

The Ongoing Gaza Blockade as a Means of Effective Control

Hala Khoury-Bisharat

For more than a decade, Israel has enforced an ongoing maritime blockade and a siege on the Gaza Strip, an area over which Israel administrated a military occupation for thirty eight years, and from which it presumably evacuated its troops in 2005. The ongoing blockade and siege isolate Gaza from the rest of the world, disconnect it from the West Bank, and leave two million Palestinians “incarcerated” and living in despair without any hope for a better future. In fact, the ongoing blockade and siege immensely harm Gaza’s economy, create continuous uncertainty in the lives of Gazans, and have become a means by which Israel effectively controls the Strip and administrates the civilian life of its citizens. Israel imposes categorical arbitrary restrictions on the movement of people and goods, thus preventing Gaza residents from exercising their basic right to freedom of movement, realizing a normal family life, working, getting an education, developing professionally and getting appropriate medical treatment.

This article wishes to examine the legality of the maritime blockade, imposed on Gaza according to international law, at two points in time: first, at the time of its imposition in 2009, and second, currently, ten years after its imposition. The author argues that the answer as regards the first depends on the classification of the conflict between Israel and Hamas in Gaza, whether it is an ongoing occupation or an international armed conflict. In examining the legality of the Gaza blockade, one must consider the importance of limiting the duration of the blockade at the time of its imposition, in order to limit its harmful effects on the civilian population.

The article argues that even if the blockade on Gaza was legally imposed, its having continued for over a decade, in addition to the siege, has sparked severe humanitarian crises and inflicts excessive harm upon civilians in relation to the military advantage anticipated from its imposition, thus making it disproportionate. The Gaza blockade is also illegal because it is a form of forbidden collective punishment.

The reality of a long blockade and siege requires a change in the traditional perception of control in the laws of occupation, which demand boots on the ground. The article challenges these laws, pointing at an existing relation between the long ongoing blockade and siege and the question of occupation in accordance with article 42 of the Hague Regulations. Even if one presumes that the Israeli occupation of Gaza ended after the disengagement plan, the imposition of an endless blockade and siege on Gaza creates effective control over the Strip, which replaces the need to have boots on the ground in the occupied territory. The Gazans live in a legal black hole, where no one can guarantee their basic needs; therefore serious normative considerations require recognition of Israel’s ongoing blockade and siege as constituting effective control over Gaza and thus establishing an occupation.