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Legal Opinion on Northern Gaza

In light of media reports indicating that there is a debate regarding the timing of the return of residents of northern Gaza to the areas from which they were evacuated, we find it appropriate to offer our legal opinion on the matter. The following reflects both our understanding of international law and our assessment of how these issues are likely to be evaluated by international forums currently examining various aspects of the conflict in Gaza.

The undersigned are experts in international law and the law of armed conflict, and have published books and articles with the world's leading publishers and journals in the relevant fields.

As a general matter, we emphasize that — especially at this time — extreme and non-consensual legal interpretations must be avoided, as they may not only result in harm to civilians but also entangle the state and its officials in international legal proceedings. This is especially true given that the conduct of hostilities in Gaza is currently under scrutiny in multiple international judicial venues.

We also note that this opinion does not purport to determine the factual situation in every sector of the Gaza Strip at this moment, but rather to outline the applicable legal principles as we understand them. Moreover, this opinion is based primarily on the law of armed conflict and does not exhaust all potentially relevant legal regimes. Other obligations, such as those under international human rights law, may also apply.

Before detailing the legal framework, we wish to emphasize the overarching conclusion of our analysis:

Any evacuation of civilians during armed conflict must be temporary and must be tightly linked to a lawful justification. Where that justification rests on military necessity, it must be concrete, specific, and limited in scope; civilians cannot be evacuated or prevented from returning based on general or abstract considerations. It is strictly prohibited to act in a way that would turn a temporary situation into a permanent one. In addition, decisions regarding evacuation — and return — are subject to the principle of proportionality. For example, the occurrence of a humanitarian disaster in the area to which civilians were evacuated may give rise to an obligation to permit their return, even if countervailing military considerations are allegedly present, depending on the circumstances.

In this context, we note that the above does not detract from any existing legal obligation to provide humanitarian assistance to displaced persons in southern Gaza. Conversely, the provision of such assistance in the south does not in itself discharge the obligation to allow displaced persons to return to the north once the reason for their evacuation has ceased to exist.

A. Military Necessity

1. Modern laws of armed conflict seek to balance operational military needs with humanitarian considerations. In this balance, **military necessity does not have absolute or a priori precedence**, and it is not the “supreme principle” of the law of armed conflict.
2. The only form of military necessity recognized under the law of armed conflict is the weakening of the enemy’s military capacity. In the unique context of fighting against Hamas, this includes thwarting acts of terrorism such as hostage-taking. **It is strictly forbidden** to take into account considerations such as revenge or the desire to re-establish settlements in a given area. While the determination of military needs and the means to achieve them is generally within the military commander’s discretion, this discretion is **bounded by law**, and legal advisers are obligated to raise objections when an action exceeds the permissible scope of military necessity.
3. The principle of military necessity does not override all other considerations and does not grant a blanket permission to act even where the law appears silent. In unclear situations, principles of humanity and the dictates of public conscience — as well as other norms of international law — continue to apply and constrain military necessity.
4. A foundational rule of the law of armed conflict is that the freedom of the parties to choose methods and means of warfare is **not unlimited**.
5. According to Israeli Supreme Court (High Court of Justice) jurisprudence, even when a legitimate military necessity exists, **the means used to achieve it must comply with the principle of proportionality** — especially when such means have significant humanitarian consequences. This applies even where the action in question does not constitute an “attack” in the legal sense.
6. Consequently, there is **no legal basis** for the argument that in matters of civilian evacuation and return, military necessity always trumps other considerations. There is no general permission under modern international humanitarian law to prevent civilians from returning home on the basis of military necessity alone. Any such claim must be subjected to the rules of proportionality.
7. Some states recognize that in a **siege** situation, certain special rules apply. When a legitimate military necessity exists, entry into a besieged area may be delayed. However, we seriously question whether the current situation in northern Gaza meets the legal definition of a siege, for reasons detailed below.

B. Legal Basis for Temporary Civilian Evacuation Under the Law of Armed Conflict

1. The law of armed conflict recognizes **two legal grounds** for the temporary evacuation of civilians.
Any evacuation not based on one of these grounds — or failure to allow return once the

justification ends — may constitute an international crime of **forcible transfer** (if within the territory) or **deportation** (if outside the territory).

2. The **first legal ground** for evacuation is as a **precautionary measure against the effects of attacks**.

Under international law, there is a duty to provide effective advance warning of an attack that may endanger the civilian population, unless operational circumstances do not allow it. Usually, such warnings are issued before specific strikes. However, in some cases, warnings to evacuate a broader area expected to be subject to intensive attacks may fulfill this duty or align with the general obligation to exercise constant care to protect civilians.

Importantly, an **advance warning does not create a legal obligation for civilians to evacuate**, nor does it grant authority to prevent them from returning. Therefore, once hostilities subside, reliance on earlier general warnings cannot legally justify preventing return.

3. The **second legal ground** arises in **occupied territory**, where evacuation may be permitted for **security of the population or imperative military reasons**.

Article 49(2) of the Fourth Geneva Convention allows evacuation for such reasons.

Civilians must be allowed to return once hostilities in the relevant area have ceased.

Due to the risk of abuse for illegitimate purposes (e.g., ethnic cleansing), this provision must be **interpreted narrowly**. The ICRC Commentary states:

“Evacuation is only permitted... when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate.”

4. It is clear that Article 49(2) cannot be invoked **for the entire duration of an armed conflict** nor simply because **hostilities continue at some level**. The reference is to **hostilities in a given area**, and conditions must be assessed **locally**, not generally. It is irrelevant whether the original evacuation order was given as an occupying power or a warring force; the legal justification for denying return must be evaluated **continuously**, regardless of the legal “source” of the initial evacuation.
5. Furthermore, under occupation law, the military commander is obligated to restore **public order and civil life**. This includes a **good-faith, positive obligation to facilitate return** as soon as possible.
6. Article 49(3) of the Geneva Convention, which requires that evacuees be transferred to areas with proper conditions, must be read alongside 49(2). However, meeting this requirement **does not discharge the duty to allow return** once the reason for evacuation ceases.
7. Based on public information, we do not believe it is possible to categorically assert that the IDF is not subject to **the law of occupation** in northern Gaza — or at least to parts of it, depending on the degree of control.

Under Israeli Supreme Court case law and scholarly consensus, a situation of occupation **does not require** the establishment of a formal civil administration — **effective control** is sufficient.

Effective control also does **not require the complete cessation of enemy resistance**,

and many sources (including the ICRC's updated Commentary) confirm that **occupation law may apply even during the invasion stage** if the army has gained some level of control over the area or population.

The fact that fighting continues does **not negate occupation status** per se. Geneva Convention provisions permitting evacuation due to hostilities in occupied territory confirm this.

8. The existence of **significant, even if not total, Israeli control** in northern Gaza **negates** characterizing the area as a pure siege (which requires external isolation without internal control).

Where such control exists, **positive duties** under the law of occupation arise, including the duty to act for the benefit of the local population and **not to impose a blanket prohibition on return** where hostilities have subsided.

9. With regard to both legal grounds for evacuation, once the justification has ceased, **the risk that enemy combatants may disguise themselves as civilians cannot justify a blanket prohibition** on the return of all civilians. Just as suspected enemy presence cannot justify expelling an entire population, it cannot justify preventing all returns. Such actions will almost certainly be deemed **unlawful** in any international forum and may recharacterize the original evacuation as **forcible transfer** cloaked in humanitarian justification.

This conclusion holds **regardless of whether northern Gaza is considered occupied** or not, and is reinforced by proportionality concerns, especially given the **severe humanitarian crisis** developing in southern Gaza due to overcrowding.

10. Finally, and for the avoidance of doubt, **not everyone attempting to return** to evacuated areas may be presumed a direct participant in hostilities or a member of an armed group. It is therefore impermissible to employ lethal force against such persons merely on that basis.

Assuming the evacuation order was lawful, it may be enforced under a **law enforcement paradigm** — not as a military targeting operation.

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