# Legal Aspects of Israel's Disengagement Plan under International Humanitarian Law

*POLICY BRIEF*

HPCR Harvard Program on Humanitarian Policy and Conflict Research
International Humanitarian Law Research Initiative

## I – Legal implications of the Israeli withdrawal for the status of the Gaza Strip and for Israel's obligations towards the welfare of the Palestinian population

### Main legal issues

On 14 April 2004, Prime Minister Ariel Sharon presented to President George W. Bush a Disengagement Plan designed, according to the Israeli prime minister, to improve the security of Israel and stabilize its political and economic situation.[1] After the original disengagement plan was defeated in a Likud referendum in early May, the Israeli prime minister issued a revised version of his Disengagement Plan on 6 June 2004 (See Annex 1: Summary of the Israeli Disengagement Plan of 6 June 2004.)

The core component of this Plan is a unilateral withdrawal from the Gaza Strip and the northern part of the West Bank, designed to allow a more effective deployment of Israeli military forces and reduce the friction with the Palestinian population. The proposed Plan is based on the assumptions that, in any future permanent status arrangement between Israel and its Palestinian counterpart, there are unlikely to be any Israeli towns and villages left in the Gaza Strip and that some areas of the West Bank are likely to be integrated with the state of Israel, including cities, towns, and villages inhabited by Israeli settlers as well as security areas, installations, and other places of special interest to Israel.[2]

The proposed disengagement raises a number of legal issues that will be reviewed in this note. These issues can be summarized as follows:

- What is the current legal status of the occupied Palestinian territory (OPT)[3] and what are the current responsibilities of Israel toward the Palestinian population in the OPT?
- What are the legal implications of the Israeli withdrawal of the Gaza Strip in terms of the status of the evacuated territory and the responsibilities of the state of Israel toward its inhabitants?
- Who determines the end of occupation?
- What would the legal consequences of the end of occupation be in the Gaza Strip?

### On the legal status of the occupied Palestinian territory

The legal status of the territory occupied by Israel in 1967 is regulated by international law--in particular, the law of occupation. The status of the territory derives directly from the

[1] See the letter of Israeli Prime Minister Ariel Sharon to President Bush dated 14 April 2004 at www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Exchange+of+letters+Sharon-Bush+14-Apr-2004.htm

[2] See Revised Disengagement Plan of 6 June, Point 1 Three. Op. cit. footnote 1.

[3] Following the practice of the United Nations, this brief refers to the Gaza Strip, the West Bank and East Jerusalem as the "Occupied Palestinian Territory" (OPT).

application of the relevant international treaties ratified by Israel, such as the Geneva Conventions or through international customary norms such as the Hague Regulations.[4]

Israeli courts have repeatedly recognized that Israeli government policies and operations in the West Bank and the Gaza Strip fall under the legal regime of occupation, including the inherent legal responsibilities of the state of Israel towards the welfare of the Palestinian occupied population. In particular, the Israeli High Court has consistently argued in favor of the application of the Hague Regulations of 1907 to the West Bank and Gaza Strip, as evidence of international customary law applicable to occupied territory. However, it rejects the overall *de jure* applicability of the Fourth Geneva Convention of 1949 to the OPT on the ground that the status of the territories occupied by Israel in 1967 was uncertain. The Fourth Geneva Convention provides a detailed regime of protection for the population living under occupation and prohibits, in particular, the transfer of nationals of the Occupying Power into the occupied territory. Nevertheless, both the GoI and Israeli courts have stated that they will respect the "humanitarian provisions" of the Fourth Geneva Convention, though no list has ever been given of what provisions are so included.[5]

The vast majority of states, as well as the ICRC and the United Nations, have opposed the selective Israeli position, instead arguing for the full *de jure* applicability of the Fourth Geneva Convention to the OPT. In the view of almost all government experts and international scholars, the disputed character of the territories occupied by Israel in 1967 does not affect the application of the Fourth Geneva Convention. The Advisory Opinion of the International Court of Justice of 9 July 2004 confirms the general view affirming the full applicability of the Hague Regulations and the Fourth Geneva Convention to the West Bank (and by extension to the Gaza Strip.)[6] [For more information on these issues, see the HPCR Policy Brief on the Applicability of IHL to the OPT.]

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[4] The law of occupation comprises an extensive array of norms, in particular Articles 42 to 56 of the Hague Regulations annexed to the 1907 Fourth Hague Convention Respecting the Laws and Customs of War on Land and Articles 27 to 34 and 47 to 135 of the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as specific provisions contained in legal instruments such as Additional Protocol I to the Geneva Conventions (1977) and the Rome Statute of the International Criminal Court. It also includes customary norms, derived from the general practice of states over time. Israel has ratified the four Geneva Conventions but not its Additional Protocols or the Rome Statute. It considers the Hague Regulations to apply as a matter of international customary law.

[5] For instance, see the Court's stance in *Beit Sourik*, para. 23, at www.ihlresearch.org/opt/docs/HCJFenceRuling.pdf, where the Court stated: "The military commander's authority is also anchored in 4th Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949. [hereinafter – the Fourth Geneva Convention]. The question of the application of the Fourth Geneva Convention has come up more than once in this Court. *See* HCJ 390/79 *Duikat v. Government of Israel*; HCJ 61/80 *Haetzni v. State of Israel*, at 597. The question is not before us now, since the parties agree that the humanitarian rules of the Fourth Geneva Convention apply to the issue under review." By recognizing the applicability of only some of the international instruments to the OPT, the GoI has attempted to circumvent international criticism on key Israeli policies in the OPT, specifically the transfer of Israeli citizens to the OPT or the deportation of Palestinians outside the OPT, both formally prohibited by Article 49 of the Fourth Geneva Convention. For a review of the legality of settlement policies, see the HPCR Policy Brief, The Legal Status of Israeli Settlements under IHL at www.ihlresearch.org/opt/feature.php?a=32. For a review of the legal aspects of deportation, see the HPCR Policy Brief, Deportation, Forcible Transfer and Assigned Residence in the Occupied Palestinian Territory at www.ihlresearch.org/opt/feature.php?a=52.

[6] The International Court of Justice in its Advisory Opinion of 9 July 2004 encapsulated this general view by noting the applicability of the Fourth Geneva Convention to the OPT. In paragraph 101, the Court states,

## Responsibilities of the Occupying Power toward the occupied population

Occupation law plays a critical role in regulating the relationship between the Occupying Power and the occupied population. From the time an invading force exerts control over a foreign territory, it acquires a set of obligations under international law regarding the treatment of the population residing in that territory. Article 43 of the Hague Regulations sets out the fundamental standard outlining the Occupying Power's obligations vis-à-vis the occupied territory and its inhabitants. The article provides that once the authority has:

> "…in fact passed into the hands of the Occupying Power, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and safety [*in the authoritative French version:* "l'ordre et la vie publics"], while respecting, unless absolutely prevented, the laws in force in the country."

While IHL allows the Occupying Power scope to take measures to protect its own forces, it also imposes important duties. The Fourth Geneva Convention introduces numerous obligations on the Occupying Power to reduce to the greatest extent possible the inconvenience and suffering of protected persons in the occupied territory.[7] These obligations include the protection of protected persons' *honor, family rights, religious convictions and practices, as well as manners and customs* (Article 27), the obligation of *ensuring food and medical supplies for the population, as well as maintaining medical services* (Articles 55 & 56) and the obligation to *facilitate the functioning of institutions devoted to the care and education of children* (Article 50).

Those norms are of particular importance should the military occupation extend over a long period of time, thereby increasing the pressures on the Occupying Power to mitigate its responsibilities toward the population and deviate from pre-existing laws. They are also of significance for the international community that may wish to support efforts to improve the living conditions of the occupied population, as well as promote a peaceful solution to the conflict. IHL maintains the onus of the responsibility on the party that controls the territory and also provides a common framework of analysis for the international community to coordinate initiatives among international agencies and donor government pertaining to the welfare of the occupied population and the reform of local authorities.

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regarding the West Bank: *"... [T]he Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that that Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories."* The Court, however, considered that in view of the fact that "the military operations leading to the occupation of the West Bank in 1967 ended a long time ago, only those articles of the Fourth Geneva Convention referred to in Article 6, paragraph 3, remain applicable in that occupied territory" (§125-126 of the Opinion). Similar reasoning applies to the Gaza Strip under Egyptian control in 1967. See HPCR Policy Brief, Review of the Applicability of International Humanitarian Law to the Occupied Palestinian Territory, available at www.ihlresearch.org/opt/pdfs/briefing3299.pdf.

[7] Under Article 4 of the Fourth Geneva Convention, protected persons are those *"who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."*

## Israel as an Occupying Power in the West Bank and Gaza Strip

Israel occupied the West Bank and the Gaza Strip in the course of the Six-Day War in June 1967. It later established a civil administration that took over and expanded public services serving the Palestinian population. For the next 27 years, the Israeli civil administration managed public services and infrastructure in the OPT, from the education and health systems to economic development of the Palestinian community, until the establishment of the Palestinian Authority in 1994. Most of the budget for public services in the OPT was covered by Israel through the civil administration until the establishment of the Interim Palestinian Authority in 1994. After that date, the Palestinian Authority took over most of these responsibilities under the Oslo Agreements. The Oslo Agreements were never intended to resolve the ultimate legal responsibilities of Israel toward the Palestinian population in the OPT. They remained silent on the issue of Israel's responsibility, leaving the question for the negotiation of the final status agreement. As a result, even if the transfer of administrative responsibilities to the Palestinian Authority narrowed the scope of duties of Israel as the Occupying Power, it did not extinguish Israel's responsibilities toward the Palestinian population. [For more information, see the HPCR Policy Brief on Israel's Obligations under IHL in the OPT.]

In view of the limited capability of the emerging Palestinian Authority to raise the necessary funds domestically to cover the cost of these services, international donors generously supported the new Authority for over a decade (over six billion dollars of assistance since 1994).[8] Notwithstanding the efforts of the new Authority and support of international donors, however, Israel remained legally responsible for the welfare of the occupied population, and will remain so until the end of the occupation.

## On the legal conditions to bring an occupation to an end

According to the Revised Disengagement Plan:

> *The completion of the plan will serve to dispel the claims regarding Israel's responsibility for the Palestinians in the Gaza Strip.*[9]

For Israel, the expected legal consequences of its withdrawal from the Gaza Strip are clear – the removal of Israeli settlers and military units from the Gaza Strip will relieve Israel of any responsibilities as an Occupying Power toward the Palestinian population of the Gaza Strip.[10] It assumes, therefore, that such withdrawal from the Gaza Strip is sufficient under international law to constitute an end to the Israeli occupation of the Gaza Strip. It disregards the continued Israeli military control of the southern border of the Strip (the "Philadelphi Road" separating Gaza from Egypt) as well as the continued control over the Gaza airspace and sea shore as being constitutive of a continued occupation of the Strip.

[8] See World Bank Report 27094-GZ, p. 8.
[9] See Section 1 Paragraph 6 of the Revised Disengagement Plan of 6 June 2004.
[10] Interestingly, the GoI does not draw the same conclusion for its evacuation of the northern West Bank, insofar as it still conceives the whole West Bank as occupied despite its redeployment from the selected areas.

Questions arise to determine under what criteria the current and planned Israeli military presence in and around the Gaza Strip and the control it exerts over the Palestinian population imply the continued existence of Israel's obligations toward the Palestinians. To what extent did the transfer of administrative powers to the Palestinian Authority in 1994 change the legal status of the Gaza Strip and the scope of Israel's obligations? Does the Israeli occupation post-1994 rely solely on the presence of civilian settlements and military installations or on other forms of control over the territory and population? To clarify these issues, this section will examine the legal conditions for the beginning and end of occupation and of Israel's obligations toward the population of the territories it occupied in 1967.

Legal conditions for the beginning of occupation

Military occupation triggers the application of the law of occupation. IHL follows a very practical approach in defining military occupation. Under IHL, occupation refers to the *factual control* of a foreign power over a territory or a population. It does not require any form of declaration or intent of the invading forces. The IHL rules pertaining to occupation apply as soon as:

1. There is an international armed conflict;
2. A foreign military force has made an incursion on enemy territory; and,
3. This force exerts any form of control over the population of that territory.

The overriding concern of IHL is to regulate the behavior of the occupying forces toward the civilian population living in the territory their control, independently of the duration or motives of military operations. Article 42 of the Hague Regulations of 1907 provides that:

> "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

The language of the Hague Regulations in this respect is clear. According to a renowned international lawyer, "only when, and where, the occupying power has attained unquestioned control does hostile territory become subject to the legal restraints of the law of occupation."[11] In IHL literature this test for the beginning and the end of occupation is often referred to as *effective control*. The test is not *per se* the military presence of the occupying forces in all areas of the territory, but the extent to which the Occupying Power, through its military presence, is exerting effective control over the territory and limiting the right of self-determination of the occupied population.

International jurisprudence helps to outline the circumstances in which the conditions of "effective control" are met. Article 42 of the Hague Regulations conceives of situations where the authority of the Occupying Power "has been established and can be exercised." These conditions were further elaborated in various decisions by international tribunals, such as the United States Military Tribunal at Nuremberg. In the Hostages case (*USA vs. Wilhelm List et al.*), the Tribunal had to decide whether Yugoslavia, Greece, and Norway were

[11] Schwarzenberger**,** Georg, International Law as Applied by International Courts and Tribunals: Vol. II, The Law of Armed Conflict, London: Stevens, 1968, at p. 324.

occupied territories at the time when the German defendants committed acts of murder, intimidation, and terrorism against civilians. The Court considered that the question of criminality might hinge on whether the actions were committed when invasion was in progress, or in the context of an accomplished occupation. The Court then explained the difference:

> "The term invasion implies a military operation while an occupation indicated the exercise of governmental authority to the exclusion of the established government. This presupposes the destruction of organized resistance and the establishment of an administration to preserve law and order. To the extent that the occupant's control is maintained and that of the civil government eliminated, the area will be said to be occupied."[12]

Later on, in the same decision, the tribunal considered a territory occupied even though the occupying army had partially evacuated certain parts of the territory and lost control over the population, as long as it could "at any time" assume physical control of any part of the territory:

> "While it is true that the partisans [resistance movement against the Germans in Yugoslavia and Greece] were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German Armed Forces of its status of an occupant."[13]

Under this jurisprudence, effective control is understood as a combination of military and administrative measures:

Effective military control of the occupied territory is ultimately a factual military issue. For the purposes of establishing effective military control, the size and distribution of the occupying forces in the territory is immaterial.[14] In other words, an Occupying Power can exercise effective control without being physically present in all parts of the territory it

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[12] *USA vs. Wilhelm List et al.*, Law Reports of Trials of War Criminals, vol. VIII, London: United Nations War Crimes Commission, 1949, at p. 56. Similarly, in case N° 45[12], the permanent military tribunal at Dijon found in the context of applying Article 2 of the Hague Regulations, that:*"[a]ny part of territory in which the occupant has been deprived of actual means for carrying out normal administration by the presence of opposing military forces, would not have the status of 'occupied' territory within the terms of articles 2 and 42 of The Hague Regulations. The fact that other parts of the occupied country as a whole, are under effective enemy occupation, would not affect this situation."* See Trial of Carl Bauer, Ernst Schrameck, and Herbert Falten, Law Reports of Trials of War Criminals, vol. VIII, *supra* note 12, at p. 15- 18.

[13] Ibid.

[14] *USA vs. Wilhelm List et al.*, *supra* note 12. See also Colby, Elbridge: "Occupation Under the Laws of War," 25 *Columbia Law Review* 904 (1925), at p. 908. The author specifically referred to the Prussian occupation of portions of France in 1870-1871, in which the occupation was maintained "by the mere ability to assert essential power". He cites Bordwell, Law of War Between Belligerents (1908), who described the Prussian occupation in the following terms: "One could go for miles within the occupied territory without seeing a single Prussian soldier."

occupies.[15] It suffices that it can project military power over the whole of the occupied territory by keeping forces in only parts of the territory, and conducting, for example, military operations from the air.

Effective administrative control does not preclude local authorities from playing a major role in the administration of the territory. The Hague Regulations, as well as the decisions of various international military tribunals, have given considerable scope to the ability of the Occupying Power to carry out normal administration in cooperation with local authorities and to preserve law and order as an objective indication of the existence of effective control.[16]

The Fourth Geneva Convention presumes a much less stringent test for application of the law of occupation. While the Hague Regulations refer to situations where "a territory is actually placed under the authority of the hostile army," the Fourth Geneva Convention focuses on the interaction between foreign forces and the civilian population. In particular, it regulates all points of contact with the population as soon as this population falls under the control of the invading army. According to Article 6 of the Fourth Geneva Convention, though the general application of the Convention in occupied territory ceases one year after the general close of military operations, selected provisions of the Convention continue to apply thereafter to the extent that the Occupying Power continues to exercise the functions of government.[17] In this context, key functions of a government include:

- Ability to manage the internal and external security of the territory.
- Ability to control the international borders of the territory and regulate entry and exit of persons and goods.
- Ability to engage in political, security, economic and cultural exchanges with other states.

Legal conditions for terminating an occupation

The conditions to bring an end to occupation to a great extent mirror the ones triggering the application of the law of occupation. The legal regime of occupation law was designed to continue regardless of whether the initial international armed conflict ended, as long as two criteria are met:

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[15] This position has been adopted by the Israeli Supreme Court in HCJ 102/82 *Tsemel v. Minister of Defence*, 37(3) P.D. 365, where the court recognized that occupation forces do not need to be in actual control of all the territory and population, it simply need to have the capability to be potentially in control of the said territory and population.

[16] See Colby, *supra* note 14, at p. 908.

[17] Article 6 of the Fourth Geneva Convention reads:

> *The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2. In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.*
> *[…]*
> *In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.*

1. There is a foreign military presence in the territory, and

2. This military presence is inherently exerting some form of effective control (albeit not exclusive) over government affairs without the approval or invitation of the sovereign authority over the territory (i.e. this presence limits the right of self-determination of the occupied population, etc.).

As these conditions are cumulative, an occupation may be considered to have ended when one of the two elements no longer holds true.

Under the framework of the Hague Regulations, a territory is no longer occupied when the occupying power can no longer exercise its authority. The end of occupation typically occurs when "an occupant withdraws from a territory or is driven out of it".[18] It could also end with a peace treaty that settles the fate of the occupied territory. Finally, and this became particularly salient after the Second World War, occupation may end as a result of the exercise by peoples of their right to self-determination. In any case, and regardless of the means through which the end of occupation comes about, the relevant criteria from an IHL point of view always remain factual: whether the occupying forces have effective control over the given territory and population.

A key aspect of the Nuremberg jurisprudence cited above is the recognition that the occupier's military evacuation from an area within the territory it occupies does not necessarily signify the end of occupation for that specific area. Such evacuation does not relieve the occupier of its responsibility for the welfare of the occupied population living in the evacuated area, especially when this withdrawal is implemented solely as to limit the occupier's responsibility toward the occupied population while maintaining its security control over the evacuated territory by other means (i.e. encirclement, military control of airspace, etc.)

In the case of the Gaza Strip, the claim that Israel will no longer be responsible for the welfare of the Palestinian population raises a number of problematic issues. At the completion of the Revised Disengagement Plan, the determination for a situation of occupation appears as follows:

1. Foreign military presence

Israel will still be deploying military forces on the "Philadelphi Road" on the Gaza side of the border between the Gaza Strip and Egypt, as well as exerting military control over Gaza airspace and sea access. Israel also reserves the right to use force against Palestinians living in Gaza in terms of preventive and reactive self-defense.[19] The continued presence of Israeli military forces in the Gaza Strip, the military encirclement of the Strip, the continued use of Gaza airspace for Israeli military operations and deliberate threats of incursions may well amount to the effective military control of the Gaza Strip by Israel (as per the Nuremberg

[18] Oppenheim, International Law: Vol. 2, 7th edition, 1952, at p. 436, cited by Roberts, Adam: "What is a Military Occupation," 55 *British Yearbook of International Law* 249 (1985), at p. 257; Colby, Elbridge: "Occupation Under the Laws of War," 25 *Columbia Law Review* 904 (1925), at p. 910.
[19] See Revised Disengagement Plan of 6 June point 3 One 3 and 3 Two 2.

jurisprudence) despite the redeployment of most Israeli forces outside the territory of the Strip.

2. Control over the occupied population

The limitations imposed on Palestinians living in the Gaza Strip in terms of access and control of Gaza's international borders will have severe implications on the ability of Gazans to free themselves from their economic and trade dependence on Israel. Furthermore, enclaving Gaza and maintaining its dependence on Israel for its electricity, part of its water supplies, economic and financial transactions, currency and fiscal policies (current legal tender remains the New Israeli Shekel), foreign employment, migration, access to imported goods and services including specialized health care, access to humanitarian and development agencies, and so on may well amount to effective control of key functions of government.

In the present circumstances, it is likely that, at the completion of the Disengagement Plan:

- Palestinian militant movements in the Gaza Strip will continue to undertake military operations against Israel, and Israeli forces will continue to conduct military incursions in the Gaza Strip;
- The Palestinian Authority will have limited opportunities or ability to take over all the government functions in the Gaza Strip, particularly in terms of security, migration, trade and fiscal policies;
- The Palestinian Authority will not have control over any international border of the Gaza Strip; and,
- Palestinians will continue to depend on Israel for access to all essential goods and services.

In this context, one could argue that the cumulative elements triggering the application of the law of occupation will remain intact, thereby precluding the end of occupation from a legal standpoint.

**Who determines the end of occupation?**

In principle, the beginning and end of occupation, being ultimately questions of fact, do not hinge upon the decision or determination by an external authority. An occupying force need not issue a proclamation at the beginning of occupation, nor officially designate a territory as occupied.[20] The end of occupation does not require a formal determination by a state or international organ such as the UN Security Council. In practice, occupiers have been consistently reluctant to designate hostile territory under their effective control as occupied.

For many, the word "occupation" has negative connotations, and may have legal implications – even beyond the applicability of the law of occupation – that affect claims

[20] Dinstein, Yoram: "The International Law of Belligerent Occupation and Human Rights," 8 *Israel Yearbook of Human Rights* 104 (1978) at p. 104; Colby, *supra* note 14, at p. 909 (arguing that although proclamations are not legally required, they could be useful.)

regarding the territory in question.[21] In practice, international institutions, or in some cases the International Court of Justice, have designated a particular territory as occupied despite the open disagreement of interested parties. The United Nations General Assembly and Security Council have on many occasions designated certain territory as occupied. For instance, the General Assembly has consistently referred to the West Bank and the Gaza Strip[22], to Namibia[23], to Northern Cyprus[24], and the Western Sahara[25], as occupied territories. More specifically, the Security Council qualified the West Bank and the Gaza Strip as occupied territories in Resolution 242 (1967) and called upon Israel "scrupulously to observe the provisions of the Geneva Conventions and international law governing military occupation" in Resolution 271 (1969). These references to the law of occupation have often been used as grounds to call for the Occupying Power to respect the applicable rules of international humanitarian law.

Regarding the end of occupation, the UN Security Council has traditionally been reluctant to take a definite position on such factual issues (See 'Israeli withdrawal from Southern Lebanon' - Text Box 1).

- **Israeli withdrawal from Southern Lebanon (June 2000)**

In May 2000, the Israel Defense Forces (IDF) withdrew from Israel's self-described security zone in southern Lebanon after 22 years of military occupation. The UN Security Council mandated the United Nations, in particular the UN Secretary General, to establish the requirements for this withdrawal and confirm its implementation.[1] On 16 June 2000, in a report to the UN Security Council, the Secretary General concluded that Israel had withdrawn its forces from Lebanon in accordance with UN Security Council Resolution 425 (1978).[2] On 27 July, the Security Council adopted a new resolution welcoming the conclusion of the Secretary General.[3] During this whole period, the UN Security Council and the UN Secretary General refrained from qualifying the legal status of the territory under the security control of Israel and the South Lebanese Army (SLA). Similarly, they refrained from qualifying the end of occupation in southern Lebanon. Despite the absence of a peace treaty between Israel and Lebanon that would have put an end to the international armed conflict, the mere fact that Israel proceeded to withdraw all military forces from Lebanese territory and transferred the security control of southern Lebanon to the Lebanese authorities was sufficient to end the occupation as well as Israel's responsibility toward the Lebanese residents of the area.

[21] See Roberts; *supra* note 18, at p. 301. It is precisely to address such reluctance that Article 4 of API was found necessary. Article 4 of Additional Protocol I of 1977 states: "The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question."

[22] See, e.g., United Nations, General Assembly, Resolution ES-10/6, 9 February 1991, U.N. Doc. A/RES/ES-10/6

[23] See e.g., United Nations, General Assembly, Resolution 2403, December 16th 1968

[24] See e.g., United Nations, General Assembly, Resolution S 33/15, November 9th, 1978, U.N. Doc. A/RES/33/15

[25] See e.g., United Nations, General Assembly, Resolution 34/37, November 21st, 1979, U.N. Doc. A/RES/34/37

In the few cases where the Security Council has made a determination about the end of occupation, it has linked its determination to certain actual change on the ground, and has not acted in a vacuum. (See 'Transfer of authority to the sovereign government of Iraq (June 2004)' - Text Box 2)

- **Transfer of authority to the sovereign government of Iraq (June 2004)**

Following the invasion of Iraq by a US-led military coalition, the UN Security Council called on the new Provisional Authority to comply with its obligations under the Hague Regulations and the Fourth Geneva Convention. Specifically, it "recognized" the US and UK, operating under a unified command, as the Occupying Powers and therefore responsible for the welfare of the Iraqi population until the re-establishment of a sovereign government. After just over a year of occupation, the UN Security Council adopted a new resolution endorsing the formation of a sovereign Interim Government and "welcoming" the end of occupation. Here again, the UN Security Council did not declare the end of occupation by itself but endorsed the transfer of authority from the Occupier Power to the new sovereign government. It recognized that, for all legal purposes, the occupation ended with this transfer of authority. The invitation for the continued presence of the Multinational Forces established under Security Council Resolution 1511 (2003), annexed to Resolution 1546, is one of the first gestures of the new sovereign government in terms of security policies.

In both cases, the Security Council endorsed or confirmed the legal consequences of acts being implemented on the ground.

**Legal consequences of the end of occupation in the Gaza Strip**

Assuming that Israel would fulfill the requirements for an end of occupation, it is worth examining the legal consequences of the change of regime.

The potential legal consequences of an end of the occupation of the Gaza Strip as a result of unilateral disengagement have to do with the applicability of IHL, including the law of occupation, to the Gaza Strip. The end of occupation would change the nature and extent of Israel's privileges and responsibilities vis-à-vis the Palestinian population in the Strip. If, as a matter of fact, Israel relinquishes its effective control over the Gaza Strip, then there would be a strong argument that Israel is released from its responsibilities as an Occupying Power towards the Palestinian population of the Gaza Strip. Among other things, this means:

- Israel will no longer be legally required to ensure that the population of the Gaza Strip has access to food, water and medical supplies, or all other goods and services essential for the survival of the population (e.g., electricity), nor will it be required to ensure and maintain public health, as required by Articles 55 and 56 of the Fourth Geneva Convention and Article 69 of Additional Protocol I;
- Israel will no longer be legally required to permit the free passage through its territory of humanitarian and relief consignments directed to the population of Gaza, nor to guarantee their protection, as required by Article 59 of the Fourth Geneva Convention. New arrangements will need to be negotiated with the GoI.

Israel can certainly decide on its own grounds to maintain selected services at full price, as it plans under the Revised Disengagement Plan.[26] It does not, however, entail any international legal obligation to maintain these services beyond what is expected from any contractual arrangements. In particular, national security interests may supersede contractual arrangements when and where the delivery of services contributes to the threat to the security of Israel.

The end of occupation, however, would not release the state of Israel from its obligations under IHL towards civilian internees and detainees from the Gaza Strip on its territory until their final release. Palestinians arrested prior to the end of occupation remain protected by the applicable rules of the Fourth Geneva Convention until their final release.[27] Furthermore, the end of occupation in Gaza is without prejudice to the application of the Hague Regulations, Geneva Conventions and customary rules of international humanitarian law to the West Bank or Israel.

At the end of the disengagement, Israel will lose all the privileges of an Occupying Power in terms of taking measures to maintain its security in the territory. The end of occupation brings to the foreground general principles of international law that regulate the use of force (*jus ad bellum*) on foreign territory. This means that the prohibition contained in the Charter of the United Nations against the use of force (Article 2(4)), along with the right to self-defense in case of an armed attack (Article 51 of the UN Charter) would become the relevant legal standards to evaluate the legality of Israeli operations in the Gaza Strip. Concretely, this would mean that contrary to what the Revised Disengagement Plan explicitly stipulates, Israel would not be legally justified in invoking the law of self-defense in conducting preventive military operations in the Gaza Strip.[28]

## II - Legal implications of the Israeli plans to remove or destroy civilian and military installations in the Gaza Strip

[26] See Revised Disengagement Plan at point 8.

[27] See Article 6 (3) of the Fourth Geneva Convention of 1949.

[28] The modern formulation of self-defense as a legal doctrine seems to have occurred in the context of the famous *Caroline* case involving the attack and destruction by British forces in Canada of an American ship inside the territory of the United States during the Canadian Rebellion of 1837. The British justification of the attack contains all the elements of what later was called anticipatory or preemptive self-defense. On the *Caroline* case see Jennings, Robert Y.: "The *Caroline* and *Mcleod* Cases," 32 *American Journal of International Law* 82 (1938) On self-defense generally see Brownlie, I.: "The Use of Force in Self-Defense," 37 *British Yearbook of International Law* 183 (Arguing that although anticipatory self-defense may have been accepted by the practice of states as evidence of international law prior to the UN Charter, there is evidence that under the charter there is little support for the legality of anticipatory self-defense in state practice). For a review of the practice of states under the UN Charter see Combacau, Jean: "The Exception of Self-Defence in U.N. Practice," in: Antonio Cassese (ed.) The Current Legal Regulation of the Use of Force, Dordrecht: Nijhoff, 1986, at pp. 9-38. For a bibliography on anticipatory self-defense see Walker, George K.: "Anticipatory Collective Self-Defense in the Charter Era: What the Treaties Have Said," 31 CORNELL *International Law Journal* 321 (1998), footnote 1 at p. 322. The legality of anticipatory self-defense became a hotly debated topic among international lawyers after the September 11th attacks and the recent war on Iraq. See "Self-Defense in an Age of Terrorism," 97 *American Society of International Law Proceedings* 141 (2003); "Agora: Future Implications of the Iraq Conflict," 97 *American Journal of International Law* 553-642 (2003).

According to the Revised Disengagement Plan, the GoI plans to dismantle and remove all military installations from the Gaza Strip, as well as remove or destroy residential dwellings and sensitive structures, such as synagogues. Other infrastructure, such as industrial, commercial, and agricultural facilities, will be transferred to an international third party, to use for the benefit of the Palestinian population, while basic infrastructure constructed by Israel (relating to water, electricity, sewage, and telecommunications) will be kept in place.

The status of Israeli military and civilian installations in the Gaza Strip raises two main legal issues:

1. What is the legal regime applicable to these installations? Does the illegality of the settlements put these installations outside the realm of the law?
2. Is the destruction or removal of these installations prior to the withdrawal prohibited?

## Legal regime applicable to Israeli installations in the Gaza Strip

As outlined above, Israeli government policies and actions in the Gaza Strip are subject to the law of occupation. The law of occupation remains applicable to all Israeli operations and installations in the Strip until the end of occupation. Israeli planned actions in this area will be conducted prior to the Israeli military withdrawal and are therefore subject to the law of occupation.

*Removal of Israeli military installations*

The removal of military installations is an integrated part of the Israeli military redeployment. A unilateral redeployment in situations of active hostilities amounts to a military operation. The removal and destruction of such property is expressly authorized by Article 53 of the Fourth Geneva Convention when such destruction is made "absolutely necessary by military operations."

*Removal of Israeli-installed public infrastructure*

Over more than three decades of occupation, Israel, as an Occupying Power, has set up (or contributed to the establishment of) a vast network of roads and water supply, sewage, electrical networks, as well as water management facilities and public buildings such as hospitals and schools. Some of these installations have been built by private and public Palestinian counterparts contracted out by the Israeli civil administration for the benefit of the Palestinian population.

These installations are part of public property in the Gaza Strip, as they have been built to fulfill the obligation of the Occupying Power to maintain public services under Article 64(2) of the Fourth Geneva Convention. The law of occupation prohibits the removal or destruction of public property unless such destruction is "rendered absolutely necessary by military operations" (Article 53 of the Fourth Geneva Convention). The destruction of public infrastructure cannot be seen as "absolutely necessary" for the purpose of the redeployment of Israeli military forces. It is therefore prohibited. The Revised

Disengagement Plan prescribes rightly that such public infrastructure should not be affected by the redeployment of Israeli forces.

*Removal or destruction of Israeli civilian settlements*

The question arises to determine the extent to which Israel can remove or destroy Israeli civilian settlements located in the Gaza Strip. Should these buildings be considered as public infrastructure or rather adjuncts made by the Israeli occupier to serve its interest during the occupation?

Most land in Gaza upon which settlements were built should probably be regarded as public land, insofar as the land tenure structure in Gaza (and the West Bank) was uncertain at the time the occupation began.[29] The privileges and duties of the occupying power with regard to public property are set forth in Article 55 of the Hague Regulations. It states that the Occupying Power shall be regarded "only as administrator and usufructuary…it must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct"[30] – i.e. the Occupying Power can administer public lands, but does not acquire title over them. In particular, the Occupying Power can use public property or the proceeds of the property not only for the benefits of the local population, but also, similar to levies, to cover the cost of maintaining the military occupation. (See Article 49 of the Hague Regulations.)

Arguably, the building of civilian installations on public land for the purposes of hosting settlers does not fall within either of the two possible legal uses of public land, insofar as such use of public lands does not bring any benefit for the occupying forces or for the occupied populations. Accordingly, Israel as the occupying power has to bring its current use of the public lands in conformity with the standards set forth in Article 55 of the Hague

[29] There are two inter-related tests to determine whether land is public or private: the first has to do with the public or private status of the owner; the second has to do with "the public direction of the use and disposition of the property." *See* Feilchenfeld, Ernst H.: The International Economic Law of Belligerent Occupation, Washington, D.C.: Carnegie Endowment for International Peace, 1942, at p. 52. In the context of the Gaza strip, the land tenure system was uncertain at the time the Israeli occupation began. In the Ottoman land law, and subsequently for the West Bank, in Jordanian law, *Miri* lands are lands for which formal and ultimate ownership ("*Rakaba*" *الرقبة*) was held by the state, with possession and use rights remained in the hands of individual landholders. The British Mandate on Palestine initiated a process for the settlement of title and judicial investigations of land rights. According to the historical records, by the end of the mandate the British achieved final settlement of title for only 20% of the territory of Mandate Palestine, most of it being in what became later the State of Israel. By 1967, most land in Gaza (and the West Bank) was still classified as *Miri* land. *See* Raja Shehadeh, "The Land Law of Palestine: An Analysis if the Definition of State Lands," 11 *Journal of Palestine Studies* 82 (1982) [hereinafter "The Land Law of Palestine"]; Alexandre (Sandy) Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967," 33 N.Y.U. *Journal of International Law and Politics* 923 (2000-2001), at pp. 932-939. *Miri* lands are public insofar as they satisfy the ownership test mentioned above; on the other hand, given the that the possession and use rights of the land lie with individual landholders *Miri* lands may not satisfy the "public direction of the use and disposition" test. Yet under international law, when in doubt property shall be deemed public. On the other hand, some argue that *Miri* lands are not public lands, as they do not satisfy the "public direction of the use and disposition" test, i.e. they are not used for public purposes. *See* "The Land Law of Palestine".

[30] Usufruct is the right of using and enjoying the fruits or profits of something belonging to another. See Merriam-Webster Online Dictionary, *available at:* www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=usufruct

Regulations. Israel therefore has two options. First, it can make available the buildings of evacuated settlements for the benefit of the Palestinian populations of the Gaza Strip. Alternatively, Israel can bring its use of the public lands of the Gaza Strip in conformity with Article 55 of the Hague Regulations by removing the buildings and returning the land to its state prior to the occupation.

## III – Legal implications of the Israeli disengagement plan for the role and activities of international agencies active in the region

The Revised Disengagement Plan very much foresees the close cooperation of international agencies in the implementation of the Plan. In particular, it states under Point 9:

> "The State of Israel recognizes the great importance of the continued activity of international humanitarian organizations and others engaged in civil development, assisting the Palestinian population.
>
> The State of Israel will coordinate with these organizations arrangements to facilitate their activities."

Under Point 7, the GoI hopes that international agencies will serve as a holder of public property being transferred back to the Palestinians. It declares:

> "The State of Israel will aspire to transfer other facilities, including industrial, commercial and agricultural ones, to a third, international party which will put them to use for the benefit of the Palestinian population that is not involved in terror.
>
> The area of the Erez industrial zone will be transferred to the responsibility of an agreed upon Palestinian or international party."

These issues are of critical importance as the legal implications of such activities or responsibilities may last for years after the implementation of the Israeli plan and trigger potential liabilities against these organizations.

The key legal issues are:

- Does the Revised Disengagement Plan affect the legal status of international agencies in the Gaza Strip?
- Is there any legal basis for an international agency to receive property from the Occupying Power?

### Legal status of international agencies in the Gaza Strip

The legal status of international agencies active in the Gaza Strip is defined by their status under international law or, by extension, their mandate as stipulated by the General Assembly of the United Nations or other organs of the United Nations. In turn, these mandates are acquiesced to by the Occupying Power through various agreements and

memoranda of understanding that detail operational measures for the implementation of these mandates.[31]

IHL provides specific roles for international agencies in occupied territory, especially for the International Committee of the Red Cross (ICRC) as well as other humanitarian agencies "for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues".[32] Although the Occupying Power remains ultimately responsible for the welfare of the Palestinian population, it has to agree to relief schemes when the population is not well supplied. (See Articles 59 and 60 of the Fourth Geneva Convention.)

Evidently, the level and scope of international assistance to the OPT has gone beyond what was expected in the Fourth Geneva Convention, especially as the occupation extended for decades and international donors agreed to fund the establishment of the Palestinian Authority under the Oslo Accords. However, the role and mandate of international organizations are still being managed within the framework of the law of occupation, particularly as it pertains to the obligation of the organizations to maintain an impartial approach (i.e. non-discriminatory) to humanitarian needs in the Gaza Strip and the obligation of the Occupying Power to facilitate the access of international agencies to the occupied territory and population.

With the completion of the Israeli withdrawal from Gaza, the pressure on international agencies to provide for the needs of the population is likely to increase, as they may constitute the only viable organizations to offer these services with a presence throughout the West Bank and Gaza. Considering the unilateral character of the withdrawal, international agencies may also be called to play the role of intermediary between Israel and the Palestinian authorities managing Gaza.

Depending on the status of the territory after the withdrawal (see Section I of this note), international agencies may face a stark choice in terms of their operational engagement in the Gaza Strip. Their role can be seen under two scenarios:

1. *If the situation in the Gaza Strip still amounts to an occupation*

In the absence of a determination by the UN Security Council or other authoritative international body on the end of occupation in the Gaza Strip, the situation in Gaza is likely to remain one of occupation. In such situation, the mandate and role of international agencies remain unchanged. The obligation to maintain an impartial approach to the population is still in force, as is the obligation of the Occupying Power to facilitate access for these relief schemes. One could argue, however, that without clear statements from the international community on the continuation of the occupation, the modus operandi between international agencies and the GoI may erode under internal political pressure to relinquish Israel's responsibilities toward the Palestinian population. The only way for the

[31] See, for example, UNRWA's mandate in United Nations General Assembly Resolution 302 (IV) of 8 December 1949 and the 1967 Comay-Michelmore Agreement which sets Israel's obligations regarding UNRWA activities in the OPT.
[32] See Article 63(3) of the Fourth Geneva Convention.

Israeli government to prove this point will be by conditioning access of international agencies on increased security regulations.

*2. If the situation in the Gaza Strip is no longer one of occupation*

If, on the contrary, an international consensus emerges to recognize the end of occupation in the Gaza Strip, international agencies will have a mandate to intervene in the Gaza Strip only to the extent the Palestinian Authority and the GoI agree to it. Outside situations of occupation, there is no right of access by international humanitarian agencies in international law. As mentioned in Section I, the GoI could even consider imposing sanctions and other restrictions on the Gaza Strip aimed at forcing the Palestinian authorities to maintain the security of the borders of the Strip. Ultimately, the GoI could impose a total embargo (or siege under IHL) – including cutting off water supplies, food supplies and electricity – as a way to force the surrender of Palestinian militants.[33] In such case, international agencies would be in a very difficult situation as they would be unable to provide for the needs of the population and may appear partial in the recognition of the end of occupation by the international community.

**Legal basis for an international agency to receive property from the Occupying Power**

If international agencies have a mandate under IHL to provide for the needs of the population in occupied territory, they generally do not have a mandate to possess public or private property beyond the necessary requirements for the fulfillment of their humanitarian or development role. They cannot, for example, hold property interest in housing projects or industrial infrastructures without proper legal arrangements with the local public authorities. In addition, real or movable property in the hands of international agencies remains subject to the applicable domestic law, unless specific arrangements have been passed with the local authorities or alternatively with the Occupying Power (e.g., for immunity from real property tax). Only the Occupying Power can requisition and own property against local laws within the limits set by international law (see Article 52 of the Hague Regulations and 64(2) of the Fourth Geneva Convention). As soon as the property leaves the hands of the Occupying Power, it falls back under the control of local authorities and is subject to local laws and local courts. International agencies do not currently have any privilege in receiving and holding property against the will of public authorities (in the case of public land) or private individuals (in the case of private property confiscated by the Occupying Power).

Holding property in contravention of local laws engages the responsibility of international agencies for any damages incurred during their possession. In particular, if the property is damaged, lost or made unusable (e.g., by rioters) during this period, the international agency

[33] "You talk about disengagement, we said, but Gaza will continue to be dependent on Israel for the supply of electricity, water and more. 'Israel will not cut off the supply of electricity and water,'" said Sharon. 'We do not want to put them into a state of chaos. Unless a situation of severe terror ensues—and then I do not rule out such steps.' [Sharon interview]" *Yedioth Ahronoth*, April 5

that received the property from the Occupying Power may be compelled to compensate the rightful owner for damages incurred during its possession.

## IV - Concluding remarks

To conclude, the end of occupation is a legal determination based on facts. It has to be made by each of the High Contracting Parties to the Fourth Geneva Convention. The views of individual parties cannot by themselves relieve the Occupying Power of its obligations toward the occupied population. A common point of reference is the UN Security Council. However, the UN Security Council has frequently been reluctant to take a stand in determining the end of an occupation. It has, nevertheless, acknowledged or recognized facts on the ground that arguably put an end to an occupation. One of the key factors for the UN Security Council in recognizing the end of occupation has been the transfer of authority from the Occupying Power to a sovereign government (e.g., the Lebanese Government for southern Lebanon or the new Interim Government for Iraq). Despite the military significance of the Israeli withdrawal from the Gaza Strip, the limited control of the Palestinian Authority over key functions of government, its lack of control over international borders, sea and airspace, as well as the continued Israeli control of key security and welfare aspects of life in the Gaza Strip are likely to be major obstacles for recognition by the Security Council of an eventual end of occupation that would relieve Israel of its obligations toward the Palestinian population of the Gaza Strip.

To successfully bring the occupation of the Gaza Strip to an end, one may argue that Israel will need *at a minimum* to withdraw the entirety of its troops and installations from the Gaza Strip, in particular from the "Philadelphi Road", transferring full and sovereign control of the border of the Gaza Strip with Egypt to the Palestinian Authority. Every arrangement short of that withdrawal and transfer of sovereignty is likely to fail to bring an end to the occupation of the Gaza Strip.

International agencies are definitely entering a difficult passage in terms of their activities in the Gaza Strip with the proposed Israeli withdrawal. It is imperative that the international community supports their efforts in maintaining a coherent legal framework for their operations on behalf of the Palestinian population. Such a framework must have demonstrated capabilities to organize relief and development efforts and attribute clear responsibilities to Israel, the Palestinian Authority, and the agencies concerned. It must offer feasible options for all the parties involved to maintain essential public services for the Gaza population. Additionally, it must prevent the further politicization of these services and ensure access to the population in need. In the absence of an agreed legal framework by all the parties involved, the law of occupation should continue to apply until a sovereign government has been able to establish law and order in the Gaza Strip.

Finally, international agencies should think over their role in receiving property in any way or form from the Occupying Power as they currently do not have any privilege under international or local laws in possessing property in the Gaza Strip and may incur significant liabilities for the years to come in local and national courts, especially if they are unable to protect and maintain the value of these properties during their possessions.

Annex 1

## Summary of the Israeli Disengagement Plan of 6 June 2004

According to the Disengagement Plan proposed by the Israeli Prime Minister on 6 June 2004, the purpose of the Disengagement is to foster a better security, political, economic and demographic situation for Israel while reducing potential frictions with the Palestinian population. To achieve these goals, the Plan aims to establish clearer demarcations between the two people in security, economic and legal terms as a mean of re-establishing the conditions for the resumption of negotiation for a permanent settlement of the Israeli-Palestinian conflict.

The Disengagement Plan can be summarized as follows:

### Security and geography

Through the implementation of the Disengagement Plan, the Government of Israel (GoI) intends to draw a preliminary demarcation between areas that it expects will remain under Israel's control as the result of a permanent status agreement and areas that will remain under Palestinian control. Specifically, with regard to the Gaza Strip, the GoI:

- Intends to withdraw all the settlements and military installations from the Gaza Strip with the exception of the area of the border between the Gaza Strip and Egypt ("the Philadelphi Road").
- Will retain an exclusive control over the external land perimeter of the Gaza Strip, its airspace and the sea off the coast of the Gaza Strip.
- Will consider the Gaza Strip as a demilitarized zone devoid of offensive and heavy weaponry, the presence of which does not accord with the Israeli-Palestinian agreements.
- Reserves a right of self-defense including the use of military force in respect of threats emanating from the Gaza Strip.

Subsequent to the implementation of the Disengagement Plan, the GoI may consider the evacuation of the "Philadelphi Road" area depending on the security situation of the time and the extent of cooperation with Egypt in establishing a reliable alternative arrangement. If and when conditions permit, the GoI will be willing to consider the establishment of a seaport and airport in the Gaza Strip. However, the evacuation of the "Philadelphi Road", establishment of a seaport and airport are not formally part of the DP presented by the Prime Minister.

With regard to the West Bank, the GoI:

- Intends to withdraw selected settlements from the northern West Bank and the adjacent military installations.

- Intends to re-establish territorial contiguity between selected Palestinian towns and villages in the northern West Bank.
- Expects that remaining areas encompassing major Israeli population centers, cities, towns and villages, security areas and other places of special interest to Israel in the West Bank will ultimately be part of the State of Israel under a negotiated permanent status agreement.
- Will retain an exclusive control over the perimeter of the evacuated area and its airspace. It will consider the evacuated area as a demilitarized zone and reserves a right of self-defense, including the use of military force.
- Will continue building the Security Fence, in accordance with the relevant decisions of the Government. The route will take into account humanitarian considerations.

**Creation of new legal status for the Gaza Strip**

- In the view of the GoI, the completion of the Disengagement Plan will serve to dispel the claims regarding Israel's responsibility for the Palestinians in the Gaza Strip.

- The process set forth in the plan is without prejudice to the relevant agreements between the State of Israel and the Palestinians. Relevant arrangements shall continue to apply.

**Economic status of the evacuated territory**

- The Disengagement Plan intends to facilitate the restoration of a normal life in the evacuated areas and the rehabilitation of Palestinian economic and commercial activity in the West Bank and the Gaza Strip. The evacuation will enable territorial contiguity for Palestinians in the Northern West Bank area and potentially reduce the number of internal checkpoints throughout the West Bank. In addition, the GoI plans to assist, with the support of the international community, in improving the transportation infrastructure in the West Bank in order to facilitate the contiguity of Palestinian transportation network within the West Bank.

- In general, the economic arrangements currently in operation between the State of Israel and the Palestinians shall remain in force. In the longer term, and in line with Israel's interest in encouraging greater Palestinian economic independence, the GoI intends to reduce the number of Palestinian workers entering Israel, to the point that it ceases completely. It will support the development of sources of employment in the Gaza Strip and in Palestinian areas of the West Bank, by international elements.

**Arrangements regarding civilians and military infrastructure**

- In general, the GoI intends to evacuate and dismantle all military installations from the selected areas of the Gaza Strip and northern West Bank.

- The GoI plans to remove or destroy residential dwellings and sensitive structures, including synagogues.

- The GoI plans to transfer other facilities, including industrial, commercial and agricultural ones, to a third, international party which will put them to use for the benefit of the Palestinian population that is not involved in "terror activities".

- The GoI plans to transfer the area of the Erez industrial zone to the responsibility of an agreed upon Palestinian or international party.

- Infrastructure relating to water, electricity, sewage and telecommunications will remain in place. In general, Israel will continue, for full price, to supply electricity, water, gas and petrol to the Palestinians, in accordance with current arrangements. Other existing arrangements, such as those relating to water and the electro-magnetic sphere shall remain in force.

- The GoI will explore, together with Egypt, the possibility of establishing a joint industrial zone on the border of the Gaza Strip, Egypt and Israel.

- The intention is to complete the planned relocation process by the end of 2005.

**International cooperation and support**

- The GoI views international support as an important component of the Disengagement Plan. This support is seen as essential in order to bring the Palestinians to implement in practice their obligations to combat terrorism and implement reforms as required by the Roadmap, thus enabling the parties to return to the path of negotiation.

- The GoI recognizes the importance of the activities of international humanitarian organizations and others engaged in development activities. It intends to coordinate with these organizations arrangements to facilitate their activities.

## Endnotes

[1] See Secretary General's report S/2000/460.
[2] See Secretary General's report S/2000/590.
[3] See United Nations, Security Council Resolution 1310 of 27 July 2000.