barriers to engagement by the international community make it difficult to advocate for improved compliance with international law. The formation of the GNC is an opportunity to overcome many of these issues.

6 RECOMMENDATIONS: MOVING FORWARD

Positive incentives for peace and a strong deterrence against a return to conflict are essential to bringing lasting security for Israeli and Palestinian civilians. Immediate measures should be taken to address the root causes of conflict, ensure accountability for violations of IHL, and clear consequences for resumption of hostilities and continued breaches of international law.

Reconstruction and recovery must not be held hostage to political developments. Irrespective of changes in the political landscape, it is imperative that the immediate needs of Palestinians living in Gaza are addressed in the short term, and that, in the longer-term, they are able to lead normal lives. Reconstruction is just one step in the direction of longer term recovery and development.

In order for Palestinians in Gaza to realize their rights, the Israeli blockade and separation policy must end to allow the functioning of a single Palestinian political entity that can meet the needs of the Palestinian population. To such an end, the **international and donor community** should act in accordance with its own obligations under international law, drawing on all available tools to encourage the parties to comply with their obligations. This is an essential paradigm shift for Palestinians in Gaza.

End the cycle of violence

All parties should immediately resume negotiations for a long-term ceasefire that addresses the need for sustainable reconstruction, tackles the root causes of the conflict, and can deliver long-lasting security for both Israelis and Palestinians. Negotiations should include all concerned parties, particularly women, as prescribed by UNSC Resolution 1325.

Both the **Government of Israel and Palestinian armed groups, including Hamas**, must abide by international humanitarian and human rights law in the conduct of hostilities.

The International community must demand an end to violations of international law, and push for greater accountability of all parties, including guarantees of non-repetition.

Donors should institute a collective, transparent public reporting mechanism for tracking destruction of their aid and should issue immediate formal demands for compensation of projects funded by their tax payers.

Where arms and ammunition could be used to commit or facilitate violations of IHL, the Arms Trade Treaty (ATT), which all contributors at the Cairo donor conference have at least signed (if not ratified), obliges **state parties** to suspend transfers and consider revoking licenses to the parties concerned. Conduct by both sides during OPE and prior conflicts

demonstrates that there is a serious risk that such arms transfers could in the future be used in commission of breaches of IHL and that any transfers would therefore be in violation of the ATT.

Principled assistance, reconstruction and recovery

The **international community** should insist **Israel** fulfils its obligations as the occupying power, to provide for the welfare of the occupied population, particularly provision of shelter, water and health services. Despite Israel's failure to meet these obligations, Israel should ensure the unhindered access of aid workers (regardless of their nationality) between the West Bank (including East Jerusalem), and Gaza.

Egypt should fulfil its third state obligation to facilitate the provision of humanitarian assistance.

Palestinian political actors must prioritize reconstruction as a humanitarian imperative.

International donors should work with the **GNC** to take a holistic approach to Gaza, initially through the development of ministerial action plans for early recovery efforts, adequate and sustainable housing, and large-scale infrastructure.

UN agencies, INGOs, and Palestinian NGOs should work effectively with the **GNC** to assess, prioritize and meet outstanding needs in Gaza.

Donors should consider supporting a Palestinian-led expert panel to supervise the implementation of such a plan, emphasizing effective coordination with key stakeholders.

The **international community** should establish benchmarks to assess progress and agree on a clear timeline to evaluate the levels of reconstruction and the efficacy of the GRM. Any agreement established to move goods into Gaza must adhere to international humanitarian and human rights law and must demonstrate a tangible reduction in housing and infrastructure needs.

The **international community** should only accept the designation of dual-use items that have been evaluated against the criteria laid out in the Wassenaar Arrangement.¹⁰⁰ Aggregate, steel bars, and cement are essential for large-scale reconstruction and not listed as prohibited materials; they should therefore be allowed into Gaza without restriction.

Donors should make good on their pledges at the Cairo Conference and move forward with reconstruction and recovery projects for Gaza. Given the devastation of the economy in Gaza, **donor funding** should wholly subsidize construction materials, prioritizing the most vulnerable. As an immediate measure, funding and technical support should be made available to enable people to afford the necessary materials and labour to complete housing repairs.

The **diplomatic community** in Jerusalem and Ramallah and in Tel Aviv should conduct monthly, coordinated, high-level visits to areas in need of

the most reconstruction (i.e. Shuja'iyyeh, Khuza'a and Beit Hanoun) and publicly report on their findings.

Palestinian political representatives must agree to a time-bound process and benchmarks to address pending issues that prevent the discharge of essential public functions.

As an immediate measure, **Palestinian executive and political authorities** should undertake the rationalization and consolidation of technical line ministries in order to improve service provision and be better able to respond to longer-term needs in Gaza.

States should comply with their third state responsibilities not to aid or assist rights violations with respect to companies that contribute to such violations. This should, where appropriate, include adopting clear guidance to national companies, including state-owned companies, pension and investment funds, to ensure that they undertake adequate due diligence and to ensure they do not support companies whose actions support violations of international law.¹⁰¹

Make the paradigm shift: End the separation policy

Israel must lift the blockade and open all crossings into and out of Gaza, allowing for the unimpeded entry and exit of goods, as a necessary prerequisite to meet humanitarian needs and to ensure sustainable economic recovery and development.

Israel must also allow free movement of Palestinians across the occupied Palestinian territory, in line with their obligations as an occupying power, with individual restrictions on movement imposed only in exceptional cases of legitimate security concern, as defined by IHL.

The international community, **in particular the Quartet of the US, EU, Russia and the UN**, should propose a time-bound plan to end the blockade, which can be implemented and monitored through relevant UN mechanisms.

The international community should promptly develop a common response to the Government of Israel if immediate progress is not made to lift the blockade.

EU Member States should adhere to and enforce provisions of the EU-Israel Association agreement and the EU Guidelines on the implementation of IHL, and take action to ensure its cooperation with Israel is fully in line with respect for IHL and human rights.¹⁰²

The international community should support the conditions necessary for a functioning and effective Palestinian political representation across the entire OPT, which is necessary to guarantee service delivery that meets the needs and offers dignity to Palestinians.

States and the UN/regional bodies should adopt and maintain principled positions regarding inclusive dialogue and engagement with all parties, ensuring that aid agencies have the necessary space to operate while maintaining their impartiality and neutrality.

NOTES

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- ³ Articles 30–37 of the International Law Commission Draft Article on Responsibility of States for Internationally Wrongful Acts, 2001. http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, read with Common Article 1 of the Geneva Conventions, <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> Elaborated at p. 12 below, "Accountability For IHL Violations"
- ⁴ Guidelines on Business and Human rights <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>
- ⁵ Article 59- 63 GC4, Article 70 Additional Protocol 1
- ⁶ United Nations Country Team (2012) 'Gaza in 2020: A liveable place?' <http://www.unrwa.org/newsroom/press-releases/gaza-2020-liveable-place>
- ⁷ UN (2012) 'Statement on Gaza, Occupied Palestinian Territory', Under-Secretary-General For Humanitarian Affairs And Emergency Relief Coordinator, Valerie Amos, <https://docs.unocha.org/sites/dms/Documents/USG%20Valerie%20Amos%20Statement%20on%20Gaza%2013Jun12.pdf>
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- ¹² According to Gisha, 'When asked why these restrictions on movement remain in effect, security officials explain that they form part of the "policy of separation" between the Gaza Strip and the West Bank. This term reappears in official statements, but the only explanation ever given is that it is intended to "pressure Hamas and support the Palestinian Authority".' Gisha, 'What is the "separation policy"? An info sheet', June 2012, <http://gisha.org/publication/1662>
- ¹³ <http://www.unrwa.org/newsroom/press-releases/gaza-2020-liveable-place>
- ¹⁴ OCHA (2014) 'Gaza Initial Rapid Assessment', p. 1, https://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf
- ¹⁵ This figure refers only to injuries related to rocket fire only. Magen David Adom (2014) 'Cease fire in Operation "Protective Edge" is holding MDA sums up 50 days of saving lives', <http://www.mdais.com/316/7004.htm>.
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- ²⁰ Note that this was on top of 5,000 houses not yet repaired following previous military conflicts, and an ongoing deficit of over 70,000 houses needed to meet Gaza's growing population needs: NRC (2014) 'The rebuilding of Gaza will take 20 years', <http://www.nrc.no/?did=9183563>
- ²¹ State of Palestine (2014) 'The National Early Recovery and Reconstruction Plan for Gaza', p. 10, http://www.mopad.pna.ps/en/images/PDFs/National%20Early%20Recovery%20and%20Reconstruction%20Plan%20for%20Gaza%202014-2017_FINAL....pdf
- ²² UNMAS (2015) 'Gaza Update', http://www.mineaction.org/sites/default/files/documents/UNMAS_news_jan2015%20PDF.pdf
- ²³ Physicians for Human Rights, Israel, 'Gaza 2014: Findings of an independent medical fact-finding mission', p. 44, https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf
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- ²⁶ International law posits that no person may be punished for acts that he or she did not commit. It ensures that the collective punishment of a group of persons for a crime committed by an individual is forbidden. Respect for this principle can be ensured solely by establishing guarantees that protect judicial procedures. GCIII Article 87; PI Article 75.2 d; PII Article 4.2b; GIV Article 33

- ²⁷ Report by the Secretary-General, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, A/HRC/24/30, 22 August 2013, p. 8, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A_HRC_24_30_ENG.doc
- ²⁸ Israel, as the occupying power, is responsible for ensuring the welfare of the Palestinian civilian population and has the primary duty to provide for basic needs. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, Articles 55, 56 and 59.
- ²⁹ Article 59- 63 GC4, Article 70 Additional Protocol 1
- ³⁰ GISHA is an Israeli human rights organization that specializes in the freedom of movement
- ³¹ Interview with Eitan Diamond, Gisha Executive Director, 5 March 2014.
- ³² Gisha, 'Frequently Asked Questions: New Gaza Construction Material Procedure', October 2014, <http://gisha.org/publication/3610>
- ³³ Article 59 of the Fourth Geneva Convention (Op.cit 24) provides that :
- 'If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.
- Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.
- All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.'
- ³⁴ Oxfam (2014) 'Cease Failure: Rethinking seven years of failing policies in Gaza', p. 5, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-cease-failure-gaza-failing-policies-270814-en.pdf
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- ⁴² FSS Assessment (2014) 'Report of the Rapid Qualitative Emergency Food Security Assessment (EFSA), Gaza Strip', <http://reliefweb.int/report/occupied-palestinian-territory/report-rapid-qualitative-emergency-food-security-assessment>
- ⁴³ Gisha (2014) op. cit.
- ⁴⁴ Access Restricted Area (ARA), anywhere from 300 to 1,000 metres along the border with Israel; the ARA is often enforced with live fire by the Israeli army.
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- ⁴⁶ UN OCHA (2010) 'Between the fence and a hard place: the humanitarian impact of Israeli-imposed restrictions on access to land and sea in the Gaza Strip', https://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf
- ⁴⁷ UN OCHA (2013) op. cit.
- ⁴⁸ Gisha (2015) 'A costly divide: Economic repercussions of separating Gaza and the West Bank', p. 7, <http://gisha.org/updates/3998>
- ⁴⁹ The Portland Trust, 'Gaza's Reconstruction', Bulletin Special Feature, December 2014.
- ⁵⁰ 'Shelter Cluster Factsheet', March 2015.
- ⁵¹ OCHA, 'Humanitarian Update', 5 March 2015.
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- ⁵³ UN Country Team in the occupied Palestinian territory (2012) 'Gaza 2020: A Liveable Place?', p. 11 <http://www.unrwa.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf>
- ⁵⁴ UN Country Team in the occupied Palestinian territory (2012) op. cit.
- ⁵⁵ Avner Gvanyahu, Breaking the Silence (2014) 'As an ex-soldier in the Israeli Defense Forces, I've seen how shockingly we treat Palestinians', *The Independent*, 15 July, <http://www.independent.co.uk/voices/comment/as-an-ex-soldier-in-the-israeli-defense-forces-ive-seen-how-shockingly-we-treat-palestinians-9607267.html>
- ⁵⁶ Philip Luther, Director of the Middle East and North Africa Programme at Amnesty International, <https://www.amnesty.org/en/articles/news/2014/11/israeli-forces-displayed-callous-indifference-deadly-attacks-family-homes-gaza/>
- ⁵⁷ Rule 10 ICRC Customary IHL Rules. See also, 'Practice relating to Rule 6 ICRC Customary IHL Rules'.
- ⁵⁸ Philip Luther, Director of the Middle East and North Africa Programme at Amnesty International, quoted in Amnesty International, 'Palestinian armed groups killed civilians on both sides in attacks amounting to war crimes', 26 March 2015, <https://www.amnesty.org/en/articles/news/2015/03/palestinian-armed-groups-killed-civilians-on-both-sides-in-2014-gaza-conflict/>
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- ⁶⁰ B'Tselem (2015) 'Black Flag: The Legal and Moral Implications of the Policy of Attacking Residential Buildings in the Gaza Strip, Summer 2014', http://www.btselem.org/download/201501_black_flag_eng.pdf
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- ⁶² Arms Trade Treaty, UN Doc A/CONF.217/2013/L.3, 27 March 2013 [ATT], Article 7. Other relevant laws also restrict the supply of weapons in specific circumstances, for example, the EU Common Position on Arms Transfers (2008) legally requires that each EU member state must assess export license applications on a case-by-case basis against criteria which include: respect of human rights and IHL in the country of final destination and the internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.
- ⁶³ Based on information provided by the Gaza Strip NGOs Safety Office (GANSO) during research for this report.
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- ⁶⁵ Articles 34–37 of the International Law Commission Draft Article on Responsibility of States for Internationally Wrongful Acts, 2001.
- ⁶⁶ Under Common Article 1 of the Geneva Conventions, states have an obligation to ensure respect for IHL. Additionally, according to international customary law, as reflected in Article 41 of the International Law Commission (ILC) Draft articles on Responsibility of States for Internationally Wrongful Acts of 2001, all states are under an obligation not to recognize a situation stemming from a wrongdoing as lawful, not to render aid or assistance in maintaining it, and to actively cooperate in order to bring the violation to an end. For the ILC Draft Articles see, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. For the Geneva Conventions see, <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>
- ⁶⁷ Guidelines on promoting compliance with IHL, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215(01))
- ⁶⁸ Interview with UNRWA, 06 March 2015; and Interview with Office of the Palestinian Deputy Prime Minister, 26 February 2015.
- ⁶⁹ Shelter cluster fact sheet, March 2015, <http://www.shelterpalestine.org/Upload/Doc/443c6d04-cecf-480f-b302-fec41a8b4719.pdf>
- ⁷⁰ Education Cluster, information provided 22 March 2015
- ⁷¹ AIDA interview with WHO official in Gaza, 7 April 2015
- ⁷² Based on a series of confidential AIDA interviews with donors and representative offices in Ramallah and Jerusalem conducted between February and March 2015. In all, AIDA interviewed 16 donor or representative offices to discuss their views on the main constraints to reconstruction in Gaza.
- ⁷³ AIDA interviews with Steen Jorgensen, Country Director, World Bank, 26 March 2015 and 7 April 2015
- ⁷⁴ The amount pledged and the amount disbursed is based on information made available to the World Bank as of 7 April 2015, these figures are subject to change.
- ⁷⁵ The EU contribution includes direct financial support to Gaza, UNRWA's general fund for Gaza, and UNRWA projects, including humanitarian and development projects in Gaza.
- ⁷⁶ The US contribution includes \$84m in financial support for UNRWA West Bank and Gaza.
- ⁷⁷ Disbursement of monetary support to Gaza does not necessarily reflect actual expenditures made on purchasing project-related goods and services, but that donor funds have been made available for use by the relevant implementing agency.
- ⁷⁸ This view has been confirmed in several interviews conducted during research, including with diplomatic missions in Jerusalem, and with representatives of intergovernmental organizations and international humanitarian agencies.
- ⁷⁹ For example, Middle East Monitor (2015) 'Gaza blockade opens door for 'new war': UNRWA', <https://www.middleeastmonitor.com/news/middle-east/17527-gaza-blockade-opens-door-for-new-war-unrwa>
- ⁸⁰ UN OCHA, 'Monthly Humanitarian Bulletin January 2015', http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_02_25_english.pdf
- ⁸¹ AIDA (2014) 'Reconstructing Gaza: Five Principles for Transformative Change', AIDA Policy Paper, <http://www.diakonia.se/globalassets/blocks-ihl-site/ihl---rights-ide-boxes/reconstructing-gaza-five-principles-for-transformative-change.pdf>
- ⁸² The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. Participating states seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine these goals, and are not diverted to support such capabilities. All but one EU Member State (Cyprus) is a Participating State to the Arrangement.
- ⁸³ The government of Israel defines aggregates, steel bars, and cement as 'dual-use', on the grounds that these items are 'liable to be used, side by side with their civilian purposes, for the development, production, installation, or enhancement of military capabilities and terrorist capacities'. Dual list items as described by the Israeli Ministry of Foreign Affairs, September 2014, http://www.mfa.gov.il/mfa/foreignpolicy/peace/humanitarian/pages/lists_controlled_entry_items_4-jul-2010.aspx
- ⁸⁴ Approvals for both the Shelter and Project streams can be viewed in real time at Gaza Reconstruction Mechanism, <http://grm.report>
- ⁸⁵ Oxfam et al., 'Failing Gaza: No rebuilding, no recovery, no more excuses. A report one year after Operation Cast Lead', 21 December 2009, p. 6, <https://www.oxfam.org/en/research/failing-gaza-no-rebuilding-no-recovery-no-more-excuses>

- ⁸⁶ UNDP, 'One Year After Report. Gaza Early Recovery and Reconstruction Needs Assessment', 10 May 2010, p. 44, <http://www.undp.ps/en/newsroom/publications/pdf/other/gazaoneyear.pdf>
- ⁸⁷ AIDA interview with UN official conducted in Jerusalem, 26 March 2014
- ⁸⁸ The Gaza Reconstruction Mechanism, www.grm.report.org
- ⁸⁹ AIDA (2014) op. cit.
- ⁹⁰ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf and <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>
- ⁹¹ ICRC (2006) 'Business and International Humanitarian Law', pg 26
- ⁹² http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf and <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>
- ⁹³ Gisha (2015) op. cit.
- ⁹⁴ As outlined in the Palestinian National Early Recovery and Reconstruction Plan for Gaza, October 2014, which formed the basis of the donor conference. 'The Cairo Conference on Palestine: Reconstructing Palestine – Conclusions by the Chair', p. 2, <http://www.norway.org.ps/Global/SiteFolders/webram/Conclusions%20by%20the%20Chair.pdf>
- ⁹⁵ Action Plans are agreed between the EU and ENP partners to demonstrate the partners' 'commitment to democracy, human rights, rule of law, good governance, market economy principles and sustainable development.' Further information can be found at: http://eeas.europa.eu/enp/index_en.htm
- ⁹⁶ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, Article 7, paragraph 10, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.077.01.0027.01.ENG
- ⁹⁷ Guidelines on promoting compliance with IHL, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215(01))
- ⁹⁸ Note that these are policies and not laws; despite the perception by many that contact with proscribed groups is criminalized, this is not the case. See Kate Mackintosh and Patrick Duplat, 'Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action', July 2013, an initiative of OCHA and NRC on behalf of the IASC on humanitarian space, https://docs.unocha.org/sites/dms/Documents/CT_Study_Full_Report.pdf
- ⁹⁹ Ibid.
- ¹⁰⁰ The Wassenaar Arrangement has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations. Participating States seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities, which undermine these goals, and are not diverted to support such capabilities.
- ¹⁰¹ Guidelines on Business and Human rights, <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>
- ¹⁰² For example, in accordance with the EU Guidelines on the Promotion of Compliance with IHL, the EU Member States could utilize provisions of the EU-Israel and EU-Palestine Association agreement, including the ENP Progress Report, the Informal Working Group on Human Rights and the Sub-Committee on Political Affairs, to systematically assess compliance with IHL as a benchmark for the achievement of the 'common values' and as a basis for concrete and specific recommendations. For the EU Guidelines on the Promotion of Compliance with IHL, see [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215\(01](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1215(01) -
Sanz, 'EU-Israel Relations: Promoting and Ensuring Respect for International Law', EMHRN and APRODEV, February 2012, http://www.euromedrights.org/files/PIP_report_EU_Israel_relations_350764247.pdf

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